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

11 In the Matter of the First Amended Accusation
12 Against:
13 **DINUBA SMOG**
14 **MARTIN ROJAS, OWNER**
15 **1818 East El Monte Way, Suite C**
16 **Dinuba, CA 93618**
17 **Automotive Repair Dealer Reg. No. ARD 269789**
18 **Smog Check, Test Only, Station License No.**
19 **TC 269789**
20 **and**
21 **JOSE ROJAS**
22 **38668 Monson Drive**
23 **Dinuba, CA 93618**
24 **Advanced Emission Specialist Technician**
25 **License No. EA 634558 (to be re-designated**
26 **upon renewal as EO 634558 and/or EI 634558)**
27 Respondents.

Case No. 79/14-94

FIRST AMENDED ACCUSATION
(Smog Check)

24 Complainant alleges:

25 **PARTIES**

26 1. Patrick Dorais ("Complainant") brings this First Amended Accusation solely in his
27 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of
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1 Consumer Affairs. This First Amended Accusation replaces in its entirety Accusation No. 79/14-
2 94 filed on February 11, 2014.

3 **Dinuba Smog; Martin Rojas, Owner**

4 2. On or about July 31, 2012, the Director of Consumer Affairs ("Director") issued
5 Automotive Repair Dealer Registration Number ARD 269789 ("registration") to Martin Rojas
6 ("Respondent Martin Rojas"), owner of Dinuba Smog. Respondent's registration was in full
7 force and effect at all times relevant to the charges brought herein and will expire on July 31,
8 2015, unless renewed.

9 3. On or about August 22, 2012, the Director issued Smog Check, Test Only, Station
10 License Number TC 269789 ("smog check station license") to Respondent Martin Rojas.
11 Respondent's smog check station license was in full force and effect at all times relevant to the
12 charges brought herein and will expire on July 31, 2015, unless renewed.

13 **Jose Rojas**

14 4. On or about July 27, 2012, the Director issued Advanced Emission Specialist
15 Technician License Number EA 634558 ("smog technician license") to Jose Rojas ("Respondent
16 Jose Rojas"). Respondent's smog technician license is due to expire on August 31, 2014. Upon
17 renewal of the license, the license will be re-designated as EO 634558 and/or EI 634558.¹

18 **JURISDICTION**

19 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
20 the Director may revoke an automotive repair dealer registration.

21 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
22 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
23 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
24 invalidating (suspending or revoking) a registration.

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

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

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

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

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

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

12

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

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

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

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18 (c) The department shall revoke the license of any smog check technician
19 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
20 the following:

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

22 **COST RECOVERY**

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

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1 XX413011C. In fact, Jose conducted the inspection using the exhaust emissions of a Dodge
2 Neon, a method known as clean piping, resulting in the issuance of a fraudulent smog certificate
3 of compliance for the 1996 Acura Integra.

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 27. Respondent Martin Rojas' registration is subject to disciplinary action pursuant to
7 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
8 statement which he knew or in the exercise of reasonable care should have known to be untrue or
9 misleading, as follows: Respondent Martin Rojas' technician, Respondent Jose Rojas, certified
10 that the 1996 Acura Integra had passed inspection and was in compliance with applicable laws
11 and regulations. In fact, Respondent Jose Rojas used clean piping methods in order to issue a
12 certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code
13 section 44012.

14 **TENTH CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 28. Respondent Martin Rojas' registration is subject to disciplinary action pursuant to
17 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
18 constitutes fraud by issuing an electronic smog certificate of compliance for the 1996 Acura
19 Integra without ensuring that a bona fide inspection was performed of the emission control
20 devices and systems on the vehicle, thereby depriving the People of the State of California of the
21 protection afforded by the Motor Vehicle Inspection Program.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 29. Respondent Martin Rojas' smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
5 comply with provisions of that Code, as follows:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on the 1996 Acura Integra in accordance with procedures prescribed by the
8 department.

9 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
10 the 1996 Acura Integra without ensuring that the vehicle was properly tested and inspected to
11 determine if it was in compliance with Health & Saf. Code section 44012.

12 **TWELFTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Regulations Pursuant**
14 **to the Motor Vehicle Inspection Program)**

15 30. Respondent Martin Rojas' smog check station license is subject to disciplinary action
16 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
17 comply with provisions of California Code of Regulations, title 16, as follows:

18 a. **Section 3340.35, subdivision (c):** Respondent Martin Rojas issued an electronic
19 smog certificate of compliance for the 1996 Acura Integra even though the vehicle had not been
20 inspected in accordance with section 3340.42.

21 b. **Section 3340.41, subdivision (c):** Respondent Martin Rojas authorized or permitted
22 his technician, Respondent Jose Rojas, to enter false information into the EIS by entering vehicle
23 identification information or emission control system identification data for a vehicle other than
24 the one being tested.

