

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 G. MICHAEL GERMAN  
Deputy Attorney General  
4 State Bar No. 103312  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2617  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation and Petition to  
Revoke Probation Against:  
13 **PATRICIA ANAYA MARTIN, OWNER,**  
**DBA, CHULA VISTA SMOG**  
14 **3031 Main Street – Suite D**  
**Chula Vista, CA 91911**  
15  
16 **Automotive Repair Dealer Registration No.**  
**ARD 244202**  
17 **Smog Check-Test Only Station License No.**  
**TC 244202**  
18 and  
19 **JESUS OLIVAS GASTELUM**  
**2690 Cagayan Avenue**  
20 **San Diego, CA 92154**  
21 **Advanced Emission Specialist Technician**  
**License No. EA 130707 (to be designated**  
22 **upon renewal as EO 130707 and/or EI**  
**130707)**  
23 Respondents.

Case No. **79/13-68**  
**ACCUSATION AND PETITION**  
**TO REVOKE PROBATION**  
*(Smog check)*

24 Complainant alleges:

25 **PARTIES**

26 1. Complainant John Wallauch brings this Accusation and Petition to Revoke Probation  
27 solely in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau),  
28 Department of Consumer Affairs.

1                   **Chula Vista Smog ARD & Smog Station License**

2           2.     In 2006, the BAR issued Automotive Repair Dealer Registration Number ARD  
3 244202 (hereinafter registration) to Patricia Anaya Martin, Owner, dba Chula Vista Smog.  
4 Respondent Martin's registration was in full force and effect at all times relevant to the charges  
5 brought herein and expired on March 31, 2013.

6           3.     On May 22, 2006, the BAR issued Smog Check, Test Only, Station License Number  
7 TC 244202 (hereinafter smog station license) to Respondent Martin. Respondent's smog check  
8 station license was in full force and effect at all times relevant to the charges brought herein and  
9 expired on March 31, 2013.

10                   **Jesus Gastelum's Advanced Emission Specialist Technician License**

11           4.     In 1999, the BAR issued Advanced Emission Specialist Technician License No. EA  
12 130707 (hereinafter technician license) to Respondent Jesus Olivas Gastelum. Respondent  
13 Gastelum's technician license was in full force and effect at all times relevant to the charges  
14 brought herein and will expire on September 30, 2013, unless renewed. Upon timely renewal of  
15 the license, the license will be redesignated as EO 130707 and/or EI 130707.<sup>1</sup>

16                                   **PRIOR DISCIPLINARY ACTION**

17           5.     On February 1, 2012, Petitioner filed Accusation No. 79/12-71 against Respondent  
18 Chula Vista Smog, Patricia Anaya Martin, Owner, before the Director of Consumer Affairs,  
19 (Director), for the Bureau. The Accusation and all other statutorily required documents were  
20 properly served on Respondent on February 14, 2012, who timely filed her Notice of Defense  
21 contesting the Accusation. Pursuant to the Decision and Order in Accusation No. 79/12-71,  
22 attached hereto as Exhibit A and incorporated herein by reference, the Director revoked  
23 Respondent Martin's registration and smog station license, effective June 27, 2012. However, the  
24 revocation of Respondent's registration and smog station license was stayed and she was placed  
25 on probation for three years with certain terms and conditions including those set forth as follows:

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

4 . . . .

5 (4) Any other conduct that constitutes fraud.

6 . . . .

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

12 12. Code section 9884.8 states:

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

25 13. Code section 9884.11 states:

26 Each automotive repair dealer shall maintain any records that are required by  
27 regulations adopted to carry out this chapter. Those records shall be open for  
28 reasonable inspection by the chief or other law enforcement officials. All of those  
records shall be maintained for at least three years.

