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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 First Amended 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

**FIRST AMENDED
A C C U S A T I O N**

16 19543 Orange Belt Dr.
17 Strathmore, CA 93267

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

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

22 Smog Check Inspector (EO) No. 630292
Smog Check Repair Technician (EI) No.
23 630292

24 Respondents.

25 Patrick Dorais ("Complainant") alleges:

26 **PARTIES**

27 1. Complainant brings this First Amended Accusation solely in his official capacity as
28 the Chief of the 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, 2018, 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, 2018, 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”).¹ 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.

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27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
 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. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
2 "bureau," "commission," "committee," "department," "division," "examining committee,"
3 "program," and "agency." "License" includes certificate, registration or other means to engage in
4 a business or profession regulated by the Bus. & Prof. Code.

5 8. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
6 part, that the Director has all the powers and authority granted under the Automotive Repair Act
7 for enforcing the Motor Vehicle Inspection Program.

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

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 Code section 44072.8 states that when a license has been revoked or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

15 STATUTORY AND REGULATORY PROVISIONS

16 11. Bus. & Prof. Code section 9884.7 states, in pertinent part:

17 (a) The director, where the automotive repair dealer cannot show there was a
18 bona fide error, may deny, suspend, revoke, or place on probation the registration of
19 an automotive repair dealer for any of the following acts or omissions related to the
20 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.

21 (1) Making or authorizing in any manner or by any means whatever any
22 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.

23 (4) Any other conduct that constitutes fraud.

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

25 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place
26 on probation the registration for all places of business operated in this state by an
27 automotive repair dealer upon a finding that the automotive repair dealer has, or is,
 engaged in a course of repeated and willful violations of this chapter, or regulations
 adopted pursuant to it.

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1 12. Code section 9884.8 states:

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

14 13. Code section 9884.9(a) states:

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

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

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

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

(signature or initials)"

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

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1 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

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

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

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

19 COST RECOVERY

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

24 UNDERCOVER OPERATION DECEMBER 18, 2014

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

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

20. On December 18, 2014, at approximately 11:50 hours, Respondent Martinez Auto Repair issued Certificate of Compliance [REDACTED] for the Bureau's 1990 Chevrolet. The operator was charged by and paid Respondent Juan A. Martinez \$50. The operator received two unsigned Vehicle Inspection Reports (VIR) from Respondent Juan A. Martinez but was not provided with an invoice.

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

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

SECOND CAUSE FOR DISCIPLINE

(Fraud)

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

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Failure to Comply with the Automotive Repair Act)

3 24. Respondent Martinez Auto Repair's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7(a)(6), in that, on or about December 18, 2014,
5 Martinez Auto Repair failed to materially comply with the Automotive Repair Act (Code section
6 9880 et seq.) as follows:

7 a. **Code section 9884.9(a)**: Respondent Martinez Auto Repair failed to provide the
8 operator with a written estimate for the 1990 Chevrolet.

9 b. **Code section 9884.8**: Respondent Martinez Auto Repair failed to provide the
10 operator with an invoice for the 1990 Chevrolet.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 (Motor Vehicle Inspection Program – Code Violations)

13 25. Respondent Martinez Auto Repair's station license is subject to discipline pursuant to
14 Health & Saf. Code section 44072.2(a), in that on or about December 18, 2014, it violated
15 sections of that Code, as follows:

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

18 b. **Code section 44015**: Respondent Martinez Auto Repair created and submitted an
19 electronic smog certificate of compliance for the 1990 Chevrolet that was not properly tested or
20 inspected for compliance with Health & Saf. Code section 44012.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 (Failure to Comply with Regulations)

23 26. Respondent Martinez Auto Repair Station License is subject to discipline pursuant to
24 Health & Saf. Code section 44072.2(c), in that on or about December 18, 2014, it failed to
25 comply with provisions of Regulations, as follows:

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

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

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

SEVENTH CAUSE FOR DISCIPLINE

(Motor Vehicle Inspection Program - Health & Saf. Code Violations)

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

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

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

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

29. Respondent Juan A. Martinez's smog check inspector license is subject to discipline pursuant to Health & Saf. Code section 44072.2(c), in that on or about December 18, 2014, he

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1 failed to comply with provisions of Regulations for smog inspections of the 1990 Chevrolet, as
2 follows:

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

5 b. **Regulations section 3341.41(c)**: Respondent Juan A. Martinez knowingly entered
6 false information into the emission inspection system.

