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8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 79/16-02

12 **HECTOR EVERARDO TRUJILLO**
13 **aka HECTOR E TRUJILLO DBA H & R**
14 **SMOG CHECK & AUTO REPAIR**
703 S Gifford Avenue, Unit 201
15 **San Bernardino, CA 92408**
Automotive Repair Dealer Registration No.
16 **ARD 262578**
Smog Check Station License No. RC 262578
17 **Lamp Station License No. LS 262578**
Brake Station License No. BS 262578

A C C U S A T I O N

18 and

19 **HECTOR E TRUJILLO**
715 E Mill Street
20 **San Bernardino, CA 92408**
Smog Check Inspector License No. EO
21 **137433**
Smog Check Repair Technician License
22 **Number EI 137433 (formerly Advanced**
Emission Specialist Technician License No.
23 **EA 137433)**
Brake Adjuster License No. BA 137433
24 **Lamp Adjuster License No. LA 137433**

25 Respondents.

1 Complainant alleges:

2 **PARTIES/LICENSE INFORMATION**

3 1. Patrick Dorais (“Complainant”) brings this Accusation solely in his official capacity
4 as the Chief of the Bureau of Automotive Repair (“Bureau”), Department of Consumer Affairs.

5 **Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair**

6 **Automotive Repair Dealer Registration**

7 2. On or about July 15, 2010, the Bureau issued Automotive Repair Dealer Registration
8 Number ARD 262578 (“registration”) to Hector Everardo Trujillo aka Hector E Trujillo dba H &
9 R Smog Check & Auto Repair (“Respondent H & R Smog”). The registration was in full force
10 and effect at all times relevant to the charges brought herein and will expire on June 30, 2016,
11 unless renewed.

12 **Smog Check Station License**

13 3. On or about October 20, 2010, the Bureau of Automotive Repair issued Smog Check
14 Station License Number RC 262578 (“station license”) to Respondent H & R Smog. The station
15 license was in full force and effect at all times relevant to the charges brought herein and will
16 expire on June 30, 2016, unless renewed.

17 **Lamp Station License**

18 4. On or about February 3, 2012, the Bureau of Automotive Repair issued Lamp Station
19 License Number LS 262578 to Respondent H & R Smog. The lamp station license was in full
20 force and effect at all times relevant to the charges brought herein and will expire on June 30,
21 2016, unless renewed.

22 **Brake Station License**

23 5. On or about February 3, 2012, the Bureau issued Brake Station License Number BS
24 262578 to Respondent H & R Smog. The brake station license was in full force and effect at all
25 times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed.

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1 **Hector E Trujillo**

2 **Technician License/Inspector License**
3 **(formerly Advanced Emission Specialist Technician License Number EA 137433)**

4 6. In or about 1997, the Bureau issued Advanced Emission Specialist Technician License
5 Number EA 137433 to Hector E Trujillo ("Respondent Trujillo"). Respondent Trujillo's
6 Advanced Emission Specialist Technician License was due to expire on June 30, 2013. However,
7 pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e)¹, the license
8 was renewed, pursuant to Respondent Trujillo's election, as Smog Check Inspector License
9 Number EO 137433 ("inspector license"), effective June 28, 2013 and Smog Check Repair
10 Technician License Number EI 137433 ("repair technician license"), effective October 16, 2013.
11 Respondent Trujillo's inspector license and repair technician license were in full force and effect
12 at all times relevant to the charges brought herein and will expire on June 30, 2017, unless
13 renewed.

14 **Brake Adjuster License**

15 7. In or about 2003, the Bureau issued Brake Adjuster License Number BA 137433 to
16 Respondent Trujillo. Respondent Trujillo's brake adjuster license was in full force and effect at
17 all times relevant to the charges brought herein and will expire on June 30, 2019, unless renewed.

18 **Lamp Adjuster License**

19 8. In or about 2003, the Bureau issued Lamp Adjuster License Number LA 137433 to
20 Respondent Trujillo. Respondent Trujillo's lamp adjuster license was in full force and effect at all
21 times relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

22 **JURISDICTION**

23 9. Business and Professions Code ("Code") section 9884.7 provides that the director
24 may revoke an automotive repair dealer registration.

