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7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 79/14-58

12 **J & M SMOG TEST ONLY, INC.;**  
13 **JESUS RODRIGUEZ - President**  
14 **1533 West Jefferson Blvd.**  
**Los Angeles, CA 90018**

15 **ACCUSATION**  
16 **(SMOG CHECK)**

17 **Automotive Repair Dealer Registration No.**  
18 **ARD 259062**  
19 **Smog Check Test Only Station License No.**  
20 **TC 259062**

21 **J & M SMOG TEST ONLY, INC.;**  
22 **JESUS RODRIGUEZ - President**  
23 **181 East Vernon Avenue**  
24 **Los Angeles, CA 90011**

25 **Automotive Repair Dealer Registration No.**  
26 **ARD 259228**  
27 **Smog Check Test Only Station License No.**  
28 **TC 259228**

**J & M SMOG TEST-ONLY, INC.;**  
**JESUS RODRIGUEZ - President**  
**24622 Pine Street, Unit A**  
**Newhall, CA 91321**

**Automotive Repair Dealer Registration No.**  
**ARD 261709**  
**Smog Check Test Only Station License No.**  
**TC 261709**

1 **JESUS RODRIGUEZ**  
2 **26513 Hillsfall Court**  
3 **Newhall, CA 91321**

4 **Smog Check Inspector License No. EO 142805**  
5 **(formerly Advanced Emission Specialist**  
6 **Technician No. EA 142805)**

7 **JOSE LUIS ZAMORA**  
8 **137 West 47<sup>th</sup> Street**  
9 **Los Angeles, CA 90037**

10 **Advanced Emissions Specialist Technician**  
11 **License Number EA 630422 (to be**  
12 **redesignated upon renewal as EO 630422**  
13 **and/or EI 630422)**

14 **LORENA RODRIGUEZ**  
15 **1365 E. 55<sup>th</sup> Street**  
16 **Los Angeles, CA 90011**

17 **Advanced Emissions Specialist Technician**  
18 **License Number EA 630424 (to be**  
19 **redesignated upon renewal as EO 630424**  
20 **and/or EI 630424)**

21 **JAIME GARCIA**  
22 **4100 Vernon Avenue**  
23 **Riverside, CA 92509**

24 **Smog Check Inspector License No. EO 139853**  
25 **Smog Check Repair Technician License No.**  
26 **EI 139853 (formerly Advanced Emission**  
27 **Specialist Technician No. EA 139853)**

28 Respondents.

Complainant alleges:

**PARTIES**

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

**Automotive Repair Dealer Registration No. ARD 259062**

2. On or about August 11, 2009, the Bureau issued Automotive Repair Dealer Registration Number ARD 259062 ("Registration No. 259062") to J & M Smog Test Only Inc.; Jesus Rodriguez - President ("Respondent J&M Smog"), doing business as J & M Smog Test Only

1 Inc. Registration No. 259062 was in full force and effect at all times relevant to the charges  
2 brought herein and expired on July 31, 2013.

3 **Smog Check Test Only Station License No. TC 259062**

4 3. On or about August 20, 2009, the Bureau issued Smog Check Test Only Station  
5 License Number TC 259062 ("Station License No. 259062") to Respondent J&M Smog. Station  
6 License No. 259062 was in full force and effect at all times relevant to the charges brought herein  
7 and expired on July 31, 2013.

8 **Automotive Repair Dealer Registration No. ARD 259228**

9 4. On or about August 26, 2009, the Bureau issued Automotive Repair Dealer  
10 Registration Number ARD 259228 ("Registration No. 259228") to J & M Smog Test Only Inc.;  
11 Jesus Rodriguez - President ("Respondent J&M Test"), doing business as J & M Smog Test Only  
12 Inc. Registration No. 259228 was in full force and effect at all times relevant to the charges  
13 brought herein and expired on July 31, 2013.

14 **Smog Check Test Only Station License No. TC 259228**

15 5. On or about September 16, 2009, the Bureau issued Smog Check Test Only Station  
16 License Number TC 259228 ("Station License No. 259228") to Respondent J&M Test. Station  
17 License No. 259228 was in full force and effect at all times relevant to the charges brought herein  
18 and expired on July 31, 2013.

