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

11 In the Matter of the Accusation Against:  
12 **J.D.J. SMOG; MANUEL VILLANUEVA,**  
**OWNER**  
13 488 W. Valley Blvd.  
Colton, CA 92324  
14  
15 Automotive Repair Dealer Registration No.  
ARD 280947  
16 Smog Check Test Only Station License No.  
TC 280947  
17 **and**  
18 **JERRY LYNN ADAMS, JR.**  
1736 Cerritos  
19 Long Beach, CA 90813  
20 Smog Check Inspector License No. EO 637987  
21 **and**  
22 **ISRAEL A. AVALOS**  
2045 M. L. King Jr., Ave., Apt. #3  
23 Long Beach, California 90806  
24 Smog Check Inspector License No. EO 636358  
25 Respondents.  
26

Case No. *79/16-134*  
**ACCUSATION**  
*Smog Check*

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about July 23, 2015, the Bureau issued Automotive Repair Dealer Registration  
6 No. ARD 280947 to J.D.J. Smog; Manuel Villanueva (Owner) (J.D.J Smog). The Automotive  
7 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought  
8 herein and will expire on July 31, 2016, unless renewed.

9 3. On or about August 17, 2015, the Bureau issued Smog Check Test Only Station  
10 License No. TC 280947 to J.D.J. Smog; Manuel Villanueva (Owner) (J.D.J Smog). The Smog  
11 Check Test Only Station license was in full force and effect at all times relevant to the charges  
12 brought herein and will expire on July 31, 2016, unless renewed.

13 4. On or about March 25, 2015, the Bureau issued Smog Check Inspector License No.  
14 EO 637987 to Jerry Lynn Adams, Jr. The Smog Check Inspector license was in full force and  
15 effect at all times relevant to the charges brought herein and will expire on December 31, 2016,  
16 unless renewed.

17 5. On or about December 17, 2013, the Bureau issued Smog Check Inspector License  
18 No. EO 636358 to Israel A. Avalos. The Smog Check Inspector license was in full force and  
19 effect at all times relevant to the charges brought herein and will expire on September 30, 2017,  
20 unless renewed.

21 **JURISDICTION**

22 6. This Accusation is brought before the Director of the Department of Consumer  
23 Affairs (Director) for the Bureau of Automotive Repair (Bureau), under the authority of the  
24 following laws.

25 7. Business and Professions Code ("BPC") section 9884.13 provides, in pertinent part,  
26 that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed  
27 with a disciplinary proceeding against an automotive repair dealer or to render a decision  
28 temporarily or permanently invalidating (suspending or revoking) a registration.



1           13. Section 9889.9 of the BPC states that “[w]hen any license has been revoked or  
2 suspended following a hearing under the provisions of this article [Article 7 (commencing with  
3 section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and  
4 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the  
5 director.”

6           14. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations  
7 shall be performed in accordance with procedures prescribed by the department.

8           15. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance  
9 shall be issued if a vehicle meets the requirements of HSC section 40012.

10           16. Section 44032 of the HSC states, in pertinent part, that: (1) no person may perform  
11 tests or repairs of emission control devices or systems of motor vehicles required by the Motor  
12 Vehicle Inspection Program unless the person performing the test or repair is a licensed qualified  
13 smog check technician; and (2) all tests must be conducted in accordance with section 44012 (i.e.  
14 Motor Vehicle Inspection Program Requirements).

15           17. Section 44059 of the HSC provides:

16           “The willful making of any false statement or entry with regard to a material matter in any  
17 oath, affidavit, certificate of compliance or noncompliance, or application form which is required  
18 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business  
19 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

20           18. Section 44072.2 of the HSC states, in pertinent part:

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

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

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

28           “(d) Commits any act involving dishonesty, fraud, or deceit whereby another is

1 injured.

2 “(e) Has misrepresented a material fact in obtaining a license.

3 “(f) Aids or abets unlicensed persons to evade the provisions of this chapter.”

4 19. Section 44072.8 of the HSC states that when a license has been revoked or suspended  
5 following a hearing under this article, any additional license issued under this chapter in the name  
6 of the licensee may be likewise revoked or suspended by the director.

7 **REGULATORY PROVISIONS**

8 20. California Code of Regulations, title 16, section 3340.15, subdivision (b), states, in  
9 pertinent part, that “[a] licensed inspector and/or repair technician shall be present during all  
10 hours the station is open for the business.”

11 21. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),  
12 states:

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

16 22. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician  
17 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section  
18 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42  
19 of this article.”

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

25 24. CCR, title 16, section 3340.41, subdivision (c) provides, as follows:

26 “No person shall enter into the emissions inspection system any vehicle  
27 identification information or emission control system identification data for any  
28 vehicle other than the one being tested. Nor shall any person knowingly enter into the  
emissions inspection system any false information about the vehicle being tested.”