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27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 automotive repair dealer, which are done by the automotive repair dealer or any automotive
2 technician, employee, partner, officer, or member of the automotive repair dealer.

3 “(1) Making or authorizing in any manner or by any means whatever any statement written
4 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable
5 care should be known, to be untrue or misleading.

6 “(2) Causing or allowing a customer to sign any work order that does not state the repairs
7 requested by the customer or the automobile's odometer reading at the time of repair.

8 “(3) Failing or refusing to give to a customer a copy of any document requiring his or her
9 signature, as soon as the customer signs the document.

10 “(4) Any other conduct that constitutes fraud.

11 “(5) Conduct constituting gross negligence.

12 “(6) Failure in any material respect to comply with the provisions of this chapter or
13 regulations adopted pursuant to it.”

14 17. Section 9884.9 of the Code states:

15 "(a) The automotive repair dealer shall give to the customer a written estimated price for
16 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
17 before authorization to proceed is obtained from the customer. No charge shall be made for work
18 done or parts supplied in excess of the estimated price without the oral or written consent of the
19 customer that shall be obtained at some time after it is determined that the estimated price is
20 insufficient and before the work not estimated is done or the parts not estimated are supplied.

21 Written consent or authorization for an increase in the original estimated price may be provided
22 by electronic mail or facsimile transmission from the customer. The bureau may specify in
23 regulation the procedures to be followed by an automotive repair dealer if an authorization or
24 consent for an increase in the original estimated price is provided by electronic mail or facsimile
25 transmission. If that consent is oral, the dealer shall make a notation on the work order of the
26 date, time, name of person authorizing the additional repairs and telephone number called, if any,
27 together with a specification of the additional parts and labor and the total additional cost, and
28 shall do either of the following:

1 "(1) Make a notation on the invoice of the same facts set forth in the notation on the work
2 order .

3 "(2) Upon completion of the repairs, obtain the customer's signature or initials to an
4 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
5 repairs, in the following language:

6 "I acknowledge notice and oral approval of an increase in the original estimated price.

7 _____

8 (signature or initials)"

9 "Nothing in this section shall be construed as requiring an automotive repair dealer to give a
10 written estimated price if the dealer does not agree to perform the requested repair."

11 18. Section 9889.1 of the Code states:

12 "Any license issued pursuant to Articles 5 and 6 [commencing with section 9887.1 of the
13 Automotive Repair Act], may be suspended or revoked by the director. The director may refuse
14 to issue a license to any applicant for the reasons set forth in Section 9889.2. The proceedings
15 under this article shall be conducted in accordance with Chapter 5 (commencing with Section
16 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all
17 the powers granted therein."

18 19. Section 9889.3 of the Code states:

19 "The director may suspend, revoke, or take other disciplinary action against a license as
20 provided in this article [Article 7 (commencing with section 9889.1) of Chapter 20.3 of Division
21 3 of the Business and Professions Code] if the licensee or any partner, officer, or director thereof:

22 "(a) Violates any section of the Business and Professions Code which relates to his or her
23 licensed activities.

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25 "(c) Violates any of the regulations promulgated by the director pursuant to this chapter [the
26 Automotive Repair Act].

27 "(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

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1 Vehicle Code and bureau regulations, and the vehicle has been road-tested, the certificate
2 shall certify that the entire system meets all such requirements.”

3 25. California Code of Regulation, title 16, section 3353, subdivision (a), states that
4 “No work for compensation shall be commenced and no charges shall accrue without
5 specific authorization from the customer in accordance with the following requirements:

6 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
7 estimated price for parts and labor for a specific job.”

8 26. California Code of Regulation, title 16, section 3371, states:

9 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any
10 false or misleading statement or advertisement which is known to be false or misleading, or which
11 by the exercise of reasonable care should be known to be false or misleading.”