19 **Automotive Repair Dealer Registration No. ARD 261709**

20 6. On or about April 23, 2010, the Bureau issued Automotive Repair Dealer  
21 Registration Number ARD 261709 ("Registration 261709") to J & M Smog Test-Only Inc.; Jesus  
22 Rodriguez - President, doing business as J & M Smog Test-Only Inc. Registration 261709 was in  
23 full force and effect at all times relevant to the charges brought herein and will expire on February  
24 28, 2014, unless renewed.

25 **Smog Check Test Only Station License No. TC 261709**

26 7. On or about May 6, 2010, the Bureau issued Smog Check Test Only Station License  
27 Number TC 261709 ("Station License 261709") to J & M Smog Test-Only Inc.; Jesus Rodriguez -  
28 President, doing business as J & M Smog Test-Only Inc. Station License 261709 was in full force

1 and effect at all times relevant to the charges brought herein and will expire on February 28, 2014,  
2 unless renewed.

3 **Smog Check Inspector License No. EO 142805**

4 8. In 2002, the Bureau issued Advanced Emission Specialist Technician License No. EA  
5 142805 to Jesus Rodriguez ("Respondent Jesus Rodriguez"). Respondent Jesus Rodriguez'  
6 Technician License was due to expire on July 31, 2012. Pursuant to California Code of  
7 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to  
8 Respondent Jesus Rodriguez' election, as Smog Check Inspector License No. EO 142805  
9 ("Inspector License 142805"). Respondent Jesus Rodriguez' Inspector License 142805 is set to  
10 expire on July 31, 2014, unless renewed.

11 **Advanced Emission Specialist Technician License EA 630422**

12 9. On or about August 27, 2008, the Bureau issued Advanced Emission Specialist  
13 Technician License No. EA 630422 ("Technician License No. 630422") to Jose Luis Zamora  
14 ("Respondent Zamora"). Respondent Zamora's Technician License No. 630422 is due to expire  
15 on April 30, 2014. If renewed, the license will be redesignated as EO 630422 and/or EI 630422.<sup>1</sup>

16 **Advanced Emission Specialist Technician License EA 630424**

17 10. On or about August 27, 2008, the Bureau issued Advanced Emission Specialist  
18 Technician License No. EA 630424 ("Technician License No. 630424 ") to Lorena Rodriguez  
19 ("Respondent Lorena"). Respondent Lorena's Technician License No. 630424 expired on January  
20 31, 2013. Upon timely renewal of the license, the license will be redesignated as EO 630424  
21 and/or EI 630424.

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26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27 3340.39, 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 17. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that  
2 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
3 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
4 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

5 **STATUTORY PROVISIONS**

6 18. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or  
7 cancellation of a license shall not deprive the Board, Registrar, or Director of jurisdiction to  
8 proceed with a disciplinary action during the period within which the license may be renewed,  
9 restored, reissued or reinstated.

10 19. Section 477 states, in pertinent part:

- 11 (a) “Board” includes “bureau,” “commission,” “committee,” “department,”  
12 “division,” “examining committee,” “program,” and “agency.”  
13 (b) “License” includes certificate, registration or other means to engage in a  
14 business or profession regulated by the Code.

15 20. Section 9884.7 states, in pertinent part:

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

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

25 . . . .

26 (4) Any other conduct that constitutes fraud.

27 . . . .

28 (6) Failure in any material respect to comply with the provisions of this chapter  
[the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations  
adopted pursuant to it.

. . . .

(b) Except as provided for in subdivision (c), if an automotive repair dealer  
operates more than one place of business in this state, the director pursuant to  
subdivision (a) shall only suspend, revoke, or place on probation the registration of the  
specific place of business which has violated any of the provisions of this chapter. This

1 violation, or action by the director, shall not affect in any manner the right of the  
2 automotive repair dealer to operate his or her other places of business.

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

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9  
10 21. Section 9884.8 states:

11 All work done by an automotive repair dealer, including all warranty work, shall be recorded  
12 on an invoice and shall describe all service work done and parts supplied... One copy of the  
13 invoice shall be given to the customer and one copy shall be retained by the automotive  
14 repair dealer.

