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

12 In the Matter of the Accusation Against:

Case No. 79/14-08

13 **RENE A. ESCARCEGA,**
14 **DBA SMOG EXPRESS**
15 **588 S. 4th Street**
16 **El Centro, CA 92243**

ACCUSATION
(SMOG CHECK)

17 **Automotive Repair Dealer Registration No.**
18 **ARD 251731**
19 **Smog Check Station License No. RC 251731**
20 **Lamp Station License No. LS 251731,**
21 **Class A**
22 **Brake Station License No. BS 251731,**
23 **Class C**

and

24 **RENE A. ESCARCEGA,**
25 **310 Chisolm Trl**
26 **Imperial, CA 92251**

27 **Smog Check Inspector License No.**
28 **EO 153103**
29 **Smog Check Repair Technician License No.**
30 **EI 153103 (formerly Advanced Emission**
31 **Specialist Technician License No. EA**
32 **153103)**
33 **Lamp Adjuster License No. LA 153103**
34 **Brake Adjuster License No. BA 153103**

Respondent.

35 Complainant Patrick Dorais alleges:

1 **PARTIES**

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

4 **Automotive Repair Dealer Registration**

5 2. In 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD
6 251731 to Respondent Rene A. Escarcega, Owner, dba Smog Express. The registration was in
7 full force and effect at all times relevant to the charges brought herein. The registration will
8 expire on August 31, 2013, unless renewed.

9 **Smog Check Station License**

10 3. On November 13, 2007, the Bureau issued Smog Check Station License Number RC
11 251731 (station license) to Respondent. The station license was in full force and effect at all
12 times relevant to the charges brought herein. The station license will expire on August 31, 2013,
13 unless renewed.

14 **Lamp Station License No. LS 251731, Class A**

15 4. On October 15, 2007, the Bureau issued Lamp Station License No. LS 251731, Class
16 A (lamp station license) to Respondent. The lamp station license was in full force and effect at
17 all times relevant to the charges brought herein, was due to expire on August 31, 2012 but was
18 canceled on February 1, 2012.

19 **Brake Station License No. BS 251731, Class C**

20 5. On October 15, 2007, the Bureau issued Brake Station License No. BS 251731, Class
21 C (brake station license) to Respondent. The brake station license was in full force and effect at
22 all times relevant to the charges brought herein, was due to expire on August 31, 2011 but was
23 canceled on February 1, 2012.

24 **Smog Check Inspector License**

25 6. In 2006, the Director issued Advanced Emission Specialist Technician License
26 Number EA 153103 to Respondent Escarcega. Respondent's advanced emission specialist
27 technician license was due to expire on October 31, 2012. Pursuant to California Code of
28 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to

1 Respondent's election, as Smog Check Inspector License Number EO 153103 and Smog Check
2 Repair Technician License Number EI 153103 ("technician licenses"), effective October 23,
3 2012. Respondent's technician licenses will expire on October 31, 2014, unless renewed.¹

4 **Lamp Adjuster License No. LA 153103**

5 7. In 2007, the Bureau issued Lamp Adjuster License No. LA 153103 (lamp adjuster
6 license) to Respondent. The lamp adjuster license was in full force and effect at all times
7 relevant to the charges brought herein, and was canceled on December 4, 2011.

8 **Brake Adjuster License No. BA 153103**

9 8. In 2006, the Bureau issued Brake Adjuster License No. BA 153103 (brake adjuster
10 license) to Respondent. The brake adjuster license was in full force and effect at all times
11 relevant to the charges brought herein, expired on October 31, 2010, and has not been renewed.

12 **JURISDICTION**

13 9. Business and Professions Code (Code) section 9884.7 provides that the Director may
14 revoke an automotive repair dealer registration.

15 10. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
16 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
17 against an automotive repair dealer or to render a decision temporarily or permanently
18 invalidating (suspending or revoking) a registration.

19 11. Health and Safety Code (H&S Code) section 44002 provides, in pertinent part, that
20 the Director has all the powers and authority granted under the Automotive Repair Act for
21 enforcing the Motor Vehicle Inspection Program.

