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

12 In the Matter of the Accusation Against:

13 **CLEAN AIR SMOG**  
14 **SERGIO EDGAR ARRIZON, OWNER**  
23910 Alessandro Blvd., Suite B  
15 Moreno Valley, CA 92553

16 **Automotive Repair Dealer Registration No.**  
ARD 264873  
17 **Smog Check Test Only Station License No.**  
TC 264873

18 **JAVIER EMANUELLE JIMENEZ**  
19 23910 Alessandro Blvd., Suite B  
Moreno Valley, CA 92553

20 **Advanced Emission Specialist Technician**  
21 **License No. EA 152322 (to be redesignated**  
**upon renewal as EO 152322 and/or EI 152322)**

22 Respondent.

Case No. 79/13-90

ACCUSATION  
smog check

23  
24 Complainant alleges:

25 **PARTIES**

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

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1 the Director of jurisdiction to proceed with a disciplinary action during the period within which  
2 the license may be renewed, restored, reissued or reinstated.

3 7. Section 477 of the B & P Code provides, in pertinent part, that "Board" includes  
4 "bureau," . . . . "License" includes certificate, registration or other means to engage in a business  
5 or profession regulated by the B & P Code.

6 8. Section 9884.7 of the B & P Code states, in pertinent part:

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

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

17 . . . .

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

20 (4) Any other conduct that constitutes fraud.

21 . . . .

22 (6) Failure in any material respect to comply with the provisions of this  
23 chapter or regulations adopted pursuant to it.

24 . . . .

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

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

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1           10. Section 44002 of the Health and Safety Code (H & S Code) provides, in pertinent  
2 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
3 for enforcing the Motor Vehicle Inspection Program.

4           11. Section 44072.2 of the H & S Code states, in pertinent part:

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

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

9                   ....

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

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

13                  ....

14           12. Section 44072.6 of the H & S Code provides, in pertinent part, that the expiration or  
15 suspension of a license by operation of law, or by order or decision of the Director, or a court of  
16 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to  
17 proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to  
18 render a decision suspending or revoking the license.

19           13. Section 44072.8 of the H & S Code states:

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

23           14. California Code of Regulations, title 16, (CCR) section 3340.28, subdivision (e),  
24 states:

25                   "Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
26 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
27 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

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1 19. CCR, section 3340.24, subdivision (c), states:

2 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a  
3 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
4 certificate of noncompliance.

5 20. CCR, section 3340.30, states, in pertinent part:

6 "A smog check technician shall comply with the following requirements at all times while  
7 licensed.

8 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
9 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
10 3340.42 of this article.

11 "..."

12 21. CCR, section 3340.35, provides, in pertinent part, that a licensed station shall issue a  
13 certificate of compliance . . . to the owner or operator of any vehicle that has been inspected in  
14 accordance with the procedures specified in section 3340.42 of this article and has all the required  
15 emission control equipment and devices installed and functioning correctly.

16 22. CCR, section 3340.41, subdivision (c), states:

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

21 23. CCR, section 3340.42, provides, in pertinent part, that smog check stations and smog  
22 check technicians shall conduct tests and inspections in accordance with the bureau's BAR 97  
23 Emissions Inspection System Specifications referenced in subsections (a) and (b) of Section  
24 3340.17.

25 **COST RECOVERY**

26 24. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
27 administrative law judge to direct a licentiate found to have committed a violation or violations of  
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
3 included in a stipulated settlement.