14. H&S Code section 44012 states:

22 The test at the smog check stations shall be performed in accordance with  
23 procedures prescribed by the department and may require loaded mode dynamometer  
24 testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard  
25 diagnostic system, or other appropriate test procedures as determined by the  
26 department in consultation with the state board. The department shall implement  
27 testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or  
28 two-speed idle testing, on model year 2000 and newer vehicles only, beginning no  
earlier than January 1, 2013. However, the department, in consultation with the state  
board, may prescribe alternative test procedures that include loaded mode  
dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems  
that the department and the state board determine exhibit operational problems. The  
department shall ensure, as appropriate to the test method, the following:

1 (a) Emission control systems required by state and federal law are reducing  
2 excess emissions in accordance with the standards adopted pursuant to subdivisions  
3 (a) and (c) of Section 44013.

4 (b) If a vehicle meets the requirements of Section 44012, a smog check  
5 station licensed to issue certificates shall issue a certificate of compliance or a  
6 certificate of noncompliance.

7 ....

8 (f) A visual or functional check is made of emission control devices  
9 specified by the department, including the catalytic converter in those instances in  
10 which the department determines it to be necessary to meet the findings of Section  
11 44001. The visual or functional check shall be performed in accordance with  
12 procedures prescribed by the department.

13 ....

14 15. H&S Code section 44015 states in pertinent part:

15 ....

16 (b) If a vehicle meets the requirements of Section 44012, a smog check  
17 station licensed to issue certificates shall issue a certificate of compliance or a  
18 certificate of noncompliance.

19 ....

20 16. H&S Code section 44032 states:

21 No person shall perform, for compensation, tests or repairs of emission  
22 control devices or systems of motor vehicles required by this chapter unless the  
23 person performing the test or repair is a qualified smog check technician and the test  
24 or repair is performed at a licensed smog check station. Qualified technicians shall  
25 perform tests of emission control devices and systems in accordance with Section  
26 44012.

27 17. H&S Code section 44072.2 states, in pertinent part:

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

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

....

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

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

....

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

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18. H&S Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

19. H&S Code section 44072.10 states, in pertinent part:

....

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

....

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . .

**REGULATORY PROVISIONS**

20. California Code of Regulations, title 16, (CCR), Section 3340.15 states in pertinent part:

A smog check station shall meet the following requirements for licensure and shall comply with these requirements at all times while licensed.

....

(e) The station shall make, keep secure, and have available for inspection on request of the bureau, or its representative, legible records showing the station's transactions as a licensee for a period of not less than three years after completion of any transaction to which the records refer. All records shall be open for reasonable inspection and/or reproduction by the bureau or its representative. Station records required to be maintained shall include copies of:

(1) All certificates of compliance and certificates of noncompliance in stock and/or issued,

(2) Repair orders relating to the inspection and repair activities, . . .

....

21. CCR Section 3340.30 states in pertinent part:

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

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

....

1 22. CCR Section 3340.35 states in pertinent part:

2 ....

3 (c) A licensed station shall issue a certificate of compliance or  
4 noncompliance to the owner or operator of any vehicle that has been inspected in  
5 accordance with the procedures specified in section 3340.42 of this article and has all  
6 the required emission control equipment and devices installed and functioning  
7 correctly. . . .

8 ....

9 23. CCR Section 3340.41 states in pertinent part:

10 ....

11 (c) No person shall enter into the emissions inspection system any vehicle  
12 identification information or emission control system identification data for any  
13 vehicle other than the one being tested. Nor shall any person knowingly enter into the  
14 emissions inspection system any false information about the vehicle being tested.

15 ....

16 24. CCR Section 3340.42 states:

17 With the exception of diesel-powered vehicles addressed in subsection (f) of  
18 this section, the following emissions test methods and standards apply to all vehicles:

19 (a) A loaded-mode test, except as otherwise specified, shall be the test  
20 method used to inspect vehicles registered in the enhanced program areas of the state.  
21 The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide  
22 and oxides of nitrogen emissions, as contained in the bureau's specifications  
23 referenced in subsection (b) of Section 3340.17 of this article. The loaded-mode test  
24 shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis  
25 dynamometer, certified by the bureau.

