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

11  
12 In the Matter of the Accusation Against:  
13 **RUDY'S SMOG CHECK,**  
**ROSALINA MANGOSING, OWNER**  
14 **83-386 Highway 111 #2**  
**Indio, CA 92201**  
15  
16 **Automotive Repair Dealer Registration No.**  
**ARD 278556**  
**Smog Check Station License No. RC 278556**  
17  
18 **RICHARD SHAWN DOMINGUEZ**  
**1160 4<sup>th</sup> Street**  
**Coachella, CA 92236**  
19  
20 **Smog Check Inspector License No. EO**  
**636339**  
21 Respondents.

Case No. *79/16-95*  
ACCUSATION  
*Smog Check*

22  
23 Complainant alleges:

24 **PARTIES**

25 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as  
26 the Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs.

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28 ///



1 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
2 temporarily or permanently.

3 9. Code section 9889.1 provides, in pertinent part, that the Director may suspend or  
4 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the  
5 Automotive Repair Act.

6 10. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
7 license by operation of law or by order or decision of the Director or a court of law, or the  
8 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
9 disciplinary proceedings.

10 11. Health and Safety Code (H & S Code) section 44002 provides, in pertinent part, that  
11 the Director has all the powers and authority granted under the Automotive Repair Act for  
12 enforcing the Motor Vehicle Inspection Program.

13 12. H & S Code section 44072.6 provides, in pertinent part, that the expiration or  
14 suspension of a license by operation of law, or by order or decision of the Director, or a court of  
15 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to  
16 proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to  
17 render a decision suspending or revoking the license.

18 13. H & S Code section 44072.8 states:

19 "When a license has been revoked or suspended following a hearing under this article, any  
20 additional license issued under this chapter in the name of the licensee may be likewise revoked  
21 or suspended by the director."

### 22 STATUTORY PROVISIONS

23 14. Code section 9884.7 of the Code states, in pertinent part:

24 (a) The director, where the automotive repair dealer cannot show there was a  
25 bona fide error, may deny, suspend, revoke, or place on probation the registration  
26 of an automotive repair dealer for any of the following acts or omissions related to  
27 the conduct of the business of the automotive repair dealer, which are done by the  
28 automotive repair dealer or any automotive technician, employee, partner, officer,  
or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any  
statement written or oral which is untrue or misleading, and which is known, or

1 which by the exercise of reasonable care should be known, to be untrue or  
misleading.

2 . . . .

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

5 (4) Any other conduct which constitutes fraud.

6 . . . .

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

8 . . . .

9 (b) Except as provided for in subdivision (c), if an automotive repair dealer  
10 operates more than one place of business in this state, the director pursuant to  
subdivision (a) shall only suspend, revoke, or place on probation the registration of  
11 the specific place of business which has violated any of the provisions of this  
chapter. This violation, or action by the director, shall not affect in any manner  
12 the right of the automotive repair dealer to operate his or her other places of  
business.

13 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or  
14 place on probation the registration for all places of business operated in this state  
by an automotive repair dealer upon a finding that the automotive repair dealer  
15 has, or is, engaged in a course of repeated and willful violations of this chapter, or  
regulations adopted pursuant to it.

16 15. Code section 9884.9 of the Code states, in pertinent part:

17 (a) The automotive repair dealer shall give to the customer a written  
18 estimated price for labor and parts necessary for a specific job. No work shall be  
done and no charges shall accrue before authorization to proceed is obtained from  
19 the customer. No charge shall be made for work done or parts supplied in excess  
of the estimated price without the oral or written consent of the customer that shall  
20 be obtained at some time after it is determined that the estimated price is  
insufficient and before the work not estimated is done or the parts not estimated  
21 are supplied. Written consent or authorization for an increase in the original  
estimated price may be provided by electronic mail or facsimile transmission from  
22 the customer. The bureau may specify in regulation the procedures to be followed  
by an automotive repair dealer if an authorization or consent for an increase in the  
23 original estimated price is provided by electronic mail or facsimile transmission. If  
that consent is oral, the dealer shall make a notation on the work order of the date,  
24 time, name of person authorizing the additional repairs and telephone number  
called, if any, together with a specification of the additional parts and labor and the  
total additional cost,

25 . . . .

26 16. H & S Code section 44012 states, in pertinent part:

27 The test at the smog check stations shall be performed in accordance with  
28 procedures prescribed by the department, pursuant to Section 44013, shall require,

1 at a minimum, loaded mode dynamometer testing in enhanced areas, and  
two-speed testing in all other program areas, and shall ensure all of the following:

2 (a) Emission control systems required by state and federal law are reducing  
3 excess emissions in accordance with the standards adopted pursuant to  
subdivisions (a) and (c) of Section 44013.