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

9 d. **Regulations section 3340.45**: Respondent Juan A. Martinez failed to perform the
10 smog check inspection in accordance with requirements and procedures specified by the *Smog*
11 *Check Manual* (2013), by failing to sign the VIR².

12 **NINTH CAUSE FOR DISCIPLINE**

13 (Dishonesty, Fraud, or Deceit)

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

21 **UNDERCOVER OPERATION JANUARY 21, 2015**

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

25 32. On or about January 21, 2015, at approximately 11:00 hours, a Bureau undercover
26 operator ("operator") presented the Bureau's documented 1993 GMC to Respondent Martinez

27 ² *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 Auto Repair's facility for a smog test. The operator requested a smog inspection of the GMC
2 from Respondent Juan A. Martinez. The operator did not receive a work order or an estimate.
3 Respondent Juan A. Martinez took possession of the vehicle and was observed driving the vehicle
4 into the smog service bay.

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

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

11 **TENTH CAUSE FOR DISCIPLINE**

12 (Untrue or Misleading Statements)

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

20 **ELEVENTH CAUSE FOR DISCIPLINE**

21 (Fraud)

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

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply with the Automotive Repair Act)

3 37. Respondent Martinez Auto Repair's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7(a)(6), in that, on or about January 21, 2015, it failed
5 to materially 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 – Health & Saf. Code Violations)

12 38. 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 39. Respondent Martinez Auto Repair's station license is subject to discipline pursuant to
24 Health & Saf. Code section 44072.2(c), in that on or about January 21, 2015, it failed to comply
25 with Regulations, as follows:

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

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

6 **FIFTEENTH CAUSE FOR DISCIPLINE**

7 (Dishonesty, Fraud or Deceit)

8 40. Respondent Martinez Auto Repair's station license is subject to discipline pursuant to
9 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 - Health & Saf. Code Violations)

16 41. Respondent Juan A. Martinez's smog check inspector license is subject to discipline
17 pursuant to Health & Saf. Code section 44072.2(a), in that on or about January 21, 2015, this
18 Respondent 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 operator did not receive a work order or an estimate. Respondent Juan A. Martinez took
2 possession of the Bureau's vehicle and drove it into the smog service bay.

3 45. 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 46. 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 47. Respondent Martinez Auto Repair's registration is subject to discipline pursuant to
14 Bus. & Prof. Code section 9884.7(a)(1), in that this Respondent made or authorized statements
15 which it knew or in the exercise of reasonable care should have known to be untrue or
16 misleading. On or about January 28, 2015, Respondent Martinez Auto Repair certified under
17 penalty of perjury that the Bureau's 1992 Toyota passed a smog inspection and was in
18 compliance with applicable laws and regulations. The true facts are the vehicle's ignition timing
19 was not within the specifications and could not pass the inspection required by Health & Saf.
20 Code section 44012.

21 **TWENTIETH CAUSE FOR DISCIPLINE**

22 (Fraud)

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

1 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

2 (Failure to Comply with the Automotive Repair Act)

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

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

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

11 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

12 (Motor Vehicle Inspection Program – Code Violations)

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

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

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

21 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

22 (Failure to Comply with Regulations)

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

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

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

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Motor Vehicle Inspection Program - Health & Saf. Code Violations)

53. Respondent Juan A. Martinez's smog check inspector license is subject to discipline pursuant to Health & Saf. Code section 44072.2(a), in that on or about January 28, 2015, he violated sections of that Code in connection with the 1992 Toyota as follows:

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

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

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

54. Respondent Juan A. Martinez's smog check inspector license is subject to discipline pursuant to Health & Saf. Code section 44072.2(c), in that on or about January 28, 2015, he failed to comply with provisions of the Regulations in connection with the 1992 Toyota, as follows:

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

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

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

7 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

8 (Dishonesty, Fraud, or Deceit)

9 55. 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 56. 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 57. 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 should 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 protocol³, and the number of Parameter Identifications (PID's)⁴.