26 On and after March 31, 2010, exhaust emissions from a vehicle subject to  
27 this inspection shall be measured and compared to the emissions standards shown in  
28 the VLT Row Specific Emissions Standards (Cutpoints) Table, dated March 2010,  
which is hereby incorporated by reference. If the emissions standards for a specific  
vehicle is not included in this table then the exhaust emissions shall be compared to  
the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle  
passes the loaded-mode test if all of its measured emissions are less than or equal to  
the applicable emission standards specified in the applicable table.

(b) A two-speed idle mode test, unless a different test is otherwise specified  
in this article, shall be the test method used to inspect vehicles registered in all  
program areas of the state, except in those areas of the state where the enhanced  
program has been implemented. The two-speed idle mode test shall measure  
hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again  
at idle RPM, as contained in the bureau's specifications referenced in subsection (b)  
of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this  
inspection shall be measured and compared to the emission standards set forth in this  
section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if  
all of its measured emissions are less than or equal to the applicable emissions  
standards specified in Table III.

....

1 (e) In addition to the test methods prescribed in this section, the following  
2 tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog  
3 Check inspection:

4 (1) A visual inspection of the vehicle's emissions control systems. During the  
5 visual inspection, the technician shall verify that the following emission control  
6 devices, as applicable, are properly installed on the vehicle:

7 (A) air injection systems,

8 (B) computer(s) and related sensors and switches,

9 (C) crankcase emissions controls, including positive crankcase ventilation,

10 (D) exhaust gas after treatment systems, including catalytic converters,

11 (E) exhaust gas recirculation (EGR) systems,

12 (F) fuel evaporative emission controls,

13 (G) fuel metering systems, including carburetors and fuel injection,

14 (H) ignition spark controls, and

15 (I) any emissions control systems that are not otherwise prompted by the  
16 Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

17 ....

18 25. CCR Section 3356 provides in pertinent part:(a) All invoices for service and repair  
19 work performed, and parts supplied, as provided for in Section 9884.8 of the Business and  
20 Professions Code, shall comply with the following:

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

25 ....

#### 26 **COST RECOVERY**

27 26. Code section 125.3 provides that a Board or Bureau may request the administrative  
28 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
case.

#### 29 **BACKGROUND**

30 27. From October 10, 2012, and continuing through October 26, 2012, Bureau Program  
31 Representative David Winkowski reviewed the Vehicle Information Database (VID) data for all

1 smog check inspections requiring the OBD II functional test performed at Chula Vista Smog.  
 2 That review, as well as Respondents' records, revealed that Chula Vista Smog, through  
 3 Respondents Martin and Gastelum, issued eight fraudulent electronic certificates of compliance  
 4 using clean-plugging methods. "Clean-plugging" means using the on-board computer from a  
 5 vehicle known to be in compliance with California's smog testing standards or an outside source  
 6 to substitute for the on-board computer of a vehicle known not to pass a California smog  
 7 inspection. All eight smog check inspections were performed by Respondent Gastelum. None of  
 8 the eight vehicles should have been issued certificates of compliance because seven of them had  
 9 OBD II fault codes that did not apply to them, and one had an incomplete Monitor "K" – EGR  
 10 System Monitoring, that did not apply to the vehicle, per the table below.