1 tested during the smog inspection using the clean plugging method.<sup>1</sup> The following chart  
 2 illustrates the documented clean plugging activities of Respondents Jerry Lynn Adams, Jr., and  
 3 Israel A. Avalos between September 17, 2015, and October 31, 2015.

4	5	6	7	8	9
Test Date and Time*	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details	
6 7 8 9 10	2010 GMC Yukon Denali None	PW494171C	EO636358 (Respondent Avalos)	Comm. Protocol: I9140808 (expected ICAN11bt5)  PID Count: 2 (expected 45)  OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)	
11 12 13 14 15	2006 Mercedes Benz R350 R Class 5WBL857	PW494176C	EO636358 (Respondent Avalos)	Comm. Protocol: I9140808 (expected ICAN11bt5)  PID Count: 2 (expected 44)  OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)	
16 17 18 19 20	2007 Toyota Tacoma Prerunner Long Bed 66206P1	PW494179C	EO636358 (Respondent Avalos)	Comm. Protocol: I9140808 (expected ICAN11bt5)  PID Count: 2 (expected 46)  OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)	
21 22 23 24 25	2015 Dodge Grand Caravan SE R36267R	PW494180C	EO636358 (Respondent Avalos)	Comm. Protocol: I9140808 (expected ICAN11bt5)  PID Count: 2 (expected 44)  OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)	

26 <sup>1</sup> Clean plugging refers to the use of another vehicle's properly functioning On Board Diagnostic,  
 27 generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing  
 28 fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for testing.

1	10/16/2015	2007 Ford F150	PY405263C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected ICAN11bt5)
2	1042-1049	8L60780			PID Count: 2 (expected 47)
3	hours				OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
4					
5					
6	10/21/2015	2005 Ford F150	PY405276C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected ICAN11bt5)
7	1606-1615	75074C1			PID Count: 2 (expected 47)
8	hours				OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
9					
10					
11	10/23/2015	2006 Chevrolet	PY405279C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected JVPW)
12	1339-1349	Silverado C1500			PID Count: 2 (expected 22)
13	hours	7X64094			OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
14					
15					
16	10/23/2015	2005 Subaru	PY405282C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected KWPF)
17	1644-1651	Impreza WRX			PID Count: 2 (expected 19)
18	hours	STI			OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
19		6CCY189			
20					
21	10/27/2015	2010 Chevrolet	PY405296C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected ICAN11bt5)
22	1629-1636	Tahoe LT			PID Count: 2 (expected 45)
23	hours	None			OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
24					
25					
26	10/27/2015	2007 Subaru	PY405295C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected KWPF)
27	1612-1619	Impreza WRX			PID Count: 2 (expected 20)
28	hours	STI			
		6AUD043			

1					OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
2					
3					
4	10/27/2015	2010 Chevrolet Tahoe LT	PY405293C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected ICAN11bt5)
5	1503-1512 hours	None			PID Count: 2 (expected 45)
6					OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
7					
8					
9	10/28/2015	2005 Chrysler Town & Country LMT	PY405298C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected JVPW)
10	1550-1558 hours	349664Y			PID Count: 2 (expected 18)
11					OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
12					
13					
14	10/28/2015	2006 Buick Lacrosse CX	PY405299C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected JVPW)
15	1606-1617 hours	6SUD469			PID Count: 2 (expected 41)
16					OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
17					
18					
19	10/31/2015	2005 BMW 7451	PY816764C	EO637987 (Respondent Adams)	Comm. Protocol: I9140808 (expected KWPF)
20	1346-1355 hours	5MVJ513			PID Count: 2 (expected 22)
21					OBD II Diagnostic Monitor for Heated Catalyst: supported (expected not supported)
22					
23					

**FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

29. Respondent J.D.J Smog is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he made or authorized statements which he knew

1 or in the exercise of reasonable care should have known to be untrue or misleading, as follows:  
2 Respondent certified that the 14 vehicles identified in paragraph 28 above, had passed inspection  
3 and were in compliance with applicable laws and regulations. In fact, Respondent conducted the  
4 inspections on the vehicles using clean-plugging methods in order to issue smog certificates of  
5 compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf.  
6 Code section 44012. Complainant refers to, and by this reference incorporates, the allegations  
7 contained in paragraph 28, as though set forth fully herein.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 30. Respondent J.D.J Smog is subject to disciplinary action pursuant to Bus. & Prof.  
11 Code section 9884.7, subdivision (a)(4), in that he committed acts that constitute fraud by issuing  
12 electronic smog certificates of compliance for the 14 vehicles identified in paragraph 28 above,  
13 without performing bona fide inspections of the emission control devices and systems on the  
14 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
15 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the  
16 allegations contained in paragraph 28, as though set forth fully herein.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Material Violation of Automotive Repair Act)**

