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

In the Matter of the Accusation Against:

Case No. 79/12-82

**J A SMOG CHECK ONLY STATION
4481 Mission Blvd
Montclair, CA 91763
Mailing Address:
4888 Howard Street
Montclair, CA 91763
JOSE ARTEAGA, JR., OWNER
Automotive Repair Dealer Registration No.
ARD 263725
Smog Check Test Only Station License No.
TC 263725,**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

and

**JOSE ARTEAGA, JR.
4888 Howard Street
Montclair, CA 91763
Advanced Emission Specialist Technician
License No. EA 632164**

Respondents.

FINDINGS OF FACT

1. On or about February 21, 2012, Complainant John Wallauch, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/12-82 against Jose Arteaga, Jr., as owner of J A Smog Check Only Station ("Respondent") and Jose Arteaga, Jr., individually, before the Director of Consumer Affairs. (Accusation No. 79/12-82 attached as Exhibit A.)

1 2. On or about January 10, 2011, the Bureau of Automotive Repair ("Bureau") issued
2 Automotive Repair Dealer Registration Number. ARD 263725 ("registration") to Respondent
3 Jose Arteaga, Jr., doing business as J A Smog Check Only Station. The Automotive Repair
4 Dealer Registration expired on January 31, 2012 and has not been renewed.

5 3. On or about January 11, 2011, the Bureau issued Smog Check Test Only Station
6 License Number. TC 263725 ("station license") to Respondent Jose Arteaga, Jr., doing business
7 as J A Smog Check Only Station. The station license expired on January 31, 2012 and has not
8 been renewed.

9 4. On or about June 10, 2010, the Bureau issued Advanced Emission Specialist
10 Technician License Number EA 632164 ("technician license") to Respondent Jose Arteaga, Jr.
11 The technician license expired on October 31, 2012 and has not been renewed.

12 5. On or about March 22, 2012, Respondent was served by Certified and First Class
13 Mail copies of Accusation No. 79/12-82, Statement to Respondent, Notice of Defense, Request
14 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
15 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
16 section 136, is required to be reported and maintained with the Bureau, which was and is:

17 4481 Mission Blvd.
18 Montclair, CA 91763.

19 6. In addition, on or about March 22, 2012, Respondent was served by Certified and
20 First Class Mail copies of Accusation No. 79/12-82, Statement to Respondent, Notice of Defense,
21 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
22 and 11507.7) at Respondent's mailing address, which was and is:

23 4888 Howard Street
24 Montclair, CA 91763.

25 7. Service of the Accusation was effective as a matter of law under the provisions of
26 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
27 124.

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1 a. Violation of Business and Professions Code section 9884.7, subdivision (a)(1) -
2 Untrue and Misleading Statements – related to three (3) separate electronic certificates
3 fraudulently issued on June 6, 2011, July 7, 2011, and July 19, 2011.

4 b. Violation of Business and Professions Code section 9884.7, subdivision (a)(4) -
5 Fraud – related to three (3) separate electronic certificates fraudulently issued on June 6, 2011,
6 July 7, 2011, and July 9, 2011.

7 4. The Director of Consumer Affairs is authorized to revoke Respondent's Smog Check
8 Test Only Station License based upon the following violations alleged in the Accusation which
9 are supported by the evidence contained in the affidavit of Bureau Representative Steve P. Koch
10 in this case.:

11 a. Violation of Health and Safety Code section 44012, subdivision (a), -
12 Respondent failed to determine that all emission control devices and systems required by law
13 were installed and functioning correctly in accordance with test procedures, during three (3)
14 separate smog inspections on June 6, 2011, July 7, 2011, and July 19, 2011.

15 b. Violation of Health and Safety Code section 44012, subdivision (f), -
16 Respondent failed to perform emission control tests on those vehicles in accordance with
17 procedures prescribed by the department, during three (3) separate smog inspections on June 6,
18 2011, July 7, 2011, and July 19, 2011.

