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

12
13 In the Matter of the Accusation Against:

Case No. 79/18-18405

14 **LYMAN LUM JUNG, Member,**
KLK VENTURES, LLC DBA F1 STAR SMOG
15 **2517 El Camino Real**
Santa Clara, CA 95051

ACCUSATION

16 **Mailing Address:**
17 **1234 Church St**
San Francisco, CA 94043

18 **Automotive Repair Dealer Registration No. ARD 288331**
19 **Smog Check, Test Only, Station License No. TC 288331**

20 **RICHARD MORALES JR.**
86 N. Claremont Ave.
21 **San Jose, CA 95127**

22 **Smog Check Inspector License No. EO 639687**

23 Respondents.

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25
26 **PARTIES**

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

1 the expiration or suspension of a license by operation of law or by order or decision of the
2 Director or a court of law, or the voluntary surrender of a license shall not deprive the Director of
3 jurisdiction to proceed with any disciplinary proceedings.

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

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

11 11. Section 44072.8 of the Health and Safety Code states:

12 When a license has been revoked or suspended following a hearing under this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

14 **STATUTORY PROVISIONS**

15 12. Section 9884.7 of the Code states:

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

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

25 ...

26 (4) Any other conduct that constitutes fraud.

27 ...

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

...

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place
on probation the registration for all places of business operated in this state by an
automotive repair dealer upon a finding that the automotive repair dealer has, or is,

1 engaged in a course of repeated and willful violations of this chapter, or regulations
2 adopted pursuant to it.

3 13. Section 9884.8 of the Code states:

4 All work done by an automotive repair dealer, including all warranty work,
5 shall be recorded on an invoice and shall describe all service work done and parts
6 supplied. Service work and parts shall be listed separately on the invoice, which shall
7 also state separately the subtotal prices for service work and for parts, not including
8 sales tax, and shall state separately the sales tax, if any, applicable to each. If any
9 used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that
10 fact. If a part of a component system is composed of new and used, rebuilt or
11 reconditioned parts, that invoice shall clearly state that fact. The invoice shall include
12 a statement indicating whether any crash parts are original equipment manufacturer
13 crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
14 of the invoice shall be given to the customer and one copy shall be retained by the
15 automotive repair dealer.

16 14. Section 9884.9 of the Code states:

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

(1) Make a notation on the invoice of the same facts set forth in the notation on
the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to
an acknowledgment of notice and consent, if there is an oral consent of the customer
to additional repairs, in the following language:

I acknowledge notice and oral approval of an increase in the original estimated
price.

(signature or initials)

Nothing in this section shall be construed as requiring an automotive repair
dealer to give a written estimated price if the dealer does not agree to perform the
requested repair.

...

1 15. Section 44012 of the Health and Safety Code provides, in pertinent part, that the
2 Bureau shall ensure that emission control systems required by state and federal law reduce excess
3 emission in accordance with the standards adopted pursuant to Health and Safety Code section
4 44013.

5 16. Section 44015, subdivision (b) of the Health and Safety Code states:

6 If a vehicle meets the requirements of Section 44012, a smog check station
7 licensed to issue certificates shall issue a certificate of compliance or a certificate of
8 noncompliance.

9 17. Section 44059 of the Health and Safety Code states:

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

15 18. Section 44072.2 of the Health and Safety Code states:

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

19 (a) Violates any section of this chapter and the regulations adopted pursuant
20 to it, which related to the licensed activities.

21 ...

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

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

26 ...

27 (h) Violates or attempts to violate the provisions of this chapter relating to the
28 particular activity for which he or she is licensed.

REGULATORY PROVISIONS AND OTHER AUTHORITY

19. California Code of Regulations, title 16, section 3340.30, states:

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

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

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20. California Code of Regulations, title 16, section 3340.35, subdivision (c) states:

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

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

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

21. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any 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.

22. California Code of Regulations, title 16, section 3340.42, states:

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

...

23. California Code of Regulations, title 16, section 3340.45, states:

(a) All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the following:

(1) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This manual became effective on or after January 1, 2013. This manual shall remain in effect until subparagraph (2) is implemented.

(2) Smog Check Manual, dated November 2, 2017, which is hereby incorporated by reference. This manual shall become effective on August 2, 2018.

24. California Code of Regulations, title 16, section 3356, states:

(a) All invoices for service and repair work performed, and parts supplied, as provided for in Section 9884.8 of the Business and Professions Code, shall comply with the following:

(1) The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau's records. If the automotive repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b) of Section 3371 of this chapter.

(2) The invoice shall separately list, describe and identify all of the following:

(A) All service and repair work performed, including all diagnostic and warranty work, and the price for each described service and repair.

1 (B) Each part supplied, in such a manner that the customer can understand what
2 was purchased, and the price for each described part. The description of each part
shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash
part, or a non-OEM aftermarket crash part.

3 (C) The subtotal price for all service and repair work performed.

4 (D) The subtotal price for all parts supplied, not including sales tax.

5 (E) The applicable sales tax, if any.