19 31. Respondent J.D.J Smog is subject to discipline under Bus. & Prof. Code section  
20 9884.7, subdivision (a)(6), in that he failed in a "material respect to comply with the provisions of  
21 this chapter or regulations adopted pursuant to it" when he issued electronic certificates of  
22 compliance for the 14 vehicles identified in paragraph 28 above, without performing bona fide  
23 inspections of the emission control devices and systems on those vehicles, thereby depriving the  
24 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
25 Program. Complainant refers to, and by this reference incorporates, the allegations contained in  
26 paragraph 28, as though set forth fully herein.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent J.D.J. Smog is subject to discipline under HSC section 44072.2,  
4 subdivision (a), in that he violated the following sections of the HSC, with respect to the vehicles  
5 set forth in paragraph 28, above:

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

8 b. **Section 44012, subdivision (f):** Respondent failed to preform a visual and/or  
9 functional check of required emission control devices.

10 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of  
11 compliance without properly testing and inspecting the vehicles to determine if they were in  
12 compliance with section 44012 of the HSC.

13 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates  
14 of compliance by certifying that those vehicles had been inspected as required when, in fact, they  
15 had not.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 33. Respondent J.D.J. Smog is subject to disciplinary action pursuant to Health & Saf.  
19 Code section 44072.2, subdivision (c), in that he violated the following sections of the CCR, title  
20 16, with respect to the vehicles set forth in paragraph 28, above:

21 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of  
22 compliance for the 15 vehicles identified in paragraph 22 above, even though the vehicles had not  
23 been inspected in accordance with section 3340.42.

24 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were  
25 conducted on the 15 vehicles identified in paragraph 22 above, in accordance with the Bureau's  
26 specifications.

27 Respondent failed to ensure that the required smog tests were conducted on the 15 vehicles  
28 identified in paragraph 22 above, in accordance with the Bureau's specifications.

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 34. Respondent Israel A. Avalos, has subjected his smog check inspector license to  
4 discipline under HSC section 44072.2, subdivision (a), in that he violated the following sections  
5 of the HSC, with respect to the vehicles set forth in paragraph 28, above:

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

8 b. **Section 44012, subdivision (f):** Respondent failed to preform a visual and/or  
9 functional check of required emission control devices.

10 b. **Section 44032:** Respondent failed to perform tests of the emission control devices  
11 and systems on those vehicles in accordance with section 44012 of the HSC, in that the vehicles  
12 had been clean plugged.

13 **SEVENTH CAUSE FOR DISCIPLINE**

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

15 35. Respondent Israel A. Avalos, has subjected his smog check inspector license to  
16 discipline under HSC section 44072.2, subdivision (c), in that he violated the following sections  
17 of the CCR, title 16, with respect to the vehicles set forth in paragraph 28, above:

18 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those  
19 vehicles in accordance with HSC section 44012.

20 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS  
21 for the electronic certificates of compliance by entering vehicle emission control information for  
22 vehicles other than the vehicles being certified.

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

25 **EIGHTH CAUSE FOR DISCIPLINE**

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

27 36. Respondent Jerry Lynn Adams, Jr., has subjected his smog check inspector license to  
28 discipline under HSC section 44072.2, subdivision (a), in that he violated the following sections

1 of the HSC, with respect to the vehicles set forth in paragraph 28, above:

2 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
3 performed on those vehicles in accordance with procedures prescribed by the department.

4 b. **Section 44012, subdivision (f):** Respondent failed to preform a visual and/or  
5 functional check of required emission control devices.

6 b. **Section 44032:** Respondent failed to perform tests of the emission control devices  
7 and systems on those vehicles in accordance with section 44012 of the HSC, in that the vehicles  
8 had been clean plugged.

9 **NINTH CAUSE FOR DISCIPLINE**

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

11 37. Respondent Jerry Lynn Adams, Jr., has subjected his smog check inspector license to  
12 discipline under HSC section 44072.2, subdivision (c), in that he violated the following sections  
13 of the CCR, title 16, with respect to the vehicles set forth in paragraph 28, above:

14 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those  
15 vehicles in accordance with HSC section 44012.

16 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS  
17 for the electronic certificates of compliance by entering vehicle emission control information for  
18 vehicles other than the vehicles being certified.

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

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1 PRAYER

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

- 4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
5 280947, issued to J.D.J. Smog; Manuel Villanueva
- 6 2. Revoking or suspending Smog Check Test Only Station License Number TC 280947,  
7 issued to J.D.J. Smog; Manuel Villanueva;
- 8 3. Revoking or suspending Smog Check Inspector License No. EO 637987 issued to  
9 Jerry Lynn Adams, Jr.;
- 10 4. Revoking or suspending Smog Check Inspector License No. EO 636358 issued to  
11 Israel A. Avalos;
- 12 5. Ordering Respondents to pay the Bureau of Automotive Repair the reasonable costs  
13 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
14 section 125.3;
- 15 6. Taking such other and further action as deemed necessary and proper.

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18 DATED: May 27, 2016

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

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