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

10
11 In the Matter of the Accusation Against:

Case No. 79/14-132

12 **IN & OUT TEST ONLY, INC.; VICTOR**
13 **DOMINGUEZ, PRESIDENT,**
SECRETARY, TREASURER
14 **2172 W. Florence Ave.**
Los Angeles, CA 90047

ACCUSATION

(SMOG CHECK)

15 **MAILING ADDRESS**
16 **902 Venice Blvd**
Los Angeles, CA 90015

17 **Automotive Repair Dealer Registration**
No. ARD 269945
18 **Smog Check, Test Only Station License**
No. TC 269945,

19 **and**

20 **FRANCISCO J. LOPEZ**
21 **6320 Gifford Street # E**
Bell, CA 90201

22 **Smog Check Inspector License**
23 **No. EO 635394**

24 Respondent.

25
26 Complainant alleges:
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1 **PARTIES**

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

4 2. On or about August 14, 2012, the Bureau of Automotive Repair issued Automotive
5 Repair Dealer Registration Number ARD 269945 to In & Out Test Only Inc.; Victor Dominguez,
6 President, Secretary, Treasurer (Respondent In & Out). The Automotive Repair Dealer
7 Registration was in full force and effect at all times relevant to the charges brought herein and
8 will expire on August 31, 2014, unless renewed.

9 3. On or about October 9, 2012, the Bureau of Automotive Repair issued Smog Check,
10 Test Only Station License Number TC 269945 to Respondent In & Out. The Smog Check Test
11 Only Station License was in full force and effect at all times relevant to the charges brought
12 herein and will expire on August 31, 2014, unless renewed.

13 4. On or about April 10, 2013, the Bureau of Automotive Repair issued Smog Check
14 Inspector License Number EO 635394 to Francisco J. Lopez (Respondent Lopez). The Smog
15 Check Inspector License was in full force and effect at all times relevant to the charges brought
16 herein and will expire on May 31, 2015, unless renewed.

17 **JURISDICTION**

18 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the
19 Bureau of Automotive Repair, under the authority of the following laws.

20 **STATUTORY PROVISIONS**

21 6. Section 9884.7 of the Business and Professions Code (Code) states, in pertinent part:

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

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

(4) Any other conduct that constitutes fraud.

1 (b) Except as provided for in subdivision (c), if an automotive repair
2 dealer operates more than one place of business in this state, the director pursuant to
3 subdivision (a) shall only suspend, revoke, or place on probation the registration of
4 the specific place of business which has violated any of the provisions of this chapter.
5 This violation, or action by the director, shall not affect in any manner the right of the
6 automotive repair dealer to operate his or her other places of business.

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

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

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

20 9. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
21 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
22 the Motor Vehicle Inspection Program.

23 10. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

11. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
expiration or suspension of a license by operation of law, or by order or decision of the Director

1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
2 the Director of jurisdiction to proceed with disciplinary action.

3 12. Section 44072.8 of the Health and Safety Code states:

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

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

11 COST RECOVERY

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

16 SURVEILLANCE OPERATIONS

17 15. On or around March 20, 2013, a routine undercover operation was initiated by Bureau
18 representatives that concerned the illegal purchase of smog inspection certificates issued for
19 vehicles that were never tested. The investigation initially concerned W M Smog Test Only
20 (ARD No. 264976), which the Bureau confirmed was indeed selling smog inspection certificates
21 of compliance for vehicles that were not in fact tested by purchasing several such certificates
22 from the facility. On or around July 18, 2013, Bureau representatives continued the undercover
23 operation by approaching the technician of W M Smog (hereinafter referred to as “Lee”) to
24 purchase additional certificates. Lee was provided with fictitious vehicle registrations which he
25 reviewed and noted that they were Star directed vehicles.¹ Lee stated that he was no longer

26 ¹ Under the BAR’s STAR Program, each Smog Check station that intends to inspect
27 directed vehicles must apply to BAR to determine whether the station meets the STAR
28 performance measures. If it is determined that the station meets the standard for each
performance measure, BAR will issue a certification to the station making it eligible to inspect
directed vehicles

1 inspecting Star directed vehicles but that he knew someone who would be willing to perform the
2 inspections for \$250 each.

