

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

FIRE HOUSE SMOG
TESLIM OLAMIDE OLADUNJOYE,
PRESIDENT
2900 Lone Tree Way
Antioch, CA 94509
Automotive Repair Dealer Registration
No. ARD 239271
Smog Check Test Only Station License
No. TC 239271

and

TESLIM OLAMIDE OLADUNJOYE
2900 Lone Tree Way
Antioch, CA 94509
Advanced Emissions Specialist Technician
License No. EA 146343

and

FERNANDO HEYNAR SOLORZANO
306 Worrell Road
Antioch, CA 94509
Advanced Emission Specialist Technician
License No. EA 150758

Respondents.

Case No. 79/10-76

OAH No. 2011020620

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter only as to respondent Fire House Smog, Teslim Olamide Oladunjoye, President, Automotive Repair Dealer Registration No. ARD 239271, Smog Check Test Only Station License No. TC 239271, and Advanced Emission Specialist Technician License No. EA 146343.

This Decision shall become effective 9/20/11.

DATED: August 19, 2011


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
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Case No. 79/10-76

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PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on June 22, 2011 in Oakland, California.

Deputy Attorney General Aspasia Papvassiliou represented complainant Sherry Mehl, Chief of the Bureau of Automotive Repair.

Teslim Olamide Oladunjoye represented himself and was present throughout the administrative hearing.¹

¹ Respondent Fernando Heynar Solorzano did not file a notice of defense and the Bureau revoked his license pursuant to a default decision prior to the hearing in this matter.

The record was left open for respondent Oladunjoye to submit documentation of the Bill of Sale of Firehouse Smog, the interim purchase agreement for the sale and pertinent pages of respondent's passport. The documents were timely received on June 27, 2011, marked and admitted as administrative hearsay. Complainant's response was received, marked and admitted on June 30, 2011. The matter was submitted on June 30, 2011.

The Bureau moved at hearing to amend the accusation combine paragraphs 14 and 15 on page 4 to become one paragraph, and to change the date in paragraph 4, line 17 to read June 30, 2013 instead of June 30, 2011. There was no objection to the amendments. The amendments were granted pursuant to Government Code section 11507.

FACTUAL FINDINGS

1. Sherry Mehl brought the Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
2. Respondent Fire House Smog (Fire House Smog) was registered as an Automotive Repair Dealer, with respondent Oladunjoye (Respondent) as president, on May 3, 2005. The registration was in full force and effect until April 30, 2010, when it expired. Fire House Smog was licensed as a smog check/test only station on May 9, 2005. The station license was in full force and effect until April 30, 2010, when it expired.
3. The Bureau first licensed respondent as a smog technician in 2003. Respondent's advanced emission specialist technician license will expire on June 30, 2013.

Bureau Evidence

4. Joseph Cheung, a Program Representative II Specialist, testified at hearing. He has been employed with the Bureau for 12 years. His responsibilities include acting as the lead investigator on citation investigations, conducting investigations and mediating consumer complaints. He is familiar with the State's Vehicle Information Database (VID) and conducted a search of records within the database pertaining to Fire House Smog. Cheung's research was done in late August 2009 and based on a statistical analysis of the data, he concluded that improper smog checks were being performed and possible illegal certificates were being issued by the station.
5. On August 25 and 26, 2009, Cheung conducted a recorded surveillance operation at Fire House Smog. On August 25, 2009, no illegal activity was confirmed.
6. On August 26, 2009, the Bureau's surveillance operation of Firehouse Smog and information obtained from the Bureau's Vehicle Identification Database (VID) revealed that between 10:29 a.m. and 6:32 p.m., Daniel Ramirez, an unlicensed person, performed three smog inspections using respondent Solorzano's access code in order to access the Emission Inspection System (EIS). Respondent Solorzano was not seen during the inspection of the three vehicles.

7. Further surveillance on August 26, 2009, revealed that respondent Solorzano performed three smog inspections allowing Ramirez to assist, using the clean-piping method by using the tail pipe emissions of a vehicle other than the vehicle being certified in order to issue the certificates of compliance. Electronic certificates of compliance were issued by Fire House Smog for each of the vehicles set forth in Table 1, below, certifying that respondent Solorzano tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations, however, respondent Solorzano failed to perform proper inspections of those vehicles or clean-piped some of the vehicles as detailed below.