4 . . . .

5 (f) A visual or functional check is made of emission control devices  
6 specified by the department, including the catalytic converter in those instances in  
7 which the department determines it to be necessary to meet the findings of Section  
44001. The visual or functional check shall be performed in accordance with  
procedures prescribed by the department.

8 . . . .

9 17. H & S Code section 44015 states, in pertinent part:

10 (a) A licensed smog check station shall not issue a certificate of  
11 compliance, except as authorized by this chapter, to any vehicle that meets the  
following criteria:

12 (1) A vehicle that has been tampered with.

13 . . . .

14 (b) If a vehicle meets the requirements of Section 44012, a smog check  
15 station licensed to issue certificates shall issue a certificate of compliance or a  
certificate of noncompliance.

16 18. H & S Code section 44032 states:

17 No person shall perform, for compensation, tests or repairs of emission  
18 control devices or systems of motor vehicles required by this chapter unless the  
19 person performing the test or repair is a qualified smog check technician and the  
20 test or repair is performed at a licensed smog check station. Qualified technicians  
shall perform tests of emission control devices and systems in accordance with  
21 Section 44012.

22 19. H & S Code section 44072.2 states, in pertinent part:

23 The director may suspend, revoke, or take other disciplinary action against a  
24 license as provided in this article if the licensee, or any partner, officer, or director  
thereof, does any of the following:

25 (a) Violates any section of this chapter [the Motor Vehicle Inspection  
26 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted  
pursuant to it, which related to the licensed activities.

27 . . . .

1 (c) Violates any of the regulations adopted by the director pursuant to this  
chapter.

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

4 . . . .

5 20. H & S Code section 44072.10 states, in pertinent part:

6 . . . .

7 (c) The department shall revoke the license of any smog check technician or  
8 station licensee who fraudulently certifies vehicles or participates in the fraudulent  
9 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of  
10 the following:

11 (1) Clean piping, as defined by the department.

12 . . . .

13 (4) Intentional or willful violation of this chapter or any regulation,  
14 standard, or procedure of the department implementing this chapter.

15 . . . .

16 **REGULATORY PROVISIONS**

17 21. California Code of Regulations, Title 16, (CCR) section 3340.1, provides that the  
18 term "clean piping," for purposes of Health and Safety Code section 44072.10, subdivision (c)(1),  
19 means the use of a substitute exhaust emissions sample in place of the actual test vehicle's  
20 exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle.

21 22. CCR, section 3340.24 (c), states:

22 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a  
23 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
24 certificate of noncompliance."

25 23. CCR, section 3340.30, states, in pertinent part:

26 "A smog check technician shall comply with the following requirements at all times while  
27 licensed.

28 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
3340.42 of this article.

. . . .

1 24. CCR, section 3340.35, states, in pertinent part:

2 . . . .

3 (c) A licensed station shall issue a certificate of compliance or  
4 noncompliance to the owner or operator of any vehicle that has been inspected in  
5 accordance with the procedures specified in section 3340.42 of this article and has  
6 all the required emission control equipment and devices installed and functioning  
7 correctly. The following conditions shall apply:

8 (1) Customers shall be charged the same price for certificates as that paid by  
9 the licensed station; and

10 (2) Sales tax shall not be assessed on the price of certificates.

11 . . . .

12 25. CCR, section 3340.41, states, in pertinent part:

13 (a) A licensed station shall give a copy of the test report printed from the  
14 emissions inspection system to the customer. The report shall be attached to the  
15 customer's invoice.

16 (b) No person shall enter into the emissions inspection system any access or  
17 qualification number other than as authorized by the bureau, nor in any way  
18 tamper with the emissions inspection system.

19 (c) No person shall enter into the emissions inspection system any vehicle  
20 identification information or emission control system identification data for any  
21 vehicle other than the one being tested. Nor shall any person knowingly enter into  
22 the emissions inspection system any false information about the vehicle being  
23 tested.

24 . . . .

