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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 / 14 - 15132

13 **MARTINEZ AUTO REPAIR**  
14 **JUAN ANDRES MARTINEZ, PARTNER**  
15 **ANDRES MARTINEZ, PARTNER**  
P.O. Box 1104  
Strathmore, California 93267

**ACCUSATION**

16 19543 Orange Belt Dr.  
Strathmore, CA 93267

17 Automotive Repair Dealer Registration No.  
ARD 261175  
18 Smog Check Station License No. RC 261175

19 **JUAN A. MARTINEZ**  
20 19717 Oklahoma Avenue  
Strathmore, California 93267

21 Smog Check Inspector (EO) No. 630292  
22 Smog Check Repair Technician (EI) No.  
630292

23 Respondents.

24  
25 Patrick Dorais ("Complainant") alleges:

26 **PARTIES**

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

1           **Automotive Repair Dealer Registration**

2           2.     On or about March 11, 2010, the Bureau issued Automotive Repair Dealer  
3     Registration No. ARD 261175 to Martinez Auto Repair ("Respondent Martinez Auto Repair"),  
4     with Juan Andres Martinez and Andres Martinez, as partners. The automotive repair dealer  
5     registration was in full force and effect at all times relevant to the charges brought herein and will  
6     expire on February 28, 2017, unless renewed.

7           **Smog Check Station License**

8           3.     On or about March 29, 2010, the Bureau issued Smog Check Station License  
9     No. RC 261175 ("Station License") to Respondent Martinez Auto Repair. The Station License  
10    was in full force and effect at all times relevant to the charges brought herein and will expire on  
11    February 28, 2017, unless renewed.

12          **Smog Check Inspector (EO)/Smog Check Repair Technician (EI) License**

13          4.     On or about June 30, 2008, the Bureau issued Advanced Emission Specialist (EA)  
14    Technician License No. 630292 to Juan A. Martinez ("Respondent Juan A. Martinez"). Effective  
15    December 30, 2013, the Bureau issued Smog Check Inspector (EO) License No. 630292 and  
16    Smog Check Repair Technician (EI) License No. 630292 to Respondent Juan A. Martinez  
17    ("Technician Licenses").<sup>1</sup> The Technician Licenses were in full force and effect at all times  
18    relevant to the charges brought herein and will expire on March 31, 2018, unless renewed.

19                   **JURISDICTION**

20          5.     Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that  
21    the Director may revoke an automotive repair dealer registration.

22          6.     Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a  
23    valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary  
24    proceeding against an automotive repair dealer or to render a decision temporarily or permanently  
25    invalidating (suspending or revoking) a registration.

26                   <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27    3340.29, and 3340.30 were amended to implement a license restructure from the Advanced  
28    Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
  Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

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 AND REGULATORY 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 was a  
11 bona fide error, may deny, suspend, revoke, or place on probation the registration of  
12 an automotive repair dealer for any of the following acts or omissions related to the  
13 conduct of the business of the automotive repair dealer, which are done by the  
14 automotive repair dealer or any automotive technician, employee, partner, officer, or  
15 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               (4) Any other conduct that constitutes fraud.

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

22               (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place  
23 on probation the registration for all places of business operated in this state by an  
24 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.    Code section 9884.8 states:

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

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1 11. Code section 9884.9(a) states:

2 The automotive repair dealer shall give to the customer a written estimated  
3 price for labor and parts necessary for a specific job. No work shall be done and no  
4 charges shall accrue before authorization to proceed is obtained from the customer.  
5 No charge shall be made for work done or parts supplied in excess of the estimated  
6 price without the oral or written consent of the customer that shall be obtained at  
7 some time after it is determined that the estimated price is insufficient and before the  
8 work not estimated is done or the parts not estimated are supplied. Written consent  
9 or authorization for an increase in the original estimated price may be provided by  
10 electronic mail or facsimile transmission from the customer. The bureau may specify  
11 in regulation the procedures to be followed by an automotive repair dealer if an  
12 authorization or consent for an increase in the original estimated price is provided by  
13 electronic mail or facsimile transmission. If that consent is oral, the dealer shall  
14 make a notation on the work order of the date, time, name of person authorizing the  
15 additional repairs, and telephone number called, if any, together with a specification  
16 of the additional parts and labor and the total additional cost, and shall do either of  
17 the following:

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

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

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

25 \_\_\_\_\_  
26 (signature or initials)"

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

19 12. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes  
20 "bureau," "commission," "committee," "department," "division," "examining committee,"  
21 "program," and "agency." "License" includes certificate, registration or other means to engage in  
22 a business or profession regulated by the Bus. & Prof. Code.

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

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

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

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

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

5 14. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
6 suspended following a hearing under this article, any additional license issued under this chapter  
7 in the name of the licensee may be likewise revoked or suspended by the director.

8 15. California Code of Regulations, title 16 ("Regulations"), section 3356(d), states: "The  
9 automotive repair dealer shall give the customer a legible copy of the invoice and shall retain a  
10 legible copy as part of the automotive repair dealer's records pursuant to section 9884.11 of the  
11 Bus. & Prof. Code and section 3358 of this article."

12 16. Regulations section 3340.45(a)(2), states that all smog check inspections shall be  
13 performed in accordance with requirements and procedures prescribed in the Smog Check  
14 Manual, dated 2013.