TABLE 1

Date and Time of Inspection	Vehicle Certified & Vehicle Tested	Certificate No.	Details
8/26/2009 10:29 to 10:34 hours	1999 Dodge Ram 1999 Dodge Ram	NM699724C	Ramirez performed smog inspection using Solorzano's access code
8/26/2009 11:48 to 11:53 hours	1997 Chevrolet Suburban 1997 Chevrolet Suburban	NM699726C	Ramirez performed smog inspection using Solorzano's access code
8/26/2009 12:02 to 12:19 hours	1991 Ford F250 pickup 1991 Ford F250 pickup	NM699727C	Ramirez performed smog inspection using Solorzano's access code
8/26/2009 15:21 to 15:43 hours	1990 Ford E350 Econoline Van White Ford pickup	NM699729C	Solorzano and Ramirez clean-piped 1990 Ford E350 Econoline Van
8/26/2009 15:35 to 15:44 hours	1993 Ford E150 Econoline Van White Ford pickup	NM708715C	Solorzano and Ramirez clean-piped 1993 Ford E150 Econoline Van
8/26/2009 18:21 to 18:32 hours	1978 Chevrolet Caprice White Ford pickup	NM699733C	Solorzano and Ramirez clean-piped 1978 Chevrolet Caprice

8. Cheung obtained a certified copy of the Department of Motor Vehicles (DMV) owner registration for the white pick up that was used for clean-piping three of the vehicles

listed in Table 1. The registered owner of the white Ford pick up was respondent Oladunjoye.

9. Cheung visited Fire House Smog on September 15, 2009 to collect invoices for his investigation. He spoke with Sam Shahidi, who identified himself as the station manager. Shahidi provided the invoices requested and advised Cheung that Solorzano was no longer employed at the station.

10. Cheung reported his findings to the Contra Costa District Attorney's Office. Both Ramirez and Solorzano were charged with criminal offenses as a result of this investigation. Ramirez was convicted of violating Vehicle Code section 20 (false information to the DMV), a misdemeanor, and as a condition of his probation, was ordered not to perform any smog inspections without a license. Solorzano was convicted of violating Penal Code section 502, subdivision (c)(1) (knowingly accessing, and without permission, altering damaging, deleting, destroying or otherwise using any data, computer system or computer network to execute any scheme to defraud), a misdemeanor, and ordered not to perform smog inspections during the period of probation.

Prior Citations

11. Matthew Rodriguez, a Program Representative II Specialist, who has worked for the Bureau for 20 years, testified at hearing. His responsibilities include investigating and mediating consumer complaints. Rodriguez has had numerous interactions with respondent over the years, including two citation conferences on October 18, 2006 and December 12, 2008. Citation conferences are held to explain the allegations in citations that are being issued to the licensee, what penalty will be assessed and how to comply or appeal the order.

12. On September 22, 2006, the Bureau issued Citation No. C07-0145 against Fire House Smog's registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to proper procedures); and, California Code of Regulations, title 16, section (Regulation) 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed penalties totaling \$500 for the violations. Fire House Smog complied with the citation on November 22, 2006.

13. On November 25, 2008, the Bureau issued Citation No. C09-0665 against Fire House Smog's registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of the emission control devices according to proper procedures) and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing pulse air injection

system. The Bureau assessed penalties totaling \$500 against Fire House for the violations. Fire House Smog complied with the citation on January 13, 2009.

14. On November 25, 2008, the Bureau issued Citation No. M09-0666 against respondent Oladunjoye's technician license for violations of Health and Safety Code section 44032 (failure to perform tests and inspections according to Health and Safety Code section 44012) and Regulation 3340.30, subdivision (a) (inspect, test and repair vehicles in accordance with Health and Safety Code sections 44012, 44035 and Regulation 3340.42, for issuing a certificate of compliance to a Bureau undercover vehicle with a missing pulse air injection system. Respondent was required to attend an 8-hour training course that he complied with on January 17, 2009.

Costs

15. The Bureau has incurred \$11,571.36 in investigative costs, and \$7,645.00 in legal costs, for a total of \$19,216.36 in costs of investigation and enforcement. There is no challenge to the reasonableness of these costs.