4 **UNDERCOVER OPERATION – JULY 26, 2012**

5 25. On or about July 26, 2012, a BAR undercover operator (operator) drove a BAR  
6 documented 1997 Pontiac (Pontiac) to Clean Air Smog and requested a smog inspection. The  
7 data communication wire at the Power Train Control Module (PCM) connector had been removed  
8 by a lab technician at the BAR documentation lab, causing the circuit from the PCM to the  
9 Diagnostic Link Connector (DLC) to be open and interrupting any communication with a  
10 diagnostic scan tool or the Emissions Inspection System (EIS). The removal of the wire caused  
11 the vehicle to be incapable of passing a properly performed OBDII functional test<sup>2</sup> portion of the  
12 smog inspection. The operator signed a work order prior to the smog inspection, but did not  
13 receive a copy. Respondent Jimenez performed the smog inspection and informed the operator  
14 that the vehicle would not communicate with the EIS. Respondent Jimenez told the operator that  
15 he could make the vehicle pass and issue a Certificate of Compliance for \$250.00. After the  
16 operator asked Respondent Jimenez for a better price, Respondent Jimenez offered to do the job  
17 for \$225.00. The operator then authorized the inspection and Respondent Jimenez completed the  
18 inspection and issued electronic Certificate of Compliance No. [REDACTED], certifying that he had  
19 tested and inspected the vehicle and that it was in compliance with applicable laws and  
20 regulations. In fact, the vehicle could not have passed the functional portion of the smog  
21 inspection because the vehicle's PCM could not communicate with the EIS through the DLC.  
22 The operator paid \$225.00, and was provided with a copy of the invoice and a Vehicle Inspection  
23 Report (VIR). On August 7, 2012, a BAR laboratory technician again verified that the Pontiac

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25 <sup>2</sup> The On Board Diagnostics (OBD II) functional test is an automated function of the  
26 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an  
27 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is  
28 located inside the vehicle. Through 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 OBD II  
functional test, it will fail the overall inspection.

1 was incapable of communicating with the EIS due to the introduced open circuit between the  
2 PCM and the DLC.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 26. Respondent Arrizon's registration is subject to disciplinary action pursuant to B & P  
6 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which  
7 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as  
8 set forth in paragraph 25, above. Respondent certified that the Pontiac had passed the smog  
9 inspection and was in compliance with applicable laws and regulations. In fact, Respondent used  
10 the clean-plugging<sup>3</sup> method in order to issue a smog certificate of compliance for the vehicle and  
11 did not test or inspect the vehicle as required by H & S Code section 44012.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 27. Respondent Arrizon's registration is subject to disciplinary action pursuant to B & P  
15 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitutes  
16 fraud as set forth in paragraph 25, above. Respondent issued an electronic smog certificate of  
17 compliance for the Pontiac without performing a bona fide inspection of the emission control  
18 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
19 protection afforded by the Motor Vehicle Inspection Program.

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

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Code )**

3 28. Respondent Arrizon's registration is subject to disciplinary action pursuant to B & P  
4 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with the following  
5 section of that Code, as set forth in paragraph 25, above.

6 a. **Section 9884.7, subdivision (a)(3):** Respondent failed to provide the operator  
7 with a copy of the estimate as soon as he signed it.

8 **FOURTH CAUSE FOR DISCIPLINE**

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

10 29. Respondent Arrizon's smog check station license is subject to disciplinary action  
11 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent failed to comply  
12 with provisions of that Code, as set forth in paragraph 25, above.

13 a. **Section 44012:** Respondent failed to perform emission control tests on the  
14 Pontiac in accordance with procedures prescribed by the department.

15 b. **Section 44015:** Respondent issued an electronic smog certificate of  
16 compliance for the Pontiac without properly testing and inspecting the vehicle to determine if it  
17 was in compliance with H & S Code section 44012.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 30. Respondent Arrizon's smog check station license is subject to disciplinary action  
21 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent failed to comply  
22 with provisions of California Code of Regulations, title 16, as set forth in paragraph 25, above, as  
23 follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an  
25 electronic smog certificate of compliance for the Pontiac.

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

1 c. **Section 3340.41, subdivision (c):** Respondent permitted false information to  
2 be entered into the EIS in that vehicle identification information or emission control system  
3 identification data was entered for a vehicle other than the one being tested.

4 d. **Section 3340.42:** Respondent failed to conduct the required smog test on the  
5 Pontiac in accordance with the BAR's specifications.