25 c. **Section 3340.42:** Respondent Martin Rojas failed to ensure that the required smog
26 tests were conducted on the 1996 Acura Integra in accordance with the Bureau's specifications.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent Martin Rojas' 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 1996 Acura Integra without ensuring that a bona fide inspection
7 was performed of the emission control devices and systems on the vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

12 32. Respondent Jose Rojas' smog technician license is subject to disciplinary action
13 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
14 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
15 perform the emission control tests on the 1996 Acura Integra in accordance with procedures
16 prescribed by the department.

17 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

20 33. Respondent Jose Rojas' smog technician license is subject to disciplinary action
21 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
22 comply with provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1996
24 Acura Integra in accordance with Health & Saf. Code sections 44012 and 44035, and California
25 Code of Regulations, title 16, section 3340.42.

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

1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1996
2 Acura Integra in accordance with the Bureau's specifications.

3 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

5 34. Respondent Jose Rojas' smog technician license is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
7 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
8 certificate of compliance for the 1996 Acura Integra without performing a bona fide inspection of
9 the emission control devices and systems on the vehicle, thereby depriving the People of the State
10 of California of the protection afforded by the Motor Vehicle Inspection Program.

11 **UNDERCOVER OPERATION: 1989 TOYOTA & 1994 HONDA**

12 35. The Bureau received a consumer complaint, indicating that the consumer had paid
13 Rumaldo Mike Carrillo ("Carrillo"), the owner of Automotive Center, located at 1818 East El
14 Monte Way, Unit #1, Dinuba, \$300 for the issuance of a smog check certificate for their vehicle
15 and that the vehicle was disassembled at the time it was allegedly smog tested. The Automotive
16 Center is not a licensed smog check station and Carrillo is not a licensed smog check technician.

17 36. On or about October 15, 2013, a representative of the Bureau, acting in an undercover
18 capacity ("operator"), took the Bureau's 1989 Toyota ("Toyota") to Carrillo's facility. A
19 defective coolant temperature sensor had been installed in the Bureau-documented vehicle,
20 causing the "check engine" light to illuminate on the dashboard. The operator met with Carrillo
21 and requested an oil change on the Toyota as well as a diagnosis of the check engine light.
22 Carrillo told the operator that he would contact him once he determined what was causing the
23 check engine light to illuminate. The operator left the facility.

24 37. At approximately 1134 hours that same day, Carrillo called the operator and told him
25 that the computer was not communicating with the vehicle, which was a common problem with
26 that model Toyota. Carrillo told the operator that he would purchase a Zener Diode from Radio
27 Shack and that it would cost \$120 to install it in the vehicle. The operator authorized the work,
28 then asked Carrillo if he could have the Toyota "smogged" (smog tested) following the repair.

1 Carrillo told the operator that he could smog the vehicle for an additional \$49 and that the Toyota
2 would be ready the next day.

3 38. On October 16, 2013, the operator called Carrillo to check on the status of the Toyota.
4 Carrillo told the operator that the Toyota passed the smog inspection, but still was not operating
5 properly. Carrillo stated that the Toyota ran rough when it was cold and that he wanted to check
6 the fuel filter to see if it was plugged.

7 39. Information from the Bureau's VID showed that on October 16, 2013, between 1202
8 and 1216 hours, Respondent Jose Rojas ("Jose") performed a smog inspection on the Toyota, on
9 behalf of Respondent Martin Rojas ("Martin"), resulting in the issuance of electronic smog
10 Certificate of Compliance No. [REDACTED]

11 40. On October 18, 2013, the operator returned to Carrillo's facility. Carrillo told the
12 operator that he went to the wrecking yard and located a used coolant temperature sensor and
13 coolant control box for the Toyota. The operator asked Carrillo if he knew someone who could
14 smog a vehicle for him that was located out of state. The operator explained that his son's Honda
15 was modified, that his son went to school in Nevada, and that the registration was expired.
16 Carrillo told the operator that he could have the vehicle smogged for \$350.

17 41. On October 21, 2013, the operator went to the facility to pick up the Toyota and paid
18 Carrillo \$414.49 in cash for the repairs. Carrillo gave the operator copies of an estimate, invoice,
19 and vehicle inspection report. The operator provided Carrillo with the registration renewal form
20 for the Bureau's 1994 Honda ("Honda"). Carrillo told the operator that he would have the smog
21 check done in a couple of days. The operator left the facility.

22 42. On October 22, 2013, the Bureau inspected the Toyota using the invoice for
23 comparison. The Bureau found that Carrillo installed a used coolant temperature sensor on the
24 vehicle that was in poor condition, failed to record the repair on the invoice, and performed
25 additional repairs that were not necessary on the vehicle.

26 43. On October 23, 2013, the operator called Carrillo and asked him if the smog for the
27 Honda was ready. Carrillo told the operator that "his guy" wanted the registration for the Honda.