22 12. H&S Code section 44072.6 provides, in pertinent part, that the expiration or
23 suspension of a license by operation of law, or by order or decision of the Director of Consumer
24 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
25 of jurisdiction to proceed with disciplinary action.

26 ¹ 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.

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16. H&S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or 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:

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

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

....

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

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

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

....

18. H&S Code section 44032 states:

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

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1 19. H&S 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
thereof, does any of the following:

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

6 (b) Is convicted of any crime substantially related to the qualifications,
7 functions, or duties of the license-holder in question.

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

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

11 20. H&S Code, section 44072.8 of the H&S Code states:

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

14 **REGULATORY PROVISIONS**

15 21. CCR section 3340.1 states, in pertinent part:

16 "Clean piping," for the purposes of Health and Safety Code section
17 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of
18 the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of
compliance for the test vehicle

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20 22. CCR section 3340.30 states in pertinent part:

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

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

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26 23. CCR section 3340.35 states in pertinent part:

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

correctly.

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24. CCR section 3340.41 states in pertinent part:

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

....

25. CCR section 3340.42 states:

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

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

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in 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.

....

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

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

- 1 (A) air injection systems,
2 (B) computer(s) and related sensors and switches,
3 (C) crankcase emissions controls, including positive crankcase ventilation,
4 (D) exhaust gas after treatment systems, including catalytic converters,
5 (E) exhaust gas recirculation (EGR) systems,
6 (F) fuel evaporative emission controls,
7 (G) fuel metering systems, including carburetors and fuel injection,
8 (H) ignition spark controls, and
9 (I) any emissions control systems that are not otherwise prompted by the
Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.
10

11 COST RECOVERY

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

16 I. DECEMBER 12, 2011 – DECEMBER 20, 2011 VID REVIEW

17 27. In January 2012, the Bureau initiated an investigation of Respondent based on a
18 review of information from the Bureau's vehicle information database (VID), which indicated
19 that Respondent may be engaging in fraudulent smog check inspections. A Bureau representative
20 conducted a detailed review of VID data for all smog inspections requiring the OBD II functional
21 portion performed at Smog Express, Respondent's automotive repair dealership and smog station,
22 for the period of December 12, 2011, through December 20, 2011. The review of the OBD II
23 functional tests² showed a pattern of the same nine OBD II fault codes (P0108, P0122, P1519,

24 _____
25 ² The On Board Diagnostic, generation II ("OBD II"), functional test is an automated
26 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a
27 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
28 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically
retrieves information from the vehicle's on-board computer about the status of the readiness

(continued...)

1 P0172, P0301, P0302, P0303, P0304, and P0300) stored in the memory of the power train control
2 module (PCM) on 37 different vehicles that were issued certificates of compliance during the
3 period of December 12, 2011, through December 20, 2011. The Bureau specifically examined
4 the VID data for ten of the vehicles that were certified from December 16, 2011, to December 20,
5 2011, and it was determined they did not support several of the OBD II codes they were alleged
6 to, as set forth in Table 1 below. Seven of the vehicles did not support one code; two did not
7 support two codes; and one did not support four OBD II codes, per the original equipment
8 manufacturer (OEM) service information applicable to these vehicles, each of which was tested
9 and issued a certificate of compliance by Respondent, per the VID data.

10 28. The Bureau concluded that Respondent performed the smog inspections on the ten
11 vehicles using a different vehicle(s) during the OBD II tests, a method known as “clean
12 plugging,”³ resulting in the issuance of fraudulent certificates of compliance for the vehicles that
13 were tested as follows:

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23 indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
24 II functional test, it will fail the overall inspection.

25 ³ Clean-plugging is the use of the OBD II readiness monitor status and stored code status
26 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that
27 is not in compliance due to the noncompliant vehicle’s failure to complete the minimum number
28 of self tests, known as monitors, or due to the presence of a stored fault code that indicates an
emission control system or component failure. Clean plugging occurs during the inspection of a
vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters
information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD
II system connector from the EIS into another vehicle that has a properly functioning OBD II
system for the purpose of obtaining a “Passing” OBD II functional test result.