#	Time of Certification			Vehicle Certified					Certificate #
	Date	Start	End	Year	Make	Model	Vehicle Identification No.	Unsupported Code(s) / Monitor(s)	
1	07/18/2012	1257	1316	1997	Nissan	Maxima	JN1CA21D5VT839206	P0328	XJ407940C
2	07/23/2012	1704	1714	1996	Honda	Civic	1HGEJ6127TL047844	P0328	XJ529809C
3	07/29/2012	0848	0859	1996	Dodge	Caravan	2B4GP45R7TR579469	P1768	XJ590491C
4	09/22/2012	0955	1006	2004	Toyota	Sienna	5TDZA23C34S057043	P1381	XL541294C
5	10/03/2012	1312	1324	2001	Volvo	S60	YV1RS61R212044311	P0505 & P1456	XL881110C
6	10/26/2012	0834	0841	1996	Mercedes Benz	C280	WDBHA28E9TF462732	P0173, P1188, P1189 & P1250	XN447503C
7	10/26/2012	1539	1549	1998	Chevrolet	Metro LSI	2C1MR222XW6727449	P0116 & P0326	XN447519C
8	09/20/2012	1634	1644	2002	BMW	530i	WBADT63452CH96658	K	XL541273C

20 28. After completing his review of the VID data, Mr. Winkowski went to Chula Vista  
 21 Smog, met with Respondent Gastelum, and asked him to provide all invoices and Vehicle  
 22 Inspection Reports from July 13, 2012 to November 19, 2012, the date of his visit. Winkowski  
 23 returned to Chula Vista Smog on November 27, 2012, per Gastelum's telling him he would obtain  
 24 and produce the records from his bookkeeper by that date. Though Winkowski located five of the  
 25 eight fraudulent smog inspections, Gastelum advised him that he could not find the invoices and  
 26 VIRs from July 2012, when the remaining three of the eight fraudulent smog tests were  
 27 performed, and that he would not be able to locate them even if given more time. Gastelum  
 28

1 claimed he could not explain why the eight vehicles contained seven unsupported OBD II codes  
2 and one unsupported monitor.

3 **I. ACCUSATION**

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 29. Respondent Martin's registration is subject to disciplinary action pursuant to Code  
7 section 9884.7, subdivision (a)(1), in that she made or authorized statements which she knew or  
8 in the exercise of reasonable care should have known to be untrue or misleading as follows:  
9 Respondent Gastelum certified that vehicles 1 through 8, identified in the table above, had passed  
10 inspection and were in compliance with applicable laws and regulations. In fact, Respondent  
11 conducted the inspections on the vehicles using clean-plugging methods during the OBD II  
12 functional tests in order to issue smog certificates of compliance for the vehicles, and the vehicles  
13 were not tested or inspected, as required by Health and Safety Code section 44012, thereby  
14 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
15 Inspection Program.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 30. Respondent Martin's registration is subject to disciplinary action pursuant to Code  
19 section 9884.7, subdivision (a)(4), in that she committed acts that constitute fraud by issuing  
20 electronic smog certificates of compliance for the vehicles 1 through 8, identified in the table  
21 above, without performing bona fide inspections of the emission control devices and systems on  
22 the vehicles, thereby depriving the People of the State of California of the protection afforded by  
23 the Motor Vehicle Inspection Program.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Invoice Requirements)**

26 31. Respondent Martin's registration is subject to disciplinary action pursuant to Code  
27 section 9884.8, in that she failed to show her correct ARD registration number on five of the  
28 invoices for vehicles 1 through 8, identified in the table above.



1 c. Section 3340.35, subdivision (c): Respondent Martin issued electronic smog certificates  
2 of compliance for vehicles 1 through 8, identified in the table above, even though the vehicles had  
3 not been inspected in accordance with section 3340.42.

4 d. Section 3340.42: Respondent Martin failed to ensure that the required smog tests were  
5 conducted on vehicles 1 through 8, identified in Table 1 above, in accordance with Bureau  
6 specifications.

7 e. Section 3356, subdivision (a)(1): Respondent Martin failed to show her correct ARD  
8 registration number on five of the invoices for vehicles 1 through 8, identified in the table above.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Motor Vehicle Inspection Program)**

11 35. Respondent Gastelum's technician license(s) is subject to disciplinary action pursuant  
12 to H&S Code section 44072.2, subdivision (a), in that Respondent Gastelum failed to comply  
13 with the following sections of that Code

14 a. Section 44012, subdivision (a): Respondent Gastelum failed to ensure that all emission  
15 control devices and systems required by law for vehicles 1 through 8, identified in the table  
16 above, were performed in accordance with the procedures prescribed by the Department.

