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

In the Matter of the Accusation Against:

**YSHUA SMOG; KEVIN RHEY ORME;
2501 W. Slauson #A
Los Angeles, CA 90043
Automotive Repair Dealer Registration No.
ARD 270826
Smog Check Test Only License No. TC
270826**

Respondent.

Case No. 79/14-23

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 17, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/14-23 against Yshua Smog; Kevin Rhey Orme; (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about November 9, 2012, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. ARD 270826 to Respondent. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 79/14-23 and will expire on November 30, 2014, unless renewed.

1 3. On or about January 4, 2013, the Bureau of Automotive Repair issued Smog Check
2 Test Only License No. TC 270826 to Respondent. The Smog Check Test Only License was in
3 full force and effect at all times relevant to the charges brought in Accusation No. 79/14-23 and
4 will expire on November 30, 2014, unless renewed.

5 4. On or about October 22, 2013, Respondent was served by Certified and First Class
6 Mail copies of the Accusation No. 79/14-23, Statement to Respondent, Notice of Defense,
7 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
8 and 11507.7) at Respondent's then address of record which, pursuant to Business and Professions
9 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
10 address of record was:

11 2501 W. Slauson #A
12 Los Angeles, CA 90043.

13 5. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
15 124.

16 6. On or about October 31, 2013, the aforementioned documents were returned by the
17 U.S. Postal Service marked "Unable to Forward." The address on the documents was the same as
18 the address on file with the Bureau. Respondent failed to maintain an updated address with the
19 Bureau and the Bureau has made attempts to serve the Respondent at the address on file.
20 Respondent has not made himself available for service and therefore, has not availed himself of
21 his right to file a notice of defense and appear at hearing.

22 7. On or about January 21, 2014, Respondent was served by Certified and First Class
23 Mail copies of the Accusation No. 79/14-23, Statement to Respondent, Notice of Defense,
24 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
25 and 11507.7) at the address listed on Respondent's California Drivers' License, neither of the
26 envelopes was returned:

27 3316 ¼ W. 77th Street
28 Los Angeles, CA 90043.

1 8. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 9. On or about February 7, 2014, Respondent was served by Certified and First Class
5 Mail copies of the Accusation No. 79/14-23, Statement to Respondent, Notice of Defense,
6 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
7 and 11507.7) at an additional address on file for Respondent:

8 3519 W. Slauson #A
9 Los Angeles, CA 90043.

10 10. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

13 11. On or about April 4, 2014, the aforementioned documents were returned by the U.S.
14 Postal Service marked "Unable to Forward." The address on the documents was the same as the
15 address on file with the Bureau.

16 12. On or about June 5, 2014, Respondent was served by Certified and First Class Mail
17 copies of the Accusation No. 79/14-23, Statement to Respondent, Notice of Defense, Request for
18 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
19 Respondent's then address of record which, pursuant to Business and Professions Code section
20 136, is required to be reported and maintained with the Bureau. Neither of the envelopes was
21 returned. Respondent's address of record was and is:

22 3902 W. Slauson Avenue
23 Los Angeles, CA 90043.

24 13. Service of the Accusation was effective as a matter of law under the provisions of
25 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
26 124.

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1 a. Business and Professions Code section 9884.7, subdivision (a)(1) – Untrue or
2 Misleading Statements;

3 b. Business and Professions Code section 9884.7, subdivision (a)(4) – Fraud;

4 c. Health and Safety Code section 44072.2, subdivision (a) – Violations of Motor
5 Vehicle Inspection Program;

6 d. Health and Safety Code section 44072.2, subdivision (c) – Failure to Comply with
7 Regulations Pursuant to the Motor Vehicle Inspection Program;

8 ORDER

9 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 270826,
10 heretofore issued to Respondent Yshua Smog; Kevin Rhey Orme, is revoked.

11 IT IS FURTHER ORDERED that Smog Check Test Only Station License No. TC 270826,
12 heretofore issued to Respondent Yshua Smog; Jevin Rhey Orme, is revoked.

13 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
14 written motion requesting that the Decision be vacated and stating the grounds relied on within
15 seven (7) days after service of the Decision on Respondent. The motion should be sent to the
16 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Boulevard,
17 Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a
18 hearing on a showing of good cause, as defined in the statute.

19 This Decision shall become effective on September 18, 2014

20 It is so ORDERED August 28, 2014

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22 
23 DOREATHEA JOHNSON
24 Deputy Director, Legal Affairs
Department of Consumer Affairs

25 51557337.DOC
DOJ Matter ID:LA2013510155

26 Exhibit A: Accusation

27 Attachment: Declarations of Proof of Service by Mail
28 Copy of Returned Mail Envelopes

EXHIBIT A
CASE NUMBER 79/14-23
ACCUSATION

1 KAMALA D. HARRIS
Attorney General of California
2 Marc D. Greenbaum
Supervising Deputy Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804
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:

Case No. **79/14-23**

13 **YSHUA SMOG**
14 **KEVIN RHEY ORME, OWNER**
15 **2501 W. SLAUSON #A**
16 **LOS ANGELES, CA. 90043**
17 **Automotive Repair Dealer Reg. No. ARD 270826**
18 **Smog Check Test Only Station License No. TC**
19 **270826,**

ACCUSATION

(Smog Check)

17 -and-

18 **DAVID ALEXANDER DOMINGUEZ**
19 **5316 ¼ W. 77th Street**
20 **Los Angeles, CA 90043**
21 **Smog Check Inspector License No. EO 633149**
22 **Smog Check Repair Technician License No. EI**
23 **633149 (was redesignated upon renewal from**
24 **EA633149 to EO 633149 and EI 633149)**

Respondents.

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 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
2 part, that the Director has all the powers and authority granted under the Automotive Repair Act
3 for enforcing the Motor Vehicle Inspection Program.

4 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
5 suspension of a license by operation of law, or by order or decision of the Director of Consumer
6 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
7 of jurisdiction to proceed with disciplinary action.

8 **STATUTORY PROVISIONS**

9 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

19

20 (4) Any other conduct that constitutes fraud.

21

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

27 10. Bus. & Prof. Code section 22, subdivision (a), states:

28 "Board" as used in any provision of this Code, refers to the board in
which the administration of the provision is vested, and unless otherwise expressly
provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

11. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
"license" includes "registration" and "certificate."

12. Health & Saf. Code section 44072.2 states, in pertinent part:

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 piping² during the following smog inspections, resulting in the issuance of fraudulent certificates of compliance for the following vehicles:

Date & Time of Inspection	Vehicle in EIS Data and License or VIN No.	Vehicle Actually Tested	Certificate No.
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

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

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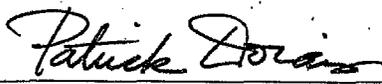
5. Revoking or suspending Smog Check Inspector License Number EO 633149 and Smog Check Repair Technician License No. EI 633149, (formerly Advanced Emission Specialist Technician License No. EA 633149) issued to David Alexander Dominguez;

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

7. Ordering Kevin Rhey Orme, individually, and as owner of YSHUA SMOG, and David Alexander Dominguez to pay 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: September 17, 2013


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

LA2013510155