#### 15 COST RECOVERY

16 17. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
17 the administrative law judge to direct a licensee found to have committed a violation or  
18 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
19 and enforcement of the case.

#### 20 UNDERCOVER OPERATION DECEMBER 18, 2014

21 18. The Bureau documented a 1990 Chevrolet with a defective exhaust gas recirculation  
22 system so that the vehicle could not pass a properly performed California smog test.  
23 On or about December 18, 2014, at approximately 11:34 hours, a Bureau undercover operator  
24 (the "operator") took the Bureau's documented 1990 Chevrolet to Respondent Martinez Auto  
25 Repair's facility and requested a smog inspection from Juan Martinez.

26 19. The operator was not provided with a work order to sign or an estimate.

27 20. On December 18, 2014, at approximately 11:50 hours, Respondent Martinez Auto  
28 Repair issued Certificate of Compliance [REDACTED] for the Bureau's 1990 Chevrolet. The

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1 operator was charged by and paid Respondent Juan A. Martinez \$50. The operator received two  
2 unsigned Vehicle Inspection Reports (VIR) from Martinez but was not provided with an invoice.

3 21. The Certificate of Compliance was not issued in compliance with applicable laws and  
4 regulations because the an essential component of the smog control system on the vehicle did not  
5 function.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Untrue or Misleading Statements)

8 22. Respondent Martinez Auto Repair is subject to discipline pursuant to Code  
9 section 9884.7(a)(1), in that it made or authorized statements or documents which it knew or in  
10 the exercise of reasonable care should have known to be untrue or misleading. On or about  
11 December 18, 2014, Respondent Martinez Auto Repair created and submitted an electronic  
12 certificate of compliance for the Bureau's 1990 Chevrolet stating the vehicle passed a smog  
13 inspection and was in compliance with applicable laws and regulations for vehicle emissions.  
14 The true facts are the exhaust gas recirculation system did not function according to applicable  
15 specifications, laws, regulations or standards and the Chevrolet should not have passed the  
16 inspection required by Health & Saf. Code section 44012.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Fraud)

19 23. Respondent Martinez Auto Repair is subject to discipline pursuant to Code section  
20 9884.7(a)(4), for committing fraud. On or about December 18, 2014, Respondent created and  
21 submitted an electronic smog certificate of compliance for the Bureau's documented 1990  
22 Chevrolet without a bona fide inspection of the vehicle's emission control devices and systems  
23 thereby depriving the people of the State of California of the protection afforded by the Motor  
24 Vehicle Inspection Program.

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1           b. **Code section 3340.42:** Respondent Martinez Auto Repair failed to ensure that the  
2 required smog tests were conducted in accordance with the Bureau's specifications.

3                                   **SIXTH CAUSE FOR DISCIPLINE**

4                                   (Dishonesty, Fraud or Deceit)

5           27. Respondent Martinez Auto Repair Station License is subject to discipline pursuant to  
6 Health & Saf. Code section 44072.2(d), in that on or about December 18, 2014, it committed a  
7 dishonest, fraudulent or deceitful act where another is injured by creating and issuing an  
8 electronic smog certificate of compliance for the Bureau's 1990 Chevrolet without ensuring that a  
9 bona fide inspection was performed of the emission control devices and systems on the vehicle,  
10 thereby depriving the people of the State of California of the protection afforded by the Motor  
11 Vehicle Inspection Program.

12                                   **SEVENTH CAUSE FOR DISCIPLINE**

13                                   (Motor Vehicle Inspection Program - Code Violations)

14           28. Respondent Juan A. Martinez's smog check inspector license is subject to discipline  
15 pursuant to Health & Saf. Code section 44072.2(a), in that on or about December 18, 2014,  
16 regarding the Bureau's 1990 Chevrolet, he violated sections of that Code as follows:

17           a. **Code section 44012(f):** Respondent Juan A. Martinez failed to perform on the  
18 vehicle a visual and/or functional check of the emission control devices in accordance with  
19 required procedures.

20           b. **Code section 44032:** Respondent Juan A. Martinez failed to perform tests of the  
21 emission control devices and systems on the vehicle in accordance with Code section 44012, in  
22 that the vehicle was precluded from passing a lawful smog inspection because the exhaust gas  
23 recirculation system was non-functional.

24                                   **EIGHTH CAUSE FOR DISCIPLINE**

25                                   (Failure to Comply With Regulations)

26           29. Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant  
27 to Health & Saf. Code section 44072.2(c), in that on or about December 18, 2014, he failed to  
28 comply with provisions of Regulations for smog inspections of the 1990 Chevrolet, as follows:



1 a. **Code section 3340.30(a)**: Respondent Juan A. Martinez failed to inspect and test the  
2 vehicle in accordance with Health & Saf. Code section 44012.

3 b. **Code section 3341.41(c)**: Respondent Juan A. Martinez knowingly entered false  
4 information into the emission inspection system.

5 c. **Code section 3340.42**: Respondent Juan A. Martinez failed to conduct the required  
6 smog tests on the vehicle in accordance with the Bureau's specifications.