TABLE I

#	Time of Certification			Vehicle Certified			Certificate #
	Date	Start	End	Year	Make	Unsupported Code(s) / Monitor(s)	
1	12/20/2011	1648	1659	2006	Honda	P1519	XB763664C
2	12/20/2011	1020	1030	2000	Jeep	P1519	XB763656C
3	12/19/2011	0958	1025	2003	Volkswagen	P0108, P1519	XB700387C
4	12/17/2011	1530	1544	1998	Dodge	P1519	XB700386C
5	12/17/2011	1246	1257	1997	Chevrolet	P1519	XB700383C
6	12/17/2011	1235	1239	2006	Chevrolet	P1519	XB700382C
7	12/16/2011	1253	1302	2001	Cadillac	P0108, P0122	XB700371C
8	12/16/2011	1153	1208	2004	Chrysler	P1519	XB700369C
9	12/16/2011	1116	1126	1996	Mitsubishi	P0108, P0122 P0172, P1519	XB700368C
10	12/16/2011	1056	1110	2002	Chevrolet	P1519	XB700367C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

29. Respondent's registration is subject to discipline under Code section 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable care should have been known to be untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table I above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had been clean-plugged.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

30. Respondent's registration is subject to discipline under Code section 9884.7, subdivision (a)(4), in that he committed acts constituting fraud by issuing electronic certificates of compliance for the vehicles set forth in Table I above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 31. Respondent's registration is subject to disciplinary action pursuant to Code section
4 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that Respondent
5 failed to comply with the following sections of the CCR:

6 a. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
7 compliance for the vehicles set forth in Table I above, even though the vehicles had not been
8 inspected in accordance with section 3340.42.

9 b. **Section 3340.42:** Respondent issued electronic certificates of compliance for the
10 vehicles set forth in Table I above, even though the vehicles had not been inspected in accordance
11 with Bureau specifications.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Chapter Requirements)**

14 32. Respondent's station license is subject to discipline under H&S Code section 44072.2,
15 subdivision (a), in that he failed to comply with the following sections of that Code

16 a. **Section 44012, subdivision (f):** Respondent failed to test and inspect the vehicles set
17 forth in Table I, above, in accordance with the procedures prescribed by the department.

18 b. **Section 44015, subdivision (b).** Respondent issued electronic certificates of
19 compliance for the vehicles set forth in Table I, above, without properly testing and inspecting the
20 vehicles to determine if they were in compliance with section 44012 of that Code.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations)**

23 33. Respondent's station license is subject to discipline under H&S Code section 44072.2,
24 subdivision (c), in that he failed to materially comply with the following sections of the CCR:

25 a. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
26 compliance for the vehicles set forth in Table I, above, even though the vehicles had not been
27 tested and inspected in accordance with the procedures specified in section 3340.42 of that Code.
28

TABLE II

Test Times	Vehicle In VID Data & License No.	Vehicle Actually Tested	Certificate of Compliance #	Results	Details
1006-1014	1996 Honda 6HIA670	1996 Honda No Plate	XD015094C	Pass	Vehicle tested matches vehicle in VID, except vehicle tested did not have any license plates.
1024-1035	2003 Ford No Plate	2003 Ford No Plate	XD015095C	Pass	Vehicle tested matches vehicle in VID.
1150-1159	1989 Ford 3Y60346	1989 Ford 3Y60346	XD015096C	Pass	Vehicle tested matches vehicle in VID.
1226-1241	1994 Nissan 6BEB033	Nissan No Plate	XD015097C	Pass	Unplated Nissan used to issue fraudulent Certificate of Compliance to Plated Nissan.
1257-1308	1995 Honda 6MDD066	1995 Honda 6MDD066	None	Fail	Vehicle tested matches vehicle in VID.

TENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

39. Respondent's registration is subject to discipline under Code section 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable care should have been known to be untrue or misleading when he issued an electronic certificate of compliance for the 1994 Nissan set forth in Table II above, certifying that it was in compliance with applicable laws and regulations when, in fact, that vehicle had been clean-piped.

ELEVENTH CAUSE FOR DISCIPLINE

(Fraud)

40. Respondent's registration is subject to discipline under Code section 9884.7, subdivision (a)(4), in that he committed acts constituting fraud by issuing an electronic certificate of compliance for the 1994 Nissan vehicle set forth in Table II above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

3 41. Respondent's registration is subject to disciplinary action pursuant to Code section
4 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that Respondent
5 failed to comply with the following sections of the CCR:

6 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of
7 compliance for the 1994 Nissan set forth in Table II above, even though it had not been inspected
8 in accordance with section 3340.42.

9 b. **Section 3340.42:** Respondent issued an electronic certificate of compliance for the 1994
10 Nissan set forth in Table II above, even though the vehicle had not been inspected in accordance
11 with Bureau specifications.

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Chapter Requirements)**

14 42. Respondent's station license is subject to discipline under H&S Code section 44072.2,
15 subdivision (a), in that he failed to comply with the following sections of that Code:

16 a. **Section 44012, subdivision (f):** Respondent failed to test and inspect the 1994 Nissan
17 set forth in Table II, above, in accordance with the procedures prescribed by the department.

18 b. **Section 44015, subdivision (b):** Respondent issued an electronic certificate of
19 compliance for the 1994 Nissan set forth in Table II, above, without properly testing and
20 inspecting it to determine if it was in compliance with section 44012 of that Code.

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations)**

23 43. Respondent's station license is subject to discipline under H&S Code section 44072.2,
24 subdivision (c), in that he failed to materially comply with the following sections of the CCR:

25 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of
26 compliance for the 1994 Nissan set forth in Table II, above, even though it had not been tested
27 and inspected in accordance with the procedures specified in section 3340.42 of that Code.

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1 resulting in the issuance of fraudulent certificates of compliance for the vehicles that were tested
2 as follows:

3 **TABLE III**

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Time of Certification				Vehicle Certified			Certificate #	
#	Date	Start	End	Year	Make	Unsupported Code(s)/Monitor(s)		
5	1	8/28/2012	1356	1404	2005	Mitsubishi	P0480, P0883	XL075346C
6	2	8/28/2012	1407	1412	2003	Honda	P0480, P0883	XL075347C

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8 **NINETEENTH CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

10 50. Respondent's registration is subject to discipline under Code section 9884.7,
11 subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable
12 care should have been known to be untrue or misleading when he issued electronic certificates of
13 compliance for the vehicles set forth in Table III above, certifying that those vehicles were in
14 compliance with applicable laws and regulations when, in fact, those vehicles had been clean-
15 plugged.

16 **TWENTIETH CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 51. Respondent's registration is subject to discipline under Code section 9884.7,
19 subdivision (a)(4), in that he committed acts constituting fraud by issuing electronic certificates of
20 compliance for the vehicles set forth in Table III above, without performing bona fide inspections
21 of the emission control devices and systems on the vehicles, thereby depriving the People of the
22 State of California of the protection afforded by the Motor Vehicle Inspection Program.

23 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

25 52. Respondent's registration is subject to disciplinary action pursuant to Code section
26 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that Respondent
27 failed to comply with the following sections of the CCR:
28

1 a. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
2 compliance for the vehicles set forth in Table III above, even though the vehicles had not been
3 inspected in accordance with section 3340.42.

4 b. **Section 3340.42:** Respondent issued electronic certificates of compliance for the
5 vehicles set forth in Table III above, even though the vehicles had not been inspected in
6 accordance with Bureau specifications.

7 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Chapter Requirements)**

9 53. Respondent's station license is subject to discipline under H&S Code section 44072.2,
10 subdivision (a), in that he failed to comply with the following sections of that Code

11 a. **Section 44012, subdivision (f):** Respondent failed to test and inspect the vehicles set
12 forth in Table III, above, in accordance with the procedures prescribed by the department.