19 c. Violation of Health and Safety Code section 44015, subdivision (b), -
20 Respondent issued electronic certificates of compliance without properly testing and inspecting
21 the vehicles to determine if they were in compliance with Health and Safety Code section 44012,
22 during three (3) separate smog inspections on June 6, 2011, July 7, 2011, and July 19, 2011.

23 d. Violation of Health and Safety Code section 44072.2, subdivision (d) -
24 Respondent committed acts involving dishonesty, fraud, or deceit by issuing 3 (three) separate
25 electronic certificates of compliance without performing bona fide inspections of the emission
26 control devices and systems, and thereby depriving the People of the State of California of the
27 protection afforded by the Motor Vehicle Inspection Program, during three (3) separate smog
28 inspections on June 6, 2011, July 7, 2011, and July 19, 2011.

1 e. Violation of California Code of Regulations, title 16, section 3340.35,
2 subdivision (c) – Respondent issued electronic certificates of compliance, during three (3)
3 separate smog inspections on June 6, 2011, July 7, 2011, and July 19, 2011, even though those
4 vehicles had not been inspected in accordance with California Code of Regulations, title 16,
5 section 3340.42.

6 f. Violation of California Code of Regulations, title 16, section 3340.42 –
7 Respondent failed to conduct the required smog tests and inspections during three (3) separate
8 smog inspections on June 6, 2011, July 7, 2011, and July 19, 2011, in accordance with the
9 Bureau’s specifications.

10 5. The Director of Consumer Affairs is authorized to revoke Respondent's Advanced
11 Emission Specialist Technician License based upon the following violations alleged in the
12 Accusation which are supported by the evidence contained in the affidavit of Bureau
13 Representative Steve P. Koch in this case.:

14 a. Violation of Health and Safety Code section 44012, subdivision (a), -
15 Respondent failed to determine that all emission control devices and systems required by law
16 were installed and functioning correctly in accordance with test procedures, during three (3)
17 separate smog inspections on June 6, 2011, July 7, 2011, and July 19, 2011.

18 b. Violation of Health and Safety Code section 44012, subdivision (f), -
19 Respondent failed to perform emission control tests on those vehicles in accordance with
20 procedures prescribed by the department, during three (3) separate smog inspections on June 6,
21 2011, July 7, 2011, and July 19, 2011.

22 c. Violation of Health and Safety Code section 44032 - Respondent failed to
23 perform tests of the emission control devices and systems on vehicles in accordance with Health
24 and Safety Code section 44012 during three (3) separate smog inspections on June 6, 2011, July
25 7, 2011, and July 19, 2011.

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1 d. Violation of Health and Safety Code section 44072.2, subdivision (d) –
2 Respondent committed acts involving dishonesty, fraud, or deceit by issuing 3 (three) separate
3 electronic certificates of compliance without performing bona fide inspections of the emission
4 control devices and systems, and thereby depriving the People of the State of California of the
5 protection afforded by the Motor Vehicle Inspection Program, during three (3) separate smog
6 inspections on June 6, 2011, July 7, 2011, and July 19, 2011.

7 e. Violation of California Code of Regulations, title 16, section 3340.30,
8 subdivision (a) – Respondent failed to inspect and test vehicles in accordance with Health and
9 Safety Code section 44012 during three (3) separate smog inspections on June 6, 2011, July 7,
10 2011, and July 19, 2011.

11 f. Violation of California Code of Regulations, title 16, section 3340.42 –
12 Respondent failed to conduct the required smog tests and inspections during three (3) separate
13 smog inspections on June 6, 2011, July 7, 2011, and July 19, 2011, in accordance with the
14 Bureau's specifications.

15 **ORDER**

16 IT IS SO ORDERED that Automotive Repair Dealer Registration Number ARD 263725,
17 heretofore issued to Respondent Jose Arteaga, Jr., doing business as J A Smog Check Only
18 Station, is revoked.

19 IT IS FURTHER ORDERED that Smog Check Test Only Station License Number
20 TC 263725, heretofore issued to Respondent Jose Arteaga, Jr., doing business as J A Smog Check
21 Only Station, is revoked.