6 **SIXTH CAUSE FOR DISCIPLINE**

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

8 31. Respondent Arrizon's smog check station license is subject to disciplinary action  
9 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent committed  
10 dishonest, fraudulent or deceitful acts whereby another was injured, as set forth in paragraph 25,  
11 above. Respondent issued an electronic smog certificate of compliance for the Pontiac, 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 **SEVENTH CAUSE FOR DISCIPLINE**

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

17 32. Respondent Jimenez's technician license is subject to disciplinary action pursuant to  
18 H & S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
19 following sections of that Code, as set forth in paragraph 25, above.

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

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

25 c. **Section 44015, subdivision (b):** Respondent issued an electronic smog  
26 certificate of compliance for the Pontiac without properly testing and inspecting the vehicle to  
27 determine if it was in compliance with H & S Code section 44012.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 33. Respondent Jimenez's technician license is subject to disciplinary action pursuant to  
4 H & S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
5 following sections of the California Code of Regulations, title 16, as set forth in paragraph 25,  
6 above.

7 a. **Section 3340.30, subdivision (a):** Respondent failed to perform the emission  
8 control tests on the Pontiac in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.42:** Respondent failed to conduct the required smog test on the  
10 Pontiac in accordance with the BAR's specifications.

11 **NINTH CAUSE FOR DISCIPLINE**

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

13 34. Respondent Jimenez's technician license is subject to disciplinary action pursuant to  
14 H & S Code section 44072.2, subdivision (d), in that Respondent committed dishonest,  
15 fraudulent, or deceitful acts whereby another was injured, as set forth in paragraph 25, above.  
16 Respondent issued an electronic smog certificate of compliance for the Pontiac, without  
17 performing a bona fide inspection of the emission control devices and system on the vehicle,  
18 thereby depriving the People of the State of California of the protection afforded by the Motor  
19 Vehicle Inspection Program.

20 **UNDERCOVER OPERATION OCTOBER 16, 2012**

21 35. On or about October 16, 2012, a BAR undercover operator (operator) drove a BAR  
22 documented 2002 Chevrolet (Chevrolet) to Clean Air Smog and requested a smog inspection. The  
23 vehicle was documented to have a modified fuel control signal to the Power Train Control  
24 Module (PCM). In this condition the vehicle would fail the tailpipe portion of the smog  
25 inspection due to high tailpipe emissions. The operator signed and received a copy of the \$50.00  
26 estimate. Shortly thereafter Respondent Jimenez informed the operator the inspection would cost  
27 \$225.00 which the operator agreed to. Respondent Jimenez completed the inspection and issued  
28 electronic Certificate of Compliance No. [REDACTED] certifying that he had tested and inspected

1 the vehicle and that it was in compliance with applicable laws and regulations. In fact, the  
2 vehicle could not have passed the smog test, because of the introduced malfunction causing  
3 excessively high tailpipe emissions. The operator paid the \$225.00 and received an invoice in the  
4 amount of \$50.00 and a copy of the VIR. On or about October 18, 2012, a BAR laboratory  
5 technician inspected the Chevrolet and found that it still had a modified fuel control signal to the  
6 PCM and failed the tailpipe portion of the smog inspection for excessively high tailpipe  
7 emissions. The BAR determined that the smog inspection on the Chevrolet was conducted using  
8 “clean piping”<sup>4</sup> methods, resulting in the issuance of a fraudulent certificate of compliance for the  
9 Chevrolet.

10 **TENTH CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 36. Respondent Arrizon’s registration is subject to disciplinary action pursuant to B & P  
13 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which  
14 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as  
15 set forth in paragraph 35, above. Respondent certified that the Chevrolet had passed the smog  
16 inspection and was in compliance with applicable laws and regulations. In fact, Respondent used  
17 the “clean-piping” method in order to issue a smog certificate of compliance for the vehicle and  
18 did not test or inspect the vehicle as required by H & S Code section 44012.

