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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 Against:

Case No. *79/14-103*

13 **MORENO VALLEY TEST ONLY,**
14 **MARTIN G. PULIDO, Owner**
15 **9140 Cleveland Avenue**
Riverside, CA 92503

ACCUSATION

16 **Automotive Repair Dealer Registration No. ARD 256093**
Smog Check- Test Only Station License No. TC 256093

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On or about September 10, 2008, the Bureau issued Automotive Repair Dealer
25 Registration Number ARD 256093 (registration) to Martin G. Pulido, doing business as Moreno
26 Valley Test Only (Respondent). The registration was in full force and effect at all times relevant
27 to the charges brought herein and will expire on August 31, 2014, unless renewed.

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1 9. Code section 477 provides, in pertinent part, that a "license" includes certificate,
2 registration or other means to engage in a business or profession regulated by the Code.

3 10. Code section 9884.7 states, in pertinent part:

4 (a) The director, where the automotive repair dealer cannot show there was a bona fide
5 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
6 dealer for any of the following acts or omissions related to the conduct of the business of the
7 automotive repair dealer, which are done by the automotive repair dealer or any automotive
8 technician, employee, partner, officer, or member of the automotive repair dealer.

9

10 (3) Failing or refusing to give to a customer a copy of any document requiring his or her
11 signature, as soon as the customer signs the document.

12 11. Code section 9884.9 states, in pertinent part:

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

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

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

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

5 _____
6 (signature or initials)"

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

9 12. H & S Code section 44012 states, in pertinent part:

10 The test at the smog check stations shall be performed in accordance with procedures
11 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
12 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
13 and shall ensure all of the following:

14

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

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20 13. H & S Code section 44015 provides, in pertinent part:

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

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25 14. H & S Code section 44072.2 states, in pertinent part:

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

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

4

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

6

7 (h) Violates or attempts to violate the provisions of this chapter relating to the particular
8 activity for which he or she is licensed.

9

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

13 **REGULATORY PROVISIONS**

14 16. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

15 A smog check technician shall comply with the following requirements at all times while
16 licensed.

17 (a) A licensed technician shall inspect, test and repair vehicles in accordance with section
18 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
19 3340.42 of this article.

20

21 17. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

22

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

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1 18. California Code of Regulations, title 16, section 3340.42, states, in pertinent part:
2 Smog check stations and smog check technicians shall conduct tests and inspections in
3 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in
4 subsections (a) and (b) of Section 3340.17

5 (a) There shall be two test procedures as follows:

6 (1) The loaded-mode test method shall be the primary test method used in the enhanced
7 program areas of the state. The loaded-mode test method shall measure hydrocarbon, carbon
8 monoxide, carbon dioxide and oxides of nitrogen emissions. The loaded-mode test equipment
9 shall be Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer,
10 certified by the bureau. The loaded-mode test procedures, including the preconditioning
11 procedure, shall only be conducted according to the bureau approved procedures specified in this
12 section and include the following:

13 (A) Place the vehicle's driving wheels on a chassis dynamometer and properly restrain the
14 vehicle prior to commencing the test.

15 (B) Exhaust emissions shall be tested and compared to the emission standards set forth in
16 this section and as shown in Table I or Table II, as applicable.

17 (C) With the vehicle operating, sample the exhaust system in the following sequence:

18 1. Accelerate the vehicle to the cruise condition as specified by the test procedures.

19 2. Operate the vehicle long enough to stabilize emission levels.

20 3. Measure and record emissions (hydrocarbon, carbon monoxide, carbon dioxide, and
21 oxides of nitrogen).

22 (2) The two-speed idle mode test method shall be used in all program areas of the state,
23 other than the enhanced program areas. The two-speed idle mode test method shall measure
24 hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle
25 RPM, as contained in the bureau's specifications referenced in subsection (b) of Section 3340.17
26 of this article. Exhaust emissions from a vehicle subject to inspection shall be tested and
27 compared to the emission standards set forth in this section and as shown in Table III.

28 (3) All tests shall be performed with the engine at its normal operating temperature.

1 (4) All loaded mode testing shall be conducted in a manner which does not induce excess
2 emissions to the test.

3 (b) There shall be a liquid fuel leak inspection as follows:

4 (1) As used in this section, "Liquid fuel leak" means any fuel emanating from a vehicle's
5 fuel delivery, metering, or evaporation systems in liquid form that has created a visible drop or
6 more of fuel on a component of a vehicle's fuel delivery, metering, or evaporation system or has
7 created a fuel puddle on, around, or under a component of a vehicle's fuel delivery, metering, or
8 evaporation system.

