BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JOSEPH MICHAEL BERTINE, PRESIDENT/SECRETARY/TREASURER; PBK AUTO CARE, DOING BUSINESS AS AUTO CARE USA** 31638 Railroad Canyon Road Canyon Lake, CA 92587 31638 Railroad Canyon Road Canyon Lake, CA 92587 Automotive Repair Dealer Registration No. ARD 267889 Smog Check Station License No. RC 267889, **DANIEL NATHAN BLANCATO** 23650 Madison Avenue Murrietta, CA 92562 Smog Check Inspector No. EO 153170 Smog Check Repair Technician No. EI 153170 (formerly Advanced Emission Specialist Technician License No. EA 153170), and **PAUL JOSEPH-MICHE CHENETTE** 31638 Railroad Canyon Road Canyon Lake, CA 92587 Smog Check Inspector No. EO 125236 Smog Check Repair Technician No. EI 125236 (formerly Advanced Emission Specialist Technician License No. EA 125236) Respondents.	Case No. 79/15-84 OAH No. 2015030919

DECISION

The attached Stipulated Revocation of License and Order Re: Joseph Michael Bertine's License Number 267889 is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter, only as to respondent Joseph

Michael Bertine, Automotive Repair Dealer Registration No. ARD 267889, and Smog Check Station License No. RC 267889.

This Decision shall become effective April 22, 2016.

DATED: April 1, 2016

TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
ADRIAN R. CONTRERAS
Deputy Attorney General
State Bar No. 267200
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2634
Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: **JOSEPH MICHAEL BERTINE, PRESIDENT/SECRETARY/TREASURER; PBK AUTO CARE, DOING BUSINESS AS AUTO CARE USA** **31638 Railroad Canyon Road** **Canyon Lake, CA 92587** **31638 Railroad Canyon Road** **Canyon Lake, CA 92587** **Automotive Repair Dealer Registration No. ARD 267889** **Smog Check Station License No. RC 267889,** **DANIEL NATHAN BLANCATO** **23650 Madison Avenue** **Murrietta, CA 92562** **Smog Check Inspector No. EO 153170** **Smog Check Repair Technician No. EI 153170 (formerly Advanced Emission Specialist Technician License No. EA 153170),** **and** **PAUL JOSEPH-MICHE CHENETTE** **31638 Railroad Canyon Road** **Canyon Lake, CA 92587** **Smog Check Inspector No. EO 125236** **Smog Check Repair Technician No. EI**	Case No. 79/15-84 OAH No. 2015030919 **STIPULATED REVOCATION OF LICENSE AND ORDER RE: JOSEPH MICHAEL BERTINE'S LICENSE NUMBER 267889**

125236 (formerly Advanced Emission Specialist Technician License No. EA 125236)

Respondents.

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibilities of the Director of Consumer Affairs and the Bureau of Automotive Repair the parties hereby agree to the following Stipulated Revocation of License and Disciplinary Order which will be submitted to the Director for the Director's approval and adoption as the final disposition of the Accusation solely with respect to Joseph Michael Bertine. It does not apply to Daniel Nathan Blancato or Paul Joseph-Miche Chenette.

PARTIES

1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Adrian R. Contreras, Deputy Attorney General.

2. Respondent Joseph Michael Bertine, President/Secretary/Treasurer; PBK Auto Care doing business as Auto Care USA (collectively Respondent) is represented in this proceeding by attorney William D. Ferreira, Esq., whose address is 582 Market Street, Suite 1608, San Francisco, CA 94104.

3. On or about February 6, 2012, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration No. ARD 267889 to Respondent. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 79/15-84 and will expire on February 29, 2016, unless renewed.

4. On or about February 29, 2012, the Bureau of Automotive Repair issued Smog Check Station License No. RC 267889 to Respondent. The Smog Check Station License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/15-84 and will expire on February 29, 2016, unless renewed.

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JURISDICTION

5. Accusation No. 79/15-84 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 12, 2015. Respondent timely filed a Notice of Defense contesting the Accusation. A copy of Accusation No. 79/15-84 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 79/15-84. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Revocation of License and Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 79/15-84, agrees that cause exists for discipline and hereby stipulates to revocation of his Automotive Repair Dealer Registration No. ARD 267889 and Smog Check Station License No. RC 267889 for the Bureau's formal acceptance.

10. Respondent understands that by signing this stipulation he enables the Director to issue an order accepting the revocation of his Automotive Repair Dealer Registration and Smog Check Station License without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the Director or the Director's designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff regarding this stipulation and revocation, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Revocation and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Revocation of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Revocation of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Revocation of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 267889 and Smog Check Station License No. RC 267889 issued to Respondent Joseph Michael Bertine, President/Secretary/Treasurer; PBK Auto Care doing business as Auto Care USA (collectively Respondent) are revoked and accepted by the Director of Consumer Affairs.

