

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

In the Matter of the Accusation Against:

EDUARDO PALMA GOMEZ, OWNER,
d.b.a. N&K SMOG TEST ONLY,
7572 Indiana Avenue
Riverside, CA 92504

Case No. 79/14-20

Automotive Repair Dealer Registration
No. ARD 268060
Smog Check, Test Only, Station License No.
TC 268060

Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order as to Eduardo Palma Gomez, Owner, d.b.a. N&K Smog Test Only 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 Eduardo Palma Gomez, Automotive Repair Dealer Registration No. ARD 268060 and Smog Check, Test Only, Station License No. TC 268060.

This Decision shall become effective

NOV 12 2013

DATED: October 16, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
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Attorneys for Complainant
7

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

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11 In the Matter of the Accusation Against:

Case No. 79/14-20

12 **EDUARDO PALMA GOMEZ, OWNER,**
d.b.a. N&K SMOG TEST ONLY,
13 **7572 Indiana Avenue**
Riverside, CA 92504
14

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
EDUARDO PALMA GOMEZ, OWNER,
d.b.a. N&K SMOG TEST ONLY

15 **Automotive Repair Dealer Registration No.**
ARD 268060
16 **Smog Check, Test Only, Station License No.**
TC 268060
17

18 Respondents.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Patrick Dorais (Complainant) is the Acting Chief of the Bureau of Automotive
24 Repair. He brought this action solely in his official capacity and is represented in this matter by
25 Kamala D. Harris, Attorney General of the State of California, by Gregory J. Salute, Supervising
26 Deputy Attorney General.
27
28

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

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

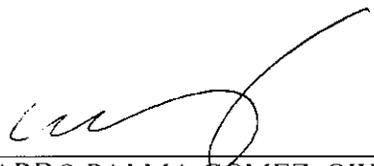
10 **DISCIPLINARY ORDER**

11 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 268060
12 issued , and Smog Check, Test Only, Station License No. TC 268060 issued to Respondent
13 Eduardo Palma Gomez d.b.a. N&K Smog Test Only, (Respondent) are revoked. IT IS HEREBY
14 FURTHER ORDERED that collection of the Bureau's costs of investigation and prosecution in
15 the amount of \$15,818.28 is hereby waived unless and until Eduardo Palma Gomez shall apply
16 for any type of license or registration at which time full payment of costs shall be due and payable
17 to the Bureau prior to the issuance of any license or registration to Eduardo Palma Gomez.

18 **ACCEPTANCE**

19 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
20 stipulation and the effect it will have on my Automotive Repair Dealer Registration, and Smog
21 Check, Test Only, Station License. I enter into this Stipulated Settlement and Disciplinary
22 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
23 of the Director of Consumer Affairs.

24
25 DATED: 07/11/13


26 _____
27 EDUARDO PALMA GOMEZ, OWNER
28 d.b.a. N&K SMOG TEST ONLY, Respondent

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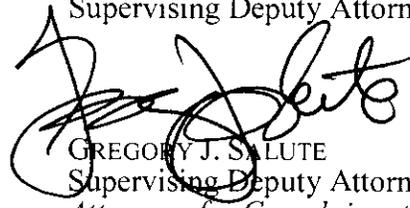
ENDORSEMENT

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

Dated: 10-7-2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



GREGORY J. SALUTE
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/14-20

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GREGORY J. SALUTE
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7 *Attorneys for Complainant*

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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:

Case No. 79/14-20

13 **EDUARDO PALMA GOMEZ, OWNER,**
14 **d.b.a. N&K SMOG TEST ONLY**
15 **7572 Indiana Avenue**
Riverside, CA 92504

A C C U S A T I O N

(Smog Check)

16 **Automotive Repair Dealer Registration**
17 **Number ARD 268060, Smog Check Test**
Only Station License Number TC 268060,

18 **MARCO ANTONIO GOMEZ,**
19 **4550 Berkley Avenue,**
20 **Hemet, Ca. 92544,**
21 **Advanced Emission Specialist Technician**
22 **License Number EA 632070 (to be**
23 **redesignated upon renewal as EO 632070**
24 **and/or EI 632070)**

25 **ISMAEL ENRIQUEZ ALEMAN**
26 **3004 N. Orange Avenue,**
27 **Rialto, Ca. 92377**
28 **Smog Check Inspector License Number EO**
635098

EDWARD LOPEZ,
5751 Willard Way,
Riverside, Ca. 92504
Smog Check Inspector License Number EO
635079

Respondent.