6 ...

7 **COST RECOVERY**

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

12 **FACTUAL ALLEGATIONS**

13 26. On or about October 26, 2018, a Bureau operator took the Bureau's 2002 Ford to
14 Respondent F1 Star for a smog inspection. The 2002 Ford was non-compliant with smog
15 inspection laws and regulations due to a modified Positive Crankcase Ventilation (PCV) system
16 that would cause the vehicle to fail a properly performed smog inspection.

17 27. Once at Respondent F1 Star's smog station, the operator asked for a smog inspection
18 to be performed on the 2002 Ford. Respondent F1 Star provided the operator with a written
19 estimate, but did not sign a work order before the inspection began. The operator paid Respondent
20 F1 Star \$79.95 for the inspection.

21 28. After the inspection, Respondent Morales informed the Bureau operator that there
22 were numerous missing emission components and advised the operator to take the 2002 Ford to
23 the dealership for repairs. Respondent Morales then informed the operator that he had a friend
24 who could pass the vehicle without performing any repairs, and that it would cost the operator
25 \$350.00 in cash. The operator was instructed to return in a few days and ask specifically for
26 Respondent Morales.

27 29. On or about November 2, 2018, the Bureau's operator returned the 2002 Ford to
28 Respondent F1 Star's smog station. The operator paid Respondent Morales \$350.00 in cash for

1 the smog inspection. Respondent Morales entered information into the BAR-OIS computer
2 system certifying under penalty of perjury that he had performed a complete smog check
3 inspection of the 2002 Ford in accordance with the procedures prescribed by the department and
4 that the information on the Vehicle Inspection Report was true and accurate. Respondent Morales
5 provided the operator with a copy of the passing Smog Check Vehicle Inspection Report.

6 30. On or about November 7, 2018, the Bureau re-inspected the 2002 Ford. The re-
7 inspection revealed the 2002 Ford still failed the visual portion of the smog inspection due to the
8 tampered Positive Crankcase Ventilation (PCV) system. The 2002 Ford remained non-compliant
9 with smog laws and regulations and should have not been issued a Certificate of Compliance No.
10 HX152180C.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Misleading/Untrue Statements – ARD Registration)**

13 31. Respondent F1 Star’s ARD Registration is subject to disciplinary action under
14 Business and Professions Code section 9884.7, subdivision (a)(1) in that Respondent F1 Star
15 made or authorized statements that were untrue or misleading, and which Respondent F1 Star
16 knew or should have known were untrue or misleading. Respondent F1 Star entered false
17 information into the state-owned computer database through the BAR-OIS system to issue a
18 Certificate of Compliance to a vehicle that was not compliant, as set forth in paragraphs 26-30,
19 above.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Violations of Chapter – ARD Registration)**

22 32. Respondent F1 Star’s ARD Registration is subject to disciplinary action under
23 Business and Professions Code section 9884.7, subdivision (a)(6) in that in that Respondent F1
24 Star violated the Automotive Repair Act and/or the regulations adopted pursuant to it as follows:

25 a. Respondent F1 Star violated Business and Professions Code section 9884.8, in that
26 Respondent F1 Star failed to give the customer a legible copy of the invoice, as set forth in
27 paragraphs 26-30, above.

28 b. Respondent F1 Star violated Business and Professions Code section 9884.9,

1 subdivision (a), in that Respondent F1 Star failed to provide the customer with a written estimate
2 for parts and labor for a specific job, and/or proceeded to charge the customer for work without
3 first obtaining authorization to proceed from the customer, as set forth in paragraphs 26-30,
4 above.

5 c. Respondent F1 Star violated California Code of Regulations, title 16, section 3356,
6 subdivision (a), in that Respondent F1 Star failed to give the customer a legible copy of the
7 invoice, as set forth in paragraphs 26-30, above.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Violations of Motor Vehicle Inspection Program – Station License)**

10 33. Respondent F1 Star’s smog check, test only, station license is subject to disciplinary
11 action pursuant to Health and Safety Code section 44072.2, subdivisions (a) and (c), in that
12 Respondent F1 Star violated the Motor Vehicle Inspection Program and/or the regulations
13 adopted pursuant to it as follows:

14 a. Respondent F1 Star violated Health and Safety Code section 44012 in that F1 Star
15 failed to ensure that the visual inspection of the emission control devices and system on the
16 Bureau’s 2002 Ford was performed in accordance with procedures prescribed by the Bureau, as
17 required by California Code of Regulations Title 16, section 3340.42, and the Smog Check
18 Manual described in California Code of Regulations Title 16, section 3340.45, as set forth in
19 paragraphs 26-30, above.

20 b. Respondent F1 Star violated California Code of Regulations, title 16, section
21 3340.30, subdivision (a) in that F1 Star violated section 44012 of the Health and Safety Code
22 and/or California Code of Regulations Title 16, section 3340.42. Respondent F1 Star failed to
23 perform a visual inspection on the 2002 Ford as required by California Code of Regulations Title
24 16, section 3340.42 and the Smog Check Manual described in California Code of Regulations
25 Title 16, section 3340.45, as set forth in paragraphs 26-30, above.