7 d. **Code section 3340.45**: Respondent Juan A. Martinez failed to perform the smog  
8 check inspection in accord with requirements and procedures specified by the *Smog Check*  
9 *Manual* (2013), by failing to sign the VIR.<sup>2</sup>

#### 10 **NINTH CAUSE FOR DISCIPLINE**

11 (Dishonesty, Fraud, or Deceit)

12 30. Respondent Juan A. Martinez's Technician Licenses are subject to discipline pursuant  
13 to Health & Saf. Code section 44072.2(d), in that on or about December 18, 2014, he committed a  
14 dishonest, fraudulent, or deceitful act whereby another was injured by creating and issuing an  
15 electronic smog certificate of compliance for the Bureau's 1990 Chevrolet without performing a  
16 bona fide inspection of the emission control devices and systems on the vehicle, thereby  
17 depriving the people of the State of California of the protection afforded by the Motor Vehicle  
18 Inspection Program.

#### 19 **UNDERCOVER OPERATION JANUARY 21, 2015**

20 31. The Bureau documented a 1993 GMC with a defective exhaust gas recirculation  
21 system so that the vehicle could not pass a properly performed California smog test. An exhaust  
22 gas recirculation system is an essential component for a properly operating smog system.

23 On or about January 21, 2015, at approximately 11:00 hours, a Bureau undercover operator  
24 ("operator") presented the Bureau's documented 1993 GMC to Respondent Martinez Auto  
25 Repair's facility for a smog test. The operator requested a smog inspection of the GMC from  
26

27 <sup>2</sup> *Smog Check Manual* (2013), section 1.5.0, requires that, "The licensed inspector must  
28 sign all copies of the VIR acknowledging that the inspection was conducted in accordance with  
all Smog Check requirements and that the information on the VIR is true and correct.

1 Respondent Juan A. Martinez. The operator did not receive a work order or an estimate.

2 Respondent Juan A. Martinez took possession of the vehicle and was observed driving the vehicle  
3 into the smog service bay.

4 32. On January 21, 2015, at approximately 11:14 hours, Respondent Martinez Auto  
5 Repair created and issued Certificate of Compliance [REDACTED] for the Bureau's 1993 GMC.  
6 The operator was charged by and paid Respondent Juan A. Martinez \$50 for the inspection and  
7 Certificate. The operator received two VIRs for the vehicle but was not provided with an invoice.

8 33. Certificate of Compliance [REDACTED] was created and submitted by Respondents  
9 for the documented GMC vehicle.

10 **TENTH CAUSE FOR DISCIPLINE**

11 (Untrue or Misleading Statements)

12 34. Respondent Martinez Auto Repair is subject to discipline pursuant to Code  
13 section 9884.7(a)(1), in that it made or authorized statements which it knew or in the exercise of  
14 reasonable care should have known to be untrue or misleading. On or about January 21, 2015,  
15 Respondent Martinez Auto Repair certified under penalty of perjury that the Bureau's 1993 GMC  
16 passed a smog inspection and was in compliance with applicable laws and regulations. The true  
17 facts are that the exhaust gas recirculation system did not function and the vehicle could not pass  
18 the inspection required by Health & Saf. Code section 44012.

19 **ELEVENTH CAUSE FOR DISCIPLINE**

20 (Fraud)

21 35. Respondent Martinez Auto Repair's registration is subject to discipline pursuant to  
22 Code section 9884.7(a)(4), in that on or about January 21, 2015, it committed fraud by issuing an  
23 electronic smog certificate of compliance for the Bureau's 1993 GMC without performing a bona  
24 fide inspection of the emission control devices and systems on the Bureau's vehicle, thereby  
25 depriving the people of the State of California of the protection afforded by the Motor Vehicle  
26 Inspection Program.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply with the Automotive Repair Act)

3 36. Respondent Martinez Auto Repair's registration is subject to disciplinary action  
4 pursuant to Code section 9884.7(a)(6), in that, on or about January 21, 2015, it failed to materially  
5 comply with the Automotive Repair Act (Code section 9880, et seq.) as follows:

6 a. **Code section 9884.9(a)**: Respondent Martinez Auto Repair failed to provide the  
7 operator with a written estimate for the Bureau's vehicle.

8 b. **Code section 9884.8**: Respondent Martinez Auto Repair failed to provide the Bureau  
9 operator with an invoice for the Bureau vehicle.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 (Motor Vehicle Inspection Program – Code Violations)

12 37. Respondent Martinez Auto Repair Station License is subject to discipline pursuant to  
13 Health & Saf. Code section 44072.2(a), in that on or about January 21, 2015 it violated sections  
14 of that Code, as follows:

15 a. **Code section 44012(a)**: Respondent Martinez Auto Repair failed to ensure that the  
16 emission control tests were performed in accordance with procedures prescribed by the  
17 department for the Bureau's vehicle.

18 b. **Code section 44015**: Respondent Martinez Auto Repair issued an electronic smog  
19 certificate of compliance for a vehicle was not properly tested in compliance with Health & Saf.  
20 Code section 44012 for the Bureau's vehicle.