1. The revocation of Respondent's Automotive Repair Dealer Registration and Smog Check Station License and the acceptance of the revoked licenses by the Bureau shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Bureau of Automotive Repair.

2. Respondent shall lose all rights and privileges as an Automotive Repair Dealer and Smog Check Station in California as of the effective date of the Director's Decision and Order.

3. Respondent shall cause to be delivered to the Bureau his pocket license and, if one was issued, his wall certificates on or before the effective date of the Decision and Order.

4. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Bureau shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations, and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 79/15-84 shall be deemed to be true, correct, and admitted by Respondent when the Director determines whether to grant or deny the application or petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $4,670.36 before issuance of a new or reinstated license.

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ACCEPTANCE

I have carefully read the above Stipulated Revocation of License and Order and have fully discussed it with my attorney, William D. Ferreira, Esq. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog Check Station License. I enter into this Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 2-15-2016

JOSEPH MICHAEL BERTINE
PRESIDENT/SECRETARY/TREASURER
PBK AUTO CARE, DOING BUSINESS AS
AUTO CARE USA
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matters contained in this Stipulated Revocation of License and Order. I approve its form and content.

DATED: 2.15.16

WILLIAM D. FERREIRA, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 2/19/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

ADRIAN R. CONTRERAS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/15-84

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Senior Assistant Attorney General
GREGORY J. SALUTE
Supervising Deputy Attorney General
State Bar No. 164015
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2617
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against: **PBK AUTO CARE,** **DBA AUTO CARE USA,** **JOSEPH MICHAEL BERTINE,** **PRESIDENT/SECRETARY/TREASURER** **31638 Railroad Canyon Road** **Canyon Lake, CA 92587** **Automotive Repair Dealer Registration No. ARD 267889** **Smog Check Station License No. RC 267889,** **DANIEL NATHAN BLANCATO** **23650 Madison Avenue** **Murrietta, CA 92562** **Smog Check Inspector No. EO 153170** **Smog Check Repair Technician No. EI 153170** **(formerly Advanced Emission Specialist Technician License No. EA 153170),** **and** **PAUL JOSEPH-MICHE CHENETTE** **31638 Railroad Canyon Road** **Canyon Lake, CA 92587** **Smog Check Inspector No. EO 125236** **Smog Check Repair Technician No. EI 125236** **(formerly Advanced Emission Specialist Technician License No. EA 125236)** Respondents.	Case No. 79/15-84 **ACCUSATION** **SMOGCHECK**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration of Respondent PBK Auto Care

2. On February 6, 2012, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 267889 to PBK Auto Care doing business as Auto Care USA, with Joseph Michael Bertine, President, Secretary, and Treasurer (Respondent PBK). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015, unless renewed.

Smog Check Station License of Respondent PBK Auto Care

3. On February 29, 2012, the Bureau of Automotive Repair issued Smog Check Station License Number RC 267889 to Respondent PBK. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015, unless renewed.

Smog Check Licenses of Respondent Daniel Nathan Blancato

4. In 2006, the Director issued Advanced Emission Specialist Technician License Number EA 153170 to Daniel Nathan Blancato (Respondent Blancato). Respondent Blancato's advanced emission specialist technician license was due to expire on July 31, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, in accordance with Respondent Blancato's election, as Smog Check Inspector License Number EO 153170 and Smog Check Repair Technician License Number EI 153170, effective July 24, 2012. Respondent Blancato's smog check licenses will expire on July 31, 2016, unless renewed.[1]

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[1] Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced 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.

Smog Check Licenses of Respondent Paul Joseph-Miche Chenette

5. In 1999, the Director issued Advanced Emission Specialist Technician License Number EA 125236 to Paul Joseph-Miche Chenette (Respondent Chenette). Respondent Chenette's advanced emission specialist technician license was due to expire on September 30, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, in accordance with Respondent Chenette's election, as Smog Check Inspector License Number EO 125236 and Smog Check Repair Technician License Number EI 125236, effective October 9, 2012. Respondent Chenette's smog check licenses will expire on September 30,2016, unless renewed.

JURISDICTION

6. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

7. Code section 22, subdivision (a), states:

> "Board" as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

8. Code section 118, subdivision (b) states:

> The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

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

10. Code section 9884.5 provides in pertinent part that a registration that is not renewed within three years following its expiration shall not be renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled immediately upon expiration of the three-year period.

11. Code section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

12. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating, suspending, or revoking a registration.

13. Code section 9889.1 provides, in pertinent part, that the Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the Automotive Repair Act.

14. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a license by operation of law or by order or decision of the Director or a court of law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any disciplinary proceedings.

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

16. H & S Code section 44072.2 states:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.
>
> (b) Is convicted of any crime substantially related to the qualifications, functions, or duties of the licenseholder in question.
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.