19 **ELEVENTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 37. Respondent Arrizon’s registration is subject to disciplinary action pursuant to B & P  
22 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitutes  
23 fraud as set forth in paragraph 35, above. Respondent issued an electronic smog certificate of  
24 compliance for the Chevrolet without performing a bona fide inspection of the emission control  
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27 <sup>4</sup> “Clean piping” is sampling the (clean) tailpipe emissions and/or the RPM readings of  
28 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not  
in compliance or are not present in the smog check area during the time of the certification.

1 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
2 protection afforded by the Motor Vehicle Inspection Program.

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with the Code )**

5 38. Respondent Arrizon's registration is subject to disciplinary action pursuant to B & P  
6 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with the following  
7 section of that Code, as set forth in paragraph 35, above.

8 a. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator  
9 with a written estimated price for labor and parts necessary for a specific job.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

12 39. Respondent Arrizon's smog check station license is subject to disciplinary action  
13 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent failed to comply  
14 with provisions of that Code, as set forth in paragraph 35, above.

15 a. **Section 44012:** Respondent failed to perform emission control tests on the  
16 Chevrolet in accordance with procedures prescribed by the department.

17 b. **Section 44015:** Respondent issued an electronic smog certificate of  
18 compliance for the Chevrolet without properly testing and inspecting the vehicle to determine if it  
19 was in compliance with H & S Code section 44012.

20 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

22 40. Respondent Arrizon's smog check station license is subject to disciplinary action  
23 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent failed to comply  
24 with provisions of California Code of Regulations, title 16, as set forth in paragraph 35, above, as  
25 follows:

26 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an  
27 electronic smog certificate of compliance for the Chevrolet.

28



1 c. **Section 44015, subdivision (b):** Respondent issued an electronic smog  
2 certificate of compliance for the Chevrolet without properly testing and inspecting the vehicle to  
3 determine if it was in compliance with H & S Code section 44012.

4 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

6 43. Respondent Jimenez's technician license is subject to disciplinary action pursuant to  
7 H & S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
8 following sections of the California Code of Regulations, title 16, as set forth in paragraph 35,  
9 above.

10 a. **Section 3340.30, subdivision (a):** Respondent failed to perform the emission  
11 control tests on the Chevrolet in accordance with Health and Safety Code section 44012.

12 b. **Section 3340.42:** Respondent failed to conduct the required smog test on the  
13 Chevrolet in accordance with the BAR's specifications.

14 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

16 44. Respondent Jimenez's technician license is subject to disciplinary action pursuant to  
17 H & S Code section 44072.2, subdivision (d), in that Respondent committed dishonest,  
18 fraudulent, or deceitful acts whereby another was injured, as set forth in paragraph 35, above.  
19 Respondent issued an electronic smog certificate of compliance for the Chevrolet, without  
20 performing a bona fide inspection of the emission control devices and system on the vehicle,  
21 thereby depriving the People of the State of California of the protection afforded by the Motor  
22 Vehicle Inspection Program.

23 **UNDERCOVER OPERATION OCTOBER 18, 2012**

24 45. On or about October 16, 2012, a BAR undercover operator (operator) drove a BAR  
25 documented 1992 Toyota (Toyota) to Clean Air Smog and requested a smog inspection. The  
26 vehicle was documented with an induced vacuum leak into the supply hose to the Manifold  
27 Absolute Pressure (MAP) sensor causing the vehicle to fail the smog inspection for high tailpipe  
28 emission readings. The operator signed and received a blank estimate. Respondent Jimenez

1 performed an inspection. He told the operator he could not get the Toyota to pass and that it  
2 would cost \$160.00 to get the vehicle to pass. Respondent Jimenez told the operator that he would  
3 have to bring the vehicle back on October 18, 2012.

