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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. 79/25-2302

13 **JONATHAN ROYCE KIRKWOOD, DBA**  
14 **SMOG CITY**  
1589 E. Mission Blvd.  
Pomona, CA 91766

**ACCUSATION**

15 **Automotive Repair Dealer Registration No.**  
16 **ARD 307038**  
17 **Smog Check, Test-Only, Station License No.**  
18 **TC 307038,**

19 **and**

20 **HECTOR ALBERTO SOTO**  
315 S. Essey Ave.  
Compton, CA 90221

21 **Smog Check Inspector License No. EO**  
22 **643731**

Respondents.

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24  
25 **PARTIES**

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

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**STATUTORY PROVISIONS**

8. Section 9884.7 of the BPC states, in pertinent part:

“(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or 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 dealer, which are done by the automotive repair dealer or any automotive technician, 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.

. . . .

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

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

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

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

12. Section 44059 of the HSC provides:

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



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

4 17. California Code of Regulations (“CCR”), title 16, section 3340.30, subdivision (a),  
5 states in pertinent part:

6 “A licensed smog check inspector and/or repair technician shall comply with the following  
7 requirements at all times while licensed:

8 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the  
9 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this  
10 article.

11 . . . .

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

17 19. CCR, title 16, section 3340.41, subdivision (b), provides: “No person shall enter into  
18 the emissions inspection system any access or qualification number other than as authorized by  
19 the bureau, nor in any way tamper with the emissions inspection system.”

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

22 **COST RECOVERY**

23 21. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board  
24 “may request the administrative law judge to direct a licentiate found to have committed  
25 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
26 investigation and enforcement of the case.”

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**SUMMARY OF OIS SMOG CHECK INSPECTION PROGRAM**

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2           22. Beginning March 9, 2015, California’s Smog Check Program was updated to require  
3 the use of an On-Board Diagnostic Inspection System (OIS). OIS is the Smog Check equipment  
4 required in all areas of the State when inspecting most model-year 2000 and newer gasoline and  
5 hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data  
6 Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD is an On Board  
7 Diagnostic (OBD) scan tool that, when requested by the California OIS software, retrieves OBD  
8 data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the  
9 California OIS software and will be retrieved.

10           23. The DAD connects between the OIS computer and the vehicle’s Diagnostic Link  
11 Connector (DLC) located in the vehicle’s passenger compartment, which allows for the retrieval  
12 of information from the vehicle’s on-board computer system. The California OIS software  
13 requires a continuous Internet connection when performing a Smog Check inspection and the OIS  
14 software communicates with BAR’s central database through the Internet connection. The bar  
15 code scanner is used to input technician information, the vehicle’s identification number (VIN),  
16 and DMV renewal information. The printer provides a Vehicle Inspection Report (VIR)  
17 containing inspection results for motorists and a Smog Check Certificate of Compliance number  
18 for passing vehicles.

19           24. Data retrieved and recorded during an OIS smog check includes; the eVIN, which is  
20 the digitally stored VIN programmed by the manufacturer into the vehicle’s Powertrain Control  
21 Module (PCM); the communication protocol, which is the manufacturer/vehicle specific language  
22 the PCM uses to Relay or communicate information. The communication protocol is  
23 programmed into the vehicle’s on-board computer during manufacture and does not change.

24           25. Other data retrieved and recorded during an OIS smog check includes the number of  
25 Parameter Identifications (PIDs), which refers to the number of specific data values that the  
26 vehicle’s PCM uses related to emissions controls. The specific data values associated with a  
27 vehicle’s PIDs are also retrieved and recorded during an OIS smog check inspection. That data  
28 include things such as the vehicle’s engine speed, throttle position, manifold absolute pressure,

1 the engine's mass air flow, and ignition timing advance readings throughout an inspection.

2 Accordingly, the following types of data are recorded during an OIS smog check inspection:

- 3 • Engine speed in revolutions per minute (RPM)
- 4 • Throttle position as measured by a throttle position sensor (TPS) mounted onto the  
5 throttle shaft. Measured in a percentage of opening from 0% at idle and near or up  
6 to 100% at full throttle.
- 7 • Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)  
8 connected to an intake manifold source, measured in kilo pascals (kpa). Typical  
9 readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum,  
10 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at sea  
11 level.
- 12 • Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's  
13 air intake tract. Measured in grams per second (gps).
- 14 • Ignition timing is set by the vehicle PCM based on engine speed and load and is  
15 measured in degrees Before Top Dead Center (BTDC).