25 26. CCR, section 3340.42, states:

26 Smog check inspection methods are prescribed in the Smog Check Manual,  
27 referenced by section 3340.45.

28 (a) All vehicles subject to a smog check inspection, shall receive one of the  
following test methods:

(1) A loaded-mode test shall be the test method used to inspect  
1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced  
program areas of the state. The loaded-mode test shall measure hydrocarbon,  
carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained  
in the bureau's specifications referenced in subsection (a) of Section 3340.17 of  
this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM)  
test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle  
subject to this inspection shall be measured and compared to the emissions  
standards shown in the Vehicle Look-up Table (VLT) Row Specific Emissions

1 Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by  
2 reference. If the emissions standards for a specific vehicle are not included in this  
3 table then the exhaust emissions shall be compared to the emissions standards set  
4 forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode  
5 test if all of its measured emissions are less than or equal to the applicable  
6 emission standards specified in the applicable table.

7 (2) A two-speed idle mode test shall be the test method used to  
8 inspect 1976 - 1999 model-year vehicles, except diesel-powered, registered in all  
9 program areas of the state, except in those areas of the state where the enhanced  
10 program has been implemented. The two-speed idle mode test shall measure  
11 hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and  
12 again at idle RPM, as contained in the bureau's specifications referenced in  
13 subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle  
14 subject to this inspection shall be measured and compared to the emission  
15 standards set forth in this section and as shown in TABLE III. A vehicle passes  
16 the two-speed idle mode test if all of its measured emissions are less than or equal  
17 to the applicable emissions standards specified in Table III.

18 (3) An OBD-focused test, shall be the test method used to inspect  
19 gasoline-powered vehicles 2000 model-year and newer, and diesel-powered  
20 vehicles 1998 model-year and newer. The OBD test failure criteria are specified  
21 in section 3340.42.2.

22 (b) In addition to subsection (a), all vehicles subject to the smog check  
23 program shall receive the following:

24 (1) A visual inspection of emission control components and  
25 systems to verify the vehicle's emission control systems are properly installed.

26 (2) A functional inspection of emission control systems as specified  
27 in the Smog Check Manual, referenced by section 3340.45, which may include an  
28 OBD test, to verify their proper operation.

(c) The bureau may require any combination of the inspection methods in  
sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to  
Health and Safety Code section 44014.7 as a means of identifying potential  
operational problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or  
physically incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational  
problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter  
standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon,  
carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter  
emissions standards included in the tables described in subsection (a), as  
applicable.

1 (2) Vehicles with emission levels exceeding the emission standards  
2 for gross polluters during an initial inspection will be considered gross polluters  
and the provisions pertaining to gross polluting vehicles will apply, including, but  
not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

3 (3) A gross polluting vehicle shall not be passed or issued a  
4 certificate of compliance until the vehicle's emissions are reduced to or below the  
applicable emissions standards for the vehicle included in the tables described in  
5 subsection (a), as applicable. However, the provisions described in section 44017  
of the Health and Safety Code may apply.

6 (4) This subsection applies in all program areas statewide to  
7 vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health  
and Safety Code.

8 27. CCR, section 3373, states:

9 No automotive repair dealer or individual in charge shall, in filling out an  
10 estimate, invoice, or work order, or record required to be maintained by section  
3340.15(f) of this chapter, withhold therefrom or insert therein any statement or  
11 information which will cause any such document to be false or misleading, or  
where the tendency or effect thereby would be to mislead or deceive customers,  
12 prospective customers, or the public.

### 13 COST RECOVERY

14 28. Code section 125.3 provides, in pertinent part, that the Board may request the  
15 administrative law judge to direct a licentiate found to have committed a violation or violations of  
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
17 enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
18 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
19 may be included in a stipulated settlement.

### 20 UNDERCOVER OPERATION: 1991 Mitsubishi

21 29. In May of 2015, the BAR conducted an undercover operation at the smog check  
22 station, Rudy's Smog Check. The BAR's vehicle, a 1992 Mitsubishi, was modified to fail a  
23 proper smog inspection due to the removal of the catalytic converter substrate, causing a tailpipe  
24 emissions failure. In addition, the vehicle had a modified fuel injection system, modified PCV  
25 system and a modified air intake system. All of the modifications of these systems were not  
26 approved for this vehicle, causing the vehicle to fail the visual inspection.