Respondent's Evidence

16. Respondent does not dispute the facts recited in Findings 1 through 15. However, he denies responsibility for the misconduct because he was unaware of it and had sold the business. Respondent provided a copy of an asset purchase agreement dated July 1, 2009, selling Fire House Smog to buyer Sam Shahidi. Respondent remained as the landlord of the business. Escrow was to close on August 7, 2009. Respondent and Shahidi agreed to the following interim purchase agreement on August 6, 2009:

"Escrow will close on August 6, 2009 and all funds will be distributed according to the escrow instructions. In order to expedite the transfer of the business and to guarantee the Buyer the presence of a valid and active BAR license, both parties agree to close escrow as scheduled, hold \$8,000.00 from Seller's proceeds in escrow for a period not to exceed 90 days, and give Seller interest in the goodwill value of the business at the rate of a ratio, the numerator of which is one, and the denominator of which is 5,350. Therefore, even though escrow will close and Buyer will take possession of the business, the escrow account will remain open pending Buyer's receipt of the BAR licenses. During the period, the aforementioned "partnership" will survive. Seller's interest will be automatically nullified when Buyer receives his BAR licenses."

17. Respondent and Shahidi agreed that Shahidi could operate under respondent's license until he received his license from the Bureau, which could take six to eight weeks.

18. Respondent contends that because the business had been sold and was temporarily being run under his license on August 26, 2009, he was not responsible for the violations. Respondent states that he was unaware of the behavior, was not there, and that the new owner, Shahidi was unaware of how the business should be run. Respondent

concedes, however, that he had employed Solorzano as his technician and Ramirez as his service writer prior to the sale of the business.

19. Respondent stored his white pick up truck on the property. Shahidi had the keys to the pick up in case he needed to move it.

20. Respondent did not "officially" work at the business after the sale, but may have conducted 10 or so smog checks there in the past two years while Shahidi was in charge.

21. Respondent provided 40 hours of training to Shahidi on management of the business in the ten days to two weeks following the sale. Shahidi was not a licensed technician at the time. Respondent left on a medical vacation for an extended period on August 18, 2009.²

22. Respondent relied on the expertise of the broker, Arka Kargodorian, concerning the logistics of the sale, transfer of ownership and licensing issues, and did not contact the Bureau about allowing the use of his license following the sale of the business.

23. Shahidi has since sold the business to another individual and it is being operated under a different license.

24. Arka Kargodorian, the broker for the sale of respondent's business to Shahidi, testified by telephone at hearing. Kargodorian confirmed that the Shahidi was using respondent's ARD license to operate the business pursuant to the interim management agreement, which allowed the buyer to operate the business after the close of escrow, but before the Bureau had issued a new license. According to Kargodorian, respondent had no management or supervisory duties following the close of escrow. Kargodorian has brokered 46 station businesses in this manner and has consulted with an attorney regarding the practice.

25. Bureau representative Matthew Rodriguez testified in rebuttal that when the ownership status of a station changes, the original license application is no longer valid and the licenses are invalidated and cancelled immediately; the new owner cannot operate until a new registration and station license are issued. If the new owner and the seller want to avoid the down time between licenses, they need to submit an application to the Bureau in advance with an effective date on the application of the change of ownership date. The new license application typically takes 45 to 60 days to process. If the seller agrees to continue as an owner and maintain the license until the new license is issued, he would assume all responsibility for any violations even if he is not there or unaware of them. The new application in this case was approved four days after the violations.

² Respondent asserted at hearing that his U.S. Passport would confirm that he was not in the country on August 26, 2009, and submitted copies of his passport post-hearing. The passport does not demonstrate that respondent was out of the country on August 26, 2009.

LEGAL CONCLUSIONS

Liability of Respondent Fire House Smog

1. It is the smog check station, not the technician, that issues a smog certificate. (Health & Saf. Code § 44010.) The law is clear that as the licensee, respondent Fire House Smog, is responsible for the misconduct committed by Solorzano and Ramirez. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295-297 [licensee, if he elects to operate his business through employees, must be responsible to the licensing authority for their conduct in the exercise of his license] See also, *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360; *Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793; *Camacho v. Youde* (1979) 95 Cal.App.3d 161.) This is true despite the evidence that respondent had entered into the sale his business before the misconduct occurred. The interim purchase agreement describes the relationship between the parties between the close of escrow and the date the Bureau issued a license to the new owner as a “partnership.” Moreover, the individuals who committed the acts of misconduct had been working for respondent prior to the sale and his automobile was used for the clean-piping. Respondent’s decision to allow the use his license without direct supervision until a new license was issued, subjected his automotive repair dealer registration and smog check test only station licenses to discipline for any acts of misconduct occurring during that period. (Findings 17 through 25.)

