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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:

Case No. *79/14-23*

13 **YSHUA SMOG**  
14 **KEVIN RHEY ORME, OWNER**  
2501 W. SLAUSON #A  
15 **LOS ANGELES, CA. 90043**  
Automotive Repair Dealer Reg. No. ARD 270826  
16 Smog Check Test Only Station License No. TC  
270826,

**ACCUSATION**

(Smog Check)

17 **-and-**

18 **DAVID ALEXANDER DOMINGUEZ**  
19 5316 ¼ W. 77<sup>th</sup> Street  
Los Angeles, CA 90043  
20 Smog Check Inspector License No. EO 633149  
Smog Check Repair Technician License No. EI  
21 633149 (was redesignated upon renewal from  
EA633149 to EO 633149 and EI 633149)  
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Respondents.

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24 Complainant alleges:

25 **PARTIES/LICENSE INFORMATION**

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





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

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

7 . . . .

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

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

12 . . . .

13 (f) Aids or abets unlicensed persons to evade the provisions of this  
14 chapter . . .

15 13. Health & Saf. Code section 44072.10 states, in pertinent part:

16 . . . .

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

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

22 . . . .

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

25 **REGULATORY PROVISIONS**

26 14. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),  
27 states:

28 “The bureau may suspend or revoke the license of or pursue other legal action against a  
licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
certificate of noncompliance.”

15. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician  
shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section

1 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
2 3340.42 of this article.”

3 16. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check  
4 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any  
5 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of  
6 this article and has all the required emission control equipment and devices installed and  
7 functioning correctly.”

8 17. CCR, title 16, section 3340.41, subdivision (c), provides: “No person shall enter into  
9 the emissions inspection system any vehicle identification information or emission control system  
10 identification data for any vehicle other than the one being tested. Nor shall any person  
11 knowingly enter into the emissions inspection system any false information about the vehicle  
12 being tested.”

13 18. CCR, title 16, section 3340.42, sets forth specific emissions test methods and  
14 procedures which apply to all vehicles inspected in the State of California.

15 19. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that  
16 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
17 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
18 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

19 20. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
20 suspended following a hearing under this article, any additional license issued under this chapter  
21 in the name of the licensee may be likewise revoked or suspended by the director.

### 22 COST RECOVERY

23 21. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
24 the administrative law judge to direct a licentiate found to have committed a violation or  
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
26 and enforcement of the case.

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**VIDEO SURVEILLANCE OPERATION OF MARCH 28, 2013**

22. On or about March 28, 2013, representatives of the Bureau conducted a video surveillance operation of Respondent Orme's smog check facility. The surveillance video and information obtained from the Bureau's vehicle information database ("VID") showed that Respondent Dominguez employed a method commonly known as clean piping<sup>2</sup> during the following smog inspections, resulting in the issuance of fraudulent certificates of compliance for the following vehicles:

<b>Date &amp; Time of Inspection</b>	<b>Vehicle in EIS Data and License or VIN No.</b>	<b>Vehicle Actually Tested</b>	<b>Certificate No.</b>
1. 3/28/2013 14:07-14:14	1998 Infinity I 30, VIN #JNKCA21AXWT630076	1996 Ford Mustang, License No. 3TQE661	XR968231C
2. 3/28/2013 14:24-14:30	2004 Hyundai Accent, License No. 6JHL293	1996 Ford Mustang, License No. 3TQE661	XR968232C
3. 3/28/2013 14:41-14:55	1997 Honda Prelude License No. 5GNA246	1996 Ford Mustang, License No. 3TQE661	None
4. 3/28/2013 15:13-15:25	1992 Honda Accord, License No. 3JHN833	1996 Ford Mustang, License No. 3TQE661	None
5. 3/28/2013 15:31-15:38	2000 Toyota Corolla, VIN # 1NXBR12E7YZ338668	1996 Ford Mustang, License No. 3TQE661	None
6. 3/28/2013 15:44-15:51	1993 Acura Integra, License No. 5APK109	1996 Ford Mustang, License No. 3TQE661	None
7. 3/28/2013 15:58-16:05	1995 Chevrolet S10 Blazer, License No. 6HHT337	1996 Ford Mustang, License No. 3TQE661	XR968233C
8. 3/28/2013 16:09-16:14	1997 Honda Civic, License No. 4TZX667	1996 Ford Mustang, License No. 3TQE661	XR968234C

<sup>2</sup> Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS to issue a certificate of compliance for another vehicle.

1 2	9. 3/28/2013 16:20-16:26	1997 Dodge Avenger, License No. 6DHD178	1996 Ford Mustang, License No. 3TQE661	XR968235C
3 4	10. 3/28/2013 16:33-16:41	2005 Toyota Camry, License No. 5NJX412	1996 Ford Mustang, License No. 3TQE661	XR968236C
5 6 7	11. 3/28/2013 17:04-17:17	2004 Chevrolet Impala, License No. 5KVZ193	1996 Ford Mustang, License No. 3TQE661	XR968237C