27 30. On May 7, 2015, a BAR undercover operator took the vehicle to Respondent  
28 Mangosing's smog check station. The operator told Respondent Mangosing's employee

1 Francisco Garza III, that he needed help passing the smog inspection. (Francisco Garza III was a  
2 licensed smog technician at Respondent Mangosing's smog check station and has already been  
3 disciplined by the BAR for his actions in this undercover run). Mr. Garza told the operator that  
4 he did not have time to work on the vehicle that day but should bring it back. On May 11, 2015  
5 the undercover operator returned to the shop, but Mr. Garza was not present. He left his billing  
6 notice for the smog check at the shop with another employee named Diego and was told that Mr.  
7 Garza would contact him. The operator was not given any paper work at that time. On May 12,  
8 2015, the operator spoke with Mr. Garza by telephone and was told that the guy who did these  
9 inspections had been shut down by the State, but that Mr. Garza could get it done for a price of  
10 \$250.00.

11 31. On May 27, 2015, Mr. Garza telephoned the operator to verify the VIN for the  
12 Mitsubishi. Later that day Mr. Garza telephoned the operator again to tell him the inspection was  
13 complete, but the price was now \$300.00 because it was getting more difficult to pass these types  
14 of vehicles.

15 32. On May 28, 2015, the undercover operator met with Mr. Garza and paid him \$300.00.  
16 The only paperwork he received was a partial copy of the VIR. The operator did not sign or  
17 receive a written estimate. Mr. Garza performed the smog inspections that resulted in an  
18 improperly issued certificate for the Smog Check inspection.

19 33. The investigator obtained information from the BAR's vehicle information database  
20 (VID) that revealed that the Mitsubishi was purportedly tested by Mr. Garza on May 27, 2015  
21 between 3:28 p.m. and 3:35 p.m. at Rudy's Smog Check. The test resulted in the issuance of  
22 electronic smog Certificate of Compliance [REDACTED]. On May 27, 2015, the Mitsubishi  
23 was stored in a secured facility by the BAR and was not in the possession or control of anyone at  
24 Rudy's Smog Check.

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1 emission control devices and systems on the vehicle, thereby depriving the People of the State of  
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Provide a Written Estimate)**

5 38. Respondent Mangosing's registration is subject to disciplinary action pursuant to  
6 Code section 9884.7, subdivision (a)(6), in that she failed to comply with Code section 9884.9,  
7 subdivision (a), by failing to provide the operator of the Mitsubishi with a written estimated price  
8 for the smog inspection.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Motor Vehicle Inspection Program)**

11 39. Respondent Mangosing's smog check station license is subject to disciplinary action  
12 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent Mangosing failed to  
13 comply with provisions of the Code, as set forth in paragraphs 29 through 35, above.

14 a. **Section 44012, subdivision (a):** Respondent Mangosing failed to ensure that all  
15 emission control devices and systems required by law for the Mitsubishi were installed and  
16 functioning correctly in accordance with procedures prescribed by the department.

17 b. **Section 44012, subdivision (f):** Respondent Mangosing failed to ensure that the  
18 emission control tests were performed on the Mitsubishi, in accordance with procedures  
19 prescribed by the department.

20 c. **Section 44015:** Respondent Mangosing issued an electronic smog certificate of  
21 compliance for the Mitsubishi without ensuring that the vehicle was properly tested and inspected  
22 to determine if it was in compliance with H & S Code section 44012.

23 d. **Section 44072.10:** Respondent Mangosing used clean piping methods in order to  
24 issue a certificate for the Mitsubishi.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

27 40. Respondent Mangosing's smog check station license is subject to disciplinary action  
28 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent Mangosing failed to

1 comply with provisions of California Code of Regulations, Title 16, as set forth in paragraphs 29  
2 through 35, above.

3 a. **Section 3340.24, subdivision (c):** Respondent Mangosing falsely or fraudulently  
4 issued an electronic smog certificate of compliance for the Mitsubishi.

5 b. **Section 3340.35, subdivision (c):** Respondent Mangosing failed to inspect and test  
6 the Mitsubishi in accordance with H & S Code sections 44012 and 44035, and CCR section  
7 3340.42.

8 c. **Section 3340.41, subdivision (c):** Respondent Mangosing permitted false  
9 information to be entered into the EIS in that vehicle identification information or emission  
10 control system identification data for a vehicle other than the one being tested.

11 d. **Section 3340.42:** Respondent Mangosing failed to conduct the required smog tests  
12 on the Mitsubishi in accordance with the BAR's specifications.

13 e) **Section 3373:** Respondent Mangosing created a false and misleading record by  
14 issuing an electronic smog certificate of compliance that falsely stated the Mitsubishi had passed  
15 a smog inspection.