Causes for Discipline: Surveillance Operation on August 26, 2009

RESPONDENT FIRE HOUSE SMOG’S AUTOMOTIVE REPAIR DEALER REGISTRATION

1. First Cause for Discipline (Findings 6 and 7): Cause for discipline of the automotive repair dealer registration issued to respondent Fire House Smog exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), for misleading statements made in the issuance of the electronic certificates of compliance nos. NM699724C, NM699726C, NM699727C, NM699729C, NM708715C, and NM699733C, certifying the certified vehicles were in compliance with applicable laws and regulations, when in fact, the smog inspections was performed by unlicensed personnel or by using the clean-piping method.

2. Second Cause for Discipline (Findings 6 and 7): Cause for discipline of the automotive repair dealer registration issued to respondent Fire House Smog exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), for fraud associated with its inspections and the issuance of the electronic certificates of compliance nos. NM699724C, NM699726C, NM699727C, NM699729C, NM708715C, and NM699733C, without the performance of a bona fide smog inspection.

RESPONDENT FIRE HOUSE SMOG'S SMOG CHECK TEST ONLY STATION LICENSE

3. Third Cause for Discipline (Findings 6 and 7): Cause for discipline of the smog check test only station license issued to respondent Fire House Smog exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on August 26, 2009, in connection with its inspections and the issuance of the electronic certificates of compliance nos. NM699724C, NM699726C, NM699727C, NM699729C, NM708715C, and NM699733C, it violated the following provisions of the Health and Safety Code pertaining to the Motor Vehicle Inspection Program:

- a. Section 44012, subdivision (a): failing to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with Bureau procedures.
- b. Section 44012, subdivision (f): failing to perform emission control tests in accordance with Bureau procedures.
- c. Section 44014, subdivision (a): allowing an unlicensed person to perform smog check inspections or assist in smog check inspections.
- d. Section 44015, subdivision (b): issuing electronic certificate of compliance without proper testing.
- e. Section 44059: making false entries for the electronic certificate.

4. Fourth Cause for Discipline (Findings 6 and 7): Cause for discipline of the smog check test only station license issued to respondent Fire House Smog exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on August 26, 2009, in connection with its inspections and the issuance of the electronic certificates of compliance nos. NM699724C, NM699726C, NM699727C, NM699729C, NM708715C, and NM699733C, it violated the following provisions of California Code of Regulations, title 16, pertaining to the Motor Vehicle Inspection Program:

- a. Section 3340.24, subdivision (c): falsely or fraudulently issuing electronic certificates of compliances without bona fide smog inspections.
- b. Section 3340.35, subdivision (c): issuing electronic certificates of compliance without testing in accordance with section 3340.42.
- c. Section 3340.42: failing to conduct required smog tests and inspections.

5. Fifth Cause for Discipline (Findings 6 and 7): Cause for discipline of the smog check test only station license issued to respondent Fire House Smog exists pursuant to

Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud or deceit in connection its inspections and the issuance of the electronic certificates of compliance nos. NM699724C, NM699726C, NM699727C, NM699729C, NM708715C, and NM699733C.

Penalty and Costs

26. Pursuant to Business and Professions Code section 125.3, the Bureau may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. The Bureau's costs of \$19,216.36 are reasonable. (Finding 15.)

27. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the guidelines for the determining whether the costs should be assessed in the particular circumstances of each case. The Bureau must consider whether to do so will unfairly penalize the licensee who has committed misconduct, but who has used the hearing process to obtain dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.*, at pp. 44-45.) Here, the misconduct committed by Solorzano and Ramirez was egregious and repetitive. Respondent does not deny the allegations of misconduct, however, he denies any knowledge of the misconduct and there is no direct evidence that he knew of Solorzano and Ramirez's actions. (Findings 16 to 18.)