11 **IMPROPER CERTIFICATIONS**

12 **Improper Certification #1**

13 58. On or about June 23, 2015, Respondent Juan A. Martinez performed an EIS
14 inspection on a 1999 Ford F350 Diesel, California License [REDACTED]. Respondent Martinez
15 Auto Repair issued Certificate of Compliance [REDACTED] for the vehicle.

16 **Improper Certification #2**

17 59. On or about June 25, 2015, Respondent Juan A. Martinez performed an EIS
18 inspection on a 1999 Ford F350 Diesel, California License [REDACTED]. Respondent Martinez
19 Auto Repair issued Certificate of Compliance [REDACTED] for the vehicle.

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23 ³ 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 ⁴ 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 and is programmed during manufacture.
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 60. Respondent Martinez Auto Repair's 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 [REDACTED] for a 1999 Ford F350 Diesel, California License [REDACTED]
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 [REDACTED] for a 1999 Ford F350 Diesel, California License [REDACTED],
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 in compliance with Health & Saf. Code section 44012.

15 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

16 (Failure to Comply with Regulations)

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

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

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

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1 **THIRTIETH CAUSE FOR DISCIPLINE**

2 (Motor Vehicle Inspection Program - Health & Saf. Code Violations)

3 62. Respondent Juan A. Martinez's smog check inspector license is subject to discipline
4 pursuant to Health & Saf. Code section 44072.2(a), in that he failed to comply with section 44012
5 of that Code when he failed to perform the emission control tests on either 1999 Ford F350
6 Diesel, license Nos. [REDACTED] and [REDACTED] in accordance with procedures prescribed by the
7 department.

8 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

9 (Failure to Comply with Regulations)

10 63. Respondent Juan A. Martinez's smog check inspector license is subject to discipline
11 pursuant to Health & Saf. Code section 44072.2(c), in that regarding on either 1999 Ford F350
12 Diesel, license Nos. [REDACTED] and [REDACTED], he failed to comply with provisions of the
13 Regulations, as follows:

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

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

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

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

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

1 **Vehicle #1**

2 65. On or about November 18, 2015, E.L. analyzed BAR-OIS test data for Respondent
3 Martinez Auto Repair that showed that on August 6, 2015, Respondent Juan A. Martinez
4 performed a smog inspection on a 2004 Chevrolet Classic (Vehicle 1), resulting in the issuance of
5 Certificate of Compliance No. YT647933C. The BAR-OIS test details for Vehicle 1 showed that
6 the eVIN recorded during the inspection did not match the VIN for Vehicle 1. E.L. reviewed the
7 Comparative OIS Test Data for vehicle make and model 2004 Chevrolet Classic and found that
8 the communication protocol and PID count recorded during the smog check on Vehicle 1 were
9 not consistent with the communication protocol and PID count for that make and model. E.L.
10 concluded that the DAD was not connected to Vehicle 1 during the smog inspection, resulting in
11 the issuance of a fraudulent smog certificate of compliance.

12 **Vehicle #2**

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

23 **Vehicle #3**

24 67. On or about December 23, 2015, reviewed BAR-OIS test data for Respondent
25 Martinez Auto Repair that showed that on December 14, 2015, Respondent Juan A. Martinez
26 performed a smog inspection on a 2008 Ford Escape XLS (Vehicle 3), resulting in the issuance of
27 Certificate of Compliance No. QA654133C. The BAR-OIS test details for Vehicle 3 showed that
28 the eVIN recorded during the inspection did not match the VIN for Vehicle 3. E.L. reviewed the

1 Comparative OIS Test Data for a vehicle make and model 2008 Ford Escape XLS and found that
2 the PID count recorded during the smog check on Vehicle 3 was not consistent with the PID
3 count for that make and model. E.L. concluded that the DAD was not connected to Vehicle 3
4 during the smog inspection, resulting in the issuance of a fraudulent smog certificate of
5 compliance.