#### 16 **SIXTH CAUSE FOR DISCIPLINE**

#### 17 **(Dishonesty, Fraud or Deceit)**

18 41. Respondent Mangosing's smog check station license is subject to disciplinary action  
19 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent Mangosing  
20 committed a dishonest, fraudulent or deceitful act whereby another is injured, as set forth in  
21 paragraphs 29 through 35, above. Respondent Mangosing issued an electronic smog certificate of  
22 compliance for the Mitsubishi without performing a bona fide inspection of the emission control  
23 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
24 protection afforded by the Motor Vehicle Inspection Program.

#### 25 **UNDERCOVER OPERATION: 1992 Honda and 1995 Honda**

26 42. On June 24, 2015, the Bar conducted an undercover operation at Respondent  
27 Mangosing's smog check station, Rudy's Smog Check. The BAR conducted this operation with  
28 two separate vehicles.

1           43. The BAR's vehicle, a 1992 Honda, was modified to fail a proper smog inspection due  
2 to the removal of the catalytic converter. The vehicle would fail the tailpipe emissions test as a  
3 gross polluter for excessive tail pipe emissions. In addition, the modifications would cause the  
4 vehicle to fail the visual inspection for the missing catalytic converter.

5           44. The BAR's other vehicle, a 1995 Honda, was modified to fail a proper smog  
6 inspection due to the modification of the positive crankcase ventilation (PCV) system with an  
7 open type element on the valve cover, the removal of the catalytic converter, and the modification  
8 of other exhaust related components with a non-approved exhaust header, and, the vehicle  
9 visually smoked out of the tail pipe. The vehicle would fail the tailpipe emissions test as a gross  
10 polluter for excessive tail pipe emissions. In addition, the modifications would cause the vehicle  
11 to fail the visual inspection for the missing catalytic converter, the modified PCV system and the  
12 modified exhaust system.

13           45. On June 24, 2015, and all times thereafter, both the 1992 Honda and the 1995 Honda  
14 were stored in secured facilities by the BAR and were never in the possession or control of  
15 Respondent Mangosing's smog check station, Rudy's Smog Check.

16           46. A BAR undercover operator took fictitious billing notices for both Hondas to  
17 Respondent Mangosing's smog check station. The operator was the same individual who  
18 conducted the undercover operation for the Mitsubishi, above. The operator met with  
19 Respondent Mangosing's employee Diego, whom he had previously met for the Mitsubishi  
20 operation and gave the billing notices to Diego, with his contact information and requested smog  
21 certificates. Diego told him he would contact the operator.

22           47. On June 26, 2015, Diego spoke with the operator by telephone and told him the smog  
23 certifications would be ready the next day on Saturday, June 27, 2015. The price on the smog  
24 certifications remained the same at \$300.00 per certification.

25           48. On June 29, 2015, the undercover operator met with Diego at Rudy's Smog Check  
26 and paid him \$600.00. For both Hondas, the operator received pink and yellow receipts listing a  
27 smog check and a certificate for \$60.00 each. For the 1992 Honda he received a signed copy of  
28

1 the VIR. For the 1995 Honda he received an unsigned copy of the VIR. The operator did not  
2 sign or receive a written estimate.

3 49. The BAR investigator obtained information from the BAR's VID that revealed that  
4 the 1992 Honda was tested by Respondent Dominguez on June 27, 2015 between 9:33 a.m. and  
5 9:48 a.m. at Rudy's Smog Check. The test resulted in the issuance of electronic smog Certificate  
6 of Compliance [REDACTED]. On June 27, 2015, the 1992 Honda was stored in a secured  
7 facility by the BAR and was not in the possession or control of anyone at Rudy's Smog Check.

8 50. The BAR investigator obtained information from the BAR's VID that revealed that  
9 the 1995 Honda was tested by Respondent Dominguez on June 27, 2015 between 12:32 a.m. and  
10 12:50 a.m. at Rudy's Smog Check. The test resulted in the issuance of electronic smog  
11 Certificate of Compliance [REDACTED]. On June 27, 2015, the 1995 Honda was stored in a  
12 secured facility by the BAR and was not in the possession or control of anyone at Rudy's Smog  
13 Check.

14 51. The BAR determined that the smog inspection of both Hondas was conducted using  
15 clean piping methods, resulting in the issuance of fraudulent certificate of compliance for the  
16 vehicles. The smog inspections were conducted using Respondent Dominguez's confidential  
17 access code.

18 52. On July 8, 2015, BAR personnel re-inspected and retested the 1992 Honda after the  
19 purported smog test by Rudy's Smog Check. The condition of the vehicle as modified before  
20 testing had not changed; the vehicle failed a visual inspection for the missing catalytic converter.  
21 In addition, the vehicle failed for excessive tail pipe emissions.