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

22 (Failure to Comply With Regulations)

23 38. Respondent Martinez Auto Repair's Station License is subject to discipline pursuant  
24 to Health & Saf. Code section 44072.2(c), in that on or about January 21, 2015, it failed to  
25 comply with Regulations, as follows:

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1 a. **Code section 3340.35(c):** Respondent Martinez Auto Repair issued an electronic  
2 smog certificate of compliance for the Bureau's vehicle that had not been inspected in accordance  
3 with Regulation section 3340.42.

4 b. **Code section 3340.42:** Respondent Martinez Auto Repair failed to perform the  
5 required smog tests in accordance with the Bureau's specifications.

6 **FIFTEENTH CAUSE FOR DISCIPLINE**

7 (Dishonesty, Fraud or Deceit)

8 39. Respondent Martinez Auto Repair's Station License is subject to discipline pursuant  
9 to Health & Saf. Code section 44072.2(d), in that on or about January 21, 2015, it committed a  
10 dishonest, fraudulent or deceitful act whereby another was injured by issuing an electronic smog  
11 certificate of compliance for the Bureau's 1993 GMC without a bona fide inspection performed  
12 on the emission control devices and systems, thereby depriving the people of the State of  
13 California of the protection afforded by the Motor Vehicle Inspection Program.

14 **SIXTEENTH CAUSE FOR DISCIPLINE**

15 (Motor Vehicle Inspection Program - Code Violations)

16 40. Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant  
17 to Health & Saf. Code section 44072.2(a), in that on or about January 21, 2015, this Respondent  
18 committed violations of the Code as follows:

19 a. **Code section 44012(f):** Respondent Juan A. Martinez failed to perform the required  
20 visual and/or functional check of the emission control devices on the Bureau's vehicle in  
21 accordance with required procedures.

22 b. **Code section 44032:** Respondent Juan A. Martinez failed to perform tests of the  
23 emission control devices and systems on the Bureau's vehicle in accordance with Code section  
24 44012, because the vehicle's exhaust gas recirculation system did not function so the vehicle  
25 could not pass a proper and lawful smog inspection.

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1 **SEVENTEENTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply With Regulations)

3 41. Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant  
4 to Health & Saf. Code section 44072.2(c), in that on or about January 21, 2015, this Respondent  
5 failed to comply with the following Regulations:

6 a. **Code section 3340.30(a)**: Respondent Juan A. Martinez failed to inspect and test the  
7 Bureau's vehicle in accordance with Health & Saf. Code section 44012.

8 b. **Code section 3341.41(c)**: Respondent Juan A. Martinez knowingly entered false  
9 information about the Bureau's vehicle into the smog emission inspection system and  
10 transmitting that information to the Bureau.

11 c. **Code section 3340.42**: Respondent Juan A. Martinez failed to properly perform and  
12 document smog tests on the Bureau's vehicle in accordance with the Bureau's specifications.

13 **EIGHTEENTH CAUSE FOR DISCIPLINE**

14 (Dishonesty, Fraud, or Deceit)

15 42. Respondent Juan A. Martinez's Technician Licenses are subject to discipline pursuant  
16 to Health & Saf. Code section 44072.2(d), in that on or about January 21, 2015, this Respondent  
17 committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing an  
18 electronic smog certificate of compliance for the Bureau's 1993 GMC without performing a bona  
19 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the  
20 people of the State of California of the protection afforded by the Motor Vehicle Inspection  
21 Program.

22 **UNDERCOVER OPERATION JANUARY 28, 2015**

23 43. The Bureau documented a 1992 Toyota so that the electronic timing was not within  
24 manufacturer's specifications and could not pass a properly performed California smog test. On  
25 or about January 28, 2015, at approximately 10:46 hours, a Bureau undercover operator  
26 ("operator") presented a Bureau-documented 1992 Toyota to Respondent Martinez Auto Repair's  
27 facility. The operator requested a smog inspection from Respondent Juan A. Martinez. The

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1 operator receive a work order or an estimate. Respondent Juan A. Martinez took possession of  
2 the Bureau's vehicle and drove it into the smog service bay.

3 44. On January 28, 2015, at approximately 10:59 hours, Respondent Martinez Auto  
4 Repair created and submitted a Certificate of Compliance [REDACTED] for the Bureau's 1992  
5 Toyota. The operator was charged by and paid Respondent Juan A. Martinez \$50 for the  
6 inspection and certificate. The operator received two Vehicle Inspection Reports (VIRs) for the  
7 vehicle but was not provided with an invoice.

8 45. Certificate of Compliance [REDACTED] was fraudulently issued because when the  
9 smog test was performed the 1992 Toyota could not pass a lawful smog inspection because the  
10 ignition timing was not within the specifications for the vehicle.

#### 11 **NINETEENTH CAUSE FOR DISCIPLINE**

12 (Untrue or Misleading Statements)

13 46. Respondent Martinez Auto Repair is subject to discipline pursuant to Code  
14 section 9884.7(a)(1), in that this Respondent made or authorized statements which it knew or in  
15 the exercise of reasonable care should have known to be untrue or misleading. On or about  
16 January 28, 2015, Respondent Martinez Auto Repair certified under penalty of perjury that the  
17 Bureau's 1992 Toyota passed a smog inspection and was in compliance with applicable laws and  
18 regulations. The true facts are the vehicle's ignition timing was not within the specifications and  
19 could not pass the inspection required by Health & Saf. Code section 44012.