1 Complainant alleges:

2 **PARTIES**

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

6 **Automotive Repair Dealer Registration**

7 2. On or about February 23, 2012, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 268060 (“registration”) to Eduardo Palma Gomez (“Respondent
9 N&K”), doing business as N&K Smog Test Only. The registration was in full force and effect at
10 all times relevant to the charges brought herein and will expire on February 28, 2014, unless
11 renewed.

12 **Smog Check Test Only Station License**

13 3. On or about March 20, 2012, the Bureau issued Smog Check Test Only Station
14 License Number TC 268060 (“station license”) to Respondent N&K. The station license was in
15 full force and effect at all times relevant to the charges brought herein and will expire on February
16 28, 2014, unless renewed.

17 **Marco Antonio Gomez- Advanced Emission Specialist Technician License**

18 4. On or about May 12, 2010, the Bureau issued Advanced Emission Specialist
19 Technician License Number EA 632070 to Marco Antonio Gomez (“Respondent Gomez”). The
20 technician license was in full force and effect at all times relevant to the charges brought herein
21 and will expire on January 31, 2014, unless renewed. Upon timely renewal of the license, the
22 license will be redesignated as EO 632070 and/or EI 632070.¹

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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 related to the conduct of the business of the automotive repair dealer, which are done
2 by the automotive repair dealer or any automotive technician, employee, partner,
3 officer, or member of the automotive repair dealer.

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

7
8 (4) Any other conduct that constitutes fraud.

9
10 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
11 place on probation the registration for all places of business operated in this state by
12 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
13 engaged in a course of repeated and willful violations of this chapter, or regulations
14 adopted pursuant to it.

15 12. Bus. & Prof. Code section 22, subdivision (a), states:

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

20 13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
21 "license" includes "registration" and "certificate."

22 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

29
30 (c) Violates any of the regulations adopted by the director pursuant to this
31 chapter.

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

34 15. Health & Saf. Code section 44072.10 states, in pertinent part:

35
36 (c) The department shall revoke the license of any smog check technician

1 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
2 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
3 the following:

4 (1) Clean piping, as defined by the department . . .

5 16. Health & Saf. Code section 44072.8 states that when a license has been revoked or
6 suspended following a hearing under this article, any additional license issued under this chapter
7 in the name of the licensee may be likewise revoked or suspended by the director.

8 17. California Code of Regulations, title 16, section 3340.1 states, in pertinent:

9
10 "Clean piping," for the purposes of Health and Safety Code section
11 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of
12 the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of
13 compliance for the test vehicle . . .

14 COST RECOVERY

15 18. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
16 the administrative law judge to direct a licensee found to have committed a violation or
17 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
18 and enforcement of the case.

19 UNDERCOVER OPERATION #1: 1995 ACURA

20 19. On September 26, 2012, a representative of the Bureau, acting in an undercover
21 capacity ("operator"), took the Bureau's 1995 Acura to Respondent Gomez's facility. The
22 positive crankcase ventilation ("PCV") system on the Bureau-documented vehicle was missing,
23 the three-way catalytic converter ("TWC") was missing, certain emission related components
24 were disconnected, illegal adjustable camshaft gears had been installed on the vehicle, and the
25 vehicle had failed a smog test as a "gross polluter". The operator met with a male employee
26 ("Employee #1") and requested a smog inspection. The operator further told the employee that
27 she was looking for a person named "Marco" and was referred by a friend. Employee #1 then
28 pointed to another employee working at the other end of the shop and identified him as "Marco".
Employee #1 then asked the operator, "You don't have a catalytic converter, do you?" The
operator told Employee #1 that she was not sure. Approximately five minutes later, Employee #1