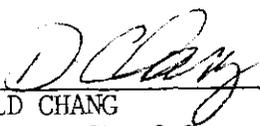
22 IT IS FURTHER ORDERED that Advanced Emission Specialist Technician License
23 Number EA 632164, heretofore issued to Respondent Jose Arteaga, Jr., is revoked.

24 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
25 written motion requesting that the Decision be vacated and stating the grounds relied on within
26 seven (7) days after service of the Decision on Respondent. The motion should be sent to the
27 Bureau of Automotive Repair, ATTN: Bill Thomas, Program Manager I, 10949 N. Mather Blvd.,
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1 Rancho Cordova, California 95670. The agency in its discretion may vacate the Decision and
2 grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on 5/30/13.

4 It is so ORDERED May 7, 2013

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6 
7 DONALD CHANG
8 Assistant Chief Counsel
9 Department of Consumer Affairs
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21 Attachment:
22 Exhibit A: Accusation
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28 51284221.DOCX
DOJ Matter ID: LA2011504772

1 KAMALA D. HARRIS
Attorney General of California
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Attorneys for Complainant

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:
12 **J A SMOG CHECK ONLY STATION**
4481 Mission Blvd
13 Montclair, CA 91763
Mailing Address:
14 4888 Howard Street
Montclair, CA 91763
15 **JOSE ARTEAGA, JR., OWNER**
Automotive Repair Dealer Registration No.
16 **ARD 263725**
Smog Check Test Only Station License No.
17 **TC 263725,**
18 **and**
19 **JOSE ARTEAGA, JR.**
4888 Howard Street
20 Montclair, CA 91763
Advanced Emission Specialist Technician License
21 No. EA 632164
22 Respondents.

Case No. 79/12-82

ACCUSATION
SMOG CHECK

23
24 Complainant alleges:

25 **PARTIES**

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

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

6 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
7 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
8 proceeding against an automotive repair dealer or to render a decision invalidating a registration
9 temporarily or permanently.

10 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
11 "commission," "committee," "department," "division," "examining committee," "program," and
12 "agency." "License" includes certificate, registration or other means to engage in a business or
13 profession regulated by the Code.

14 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
15 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
16 the Motor Vehicle Inspection Program.

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

28 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
expiration or suspension of a license by operation of law, or by order or decision of the Director
of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
the Director of jurisdiction to proceed with disciplinary action.

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1 11. Section 44072.8 of the Health and Safety Code states:

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

4 **COST RECOVERY**

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

9 **UNDERCOVER OPERATION – JUNE 6, 2011**

10 13. On or about June 6, 2011, a Bureau undercover operator drove a Bureau-documented
11 2002 Honda Accord to Respondent's facility and requested a smog inspection. The vehicle could
12 not pass the smog inspection due to an OBDII communications failure. The operator spoke with
13 Respondent and informed him that he wanted a smog inspection. Respondent began the
14 inspection; however, he informed the operator that the vehicle would not pass the inspection due
15 to a communications problem with the OBDII test. The operator asked Respondent what to do
16 and Respondent told the operator he could use another Honda for the OBDII¹ functional portion
17 of the test but, that it would cost an additional \$20. Respondent substituted a gold Honda for the
18 OBDII functional portion of the test, which constitutes clean plugging. The operator watched as
19 Respondent connected a cable in the driver's side of a gold Honda. Respondent issued Certificate
20 of Compliance No. [REDACTED] for the 2002 Honda Accord. Several minutes later, Respondent
21 presented the operator with paperwork and requested \$70. The operator paid Respondent \$70 and

22 ¹ The On Board Diagnostics (OBDII) functional test is an automated function of the BAR-97
23 analyzer. During the OBDII functional test, the technician is required to connect an interface cable from
24 the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through
25 the DLC, the BAR-97 analyzer automatically retrieves 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 OBDII functional test, it will fail the overall inspection.

26 Clean plugging is the use of the OBDII readiness monitor status and stored fault code (trouble
27 code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle
28 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 control system or
component failure.