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

(e) Has misrepresented a material fact in obtaining a license.

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection.

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

17. H & S Code section 44072.4 states:

The director may take disciplinary action against any licensee after a hearing as provided in this article by any of the following:

(a) Imposing probation upon terms and conditions to be set forth by the director.

(b) Suspending the license.

(c) Revoking the license.

18. H & S Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

19. H & S Code section 44072.7 provides that all accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after the discovery by the Bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.

20. H & S Code section 44072.8 states:

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

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21. H & S Code section 44072.10 states, in pertinent part:

. . . .

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping[2], as defined by the department.

. . . .

22. California Code of Regulations, title 16 (Regulations), section 3340.28, subdivision (e), states that "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

STATUTORY PROVISIONS

23. Code section 482 states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

24. Code section 490 states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially

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[2] Clean-piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of 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.

related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

25. Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

26. Code section 9884.7 states, in pertinent part:

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

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

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. . . .

(4) Any other conduct that constitutes fraud.

. . . .

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

. . . .

27. Code section 17200 states:

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

28. Code section 17500 states:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Intemet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

29. H & S Code section 44012 states:

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

determined by the department in 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 alternative test procedures that include loaded mode dynamometer or two-speed idle 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:

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

. . . .

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

. . . .

30. H&S Code section 44013 states:

(a) (1) The department, in cooperation with the state board, shall prescribe maximum emission standards to be applied in inspecting motor vehicles under this chapter.

(2) In prescribing the standards, the department shall undertake studies and experiments which are necessary and feasible, evaluate available data, and confer with automotive engineers.

(3) The standards shall be set at a level reasonably achievable for each class and model of motor vehicle when operating in a reasonably sound mechanical condition, allowing for the effects of installed motor vehicle pollution control devices and the motor vehicle's age and total mileage.

(4) The standards shall be designed so that motor vehicles failing the test specified in Section 44012 will be operated, as soon as possible, with a substantial reduction in emissions, and shall be revised from time to time as experience justifies.

. . . .

(c) Notwithstanding any other provision of this chapter, the maximum emission standards and test procedures prescribed in subdivisions (a) and (b) for a motor vehicle class and model-year shall not be more stringent than the emission standards and test procedures under which that motor vehicle's class and model-year was certified. Emission standards and test procedures prescribed by the department shall ensure that not more than 5 percent of the vehicles or engines,

which would otherwise meet the requirements of this part, will fail the inspection and maintenance test for that class of vehicle or engine.

. . . .

31. H & S Code section 44015 states in pertinent part:

. . . .

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

. . . .

32. H & S Code section 44032 states:

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

33. H & S Code section 44059 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

REGULATORY PROVISIONS

34. California Code of Regulations, title 16 (CCR), section 3340.24 states in pertinent part:

. . . .

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

35. CCR section 3340.30 states in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

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(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

. . . .

36. CCR section 3340.35 states in pertinent part:

. . . .

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

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

. . . .

37. CCR section 3340.41, subdivision (c), states:

No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

COST RECOVERY

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

BACKGROUND

39. Based on a report and a review of smog check data, on May 13 and 28, 2014, the Bureau of Automotive Repair (BAR) investigated the smog check activities of PBK Auto Care, doing business as Auto Care USA (Respondent PBK) and found six serious instances of fraud. As smog check inspectors, Daniel Nathan Blancato (Respondent Blancato) and Paul Joseph-

Miche Chenette (Respondent Chenette) are required to properly smog test a vehicle to ensure that it is in good operating condition and meets emissions standards. During the two days of surveillance, Respondents Blancato and Chenette were video recorded on six separate occasions falsifying smog test results. Respondents Blancato and Chenette entered the information of a client's vehicle into the Emission Inspection System (EIS) or BAR 97, then simply attached the testing instrument to a different clean vehicle they knew would pass smog. Respondents Blancato and Chenette reported to BAR that a client's vehicle had passed inspection, when in fact the client's vehicle had not been tested and in all six instances the vehicles were not even present at the test facility.

CLEAN PIPED VEHICLE #1

40. **Undercover Surveillance – Inspection Number 1 on May 13, 2014**

On May 13, 2014, Daniel Nathan Blancato (Respondent Blancato), a licensed smog inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK), issued a smog Certificate of Compliance for a 1988 Mazda RX7, VIN JM1FC3329J0605359, CA License 6VQB583 (1988 Mazda). According to the information provided to BAR by Respondent Blancato, the 1988 Mazda was smog tested between 6:31 a.m. and 6:39 a.m., on May 13, 2014.