28. Respondent Fire House Smog's Automotive Repair Registration (No. ARD 239271) and its Smog Check Test Only Station License (No. TC 239271) are subject to discipline due to the misconduct by Solorzano and Ramirez. Given the egregious and repeated nature of the misconduct, and the history of prior citations, revocation of both licenses is warranted. (Findings 6 through 14.) Firehouse Smog and owner, Teslim Oladmide Oladunjoye, are liable for these costs as the licensee at the time the misconduct occurred. Any assets owned by Fire House Smog, or its owner, may be used to satisfy the Bureau's investigative costs.

29. The Bureau also seeks to discipline respondent's advanced emission specialist technician license, as a result of the discipline imposed on the automotive repair registration and the smog check test only license. However, there is no evidence that respondent was personally involved in the misconduct, or that he was aware of it. Given the special circumstances involved here, namely, that respondent had sold the business and was no longer on the premises, and absent evidence that he was aware of the misconduct, there is no cause to impose discipline against his technician license.

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Exhibit A

Accusation

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2129
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

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13 **FIRE HOUSE SMOG**
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14 Antioch, CA 94509
TESLIM OLAMIDE OLADUNJOYE, PRESIDENT
Automotive Repair Dealer Registration No.
15 **ARD 239271**
Smog Check Test Only Station License No. TC 239271

A C C U S A T I O N
S M O G C H E C K

16 and

17 **TESLIM OLAMIDE OLADUNJOYE**
2900 Lone Tree Way
18 Antioch, CA 94509
Advanced Emission Specialist Technician License
19 No. EA 146343

20 and

21 **FERNANDO HEYNAR SOLORZANO**
306 Worrell Road
22 Antioch, CA 94509
Advanced Emission Specialist Technician License
23 No. EA 150758

24 Respondents.

26 Complainant alleges:

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1 PARTIES

2 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
3 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

4 **Automotive Repair Dealer Registration**

5 2. On or about May 3, 2005, the Bureau issued Automotive Repair Dealer Registration
6 Number ARD 239271 ("registration") to Fire House Smog ("Respondent Fire House") with
7 Teslim Olamide Ojadunjoye as President. The registration was in full force and effect at all times
8 relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

9 **Smog Check Test Only Station License**

10 3. On or about May 9, 2005, the Bureau issued Smog Check Test Only Station License
11 Number TC 239271 ("station license") to Respondent Fire House. The station license was in full
12 force and effect at all times relevant to the charges brought herein and will expire on April 30,
13 2010, unless renewed.

14 **Advanced Emission Specialist Technician License**

15 4. On a date uncertain in 2003, the Bureau issued Advanced Emission Specialist
16 Technician License Number EA 146343 ("technician license") to Teslim Olamide Oladunjoye.
17 The technician license will expire on June 30, 2011, unless renewed.

18 **Advanced Emission Specialist Technician License**

19 5. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist
20 Technician License Number EA 150758 ("technician license") to Fernando Heynar Solorzano
21 ("Respondent Solorzano"). The technician license expired on August 31, 2009, and has not been
22 renewed.

23 STATUTORY PROVISIONS

24 6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
25 part:

26 (a) The director, where the automotive repair dealer cannot show there
27 was a bona fide error, may refuse to validate, or may invalidate temporarily or
28 permanently, the registration of an automotive repair dealer for any of the following
acts or omissions related to the conduct of the business of the automotive repair

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

(4) Any other conduct which constitutes fraud.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of 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 the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it."

7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

8. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

9. Section 44002 of the Health and Safety Code provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

10. Section 44072.2 of the Health and Safety Code state, in pertinent part:

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

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

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

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

2 11. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
3 expiration or suspension of a license by operation of law, or by order or decision of the Director
4 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
5 the Director of jurisdiction to proceed with disciplinary action.

6 12. Section 44072.8 of the Health and Safety Code states:

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

10 COST RECOVERY

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

15 SURVEILLANCE OPERATION – AUGUST 26, 2009

16 14. On or about August 26, 2009, the Bureau performed a video-taped surveillance at
17 Respondent Fire House's facility. The surveillance operation and information obtained from the
18 Bureau's Vehicle Information Database ("VID") revealed that between 1029 hours and 1832
19 hours, Daniel Ramirez, an unlicensed person, performed three (3) smog inspections using
20 Respondent Solorzano's access code in order to access the Emission Inspection System ("EIS").
21 Respondent Solorzano was not seen during the inspection of those three vehicles.