6 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

7 (Untrue or Misleading Statements)

8 68. Respondent Martinez Auto Repair's registration is subject to discipline pursuant to
9 Bus. & Prof. Code section 9884.7(a)(1), in that it made or authorized statements which it knew or
10 in the exercise of reasonable care should have known to be untrue or misleading. Specifically,
11 Respondent Martinez Auto Repair's smog technician, Respondent Juan A. Martinez, certified that
12 vehicles 1 through 3, identified in paragraphs 65 through 67, above, had passed inspection and
13 were in compliance with applicable laws and regulations. In fact, Respondent Juan A. Martinez
14 conducted the smog inspections on the vehicles using clean-plugging methods in that he
15 substituted a different vehicle during the inspections in order to issue smog certificates of
16 compliance for the three vehicles, and did not test or inspect the vehicles as required by Health &
17 Saf. Code section 44012.

18 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

19 (Fraud)

20 69. Respondent Martinez Auto Repair's registration is subject to discipline pursuant to
21 Bus. & Prof. Code section 9884.7(a)(4), in that it committed acts that constitute fraud by issuing
22 an electronic smog certificate of compliance for vehicles 1 through 3, identified in paragraphs 65
23 through 67, above, without ensuring that bona fide inspections were performed of the emission
24 control devices and systems on the vehicles, thereby depriving the People of the State of
25 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1
2 through 3, identified in paragraphs 65 through 67 above, without ensuring that a bona fide
3 inspection was performed of the emission control devices and systems on the vehicles, thereby
4 depriving the people of the State of California of the protection afforded by the Motor Vehicle
5 Inspection Program.

6 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

7 (Motor Vehicle Inspection Program - Health & Saf. Code Violations)

8 73. Respondent Juan A. Martinez's smog check inspector license is subject to discipline
9 pursuant to Health & Saf. Code section 44072.2(a), in that he violated section 44012 of that Code.
10 Specifically, Respondent Juan A. Martinez failed to perform the emission control tests on
11 vehicles 1 through 3, identified in paragraphs 65 through 67 above, in accord with procedures
12 prescribed by the department.

13 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

14 (Failure to Comply with Regulations)

15 74. Respondent Juan A. Martinez's smog check inspector license is subject to discipline
16 pursuant to Health & Saf. Code section 44072.2(c), in that he failed to comply with provisions of
17 the Regulations, as follows:

18 a. **Regulations section 3340.30(a)**: Respondent Juan A. Martinez failed to inspect and
19 test vehicles 1 through 3, identified in paragraphs 65 through 67 above, in accordance with
20 Health & Saf. Code section 44012 and 44035, and Regulations, section 3340.42.

21 b. **Regulations section 3340.42**: Respondent Juan A. Martinez failed to conduct the
22 required smog tests on vehicles 1 through 3, identified in paragraphs 65 through 67 above, in
23 accordance with the Bureau's specifications.

24 **THIRTY-NINTH CAUSE FOR DISCIPLINE**

25 (Dishonesty, Fraud, or Deceit)

26 75. Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant
27 to Health & Saf. Code section 44072.2(d), in that he committed dishonest, fraudulent, or deceitful
28 acts whereby another is injured by issuing electronic smog certificates of compliance for

1 vehicles 1 through 3, identified in paragraphs 65 through 67 above, without performing bona fide
2 inspections of the emission control devices and systems on the vehicles, thereby depriving the
3 people of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 **REVIEW OF ADDITIONAL OIS TEST DATA FOR MARTINEZ AUTO REPAIR**

6 76. Bureau Representative E.L. analyzed BAR-OIS test data from smog inspections
7 conducted on Bureau documented vehicles at Respondents' Martinez Auto Repair's facility. E.L.
8 determined that Respondents' smog check inspector, Respondent Juan A. Martinez, performed
9 smog inspections on five vehicles by "clean plugging", resulting in the issuance of fraudulent
10 smog certificates of compliance for the vehicles.

