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7

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

10
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

ACCUSATION
(SMOG CHECK)

15 **Automotive Repair Dealer Registration No.**
ARD 259062
16 **Smog Check Test Only Station License No.**
TC 259062

17 **J & M SMOG TEST ONLY, INC.;**
18 **JESUS RODRIGUEZ - President**
19 **181 East Vernon Avenue**
Los Angeles, CA 90011

20 **Automotive Repair Dealer Registration No.**
ARD 259228
21 **Smog Check Test Only Station License No.**
TC 259228

22 **J & M SMOG TEST-ONLY, INC.;**
23 **JESUS RODRIGUEZ - President**
24 **24622 Pine Street, Unit A**
Newhall, CA 91321

25 **Automotive Repair Dealer Registration No.**
ARD 261709
26 **Smog Check Test Only Station License No.**
TC 261709
27
28

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

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

5 **JOSE LUIS ZAMORA**
137 West 47th Street
Los Angeles, CA 90037

6 **Advanced Emissions Specialist Technician**
7 License Number EA 630422 (to be
8 redesignated upon renewal as EO 630422
and/or EI 630422)

9 **LORENA RODRIGUEZ**
1365 E. 55th Street
Los Angeles, CA 90011

10 **Advanced Emissions Specialist Technician**
11 License Number EA 630424 (to be
12 redesignated upon renewal as EO 630424
and/or EI 630424)

13 **JAIME GARCIA**
14 4100 Vernon Avenue
Riverside, CA 92509

15 **Smog Check Inspector License No. EO 139853**
16 **Smog Check Repair Technician License No.**
17 **EI 139853 (formerly Advanced Emission**
Specialist Technician No. EA 139853)

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19 Respondents.

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21 Complainant alleges:

22 **PARTIES**

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

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

26 2. On or about August 11, 2009, the Bureau issued Automotive Repair Dealer
27 Registration Number ARD 259062 ("Registration No. 259062") to J & M Smog Test Only Inc.;
28 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 630422.¹

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 ¹ 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.

8
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 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 tests⁴ 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,”⁵ resulting in the issuance of fraudulent certificates of compliance for
 11 the vehicles.

Date & Time of Inspection	Vehicle Certified & License No.	Respondent	Certificate No.
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 ⁴ 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 ⁵ 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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