22 15. Respondent Solorzano performed three (3) smog inspections using the clean piping
23 method and allowed Daniel Ramirez to assist with the inspections of two of those vehicles.
24 Electronic certificates of compliance were issued for each of the vehicles set forth in Table 1,
25 below, certifying that Respondent Solorzano tested and inspected those vehicles and that the
26 vehicles were in compliance with applicable laws and regulation; however, Respondent
27 Solorzano failed to perform proper inspections of those vehicles or clean piped some of the
28 vehicles as detailed in Table 1, below.

TABLE 1

	Date & Time	Vehicle Certified	Vehicle Tested	Certificate Issued	Details
1	8/26/2009 1029 hours to 1034 hours	1999 Dodge Ram	1999 Dodge Ram	NM699724C	Daniel Ramirez performed the smog inspection using Respondent Solorzano's access code.
2	8/26/09 1148 hours to 1153 hours	1997 Chevrolet Suburban	1997 Chevrolet Suburban	NM699726C	Daniel Ramirez performed the smog inspection using Respondent Solorzano's access code.
3	8/26/2009 1202 hours to 1219 hours	1991 Ford F250 pickup truck	1991 Ford F250 pickup truck	NM699727C	Daniel Ramirez performed the smog inspection using Respondent Solorzano's access code.
4	8/26/2009 1521 hours to 1543 hours	1990 Ford E350 Econoline Van	White Ford pickup	NM699729C	Respondent Solorzano and Daniel Ramirez clean piped the 1990 Ford E350 Econoline Van
5	8/26/2009 1535 hours to 1544 hours	1993 Ford E150 Econoline Van	White Ford pickup	NM708715C	Respondent Solorazano and Daniel Ramirez clean piped the 1993 E150 Ford Econoline Van.
6	8/26/2009 1821 hours to 1832 hours	1978 Chevrolet Caprice	White Ford pickup	NM699733C	Respondent Solorzano clean piped the 1978 Chevrolet Caprice.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 15. Respondent Fire House has subjected its registration to discipline under Code section
4 9884.7, subdivision (a)(1), in that on or about August 26, 2009, it made statements which it knew
5 or which by exercise of reasonable care it should have known were untrue or misleading when it
6 issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying
7 that those vehicles were in compliance with applicable laws and regulations and had been
8 inspected by a licensed technician when, in fact, the smog inspections for vehicle nos. 1, 2, and 3,
9 were performed by Daniel Ramirez, an unlicensed person, and vehicle nos. 4, 5, and 6, had been
10 clean piped. Further, Daniel Ramirez assisted in the clean piping of vehicle nos. 4 and 5.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 16. Respondent Fire House has subjected its registration to discipline under Code section
14 9884.7, subdivision (a)(4), in that on or about August 26, 2009, it committed acts which
15 constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table
16 1, above, without performing bona fide inspections of the emission control devices and systems
17 on those vehicles, thereby depriving the People of the State of California of the protection
18 afforded by the Motor Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

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

21 17. Respondent Fire House has subjected its station license to discipline under Health and
22 Safety Code section 44072.2, subdivision (a), in that on or about August 26, 2009, regarding the
23 vehicles set forth in Table 1, above, it violated sections of that Code, as follows:

24 a. **Section 44012, subdivision (a):** Respondent Fire House failed to determine that all
25 emission control devices and systems required by law were installed and functioning correctly in
26 accordance with test procedures.

27 b. **Section 44012, subdivision (f):** Respondent Fire House failed to perform emission
28 control tests on those vehicles in accordance with procedures prescribed by the department.

1 c. **Section 4014, subdivision (a):** Respondent Fire House allowed Daniel Ramirez to
2 perform smog inspections and/or assist in smog inspections for vehicles 1, 2, 3, 4, and 5, when he
3 was not licensed to do so.

4 d. **Section 44015, subdivision (b):** Respondent Fire House issued electronic certificates
5 of compliance without properly testing and inspecting those vehicles to determine if they were in
6 compliance with section 44012 of that Code.