8  
9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 23. Respondent Orme's registration is subject to disciplinary action pursuant to Bus. &  
12 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement  
13 which he knew or in the exercise of reasonable care should have known to be untrue or  
14 misleading, as follows: Respondent Orme's inspector, Respondent Dominguez, certified that the  
15 vehicles identified in paragraph 22 above had passed inspection and were in compliance with  
16 applicable laws and regulations. In fact, Respondent Dominguez used clean piping methods in  
17 order to issue certificates for those vehicles and did not test or inspect the vehicles as required by  
18 Health & Saf. Code section 44012.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 24. Respondent Orme's registration is subject to disciplinary action pursuant to Bus. &  
22 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that  
23 constitutes fraud by issuing electronic smog certificates of compliance for the vehicles identified  
24 above in paragraph 22 without ensuring that a bona fide inspection was performed of the emission  
25 control devices and systems on the vehicles, thereby depriving the People of the State of  
26 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 25. Respondent Orme's smog check station license is subject to disciplinary action  
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
5 comply with provisions of that Code, as follows:

6 a. **Section 44012:** Respondent Dominguez failed to ensure that emission control tests  
7 were performed on the vehicles identified above in paragraph 22 in accordance with procedures  
8 prescribed by the department.

9 b. **Section 44015:** Respondent Dominguez issued an electronic smog certificate of  
10 compliance for the vehicles identified above in paragraph 22 without ensuring that the vehicles  
11 were properly tested and inspected to determine if they were in compliance with Health & Saf.  
12 Code section 44012.

13 **FOURTH CAUSE FOR DISCIPLINE**

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

16 26. Respondent Orme's smog check station license is subject to disciplinary action  
17 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to  
18 comply with provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.24, subdivision (c):** Respondent Dominguez falsely or fraudulently  
20 issued electronic smog certificates of compliance for the vehicles identified in paragraph 22  
21 above.

22 b. **Section 3340.35, subdivision (c):** Respondent Dominguez issued electronic smog  
23 certificates of compliance for the vehicles identified in paragraph 22 above even though the  
24 vehicles had not been inspected in accordance with section 3340.42.

25 c. **Section 3340.41, subdivision (c):** Respondent Orme authorized or permitted his  
26 inspector, Respondent Dominguez, to enter false information into the EIS by entering vehicle  
27 identification information or emission control system identification data for a vehicle other than  
28 the one being tested.

1 d. **Section 3340.42:** Respondent Dominguez failed to ensure that the required smog  
2 tests were conducted on the vehicles identified in paragraph 22 above in accordance with the  
3 Bureau's specifications.

4 **FIFTH CAUSE FOR DISCIPLINE**

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

6 27. Respondent Orme's smog check station license is subject to disciplinary action  
7 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a  
8 dishonest, fraudulent or deceitful act whereby another is injured by issuing electronic smog  
9 certificates of compliance for the vehicles identified in paragraph 22 without ensuring that a bona  
10 fide inspection was performed of the emission control devices and systems on the vehicles,  
11 thereby depriving the People of the State of California of the protection afforded by the Motor  
12 Vehicle Inspection Program.

13 **SIXTH CAUSE FOR DISCIPLINE**

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

15 28. Respondent Dominguez's technician licenses are subject to disciplinary action  
16 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
17 comply with provisions of that Code, as follows:

18 a. **Section 44012:** Respondent Dominguez failed to perform the emission control tests  
19 on the vehicles identified in paragraph 22 above in accordance with procedures prescribed by the  
20 department.

21 b. **Section 44059:** Respondent Dominguez willfully made false entries in the EIS,  
22 resulting in the issuance of fraudulent certificates of compliance for the vehicles identified in  
23 paragraph 22 above.

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1 **OTHER MATTERS**

2 31. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
3 suspend, revoke or place on probation the registration for all places of business operated in this  
4 state by Respondent Kevin Rhey Orme, owner of YSHUA SMOG, upon a finding that  
5 Respondent 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 32. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station  
8 License Number TC 270826, issued to Respondent Kevin Rhey Orme, owner of YSHUA SMOG,  
9 is revoked or suspended, any additional license issued under this chapter in the name of said  
10 licensee may be likewise revoked or suspended by the Director.

11 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
12 Number EO 633149 and Smog Check Repair Technician License No. EI 633149, (formerly  
13 Advanced Emission Specialist Technician License No. EA 633149), issued to Respondent David  
14 Alexander Dominguez, are revoked or suspended, any additional license issued under this chapter  
15 in the name of said licensee may be likewise revoked or suspended by the Director.

16 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
20 270826, issued to Kevin Rhey Orme, owner of YSHUA SMOG;

21 2. Revoking or suspending any other automotive repair dealer registration issued to  
22 Kevin Rhey Orme;

23 3. Revoking or suspending Smog Check Test Only Station License Number TC 270826,  
24 issued to Kevin Rhey Orme, owner of YSHUA SMOG;

25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
26 and Safety Code in the name of Kevin Rhey Orme;

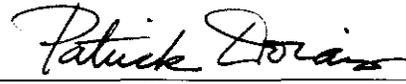
1           5.    Revoking or suspending Smog Check Inspector License Number EO 633149 and  
2 Smog Check Repair Technician License No. EI 633149, (formerly Advanced Emission Specialist  
3 Technician License No. EA 633149) issued to David Alexander Dominguez;

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

6           7.    Ordering Kevin Rhey Orme, individually, and as owner of YSHUA SMOG, and  
7 David Alexander Dominguez to pay the Bureau of Automotive Repair the reasonable costs of the  
8 investigation and enforcement of this case, pursuant to Business and Professions Code section  
9 125.3;

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

11  
12 DATED: September 17, 2013

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

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