15  
16  
17 22. Section 9884.9 states, in pertinent part:

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

### REGULATORY PROVISIONS

20 23. Health and Safety Code Section 44002 provides, in pertinent part, that the Director  
21 has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor  
22 Vehicle Inspection Program.

23 24. Health and Safety Code Section 44012 states:

24 The test at the smog check stations shall be performed in accordance with procedures  
25 prescribed by the department and may require loaded mode dynamometer testing in  
26 enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic  
27 system, or other appropriate test procedures as determined by the department in  
28 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

1 alternative test procedures that include loaded mode dynamometer or two-speed idle  
2 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:

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

5 . . . .

6 (f) A visual or functional check is made of emission control devices specified by  
7 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  
8 visual or functional check shall be performed in accordance with procedures prescribed  
by the department.

9  
10 25. Health and Safety Code Section 44015 states, in pertinent part:

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

13 26. Health and Safety Code Section 44032 states:

14 No person shall perform, for compensation, tests or repairs of emission control devices  
15 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  
16 a licensed smog check station. Qualified technicians shall perform tests of emission  
control devices and systems in accordance with Section 44012.

17 27. Health and Safety Code section 44072.2 states:

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

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

22 . . . .

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

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

25 . . . .

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

28 28. Health and Safety Code section 44072.8 states:

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

3 29. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides that  
4 “[t]he bureau may suspend or revoke the license of or pursue other legal action against a licensee,  
5 if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of  
6 noncompliance.”

7 30. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides, in  
8 pertinent part, that a licensed technician shall inspect, test and repair vehicles in accordance with  
9 section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and  
10 section 3340.42 of the California Code of Regulations.

11 31. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides, in  
12 pertinent part, that a licensed station shall issue a certificate of compliance or noncompliance to the  
13 owner or operator of any vehicle that has been inspected in accordance with the procedures  
14 specified in section 3340.42 of the California Code of Regulations and have all the required  
15 emission control equipment and devices installed and functioning correctly.

16 32. California Code of Regulations, title 16, section 3340.41, subdivision (c), states that  
17 no person shall enter into the emissions inspection system any vehicle identification information or  
18 emission control system identification data for any vehicle other than the one being tested. Nor  
19 shall any person knowingly enter into the emissions inspection system any false information about  
20 the vehicle being tested.

21 33. California Code of Regulations, title 16, section 3340.42 provides, in pertinent part:

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

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

26 . . . .

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

28 . . . .

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

3 **COST RECOVERY**

4 34. Section 125.3 provides, in pertinent part, that a Board may request the administrative  
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
7 case.

8 **UNDERCOVER OPERATION – February 24, 2012**

9 35. On or about February 24, 2012, a Bureau undercover operator called a phone number  
10 posted on a Craig's list advertisement. The advertisers claimed that they would make cars pass  
11 their smog tests even if the cars had failed previous smog tests. Upon calling the listed number,  
12 the undercover operator spoke with an unlicensed individual who suggested a meeting location.  
13 The undercover operator, driving a Bureau documented 1997 Acura, met with a person who  
14 identified himself as Kevin, but was later identified as Alan Gamaliel Soto. The operator was then  
15 directed to take his vehicle to Respondent J&M Smog.

16 36. The 1997 Acura had been previously documented as being equipped with a modified  
17 positive crankcase ventilation system, a missing catalytic converter and rear heated oxygen sensor,  
18 a malfunction indicator lamp that did not operate and the ignition timing had been adjusted beyond  
19 manufacturer specifications. The vehicle also failed the tailpipe emissions portion of the smog test  
20 as a gross polluter. After speaking alone with two men at the test only facility Kevin told the  
21 operator they could pass the vehicle, but it would cost him \$170.00.

22 37. The operator agreed to pay this price and the smog test was then performed on the  
23 1997 Acura using the tailpipe emissions from a Chevrolet Van. The test was performed using the  
24 smog check technician license of Respondent Zamora. The undercover operator also identified  
25 Respondent Zamora as the technician who tested the vehicle. After the test was completed, Kevin  
26 informed the operator that his vehicle had passed. The operator then paid Kevin \$170.00 in cash  
27 and received a copy of the vehicle inspection report (VIR). The operator was never asked to sign  
28 an estimate, work order or invoice nor was he given any other documentation.