1 approached the operator and told her that since the car failed previously, they might have to fail it
2 and have her come back another day to pass it. He said "it wouldn't look good otherwise."
3 Approximately ten minutes later, Employee #1 called the operator into the shop area. He told the
4 operator "we're going to pass it for \$120, but don't say anything." The operator agreed to pay the
5 employee \$120 to certify the vehicle. The operator then observed the Bureau's 1995 Acura
6 being pulled into the test bay and could hear the car driving on the rollers. A short time later
7 Marco came back into the office and asked the operator to fill out an invoice with her personal
8 information which she did. Marco gave the operator a vehicle inspection report ("VIR") but did
9 not give her any type of an invoice indicating that she paid for a smog test.

10 20. The Bureau's VID (vehicle information database) data indicated that the vehicle
11 passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No.
12 [REDACTED] The VID data showed that Respondent Gomez performed the smog inspection on the
13 vehicle.

14 21. On October 3, 2012, the Bureau inspected the vehicle and found that the condition of
15 the vehicle had not changed. The PCV components and catalytic converter were still missing.
16 The adjustable camshaft timing gears were still installed. A smog inspection was then performed
17 on the vehicle. The vehicle failed the inspection due to excessive tailpipe emissions. The Bureau
18 concluded that Respondent Gomez performed the smog inspection on the vehicle using clean
19 piping methods, resulting in the issuance of a fraudulent smog certificate of compliance.

20 FIRST CAUSE FOR DISCIPLINE

21 (Untrue or Misleading Statements)

22 22. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
23 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
24 which he knew or in the exercise of reasonable care should have known to be untrue or
25 misleading, as follows:

26 a. Respondent N&K allowed his employee, Respondent Gomez, to certify under penalty
27 of perjury on the VIR that he performed the smog inspection on the Bureau's 1995 Acura in
28 accordance with all Bureau requirements and that the vehicle had passed the inspection and was

1 in compliance with applicable laws and regulations. In fact, Respondent Gomez used clean
2 piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle
3 as required by Health & Saf. Code section 44012.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 23. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
7 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
8 constitutes fraud, as follows: Respondent N&K allowed his employee, i.e. Respondent Gomez to
9 issue an electronic smog certificate of compliance for the Bureau's 1995 Acura without ensuring
10 that a bona fide inspection was performed of the emission control devices and systems on the
11 vehicle, thereby depriving the People of the State of California of the protection afforded by the
12 Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 24. Respondent N&K's smog check station license is subject to disciplinary action
16 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
17 comply with the following sections of that Code:

18 a. **Section 44012:** Respondent N&K failed to ensure that the emission control tests
19 were performed on the Bureau's 1995 Acura in accordance with procedures prescribed by the
20 department.

21 b. **Section 44015:** Respondent N&K allowed his employee, i.e., Respondent Gomez to
22 issue an electronic smog certificate of compliance for the Bureau's 1995 Acura without ensuring
23 that the vehicle was properly tested and inspected to determine if it was in compliance with
24 Health & Saf. Code section 44012.

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FOURTH CAUSE FOR DISCIPLINE
**(Failure to Comply with Regulations Pursuant
to the Motor Vehicle Inspection Program)**

25. Respondent N&K's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent N&K failed to comply with the provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent N&K allowed his employee Respondent Gomez to issue an electronic smog certificate of compliance for the Bureau's 1995 Acura even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

b. **3340.41, subdivision (c)**: Respondent N&K allowed his employee, i.e., Respondent Gomez to enter false information into the Emissions Inspection System ("EIS") by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42**: Respondent N&K failed to ensure that the required smog tests were conducted on the Bureau's 1995 Acura in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE
(Dishonesty, Fraud or Deceit)

26. Respondent N&K's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by allowing his employee Respondent Gomez to issue an electronic smog certificate of compliance for the Bureau's 1995 Acura without ensuring that a bona fide inspection was performed 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.

