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

12 In the Matter of the Accusation Against:

Case No. *79/15-47*
ACCUSATION
Smog check

13 **JIMMY'S TEST ONLY,**
JAMIL J. MOAMAR, OWNER
14 4220 Glen Street, Unit B
Riverside, CA 92509

15 Automotive Repair Dealer Registration No.
16 ARD 271065
Smog Check-Test Only Station License No.
17 TC 271065,

18 **JAMIL J. MOAMAR**
9471 53rd Street
19 Riverside, CA 92509

20 Smog Check Inspector License No. EO 633901
Smog Check Repair Technician License No. EI
21 633901 (formerly Advanced Emission
Specialist Technician License No. EA
22 633901),

23 and

24 **VICTOR HERNANDEZ**
3461 Anderson Avenue, #6
25 Riverside, CA 92507

26 Smog Check Inspector License No. EO 636318

27 Respondents.
28

1 Complainant alleges:

2 **PARTIES**

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

5 **Respondent Jamil J. Moamar, Owner of Jimmy's Test Only**

6 2. On December 7, 2012, the Bureau of Automotive Repair (Bureau) issued
7 Automotive Repair Dealer Registration Number ARD 271065 to Jamil J. Moamar (Respondent
8 Owner), Owner of Jimmy's Test Only. The Automotive Repair Dealer Registration was in full
9 force and effect at all times relevant to the charges brought herein and will expire on December
10 31, 2014, unless renewed.

11 3. On December 14, 2012, the Bureau issued Smog Check-Test Only Station
12 License Number TC 271065 to Respondent Owner. The Smog Check-Test Only Station License
13 was in full force and effect at all times relevant to the charges brought herein and will expire on
14 December 31, 2014, unless renewed.

15 **Respondent Jamil J. Moamar, Smog Check Inspector/ Repair Technician**

16 4. On December 21, 2011, the Bureau issued Advanced Emission Specialist
17 Technician License Number EA 633901 to Jamil J. Moamar (Respondent Moamar). Respondent
18 Moamar's advanced emission specialist technician license was due to expire on March 31, 2014,
19 however, was cancelled on February 6, 2014. Under California Code of Regulations, title 16,
20 section 3340.28, subdivision (e), the license was renewed, in accordance with Respondent
21 Moamar's election, as Smog Check Inspector License Number EO 633901 and Smog Check
22 Repair Technician License Number EI 633901, effective February 6, 2014. Respondent
23 Moamar's smog check inspector license and smog check repair technician license were in full
24 force and effect at all times relevant to the charges brought herein and will expire on March 31,
25 2016, unless renewed.¹

26 _____
27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
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
(continued...)

1 against an automotive repair dealer or to render a decision temporarily or permanently
2 invalidating, suspending, or revoking a registration.

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

6 13. Section 9889.7 provides, in pertinent part, that the expiration or suspension of a
7 license by operation of law or by order or decision of the Director or a court of law, or the
8 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any
9 disciplinary proceedings.

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

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

17 16. H & S Code section 44072.8 states:

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

21 **STATUTORY PROVISIONS**

22 17. Section 9884.7 states, in pertinent part:

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

....

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

....

18. Section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost.

19. 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.

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

4

5 (f) A visual or functional check is made of emission control devices
6 specified by the department, including the catalytic converter in those instances in
7 which the department determines it to be necessary to meet the findings of
8 Section 44001. The visual or functional check shall be performed in accordance
9 with procedures prescribed by the department.

10

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

12

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

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17 21. H & S Code section 44032 states:

18 No person shall perform, for compensation, tests or repairs of emission
19 control devices or systems of motor vehicles required by this chapter unless the
20 person performing the test or repair is a qualified smog check technician and the
21 test or repair is performed at a licensed smog check station. Qualified technicians
22 shall perform tests of emission control devices and systems in accordance with
23 Section 44012.

24 22. H & S Code section 44059 states:

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

29 23. H & S Code section 44072.2 states, in pertinent part:

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

33 (a) Violates any section of this chapter [the Motor Vehicle Inspection
34 Program (H & S Code § 44000, et seq.)] and the regulations adopted pursuant to
35 it, which related to the licensed activities.