13 b. **Section 44015, subdivision (b).** Respondent issued electronic certificates of
14 compliance for the vehicles set forth in Table III, above, without properly testing and inspecting
15 the vehicles to determine if they were in compliance with section 44012 of that Code.

16 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Regulations)**

18 54. Respondent's station license is subject to discipline under H&S Code section 44072.2,
19 subdivision (c), in that he failed to materially comply with the following sections of the CCR:

20 a. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
21 compliance for the vehicles set forth in Table III, above, even though the vehicles had not been
22 tested and inspected in accordance with the procedures specified in section 3340.42 of that Code.

23 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections
24 on the vehicles set forth in Table III, above, in accordance with the Bureau's specifications.

25 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

27 55. Respondent's station license is subject to discipline under H&S Code section 44072.2,
28 subdivision (d), in that he committed acts involving dishonesty, fraud, or deceit whereby another

1 was injured by issuing electronic certificates of compliance for the vehicles set forth in Table III,
2 above, without performing bona fide inspections of the emission control devices and systems on
3 those vehicles, thereby depriving the People of the State of California of the protection afforded
4 by the Motor Vehicle Inspection Program.

5 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Chapter Requirements)**

7 56. Respondent's technician license is subject to discipline under H&S Code section
8 44072.2, subdivision (a), in that he violated the following sections of that Code:

9 a. **Section 44012, subdivision (f):** Respondent failed to perform the smog inspections
10 on the vehicles set forth in Table III, above, in accordance with procedures prescribed by the
11 department.

12 b. **Section 44032:** Respondent failed to perform tests of the emission control devices
13 and systems on the vehicles set forth in Table III, above, in accordance with H&S Code section
14 44012.

15 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations)**

17 57. Respondent's technician license is subject to discipline under H&S Code section
18 44072.2, subdivision (c), in that he failed to materially comply with the following sections of the
19 CCR:

20 a. **Section 3340.30, subdivision (a):** Respondent failed to perform tests and inspections
21 of the vehicles set forth in Table III, above, in accordance with H&S Code section 44012, and
22 CCR section 3340.42.

23 b. **Section 3340.41, subdivision (c):** Respondent falsely entered into the EIS unit, vehicle
24 identification information or emission control system information for vehicles other than the ones
25 being tested, as set forth in Table III, above.

26 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections
27 of the vehicles set forth in Table III, above, in accordance with the Bureau's specifications.

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1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

3 58. Respondent's technician license is subject to discipline under H&S Code section
4 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud, or deceit, by
5 issuing the electronic certificates of compliance for the vehicles set forth in Table III, above,
6 without performing bona fide inspections of the emission control devices and systems on the
7 vehicles, thereby depriving the People of the State of California of the protection afforded by the
8 Motor Vehicle Inspection Program.

9 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

10 **(Conviction of a Crime Substantially Related to Respondent's ARD Registration)**

11 59. Respondent's registration is subject to discipline under Code section 490, in that he
12 was convicted of a crime substantially related to the qualifications, functions, and duties of a
13 licensed automotive repair dealer and smog station licensee. The circumstances are as follows:

14 a. On June 13, 2013, in the case of *People v. Rene A. Escarcega*, (Imperial County
15 Superior Court Case No. ECM37614), Respondent was convicted by the Court on his plea of
16 guilty of violating Penal Code section 502(c) (uttering a false smog certificate of compliance),
17 and Vehicle Code section 4463(a)(2) (false evidences and uses of documents, licenses, devices,
18 placards, or plates), misdemeanors.

19 b. As a result of the conviction, on June 13, 2013, Respondent was sentenced to three
20 years summary probation; to obey all laws, ordinances, and court orders; to be committed to the
21 custody of the Imperial County Sheriff and/or CalTrans for 26 days; to submit to immediate
22 search of his person/auto/home/premises/garage/storage areas and personal/leased property, with
23 or without cause, by law enforcement officers; to pay fees and fines to the court in the sum of
24 \$2,030.00; to forfeit to the Bureau all evidence seized under the search warrant executed in the
25 criminal case, consisting of Respondent's smog testing equipment; to not work directly or
26 indirectly as a smog check technician while on probation; and to fully comply with the terms of
27 the Court's Order Re: Restrictions on Licensing and Working as Smog Technician, dated January
28 30, 2013, for as long as that Order requires pursuant to its own terms.