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

3 **UNDERCOVER OPERATION #2: 1995 CHEVROLET**

4 30. On November 13, 2012, a Bureau undercover operator took the Bureau's 1995
5 Chevrolet to Respondent N&K's facility. The truck was equipped with a disabled EGR system
6 and a modified oxygen sensor circuit which caused the vehicle to emit excessive tailpipe
7 emissions. The operator went into the office and was met by Respondent Gomez and his assistant
8 Ismael. The operator requested a smog test on the vehicle. Respondent Gomez asked the
9 operator if the truck had failed at any other shops to which she replied no. The operator was
10 asked to wait in the waiting room while other vehicles were tested. While she waited Respondent
11 Gomez apologized for how long it was taking, and informed her that he would definitely "make
12 the truck pass." Respondent Gomez approached her thereafter and she was asked to fill out
13 paperwork but she did not sign the paperwork nor received a copy of it. After the test was
14 completed, Respondent Gomez informed her that she owed him \$120 for the test, and he normally
15 charged \$140. She paid Respondent Gomez \$120 and informed him that she would send him
16 more business. Respondent Gomez then told the operator that she was "part of the family" and
17 gave her a passing VIR for the vehicle.

18 31. The Bureau's VID (vehicle information database) data indicated that the vehicle
19 passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No.
20 [REDACTED] The VID data showed that Respondent Gomez performed the smog inspection on the
21 vehicle.

22 32. On November 14, 2012, the Bureau performed a smog inspection on the vehicle. The
23 vehicle failed the inspection due to excessive tailpipe emissions, which were at gross polluter
24 levels. The tamper indicators on the EGR valve and oxygen sensor circuit defect were still intact
25 indicating that the system defects had not been corrected. The Bureau concluded that Respondent
26 Gomez had performed the smog inspection on the vehicle using clean piping methods, resulting
27 in the issuance of a fraudulent smog certificate of compliance.

28 ///

1 a. **Section 44012:** Respondent N&K failed to ensure that the emission control tests
2 were performed on the Bureau's 1995 Chevrolet in accordance with procedures prescribed by the
3 department.

4 b. **Section 44015:** Respondent N&K allowed his employee to issue an electronic smog
5 certificate of compliance for the Bureau's 1995 Chevrolet without ensuring that the vehicle was
6 properly tested and inspected to determine if it was in compliance with Health & Saf. Code
7 section 44012.

8 **TWELFTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations Pursuant** 10 **to the Motor Vehicle Inspection Program)**

11 36. Respondent N&K's smog check station license is subject to disciplinary action
12 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent N&K failed
13 to comply with the provisions of California Code of Regulations, title 16, as follows:

14 a. **Section 3340.35, subdivision (c):** Respondent Gomez issued an electronic smog
15 certificate of compliance for the Bureau's 1995 Chevrolet even though the vehicle had not been
16 inspected in accordance with Health & Saf. Code section 3340.42.

17 b. **3340.41, subdivision (c):** Respondent N&K permitted his technician, Respondent
18 Gomez, to enter false information into the EIS unit by entering vehicle identification information
19 or emission control system identification data for a vehicle other than the one being tested.

20 c. **Section 3340.42:** Respondent N&K failed to ensure that the required smog tests were
21 conducted on the Bureau's 1995 Chevrolet in accordance with the Bureau's specifications.

22 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

24 37. Respondent N&K's smog check station license is subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
26 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
27 certificate of compliance for the Bureau's 1995 Chevrolet without ensuring that a bona fide
28 inspection was performed of the emission control devices and systems on the vehicle, thereby

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

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

5 38. Respondent Gomez's technician license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
7 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
8 emission control tests on the Bureau's 1995 Chevrolet in accordance with procedures prescribed
9 by the department.

10 **FIFTEENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant**
12 **to the Motor Vehicle Inspection Program)**

13 39. Respondent Gomez's technician license is subject to disciplinary action pursuant to
14 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
15 provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.30, subdivision (a)**: Respondent Gomez failed to inspect and test the
17 Bureau's 1995 Chevrolet in accordance with Health & Saf. Code sections 44012 and 44035, and
18 California Code of Regulations, title 16, section 3340.42.