36

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

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

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6 24. H & S Code section 44072.8 states, in pertinent part:

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

10 **REGULATORY PROVISIONS**

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

16 26. CCR, section 3340.30 states in pertinent part:

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

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

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23 27. CCR, section 3340.35 states in pertinent part:

24

25 (c) A licensed station shall issue a certificate of compliance or
26 noncompliance to the owner or operator of any vehicle that has been inspected in
27 accordance with the procedures specified in section 3340.42 of this article and has
28 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.

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28. CCR, section 3340.41 states:

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(c) 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.

....

29. CCR, section 3340.42 states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle are not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in those areas of the state where the enhanced program has been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emission standards set forth in this section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or equal to the applicable emissions standards specified in Table III.

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1 (3) An OBD-focused test, shall be the test method used to inspect
2 gasoline-powered vehicles 2000 model-year and newer, and diesel-powered
3 vehicles 1998 model-year and newer. The OBD test failure criteria are specified
4 in section 3340.42.2.

5 (b) In addition to subsection (a), all vehicles subject to the smog check
6 program shall receive the following:

7 (1) A visual inspection of emission control components and
8 systems to verify the vehicle's emission control systems are properly installed.

9 (2) A functional inspection of emission control systems as
10 specified in the Smog Check Manual, referenced by section 3340.45, which may
11 include an OBD test, to verify their proper operation.

12 (c) The bureau may require any combination of the inspection
13 methods in sections (a) and (b) under any of the following circumstances:

14 (1) Vehicles that the department randomly selects pursuant to
15 Health and Safety Code section 44014.7 as a means of identifying potential
16 operational problems with vehicle OBD systems.

17 (2) Vehicles identified by the bureau as being operationally or
18 physically incompatible with inspection equipment.

19 (3) Vehicles with OBD systems that have demonstrated operational
20 problems.

21 (d) Pursuant to section 39032.5 of the Health and Safety Code, gross
22 polluter standards are as follows:

23 (1) A gross polluter means a vehicle with excess hydrocarbon,
24 carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter
25 emissions standards included in the tables described in subsection (a), as
26 applicable.

27 (2) Vehicles with emission levels exceeding the emission standards
28 for gross polluters during an initial inspection will be considered gross polluters
and the provisions pertaining to gross polluting vehicles will apply, including, but
not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a
certificate of compliance until the vehicle's emissions are reduced to or below the
applicable emissions standards for the vehicle included in the tables described in
subsection (a), as applicable. However, the provisions described in section 44017
of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to
vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health
and Safety Code.

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1 **COST RECOVERY**

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

8 **UNDERCOVER OPERATION: 1995 Chevrolet**

9 31. On November 6, 2013, the Bureau conducted an undercover operation at
10 Respondent Owner's smog check-test only station, Jimmy's Test Only. The Bureau's vehicle, a
11 1995 Chevrolet, was modified to fail a proper smog inspection due to a disabled exhaust gas
12 recirculation (EGR) system and modified oxygen sensor circuit. Tamper indicators were placed
13 to detect corrections of the EGR defect and the oxygen sensor circuit.

14 32. Weeks before, on October 18, 2013, a Bureau undercover operator took the
15 vehicle to a smog check-test only station. The operator requested a smog check inspection. A
16 station staff told the operator that the valves that make the vehicle pass were not working and to
17 come back another day. On October 25, 2013, the operator once more took the vehicle to the
18 smog check-test only station for a smog test. The station staff told the operator that the person
19 who took the vehicles to another shop was out of town and to come back another day. On
20 November 5, 2013, the operator took the vehicle to the smog check-test only station for a smog
21 test. The station staff told the operator that there were more issues with the vehicle and to come
22 back the following day.