1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Automotive Repair Act)**

3 41. Respondent J&M Smog's Registration No. 259062 is subject to discipline pursuant to  
4 section 9884.7, subdivision (a)(6), in that on or about February 24, 2012, Respondent J&M Smog  
5 failed to comply with the following section of that code:

6 a. **Section 9884.8:** Respondent J&M Smog failed to provide the operator with a copy of  
7 an invoice for the smog inspection and certification of the 1997 Acura.

8 b. **Section 9884.9, subdivision (a):** Respondent J&M Smog failed to provide the  
9 operator with a written estimated price for the smog inspection and certification of the 1997  
10 Acura.

11 **FOURTH CAUSE FOR DISCIPLINE**

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

13 42. Respondent J&M Smog's Station License No. 259062 is subject to discipline pursuant  
14 to Health & Safety Code section 44072.2, subdivision (a), in that on or about February 24, 2012,  
15 regarding the 1997 Acura, Respondent J&M Smog failed to comply with the following sections of  
16 to Health & Safety Code:

17 a. **Section 44012, subdivision (f):** Respondent J&M Smog failed to perform emission  
18 control inspections on the vehicle in accordance with procedures prescribed by the department.

19 b. **Section 44015, subdivision (b):** Respondent J&M Smog issued electronic Certificate  
20 of Compliance No. [REDACTED] for the vehicle without properly inspecting the vehicle to  
21 determine if it was in compliance with Health & Safety Code section 44012.

22 **FIFTH CAUSE FOR DISCIPLINE**

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

24 43. Respondent J&M Smog's Station License No. 259062 is subject to discipline pursuant  
25 to Health & Safety Code section 44072.2, subdivision (c), in that on or about February 24, 2012,  
26 regarding the 1997 Acura Respondent J&M Smog failed to comply with provisions of California  
27 Code of Regulations, title 16, as follows:

28 a. **Section 3340.35, subdivision (c):** Respondent J&M Smog issued electronic

1 Certificate of Compliance No. [REDACTED] for the vehicle even though the vehicle had not been  
2 inspected in accordance with section 3340.42.

3 b. **Section 3340.42:** Respondent J&M Smog failed to perform an emission control  
4 inspection on the vehicle in accordance with procedures prescribed by the department.

5 **SIXTH CAUSE FOR DISCIPLINE**

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

7 44. Respondent J&M Smog's Station License No. 259062 is subject to discipline  
8 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about February  
9 24, 2012, regarding the 1997 Acura, Respondent J&M Smog committed dishonest, fraudulent or  
10 deceitful acts whereby another is injured by issuing electronic Certificate of Compliance No.  
11 [REDACTED] for the vehicle without performing a bona fide inspection of the emission control  
12 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
13 protection afforded by the Motor Vehicle Inspection Program.

14 **SEVENTH CAUSE FOR DISCIPLINE**

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

16 45. Respondent Zamora's Technician License No. 630422 is subject to discipline  
17 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on or about February  
18 24, 2012, regarding the 1997 Acura, Respondent Zamora violated the following sections of the  
19 Health and Safety Code:

20 a. **Section 44012, subdivision (f):** Respondent Zamora failed to perform emission  
21 control inspections on the vehicle in accordance with procedures prescribed by the department.

22 b. **Section 44032:** Respondent Zamora failed to perform an inspection of the emission  
23 control devices and systems on the vehicle in accordance with section 44012 of that Code.

24 **EIGHTH CAUSE FOR DISCIPLINE**

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

26 46. Respondent Zamora's Technician License No. 630422 is subject to discipline  
27 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about February  
28 24, 2012, regarding the 1997 Acura, Respondent Zamora violated the following sections of the

1 California Code of Regulations, title 16:

2 a. **Section 3340.30, subdivision (a):** Respondent Zamora failed to perform the  
3 emission control inspection in accordance with Health and Safety Code section 44012.

4 b. **Section 3340.42:** Respondent Zamora failed to conduct the required smog tests on  
5 the vehicle in accordance with the Bureau's specifications.