17 b. Section 44012, subdivision (f): Respondent Gastelum failed to ensure that a  
18 visual/functional check of emission control devices were performed on vehicles 1 through 8,  
19 identified in the table above, in accordance with procedures prescribed by the department.

20 c. Section 44032: Respondent Gastelum failed to conduct tests for vehicles 1 through 8,  
21 identified in the Table above, in accordance with H&S Code section 44013.

22 **EIGHTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

24 36. Respondent Gastelum's technician license(s) is subject to disciplinary action pursuant  
25 to Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in  
26 that Respondent failed to comply with the provisions of the Regulations as follows:

27 a. Section 3340.30, subdivision (a): Respondent Gastelum failed to inspect and test  
28 vehicles 1 through 8, identified in the table above, in accordance with H&S Code section 44012.



1 aware of his violations and of the importance of following proper smog check procedures.

2 Respondent paid the fine on June 8, 2007.

3 b. On October 31, 2008, the Bureau issued Citation No. C09-0531 to Respondent Martin  
4 for violating CCR, section 3340.16, subdivision (d) (a smog check test-only station shall not  
5 engage in any automotive repair work). On October 17, 2008, Respondent performed an ignition  
6 timing adjustment on a Bureau undercover vehicle and issued Certificate of Compliance

7 # [REDACTED] The Bureau assessed a civil penalty of \$500 against Respondent for the violation.  
8 Respondent was again accompanied at the November 24, 2008 Citation Conference at Bureau's  
9 Oceanside office by Respondent Gastelum. Respondent paid the fine on December 3, 2008.

10 c. On May 19, 2009, the Bureau issued Citation No. C09-1333 to Respondent Martin for  
11 violations of H&S Code section 44012, subdivision (f) (failure to determine that emission control  
12 devices and systems required by State and Federal law are installed and functioning correctly in  
13 accordance with test procedures); and CCR, section 3340.35, subdivision (c) (issuing a certificate  
14 of compliance to a vehicle that was improperly tested). On May 7, 2009, Respondent issued a  
15 certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond  
16 specifications. The Bureau assessed civil penalties totaling \$1,000 against Respondent Martin for  
17 the violations. Respondent paid the fine on June 29, 2009.

18 d. On August 28, 2009, the Bureau issued Citation No. C2010-0155 to Respondent  
19 Martin for violations of H&S Code section 44012, subdivision (f) (failure to perform a  
20 visual/functional check of emission control devices according to procedures prescribed by the  
21 department); and CCR, section 3340.35, subdivision (c) (issuing a certificate of compliance to a  
22 vehicle that was improperly tested). On August 6, 2009, Respondent Martin issued a certificate  
23 of compliance to a Bureau undercover vehicle with a missing PCV system. The Bureau assessed  
24 civil penalties totaling \$2,000 against Respondent for the violations. Respondent Martin was  
25 again accompanied at the September 28, 2009 Citation Conference at the Bureau's San Diego  
26 office by Respondent Gastelum. Respondent paid the fine on October 13, 2009.

27 40. Respondent Gastelum had been cited for violations of the smog check laws and  
28 regulations prior to the Director's June 27, 2012 Decision and Order as follows:

1 a. On April 12, 2007, the Bureau issued Citation No. M07-0738 to Respondent  
2 Gastelum for violations of H&S Code section 44032 (qualified technicians shall perform tests of  
3 emission control systems and devices in accordance with H&S Code section 44012; and  
4 Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles  
5 in accordance with H&S Code sections 44012 and 44035, and CCR, section 3340.42). The  
6 Bureau ordered Respondent Gastelum to complete smog testing training for the violations.  
7 Respondent completed training on June 5, 2007.