23 33. On November 6, 2013, the operator took the vehicle to the smog check-test only
24 station. The station staff and Respondent Hernandez were waiting for the operator. The operator
25 did not sign or receive a written estimate. The operator waited at the station while Respondent
26 Hernandez drove the vehicle to another smog check-test only station. Respondent Hernandez
27 returned and provided the operator a copy of the Vehicle Inspection Report (VIR), bearing
28 Certificate of Compliance Number [REDACTED] and Respondent Moamar's name as the smog

1 technician who had performed the smog test at Jimmy's Test Only, smog check-test only station
2 owned by Respondent Owner. The operator paid the station staff \$230.00 but was never given an
3 invoice. The operator asked if it was okay to bring in additional vehicles that needed to pass. The
4 station staff told the operator that it was okay with a prior telephone call.

5 34. On November 8, 2013, a Bureau personnel re-inspected the vehicle after the smog
6 test at Respondent Owner's smog check-test only station. The condition of the vehicle as
7 modified before testing at Respondent Owner's smog check-test only station had not changed; the
8 tamper indicators were still intact and the EGR system defect and oxygen sensor circuit
9 modification were not corrected. A smog inspection was performed and the 1995 Chevrolet failed
10 the inspection as a gross polluter for excessive oxides of nitrogen tailpipe emissions.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Misleading Statements)**

13 35. Respondent Owner has subjected his registration to discipline under Code section
14 9884.7, subdivision (a)(1), in that on November 6, 2013, he made statements which he knew or
15 which by exercise of reasonable care he should have known were untrue or misleading when he
16 issued electronic Certificate of Compliance No. [REDACTED] for the 1995 Chevrolet, certifying
17 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle
18 had a disabled EGR system and modified oxygen sensor circuit.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 36. Respondent Owner has subjected his registration to discipline under Code section
22 9884.7, subdivision (a)(4), in that Respondent committed acts constituting fraud by issuing
23 electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona
24 fide inspection of the emission control devices and systems on the vehicle.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Failure to Provide a Written Estimate)**

27 37. Respondent Owner has subjected his registration to discipline under Code section
28 9884.7, subdivision (a)(6), in that on November 6, 2013, he failed to comply with Code section

1 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the
2 smog inspection.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 38. Respondent Owner has subjected his station license to discipline under H & S
6 Code section 44072.2, subdivision (a), in that on November 6, 2013, regarding the 1995
7 Chevrolet, he violated the following sections of that Code:

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

11 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic
12 Certificate of Compliance No. [REDACTED] without properly testing and inspecting the vehicle to
13 determine if it was in compliance with section 44012 of that Code.

14 **FIFTH CAUSE FOR DISCIPLINE**

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

16 39. Respondent Owner has subjected his station license to discipline under H & S
17 Code section 44072.2, subdivision (c), in that on November 6, 2013, regarding the 1995
18 Chevrolet, he violated CCR section 3340.35, subdivision (c) when he issued electronic
19 Certificate of Compliance No. [REDACTED] even though the vehicle had not been inspected in
20 accordance with H & S Code section 3340.42.

21 **SIXTH CAUSE FOR DISCIPLINE**

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

23 40. Respondent Moamar has subjected his Smog Check Inspector License to
24 discipline under H & S Code section 44072.2, subdivision (a), in that on November 6, 2013,
25 regarding the 1995 Chevrolet, he violated the following sections of that Code:

26 a. **Section 44032:** Respondent Moamar failed to perform tests of the
27 emission control devices and systems on that vehicle in accordance with H & S Code section
28 44012, in that the vehicle had a disabled EGR system and modified oxygen sensor circuit.

1 electronic Certificate of Compliance No. [REDACTED] for the 1995 Chevrolet without performing a
2 bona fide inspection of the emission control devices and systems on that vehicle.

3 **TENTH CAUSE FOR DISCIPLINE**

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

5 44. Respondent Hernandez has subjected his Smog Check Inspector License to
6 discipline under H & S Code section 44072.2, subdivision (d), in that on November 6, 2013, he
7 committed acts involving dishonesty, fraud or deceit whereby another was injured by assisting in
8 the issuance of electronic Certificate of Compliance No. [REDACTED] for the 1995 Chevrolet
9 without performing a bona fide inspection of the emission control devices and systems on that
10 vehicle.