### 16 **EXPLANATION OF CLEAN PLUGGING**

17 26. BAR has become aware of methods that some Smog Check stations and Smog Check  
18 inspectors use to fraudulently issue smog certificates to vehicles that will not pass a Smog Check  
19 test, or in some instances, are not even present during the time that the test is performed. One  
20 such method, which is known as "clean plugging," involves using another vehicle's properly  
21 functioning OBD II system, or another source such as a defeat device/simulator, to generate  
22 passing data readings or diagnostic information for the purpose of fraudulently issuing smog  
23 certificates to vehicles that are not in smog compliance and/or are not present for testing.

24 27. Defeat devices attempt to simulate engine operation during a Smog Check inspection  
25 by transmitting OBD II data to the VID that has been modified or replaced entirely for the  
26 purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a  
27 defeat device/simulator during a Smog Check inspection constitutes clean plugging and is strictly  
28 prohibited. As described in more detail below, BAR is able to utilize the data retrieved and

1 recorded during an OIS smog check to identify inspections in which a defeat device/simulator  
2 was used.

3 28. During normal engine operation at idle, engine speed is relatively steady around its  
4 target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or  
5 MAF readings are also steady. For the engine speed to increase, the throttle would have to be  
6 opened to increase airflow through the engine. The engine's management systems supply fuel and  
7 spark timing appropriate to any changes in throttle position and engine speed. An increase in  
8 throttle, measured by the TPS, which increases engine RPM, would result in corresponding  
9 increases in MAF as well as a change in MAP. Stated another way, any movement in the throttle  
10 from the idle position will result in an increase of airflow through the engine with corresponding  
11 increases RPM and/or MAF along with changes in MAP.

12 29. Clean plugging is apparent in cases where the data recorded during an OIS smog  
13 check shows that the engine speed as measured in RPM increases during the test but the throttle  
14 position remains unchanged, the mass air flow rate is unchanged, the manifold absolute pressure  
15 is unchanged, and the ignition timing advance readings are unchanged. Because engine speed as  
16 measured in RPM cannot increase without changes in throttle position, MAF, MAP and ignition  
17 timing advance readings, test data in such cases demonstrates that a defeat device was used to  
18 simulate engine speed (RPM) readings for a vehicle that was not actually tested.

19 **RESPONDENTS' FRAUDULENT SMOG INSPECTIONS**

20 30. A Bureau program representative analyzed specific OIS Test Data for inspections  
21 performed at the Smog City facility between October 10, 2024, and November 8, 2024. The  
22 investigation revealed that the data related to certain vehicles certified by Respondent Soto  
23 contained a pattern of unmistakable discrepancies between the information transmitted during the  
24 inspections and the recognized and scientifically established characteristics of internal  
25 combustion engine operation.

26 31. Specifically, the Bureau program representative identified 10 instances in which the  
27 throttle position, MAF and/or MAP readings remained unchanged when vehicle engine speeds

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1 were taken from idle to a steady elevated RPM.<sup>1</sup> Such conditions would not have occurred if the  
2 DAD had been connected to the vehicles that were purportedly being tested instead of a defeat  
3 device that simulated engine RPM.

4 32. These documented discrepancies confirm that, in performing the inspections at issue,  
5 Respondents engaged in the illegal activity of clean plugging in order to issue fraudulent  
6 certificates of compliance for the vehicles. The following chart (“Table 1”) illustrates the  
7 documented clean plugging activities by Respondents during the period reviewed.

8 **Table 1**

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10 <b>Test Date</b>	11 <b>Vehicle Certified &amp; License No./VIN</b>	12 <b>Certificate No.</b>	13 <b>Test Details</b>
14 October 10, 2024	15 2003 Ford Ranger Super Cab VIN # 1FTYR44V93PA66712,	16 JB453523C	17 Inspection performed by Respondent Soto. Throttle position and MAF were unchanged when engine taken from around 650 RPM to around 1650 RPM.
18 October 12, 2024	19 2007 Chevrolet Silverado K1500 VIN # 1GCEK14X37Z128817	20 UE597158C	21 Inspection performed by Respondent Soto. Throttle position, MAF and MAP were unchanged when engine taken from around 650 RPM to around 1800 RPM.
22 October 18, 2024	23 2004 Ford F150 SVT Lightning VIN # 2FTRF07304CA50126	24 UE739602C	25 Inspection performed by Respondent Soto. Throttle position and MAF were unchanged when engine taken from around 700 RPM to around 1550 RPM.

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28 <sup>1</sup> Not all vehicles include both MAP and MAF parameters. Many vehicle manufacturers  
include only one of these parameters.