6 **NINTH CAUSE FOR DISCIPLINE**

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

8 47. Respondent Zamora's Technician License No. 630422 is subject to discipline  
9 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about February  
10 24, 2012, Respondent Zamora committed acts involving dishonesty, fraud or deceit whereby  
11 another was injured by issuing electronic Certificate of Compliance No. [REDACTED] for the 1997  
12 Acura without performing a bona fide inspection of the emission control devices and systems on  
13 the vehicle, thereby depriving the People of the State of California of the protection afforded by  
14 the Motor Vehicle Inspection Program.

15 **UNDERCOVER OPERATION June 27, 2012**

16 48. On or about June 27, 2012, a Bureau undercover operator called a phone number  
17 posted on a Craig's list advertisement. The advertisers stated that they would make cars pass their  
18 smog tests even if the cars had failed previous smog tests. The undercover operator spoke with an  
19 unlicensed individual who suggested a meeting location. The undercover operator, driving a 1995  
20 Acura, met with a person who identified himself as Tony but, again, was later identified as Alan  
21 Gamaliel Soto. The operator was then directed to take his vehicle to Respondent J&M Smog.

22 49. The 1995 Acura was documented with a modified positive crankcase ventilation  
23 system and a missing catalytic converter. The vehicle also would fail the smog inspection for  
24 excessively high tailpipe emission readings. The undercover operator was told to wait on the  
25 sidewalk as Tony drove the Acura into the service bay at J & M Smog Test Only Inc. After  
26 several people had looked under the hood of the Acura, Tony approached the operator and told  
27 him that, because the vehicle was modified, the smog inspection and certification would cost  
28 \$200.00



1 committed acts constituting fraud by issuing electronic Certificate of Compliance No [REDACTED]  
2 for the 1995 Acura without performing a bona fide inspection of the emission control devices and  
3 systems on the vehicle, thereby depriving the People of the State of California of the protection  
4 afforded by the Motor Vehicle Inspection Program.

5 **TWELFTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Code)**

7 54. Respondent J&M Smog's Registration No. 259062 is subject to discipline pursuant to  
8 section 9884.7, subdivision (a)(6), in that on or about June 27, 2012, Respondent J&M Smog  
9 failed to comply with the following section of that code:

10 a. **Section 9884.8:** Respondent J&M Smog failed to provide the undercover  
11 operator with a copy of an invoice for the smog inspection and certification of the 1995 Acura.

12 b. **Section 9884.9, subdivision (a):** Respondent J&M Smog failed to provide the  
13 undercover operator with a written estimated price for labor and parts necessary for a specific job.

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

16 55. Respondent J&M Smog's Station License No. 259062 is subject to discipline pursuant  
17 to Health & Safety Code section 44072.2, subdivision (a), in that on or about June 27, 2012,  
18 regarding the 1995 Acura, Respondent J&M Smog failed to comply with the following sections of  
19 the Health & Safety Code:

20 a. **Section 44012, subdivision (f):** Respondent J&M Smog failed to perform  
21 emission control inspections on the vehicle in accordance with procedures prescribed by the  
22 department.

23 b. **Section 44015, subdivision (b):** Respondent J&M Smog issued electronic  
24 Certificate of Compliance No [REDACTED] for the vehicle without properly inspecting the vehicle  
25 to determine if it was in compliance with Health & Safety Code section 44012.

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1 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

3 56. Respondent J&M Smog's Station License No. 259062 is subject to discipline pursuant  
4 to Health & Safety Code section 44072.2, subdivision (c), in that on or about June 27, 2012,  
5 regarding the 1995 Acura Respondent J&M Smog failed to comply with provisions of California  
6 Code of Regulations, title 16, as follows:

7 a. **Section 3340.35, subdivision (c):** Respondent J&M Smog issued electronic  
8 Certificate of Compliance No. [REDACTED] for the vehicle even though the vehicle had not been  
9 inspected in accordance with section 3340.42.

10 b. **Section 3340.42:** Respondent J&M Smog failed to perform an emission control  
11 inspection on the vehicle in accordance with procedures prescribed by the department.