7 e. **Section 44059:** Respondent Fire House willfully made false entries for the electronic
8 certificates of compliance, certifying that those vehicles had been inspected as required when, in
9 fact, they had not.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

12 18. Respondent Fire House has subjected its station license to discipline under Health and
13 Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2009, regarding the
14 vehicles set forth in Table 1, above, it violated sections of the California Code of Regulations,
15 title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent Fire House falsely or fraudulently
17 issued the electronic certificates of compliance without performing bona fide inspections of the
18 emission control devices and systems on those vehicles as required by Health and Safety Code
19 section 44012.

20 b. **Section 3340.35, subdivision (c):** Respondent Fire House issued electronic
21 certificates of compliance even though the vehicles had not been inspected in accordance with
22 section 3340.42 of that Code.

23 c. **Section 3340.42:** Respondent Fire House failed to conduct the required smog tests
24 and inspections on those vehicles in accordance with the Bureau's specifications.

25 **FIFTH CAUSE FOR DISCIPLINE**

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

27 19. Respondent Fire House has subjected its station license to discipline under Health and
28 Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2009, regarding the

1 vehicles set forth in Table 1, above, it committed acts involving dishonesty, fraud or deceit
2 whereby another was injured by issuing electronic certificates of compliance without performing
3 bona fide inspections of the emission control devices and systems on those vehicles, thereby
4 depriving the People of the State of California of the protection afforded by the Motor Vehicle
5 Inspection Program.

6 **SIXTH CAUSE FOR DISCIPLINE**

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

8 20. Respondent Solorzano has subjected his technician license to discipline under Health
9 and Safety Code section 44072.2, subdivision (a), in that on or about August 26, 2009, regarding
10 the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

11 a. **Section 44012, subdivision (a):** Respondent Solorzano failed to determine that all
12 emission control devices and systems required by law were installed and functioning correctly in
13 accordance with test procedures.

14 b. **Section 44012, subdivision (f):** Respondent Solorzano failed to perform emission
15 control tests on that vehicle in accordance with procedures prescribed by the department.

16 c. **Section 44014, subdivision (a):** Respondent Solorzano allowed Daniel Ramirez to
17 assist him with the inspections of vehicles 4 and 5 when Daniel Ramirez was not licensed to do
18 so.

19 d. **Section 44032:** Respondent Solorzano failed to perform tests of the emission control
20 devices and systems on those vehicles in accordance with section 44012 of that Code.

21 e. **Section 44059:** Respondent Solorzano willfully made false entries for the electronic
22 certificates of compliance, certifying that those vehicles had been inspected as required when, in
23 fact, they had not.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

26 21. Respondent Solorzano has subjected his technician license to discipline under Health
27 and Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2009, regarding
28

1 the vehicles set forth in Table 1, above, he violated sections of the California Code of
2 Regulations, title 16, as follows:

3 a. **Section 3340.24, subdivision (c):** Respondent Solorzano falsely or fraudulently
4 issued electronic certificates of compliance without performing bona fide inspections of the
5 emission control devices and systems on those vehicles as required by Health and Safety Code
6 section 44012.

7 b. **Section 3340.30, subdivision (a):** Respondent Solorzano failed to inspect and test
8 those vehicles in accordance with Health and Safety Code section 44012.

9 c. **Section 3340.41, subdivision (c):** Respondent Solorzano entered false information
10 into the EIS for the electronic certificates of compliance by entering vehicle identification or
11 emission control information for vehicles other than the vehicles certified for vehicle nos. 4, 5,
12 and 6.

13 d. **Section 3340.42:** Respondent Solorzano failed to conduct the required smog tests
14 and inspections on those vehicles in accordance with the Bureau's specifications.

15 EIGHTH CAUSE FOR DISCIPLINE

16 (Dishonesty, Fraud or Deceit)

17 22. Respondent Solorzano has subjected his technician license to discipline under Health
18 and Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2009, he
19 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
20 electronic certificates of compliance for the vehicles set forth in Table 1, above, without
21 performing bona fide inspections of the emission control devices and systems on those vehicles,
22 thereby depriving the People of the State of California of the protection afforded by the Motor
23 Vehicle Inspection Program.

24 PRIOR CITATIONS

25 23. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges as follows:

27 a. On or about September 22, 2006, the Bureau issued Citation No. C07-0145 against
28 Respondent Fire House's registration and station licenses for violations of Health & Safety Code

1 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
2 devices according to procedures prescribed by the department); and, California Code of
3 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
4 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
5 Bureau undercover vehicle with the ignition timing adjusted beyond the manufacturer's
6 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent Fire House
7 for the violations. Respondent Fire House complied with this citation on November 22, 2006.

