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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 Accusation Against:

Case No. 79/15-126

12 **ADVANCED SMOG, ERIC YIH Owner,**
13 **140 B South Linden Avenue**
South San Francisco, CA 94080

A C C U S A T I O N

14 **Automotive Repair Dealer Registration No.**
15 **ARD 271480**
16 **Smog Check, Test Only, Station License No.**
17 **TC 271480**

(SMOG CHECK)

18 and

19 **MICHAEL JOSEPH MONARES**
20 **3984 Washington Blvd. C513**
21 **Fremont, CA 94538**

22 **Smog Check Inspector License No. EO**
23 **632615; Smog Check Repair Technician**
24 **License No. EI 632615**
25 **(redesignated upon renewal from Advanced**
26 **Emissions Specialist Technician License No.**
27 **EA 632615)**

28 and

29 **CARLOS OSWALDO HERNANDEZ**
30 **1218 Floribunda Ave. Apt 3.**
31 **Burlingame, CA 94010**

32 **Smog Check Inspector License No. EO**
33 **634552 (redesignated upon renewal from**
34 **Advanced Emissions Specialist Technician**
35 **License No. EA 634552) Respondents.**

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about January 16, 2013, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 271480 to Eric Yih (Respondent). The Automotive
7 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought
8 herein and will expire on January 31, 2016.

9 **Advanced Smog - Eric Yih**

10 3. On or about February 22, 2013, the Bureau of Automotive Repair issued Smog
11 Check, Test Only, Station License Number TC 271480 to Eric Yih (Respondent). The Smog
12 Check, Test Only, Station License was in full force and effect at all times relevant to the charges
13 brought herein and will expire on January 31, 2016.

14 **Michael Joseph Monares**

15 4. On October 25, 2010, the Director issued Advanced Emissions Specialist Technician
16 License Number EA 632615 to Michael Joseph Monares (Respondent Technician). Upon
17 renewal, Respondent Technician's license was redesignated as two licenses: Smog Check
18 Inspector License No. EO 632615 and Smog Check Repair Technician License No. EI 632615.¹
19 Respondent's Technician licenses were in full force and effect at all times relevant to the charges
20 brought herein. EI 632615 will expire on October 31, 2015 and EO 632615 will expire on
21 October 31, 2016, unless renewed.

22 **Carlos Oswaldo Hernandez**

23 5. On July 26, 2012, the Director issued Advanced Emissions Specialist Technician
24 License Number EA 634552 to Carlos Oswaldo Hernandez (Respondent Technician). Upon
25 renewal, Respondent Technician's license was designated with the election of Smog Check

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 Technician (EB) license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 Inspector License No. EO 634552. Respondent's Technician's licenses were in full force and
2 effect at all times relevant to the charges brought herein and will expire on March 31, 2016,
3 unless renewed.

4 JURISDICTION

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

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

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

15 9. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
16 surrender, cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction
17 to proceed with a disciplinary action during the period within which the license may be renewed,
18 restored, reissued or reinstated.

19 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
20 expiration or suspension of a license by operation of law, or by order or decision of the Director
21 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
22 the Director of jurisdiction to proceed with disciplinary action.

23 11. Section 44072.8 of the Health and Safety Code states:

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

27 12. Business and Professions Code section 9884.7 provides that the Director may revoke
28 any automotive repair dealer registration.

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

4 18. Section 44012 of the Health and Safety Code states:

5 "The test at the smog check stations shall be performed in accordance with procedures
6 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
7 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
8 and shall ensure all of the following:

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

14 19. Section 44014 of the Health and Safety Code states:

15 "(a) Except as otherwise provided in this chapter, the testing and repair portion of the
16 program shall be conducted by smog check stations licensed by the department, and by smog
17 check technicians who have qualified pursuant to this chapter.

18 20. Section 44015 of the Health and Safety Code states:

19 "(a) A licensed smog check station shall not issue a certificate of compliance, except as
20 authorized by this chapter...

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

23 21. Section 44030 of the Health and Safety Code states:

24 (a) The department shall develop standards for the licensing of smog check stations. Tests,
25 service, and adjustment at smog check stations shall be performed by a qualified smog check
26 mechanic.