1	October 19, 2024	2004 Acura MDX VIN # 2HNYD18254H502520	UE739619C	Inspection performed by Respondent Soto. Throttle position and MAP were unchanged when engine taken from around 425 RPM to around 1925 RPM.
2				
3				
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5				
6	October 26, 2024	2006 Acura RSX Type-S VIN # JH4DC530X6S021872	UE739645C	Inspection performed by Respondent Soto. Throttle position and MAP were unchanged when engine taken from around 800 RPM to around 1750 RPM.
7				
8				
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10				
11	October 28, 2024	2002 Chevrolet Astro VIN # 1GNDM19X32B111801	UE739648C	Inspection performed by Respondent Soto. Throttle position, MAF and MAP were unchanged when engine taken from around 800 RPM to around 1500 RPM.
12				
13				
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16	October 29, 2024	2002 Lexus IS 300 VIN # JTHBD192X20050669	UE999212C	Inspection performed by Respondent Soto. Throttle position and MAF were unchanged when engine taken from around 725 RPM to around 2125 RPM.
17				
18				
19				
20				
21	October 31, 2024	2002 Chevrolet Impala VIN # 2G1WF52E929125675	UE999233C	Inspection performed by Respondent Soto. Throttle position, MAF and MAP were unchanged when engine taken from around 700 RPM to around 2000 RPM.
22				
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1 2 3 4 5	November 1, 2024	2000 Dodge Ram 1500 VIN # 1B7HC13ZXYJ104611	UE999243C	Inspection performed by Respondent Soto. Throttle position and MAP were unchanged when engine taken from around 600 RPM to around 1625 RPM.
6 7 8 9 10	November 8, 2024	2004 Chevrolet Corvette Z06 VIN # 1G1YY12S745110576	UG092225C	Inspection performed by Respondent Soto. Throttle position, MAF and MAP were unchanged when engine taken from around 700 RPM to around 1550 RPM.

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**FIRST CAUSE FOR DISCIPLINE**

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**(Misleading Statements – Respondent Kirkwood)**

14           33. Respondent Kirkwood’s Automotive Repair Dealer Registration is subject to  
15 discipline under BPC section 9884.7, subdivision (a)(1), in that he made statements which were  
16 known to be untrue or misleading or, which by exercise of reasonable care should have been  
17 known to be untrue or misleading by issuing electronic smog certificates of compliance for the  
18 vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with  
19 applicable laws and regulations when, in fact, those vehicles had not been so inspected.  
20 Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs  
21 30 through 32, inclusive, as though set forth fully herein.

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**SECOND CAUSE FOR DISCIPLINE**

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**(Fraud – Respondent Kirkwood)**

24           34. Respondent Kirkwood’s Automotive Repair Dealer Registration is subject to  
25 discipline under BPC section 9884.7, subdivision (a)(4), in that Respondent committed acts that  
26 constitute fraud by issuing electronic smog certificates of compliance for the vehicles set forth in  
27 Table 1, above, without performing bona fide inspections of the emission control devices and  
28 systems on those vehicles, thereby depriving the People of the State of California of the

1 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this  
2 reference incorporates, the allegations contained in paragraphs 30 through 32, inclusive, as  
3 though set forth fully herein.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Material Violation of Automotive Repair Act – Respondent Kirkwood)**

6 35. Respondent Kirkwood’s Automotive Repair Dealer Registration is subject to  
7 discipline under BPC section 9884.7, subdivision (a)(6), in that Respondent failed in a “material  
8 respect to comply with the provisions of this chapter or regulations adopted pursuant to it” when  
9 issuing electronic smog certificates of compliance for the vehicles set forth in Table 1, above,  
10 without performing bona fide inspections of the emission control devices and systems on those  
11 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
12 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the  
13 allegations contained in paragraphs 30 through 32, inclusive, as though set forth fully herein.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Violation of the Motor Vehicle Inspection Program – Respondent Kirkwood)**

16 36. Respondent Kirkwood’s Smog Check Test Only License is subject to discipline under  
17 HSC section 44072.2, subdivision (a), in that, with respect to the vehicles set forth in Table 1,  
18 above, Respondent violated the following sections of the HSC:

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

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

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program**  
3 **– Respondent Kirkwood)**

4 37. Respondent Kirkwood’s Smog Check Test Only License is subject to discipline under  
5 HSC section 44072.2, subdivision (c), in that, with respect to the vehicles set forth in Table 1,  
6 above, Respondent violated the following sections of title 16 of the CCR:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
8 electronic smog certificates of compliance without performing bona fide inspections of the  
9 emission control devices and systems on those vehicles as required by HSC section 44012.

10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of  
11 compliance even though those vehicles had not been inspected in accordance with section  
12 3340.42 of the HSC.