12 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

14 57. Respondent J&M Smog's Station License No. 259062 is subject to discipline pursuant  
15 to Health & Safety Code section 44072.2, subdivision (d), in that on or about June 27, 2012,  
16 regarding the 1995 Acura, Respondent J&M Smog committed dishonest, fraudulent or deceitful  
17 acts whereby another is injured by issuing electronic Certificate of Compliance No. [REDACTED] for  
18 the vehicle without performing a bona fide inspection of the emission control devices and systems  
19 on the vehicle, thereby depriving the People of the State of California of the protection afforded by  
20 the Motor Vehicle Inspection Program.

21 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

23 58. Respondent Zamora's Technician License No. 630422 is subject to discipline pursuant  
24 to Health and Safety Code section 44072.2, subdivision (a), in that on or about June 27, 2012,  
25 regarding the 1995 Acura, Respondent Zamora violated the following sections of the Health and  
26 Safety Code:

27 a. **Section 44012, subdivision (f):** Respondent Zamora failed to perform emission  
28 control inspections on the vehicle in accordance with procedures prescribed by the department.



1 period of March 2012 through October 2012. The representative found that six vehicles reported  
 2 diagnostic trouble codes (hereinafter “code” or “codes”) during the OBD II tests<sup>4</sup> that were not  
 3 applicable to the vehicles tested. Of the six vehicles, five also reported the same code irrespective  
 4 of the make or model of the vehicle. The sixth vehicle reported a different code, but that code was  
 5 also not applicable to the vehicle tested. The VID data further indicated that Respondent Garcia  
 6 performed the inspection on one of the vehicles and Respondent Lorena performed the inspections  
 7 on the other five vehicles.

8 63. The Bureau concluded that Respondent Garcia and Respondent Lorena performed the  
 9 smog inspections on the six vehicles using a different vehicle during the OBD II tests, a method  
 10 known as “clean plugging,”<sup>5</sup> resulting in the issuance of fraudulent certificates of compliance for  
 11 the vehicles.

<b>Date &amp; Time of Inspection</b>	<b>Vehicle Certified &amp; License No.</b>	<b>Respondent</b>	<b>Certificate No.</b>
1. 3/21/2012 09:54 - 10:13	1999 Volkswagon Jetta; License No. 6NUE389	Garcia	XF263644C
2. 10/10/2012 18:00 - 18:08	1997 Toyota Camry; License No. 3TTB420	Lorena	XL977366C
3. 10/10/2012 18:22 - 18:31	2001 Toyota Corolla; License No. 4NKC689	Lorena	XL977367C
4. 10/17/2012 16:09 - 16:19	1999 Nissan Altima; License No. 4HEG793	Lorena	XL977387C
5. 10/17/2012 16:56 - 17:14	2002 Mitsubishi Galant; License No. 4UEN815	Lorena	XL977388C
6. 10/27/2012 12:42 - 12:53	2002 Mitsubishi Lancer; License No. 3QSB526	Lorena	XN378716C

22 <sup>4</sup> The On Board Diagnostics (“OBD II”) functional test is an automated function of the  
 23 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an  
 24 interface cable from the BAR 97 analyzer to a Diagnostic Link Connector (“DLC”) which is  
 25 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves the  
 information from the vehicle’s on-board computer about the status of the readiness indicators,  
 trouble codes and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional  
 test, it will fail the overall inspection.

26 <sup>5</sup> Clean plugging is the use of the OBD II readiness monitor status and stored fault code  
 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to  
 27 another vehicle that is not in compliance due to a failure to complete the minimum number of self  
 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission  
 28 control system or component failure.

1 **NINETEENTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 64. Respondent J&M Test's Registration No. 259228 is subject to disciplinary action  
4 pursuant to section 9884.7, subdivision (a)(1), in that Respondent J&M Test made or authorized  
5 statements which it knew or in the exercise of reasonable care should have known to be untrue or  
6 misleading, as follows: Respondent J&M Test's technicians, Respondent Garcia and Respondent  
7 Lorena, certified that vehicles 1 through 6, identified in paragraph 63 above, had passed inspection  
8 and were in compliance with applicable laws and regulations. In fact, Respondent Garcia and  
9 Respondent Lorena conducted the inspections on the vehicles using clean-plugging methods in that  
10 they substituted or used a different vehicle(s) during the OBD II functional tests in order to issue  
11 smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required  
12 by Health & Safety Code section 44012.