3 16. Over the course of two subsequent transactions, representatives negotiated the
4 purchase of three smog inspection certificates of compliance for \$250 each and provided Lee with
5 all necessary information needed to perform the smog inspections. Bureau representatives were
6 subsequently provided with vehicle inspection reports for all three vehicles representing that they
7 had passed inspection. Review of the vehicle inspection reports revealed that they had been
8 performed by Respondent In & Out Smog through the use of Respondent Lopez's Smog
9 Inspector license and access code. At all times relevant to the undercover operation, the
10 following vehicles purportedly inspected by Respondent In & Out were maintained in the BAR's
11 documentation lab storage facility. The vehicles could not have been inspected at In & Out Smog
12 and should not have received Smog Certificates of Compliance.

13 **Table 1**

14

Date and Test Times	Vehicle in EIS Data (License Plate #)	Vehicle Tested (License Plate #)	Certificate Issued
15 7-19-2013 16 1022-1048	1994 Honda Accord [REDACTED]	Undetermined	[REDACTED]
17 8-8-2013 18 1042-1052	1989 Honda Accord [REDACTED]	Undetermined	[REDACTED]
19 8-10-2013 0852-0906	1991 Honda Accord [REDACTED]	Undetermined	[REDACTED]

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Misleading Statements)**

22 17. Respondent In & Out has subjected its registration to discipline under Code section
23 9884.7, subdivision (a)(1), in that on July 19, and August 8 and 10, 2013, it made statements
24 which it knew or which by exercise of reasonable care it should have known were untrue or
25 misleading when it issued electronic certificates of compliance for the vehicles set forth in Table
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1 1 above, certifying that those vehicles were in compliance with applicable laws and regulations
2 when, in fact, the vehicles had been clean piped.²

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 18. Respondent In & Out has subjected its registration to discipline under Code section
6 9884.7, subdivision (a)(4), in that on July 19, and August 8 and 10, 2013, it committed acts which
7 constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table
8 1 above, without performing bona fide inspections of the emission control devices and systems on
9 those vehicles, thereby depriving the People of the State of California of the protection afforded
10 by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 19. Respondent In & Out has subjected its station license to discipline under Health and
14 Safety Code section 44072.2, subdivision (a), in that on July 19, and August 8 and 10, 2013,
15 regarding the vehicles set forth in Table 1 above, it violated sections of that Code, as follows:

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

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

21 c. **Section 44015, subdivision (b):** Respondent In & Out issued electronic certificates
22 of compliance without properly testing and inspecting the vehicles to determine if they were in
23 compliance with section 44012 of that Code.

24
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26
27 ² Clean-piping is a method used to fraudulently certify vehicles that will not pass a smog
28 inspection on their own, or in some instances, are not even present during the time the test is
performed.

1 d. **Section 44059:** Respondent In & Out willfully made false entries for the electronic
2 certificates of compliance by certifying that those vehicles had been inspected as required when,
3 in fact, they had not.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 20. Respondent In & Out has subjected its station license to discipline under Health and
7 Safety Code section 44072.2, subdivision (c), in that on July 19, and August 8 and 10, 2013,
8 regarding the vehicles set forth in Table 1, above, it violated sections of the California Code of
9 Regulations, title 16, as follows:

10 a. **Section 3340.24, subdivision (c):** Respondent In & Out falsely or fraudulently
11 issued electronic certificates of compliance without performing bona fide inspections of the
12 emission control devices and systems on those vehicles as required by Health and Safety Code
13 section 44012.

14 b. **Section 3340.35, subdivision (c):** Respondent In & Out issued electronic certificates
15 of compliance even though those vehicles had not been inspected in accordance with section
16 3340.42 of that Code.