8 b. On or about November 25, 2008, the Bureau issued Citation No. C09-0665 against
9 Respondent Fire House's registration and station licenses for violations of Health & Safety Code
10 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
11 devices according to procedures prescribed by the department), and California Code of
12 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
13 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
14 Bureau undercover vehicle with a missing pulse air injection system. The Bureau assessed civil
15 penalties totaling \$500 against Respondent Fire House for the violations. Respondent Fire House
16 complied with this citation on January 13, 2009.

17 c. On or about November 25, 2008, the Bureau issued Citation No. M09-0666 against
18 Teslim Olamide Oladunjoye's (who serves as the President of Respondent herein) technician
19 license for violations of Health & Safety Code section 44032, (failure to perform tests and
20 inspects in accordance with Health & Safety Code section 44012), and California Code of
21 Regulations, title 16, section ("Regulation") 3340.30, subdivision (a) (inspect, test, and repair
22 vehicles in accordance with Health & Safety Code sections 44012, 44035, and Regulation
23 3340.42) for issuing a certificate of compliance to a Bureau undercover vehicle with a missing
24 pulse air injection system. Oladunjoye was required to attend an 8-hour training course.
25 Oladunjoye complied with this citation on January 17, 2009.

26 d. On or about May 19, 2009, the Bureau issued Citation No. M09-1330 against
27 Respondent Solorzano's technician license for violations of Health & Safety Code section 44032,
28 (failure to perform tests and inspects in accordance with Health & Safety Code section 44012),

1 and California Code of Regulations, title 16, section ("Regulation") 3340.30, subdivision (a)
2 (inspect, test, and repair vehicles in accordance with Health & Safety Code sections 44012,
3 44035, and Regulation 3340.42) for issuing a certificate of compliance to a Bureau undercover
4 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. Respondent
5 Solorzano was required to attend an 8-hour training course. Respondent has not complied with
6 this citation.

7 **OTHER MATTERS**

8 24. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
9 or permanently or refuse to validate, the registrations for all places of business operated in this
10 state by Fire House Smog, upon a finding that it has, or is, engaged in a course of repeated and
11 willful violations of the laws and regulations pertaining to an automotive repair dealer.

12 25. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
13 License Number TC 239271, issued to Fire House Smog, is revoked or suspended, any additional
14 license issued under this chapter in the name of said licensee including, but not limited to
15 Advanced Emission Specialist Technician License Number EA 146343, issued to Teslim
16 Olamide Oladunjoye, may be likewise revoked or suspended by the director.

17 26. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
18 Technician License Number EA 150758, issued to Fernando Heynar Solorzano, is revoked or
19 suspended, any additional license issued under this chapter in the name of said licensee may be
20 likewise revoked or suspended by the director.

21 **PRAYER**

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

24 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
25 Number ARD 239271, issued to Fire House Smog:

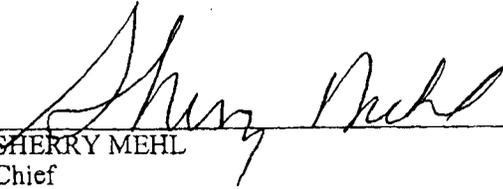
26 2. Temporarily or permanently invalidating any other automotive repair dealer
27 registration issued in the name of Fire House Smog;

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- 1 3. Revoking or suspending Smog Check Test Only Station License Number TC 239271,
- 2 issued to Fire House Smog;
- 3 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 4 and Safety Code in the name of Fire House Smog;
- 5 5. Revoking or suspending Advanced Emission Specialist Technician License Number
- 6 EA 146343, issued to Teslim Olamide Oladunjoye;
- 7 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 8 and Safety Code in the name of Teslim Olamide Oladunjoye;
- 9 7. Revoking or suspending Advanced Emission Specialist Technician License Number
- 10 EA 150758, issued to Fernando Heynar Solorzano;
- 11 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 12 and Safety Code in the name of Fernando Heynar Solorzano;
- 13 9. Ordering Fire House Smog, Teslim Olamide Oladunjoye, and Fernando Heynar
- 14 Solorzano to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
- 15 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 16 10. Taking such other and further action as deemed necessary and proper.

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DATED: 4/28/10


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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