13 **TWENTIETH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 65. Respondent J&M Test's Registration No. 259228 is subject to disciplinary action  
16 pursuant to section 9884.7, subdivision (a)(4), in that Respondent J&M Test committed acts that  
17 constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 6,  
18 identified in paragraph 63 above, without performing bona fide inspections of the emission control  
19 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
20 protection afforded by the Motor Vehicle Inspection Program.

21 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

23 66. Respondent J&M Test's Station License No. 259228 is subject to disciplinary  
24 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent  
25 J&M Test failed to comply with the following sections of that code:

26 a. **Section 44012:** Respondent J&M Test failed to ensure that the emission control tests  
27 were performed on vehicles 1 through 6, identified in paragraph 63 above, in accordance with  
28 procedures prescribed by the department.



1 smog certificates of compliance for vehicles 1 through 6, identified in paragraph 63 above, without  
2 performing bona fide inspections of the emission control devices and systems on the vehicles,  
3 thereby depriving the People of the State of California of the protection afforded by the Motor  
4 Vehicle Inspection Program.

5 **OTHER MATTERS**

6 69. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the  
7 Director may suspend, revoke, or place on probation the registration for all places of business  
8 operated in this state by Jesus Rodriguez, owner and President of Respondent J&M Smog upon a  
9 finding that Jesus Rodriguez, owner and President of Respondent J&M Smog has, or is, engaged  
10 in a course of repeated and willful violations of the laws and regulations pertaining to an  
11 automotive repair dealer.

12 70. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the  
13 Director may suspend, revoke, or place on probation the registration for all places of business  
14 operated in this state by Jesus Rodriguez, owner and President of Respondent J&M Test upon a  
15 finding that Jesus Rodriguez, owner and President of Respondent J&M Test has, or is, engaged in  
16 a course of repeated and willful violations of the laws and regulations pertaining to an automotive  
17 repair dealer.

18 71. Pursuant to Health and Safety Code section 44072.8, if Station License No. 259062,  
19 issued to Respondent J&M Smog is revoked or suspended, any additional license issued under this  
20 chapter in the name of said licensee may be likewise revoked or suspended by the director.

21 72. Pursuant to Health and Safety Code section 44072.8, if Station License No. 259228,  
22 issued to Respondent J&M Test is revoked or suspended, any additional license issued under this  
23 chapter in the name of said licensee may be likewise revoked or suspended by the director.

24 73. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist  
25 Technician License Number EA 630422, issued to Jose Luis Zamora, is revoked or suspended, any  
26 additional license issued under this chapter in the name of said licensee may be likewise revoked or  
27 suspended by the director.

28



1 9. Revoking or suspending any additional license issued under Chapter 5 of the Health  
2 and Safety Code in the name of Jesus Rodriguez;

3 10. Revoking or suspending Advanced Emission Specialist Technician License Number  
4 EA 630422, and as redesignated upon his timely renewal as EO 630422 and/or EI 630422, issued  
5 to Jose Luis Zamora;

6 11. Revoking or suspending any additional license issued under Chapter 5 of the Health  
7 and Safety Code in the name of Jose Luis Zamora;

8 12. Revoking or suspending Advanced Emission Specialist Technician License Number  
9 EA 630424, and as redesignated upon her timely renewal as EO 630424 and/or EI 630424, issued  
10 to Lorena Rodriguez;

11 13. Revoking or suspending any additional license issued under Chapter 5 of the Health  
12 and Safety Code in the name of Lorena Rodriguez;

13 14. Revoking or suspending Jaime Garcia's Smog Check Inspector License No. EO  
14 139853 and Smog Check Repair Technician License Number EI 139853;

15 15. Revoking or suspending any additional license issued under chapter 5 of the Health  
16 and Safety Code in the name of Jaime Garcia;

17 16. Ordering Jesus Rodriguez, Jose Luis Zamora, Lorena Rodriguez, and Jaime Garcia to  
18 pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of  
19 this case, pursuant to Business and Professions Code section 125.3; and,

20 17. Taking such other and further action as deemed necessary and proper.  
21  
22

23 DATED: *November 18, 2013*

*Patrick Dorais*

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

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