4 On October 18, 2012, the operator returned with the Toyota to Clean Air Smog to have the  
5 smog inspection completed. The vehicle still had the induced vacuum leak in the supply hose to  
6 the MAP sensor. Respondent Jimenez told the operator the inspection would cost \$160.00, but  
7 the operator did not sign or receive any paperwork. The Toyota was never pulled into the shop  
8 and a short time later Respondent Jimenez told the operator to return around 5:00 p.m.  
9 Respondent Jimenez also told the operator that he did not have to bring the Toyota back.

10 On October 18, 2012, at or around 5:00 p.m., the Toyota was secured in the BAR  
11 documentation lab, when the operator returned to Clean Air Smog driving a different vehicle. At  
12 that time, Respondent Jimenez "completed the inspection" of the Toyota and issued Certificate of  
13 Compliance number [REDACTED]. The operator paid \$160.00 and received an invoice in the  
14 amount of \$50.00 and a copy of the VIR for the Toyota. The Toyota was not at Clean Air Smog  
15 at the time the certification was issued, because it was in fact secured at the BAR's  
16 documentation lab. The BAR determined that the smog inspection on the Toyota was conducted  
17 using "clean piping" methods, resulting in the issuance of a fraudulent certificate of compliance  
18 for the Toyota.

19 **NINETEENTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 46. Respondent Arrizon's registration is subject to disciplinary action pursuant to B & P  
22 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which  
23 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as  
24 set forth in paragraph 45, above. Respondent certified that the Toyota had passed the smog  
25 inspection and was in compliance with applicable laws and regulations. In fact, Respondent used  
26 the "clean-piping" method in order to issue a smog certificate of compliance for the vehicle and  
27 did not test or inspect the vehicle as required by H & S Code section 44012.

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**TWENTIETH CAUSE FOR DISCIPLINE**

**(Fraud)**

47. Respondent Arrizon’s registration is subject to disciplinary action pursuant to B & P Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitutes fraud as set forth in paragraph 45, above. Respondent issued an electronic smog certificate of compliance for the Toyota without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

48. Respondent Arrizon’s registration is subject to disciplinary action pursuant to B & P Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with the following section of that Code, as set forth in paragraph 45, above.

a. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with a written estimated price for labor and parts necessary for a specific job.

**TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

49. Respondent Arrizon’s smog check station license is subject to disciplinary action pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as set forth in paragraph 45, above.

a. **Section 44012:** Respondent failed to perform emission control tests on the Toyota in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for the Toyota without properly testing and inspecting the vehicle to determine if it was in compliance with H & S Code section 44012.

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**TWENTY-THIRD CAUSE FOR DISCIPLINE**

**(Failure to Comply with Regulations)**

50. Respondent Arrizon’s smog check station license is subject to disciplinary action pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as set forth in paragraph 45, above, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Toyota.

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

c. **Section 3340.41, subdivision (c):** Respondent permitted false information to be entered into the EIS in that vehicle identification information or emission control system identification data was entered for a vehicle other than the one being tested.

d. **Section 3340.42:** Respondent failed to conduct the required smog test on the Toyota in accordance with the BAR’s specifications.

**TWENTY-FOURTH CAUSE FOR DISCIPLINE**

**(Dishonesty, Fraud or Deceit)**

51. Respondent Arrizon’s smog check station license is subject to disciplinary action pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another was injured, as set forth in paragraph 45, above. Respondent issued an electronic smog certificate of compliance for the Toyota, without performing a bona fide inspection of the emission control devices and system on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

3 52. Respondent Jimenez's technician license is subject to disciplinary action pursuant to  
4 H & S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
5 following sections of that Code, as set forth in paragraph 45, above.

6 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission  
7 control devices and systems required by law for the Toyota were installed and functioning  
8 correctly in accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent failed to perform the emission  
10 control tests on the Toyota in accordance with procedures prescribed by the department.

11 c. **Section 44015, subdivision (b):** Respondent issued an electronic smog  
12 certificate of compliance for the Toyota without properly testing and inspecting the vehicle to  
13 determine if it was in compliance with H & S Code section 44012.