11 77. On or about November 9, 2016, E.L. discovered that Respondent Juan A. Martinez
12 was the registered owner of a vehicle with the same VIN number as the vehicle used to clean plug
13 vehicles 1 and 3, set forth in paragraphs 78 and 80, below.

14 **Vehicle #1**

15 78. E.L. analyzed BAR-OIS test data generated by Respondent Martinez Auto Repair for
16 February 22, 2016, that showed Respondent Juan A. Martinez performed a smog inspection on a
17 2007 BMW 335i (Vehicle 1), followed by issuance of Certificate of Compliance No.
18 YX860840C. The BAR-OIS smog test details for Vehicle 1 showed that the eVIN test results
19 recorded by Respondent Juan A. Martinez' during his smog inspection did not match the
20 manufacturer's VIN for Vehicle 1. E.L. analyzed the Comparative OIS Test Data for the vehicle
21 tested, a 2007 BMW 335i, and found that the PID count recorded by Respondent Martinez from
22 Vehicle 1 did not match the vehicle manufacturer's PID count for a 2007 BMW 335i. The 2007
23 BMW 535i could not have been connected to the smog test machine during Respondent's smog
24 inspection. Respondents' issued a fraudulent smog certificate of compliance because the smog
25 test did not comply with applicable laws and regulations.

26 **Vehicle #2**

27 79. E.L. analyzed BAR-OIS test data from Respondent Martinez Auto Repair for March
28 31, 2016, showing Respondent Juan A. Martinez performed a smog inspection on a 2001 Chevy

1 C1500 Suburban (Vehicle 2). The Suburban passed the smog inspection and Respondents' issued
2 Certificate of Compliance No. ZB153632C. However, the BAR-OIS test details for Vehicle 2
3 showed the eVIN recorded during the smog inspection did not match the VIN for Vehicle 2.
4 Since the VINs did not match, a vehicle other than the Suburban was connected to the testing
5 machine. Respondents' issued a fraudulent smog certificate of compliance because the smog
6 inspection did not comply with applicable laws and regulations for smog inspections.

7 **Vehicle #3**

8 80. E.L. analyzed BAR-OIS test data from Respondent Martinez Auto Repair for July 19,
9 2016, showing Respondent Juan A. Martinez performed a smog inspection on a 2006 BMW 325i
10 (Vehicle 3), and that the vehicle passed the inspection resulting in Respondent issuing Certificate
11 of Compliance No. ZF811344C. The BAR-OIS test details for Vehicle 3 showed the eVIN
12 recorded during Respondent's smog inspection did not match the vehicle manufacturer's VIN for
13 Vehicle 3. The Comparative OIS Test Data for a 2006 BMW 325i showed the PID count
14 recorded during Martinez' smog check on Vehicle 3 did not match the manufacturer's PID count
15 for a 2006 BMW 325i. The 2006 BMW 325i was not connected to the test machine during the
16 smog inspection. Respondents' issued a fraudulent smog certificate of compliance because the
17 smog check test did not comply with applicable laws and regulations for smog tests.

18 **Vehicle #4**

19 81. E.L. analyzed BAR-OIS test data from Respondent Martinez Auto Repair showing on
20 September 2, 2016, Respondent Juan A. Martinez performed a smog inspection on a 2002 Ford
21 Windstar LX (Vehicle 4), and that the vehicle passed the inspection resulting Respondent issuing
22 Certificate of Compliance No. ZJ299592C. The Comparative OIS Test Data for a 2002 Ford
23 Windstar LX showed the communication protocol and PID count recorded during Respondent's
24 smog check on Vehicle 4 did not match the communication protocol and PID count for a 2002
25 Ford Windstar LX. Vehicle 4 was not connected to the test machine during Respondent's smog
26 inspection, resulting in the issuance of a fraudulent smog certificate of compliance because
27 Respondent did not comply with applicable laws and regulations for smog tests.