1 was provided with an invoice dated June 6, 2011, that only showed \$50. Respondent also
2 provided the operator with a Vehicle Inspection Report ("VIR"). Respondent told the operator
3 that he did not want to put \$70 on the invoice because the transaction was illegal. Respondent
4 told the operator he was trying to drum up business and asked the operator to tell his buddies
5 about him.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Misleading Statements)**

8 14. Respondent has subjected his registration to discipline under Code section 9884.7,
9 subdivision (a)(1), in that on or about June 6, 2011, he made statements which he knew or which
10 by exercise of reasonable care he should have known were untrue or misleading when he issued
11 electronic Certificate of Compliance No. [REDACTED] for the 2002 Honda Accord, certifying that
12 the vehicle was in compliance with applicable laws and regulations. In fact, Respondent
13 conducted the inspection on that vehicle using clean plugging methods by substituting or using a
14 different vehicle during the OBDII functional test in order to issue smog certificate of compliance
15 for that vehicle, and did not test or inspect the vehicle as required by Health and Safety Code
16 section 44012.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Fraud)**

19 15. Respondent has subjected his registration to discipline under Code section 9884.7,
20 subdivision (a)(4), in that on or about June 6, 2011, he committed acts which constitute fraud by
21 issuing electronic Certificate of Compliance No. [REDACTED] for the 2002 Honda Accord
22 without performing a bona fide inspection of the emission control devices and systems on that
23 vehicle, thereby depriving the People of the State of California of the protection afforded by the
24 Motor Vehicle Inspection Program.

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

5 **SIXTH CAUSE FOR DISCIPLINE**

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

7 19. Respondent has subjected his technician license to discipline under Health and Safety
8 Code section 44072.2, subdivision (a), in that on or about June 6, 2011, regarding the 2002 Honda
9 Accord, he violated sections of that Code, as follows:

10 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
11 control devices and systems required by law were installed and functioning correctly in
12 accordance with test procedures.

13 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
14 on that vehicle in accordance with procedures prescribed by the department.

15 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
16 and systems on that vehicle in accordance with section 44012 of that Code.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

19 20. Respondent has subjected his technician license to discipline under Health and Safety
20 Code section 44072.2, subdivision (c), in that on or about June 6, 2011, regarding the 2002 Honda
21 Accord, he violated sections of the California Code of Regulations, title 16, as follows:

22 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle
23 in accordance with Health and Safety Code section 44012.

24 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and
25 inspections on that vehicle in accordance with the Bureau's specifications.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 21. Respondent has subjected his technician license to discipline under Health and Safety
4 Code section 44072.2, subdivision (d), in that on or about June 6, 2011, regarding the 2002
5 Honda Accord, he committed acts involving dishonesty, fraud or deceit whereby another was
6 injured by issuing electronic Certificate of Compliance No. [REDACTED] without performing a
7 bona fide inspection of the emission control devices and systems on that vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **UNDERCOVER OPERATION – JULY 7, 2011**

11 22. On or about July 7, 2011, a Bureau undercover operator drove a Bureau-documented
12 1995 Acura Integra to Respondent's facility and requested a smog inspection. The vehicle could
13 not pass the visual or tailpipe portions of the smog inspection due to excessive tailpipe emissions,
14 a modified PCV system, a missing three-way catalytic converter, and disconnected emissions
15 related components. The operator spoke with Respondent, who recognized him from the June 6,
16 2011 smog inspection. The operator told Respondent that he had a friend that needed a smog
17 check for his Acura Integra. Respondent told the operator he would smog the vehicle but that it
18 would cost \$120 if the vehicle was at the station or \$150 if the vehicle was not at the station. The
19 operator told Respondent to do the test without the vehicle present. The operator asked
20 Respondent if he wanted him to pull the 2002 Honda into the test bay. Respondent told the
21 operator he would use the Honda already in the test bay for the inspection. The operator was not
22 provided with any paperwork or estimate. After Respondent performed the test, he issued
23 Certificate of Compliance No. [REDACTED] certifying that the vehicle was in compliance with
24 applicable laws and regulations. In fact, Respondent performed the smog inspection using the
25 clean piping method² by using the tail pipe emissions of a vehicle other than the vehicle being

26 ² "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

1 certified in order to issue the electronic certificate of compliance. The vehicle certified was not in
2 the test bay at the time of the smog inspection. Respondent told the operator he would only
3 charge \$140 and if he sent more business Respondent's way, the charge would be cheaper. The
4 operator paid Respondent \$140 and was provided with a VIR.