17 c. **Section 3340.42:** Respondent In & Out failed to conduct the required smog tests and
18 inspections on those vehicles in accordance with the Bureau's specifications.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 21. Respondent In & Out subjected its station license to discipline under Health and
22 Safety Code section 44072.2, subdivision (d), in that on July 19, and August 8 and 10, 2013,
23 regarding the vehicles set forth in Table 1, above, it committed acts involving dishonesty, fraud or
24 deceit whereby another was injured by issuing electronic certificates of compliance for those
25 vehicles without performing bona fide inspections of the emission control devices and systems on
26 those vehicles, thereby depriving the People of the State of California of the protection afforded
27 by the Motor Vehicle Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent Lopez has subjected his inspector license to discipline under Health and
4 Safety Code section 44072.2, subdivision (a), in that on July 19, and August 8 and 10, 2013,
5 regarding the vehicles set forth in Table 1, he violated sections of that Code, as follows:

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

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

11 c. **Section 44032:** Respondent Lopez failed to perform tests of the emission control
12 devices and systems on those vehicles in accordance with section 44012 of that Code, in that
13 those vehicles had been clean piped.

14 d. **Section 44059:** Respondent Lopez willfully made false entries for the electronic
15 certificates of compliance by certifying that those vehicles had been inspected as required when,
16 in fact, they had not.

17 **SEVENTH CAUSE FOR DISCIPLINE**

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

19 23. Respondent Lopez has subjected his inspector license to discipline under Health and
20 Safety Code section 44072.2, subdivision (c), in that on July 19, and August 8 and 10, 2013,
21 regarding the vehicles set forth in Table 1, he violated sections of the California Code of
22 Regulations, title 16, as follows:

23 a. **Section 3340.24, subdivision (c):** Respondent Lopez falsely or fraudulently issued
24 electronic certificates of compliance without performing bona fide inspections of the emission
25 control devices and systems on those vehicles as required by Health and Safety Code section
26 44012.

27 b. **Section 3340.30, subdivision (a):** Respondent Lopez failed to inspect and test those
28 vehicles in accordance with Health and Safety Code section 44012.

1 c. **Section 3340.41, subdivision (c):** Respondent Lopez entered false information into
2 the Emission Inspection System (“EIS”) for the electronic certificates of compliance by entering
3 vehicle emission control information for vehicles other than the vehicles being certified.

4 d. **Section 3340.42:** Respondent Lopez failed to conduct the required smog tests and
5 inspections on those vehicles in accordance with the Bureau’s specifications.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 24. Respondent Lopez has subjected his inspector license to discipline under Health and
9 Safety Code section 44072.2, subdivision (d), in that on July 19, and August 8 and 10, 2013, he
10 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
11 electronic certificates of compliance for the vehicles set forth in Table 1, above, without
12 performing bona fide inspections of the emission control devices and systems on those vehicles,
13 thereby depriving the People of the State of California of the protection afforded by the Motor
14 Vehicle Inspection Program.

15 **OTHER MATTERS**

16 25. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
17 or permanently or refuse to validate, the registrations for all places of business operated in this
18 state by In & Out Test Only Inc., including, but not limited to In & Out Test Only Inc. (ARD No.
19 268325) upon a finding that it has, or is, engaged in a course of repeated and willful violations of
20 the laws and regulations pertaining to an automotive repair dealer.

21 26. Under Health and Safety Code section 44072.8, if Station License Number TC
22 269945, issued to In & Out Test Only Inc. is revoked or suspended, any additional license issued
23 under this chapter in the name of said licensee, including, but not limited to In & Out Test Only
24 Inc. (Smog Check Test Only Station License No. TC 268325) may be likewise revoked or
25 suspended by the director.

26 27. Under Health and Safety Code section 44072.8, if Respondent Lopez’s Smog Check
27 Inspector License (Number EO 635394) is revoked or suspended, any additional license issued
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1 under this chapter in the name of said licensee may be likewise revoked or suspended by the
2 director.

3 PRAYER

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

6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 269945, issued to Respondent In & Out;

8 2. Revoking or suspending Automotive Repair Dealer Registration Number ARD
9 268325, issued to In & Out Test Only Inc.;

10 3. Revoking or suspending Smog Check Test Only Station License Number TC 269945,
11 issued to Respondent In & Out;

12 4. Revoking or suspending Smog Check Test Only Station License Number TC 268325,
13 issued to In & Out Smog Test Only Inc.;

14 5. Revoking or suspending Smog Check Inspector License Number EO 635394, issued
15 to Respondent Lopez;

16 6. Ordering Respondents In & Out and Lopez to pay the Bureau of Automotive Repair
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;

19 7. Taking such other and further action as deemed necessary and proper.

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21 DATED:

May 7, 2014

Patrick Dorais

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

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