19 b. **Section 3340.41, subdivision (c)**: Respondent Gomez entered false information into
20 the EIS by entering vehicle identification information or emission control system identification
21 data for a vehicle other than the one being tested.

22 c. **Section 3340.42**: Respondent Gomez failed to conduct the required smog tests on the
23 Bureau's 1995 Chevrolet in accordance with the Bureau's specifications.

24 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

26 40. Respondent Gomez's technician license is subject to disciplinary action pursuant to
27 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
28 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of

1 compliance for the Bureau's 1995 Chevrolet without performing a bona fide inspection of the
2 emission control devices and systems on the vehicle, thereby depriving the People of the State of
3 California of the protection afforded by the Motor Vehicle Inspection Program.

4 **UNDERCOVER OPERATION #3: 1999 DODGE**

5 41. On January 18, 2013, a Bureau undercover operator took the Bureau's 1999 Dodge to
6 Respondent N&K's facility. The vehicle was equipped with a modified heated oxygen sensor
7 circuit which caused the vehicle to emit excessive tailpipe emissions. The operator went into the
8 office and was greeted by Respondent Lopez. The operator requested a smog test on the vehicle.
9 The operator was approached thereafter and told to fill out paperwork which he completed but did
10 not receive a copy of it. The operator then observed Respondent Lopez drive the vehicle into the
11 testing bay and sit inside the Dodge while Respondent Aleman inserted the analyzer probe into
12 the vehicle. Respondent Lopez stated that the emissions levels were high and asked Respondent
13 Aleman if he wanted to "use his car cold". Respondent Aleman replied "ok". Respondent Lopez
14 then exited the Dodge and walked over to a white Lincoln Towncar parked adjacent to the testing
15 bay and started the engine. Respondent Lopez then took the analyzer probe that was previously
16 inserted in the Dodge and walked it over to the rear of the Lincoln Towncar. Respondent Aleman
17 inserted a "dummy probe"² into the tailpipe of the Dodge. Respondent Lopez then got into the
18 Lincoln Towncar and raised the engine speed while Respondent Aleman drove the Dodge onto
19 the dynamometer. Respondent Aleman then exited the Dodge, removed the "dummy probe" from
20 the tailpipe of the Dodge, and walked over to the analyzer. Respondent Lopez exited the Lincoln
21 Towncar and walked back to the analyzer with the analyzer probe in his hand. A few minutes
22 later, Respondent Aleman informed the operator that the test was completed.

23 42. After the test was completed, Respondent Aleman informed the operator that he owed
24 him \$140 for the test. The operator paid Respondent Aleman \$140 and asked Respondent Aleman
25

26 ² The "dummy probe" is a short probe not connected to the analyzer but made to look like
27 a probe is connected to the analyzer to disguise anyone conducting surveillance that the actual car
28 is being tested and not a different car. In this case, the undercover operator could see the end of
the probe lying near the rear tire of the Dodge.

1 if he could bring more cars to him that needed "help" with the smog test. Respondent Aleman
2 said that he could but to call first.

3 43. The Bureau's VID (vehicle information database) data indicated that the vehicle
4 passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No.
5 [REDACTED] The VID data showed that Respondent Aleman performed the smog inspection on
6 the vehicle.

7 44. On January 25, 2013, the Bureau performed a smog inspection on the vehicle. The
8 vehicle failed the inspection due to excessive tailpipe emissions. The Bureau concluded that
9 Respondent Aleman had performed the smog inspection on the vehicle using clean piping
10 methods, resulting in the issuance of a fraudulent smog certificate of compliance.