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1 **Vehicle #5**

2 82. E.L. analyzed BAR-OIS test data from Respondent Martinez Auto Repair for
3 October 6, 2016, showing Respondent Juan A. Martinez performed a smog inspection on a 2005
4 Ford F150 truck (Vehicle 5), and that the vehicle passed the test resulting in the issuance of
5 Certificate of Compliance No. QE495093C. The BAR-OIS test details for Vehicle 5 showed that
6 the eVIN recorded during the inspection did not match the VIN for 2005 Ford F-150 trucks. The
7 Comparative OIS Test Data for a 2005 Ford F150 showed the PID count recorded during the
8 smog check on Vehicle 5 did not match the PID count for a 2005 Ford F150 truck. The test
9 machine was not connected to Vehicle 5 during Respondents' smog inspection resulting in the
10 issuance of a fraudulent smog certificate of compliance because Respondent's inspection did not
11 comply with applicable laws and regulations for smog inspections.

12 **FORTIETH CAUSE FOR DISCIPLINE**

13 (Untrue or Misleading Statements)

14 83. Respondent Martinez Auto Repair's registration is subject to discipline pursuant to
15 Bus. & Prof. Code section 9884.7(a)(1), in that it made or authorized statements which it knew or
16 in the exercise of reasonable care should have known to be untrue or misleading. Specifically,
17 Respondent Martinez Auto Repair's smog technician, Respondent Juan A. Martinez, certified that
18 vehicles 1 through 5, identified in paragraphs 78 through 82, above, passed inspection and were
19 in compliance with applicable laws and regulations. In fact, Respondent Juan A. Martinez
20 conducted the smog inspections on the vehicles using clean-plugging methods by connecting a
21 different vehicle to the smog test machine resulting in false or misleading test results during the
22 inspections in order to issue smog certificates of compliance for the five vehicles. Respondent
23 did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

24 **FORTY-FIRST CAUSE FOR DISCIPLINE**

25 (Fraud)

26 84. Respondent Martinez Auto Repair's registration is subject to discipline pursuant to
27 Bus. & Prof. Code section 9884.7(a)(4), in that it committed acts that constitute fraud by issuing
28 electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraphs 78

1 through 82 without performing bona fide inspections of the emission control devices and systems
2 on the vehicles, thereby depriving the People of the State of California of the protection afforded
3 by the Motor Vehicle Inspection Program.

4 **FORTY-SECOND CAUSE FOR DISCIPLINE**

5 (Motor Vehicle Inspection Program – Code Violations)

6 85. Respondent Martinez Auto Repair's station license is subject to discipline pursuant to
7 Health & Saf. Code section 44072.2(a), in that it failed to comply with the following sections of
8 that Code, as follows:

9 a. **Code section 44012(a)**: Respondent Martinez Auto Repair failed to ensure that the
10 emission control tests were performed on vehicles 1 through 5, identified in paragraphs 78
11 through 82 above, in accordance with procedures prescribed by the department.

12 b. **Code section 44015**: Respondent Martinez Auto Repair issued electronic smog
13 certificates of compliance for vehicles 1 through 5, identified in paragraphs 78 through 82 above,
14 without ensuring that the vehicles were properly tested and inspected to determine if it was in
15 compliance with Health & Saf. Code section 44012.

16 **FORTY-THIRD CAUSE FOR DISCIPLINE**

17 (Failure to Comply with Regulations)

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

21 a. **Regulations section 3340.35(c)**: Respondent Martinez Auto Repair issued electronic
22 smog certificates of compliance for vehicles 1 through 5, identified in paragraphs 78 through 82
23 above, even though the vehicles had not been inspected in accordance with Regulations section
24 3340.42.

25 b. **Regulations section 3340.42**: Respondent Martinez Auto Repair failed to ensure that
26 the required smog tests were conducted on vehicles 1 through 5, identified in paragraphs 78
27 through 82 above, in accordance with the Bureau's specifications.