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1 misleading, as follows: Respondent Martin Rojas' technician, Respondent Jose Rojas, certified
2 that the Bureau's 1994 Honda had passed inspection and was in compliance with applicable laws
3 and regulations. In fact, Respondent Jose Rojas used clean piping methods in order to issue a
4 certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code
5 section 44012. Further, certain emission control components on the vehicle were missing,
6 modified, disconnected, and/or unapproved (illegal), and the vehicle's emissions were at gross
7 polluter levels. As such, the vehicle would not pass the inspection required by Health & Saf.
8 Code section 44012.

9 **EIGHTEENTH CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 50. Respondent Martin Rojas' registration is subject to disciplinary action pursuant to
12 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
13 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1994
14 Honda without ensuring that a bona fide inspection was performed of the emission control
15 devices and systems on the vehicle, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program.

17 **NINETEENTH CAUSE FOR DISCIPLINE**

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

19 51. Respondent Martin Rojas' smog check station license is subject to disciplinary action
20 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
21 comply with provisions of that Code, as follows:

22 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
23 performed on the Bureau's 1994 Honda in accordance with procedures prescribed by the
24 department.

25 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
26 the Bureau's 1994 Honda without ensuring that the vehicle was properly tested and inspected to
27 determine if it was in compliance with Health & Saf. Code section 44012.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 52. Respondent Martin Rojas' smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.35, subdivision (c):** Respondent Martin Rojas issued an electronic
8 smog certificate of compliance for the Bureau's 1994 Honda even though the vehicle had not
9 been inspected in accordance with section 3340.42.

10 b. **Section 3340.41, subdivision (c):** Respondent Martin Rojas authorized or permitted
11 his technician, Respondent Jose Rojas, to enter false information into the EIS by entering vehicle
12 identification information or emission control system identification data for a vehicle other than
13 the one being tested.

14 c. **Section 3340.42:** Respondent Martin Rojas failed to ensure that the required smog
15 tests were conducted on the Bureau's 1994 Honda in accordance with the Bureau's specifications.

16 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

18 53. Respondent Martin Rojas' smog check station license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
20 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
21 certificate of compliance for the Bureau's 1994 Honda without ensuring that a bona fide
22 inspection was performed of the emission control devices and systems on the vehicle, thereby
23 depriving the People of the State of California of the protection afforded by the Motor Vehicle
24 Inspection Program.

25 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

27 54. Respondent Jose Rojas' smog technician license is subject to disciplinary action
28 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to

1 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
2 perform the emission control tests on the Bureau's 1994 Honda in accordance with procedures
3 prescribed by the department.

4 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant**
6 **to the Motor Vehicle Inspection Program)**

7 55. Respondent Jose Rojas' smog technician license is subject to disciplinary action
8 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
9 comply with provisions of California Code of Regulations, title 16, as follows:

10 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
11 1994 Honda in accordance with Health & Saf. Code sections 44012 and 44035, and California
12 Code of Regulations, title 16, section 3340.42.

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

16 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
17 Bureau's 1994 Honda in accordance with the Bureau's specifications.

18 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

20 56. Respondent Jose Rojas' smog technician license is subject to disciplinary action
21 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
22 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
23 certificate of compliance for the Bureau's 1994 Honda without performing a bona fide inspection
24 of the emission control devices and systems on the vehicle, thereby depriving the People of the
25 State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 OTHER MATTERS

2 57. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 suspend, revoke, or place on probation the registration for all places of business operated in this
4 state by Respondent Martin Rojas, owner of Dinuba Smog, upon a finding that Respondent has,
5 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining
6 to an automotive repair dealer.

7 58. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
8 License Number TC 269789, issued to Respondent Martin Rojas, owner of Dinuba Smog, is
9 revoked or suspended, any additional license issued under this chapter in the name of said
10 licensee may be likewise revoked or suspended by the Director.

11 59. Pursuant to Health & Saf. Code section 44072.8, if Respondent Jose Rojas' smog
12 technician license, currently designated as EA 634558, but upon renewal will be re-designated as
13 EO 634558 and/or EI 634558, is revoked or suspended, any additional license issued under this
14 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

15 PRAYER

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

18 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
19 269789, issued to Martin Rojas, owner of Dinuba Smog;

20 2. Revoking or suspending any other automotive repair dealer registration issued to
21 Martin Rojas;

22 3. Revoking or suspending Smog Check, Test Only, Station License Number
23 TC 269789, issued to Martin Rojas, owner of Dinuba Smog;

24 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
25 and Safety Code in the name of Martin Rojas;

26 5. Revoking or suspending Jose Rojas' smog technician license, currently designated as
27 EA 634558, but which, upon renewal, will be re-designated as EO 634558 and/or EI 634558;

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6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jose Rojas;

7. Ordering Martin Rojas, owner of Dinuba Smog, and Jose Rojas to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: July 3, 2014

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

SA2013113110