11 **UNDERCOVER OPERATION: 1994 Honda**

12 45. On December 6, 2013, the Bureau conducted a second undercover operation at
13 Respondent Owner's smog check-test only station, Jimmy's Test Only. The Bureau's vehicle, a
14 1994 Honda, was modified to fail a proper smog inspection due to the replacement of the
15 existing exhaust catalytic converter with a marked and matching but inoperative exhaust catalytic
16 converter, with its internal substrate removed.

17 46. A Bureau undercover operator took the vehicle to a smog check-test only station.
18 The operator requested a smog check inspection. A station staff told the operator that the testing
19 would cost \$200.00 and that the vehicle would be tested in another shop. Respondent Hernandez
20 arrived and drove the vehicle to Jimmy's Test Only, smog check-test only station owned by
21 Respondent Owner. Respondent Hernandez returned and told the operator to pay him \$220.00.
22 The operator paid Respondent Hernandez \$220.00 but was never given an invoice. Respondent
23 Hernandez then provided the operator a copy of the VIR, bearing Certificate of Compliance
24 Number [REDACTED] and Respondent Moamar's name as the smog technician who had performed
25 the smog test at Jimmy's Test Only.

26 47. Another operator conducted a visual surveillance at Respondent Owner's smog
27 check-test only station, Jimmy's Test Only, as soon as Respondent Hernandez took custody of
28 the 1994 Honda from the first operator. The second operator saw a vehicle identical to the

1 Bureau's 1994 Honda being driven into Jimmy's Test Only testing bay. The second operator also
2 observed a vehicle, with Jimmy's Test Only advertising on its side, move to the testing bay area.
3 When the second vehicle moved away from the testing bay and parked, the second operator,
4 using the Bureau database, determined that the Bureau's 1994 Honda had been certified at
5 Jimmys Test only. The vehicle identical to the Bureau's 1994 Honda was then driven out of
6 Jimmy's Test Only.

7 48. On December 10, 2013, a Bureau personnel re-inspected the vehicle after the smog
8 test at Respondent Owner's smog check-test only station. The condition of the vehicle as
9 modified before testing at Respondent Owner's smog check-test only station had not changed; the
10 marked inoperative exhaust catalytic converter was still installed. A smog inspection was
11 performed and the 1994 Honda failed the inspection as a gross polluter for excessive oxides of
12 nitrogen and maximum levels of exhaust emissions for hydrocarbons and carbon monoxide.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Misleading Statements)**

15 49. Respondent Owner has subjected his registration to discipline under Code section
16 9884.7, subdivision (a)(1), in that on December 6, 2013, he made statements which he knew or
17 which by exercise of reasonable care he should have known were untrue or misleading when he
18 issued electronic Certificate of Compliance No. [REDACTED] for the 1994 Honda, certifying that
19 the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle had
20 the existing exhaust catalytic converter replaced with a matching but inoperative exhaust
21 catalytic converter, with its internal substrate removed.

22 **TWELFTH CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 50. Respondent Owner has subjected his registration to discipline under Code section
25 9884.7, subdivision (a)(4), in that Respondent committed acts constituting fraud by issuing
26 electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona
27 fide inspection of the emission control devices and systems on the vehicle.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Provide a Written Estimate)**

3 51. Respondent Owner has subjected his registration to discipline under Code section
4 9884.7, subdivision (a)(6), in that on December 6, 2013, he failed to comply with Code section
5 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the
6 smog inspection.

7 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

9 52. Respondent Owner has subjected his station license to discipline under H & S
10 Code section 44072.2, subdivision (a), in that on December 6, 2013, regarding the 1994 Honda,
11 he violated the following sections of that Code:

12 a. **Section 44012, subdivision (f):** Respondent Owner failed to perform
13 emission control tests on the vehicle in accordance with procedures prescribed by the
14 department.

15 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic
16 Certificate of Compliance No. [REDACTED] without properly testing and inspecting the vehicle to
17 determine if it was in compliance with section 44012 of that Code.

18 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

20 53. Respondent Owner has subjected his station license to discipline under H & S
21 Code section 44072.2, subdivision (c), in that on December 6, 2013, regarding the 1994 Honda,
22 he violated the following sections of the CCR:

23 a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic
24 Certificate of Compliance No. [REDACTED] even though the vehicle had not been inspected in
25 accordance with H & S Code section 3340.42.