22 53. On July 8, 2015, BAR personnel re-inspected and retested the 1995 Honda after the  
23 purported smog test by Rudy's Smog Check. The condition of the vehicle as modified before  
24 testing had not changed; the vehicle failed the tailpipe emissions test as a gross polluter for  
25 excessive tail pipe emissions. In addition, the vehicle failed the visual inspection for the missing  
26 catalytic converter, the modified PCV system and the modified exhaust system.

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**SEVENTH CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

54. Respondent Mangosing's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent Mangosing made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as set forth in paragraphs 42 through 53, above. Respondent Mangosing certified that the 1992 Honda and the 1995 Honda had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Mangosing used clean piping methods in order to issue certificates for the vehicles and did not test or visually inspect the vehicles as required by H & S Code section 44012.

**EIGHTH CAUSE FOR DISCIPLINE**

**(Fraud)**

55. Respondent Mangosing's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitutes fraud as set forth in paragraphs 42 through 53. Respondent Mangosing issued electronic smog certificates of compliance for the 1992 Honda and the 1995 Honda without performing a bona fide inspection of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**NINTH CAUSE FOR DISCIPLINE**

**(Failure to Provide a Written Estimate)**

56. Respondent Mangosing's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that she failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator of the 1992 Honda and the 1995 Honda with written estimated prices for the smog inspections.

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1 TENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 57. Respondent Mangosing's smog check station license is subject to disciplinary action  
4 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent Mangosing failed to  
5 comply with provisions of the Code, as set forth in paragraphs 42 through 53, above.

6 a. **Section 44012, subdivision (a):** Respondent Mangosing failed to ensure that all  
7 emission control devices and systems required by law for the 1992 Honda and the 1995 Honda  
8 were installed and functioning correctly in accordance with procedures prescribed by the  
9 department.

10 b. **Section 44012, subdivision (f):** Respondent Mangosing failed to ensure that the  
11 emission control tests were performed on the 1992 Honda and the 1995 Honda, in accordance  
12 with procedures prescribed by the department.

13 c. **Section 44015:** Respondent Mangosing issued electronic smog certificates of  
14 compliance for the 1992 Honda and the 1995 Honda without ensuring that the vehicles were  
15 properly tested and inspected to determine if they were in compliance with H & S Code section  
16 44012.

17 d. **Section 44072.10:** Respondent Mangosing used clean piping methods in order to  
18 issue certificates for the 1992 Honda and the 1995 Honda.

19 ELEVENTH CAUSE FOR DISCIPLINE

20 (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

21 58. Respondent Mangosing's smog check station license is subject to disciplinary action  
22 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent Mangosing failed to  
23 comply with provisions of California Code of Regulations, Title 16, as set forth in paragraphs 42  
24 through 53, above.

25 a. **Section 3340.24, subdivision (c):** Respondent Mangosing falsely or fraudulently  
26 issued electronic smog certificates of compliance for the 1992 Honda and the 1995 Honda.

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1 e) **Section 3373:** Respondent Dominguez created a false and misleading record by  
2 issuing electronic smog certificates of compliance that falsely stated the 1992 Honda and the  
3 1995 Honda had passed a smog inspection.

4 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

6 62. Respondent Dominguez's inspector license is subject to disciplinary action pursuant  
7 to H & S Code section 44072.2, subdivision (d), in that Respondent committed dishonest,  
8 fraudulent, or deceitful acts whereby another is injured, as set forth in paragraphs 42 through 53,  
9 above. Respondent issued electronic smog certificates of compliance for the 1992 Honda and the  
10 1995 Honda without performing bona fide inspections of the emission control devices and  
11 systems on the vehicles, thereby depriving the People of the State of California of the protection  
12 afforded by the Motor Vehicle Inspection Program.

13 **UNDERCOVER OPERATION: 2001 Honda and 2003 Honda**

14 63. On July 27, 2015, the Bar conducted an undercover operation at Respondent  
15 Mangosing's smog check station, Rudy's Smog Check. The BAR conducted this operation with  
16 two separate vehicles.

17 64. The BAR's vehicle, a 2001 Honda, was modified to fail a proper smog inspection due  
18 to the removal of the catalytic converter and two heated oxygen sensors. The vehicle would fail  
19 the California On Board Diagnostic Inspection System (OIS) test for tampered computers,  
20 sensors, switches and wiring. In addition, the modifications would cause the vehicle to fail the  
21 functional inspection for the On Board Diagnostics Generation Two (OBDII) and OBD bulb  
22 check.