8 **OTHER MATTERS**

9 41. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or  
10 place on probation the registration for all places of business operated in this state by Respondent  
11 Martin upon a finding that Respondent has, or is, engaged in a course of repeated and willful  
12 violations of the laws and regulations pertaining to an automotive repair dealer.

13 42. Pursuant to H&S Code section 44072.8, if Respondent Martin's Smog Check, Test  
14 Only, Station License Number TC 244202, is revoked or suspended, any additional license issued  
15 under the same chapter in the name of said licensee may be likewise revoked or suspended by the  
16 Director.

17 43. Pursuant to H&S Code section 44072.8, if Respondent Gastelum's Advanced  
18 Emissions Specialist Technician License(s), currently designated as EA 130707 and as  
19 redesignated upon timely renewal as EO 130707 and/or EI 130707, is/are revoked or suspended,  
20 any additional license(s) under this chapter in the name of said licensee may be likewise revoked  
21 or suspended by the director.

22 **PRAAYER**

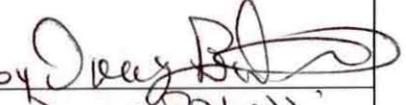
23 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
24 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of  
25 Consumer Affairs issue a decision:

26 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
27 244202, issued to Respondent Patricia Anaya Martin, Owner, dba Chula Vista Smog;  
28

- 1           2.    Revoking or suspending any other automotive repair dealer registration issued to  
2 Respondent Martin;
- 3           3.    Revoking or suspending Smog Check Station License Number TC 244202, issued to  
4 Respondent Martin;
- 5           4.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
6 and Safety Code in the name of Respondent Martin;
- 7           5.    Revoking or suspending Respondent Jesus Olivas Gastelum's Advanced Emission  
8 Specialist Technician License(s), currently designated as EA 130707 and as redesignated upon  
9 timely renewal as EO 130707 and/or EI 130707;
- 10          6.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
11 and Safety Code in the name of Respondent Gastelum;
- 12          7.    Vacating the stay and reimposing the order of revocation of ARD registration number  
13 ARD 244202 and Smog Check, Test Only, Station License number TC 244202, issued to  
14 Respondent Martin;
- 15          8.    Ordering Respondents Martin and Gastelum to pay the Bureau of Automotive Repair  
16 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
17 Professions Code section 125.3; and
- 18          9.    Taking such other and further action as deemed necessary and proper.

19  
20 DATED: \_\_\_\_\_

4/15/13

John Wallauch by   
DOUG BALATTI

JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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**Exhibit A**

**Decision and Order**

**Bureau of Automotive Repair Case No. 79/12-71**

BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**CHULA VISTA SMOG**  
**PATRICIA ANAYA MARTIN, Owner**  
3031 Main Street, Suite D  
Chula Vista, CA 91911

Automotive Repair Dealer Registration  
No. ARD 244202  
Smog Check, Test Only, Station License  
No. TC 244202

Respondent.

Case No. 79/12-71

OAH No. 2012030078

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

The suspension of Automotive Repair Dealer Registration No. ARD 244202 and Smog Check, Test Only, Station License No. TC 244202 shall commence on the effective date of this decision.

This Decision shall become effective 6/27/12.

DATED: June 7, 2012

  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 G. MICHAEL GERMAN  
Deputy Attorney General  
4 State Bar No. 103312  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2617  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **CHULA VISTA SMOG; PATRICIA**  
**ANAYA MARTIN, OWNER;**  
14 **3031 Main Street, Suite D**  
**Chula Vista, CA 91911**

15 **Automotive Repair Dealer License No. ARD**  
**244202**  
16 **Smog Check Technician License No. EA**  
**302292**

17 Respondent.

Case No. 79/12-71

OAH No. 2012030078

**STIPULATED SETTLEMENT**

**AND DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Complainant John Wallauch is the Chief of the Bureau of Automotive Repair  
22 (Bureau). He brought this action solely in his official capacity and is represented in this matter by  
23 Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy  
24 Attorney General.