41. A BAR representative observed and recorded Respondent Blancato using the clean-piping method to fraudulently certify the 1988 Mazda. Respondent PBK has only one testing bay. The BAR representative videotaped the activities at Respondent PBK's smog check station during the time the 1988 Mazda was allegedly being tested. The BAR representative observed and recorded that between 6:19 a.m. and 6:29 a.m., Respondent PBK's testing bay remained empty. The BAR representative also observed and recorded that between 6:29 a.m. and 6:38 a.m., a 2001 PT Cruiser was the only vehicle in Respondent PBK's test bay. Respondent Blancato represented to BAR that he was testing the 1988 Mazda from 6:31 a.m. to 6:39 a.m., when in actuality he was testing the 2001 PT Cruiser. Respondent Blancato used the "clean" exhaust from the 2001 PT Cruiser to certify the exhaust of the 1988 Mazda. In actuality the 1988 Mazda was not even present at Respondent PBK's test bay during the smog test. Respondent

Blancato certified to BAR that he had smog tested the 1988 Mazda and issued passing smog Certificate of Compliance No. YF566406C for the 1988 Mazda RX7, VIN JM1FC3329J0605359, CA License 6VQB583.

CLEAN PIPED VEHICLE #2

42. **Undercover Surveillance – Inspection Number 2 on May 13, 2014**

On May 13, 2014, Daniel Nathan Blancato (Respondent Blancato), a licensed smog inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK), issued a smog Certificate of Compliance for a 1995 Volvo 850, VIN YV1LS5510S2236509, no CA License plate (1995 Volvo). According to the information provided to BAR by Respondent Blancato, the 1995 Volvo was smog tested between 6:50 a.m. and 6:57 a.m., on May 13, 2014.

43. A BAR representative observed and recorded Respondent Blancato again using the clean-piping method to fraudulently certify the 1995 Volvo. Respondent PBK has only one testing bay. The BAR representative videotaped the activities at Respondent PBK's smog check station during the time the 1995 Volvo was allegedly being tested. The BAR representative observed and recorded that at 6:53 a.m Respondent Blancato was observed inserting the analyzer probe into the tailpipe of the 2001 PT Cruiser. At 6:54 a.m. Respondent Blancato was observed entering the 2001 PT Cruiser. At 6:56 a.m., Respondent Blancato was observed exiting the 2001 PT Cruiser and removing the probe from its tailpipe. At 6:57 a.m., Respondent Blancato drove the 2001 PT Cruiser out of the smog check testing bay. Respondent Blancato represented to BAR that he was testing the 1995 Volvo from 6:50 a.m. to 6:57 a.m., when in reality he was testing the 2001 PT Cruiser. Respondent Blancato used the "clean" exhaust from the 2001 PT Cruiser to certify the exhaust of the 1995 Volvo. In reality, the 1995 Volvo was not even present at Respondent PBK's testing bay during the smog test on record. Respondent Blancato certified to BAR that he had smog tested the 1995 Volvo and issued smog Certificate of Compliance No. YF566407C for the 1995 Volvo 850, VIN YV1LS5510S2236509, no CA License plate.

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CLEAN PIPED VEHICLE #3

44. **Undercover Surveillance – Inspection Number 3 on May 13, 2014**

On May 13, 2014, Paul Joseph-Miche Chenette (Respondent Chenette), a licensed smog inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK), issued a smog Certificate of Compliance for a 2006 Chevrolet Cobalt, VIN 1G1AK55F967855796, CA License 5SFK181 (2006 Chevrolet). According to the information provided to BAR by Respondent Chenette, the 2006 Chevrolet was smog tested between 9:24 a.m. and 9:33 a.m., on May 13, 2014.

45. A BAR representative observed and recorded Respondent Chenette using the clean-piping method to fraudulently certify the 2006 Chevrolet. PBK Auto Care, doing business as Auto Care USA (Respondent PBK) has only one testing bay. The BAR representative videotaped the activities at Respondent PBK's smog check station during the time the 2006 Chevrolet was allegedly being tested. The BAR representative observed and recorded that at 9:27 a.m Respondent Chenette was observed driving the 2001 PT Cruiser into Respondent PBK's testing bay. At 9:28 a.m. Respondent Chenette was observed inserting the analyzer probe into the tailpipe of the 2001 PT Cruiser and thereafter entering the vehicle. At 9:31 a.m., Respondent Chenette was observed exiting the 2001 PT Cruiser and removing the probe from its tailpipe. At 9:34 a.m., Respondent Chenette drove the 2001 PT Cruiser out of the smog check testing bay. Respondent Chenette represented to BAR that he was testing the 2006 Chevrolet from 9:24 a.m. to 9:33 a.m., when in reality he was testing the 2001 PT Cruiser. Respondent Chenette used the "clean" exhaust from the 2001 PT Cruiser to certify the exhaust of the 2006 Chevrolet. In reality, the 2006 Chevrolet was not even present at Respondent PBK's testing bay during the smog test on record. Respondent Chenette certified to BAR that he had smog tested the 2006 Chevrolet and issued smog Certificate of Compliance No. YF566408C for the 2006 Chevrolet Cobalt, VIN 1G1AK55F967855796, CA License 5SFK181.