#### 20 **TWENTIETH CAUSE FOR DISCIPLINE**

21 (Fraud)

22 47. Respondent Martinez Auto Repair is subject to discipline pursuant to Code section  
23 9884.7(a)(4), in that on or about January 28, 2015, it committed fraud by creating and issuing an  
24 electronic smog certificate of compliance for the Bureau's 1992 Toyota without ensuring that a  
25 bona fide inspection was performed of the emission control devices and systems on the vehicle,  
26 thereby depriving the people of the State of California of the protection afforded by the Motor  
27 Vehicle Inspection Program.

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1 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

2 (Failure to Comply with the Automotive Repair Act)

3 48. Respondent Martinez Auto Repair is subject to disciplinary action under Code section  
4 9884.7(a)(6), in that, on or about January 28, 2015, this Respondent failed to materially comply  
5 with the Automotive Repair Act (Code section 9880, et seq.) as follows:

6 a. **Code section 9884.9(a)**: Respondent Martinez Auto Repair failed to provide the  
7 operator with a written estimate for the Bureau's vehicle

8 b. **Code section 9884.8**: Respondent Martinez Auto Repair failed to provide the Bureau  
9 operator with an invoice.

10 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

11 (Motor Vehicle Inspection Program – Code Violations)

12 49. Respondent Martinez Auto Repair's Station License is subject to discipline pursuant  
13 to Health & Saf. Code section 44072.2(a), in that on or about January 28, 2015, this Respondent  
14 violated sections of that Code, as follows:

15 a. **Code section 44012(a)**: Respondent Martinez Auto Repair failed to perform  
16 emission control tests in accordance with procedures prescribed by the Bureau and Department.

17 b. **Code section 44015**: Respondent Martinez Auto Repair issued an electronic smog  
18 certificate of compliance without properly testing and inspecting the Bureau's vehicle to  
19 determine if it was in compliance with Health & Saf. Code section 44012.

20 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

21 (Failure to Comply With Regulations)

22 50. Respondent Martinez Auto Repair's Station License is subject to discipline pursuant  
23 to Health & Saf. Code section 44072.2(c), in that on or about January 28, 2015, it failed to  
24 comply with Regulations in connection with the 1992 Toyota, as follows:

25 a. **Code section 3340.35(c)**: Respondent Martinez Auto Repair created and issued an  
26 electronic smog certificate of compliance even though the vehicle had not been inspected in  
27 accordance with Regulation section 3340.42.

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1       b. **Code section 3340.42:** Respondent Martinez Auto Repair failed to ensure that the  
2 required smog tests were conducted in accordance with the Bureau's specifications.

3                               **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

4                               (Dishonesty, Fraud or Deceit)

5       51. Respondent Martinez Auto Repair's Station License is subject to discipline pursuant  
6 to Health & Saf. Code section 44072.2(d), in that on or about January 28, 2015, it committed a  
7 dishonest, fraudulent or deceitful act whereby another is injured by creating and issuing an  
8 electronic smog certificate of compliance for the Bureau's 1992 Toyota without ensuring that a  
9 bona fide inspection was performed of the emission control devices and systems on the vehicle,  
10 thereby depriving the people of the State of California of the protection afforded by the Motor  
11 Vehicle Inspection Program.

12                               **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

13                               (Motor Vehicle Inspection Program - Code Violations)

14       52. Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant  
15 to Health & Saf. Code section 44072.2(a), in that on or about January 28, 2015, he violated  
16 sections of that Code in connection with the 1992 Toyota as follows:

17       a. **Code section 44012(f):** Respondent Juan A. Martinez failed to perform on the  
18 vehicle a visual and/or functional check of the emission control devices in accordance with  
19 required procedures.

20       b. **Code section 44032:** Respondent Juan A. Martinez failed to perform tests of the  
21 emission control devices and systems on the vehicle in accordance with Code section 44012, in  
22 that the vehicle was precluded from passing a lawful smog inspection because the ignition timing  
23 was not within specifications.

24                               **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

25                               (Failure to Comply With Regulations)

26       53. Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant  
27 to Health & Saf. Code section 44072.2(c), in that on or about January 28, 2015, he failed to  
28 comply with provisions of the Regulations in connection with the 1992 Toyota, as follows:



1 a. **Code section 3340.30(a)**: Respondent Juan A. Martinez failed to inspect and test the  
2 vehicle in accordance with Health & Saf. Code section 44012.

3 b. **Code section 3341.41(c)**: Respondent Juan A. Martinez knowingly entered false  
4 information into the emission inspection system.

5 c. **Code section 3340.42**: Respondent Juan A. Martinez failed to conduct the required  
6 smog tests on the vehicle in accordance with the Bureau's specifications.

7 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

8 (Dishonesty, Fraud, or Deceit)

9 54. Respondent Juan A. Martinez's Technician Licenses are subject to discipline pursuant  
10 to Health & Saf. Code section 44072.2(d), in that on or about January 28, 2015, this Respondent  
11 committed a dishonest, fraudulent, or deceitful act whereby another was injured by creating and  
12 issuing an electronic smog certificate of compliance for the Bureau's 1992 Toyota without  
13 performing a bona fide inspection of the emission control devices and systems on the vehicle,  
14 thereby depriving the people of the State of California of the protection afforded by the Motor  
15 Vehicle Inspection Program.