1 c. The circumstances of the crime were that on or about December 16, 2011, through
2 December 20, 2011; January 11, 2012; and August 28, 2012, Respondent willfully, unlawfully,
3 and with the intent to defraud, prejudice and damage, alter, forge, counterfeit, and falsified smog
4 check certificates to and for vehicles, as detailed in Tables I, II and III and paragraphs 27, 28, 38,
5 48, and 49, above, and in the criminal complaint. The November 21, 2012 criminal complaint
6 charged Respondent with 26 misdemeanor violations of Penal Code section 502(c) (willfully
7 accessing/ altering computer data with fraudulent intent), and Vehicle Code section 4463(a)(2)
8 (willfully forge/falsify smog check certificates with fraudulent intent), but counts three through
9 26 were dismissed in the interest of justice, per Respondent's June 13, 2012, plea agreement.

10 **TWENTIETH CAUSE FOR DISCIPLINE**

11 **(Conviction of a Crime Substantially Related to Respondent's**
12 **Smog Station and Technician Licenses)**

13 60. Respondent's station and technician licenses are subject to discipline under H&S
14 Code sections 44072 and 44072.2, subdivision (b), in that he was convicted of a crime
15 substantially related to the qualifications, functions, and duties of a smog station and smog
16 technician, as detailed above in paragraphs 59 (a) through (c).

17 **PRIOR CITATIONS**

18 61. To determine the degree of discipline, if any, Complainant alleges that Respondent
19 has been previously cited for violations of the smog check laws and regulations as follows:

20 **Smog Station License No. RC251731**

21 a. On April 8, 2010, the Bureau issued Citation No. C2010-1063 against Respondent's
22 smog station license for violations of H&S Code section 44012 (failure to determine that
23 emission control devices and systems required by state and federal law are installed and
24 functioning in accordance with test procedures); and CCR section 3340.35(c) (issuing certificate
25 of compliance to a vehicle that was improperly tested) for issuing a certificate of compliance to a
26 Bureau undercover vehicle documented to fail a smog test. Respondent was required to pay fines
27 totaling \$500, which Respondent paid on June 14, 2010.

28

PRAYER

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

1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration No. ARD 251731, issued to Rene A. Escarcega, doing business as Smog Express;

2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Rene A. Escarcega;

3. Revoking, suspending or placing on probation Smog Check Station License Number RC 251731, issued to Rene A. Escarcega, doing business as Smog Express;

4. Revoking, suspending or placing on probation any additional license issued under Chapter 5 of the Health and Safety Code in the name of Rene A. Escarcega;

5. Revoking or suspending Smog Check Inspector License Number EO 153103 and Smog Check Repair Technician License No. EI 153103 issued to Rene A. Escarcega;

6. Revoking, suspending or placing on probation any additional license issued under Chapter 5 of the Health and Safety Code in the name of Rene A. Escarcega;

7. Revoking or suspending or placing on probation Lamp Station License Number LS 251731, Class A, issued to Rene A. Escarcega, dba Smog Express;

8. Revoking or suspending or placing on probation Brake Station License Number BS 251731, Class C, issued to Rene A. Escarcega, dba Smog Express;

9. Revoking or suspending or placing on probation Lamp Adjuster License No. LA 153103 issued to Rene A. Escarcega;

10. Revoking or suspending or placing on probation Brake Adjuster License No. BA 153103 issued to Rene A. Escarcega;

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11. Ordering Rene A. Escarcega to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

12. Taking such other and further action as deemed necessary and proper.

DATED: 7/22/13

PAT DORAIS by Don & BALATTI
PATRICK DORAIS
Acting Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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