5 **NINTH CAUSE FOR DISCIPLINE**

6 **(Misleading Statements)**

7 23. Respondent has subjected his registration to discipline under Code section 9884.7,
8 subdivision (a)(1), in that on or about July 7, 2011, he made statements which he knew or which
9 by exercise of reasonable care he should have known were untrue or misleading when he issued
10 electronic Certificate of Compliance No. [REDACTED] for the 1995 Acura Integra, certifying that
11 the vehicle was in compliance with applicable laws and regulations. In fact, Respondent
12 conducted the inspection on that vehicle using the clean piping method in order to issue smog
13 certificate of compliance for that vehicle, and did not test or inspect the vehicle as required by
14 Health and Safety Code section 44012.

15 **TENTH CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 24. Respondent has subjected his registration to discipline under Code section 9884.7,
18 subdivision (a)(4), in that on or about July 7, 2011, he committed acts which constitute fraud by
19 issuing electronic Certificate of Compliance No. [REDACTED] for the 1995 Acura Integra without
20 performing a bona fide inspection of the emission control devices and systems on that vehicle,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 **ELEVENTH CAUSE FOR DISCIPLINE**

24 **(Violation of the Motor Vehicle Inspection Program)**

25 25. Respondent has subjected his station license to discipline under Health and Safety
26 Code section 44072.2, subdivision (a), in that on or about July 7, 2011, regarding the 1995 Acura
27 Integra, he violated sections of that Code, as follows:

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1 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
2 control devices and systems required by law were installed and functioning correctly in
3 accordance with test procedures.

4 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
5 on that vehicle in accordance with procedures prescribed by the department.

6 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
7 Compliance No. [REDACTED] without properly testing and inspecting the vehicle to determine if
8 it was in compliance with section 44012 of that Code.

9 **TWELFTH CAUSE FOR DISCIPLINE**

10 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

11 26. Respondent has subjected his station license to discipline under Health and Safety
12 Code section 44072.2, subdivision (c), in that on or about July 7, 2011, regarding the 1995 Acura
13 Integra, he violated sections of the California Code of Regulations, title 16, as follows:

14 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
15 Compliance No. [REDACTED] even though that vehicle had not been inspected in accordance
16 with section 3340.42 of that Code.

17 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and
18 inspections on that vehicle in accordance with the Bureau's specifications.

19 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

21 27. Respondent subjected his station license to discipline under Health and Safety Code
22 section 44072.2, subdivision (d), in that on or about July 7, 2011, regarding the 1995 Acura
23 Integra, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
24 issuing electronic Certificate of Compliance No. [REDACTED] for that vehicle without
25 performing a bona fide inspection of the emission control devices and system on the vehicle,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

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1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **STATION INSPECTION – JULY 19, 2011**

4 31. On or about July 19, 2011, a Bureau representative (“representative”) performed a
5 station inspection at Respondent’s facility. When the representative arrived, Respondent was not
6 at the station but the representative observed a 1997 Honda Accord in the test bay. At
7 approximately 1517 hours, the representative entered the facility and Respondent was at the EIS
8 entering information and appeared to be in the process of testing a vehicle. Respondent
9 completed the test and provided the customer with some paperwork and the keys to the Honda
10 Accord. The customer left the area in the 1997 Honda Accord. At approximately 1524 hours, the
11 representative confirmed that Respondent certified a 1995 Honda Civic and issued Certificate of
12 Compliance No. WX187874C to a 1995 Honda Civic, certifying that he had tested and inspected
13 the vehicle and that it was in compliance with applicable laws and regulations. In fact
14 Respondent performed the smog inspection using the clean piping method by using the tail pipe
15 emissions of a 1997 Honda Accord in order to issue the electronic certificate of compliance to the
16 1995 Honda Civic. When confronted by the representative, Respondent stated he had clean piped
17 the 1995 Honda Civic using a 1997 Honda Accord that belonged to the owner of a smog facility
18 next door to Respondent. Respondent told the operator that he sometimes did illegal smog
19 inspections for family and friends.