16 **UPDATED SMOG CHECK PROGRAM - ON BOARD DIAGNOSTIC SYSTEM**

17 **Background**

18 55. On March 9, 2015, California's Smog Check Program was updated to include the  
19 On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is smog check equipment  
20 required in all areas of the state for smog inspections on most vehicle models starting in 2000 for  
21 gasoline vehicles, hybrid vehicles and most 1998 and newer diesel vehicles. This system  
22 replaced BAR-97 emission inspection system (EIS) still used for most gasoline vehicles model  
23 years 1999 and older, hybrid vehicles and 1997 and older diesel vehicles. The system  
24 components include a certified Data Acquisition Device (DAD), computer, bar code scanner, and  
25 printer.

26 56. The DAD is an On-Board Diagnostic (OBD) scan tool that retrieves OBD data from  
27 the vehicle. The DAD connects between the BAR-OIS computer and the vehicle's diagnostic  
28 link connector. The bar code scanner is used to input technician information, the vehicle

1 identification number, and DMV renewal information. The vehicle identification number (VIN)  
2 that is physically present on all vehicles is programmed into the vehicle's On-Board Diagnostics  
3 – Generation II (OBD II) on 2005 and newer vehicles, and on many occasions was programmed  
4 into the OBD II computer in earlier model years. The electronically programmed VIN (eVIN), is  
5 electronically captured by the Bureau during a smog check inspection, and must match the  
6 physical VIN on the vehicle for the vehicle to pass smog inspection.

7 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the  
8 inspection results and the Smog Check Certificate of Compliance Number for passing vehicles.  
9 Data retrieved and recorded during an OIS smog check includes the eVIN, the communication  
10 protocol<sup>3</sup>, and the number of Parameter Identifications (PID's)<sup>4</sup>.

### 11 **IMPROPER CERTIFICATIONS**

#### 12 **Improper Certification #1**

13 57. On or about June 23, 2015, Respondent Juan A. Martinez performed an EIS  
14 inspection on a 1999 Ford F350 Diesel, California License No. 6X02336. Respondent Martinez  
15 Auto Repair issued Certificate of Compliance No. YR829734C for the vehicle.

#### 16 **Improper Certification #2**

17 58. On or about June 25, 2015, Respondent Juan A. Martinez performed an EIS  
18 inspection on a 1999 Ford F350 Diesel, California License No. 6W15755. Respondent Martinez  
19 Auto Repair issued Certificate of Compliance No. YR829734C for the vehicle.

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23 <sup>3</sup> The OBD II communication protocol describes the specific manufacturer/vehicle  
24 communication "language" used by the OBD II computer to communicate to scan tools and other  
25 devices such as the BAR-OIS. The communication protocol is programmed into the OBD II  
26 computer during manufacture and does not change.

27 <sup>4</sup> PID's are data points reported by the OBD II computer to the scan tool or BAR-OIS (for  
28 example, engine speed (rpm), vehicle speed, engine temperature, etc.). The PID count is the  
number of data points reported by the OBD II computer, is programmed during manufacture, and  
does not change. Each make and model vehicle reports a specific number of PID counts; i.e., the  
PID count does not vary for that make and model vehicle.

1 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

2 (Motor Vehicle Inspection Program – Code Violations)

3 59. Respondent Martinez Auto Repair Station License is subject to discipline pursuant to  
4 Health & Saf. Code section 44072.2(a), in that it violated sections of that Code, as follows:

5 a. **Code section 44012(a):**

6 i. On or about June 23, 2015, Respondent Martinez Auto Repair issued Certificate  
7 of Compliance No. YR829734C for a 1999 Ford F350 Diesel, California License No. 6X02336,  
8 using a BAR-97 EIS inspection, when a BAR-OIS inspection was required for that vehicle.

9 ii. On or about June 25, 2015, Respondent Martinez Auto Repair issued Certificate  
10 of Compliance No. YR829740C for a 1999 Ford F350 Diesel, California License No. 6W15755,  
11 using a BAR-97 EIS inspection, when a BAR-OIS inspection was required for that vehicle.

12 b. **Code section 44015:** Respondent Martinez Auto Repair issued electronic smog  
13 certificates of compliance without ensuring that the vehicles were properly tested and inspected to  
14 determine if they were compliance with Health & Saf. Code section 44012.

15 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

16 (Failure to Comply With Regulations)

17 60. Respondent Martinez Auto Repair's Station License is subject to discipline pursuant  
18 to Health & Saf. Code section 44072.2(c), in that it failed to comply with provisions of the  
19 Regulations, as follows:

20 a. **Code section 3340.35(c):** Respondent Martinez Auto Repair issued electronic smog  
21 Certificate of Compliance Nos. YR829734C and YR829740C even though the vehicles for which  
22 the certificates were issued had not been inspected in accordance with Regulations section  
23 3340.42.

24 b. **Code section 3340.42:** Respondent Martinez Auto Repair failed to ensure that the  
25 required smog tests were conducted in accordance with the Bureau's specifications on either 1999  
26 Ford F350 Diesel, license Nos. 6X02336 and 6W15755.

