

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of the Accusation Against:  
**R & J SMOG TEST ONLY; RUTH D.  
GONZALEZ**  
**10232 I Avenue Unit 13**  
**Hesperia, CA 92345**  
**Automotive Repair Dealer Registration No.**  
**ARD 259648**  
**Smog Check, Test Only, Station License No.**  
**TC 259648**

Respondent.

Case No. 79/15-25

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 26, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/15-25 against R & J Smog Test Only; Ruth D. Gonzalez (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)
2. On or about October 12, 2009, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. ARD 259648 to Respondent. The Automotive Repair Dealer Registration expired on September 30, 2013, and has not been renewed.

1           3.     On or about November 17, 2009, the Bureau of Automotive Repair issued Smog  
2 Check, Test Only, Station License No. TC 259648 to Respondent. The Smog Check, Test Only,  
3 Station License expired on September 30, 2013, and has not been renewed.

4           4.     On or about August 27, 2014, Respondent was served by Certified and First Class  
5 Mail copies of the Accusation No. 79/15-25, 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 Respondent's address of record which, pursuant to Business and Professions  
8 Code section 136, is required to be reported and maintained with the Bureau. Respondent's  
9 address of record was and is: 10232 I Avenue Unit 13, Hesperia, CA 92345.

10          5.     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          6.     On or about September 10, 2014, the aforementioned documents were returned by the  
14 U.S. Postal Service marked "Forwarding Address Expired." The address on the documents was  
15 the same as the address on file with the Bureau. Respondent failed to maintain an updated  
16 address with the Bureau and the Bureau has made attempts to serve the Respondent at the address  
17 on file. Respondent has not made herself available for service and therefore, has not availed  
18 herself of her right to file a notice of defense and appear at hearing.

19          7.     Government Code section 11506 states, in pertinent part:

20                 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
21 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
22 of the accusation not expressly admitted. Failure to file a notice of defense shall  
23 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
24 may nevertheless grant a hearing.

25          8.     Respondent failed to file a Notice of Defense within 15 days after service upon her of  
26 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No.  
27 79/15-25.

28                 ///

///

///

1 9. California Government Code section 11520 states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense or to appear at the  
3 hearing, the agency may take action based upon the respondent's express admissions  
4 or upon other evidence and affidavits may be used as evidence without any notice to  
5 respondent.

6 10. Pursuant to its authority under Government Code section 11520, the Director after  
7 having reviewed the proof of service dated August 27, 2014, signed by Cynthia Vuu, and return  
8 envelopes finds Respondent is in default. The Director will take action without further hearing  
9 and, based on Accusation, No. 79/15-25, proof of service and on the Affidavit of Bureau  
10 Representative Joseph B. Cheung finds that the allegations in Accusation are true.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent R & J Smog Test Only; Ruth D.  
13 Gonzalez has subjected her Smog Check, Test Only, Station License No. TC 259648 to  
14 discipline.

15 2. The agency has jurisdiction to adjudicate this case by default.

16 3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive  
17 Repair Dealer Registration based upon the following violations alleged in the Accusation which  
18 are supported by the evidence contained in the affidavit of Bureau Representative Joseph B.  
19 Cheung in this case:

20 a. Respondent Gonzalez has subjected her station license to discipline pursuant to  
21 Health and Safety Code section 44050, subdivision (e), in that the Bureau issued the following  
22 citation against Respondent's station license: on or about December 11, 2012 the Bureau issued  
23 Citation No. C2013-0396 to Respondent Gonzalez against her station license for violation of  
24 Health and Safety Code section 44012, subdivision (f), (failure to perform a visual/functional  
25 check of emission control devices). On or about February 5, 2013, the Bureau served Respondent  
26 Gonzalez with the citation. The Bureau ordered Respondent Gonzalez pay a fine of \$3000.00.  
27 Respondent Gonzalez failed to appeal the citation and the citation became effective on March 8,  
28 2013. To date, Respondent Gonzalez has failed pay the fine.

///

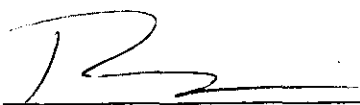
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORDER

IT IS SO ORDERED that Smog Check, Test Only, Station License No. TC 259648, heretofore issued to Respondent R & J Smog Test Only; Ruth D. Gonzalez, is revoked.