20 **SEVENTEENTH CAUSE FOR DISCIPLINE**

21 **(Misleading Statements)**

22 32. Respondent has subjected his registration to discipline under Code section 9884.7,
23 subdivision (a)(1), in that on or about July 19, 2011, he made statements which he knew or which
24 by exercise of reasonable care he should have known were untrue or misleading when he issued
25 electronic Certificate of Compliance No. WX187874C for the 1995 Honda Civic, certifying that
26 the vehicle was in compliance with applicable laws and regulations. In fact, Respondent
27 conducted the inspection on that vehicle using the clean piping method in order to issue smog

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1 certificate of compliance for that vehicle, and did not test or inspect the vehicle as required by
2 Health and Safety Code section 44012.

3 **EIGHTEENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 33. Respondent has subjected his registration to discipline under Code section 9884.7,
6 subdivision (a)(4), in that on or about July 19, 2011, he committed acts which constitute fraud by
7 issuing electronic Certificate of Compliance No. WX187874C for the 1995 Honda Civic without
8 performing a bona fide inspection of the emission control devices and systems on that vehicle,
9 thereby depriving the People of the State of California of the protection afforded by the Motor
10 Vehicle Inspection Program.

11 **NINETEENTH CAUSE FOR DISCIPLINE**

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

13 34. Respondent has subjected his station license to discipline under Health and Safety
14 Code section 44072.2, subdivision (a), in that on or about July 19, 2011, regarding the 1995
15 Honda Civic, he violated sections of that Code, as follows:

16 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
17 control devices and systems required by law were installed and functioning correctly in
18 accordance with test procedures.

19 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
20 on that vehicle in accordance with procedures prescribed by the department.

21 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
22 Compliance No. WX187874C without properly testing and inspecting the vehicle to determine if
23 it was in compliance with section 44012 of that Code.

24 **TWENTIETH CAUSE FOR DISCIPLINE**

25 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

26 35. Respondent has subjected his station license to discipline under Health and Safety
27 Code section 44072.2, subdivision (c), in that on or about July 19, 2011, regarding the 1995
28 Honda Civic, he violated sections of the California Code of Regulations, title 16, as follows:

1 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
2 Compliance No. WX187874C even though that vehicle had not been inspected in accordance
3 with section 3340.42 of that Code.

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

6 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

8 36. Respondent subjected his station license to discipline under Health and Safety Code
9 section 44072.2, subdivision (d), in that on or about July 19, 2011, regarding the 1995 Honda
10 Civic, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
11 issuing electronic Certificate of Compliance No. WX187874C for that vehicle without
12 performing a bona fide inspection of the emission control devices and system on the vehicle,
13 thereby depriving the People of the State of California of the protection afforded by the Motor
14 Vehicle Inspection Program.

15 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

17 37. Respondent has subjected his technician license to discipline under Health and Safety
18 Code section 44072.2, subdivision (a), in that on or about July 19, 2011, regarding the 1995
19 Honda Civic, he violated sections of that Code, as follows:

20 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
21 control devices and systems required by law were installed and functioning correctly in
22 accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
24 on that vehicle in accordance with procedures prescribed by the department.

25 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
26 and systems on that vehicle in accordance with section 44012 of that Code.

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7. Ordering Jose Arteaga, Jr. 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; and,

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

DATED: 2/21/12 John Wallauch by Dona Balatti
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Dona BALATTI
Assist. Chief

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