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1 **THIRTIETH CAUSE FOR DISCIPLINE**

2 (Motor Vehicle Inspection Program - Code Violations)

3 61. Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant  
4 to Health & Saf. Code section 44072.2(a), in that he failed to comply with Code section 44012  
5 when he failed to perform the emission control tests on either 1999 Ford F350 Diesel, license  
6 Nos. 6X02336 and 6W15755, in accordance with procedures prescribed by the department.

7 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

8 (Failure to Comply With Regulations)

9 62. Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant  
10 to Health & Saf. Code section 44072.2(c), in that regarding on either 1999 Ford F350 Diesel,  
11 license Nos. 6X02336 and 6W15755, he failed to comply with provisions of the Regulations, as  
12 follows:

13 a. **Code section 3340.30(a)**: Respondent Juan A. Martinez failed to inspect and test the  
14 vehicles in accordance with Health & Saf. Code section 44012.

15 b. **Code section 3340.42**: Respondent Juan A. Martinez failed to conduct the required  
16 smog check inspection methods on the vehicles in accordance with the Bureau's specifications.

17 **REVIEW OF OIS TEST DATA FOR MARTINEZ AUTO REPAIR**

18 63. Bureau Representative "E.L." reviewed BAR-OIS test data pertaining to smog  
19 inspections conducted at Respondent Martinez Auto Repair's facility. E.L. found that  
20 Respondent's smog check technician, Respondent Juan A. Martinez, performed smog inspections  
21 on three vehicles identified below using a method known as "clean plugging"<sup>5</sup>, resulting in the  
22 issuance of fraudulent certificates of compliance for the vehicles.

23 **Vehicle #1**

24 64. On or about November 18, 2015, E.L. reviewed BAR-OIS test data for Respondent  
25 Martinez Auto Repair that showed that on August 6, 2015, Respondent Juan A. Martinez

26 <sup>5</sup> Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another  
27 source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog  
28 certificate of compliance to another vehicle that is not in compliance with the Smog Check  
Program and/or is not present for testing.

1 performed a smog inspection on a 2004 Chevrolet Classic (Vehicle 1), resulting in the issuance of  
2 Certificate of Compliance No. YT647933C. The BAR-OIS test details for Vehicle 1 showed that  
3 the eVIN recorded during the inspection did not match the VIN for Vehicle 1. E.L. reviewed the  
4 Comparative OIS Test Data for vehicle make and model 2004 Chevrolet Classic and found that  
5 the communication protocol and PID count recorded during the smog check on Vehicle 1 were  
6 not consistent with the communication protocol and PID count for that make and model. E.L.  
7 concluded that the DAD was not connected to Vehicle 1 during the smog inspection, resulting in  
8 the issuance of a fraudulent smog certificate of compliance.

9 **Vehicle #2**

10 65. On or about November 18, 2015, E.L. reviewed BAR-OIS test data for Respondent  
11 Martinez Auto Repair that showed that on September 1, 2015, Respondent Juan A. Martinez  
12 performed a smog inspection on a 2000 Lincoln LS (Vehicle 2), resulting in the issuance of  
13 Certificate of Compliance No. PW536712C. The BAR-OIS test details for Vehicle 2 showed that  
14 the eVIN recorded during the inspection did not match the VIN for Vehicle 2. E.L. reviewed the  
15 Comparative OIS Test Data for vehicle make and model 2000 Lincoln LS and found that the  
16 communication protocol recorded during the smog check on Vehicle 2 was not consistent with  
17 the communication protocol for that make and model. E.L. concluded that the DAD was not  
18 connected to Vehicle 2 during the smog inspection, resulting in the issuance of a fraudulent smog  
19 certificate of compliance.

20 **Vehicle #3**

21 66. On or about December 23, 2015, reviewed BAR-OIS test data for Respondent  
22 Martinez Auto Repair that showed that on December 14, 2015, Respondent Juan A. Martinez  
23 performed a smog inspection on a 2008 Ford Escape XLS (Vehicle 3), resulting in the issuance of  
24 Certificate of Compliance No. QA654133C. The BAR-OIS test details for Vehicle 3 showed that  
25 the eVIN recorded during the inspection did not match the VIN for Vehicle 3. E.L. reviewed the  
26 Comparative OIS Test Data for a vehicle make and model 2008 Ford Escape XLS and found that  
27 the PID count recorded during the smog check on Vehicle 3 was not consistent with the PID  
28 count for that make and model. E.L. concluded that the DAD was not connected to Vehicle 3

1 during the smog inspection, resulting in the issuance of a fraudulent smog certificate of  
2 compliance.

3 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

4 (Untrue or Misleading Statements)

5 67. Respondent Martinez Auto Repair's registration is subject to discipline pursuant to  
6 Code section 9884.7(a)(1), in that it made or authorized statements which it knew or in the  
7 exercise of reasonable care should have known to be untrue or misleading. Specifically,  
8 Respondent Martinez Auto Repair's smog technician, Respondent Juan A. Martinez, certified that  
9 vehicles 1 through 3, identified in paragraphs 64 through 66, above, had passed inspection and  
10 were in compliance with applicable laws and regulations. In fact, Respondent Juan A. Martinez  
11 conducted the smog inspections on the vehicles using clean-plugging methods in that he  
12 substituted a different vehicle during the inspections in order to issue smog certificates of  
13 compliance for the three vehicles, and did not test or inspect the vehicles as required by Health &  
14 Saf. Code section 44012.