26 b. **Section 3340.42:** Respondent Owner failed to conduct the required smog
27 tests and inspections on the vehicle in accordance with the Bureau's specifications.

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1 61. While the first operator was waiting at the station where the 2002 Honda was
2 picked-up, another operator was conducting a surveillance at Jimmy's Test Only, smog check-
3 test only station owned by Respondent Owner. With a video camera, the second operator
4 recognized Respondent Moamar and Respondent Hernandez, who were preparing to test the
5 2002 Honda, the only vehicle at the shop at the time. Respondent Moamar then moved another
6 vehicle closer to the testing bay. Thereafter, Respondent Moamar went to the shop area and
7 returned with an analyzer sample probe in his hand and proceeded behind the other vehicle.
8 Respondent Moamar returned to the shop area without the analyzer sample probe. Respondent
9 Moamar then drove the 2002 Honda on the dynamometer with no analyzer probe in the tailpipe.
10 Respondent Moamar exited the 2002 Honda and moved the other vehicle away from the testing
11 bay. Respondent Moamar then went to the emissions analyzer and thereafter backed the 2002
12 Honda out of the testing bay. Respondent Moamar then handed some paperwork to Respondent
13 Hernandez, who drove the 2002 Honda back to the first operator.

14 62. The first operator saw Respondent Hernandez arrive in the 2002 Honda.
15 Respondent Hernandez told the first operator that the total cost of testing was \$200.00. The
16 operator paid another \$100.00 to Respondent Hernandez, who then provided the operator a VIR,
17 bearing Certificate of Compliance Number [REDACTED] and Respondent Moamar's name as the
18 smog technician who had performed the smog test at Jimmy's Test Only.

19 63. On March 27, 2014, a Bureau personnel re-inspected the vehicle after the smog
20 test at Respondent Owner's smog check-test only station. The condition of the vehicle as
21 modified before testing at Respondent Owner's smog check-test only station had not changed; the
22 marked inoperative exhaust catalytic converter was still installed. An Acceleration Simulation
23 Mode smog check inspection was performed and the 2002 Honda failed the inspection due to
24 high emissions. A visual inspection was also conducted and the Malfunction Indicator Light
25 turned on with the fault code: P0141 O₂ Sensor Heater Circuit Malfunction (bank 1 sensor 2). A
26 "FAIL" VIR was printed with "OVERALL TEST RESULTS-FAIL."

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TWENTY-FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

64. Respondent Owner has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on March 20, 2014, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic Certificate of Compliance No. [REDACTED] for the 2002 Honda, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle had the existing exhaust catalytic converter replaced with a matching but inoperative exhaust catalytic converter, with its internal substrate removed.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Fraud)

65. Respondent Owner has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting fraud by issuing electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

66. Respondent Owner has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that on March 20, 2014, he failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the smog inspection.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

67. Respondent Owner has subjected his station license to discipline under H & S Code section 44072.2, subdivision (a), in that on March 20, 2014, regarding the 2002 Honda, he violated the following sections of that Code:

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1 a. **Section 44012, subdivision (f):** Respondent Owner failed to perform
2 emission control tests on the vehicle in accordance with procedures prescribed by the
3 department.

4 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic
5 Certificate of Compliance No. [REDACTED] without properly testing and inspecting the vehicle to
6 determine if it was in compliance with section 44012 of that Code.

7 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

9 68. Respondent Owner has subjected his station license to discipline under H & S
10 Code section 44072.2, subdivision (c), in that on March 20, 2014, regarding the 2002 Honda, he
11 violated the following sections of the CCR:

12 a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic
13 Certificate of Compliance No. [REDACTED] even though the vehicle had not been inspected in
14 accordance with H & S Code section 3340.42.

15 b. **Section 3340.42:** Respondent Owner failed to conduct the required smog
16 tests and inspections on the vehicle in accordance with the Bureau's specifications.

17 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

19 69. Respondent Owner has subjected his station license to discipline under H & S
20 Code section 44072.2, subdivision (d), in that on March 20, 2014, regarding the 2002 Honda, he
21 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
22 electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona
23 fide inspection of the emission control devices and systems on the vehicle.