11 **SEVENTEENTH CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 45. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
14 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
15 which he knew or in the exercise of reasonable care should have known to be untrue or
16 misleading, as follows:

17 a. Respondent N&K's technician, Respondent Aleman, with the assistance of
18 Respondent Lopez, certified under penalty of perjury on the VIR that he performed the smog
19 inspection on the Bureau's 1999 Dodge in accordance with all Bureau requirements and that the
20 vehicle had passed the inspection and was in compliance with applicable laws and regulations. In
21 fact, Respondent Aleman used clean piping methods in order to issue a certificate for the vehicle
22 and did not test or inspect the vehicle as required by Health & Saf. Code section 44012. As such,
23 the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

24 **EIGHTEENTH CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 46. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
27 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent N&K committed an act that
28 constitutes fraud, as follows: Respondent N&K allowed his employee to issue an electronic smog

1 certificate of compliance for the Bureau's 1999 Dodge without ensuring that a bona fide
2 inspection was performed of the emission control devices and systems on the vehicle, thereby
3 depriving the People of the State of California of the protection afforded by the Motor Vehicle
4 Inspection Program.

5 **NINETEENTH CAUSE FOR DISCIPLINE**

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

7 47. Respondent N&K's smog check station license is subject to disciplinary action
8 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent N&K failed
9 to comply with the following sections of that Code:

10 a. **Section 44012:** Respondent N&K failed to ensure that the emission control tests
11 were performed on the Bureau's 1999 Dodge in accordance with procedures prescribed by the
12 department.

13 b. **Section 44015:** Respondent N&K allowed his employee to issue an electronic smog
14 certificate of compliance for the Bureau's 1999 Dodge without ensuring that the vehicle was
15 properly tested and inspected to determine if it was in compliance with Health & Saf. Code
16 section 44012.

17 **TWENTIETH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations Pursuant**
19 **to the Motor Vehicle Inspection Program)**

20 48. Respondent N&K's smog check station license is subject to disciplinary action
21 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent N&K failed
22 to comply with the provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.35, subdivision (c):** Respondent Aleman, with the assistance of
24 Respondent Lopez, issued an electronic smog certificate of compliance for the Bureau's 1999
25 Dodge even though the vehicle had not been inspected in accordance with Health & Saf. Code
26 section 3340.42.

27 b. **3340.41, subdivision (c):** Respondent N&K permitted his technician, Respondent
28 Aleman, with the assistance of Respondent Lopez, to enter false information into the EIS unit by

1 entering vehicle identification information or emission control system identification data for a
2 vehicle other than the one being tested.

3 c. **Section 3340.42:** Respondent N&K failed to ensure that the required smog tests were
4 conducted on the Bureau's 1999 Dodge in accordance with the Bureau's specifications.

5 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

7 49. Respondent N&K's smog check station license is subject to disciplinary action
8 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
9 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
10 certificate of compliance for the Bureau's 1999 Dodge without ensuring that a bona fide
11 inspection was performed of the emission control devices and systems on the vehicle, thereby
12 depriving the People of the State of California of the protection afforded by the Motor Vehicle
13 Inspection Program.

14 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

16 50. Respondents Aleman and Lopez inspector licenses are subject to disciplinary action
17 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that both Respondents failed
18 to comply with section 44012 of that Code in a material respect, as follows: Respondents failed
19 to perform the emission control tests on the Bureau's 1999 Dodge in accordance with procedures
20 prescribed by the department.

21 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations Pursuant**
23 **to the Motor Vehicle Inspection Program)**

24 51. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary
25 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that both Respondents
26 failed to comply with provisions of California Code of Regulations, title 16, as follows:
27
28

1 a. **Section 3340.30, subdivision (a)**: Respondents failed to inspect and test the
2 Bureau's 1999 Dodge in accordance with Health & Saf. Code sections 44012 and 44035, and
3 California Code of Regulations, title 16, section 3340.42.

4 b. **Section 3340.41, subdivision (c)**: Respondent Aleman with the assistance of
5 Respondent Lopez entered false information into the EIS by entering vehicle identification
6 information or emission control system identification data for a vehicle other than the one being
7 tested.

8 c. **Section 3340.42**: Respondents failed to conduct the required smog tests on the
9 Bureau's 1999 Dodge in accordance with the Bureau's specifications.

10 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

12 52. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary
13 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondents
14 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an
15 electronic smog certificate of compliance for the Bureau's 1999 Dodge without performing a
16 bona fide inspection of the emission control devices and systems on the vehicle, thereby
17 depriving the People of the State of California of the protection afforded by the Motor Vehicle
18 Inspection Program.