23 65. The BAR's other vehicle, a 2003 Honda, was modified to fail a proper smog  
24 inspection due to the removal of the catalytic converter and two heated oxygen sensors. The  
25 vehicle would fail the California On Board Diagnostic Inspection System (OIS) test for tampered  
26 computers, sensors, switches and wiring. In addition, the modifications would cause the vehicle  
27 to fail the functional inspection for the On Board Diagnostics Generation Two (OBDII) and OBD  
28 bulb check.

1           66. On July 27, 2015, and all times thereafter, both the 2001 Honda and the 2003 Honda  
2 were stored in secured facilities by the BAR and were never in the possession or control of  
3 Respondent Mangosing's smog check station, Rudy's Smog Check, or at any other smog shop.

4           67. A BAR undercover operator took fictitious billing notices for both Hondas to  
5 Respondent Mangosing's smog check station. The operator was the same individual who  
6 conducted the previous undercover operations, above. The operator met with Respondent  
7 Mangosing's employee Diego, whom he had previously met with, for the previous operations,  
8 and gave the billing notices to Diego, with his contact information, and requested smog  
9 certificates. Diego told him he would contact the operator. The operator left the facility. Later  
10 that same day, Diego called the undercover operator and said the price for each inspection was  
11 \$450.00, which the undercover operator authorized. Diego again called the undercover operator  
12 and asked the undercover operator to text photographs of the odometer readings for the vehicles,  
13 which the undercover operator did. Finally, on that same day, Diego called and told the  
14 undercover operator the vehicles would be completed later that day.

15           68. On July 28, 2015, Diego called and told the undercover operator that there was a  
16 problem with the paperwork. Diego said he would correct the problem and contact the  
17 undercover operator.

18           69. On August 3, 2015, Diego called and told the undercover operator that the smog  
19 certifications of compliance for the 2001 Honda and the 2003 Honda were issued. The  
20 undercover operator drove to Rudy's and met with Diego. Diego showed the undercover operator  
21 two VIRs. According to the certifications on these VIRs, on July 27, 2015, a different smog  
22 shop, performed these smog check inspections that led to the issuance of smog certificates of  
23 compliance. The VIR for the 2001 Honda had the wrong Vehicle Identification Number and  
24 license plate number. The VIR for the 2003 Honda had the wrong Vehicle Identification  
25 Number. The undercover operator told Diego that he could not accept the paperwork because of  
26 the wrong information. Diego kept the paperwork. Diego said he would get a different smog  
27 check station to do the inspections. Later that day, Diego called the undercover operator and said  
28 to check the BAR's website the following day and the smog inspections would be listed. Diego

1 said a technician at a different shop did the inspections and processed the registration documents  
2 through the Department of Motor Vehicles.

3 70. On August 4, 2015, the undercover operator contacted Diego and said the smog check  
4 inspections for the 2001 Honda and the 2003 Honda were not listed on the BAR's website.  
5 Diego asked the undercover operator to speak with the smog check technician who performed the  
6 inspections, who Diego put on the phone. This unidentified man said he performed the  
7 inspections and that the undercover operator owed him money. The man told the undercover  
8 operator that the BAR's website was unreliable, the vehicles passed inspection, and he processed  
9 the registration so there would "be no problem." Diego then got back on the phone and asked the  
10 undercover operator when they could expect payment for the inspections. The undercover  
11 operator said he would pay them on August 6, 2015.

12 71. On August 6, 2015, the undercover operator met Diego at a fast food restaurant and  
13 paid \$900.00. Diego gave the undercover operator a Department of Motor Vehicles receipt for  
14 payment of \$90.00 and a temporary registration for the 2001 Honda; and a Department of Motor  
15 Vehicles receipt for payment of \$91.00 and a temporary registration for the 2003 Honda. Diego  
16 said the vehicles were registered at the Department of Motor Vehicles and the undercover  
17 operator should receive the permanent registration and stickers in the mail on a later date. The  
18 operator did not sign or receive a written estimate.

19 72. The BAR investigator down loaded the BAR's OIS Test Detail from the VID that  
20 revealed that the 2001 Honda was tested at the other smog shop on July 27, 2015. The test  
21 resulted in the issuance of electronic smog Certificate of Compliance [REDACTED]. The VIN  
22 had been manually entered, was missing a digit, and the license plate number was incorrect. This  
23 allowed the vehicle to be inspected by a smog check station that was not STAR certified. On July  
24 27, 2015, the 2001 Honda was stored in a secured facility by the BAR and was not in the  
25 possession or control of anyone at Rudy's Smog Check, or at any other smog shop.