12 **COST RECOVERY**

13 27. Section 125.3 of the Code provides, in pertinent part, that a board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 **UNDERCOVER OPERATION NO. 1: 1998 TOYOTA**

18 28. On September 13, 2013, an undercover operator of the Bureau ("operator") took the
19 Bureau's 1998 Toyota vehicle to Respondent H & R Smog's facility and requested a smog, brake
20 and lamp inspections. The vehicle defects included a brake system with the right front brake rotor
21 deliberately machined beyond minimum thickness specifications and the right rear brake drum
22 was deliberately machined beyond maximum diameter specifications. The headlamps were
23 deliberately misadjusted, the left rear backup light and right rear tail light were inoperative.

24 29. When the operator arrived at Respondent H & R Smog's facility, he was greeted by a
25 male employee. The operator informed the male employee that he needed a smog, brake and
26 lamp inspections. The male employee stated that the services would cost \$100.00. The male
27 employee provided the operator with a blank document and asked the operator to fill out the
28 information and sign it. The operator was not provided a copy of the estimate. Respondent

1 Trujillo performed the brake and lamp inspections and issued brake and lamp certificates. The
2 operator paid \$100.00 and was provided with a Smog Check Vehicle Inspection Report, Brake
3 Certificate Number [REDACTED] and Lamp Certificate Number [REDACTED] and a yellow and pink
4 copy of the unnumbered invoice.

5 30. The operator observed that at no point was the headlamp aiming equipment ever
6 accessed or used to inspect the headlamp adjustment on the Bureau's vehicle. Additionally, the
7 vehicle was never lifted off the ground and the wheels were not removed for any type of brake
8 inspection. The vehicle also was not road tested by anyone at Respondent H & R Smog's
9 Facility.

10 31. On September 18, 2013, a Bureau representative re-inspected the vehicle and found
11 that none of the wheels were removed from the vehicle, the right front brake rotor and the right
12 rear brake drum were out of the manufacturer's specification. In addition, the re-inspection of the
13 vehicle revealed that the right rear tail light and left rear back up light do not illuminate. The
14 Bureau representative also found that the left and right headlamps aim were not within
15 manufacturer's specification.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue and Misleading Statement)**

18 32. Respondent H & R Smog's registration is subject to discipline under Code section
19 9884.7, subdivision (a)(1) and California Code of Regulation, title 16, section 3371, in that on or
20 about September 13, 2013, regarding the 1998 Toyota vehicle, Respondent H & R Smog made or
21 authorized statements which it knew or in the exercise of reasonable care should have known to
22 be untrue or misleading, as follows:

23 a. Respondent H & R Smog certified under penalty of perjury on Brake Certificate
24 Number [REDACTED] that the applicable inspection was performed on the brake system when, in
25 fact, Respondent H & R Smog's adjuster, Respondent Trujillo, failed to inspect the brake system
26 on the vehicle, as evidenced by his failure to remove the right front wheel and the right rear brake
27 drum.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Provide a Copy of a Signed Document)**

3 35. Respondent H & R Smog's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(3) and California Code of Regulation, title 16, section 3353, subdivision
5 (a), in that on or about September 13, 2013, regarding the 1998 Toyota vehicle, Respondent H &
6 R Smog failed to provide the operator with a copy of the estimate as soon as the operator signed
7 the document.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with the Code)**

10 36. Respondent H & R Smog's registration is subject to discipline pursuant to Code
11 section, subdivision 9884.7(a)(6), in that on or about September 13, 2013, regarding the 1998
12 Toyota vehicle, Respondent H & R Smog failed to comply with provisions of that Code in the
13 following material respects:

14 a. **Section 9884.9, subdivision (a):** Respondent H & R Smog failed to provide the
15 operator with a written estimated price for parts and labor for a specific job.

16 b. **Section 9889.16:**

17 i. Respondent Trujillo issued Brake Certificate Number [REDACTED] for the
18 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
19 the Vehicle Code, in that the right front brake rotor and the right rear brake drum were out of
20 manufacturer's specifications.

21 ii. Respondent Trujillo issued Lamp Certificate Number [REDACTED] for the
22 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
23 the Vehicle Code, in that the right rear tail light and left rear back up light do not illuminate.