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CLEAN PIPED VEHICLE #4

46. **Undercover Surveillance – Inspection Number 1 on May 28, 2014**

On May 28, 2014, Daniel Nathan Blancato (Respondent Blancato), a licensed smog inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK), issued a smog Certificate of Compliance for a 2001 Ford Focus, VIN 3FAFP31301R239426, CA License 6VCJ243 (2001 Ford). According to the information provided to BAR by Respondent Blancato, the 2001 Ford was smog tested between 7:34 a.m. and 7:40 a.m., on May 28, 2014.

47. A BAR representative observed and recorded Respondent Blancato using the clean-piping method to fraudulently certify the 2001 Ford. Respondent PBK has only one testing bay. The BAR representative videotaped the activities at Respondent PBK's smog check station during the time the 2001 Ford was allegedly being tested. The BAR representative observed and recorded that at 7:30 a.m. Respondent Blancato drove a 2001 PT Cruiser into Respondent PBK's testing bay. The BAR representative also observed and recorded that Respondent Blancato at 7:38 a.m. inserted the exhaust test probe into the tailpipe of the 2001 PT Cruiser, at 7:39 a.m. entered the vehicle, and at 7:40 a.m. exited the vehicle and removed the exhaust test probe from the tailpipe of the 2001 PT Cruiser. At 7:41 a.m. Respondent Blancato drove the 2001 PT Cruiser out of Respondent PBK's test bay. Respondent Blancato represented to BAR that he was testing the 2001 Ford from 7:34 a.m. to 7:40 a.m., when in actuality he was testing the 2001 PT Cruiser. Respondent Blancato used the "clean" exhaust from the 2001 PT Cruiser to certify the exhaust of the 2001 Ford. In actuality the 2001 Ford was not even present at Respondent PBK's test bay during the smog test. Respondent Blancato certified to BAR that he had smog tested the 2001 Ford and issued passing smog Certificate of Compliance No. YF737064C for the 2001 Ford Focus, VIN 3FAFP31301R239426, CA License 6VCJ243.

CLEAN PIPED VEHICLE #5

48. **Undercover Surveillance – Inspection Number 2 on May 28, 2014**

On May 28, 2014, Daniel Nathan Blancato (Respondent Blancato), a licensed smog inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK), issued a smog Certificate of Compliance for a 1982 Chevrolet Camaro, VIN

1G1AP87H0CL169795, CA License 6GCR098 (1982 Chevrolet). According to the information provided to BAR by Respondent Blancato, the 1982 Chevrolet was smog tested between 3:03 p.m. and 3:09 p.m., on May 28, 2014.

49. A BAR representative observed and recorded Respondent Blancato again using the clean-piping method to fraudulently certify the 1982 Chevrolet. Respondent PBK has only one testing bay. The BAR representative videotaped the activities at Respondent PBK's testing bay during the time the 1982 Chevrolet was allegedly being tested. The BAR representative observed and recorded that at 2:59 p.m. Respondent Blancato drove a Toyota Tundra into Respondent PBK's testing bay. At 3:06 p.m. Respondent Blancato was observed inserting the analyzer probe into the tailpipe of the Toyota Tundra. At 3:09 p.m., Respondent Blancato was observed removing the probe from the tailpipe of the Toyota Tundra. Respondent Blancato represented to BAR that he was testing the 1982 Chevrolet from 3:03 p.m. to 3:09 p.m., when in reality he was testing the Toyota Tundra. Respondent Blancato used the "clean" exhaust from the Toyota Tundra to certify the exhaust of the 1982 Chevrolet. In reality, the 1982 Chevrolet was not even present at Respondent PBK's testing bay during the smog test on record. Respondent Blancato certified to BAR that he had smog tested the 1982 Chevrolet and issued smog Certificate of Compliance No. YF737068C for the 1982 Chevrolet Camaro, VIN 1G1AP87H0CL169795, CA License 6GCR098.

CLEAN PIPED VEHICLE #6

50. **Undercover Surveillance – Inspection Number 3 on May 28, 2014**

On May 28, 2014, Paul Joseph-Miche Chenette (Respondent Chenette), a licensed smog inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK), issued a smog Certificate of Compliance for a 2002 Chevrolet Avalanche, VIN 3GNEK13T42G132308, CA License 6X98915 (2002 Chevrolet). According to the information provided to BAR by Respondent Chenette, the 2002 Chevrolet was smog tested between 3:31 p.m. and 3:38 p.m., on May 28, 2014.

51. A BAR representative observed and recorded Chad Russell (Russell), an unlicensed person, using the clean-piping method to fraudulently certify the 2002 Chevrolet.