15 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

16 (Fraud)

17 68. Respondent Martinez Auto Repair's registration is subject to discipline pursuant to  
18 Code section 9884.7(a)(4), in that it committed acts that constitute fraud by issuing an electronic  
19 smog certificate of compliance for vehicles 1 through 3, identified in paragraphs 64 through 66,  
20 above, without ensuring that bona fide inspections were performed of the emission control  
21 devices and systems on the vehicles, thereby depriving the People of the State of California of the  
22 protection afforded by the Motor Vehicle Inspection Program.

23 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

24 (Motor Vehicle Inspection Program – Code Violations)

25 69. Respondent Martinez Auto Repair's Station License is subject to discipline pursuant  
26 to Health & Saf. Code section 44072.2(a), in that it failed to comply with the following sections  
27 of that Code, as follows:

1       a. **Code section 44012(a):** Respondent Martinez Auto Repair failed to ensure that the  
2 emission control tests were performed on vehicles 1 through 3, identified in paragraphs 68  
3 through 70 above, in accordance with procedures prescribed by the department.

4       b. **Code section 44015:** Respondent Martinez Auto Repair issued electronic smog  
5 certificates of compliance for vehicles 1 through 3, identified in paragraphs 64 through 66 above,  
6 without ensuring that the vehicles were properly tested and inspected to determine if it was in  
7 compliance with Health & Saf. Code section 44012.

8                                   **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

9                                   (Failure to Comply with Regulations)

10       70. Respondent Martinez Auto Repair's Station License is subject to discipline pursuant  
11 to Health & Saf. Code section 44072.2(c), in that it failed to comply with provisions of the  
12 Regulations, as follows:

13       a. **Code section 3340.35(c):** Respondent Martinez Auto Repair issued electronic smog  
14 certificates of compliance for vehicles 1 through 3, identified in paragraphs 64 through 66 above,  
15 even though the vehicles had not been inspected in accordance with Regulations section 3340.42.

16       b. **Code section 3340.42:** Respondent Martinez Auto Repair failed to ensure that the  
17 required smog tests were conducted on vehicles 1 through 3, identified in paragraphs 64 through  
18 66 above, in accordance with the Bureau's specifications.

19                                   **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

20                                   (Dishonesty, Fraud or Deceit)

21       71. Respondent Martinez Auto Repair's Station License is subject to discipline pursuant  
22 to Health & Saf. Code section 44072.2(d), in that it committed dishonest, fraudulent or deceitful  
23 acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles  
24 1 through 3, identified in paragraphs 64 through 66 above, without ensuring that a bona fide  
25 inspection was performed of the emission control devices and systems on the vehicles, thereby  
26 depriving the people of the State of California of the protection afforded by the Motor Vehicle  
27 Inspection Program.

1                                   **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

2                                   (Motor Vehicle Inspection Program - Code Violations)

3           72.   Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant  
4 to Health & Saf. Code section 44072.2(a), in that he violated sections of that Code. Specifically,  
5 Respondent Juan A. Martinez failed to perform the emission control tests on vehicles 1 through 3,  
6 identified in paragraphs 64 through 66 above, in accord with procedures prescribed by the  
7 department.

8                                   **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

9                                   (Failure to Comply with Regulations)

10          73.   Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant  
11 to Health & Saf. Code section 44072.2(c), in that he failed to comply with provisions of the  
12 Regulations, as follows:

13           a.   **Code section 3340.30(a)**: Respondent Juan A. Martinez failed to inspect and test  
14 vehicles 1 through 3, identified in paragraphs 64 through 66 above, in accordance with Health &  
15 Saf. Code section 44012 and 44035, and Regulations, section 3340.42.

16           b.   **Code section 3340.42**: Respondent Juan A. Martinez failed to conduct the required  
17 smog tests on vehicles 1 through 3, identified in paragraphs 64 through 66 above, in accordance  
18 with the Bureau's specifications.

19                                   **THIRTY-NINTH CAUSE FOR DISCIPLINE**

20                                   (Dishonesty, Fraud, or Deceit)

21          74.   Respondent Juan A. Martinez's Technician Licenses are subject to discipline pursuant  
22 to Health & Saf. Code section 44072.2(d), in that he committed dishonest, fraudulent, or deceitful  
23 acts whereby another is injured by issuing electronic smog certificates of compliance for  
24 vehicles 1 through 3, identified in paragraphs 64 through 66 above, without performing bona fide  
25 inspections of the emission control devices and systems on the vehicles, thereby depriving the  
26 people of the State of California of the protection afforded by the Motor Vehicle Inspection  
27 Program.

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1 Health & Saf. Code in the name of Juan A. Martinez;

2 7. Ordering Respondents Martinez Auto Repair and Juan A. Martinez to pay the  
3 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this  
4 case, pursuant to Bus. & Prof. Code section 125.3; and,

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

6  
7 DATED:

December 19, 2016

*Patrick Dorais*

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

*Complainant*

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