24 iii. Respondent Trujillo issued Lamp Certificate Number [REDACTED] for the
25 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
26 the Vehicle Code, in that the left and right headlamps aim were not within specifications.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Bus. & Prof. Code)**

3 40. Respondent H & R Smog's brake and lamp station licenses are subject to discipline
4 under Code section 9889.3, subdivisions (a) and (h), in that on or about September 13, 2013,
5 regarding the 1998 Toyota vehicle, Respondent H & R Smog violated Code section 9889.16
6 relating to his licensed activities, as more particularly set forth above in paragraph 37.

7 **TENTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud, or Deceit)**

9 41. Respondent H & R Smog's brake and lamp station licenses are subject to discipline
10 pursuant to Code section 9889.3, subdivision (d), in that on or about September 13, 2013,
11 regarding the 1998 Toyota vehicle, Respondent H & R Smog committed acts involving
12 dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in
13 paragraphs 28, 29, 30 and 31.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Code)**

16 42. Respondent Trujillo's brake and lamp adjuster licenses are subject to discipline under
17 Code section 9889.3, subdivision (a), in that on or about September 13, 2013, regarding the 1998
18 Toyota vehicle, Respondent Trujillo violated sections of the Code, relating to his licensed
19 activities, as more particularly set forth above in paragraph 36.

20 **TWELFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations)**

22 43. Respondent Trujillo's brake and lamp adjuster licenses are subject to discipline under
23 Code section 9889.3, subdivision (c), in that on or about September 13, 2013, regarding the 1998
24 Toyota vehicle, Respondent Trujillo failed to comply with provisions of California Code of
25 Regulations, title 16, as more particularly set forth above in paragraph 37.

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1 lamp inspections. Respondent Trujillo issued brake and lamp certificates. The operator paid
2 \$100.00 and was provided with a Smog Check Vehicle Inspection Report, Brake Certificate
3 Number [REDACTED] and Lamp Certificate Number [REDACTED] and a yellow and pink copy of
4 the unnumbered invoice.

5 49. At no time prior to the inspections was the operator given a price and did not sign
6 anything while at Respondent H & R Smog's facility. Additionally, the operator observed the
7 inspections which revealed that at no time was the vehicle ever driven pass/over the dynamometer
8 into any other areas within Respondent H & R Smog's facility, the vehicle was never lifted off the
9 ground, none of the vehicle's wheels were removed for any type of brake inspection. The vehicle
10 was never road tested and the vehicle's lights were never turned on at anytime for any type of
11 lamp inspection.

12 50. On December 17, 2013, a Bureau representative re-inspected the vehicle and found
13 that none of the wheels were removed from the vehicle, the right front brake rotor and the right
14 rear brake rotor were out of the manufacturer's specification.

15 **FIFTEENTH CAUSE FOR DISCIPLINE**

16 **(Untrue and Misleading Statement)**

17 51. Respondent H & R Smog's registration is subject to discipline under Code section
18 9884.7, subdivision (a)(1) and California Code of Regulation, title 16, section 3371, in that on or
19 about December 12, 2013, regarding the 2002 Honda vehicle, Respondent H & R Smog made or
20 authorized statements which it knew or in the exercise of reasonable care should have known to
21 be untrue or misleading, as follows:

22 a. Respondent H & R Smog certified under penalty of perjury on Brake Certificate
23 Number [REDACTED] that the applicable inspection was performed on the brake system when, in
24 fact, Respondent H & R Smog's adjuster, Respondent Trujillo, failed to inspect the brake system
25 on the vehicle, as evidenced by his failure to remove the right front wheel and the right rear
26 wheel.

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1 Honda vehicle, Respondent H & R Smog failed to comply with provisions of that Code in the
2 following material respects:

3 a. **Section 9884.9, subdivision (a):** Respondent H & R Smog failed to provide the
4 operator with a written estimated price for parts and labor for a specific job.