Respondent PBK has only one testing bay. The BAR representative videotaped the activities at Respondent PBK's testing bay during the time the 2002 Chevrolet was allegedly being tested. The BAR representative observed and recorded that at 3:36 p.m Russell inserted the analyzer probe into the tailpipe of a Toyota Tundra. At 3:38 p.m., Russell was observed removing the probe from the tailpipe of a Toyota Tundra. At 3:40 p.m., Russell drove the Toyota Tundra out of the smog check testing bay. Russell represented to BAR that he was testing the 2002 Chevrolet from 3:31 p.m. to 3:38 p.m., when in reality he was testing the Toyota Tundra. Russell used the "clean" exhaust from the Toyota Tundra to certify the exhaust of the 2002 Chevrolet. In reality, the 2002 Chevrolet was not even present at Respondent PBK's testing bay during the smog test on record. Russell, using Respondent Chenette's smog inspector technician license, certified to BAR that he had smog tested the 2002 Chevrolet and issued smog Certificate of Compliance No. YF737070C for the 2002 Chevrolet Avalanche, VIN 3GNEK13T42G132308, CA License 6X98915.

52. Of the six fraudulent inspections set forth below, inspection numbers 1, 2, 4, and 5 were performed under Respondent Blancato's smog check inspector license number and inspection numbers 3 and 6 were performed under Respondent Chenette's smog check inspector license number.

Date & Time of Inspection	Vehicle Certified and License Number	Certificate No.
1. 5/13/2014 6:31 to 6:39 a.m.	1988 Mazda RX7, VIN JM1FC3329J0605359, CA License 6VQB583	YF566406C
2. 5/13/2014 6:50 to 6:57 a.m.	1995 Volvo 850, VIN YV1LS5510S2236509, no CA License plate	YF566407C
3. 5/13/2014 9:24 to 9:33 a.m.	2006 Chevrolet Cobalt, VIN 1G1AK55F967855796, CA License 5SFK181	YF566408C
4. 5/28/2014 7:34 to 7:40 a.m.	2001 Ford Focus, VIN 3FAFP31301R239426, CA License 6VCJ243	YF737064C
5. 5/28/2014 3:03 to 3:09 p.m.	1982 Chevrolet Camaro, VIN 1G1AP87H0CL169795, CA License 6GCR098	YF737068C
6. 5/28/2014 3:31 to 3:38 p.m.	2002 Chevrolet Avalanche, VIN 3GNEK13T42G132308, CA License 6X98915	YF737070C

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FIRST CAUSE FOR DISCIPLINE
Automotive Repair Dealer Registration
(Untrue or Misleading Statements)

53. Respondent PBK's Automotive Repair Dealer Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(1), in that Respondent PBK made or authorized a statement which it knew or in the exercise of reasonable care should have known to be untrue or misleading, by certifying that the vehicles as set forth under paragraphs 41-54, above, had passed inspection and were in compliance with applicable laws and regulations. Respondent PBK used the "clean-piping" method in order to issue smog certificates of compliance for vehicles that had not been tested or inspected as required by H & S Code section 44012.

SECOND CAUSE FOR DISCIPLINE
Automotive Repair Dealer Registration
(Fraud)

54. Respondent PBK's Automotive Repair Dealer Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(4), in that Respondent PBK committed an act which constitutes fraud by issuing an electronic smog certificate of compliance for the six vehicles referenced in paragraphs 41-54, above, 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 (H & S Code section 44000, et seq.).

THIRD CAUSE FOR DISCIPLINE
Automotive Repair Dealer Registration
(Violations of the Code)

55. Respondent PBK's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent PBK failed to comply with provisions of that Code in the following material respects:

a. **Section 17200:** Respondent PBK engaged in unfair, deceptive, and fraudulent business practice when it certified that the vehicles as set forth under paragraphs 41-54, above, had passed inspection and were in compliance with applicable laws and regulations.

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b. **Section 17500**: Respondent PBK certified that the vehicles as set forth under paragraphs 41-54, above, had passed inspection and were in compliance with applicable laws and regulations, which constitute untrue statements that were known to Respondent to be misleading.

FOURTH CAUSE FOR DISCIPLINE
Automotive Repair Dealer Registration
(Violations of the Motor Vehicle Inspection Program)

56. Respondent PBK's Automotive Repair Dealer Registration is subject to disciplinary action under H & S Code section 44072.2, subdivision (a), in that as set forth in paragraphs 41-54, above, Respondent PBK failed to materially comply with the following provisions of California Code of Regulations, Title 16:

a. **Section 3371**: Respondent PBK made untrue or misleading statements with respect to the vehicles as set forth under paragraphs 41-54, above, by certifying that those vehicles had passed inspection and were then in compliance with applicable state and federal laws. In fact, those vehicles had not been tested or inspected as required by H & S Code section 44012.

b. **Section 3373**: Respondent PBK made false or misleading records with respect to the vehicles as set forth under paragraphs 41-54, above, by issuing smog certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protections afforded under the Motor Vehicle Inspection Program (H & S Code section 44000, et seq.).