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1 **FORTY-FOURTH CAUSE FOR DISCIPLINE**

2 (Dishonesty, Fraud or Deceit)

3 87. Respondent Martinez Auto Repair's station license is subject to discipline pursuant to
4 Health & Saf. Code section 44072.2(d), in that it committed dishonest, fraudulent or deceitful acts
5 whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1
6 through 5, identified in paragraphs 78 through 82 above, without ensuring that a bona fide
7 inspection was performed of the emission control devices and systems on the vehicles, thereby
8 depriving the people of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **FORTY-FIFTH CAUSE FOR DISCIPLINE**

11 (Motor Vehicle Inspection Program - Health & Saf. Code Violations)

12 88. Respondent Juan A. Martinez's Smog check inspector license is subject to discipline
13 pursuant to Health & Saf. Code section 44072.2(a), in that he violated section 44012 of that Code.
14 Specifically, Respondent Juan A. Martinez failed to perform the emission control tests on
15 vehicles 1 through 5, identified in paragraphs 78 through 82 above, in accord with procedures
16 prescribed by the department.

17 **FORTY-SIXTH CAUSE FOR DISCIPLINE**

18 (Failure to Comply with Regulations)

19 89. Respondent Juan A. Martinez's Smog check inspector license is subject to discipline
20 pursuant to Health & Saf. Code section 44072.2(c), in that he failed to comply with provisions of
21 the Regulations, as follows:

22 a. **Regulations section 3340.30(a)**: Respondent Juan A. Martinez failed to inspect and
23 test vehicles 1 through 5, identified in paragraphs 78 through 82 above, in accordance with
24 Health & Saf. Code section 44012 and 44035, and Regulations, section 3340.42.

25 b. **Regulations section 3340.42**: Respondent Juan A. Martinez failed to conduct the
26 required smog tests on vehicles 1 through 5, identified in paragraphs 78 through 82 above, in
27 accordance with the Bureau's specifications.

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1 **FORTY-SEVENTH CAUSE FOR DISCIPLINE**

2 (Dishonesty, Fraud, or Deceit)

3 90. Respondent Juan A. Martinez's technician licenses are subject to discipline pursuant
4 to Health & Saf. Code section 44072.2(d), in that he committed dishonest, fraudulent, or deceitful
5 acts whereby another is injured by issuing electronic smog certificates of compliance for
6 vehicles 1 through 5, identified in paragraphs 78 through 82 above, without performing bona fide
7 inspections of the emission control devices and systems on the vehicles, thereby depriving the
8 people of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **OTHER MATTERS**

11 91. Pursuant to Bus. & Prof. Code section 9884.7(c), the Director may suspend, revoke,
12 or place on probation the registration for all places of business operated in this state by
13 Respondent Martinez Auto Repair, upon a finding that Respondent Martinez Auto Repair has, or
14 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
15 an automotive repair dealer.

16 92. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
17 Number RC 261175 issued to Respondent Martinez Auto Repair is revoked or suspended, any
18 additional license issued under this chapter in the name of said licensee may be likewise revoked
19 or suspended by the Director.

20 93. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector (EO)
21 License No. 630292, or Smog Check Repair Technician (EI) License No. 630292, issued to
22 Respondent Juan A. Martinez, is revoked or suspended, any additional license issued under this
23 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

24 **PRAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 261175, to Martinez Auto Repair, with Juan Andres Martinez and Andres Martinez, as partners;

- 1 2. Revoking or suspending any other automotive repair dealer registration issued to
2 Martinez Auto Repair;
- 3 3. Revoking or suspending Smog Check Station License Number RC 261175, issued to
4 Martinez Auto Repair;
- 5 4. Revoking or suspending any additional license issued under Chapter 5 of the
6 Health & Saf. Code in the name of Martinez Auto Repair;
- 7 5. Revoking or suspending Smog Check Inspector (EO) License No. 630292 and Smog
8 Check Repair Technician (EI) License No. 630292, issued to Juan A. Martinez;
- 9 6. Revoking or suspending any additional license issued under Chapter 5 of the
10 Health & Saf. Code in the name of Juan A. Martinez;
- 11 7. Ordering Respondents Martinez Auto Repair and Juan A. Martinez to pay the
12 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
13 case, pursuant to Bus. & Prof. Code section 125.3; and,
- 14 8. Taking such other and further action as deemed necessary and proper.

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16
17 DATED:

January 19, 2018



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

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