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

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud and/or Deceit – Respondent Kirkwood)**

17 38. Respondent Kirkwood’s Smog Check Test Only License is subject to discipline  
18 under HSC section 44072.2, subdivision (d), in conjunction with HSC section 44072.10,  
19 subdivision (c), in that, with respect to the vehicles set forth in Table 1, above, Respondent  
20 committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing  
21 electronic smog certificates of compliance for those vehicles without performing bona fide  
22 inspections and functional testing of the emission control devices and systems on those vehicles,  
23 thereby depriving the People of the State of California of the protection afforded by the Motor  
24 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the  
25 allegations contained in paragraphs 30 through 32, inclusive, as though set forth fully herein.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 **– Respondent Soto)**

4 39. Respondent Soto’s Smog Check Inspector License is subject to discipline under HSC  
5 section 44072.2, subdivision (a), in that, with respect to the vehicles set forth in Table 1, above,  
6 Respondent violated the following sections of the HSC:

7 a. **Section 44012:** Respondent failed to ensure that the onboard diagnostic system tests  
8 were performed on those vehicles in accordance with procedures prescribed by the department.

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

12 c. **Section 44032:** Respondent failed to perform tests of the onboard diagnostic systems  
13 on those vehicles in accordance with section 44012 of the HSC.

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

17 **EIGHTH CAUSE FOR DISCIPLINE**

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

19 **– Respondent Soto)**

20 40. Respondent Soto’s Smog Check Inspector License is subject to discipline under HSC  
21 section 44072.2, subdivision (c), in that, with respect to the vehicles set forth in Table 1, above,  
22 Respondent violated the following sections of title 16 of the CCR:

23 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
24 electronic smog certificates of compliance without performing bona fide inspections and  
25 functional testing of the emission control devices and systems on those vehicles as required by  
26 HSC section 44012.

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

1 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of  
2 compliance even though those vehicles had not been inspected in accordance with section  
3 3340.42 of the HSC.

4 d. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information  
5 into the EIS about the vehicles being tested.

6 e. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
7 inspections on those vehicles in accordance with the Bureau’s specifications.

8 **NINTH CAUSE FOR DISCIPLINE**

9 **(Dishonesty, Fraud or Deceit– Respondent Soto)**

10 41. Respondent Soto’s Smog Check Inspector License is subject to discipline under HSC  
11 section 44072.2, subdivision (d), in conjunction with HSC section 44072.10, subdivision (c), in  
12 that, with respect to the vehicles set forth in Table 1, above, Respondent committed acts involving  
13 dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of  
14 compliance for those vehicles without performing bona fide inspections and functional testing of  
15 the emission control devices and systems on those vehicles, thereby depriving the People of the  
16 State of California of the protection afforded by the Motor Vehicle Inspection Program.  
17 Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs  
18 30 through 32, inclusive, as though set forth fully herein.

19 **OTHER MATTERS**

20 42. Section 9884.7, subdivision (c), of the BPC states that “the director may suspend,  
21 revoke, or place on probation the registration for all places of business operated in this state by an  
22 automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a  
23 course of repeated and willful violations of this chapter, or regulations adopted pursuant to.”

24 43. Section 44072.8 of the HSC states that when a license has been revoked or suspended  
25 following a hearing, any additional license issued under the Motor Vehicle Inspection Program  
26 (Health & Saf. Code Sec. 44000, et seq.) in the name of the licensee may be likewise revoked or  
27 suspended by the director.

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**PRAYER**

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 307038, issued to Jonathan Royce Kirkwood, dba Smog City;

2. Revoking or suspending Smog Check, Test-Only, Station License Number TC 307038, issued to Jonathan Royce Kirkwood, dba Smog City;

3. Revoking or suspending Smog Check Inspector License Number EO 643731, issued to Hector Alberto Soto;

4. Revoking or suspending any and all additional Automotive Repair Dealer Registrations issued in the name of Jonathan Royce Kirkwood pursuant to section 9884.7, subdivision (c), of the Business and Professions Code;

5. Revoking or suspending any and all licenses issued under the Motor Vehicle Inspection Program (Health & Saf. Code Sec. 44000, et seq.) in the name of Jonathan Royce Kirkwood pursuant to section 44072.8 of the Health and Safety Code;

6. Revoking or suspending any and all licenses issued under the Motor Vehicle Inspection Program (Health & Saf. Code Sec. 44000, et seq.) in the name of Hector Alberto Soto pursuant to section 44072.8 of the Health and Safety Code;

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1           7.     Ordering Jonathan Royce Kirkwood and Hector Alberto Soto to pay the Bureau of  
2 Automotive Repair the reasonable costs of the investigation and enforcement of this case,  
3 pursuant to Business and Professions Code section 125.3 and if placed on probation, the costs of  
4 probation monitoring; and

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

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7     DATED:    As of digital signature date

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

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