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

This Decision shall become effective on February 24, 2015  
It is so ORDERED January 5, 2015

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

R & J REVISED DEFAULT.DOCX  
DOJ Matter ID:LA2014512367

Attachment:  
Exhibit A: Accusation

# Exhibit A

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

7 *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:

13 **RUTH D. GONZALEZ DBA R & J SMOG TEST ONLY,**  
14 **10232 I Avenue, Unit 13,**  
**Hesperia, CA 92345**

15 **Automotive Repair Dealer Registration No. ARD 259648**  
**Smog Check Station License No. TC 259648**

16 Respondent.

Case No. *19/15-25*

**ACCUSATION**

**SMOG CHECK**

17  
18 Complainant alleges:

19 **PARTIES**

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

22 **Automotive Repair Dealer Registration**

23 2. On or about October 12, 2009, the Bureau issued Automotive Repair Dealer  
24 Registration Number ARD 259648 to Ruth D. Gonzalez doing business as R & J Smog Test Only  
25 ("Respondent or Gonzalez"). The automotive repair dealer registration was in full force and  
26 effect at all times relevant to the charges brought herein and was due to expire on September 30,  
27 2013. However, the automotive repair dealer registration was cancelled on March 4, 2013.

28 ///

1           **Smog Check Station License**

2           3.     On or about November 17, 2009, the Bureau issued Smog Check Station License  
3     Number TC 259648 (“station license”) to Respondent. The station license was in full force and  
4     effect at all times relevant to the charges brought herein. The station license was set to expire on  
5     September 30, 2013, but was cancelled on March 4, 2013.

6                           **JURISDICTION AND STATUTORY PROVISIONS**

7           4.     Section 118, subdivision (b) of the Business and Professions Code states:

8                         The suspension, expiration, or forfeiture by operation of law of a license  
9                         issued by a board in the department, or its suspension, forfeiture, or cancellation by  
10                        order of the board or by order of a court of law, or its surrender without the written  
11                        consent of the board, shall not, during any period in which it may be renewed,  
12                        restored, reissued, or reinstated, deprive the board of its authority to institute or  
13                        continue a disciplinary proceeding against the licensee upon any ground provided by  
14                        law or to enter an order suspending or revoking the license or otherwise taking  
15                        disciplinary action against the licensee on any such ground.

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

16          6.     Section 44050 of the Health and Safety Code states, in pertinent part:

17                       (a) In addition to or in lieu of any other remedy or penalty, including, but  
18                       not limited to, education, training, or an office conference, the department may issue  
19                       a citation to a licensee, contractor, or fleet owner for a violation of the requirements  
20                       of this chapter or a regulation adopted pursuant to this chapter. The citation may  
21                       contain an order of abatement or the assessment of an administrative fine, or both.

22                       (e) Failure to comply with an order of abatement or payment of an  
23                       administrative fine issued by the department pursuant to this section is grounds for  
24                       suspension or revocation of the license, or placing the license on probation.

25          7.     Section 44055 of the Health and Safety Code, subdivision (b) states:

26                       (b) The department may deny an application for the renewal of a test  
27                       station or repair station license if the applicant, or any partner, officer, or director  
28                       thereof, has failed to pay any civil penalty or administrative fine in accordance with  
29                       this article.

30          8.     Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
31     expiration or suspension of a license by operation of law, or by order or decision of the Director

1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
2 the Director of jurisdiction to proceed with disciplinary action.

3 9. Section 44072.8 of the Health and Safety Code states:

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

#### 6 **COST RECOVERY**

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

#### 11 **FIRST CAUSE FOR DISCIPLINE**

##### 12 **(Failure to Pay Administrative Fine)**

13 11. Respondent Gonzalez has subjected her station license to discipline pursuant to  
14 Health and Safety Code section 44050, subdivision (e), in that the Bureau issued the following  
15 citation against Respondent's station license: on or about December 11, 2012 the Bureau issued  
16 Citation No. C2013-0396 to Respondent Gonzalez against her station license for violation of  
17 Health and Safety Code section 44012, subdivision (f), (failure to perform a visual/functional  
18 check of emission control devices). On or about February 5, 2013, the Bureau served Respondent  
19 Gonzalez with the citation. The Bureau ordered Respondent Gonzalez pay a fine of \$3000.00.  
20 Respondent Gonzalez failed to appeal the citation and the citation became effective on March 8,  
21 2013. To date, Respondent Gonzalez has failed pay the fine.

#### 22 **OTHER MATTERS**

23 12. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License  
24 Number TC 259648, issued to Ruth D. Gonzalez dba R & J Smog Test Only is revoked or  
25 suspended, any additional license issued under this chapter in the name of said licensee may be  
26 likewise revoked or suspended by the director.

27 ///

28 ///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PRAYER

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

1. Revoking or suspending Ruth D. Gonzalez dba R & J Smog Test Only's Smog Check Station License Number TC 259648;
2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Ruth D. Gonzalez dba R & J Smog Test Only;
3. Ordering Ruth D. Gonzalez dba R & J Smog Test Only 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,
4. Taking such other and further action as deemed necessary and proper.

DATED: August 26, 2014



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

LA2014512367  
51582116.docx