25 2. Respondent Patricia Anaya Martin, Owner, dba Chula Vista Smog, is representing  
26 herself in this proceeding and has chosen not to exercise its right to be represented by counsel.  
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1 CULPABILITY

2 10. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 79/12-71.

4 11. Respondent agrees that her ARD registration and smog station license are subject to  
5 discipline and she agrees to be bound by the Director's probationary terms as set forth in the  
6 Disciplinary Order below.

7 CONTINGENCY

8 12. This stipulation shall be subject to approval by the Director or his designee.  
9 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau may  
10 communicate directly with the Director and staff of the Department of Consumer Affairs  
11 regarding this stipulation and settlement, without notice to or participation by Respondent. By  
12 signing the stipulation, Respondent understands and agrees that she may not withdraw her  
13 agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon  
14 it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated  
15 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall  
16 be inadmissible in any legal action between the parties, and the Director shall not be disqualified  
17 from further action by having considered this matter.

18 13. The parties understand and agree that facsimile copies of this Stipulated Settlement  
19 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
20 effect as the originals.

21 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
26 writing executed by an authorized representative of each of the parties.  
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1 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of  
2 Consumer Affairs.

3  
4 DATED: 4-16-12 Patricia Martin  
5 CHULA VISTA SMOG; PATRICIA ANAYA  
6 MARTIN, OWNER; CASTELLANOS  
7 Respondent

8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
10 submitted for consideration by the Director of Consumer Affairs.

11 Dated: April 17, 2012

12 Respectfully submitted,  
13 KAMALA D. HARRIS  
14 Attorney General of California  
15 LINDA K. SCHNEIDER  
16 Supervising Deputy Attorney General

17 G. Michael German  
18 G. MICHAEL GERMAN  
19 Deputy Attorney General  
20 *Attorneys for Complainant*

21 SD2011801433  
22 Stipulation.rtf

**Exhibit A**

**Accusation No. 79/12-71**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
4 State Bar No. 132645  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2105  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

9 **BEFORE THE**  
**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. 79/12-71

13 **CHULA VISTA SMOG**  
14 **PATRICIA ANAYA MARTIN, OWNER**  
3031 Main Street, Suite D  
15 Chula Vista, CA 91911  
Automotive Repair Dealer Reg. No. ARD 244202  
16 Smog Check, Test Only, Station License No.  
TC 244202

**A C C U S A T I O N**  
(Smog Check)

17 Respondent.  
18

19 Complainant alleges:

20 **PARTIES**

21 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as  
22 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

23 2. In or about 2006, the Director of Consumer Affairs ("Director") issued Automotive  
24 Repair Dealer Registration Number ARD 244202 ("registration") to Patricia Anaya Martin  
25 ("Respondent"), owner of Chula Vista Smog. Respondent's registration was in full force and  
26 effect at all times relevant to the charges brought herein and will expire on March 31, 2012,  
27 unless renewed.

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

9. Bus. & Prof. Code section 22, subdivision (a), states:

“Board” as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

10. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

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

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

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

....

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

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

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

**COST RECOVERY**

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

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1 emission control devices and systems on the vehicle, thereby depriving the People of the State of  
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program)**

5 18. Respondent's smog check station license is subject to disciplinary action pursuant to  
6 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
7 following sections of that Code:

8 a. **Section 44012, subdivision (f)**: Respondent failed to ensure that the visual  
9 inspection of the emission control systems and devices on the Bureau's 2001 Honda Prelude was  
10 performed in accordance with procedures prescribed by the department.

11 b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for  
12 the Bureau's 2001 Honda Prelude without ensuring that the vehicle was properly tested and  
13 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Regulations Pursuant**  
16 **to the Motor Vehicle Inspection Program)**

17 19. Respondent's smog check station license is subject to disciplinary action pursuant to  
18 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
19 following sections of California Code of Regulations, title 16:

20 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate  
21 of compliance for the Bureau's 2001 Honda Prelude even though the vehicle had not been  
22 inspected in accordance with section 3340.42.