9 (2) With the engine running, the smog check technician shall visually inspect the following
10 components of the vehicle, if they are exposed and visually accessible, for liquid fuel leaks:

11 (A) Gasoline fuel tanks.

12 (B) Gasoline fill pipes, associated hoses and fuel tank connections.

13 (C) Gas caps.

14 (D) External fuel pumps.

15 (E) Fuel delivery and return lines and hoses.

16 (F) Fuel filters.

17 (G) Carburetors.

18 (H) Fuel injectors.

19 (I) Fuel pressure regulators.

20 (J) Charcoal canisters.

21 (K) Fuel vapor hoses.

22 (L) Any valves connected to any other fuel evaporative component.

23 "(c) On and after November 1, 2007, all motor vehicles subject to the program, except as
24 provided in paragraph (1) of this subsection, shall be given a low-pressure test of the fuel
25 evaporative control system as part of a smog check inspection.

26 (1) The following vehicles are exempt from the low-pressure fuel evaporative test, and
27 when inspecting these vehicles, the Smog Check technician shall enter "N" (Not Applicable) at
28 the EIS "Fuel Evaporative Test" prompt:

1 (A) 1996 and newer model-year vehicles that are equipped with a Series II On-Board
2 Diagnostic (OBD II) system with the capability to perform a self-diagnosis of the vehicle's fuel
3 evaporative system;

4 (B) Vehicles for which there are no fuel tank filler neck adapters;

5 (C) Vehicles powered exclusively by compressed natural gas (CNG), Liquid natural gas
6 (LNG), or liquid petroleum gas (LPG);

7 (D) Vehicles not originally equipped, and not required by state or federal law to be
8 equipped, with a fuel evaporation control system;

9 (E) Vehicles with two or more fully operational fuel tanks; and

10 (F) Vehicles, in their original factory configuration, with a fuel evaporative canister and
11 fuel vapor hoses that are not accessible or would require the partial dismantling of the vehicle in
12 order to gain access to them for testing. If the fuel evaporative system pressure test is infeasible
13 pursuant to this subparagraph, the technician shall note the location of the canister on the vehicle
14 inspection report provided to the consumer pursuant to Section 3340.41 of this article.

15 (2) Smog Check stations and Smog Check technicians shall perform the low-pressure test
16 of a vehicle's fuel evaporative systems, using a BAR-certified low-pressure fuel evaporative tester
17 (LPFET). The test shall be performed in accordance with the test procedures and specifications
18 contained in the LPFET instruction manual provided by the tester's manufacturer, and following ,
19 as applicable:

20 (A) If components related to the vehicle's fuel evaporative system are missing, modified, or
21 disconnected, enter 'F' at the EIS "Fuel Evaporative Test" prompt. If the vehicle's fuel
22 evaporation system components are not missing, modified, or disconnected, proceed with the test.

23 (B) If, at the conclusion of the test, the LPFET displays a "P" (pass), enter "P" in the EIS at
24 the "Fuel Evaporative Test" prompt.

25 (C) If, at the conclusion of the test the LPFET displays an "F" (fail), perform a seal check in
26 accordance with the procedures and specifications contained in the LPFET instruction manual
27 provided by the tester's manufacturer.

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1 1. If, after completion of the appropriate seal check, the system is found to be properly
2 sealed, enter "F" (fail) in the EIS at the "Fuel Evaporative Test" prompt.

3 2. If, after completion of the appropriate seal check, the system is found not to be properly
4 sealed follow the applicable procedures and specifications contained in the LPFET instruction
5 manual provided by the tester's manufacturer to correct the leaks and effect proper seals.

6 (D) After all leaks have been corrected, a verification test shall be performed in accordance
7 with the procedures and specifications contained in the LPFET instruction manual provided by
8 the tester's manufacturer.

9 1. If, at the conclusion of the verification test, the LPFET displays a "P" (pass), enter "P" in
10 the EIS at the "Fuel Evaporative Test" prompt.

11 2. If, at the conclusion of the verification test the LPFET displays an "F" (fail), enter "F" in
12 the EIS at the "Fuel Evaporative Test" prompt.

13 (E) At the completion of the test and any necessary verification test, following the
14 procedures and specifications contained in the LPFET instruction manual provided by the tester's
15 manufacturer, depressurize the evaporative system, remove the tester and return the fuel
16 evaporative system to its original configuration.

17 (3) Nothing in this subsection shall excuse a station or a technician from completing the
18 visual inspection of the vehicle as required by Section 3340.17 or the liquid fuel leak inspection
19 as required by subsection (b) of this section.

20 "(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are
21 as follows:

22 (1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides
23 of nitrogen emissions pursuant to the gross polluter emissions standards included in TABLES I, II
24 or III.