14 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

16 53. Respondent Jimenez's technician license is subject to disciplinary action pursuant to  
17 H & S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
18 following sections of the California Code of Regulations, title 16, as set forth in paragraph 45,  
19 above.

20 a. **Section 3340.30, subdivision (a):** Respondent failed to perform the emission  
21 control tests on the Toyota in accordance with Health and Safety Code section 44012.

22 b. **Section 3340.41, subdivision (c):** Respondent entered false information into  
23 the EIS unit by entering the identification information for the Toyota when in fact; the Toyota  
24 was secured at the Bureau's Documentation Lab at the time of certification.

25 c. **Section 3340.42:** Respondent failed to conduct the required smog test on the  
26 Toyota in accordance with the BAR's specifications.

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1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

3 54. Respondent Jimenez's technician license is subject to disciplinary action pursuant to  
4 H & S Code section 44072.2, subdivision (d), in that Respondent committed dishonest,  
5 fraudulent, or deceitful acts whereby another was injured, as set forth in paragraph 45, above.  
6 Respondent issued an electronic smog certificate of compliance for the Toyota, without  
7 performing a bona fide inspection of the emission control devices and system on the vehicle,  
8 thereby depriving the People of the State of California of the protection afforded by the Motor  
9 Vehicle Inspection Program.

10 **OTHER MATTERS**

11 55. Pursuant to Business & Professions Code section 9884.7(c), the Director may  
12 suspend, revoke, or place on probation the registrations for all places of business operated in this  
13 state by Sergio Edgar Arrizon, upon a finding that he has, or is, engaged in a course of repeated  
14 and willful violation of the laws and regulations pertaining to an automotive repair dealer.

15 56. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only  
16 Station License Number TC 264873, issued to Sergio Edgar Arrizon, doing business as Clean Air  
17 Smog, is revoked or suspended, any additional license issued under this chapter in the name of  
18 said licensees may be likewise revoked or suspended by the Director.

19 57. Pursuant to Health and Safety Code section 44072.8, if Javier Emanuelle Jimenez's  
20 technician licenses(s), currently designated as EA 152322 and as redesignated upon timely  
21 renewal as EO 152322 and/or EI 152322, is/are revoked or suspended, any additional license  
22 issued under this chapter in the name of said licensee may be likewise revoked or suspended by  
23 the Director.

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25 **PRAYER**

26 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
27 and that following the hearing, the Director of Consumer Affairs issue a decision:  
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- 1           1.     Revoking, suspending, or placing on probation Automotive Repair Dealer  
2 Registration No. ARD 264873, issued to Sergio Edgar Arrizon, doing business as Clean Air  
3 Smog;
- 4           2.     Revoking, suspending, or placing on probation any other automotive repair dealer  
5 registration issued to Sergio Edgar Arrizon;
- 6           3.     Revoking or suspending Smog Check Test Only Station License Number  
7 TC 264873, issued to Sergio Edgar Arrizon, doing business as Clean Air Smog;
- 8           4.     Revoking or suspending any additional license issued under chapter 5, of the Health  
9 and Safety Code in the name of Sergio Edgar Arrizon;
- 10          5.     Revoking or suspending Javier Emanuelle Jimenez's smog technician licenses(s),  
11 currently designated as EA 152322 and as redesignated upon his timely renewal as EO 152322  
12 and/or EI 152322Advanced Emission Specialist Technician Number EA 152322;
- 13          6.     Revoking or suspending any additional license issued under chapter 5, of the Health  
14 and Safety Code in the name of Javier Emanuelle Jimenez;
- 15          7.     Ordering Sergio Edgar Arrizon, individually and as owner of Clean Air Smog and  
16 Javier Emanuelle Jimenez to pay the Director of Consumer Affairs the reasonable costs of the  
17 investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 18          8.     Taking such other and further action as deemed necessary and proper.

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DATED: May 30, 2013

  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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