5 b. **Section 9889.16:**

6 i. Respondent Trujillo issued Brake Certificate Number [REDACTED] for the
7 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
8 the Vehicle Code, in that the right front brake rotor and the right rear brake rotor were out of
9 manufacturer's specifications.

10 ii. Respondent Trujillo issued Lamp Certificate Number [REDACTED] for the
11 vehicle, in that Respondent Trujillo failed to perform any lamp inspection of the vehicle, even
12 though the headlamps were within specifications.

13 **NINETEENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations)**

15 55. Respondent H & R Smog's registration is subject to discipline pursuant to Code
16 section 9884.7, subdivision (a)(6), in that on or about December 12, 2013, regarding the 2002
17 Honda vehicle, Respondent H & R Smog failed to comply with provisions of California Code of
18 Regulations, title 16, in the following material respects:

19 a. **Section 3305, subdivision (a):** Respondent Trujillo failed to perform a brake and
20 lamp inspection in accordance with the vehicle's manufacturer standards and/or current standards,
21 specifications, recommended procedures, and/or directives issued by the Bureau.

22 b. **Section 3316, subdivision (d)(2):** Respondent Trujillo issued Lamp Certificate
23 Number [REDACTED], certifying that the vehicle's lamp system had been inspected and was in
24 satisfactory condition when, in fact, the vehicle's lights were never turned on at anytime for any
25 type of lamp inspection.

26 c. **Section 3321, subdivision (c)(2):** Respondent Trujillo issued Brake Certificate
27 Number [REDACTED], certifying that the vehicle's brake system had been inspected and was in
28 satisfactory condition when, in fact, it was not.

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TWENTIETH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

56. Respondent H & R Smog's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (a), in that on or about December 12, 2013, regarding the 2002 Honda vehicle, Respondent H & R Smog violated sections of the Code, relating to its licensed activities, as more particularly set forth above in paragraph 53.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with the Bus. & Prof. Code)

57. Respondent H & R Smog's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivisions (a) and (h), in that on or about December 12, 2013, regarding the 2002 Honda vehicle, Respondent H & R Smog violated Code section 9889.16 relating to his licensed activities, as set forth in paragraph 54.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

58. Respondent H & R Smog's brake and lamp station licenses are subject to discipline pursuant to Code section 9889.3, subdivision (d), in that on or about December 12, 2013, regarding the 2002 Honda vehicle, Respondent H & R Smog committed acts involving dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in paragraphs 47, 48, 49 and 50.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

59. Respondent Trujillo's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3, subdivision (a), in that on or about December 12, 2013, regarding the 2002 Honda vehicle, Respondent Trujillo violated sections of the Code, relating to his licensed activities, as more particularly set forth above in paragraph 54.

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- 1 6. Revoking or suspending any additional license issued under Articles 5 and 6 of
- 2 Chapter 20.3 of the Business and Professions Code in the name of Hector Everardo Trujillo aka
- 3 Hector E Trujillo dba H & R Smog Check & Auto Repair;
- 4 7. Revoking or suspending Smog Check Inspector License Number EO 137433
- 5 (formerly Advanced Emission Specialist Technician License Number EA 137433), issued to
- 6 Hector E Trujillo;
- 7 8. Revoking or suspending Smog Check Repair Technician License Number EI 137433
- 8 (formerly Advanced Emission Specialist Technician License Number EA 137433), issued to
- 9 Hector E Trujillo;
- 10 9. Revoking or suspending Brake Adjuster License Number BA 137433, issued to
- 11 Hector E Trujillo;
- 12 10. Revoking or suspending Lamp Adjuster License Number LA 137433, issued to
- 13 Hector E. Trujillo;
- 14 11. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 15 and Safety Code in the name of Hector E Trujillo;
- 16 12. Ordering Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check &
- 17 Auto Repair; and Hector E Trujillo to pay the Bureau of Automotive Repair the reasonable costs
- 18 of the investigation and enforcement of this case, pursuant to Business and Professions Code
- 19 section 125.3; and
- 20 13. Taking such other and further action as deemed necessary and proper.

23 DATED: July 2, 2015



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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