25 (2) Vehicles with emission levels exceeding the emission standards for gross polluters
26 during an initial inspection will be considered gross polluters and the provisions pertaining to
27 gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, 44017
28 and 44081 of the Health and Safety Code.

1 (3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until
2 the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle
3 as indicated in TABLES I, II, or III. However, the provisions described in section 44017 of the
4 Health and Safety Code may apply.

5 (4) This subsection applies in all program areas statewide to vehicles requiring inspection
6 pursuant to sections 44005 and 44011 of the Health and Safety Code.

7 (5) The gross polluter emission standards in TABLE III shall be used to determine if a
8 vehicle shall be designated as a gross polluter.

9 "(e)(1) In the enhanced program areas, heavy-duty vehicles shall be tested using the
10 loaded-mode testing method as provided in paragraph (1) of subsection (a) of this section, unless:

11 (A) The vehicle has a drive axle weight that exceeds 5,000 pounds when the vehicle is
12 unloaded, or

13 (B) The vehicle is classified by the Department of Motor Vehicles as a motorhome, or

14 (C) The vehicle has a body and/or chassis configuration or modification made for business
15 purposes that renders the vehicle incompatible with loaded-mode testing, or

16 (D) The emission inspection system prompts the technician to perform the two-speed idle
17 test.

18 (2) For the purposes of this subsection, the term "unloaded" shall mean that the vehicle is
19 not currently transporting loads for delivery or is not carrying items of a temporary nature, but
20 excludes items that have been welded, bolted or otherwise permanently affixed to the vehicle, and
21 tools, supplies, parts, hardware, equipment or devices of a similar nature that are routinely carried
22 in or on the vehicle in the performance of the work for; which the vehicle is primarily used.

23 (3) For the purposes of this subsection, modifications that render a vehicle incompatible
24 with loaded-mode testing shall not include any tire, wheel, body or chassis modifications made
25 for other than business purposes.

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1 (4) If it is determined that a heavy-duty vehicle cannot be subjected to a loaded-mode test
2 for any of the reasons set forth in subparagraphs (A) through (D) of paragraph (1) of this
3 subsection, the technician shall perform a two-speed idle test. The technician shall also note on
4 the final invoice the justification for the performance of a two-speed idle test."

5 19. California Code of Regulations, title 16, section 3353, states, in pertinent part:

6 No work for compensation shall be commenced and no charges shall accrue without
7 specific authorization from the customer in accordance with the following requirements:

8 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
9 estimated price for labor and parts for a specific job.

10

11 20. California Code of Regulations, title 16, section 3373, states:

12 No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice,
13 or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold
14 therefrom or insert therein any statement or information which will cause any such document to
15 be false or misleading, or where the tendency or effect thereby would be to mislead or deceive
16 customers, prospective customers, or the public.

17 **COST RECOVERY**

18 21. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
22 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
23 included in a stipulated settlement.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Signed Document)

26. Respondent has subjected his registration to discipline under Code section 9884.7(a)(3), in that on August 22, 2013, he failed to provide the operator with a copy of the work order for the smog inspection as soon as the operator signed it.

THIRD CAUSE FOR DISCIPLINE

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

27. Respondent has subjected his registration to discipline under Code section 9884.7(a)(6) and H & S Code section 44072.2(c), in that in testing the 1989 Ford on August 22, 2013, he failed to comply with the following sections of the Regulations:

a. **Section 3340.30(a):** Respondent issued an electronic certificate of compliance for the vehicle, even though it had not been inspected in accordance with H & S Code sections 44012 and 44035, and Regulations section 3340.42.

b. **Section 3340.35(c):** Respondent issued an electronic certificate of compliance for the vehicle, even though it had not been inspected in accordance with section 3340.42.

c. **Section 3340.42:** Respondent issued an electronic certificate of compliance for the vehicle, even though it had not been inspected in accordance with Bureau specifications.

d. **Section 3373:** Respondent issued an electronic certificate of compliance for the vehicle based on inaccurate information which caused that certificate to be false or misleading, with the tendency or effect to mislead or deceive customers, prospective customers, or the public.

FOURTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

28. Respondent has subjected his registration to discipline under H & S Code section 44072.2(a), in that in testing the 1989 Ford on August 22, 2013, he violated the following sections of that Code:

a. **Section 44012:** Respondent failed to follow emission control systems inspection/test procedures.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Number ARD 256093, issued to Respondent Martin G. Pulido, doing business as Moreno Valley Test Only;
2. Revoking or suspending License Number TC 256093, issued to Respondent Martin G. Pulido, doing business as Moreno Valley Test Only;
3. Ordering Respondent Martin G. Pulido to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/12/14

PAT DORAIS by Doug Balatti
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
DOUG BALATTI

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