23 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were  
24 conducted on the Bureau's 2001 Honda Prelude in accordance with the Bureau's specifications.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Dishonesty, Fraud or Deceit)**

27 20. Respondent's smog check station license is subject to disciplinary action pursuant to  
28 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,

1 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an  
2 electronic smog certificate of compliance for the Bureau's 2001 Honda Prelude without ensuring  
3 that a bona fide inspection was performed of the emission control devices and systems on the  
4 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
5 Motor Vehicle Inspection Program.

6 **MATTERS IN AGGRAVATION**

7 21. To determine the degree of discipline, if any, to be imposed on Respondent,  
8 Complainant alleges as follows:

9 a. On or about April 12, 2007, the Bureau issued Citation No. C07-0737 against  
10 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
11 perform a visual/functional check of emission control devices according to procedures prescribed  
12 by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35,  
13 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On  
14 or about March 29, 2007, Respondent issued a certificate of compliance to a Bureau undercover  
15 vehicle with a missing EGR valve. The Bureau assessed civil penalties totaling \$500 against  
16 Respondent for the violations. Respondent paid the fine on June 8, 2007.

17 b. On or about October 31, 2008, the Bureau issued Citation No. C09-0531 against  
18 Respondent for violating Regulation 3340.16, subdivision (d) (a smog check test-only station  
19 shall not engage in any automotive repair work. On or about October 17, 2008, Respondent  
20 performed an ignition timing adjustment on a Bureau undercover vehicle and issued Certificate of  
21 Compliance # [REDACTED]. The Bureau assessed a civil penalty of \$500 against Respondent for the  
22 violation. Respondent paid the fine on December 3, 2008.

23 c. On or about May 19, 2009, the Bureau issued Citation No. C09-1333 against  
24 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
25 determine that emission control devices and systems required by State and Federal law are  
26 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,  
27 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On  
28 or about May 7, 2009, Respondent issued a certificate of compliance to a Bureau undercover

1 vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil  
2 penalties totaling \$1,000 against Respondent for the violations. Respondent paid the fine on June  
3 29, 2009.

4 d. On or about August 28, 2009, the Bureau issued Citation No. C2010-0155 against  
5 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
6 perform a visual/functional check of emission control devices according to procedures prescribed  
7 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance  
8 to a vehicle that was improperly tested). On or about August 6, 2009, Respondent issued a  
9 certificate of compliance to a Bureau undercover vehicle with a missing PCV system. The  
10 Bureau assessed civil penalties totaling \$2,000 against Respondent for the violations. Respondent  
11 paid the fine on October 13, 2009.

#### 12 OTHER MATTERS

13 22. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
14 suspend, revoke, or place on probation the registration for all places of business operated in this  
15 state by Respondent Patricia Anaya Martin, owner of Chula Vista Smog, upon a finding that  
16 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and  
17 regulations pertaining to an automotive repair dealer.

18 23. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
19 License Number TC 244202, issued to Respondent Patricia Anaya Martin, owner of Chula Vista  
20 Smog, is revoked or suspended, any additional license issued under this chapter in the name of  
21 said licensee may be likewise revoked or suspended by the director.

#### 22 PRAYER

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

25 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
26 244202, issued to Patricia Anaya Martin, owner of Chula Vista Smog;

27 2. Revoking or suspending any other automotive repair dealer registration issued to  
28 Patricia Anaya Martin;

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3. Revoking or suspending Smog Check, Test Only, Station License Number TC 244202, issued to Patricia Anaya Martin, owner of Chula Vista Smog.
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Patricia Anaya Martin;
5. Ordering Patricia Anaya Martin, owner of Chula Vista Smog, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
6. Taking such other and further action as deemed necessary and proper.

DATED: 2/1/12

  
SHERRY MEHL  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2011801433