24 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

26 70. Respondent Moamar has subjected his Smog Check Inspector License to
27 discipline under H & S Code section 44072.2, subdivision (a), in that on March 20, 2014,
28 regarding the 2002 Honda, he violated the following sections of that Code:

1 a. **Section 44032:** Respondent Moamar failed to perform tests of the
2 emission control devices and systems on that vehicle in accordance with H & S Code section
3 44012, in that the vehicle had the existing exhaust catalytic converter replaced with a matching
4 but inoperative exhaust catalytic converter, with its internal substrate removed.

5 b. **Section 44059:** Respondent Moamar willfully made false entries for
6 electronic Certificate of Compliance No. [REDACTED] by certifying that the vehicle had been
7 inspected as required when, in fact, it had not.

8 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

10 71. Respondent Moamar has subjected his Smog Check Inspector License to
11 discipline under H & S Code section 44072.2, subdivision (c), in that on March 20, 2014,
12 regarding the 2002 Honda, he violated the following sections of the CCR:

13 a. **Section 3340.30, subdivision (a):** Respondent Moamar failed to inspect
14 and test that vehicle in accordance with H & S Code section 44012.

15 b. **Section 3340.42:** Respondent Moamar failed to conduct the required smog
16 tests and inspections on that vehicle in accordance with the Bureau's specifications.

17 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

19 72. Respondent Moamar has subjected his Smog Check Inspector License to
20 discipline under H & S Code section 44072.2, subdivision (d), in that on March 20, 2014, he
21 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
22 electronic Certificate of Compliance No. [REDACTED] for the 2002 Honda without performing a
23 bona fide inspection of the emission control devices and systems on that vehicle.

24 **THIRTIETH CAUSE FOR DISCIPLINE**

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

26 73. Respondent Hernandez has subjected his Smog Check Inspector License to
27 discipline under H & S Code section 44072.2, subdivision (d), in that on March 20, 2014, he
28 committed acts involving dishonesty, fraud or deceit whereby another was injured by assisting in

1 the issuance of Certificate of Compliance No. [REDACTED] for the 2002 Honda without performing
2 a bona fide inspection of the emission control devices and systems on that vehicle.

3 **OTHER MATTERS**

4 74. Under Health and Safety Code section 44072.8, if Smog Check - Test Only
5 Station License Number TC 271065, issued to Jamil J. Moamar, doing business as Jimmy's Test
6 Only, is revoked or suspended, Automotive Repair Dealer Registration Number ARD 271065
7 and any additional license issued under this chapter in the name of said licensee may be likewise
8 revoked or suspended by the director.

9 75. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
10 Number EO 633901 issued to Jamil J. Moamar, is revoked or suspended, Smog Check Repair
11 Technician License Number EI 633901 and any additional license issued under this chapter in
12 the name of said licensee may be likewise revoked or suspended by the director.

13 76. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
14 Number EO 636318 issued to Victor Hernandez, is revoked or suspended, any additional license
15 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
16 the director.

17 **PRAYER**

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

20 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
21 271065, issued to Jamil J. Moamar, Owner of Jimmy's Test Only;

22 2. Revoking or suspending Smog Check-Test Only Station License Number TC
23 271065, issued to Jamil J. Moamar, Owner of Jimmy's Test Only;

24 3. Revoking or suspending Smog Check Inspector License Number EO 633901,
25 issued to Jamil J. Moamar;

26 4. Revoking or suspending Smog Check Repair Technician License Number EI
27 633901, issued to Jamil J. Moamar;

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- 5. Revoking or suspending Smog Check Inspector License Number EO 636318, issued to Victor Hernandez;
- 6. Ordering Jamil J. Moamar and Victor Hernandez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 7. Taking such other and further action as deemed necessary and proper.

DATED: 9/26/14

Patrick Dorais by [Signature]
 PATRICK DORAIS
 Chief
 Bureau of Automotive Repair
 Department of Consumer Affairs
 State of California
 Complainant

Doug Balatti
 Assist Chief

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