FIFTH CAUSE FOR DISCIPLINE
Smog Check Station License
(Violations of the Motor Vehicle Inspection Program)

57. Respondent PBK's Smog Check Station License is subject to disciplinary action under H & S Code section 44072.2, subdivision (a), in that as set forth in paragraphs 41-54, above, Respondent PBK failed to materially comply with the following provisions of California Code of Regulations, Title 16:

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a. **Section 44012, subdivision (a)**: Respondent PBK failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures on the six vehicles referenced in paragraphs 41-54.

b. **Section 44012, subdivision (f)**: Respondent PBK failed to perform emission control tests in accordance with procedures prescribed by the department on the six vehicles referenced in paragraphs 41-54.

c. **Section 44015, subdivision (b)**: Respondent PBK issued an electronic smog certificate of compliance for the six vehicles referenced in paragraphs 41-54, above, without properly testing and inspecting the vehicles to determine if they were in compliance with H & S Code section 44012.

SIXTH CAUSE FOR DISCIPLINE
Smog Check Station License
(Failure to Comply with Regulations)

58. Respondent PBK's Smog Check Station License is subject to disciplinary action under H & S Code section 44072.2, subdivision (c), in that Respondent PBK failed to comply with provisions of California Code of Regulations, Title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent PBK falsely or fraudulently issued an electronic smog certificate of compliance for the six vehicles referenced in paragraph 54, above.

b. **Section 3340.35, subdivision (c)**: Respondent PBK issued an electronic smog certificate of compliance for the six vehicles referenced in paragraph 54, above, even though the vehicles had not been inspected in accordance with section 3340.42.

c. **Section 3340.41, subdivision (c)**: Respondent PBK permitted false information to be entered into the Emission Inspection System ("EIS") in that vehicle identification information or emission control system identification data was entered for vehicles other than the ones being tested, as referenced in paragraph 54, above.

d. **Section 3340.42**: Respondent PBK failed to conduct the required smog tests on the six vehicles referenced in paragraph 54, above, in accordance with the Bureau's specifications.

SEVENTH CAUSE FOR DISCIPLINE
Smog Check Station License
(Dishonesty, Fraud or Deceit)

59. Respondent PBK's Smog Check Station License is subject to disciplinary action under H & S Code section 44072.2, subdivision (d), in that Respondent PBK committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the six vehicles referenced in paragraph 54, above, without performing a bona fide inspection of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

EIGHT CAUSE FOR DISCIPLINE
Smog Check Inspector License
(Failure to Comply with Regulations)

60. Respondent Blancato's smog check inspector license is subject to disciplinary action under H & S Code section 44072.2, subdivision (c), in that Respondent Blancato failed to comply with California Code of Regulations, Title 16, section 3340.41, subdivision (c), by entering false vehicle identification information or emissions control system identification into the EIS on four of the six vehicles referenced in paragraphs 41-54.

a. **Section 44012, subdivision (a)**: Respondent Blancato failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures, as referenced in paragraphs 41-54.

b. **Section 44012, subdivision (f)**: Respondent Blancato failed to perform emission control tests on the vehicles referenced in paragraphs 41-54, in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Blancato failed to perform tests of the emission control devices and systems on four of the six vehicles referenced in paragraphs 41-54 above, in accordance with section 44012 of that Code, in that the vehicles had been clean piped.

d. **Section 44059**: Respondent Blancato willfully made false entries for electronic Certificates of Compliance, certifying that four of the six vehicles referenced in paragraphs 41-54 above, had been inspected as required when, in fact, they had not.

NINTH CAUSE FOR DISCIPLINE

Smog Check Inspector License
(Violations of Regulations)

21. Respondent Blancato's smog check inspector license is subject to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on May 13 and 28, 2014, he violated sections of the California Code of Regulations, Title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Blancato falsely or fraudulently issued electronic Certificates of Compliance without performing a bona fide inspection of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012, on four of the six vehicles referenced in paragraphs 41-54.

b. **Section 3340.30, subdivision (a)**: Respondent Blancato failed to inspect and test on four of the six vehicles referenced in paragraphs 41-54, above, in accordance with Health and Safety Code section 44012.

c. **Section 3340.41, subdivision (c)**: Respondent Blancato entered false information into the Emission Inspection System ("EIS") for electronic Certificates of Compliance by entering vehicle emission control information for a vehicle other than on four of the six vehicles referenced in paragraphs 41-54.

d. **Section 3340.42**: Respondent Blancato failed to conduct the required smog tests and inspections on four of the six vehicles referenced in paragraphs 41-54, above, in accordance with the Bureau's specifications.