26 73. The BAR investigator down loaded the BAR's OIS Test Detail from the VID that  
27 revealed that the 2003 Honda was tested at the other smog shop on July 27, 2015. The test  
28 resulted in the issuance of electronic smog Certificate of Compliance [REDACTED]. The VIN

1 had been manually entered and was missing a digit. This allowed the vehicle to be inspected by a  
2 smog check station that was not STAR certified. On July 27, 2015, the 2003 Honda was stored in  
3 a secured facility by the BAR and was not in the possession or control of anyone at Rudy's Smog  
4 Check, or at any other smog shop.

5 74. On September 3 and 9, 2015, BAR personnel re-inspected and retested the 2001  
6 Honda and the 2003 Honda. The condition of the vehicles as modified before testing had not  
7 changed; both vehicles failed the OIS test for tampered computers, sensors, switches and wiring.  
8 In addition, the vehicles failed the functional inspection for the On Board Diagnostics Generation  
9 Two (OBDII) and OBD bulb check.

10 **SIXTEENTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 75. Respondent Mangosing's registration is subject to disciplinary action pursuant to  
13 Code section 9884.7, subdivision (a)(4), in that Respondent Mangosing committed acts which  
14 constitutes fraud as set forth in paragraphs 63 through 74. Respondent Mangosing conspired with  
15 another licensee to fraudulently issue electronic smog certificates of compliance for the 2001  
16 Honda and the 2003 Honda without performing a bona fide inspection of the emission control  
17 devices and systems on the vehicles, thereby depriving the People of the State of California of the  
18 protection afforded by the Motor Vehicle Inspection Program.

19 **SEVENTEENTH CAUSE FOR DISCIPLINE**

20 **(Violations of the Motor Vehicle Inspection Program)**

21 76. Respondent Mangosing's smog check station license is subject to disciplinary action  
22 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent Mangosing failed to  
23 comply with provisions of the Code, as set forth in paragraphs 63 through 74, above.

24 a. **Section 44072, subdivision (d):** Respondent Mangosing conspired with another  
25 licensee to fraudulently issue electronic smog certificates of compliance for the 2001 Honda and  
26 the 2003 Honda.

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1 **OTHER MATTERS**

2 80. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke  
3 or place on probation the registration for all places of business operated in this state by  
4 Respondent Rosalina Mangosing, owner of Rudy's Smog Check, upon a finding that Respondent  
5 Mangosing has, or is, engaged in a course of repeated and willful violations of the laws and  
6 regulations pertaining to an automotive repair dealer.

7 81. Pursuant to H & S Code section 44072.8, if Smog Check Station License Number RC  
8 278556, issued to Respondent Mangosing, is revoked or suspended, any additional license issued  
9 under this chapter in the name of said licensee may be likewise revoked or suspended by the  
10 Director.

11 82. Pursuant to H & S Code section 44072.8, if Smog Check Inspector License No. EO  
12 636339, issued to Respondent Richard Shawn Dominguez, is revoked or suspended, any  
13 additional license issued under this chapter in the name of said licensee may be likewise revoked  
14 or suspended by the Director.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
17 and that following the hearing, the Director of Consumer Affairs issue a decision:

18 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
19 278556, issued to Rudy's Smog Check, Rosalina Mangosing, Owner;

20 2. Revoking or suspending any other automotive repair dealer registration issued to  
21 Rosalina Mangosing;

22 3. Revoking or suspending Smog Check Station License Number RC 278556, issued to  
23 Rudy's Smog Check, Rosalina Mangosing, Owner;

24 4. Revoking or suspending any additional license issued under Articles 5 and 6 of  
25 Chapter 20.3 of the Code in the name of Rosalina Mangosing;

26 5. Revoking or suspending Smog Check Inspector License Number EO 636339, issued  
27 to Richard Shawn Dominguez;

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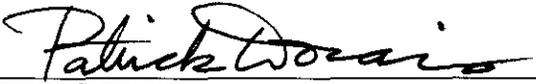
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6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Richard Shawn Dominguez;

7. Ordering Rosalina Mangosing and Richard Shawn Dominguez to pay, jointly and severally, the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

8. Taking such other and further action as deemed necessary and proper.

DATED: April 7, 2016

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

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