26 c. Respondent F1 Star violated California Code of Regulations, title 16, section
27 3340.35, subdivision (c) in that Respondent F1 Star issued a certificate of compliance to a vehicle
28 that did not have all required emission control equipment and devices installed and functioning

1 correctly, as set forth in paragraphs 26-30, above.

2 d. Respondent F1 Star violated California Code of Regulations, Title 16, section
3 3340.42, by failing to perform a visual inspection on the 2002 Ford, as set forth in paragraphs 26-
4 30, above.

5 e. Respondent F1 Star violated California Code of Regulations, Title 16, section
6 3340.45, by failing to perform a visual inspection on the 2002 Ford as required by the Smog
7 Check Manual, as set forth in paragraphs 26-30, above.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Violations of Motor Vehicle Inspection Program – Smog Check Inspector License)**

10 34. Respondent Morales’s smog check inspector license is subject to disciplinary action
11 under Health and Safety Code section 44072.2, subdivisions (a) and (c) in that Respondent
12 Morales violated the Motor Vehicle Inspection Program and/or the regulations adopted pursuant
13 to it as follows:

14 a. Respondent Morales violated Health and Safety Code section 44012 in that
15 Respondent Morales failed to perform tests of emission control devices and systems on the 2002
16 Ford as required by California Code of Regulations, title 16, section 3340.42 and the Smog Check
17 Manual described in California Code of Regulations, title 16, section 3340.45, as set forth in
18 paragraphs 26-30, above.

19 b. Respondent Morales violated Health and Safety Code section 44059 in that
20 Respondent Morales willfully made false entries for the electronic certificates of compliance by
21 certifying that the 2002 Ford had been inspected as required when, in fact, it had not, as set forth
22 in paragraphs 26-30 above.

23 c. Respondent Morales violated California Code of Regulations, title 16, section
24 3340.30, subdivision (a), in that Respondent Morales failed to inspect and test the Bureau’s 2002
25 Ford in accordance with Health & Safety Code sections 44012 and 44035, and California Code of
26 Regulations, title 16, section 3340.42 and the Smog Check Manual described in California Code
27 of Regulations, title 16, section 3340.45, as set forth in paragraphs 26-30, above.

28 d. Respondent Morales violated California Code of Regulations, Title 16, section

1 3340.35(c), in that Respondent Morales issued a certificate of compliance to a vehicle that did not
2 have all required emission control equipment and devices installed and functioning correctly, as
3 set forth in paragraphs 26-30, above.

4 e. Respondent Morales violated California Code of Regulations, Title 16, section
5 3340.41, **subdivision (c)** in that he entered knowingly entered false information about the vehicle
6 being tested into the emissions inspection system, as set forth in paragraphs 26-30, above.

7 f. Respondent Morales violated California Code of Regulations, Title 16, section
8 3340.42, by failing to perform a visual inspection on the 2002 Ford, as set forth in paragraphs 26-
9 30, above.

10 g. Respondent Morales violated California Code of Regulations, Title 16, section
11 3340.45, by failing to perform a visual inspection on the 2002 Ford as required by the Smog
12 Check Manual, as set forth in paragraphs 26-30, above.

13 **OTHER MATTERS**

14 35. Pursuant to Health & Safety Code section 44072.8, if Respondent Morales's Smog
15 Check Inspector License is revoked or suspended, any additional license issued under this chapter
16 in the name of said licensee may be likewise revoked or suspended by the Director.

17 36. Pursuant to Health & Safety Code section 44072.8, if Respondent F1 Star's Smog
18 Check, Test Only, Station License is revoked or suspended, any additional license issued under
19 this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

20 37. Pursuant to Business and Professions Code 9884.7, subdivision (c), the Director may
21 suspend, revoke, or place on probation the registration for all places of business operated in this
22 state by Respondent F1 Star upon a finding that Respondent F1 Star has, or is, engaged in a
23 course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

24 **PRAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 288331, issued to KLK Ventures, LLC., doing business as F1 Star Smog; Lyman Lum Jung,

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Member;

2. Revoking or suspending Smog Check, Test Only, Station License Number TC 288331, issued to KLK Ventures, LLC., doing business as F1 Star Smog; Lyman Lum Jung,

Member;

3. Revoking or suspending any additional Automotive Repair Dealer Registration and/or Smog Check, Test Only, Station License issued to KLK Ventures, LLC., doing business as F1 Star Smog; Lyman Lum Jung, Member;

4. Revoking or suspending Smog Check Inspector License Number EO 639687, issued to Richard Morales, Jr.;

5. Revoking or suspending any additional licenses issued to Richard Morales, Jr. under Chapter 5, Part 5 of Division 26 of the Health and Safety Code;

6. Ordering KLK Ventures, LLC., doing business as F1 Star Smog; Lyman Lum Jung, Member and Richard Morales, Jr. 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; and,

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

DATED: November 14, 2019

Signature on File
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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