TENTH CAUSE FOR DISCIPLINE

Smog Check Inspector License
(Untrue or Misleading Statements)

61. Respondent Blancato's Smog Check Inspector License is subject to disciplinary action under H & S Code section 44072.2, subdivision (d), in that Respondent Blancato committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for four of the six vehicles referenced in paragraphs 41-54, above, without performing a bona fide inspection of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TENTH CAUSE FOR DISCIPLINE

Smog Check Inspector License
(Failure to Comply with Regulations)

62. Respondent Chenette's smog check inspector license is subject to disciplinary action under H & S Code section 44072.2, subdivision (c), in that Respondent Chenette failed to comply with California Code of Regulations, Title 16, section 3340.41, subdivision (c), by entering false vehicle identification information or emissions control system identification into the EIS on two of the six vehicles referenced in paragraphs 41-54.

a. **Section 44012, subdivision (a)**: Respondent Chenette failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures, as referenced in paragraphs 41-54.

b. **Section 44012, subdivision (f)**: Respondent Chenette failed to perform emission control tests on the vehicles referenced in paragraphs 41-54, in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Chenette failed to perform tests of the emission control devices and systems on two of the six vehicles referenced in paragraphs 41-54 above, in accordance with section 44012 of that Code, in that the vehicles had been clean piped.

d. **Section 44059**: Respondent Chenette willfully made false entries for electronic Certificates of Compliance, certifying that two of the six vehicles referenced in paragraphs 41-54 above, had been inspected as required when, in fact, they had not.

TWELFTH CAUSE FOR DISCIPLINE

Smog Check Inspector License
(Violations of Regulations)

63. Respondent Chenette's smog check inspector license is subject to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on May 13 and 28, 2014, he violated sections of the California Code of Regulations, Title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Chenette falsely or fraudulently issued electronic Certificates of Compliance, without performing a bona fide inspection of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012, on two of the six vehicles referenced in paragraphs 41-54.

b. **Section 3340.30, subdivision (a)**: Respondent Chenette failed to inspect and test on two of the six vehicles referenced in paragraphs 41-54, above, in accordance with Health and Safety Code section 44012.

c. **Section 3340.41, subdivision (c)**: Respondent Chenette entered false information into the Emission Inspection System ("EIS") for electronic Certificates of Compliance by entering vehicle emission control information for a vehicle other than on two of the six vehicles referenced in paragraphs 41-54.

d. **Section 3340.42**: Respondent Chenette failed to conduct the required smog tests and inspections on two of the six vehicles referenced in paragraphs 41-54, above, in accordance with the Bureau's specifications.

THIRTEENTH CAUSE FOR DISCIPLINE
Smog Check Inspector License
(Untrue or Misleading Statements)

64. Respondent Chenette's Smog Check Inspector License is subject to disciplinary action under H & S Code section 44072.2, subdivision (d), in that Respondent Chenette committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for two of the six vehicles referenced in paragraphs 41-54, above, without performing a bona fide inspection of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

65. Under Health and Safety Code section 44072.8, if Smog Check Station License Number RC 267889, issued to PBK Auto Care doing business as Auto Care USA, with Joseph Michael Bertine, President, Secretary, and Treasurer, is revoked or suspended, Automotive Repair Dealer Registration Number ARD 267889, and any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

66. Under Health and Safety Code section 44072.8, if Smog Check Inspector License Number EO 153170 issued to Daniel Nathan Blancato, is revoked or suspended, Smog Check

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Repair Technician License Number EI 153170, and any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

67. Under Health and Safety Code section 44072.8, if Smog Check Inspector License Number EO 125236 issued to Paul Joseph-Miche Chenette, is revoked or suspended, Smog Check Repair Technician License Number EI 125236, and any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 267889, issued to PBK Auto Care doing business as Auto Care USA, with Joseph Michael Bertine, as President, Secretary, and Treasurer;

2. Revoking or suspending Smog Check Station License Number RC 267889, issued to PBK Auto Care doing business as Auto Care USA, with Joseph Michael Bertine, as President, Secretary, and Treasurer;

3. Revoking or suspending Smog Check Inspector License Number EO 153170, issued to Daniel Nathan Blancato;

4. Revoking or suspending Smog Check Repair Technician License Number EI 153170, issued to Daniel Nathan Blancato;

5. Revoking or suspending Smog Check Inspector License Number EO 125236, issued to Paul Joseph-Miche Chenette;

6. Revoking or suspending Smog Check Repair Technician License Number EI 125236, issued to Paul Joseph-Miche Chenette;

7. Ordering PBK Auto Care, Joseph Michael Bertine, Daniel Nathan Blancato, and Paul Joseph-Miche Chenette to pay the Bureau of Automotive Repair the reasonable costs of

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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: December 4, 2014

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

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