19 **UNDERCOVER OPERATION #4: 1992 PLYMOUTH**

20 53. On February 1, 2013, a Bureau undercover operator took the Bureau's 1992 Plymouth
21 to Respondent N&K's facility. The vehicle was equipped with a three-way catalytic converter
22 with its internal material removed which caused the vehicle to emit excessive tailpipe emissions.
23 Once he arrived, the operator went into the office and was greeted by Respondent Lopez. The
24 operator requested a smog test on the vehicle. The operator was told by Respondent Lopez that
25 the smog test would cost \$50.00. The operator stated to Respondent Lopez that the vehicle
26 "needed some help". Respondent Lopez asked the operator if he had spoken to Respondent
27 Aleman to which the operator stated that he had. Respondent Lopez then replied "no problem".
28 The operator was told to fill out paperwork which he completed but did not receive a copy of it.

1 The operator then observed Respondent Aleman start a Buick Regal parked in the shop adjacent
2 to the testing bay while Respondent Lopez drove the 1992 Plymouth into the testing bay.
3 Respondent Aleman then checked the emissions of the 1992 Plymouth in manual mode after
4 Respondent Lopez inserted the analyzer probe into the 1992 Plymouth 's tailpipe. Respondent
5 Lopez was overheard by the operator stating: "Yes, it's dirty. That's why it has that smell."

6 54. Respondent Lopez then removed the analyzer probe from the 1992 Plymouth and
7 placed it next to the analyzer. Respondent Aleman then picked up the probe and walked over to
8 the rear of the Buick Regal. He then bent down behind the Regal and walked back to the 1992
9 Plymouth where he inserted a "dummy probe" into the tailpipe. The undercover operator
10 observed the end of the "dummy probe" lying near the rear tire of the 1992 Plymouth.
11 Respondent Lopez then got inside the Buick Regal and raised the engine speed while Respondent
12 Aleman drove the 1992 Plymouth on the dynamometer. After the 1992 Plymouth was done
13 running on the dynamometer, Respondent Lopez exited the Buick Regal and walked back to the
14 analyzer with the analyzer probe in his hand. Respondent Aleman exited the 1992 Plymouth and
15 removed the "dummy probe" from the Plymouth's exhaust. The operator then observed both
16 Respondent Lopez and Respondent Aleman standing in front of the analyzer while Respondent
17 Lopez entered data into the EIS. Respondent Lopez then drove the 1992 Plymouth out of the test
18 bay. Respondent Aleman indicated that the test was done. The operator asked Respondent
19 Aleman if he could have a discount if he brought more cars into the shop and Respondent Aleman
20 replied that he could do it for \$120.00.

21 55. Respondent Aleman then asked the operator to come into the waiting area and asked
22 Respondent Aleman if it was \$120 to which he replied "yes." The operator handed Respondent
23 Aleman \$120 in cash and in return received a VIR (vehicle inspection report) and the DMV
24 document. Respondent Aleman stated to the operator "anytime you need help, bring them by."

25 56. The Bureau's VID (vehicle information database) data indicated that the vehicle
26 passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No.
27 [REDACTED] The VID data showed that Respondent Lopez performed the smog inspection on the
28 vehicle.

1 57. On February 5, 2013, the Bureau re-inspected the vehicle and performed a smog
2 inspection on the vehicle. The vehicle failed the inspection due to excessive tailpipe emissions.
3 The Bureau concluded that Respondent Lopez had performed the smog inspection on the vehicle
4 using clean piping methods, resulting in the issuance of a fraudulent smog certificate of
5 compliance.

6 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

7 **(Untrue or Misleading Statements)**

8 58. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
9 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
10 which he knew or in the exercise of reasonable care should have known to be untrue or
11 misleading, as follows:

12 a. Respondent N&K's technician, Respondent Lopez, with the assistance of Respondent
13 Aleman, certified under penalty of perjury on the VIR that he performed the smog inspection on
14 the Bureau's 1992 Plymouth in accordance with all Bureau requirements and that the vehicle had
15 passed the inspection and was in compliance with applicable laws and regulations. In fact,
16 Respondent Lopez used clean piping methods in order to issue a certificate for the vehicle and did
17 not test or inspect the vehicle as required by Health & Saf. Code section 44012. As such, the
18 vehicle would not pass the inspection required by Health & Saf. Code section 44012.

19 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 59. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
22 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent N&K committed an act that
23 constitutes fraud, as follows: Respondent N&K allowed his employee to issue an electronic smog
24 certificate of compliance for the Bureau's 1992 Plymouth without ensuring that a bona fide
25 inspection was performed of the emission control devices and systems on the vehicle, thereby
26 depriving the People of the State of California of the protection afforded by the Motor Vehicle
27 Inspection Program.

28 ///

1 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

3 62. Respondent N&K's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
5 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
6 certificate of compliance for the Bureau's 1992 Plymouth without ensuring that a bona fide
7 inspection was performed of the emission control devices and systems on the vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **THIRTIETH CAUSE FOR DISCIPLINE**

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

12 63. Respondents Aleman and Lopez inspector licenses are subject to disciplinary action
13 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that both Respondents failed
14 to comply with section 44012 of that Code in a material respect, as follows: Respondents failed
15 to perform the emission control tests on the Bureau's 1992 Plymouth in accordance with
16 procedures prescribed by the department.

17 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations Pursuant**
19 **to the Motor Vehicle Inspection Program)**

20 64. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary
21 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that both Respondents
22 failed to comply with provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.30, subdivision (a)**: Respondents failed to inspect and test the
24 Bureau's 1992 Plymouth in accordance with Health & Saf. Code sections 44012 and 44035, and
25 California Code of Regulations, title 16, section 3340.42.

26 b. **Section 3340.41, subdivision (c)**: Respondent Lopez with the assistance of
27 Respondent Aleman entered false information into the EIS by entering vehicle identification
28

1 information or emission control system identification data for a vehicle other than the one being
2 tested.

3 c. **Section 3340.42:** Respondents failed to conduct the required smog tests on the
4 Bureau's 1992 Plymouth in accordance with the Bureau's specifications.

5 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

7 65. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary
8 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondents
9 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an
10 electronic smog certificate of compliance for the Bureau's 1992 Plymouth without performing a
11 bona fide inspection of the emission control devices and systems on the vehicle, thereby
12 depriving the People of the State of California of the protection afforded by the Motor Vehicle
13 Inspection Program.

14 **OTHER MATTERS**

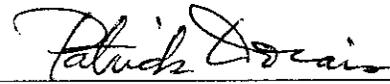
15 66. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
16 or may invalidate temporarily or permanently, the registrations for all places of business operated
17 in this state by Eduardo Palma Gomez upon a finding that he has, or is, engaged in a course of
18 repeated and willful violations of the laws and regulations pertaining to an automotive repair
19 dealer.

20 67. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
21 License Number TC 268060, issued to Eduardo Palma Gomez, doing business as N&K Smog
22 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
23 of said licensee may be likewise revoked or suspended by the director.

24 68. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
25 Technician License Number currently designated as EA 632070 (and upon timely renewal of the
26 license, to be redesignated as EO 632070 and/or EI 632070), issued to Marco Antonio Gomez, is
27 revoked or suspended, any additional license issued under this chapter in the name of said
28 licensee may be likewise revoked or suspended by the director.

- 1 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Ismael Enriquez Aleman;
- 3 9. Revoking or suspending Smog Check Inspector License Number EO 635079, issued
4 to Edward Lopez;
- 5 10. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Edward Lopez;
- 7 11. Ordering Eduardo Palma Gomez, Marco Antonio Gomez, Ismael Enriquez Aleman
8 and Edward Lopez to jointly and severally pay the Bureau of Automotive Repair the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3; and,
- 11 12. Taking such other and further action as deemed necessary and proper.

13 DATED: August 30, 2013

14 
15 PATRICK DORAIS
16 Acting Chief
17 Bureau of Automotive Repair
18 Department of Consumer Affairs
19 State of California
20 *Complainant*