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1 22. Section 44032 of the Health and Safety Code states:

2 "No person shall perform, for compensation, tests or repairs of emission control devices or
3 systems of motor vehicles required by this chapter unless the person performing the test or repair
4 is a qualified smog check technician and the test or repair is performed at a licensed smog check
5 station. Qualified technicians shall perform tests of emission control devices and systems in
6 accordance with Section 44012."

7 23. Section 44059 of the Health and Safety Code states:

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

12 24. Section 44072.2 of the Health and Safety Code states:

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

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

17 25. California Health and Safety Code Section 9889.22 states:

18 The willful making of any false statement or entry with regard to a material matter in any
19 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
20 by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the
21 Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

22 26. California Code of Regulations, title 16, section 3373 states:

23 No automotive repair dealer or individual in charge shall, in filing out an estimate, invoice,
24 or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold
25 therefrom or insert therein any statement or information which will cause any such document to
26 be false or misleading, or where the tendency or effect thereby would be to mislead or deceive
27 customers, prospective customers, or the public.

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1 27. California Code of Regulations, title 16, section 3340.30, states:

2 "A smog check technician shall comply with the following requirements at all times while
3 licensed.

4 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
5 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
6 3340.42 of this article.

7 28. California Code of Regulations, title 16, section 3340.35, states:

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

12 29. California Code of Regulations, title 16, section 3340.41, states:

13 "(c) No person shall enter into the emissions inspection system any vehicle identification
14 information or emission control system identification data for any vehicle other than the one being
15 tested. Nor shall any person knowingly enter into the emissions inspection system any false
16 information about the vehicle being tested.

17 30. California Code of Regulations, title 16, section 3340.42, states:

18 "Smog check stations and smog check technicians shall conduct tests and inspections in
19 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in
20 subsections (a) and (b) of Section 3340.17 and the following:

21 31. California Code of Regulations, title 16, section 3340.45, states:

22 (a) All Smog Check inspections shall be performed in accordance with requirements and
23 procedures prescribed in the following:

24 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
25 incorporated by referenced. This manual shall be in effect until subparagraph (2) is implemented.

26 (2) Smog Check Manual dated 2013, which is hereby incorporated by reference. This
27 manual shall become effective on or after January 1, 2013.

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1 **COSTS**

2 32. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FACTUAL BACKGROUND**

7 33. From September 25, 2013 through January 13, 2014, Respondent Yih, owner of
8 Advanced Smog Check, encouraged, directed and knowingly allowed Respondent Technician
9 Monares to “clean plug” vehicles which were failing OBD II tests and encouraged, directed and
10 knowingly allowed Respondent Technician Monares to perform “false fail” Smog Check tests by
11 failing the gas cap functional test portion of various Smog Check examinations.^{2 3} Respondent
12 Monares knowingly performed “clean plugging” and “false fails.” Respondent Hernandez
13 performed “clean plugging.” A Bureau review of Advanced Smog’s OBD II Test Data revealed
14 numerous illegal smogs as noted below.

15 **Clean Plug No. 1 – October 3, 2013 - Hernandez**

16 On or about October 3, 2013, a 2000 Audi TT Quattro Coupe/Roadster was tested and
17 Smog Certificate No. PA266454C was issued under licensed Smog Check Technician No.
18 EA634552, Respondent Hernandez. The Bar 97 Test detail shows code P0743 was stored in the
19 PCM memory at the time of certification. Service information shows that this code does not
20 apply or match to the 2000 Audi TT Quattro Coup/Roadster.

21 ² “Clean-Plugging” is a method used to fraudulently inspect and/or certify vehicles that
22 will not pass a properly performed smog inspection on their own. To “clean-plug” a vehicle, the
23 technician or other individual uses another vehicle’s On Board Diagnostics II (OBDII) connection
to perform the OBDII functional test that will pass the Smog Check functional test while entering
data for the vehicle being fraudulently certified.

24 ³ “False Fail” is a method used to fail vehicles that might pass a Smog Check test on
25 their own, or in some instances, are not even present during the time the test is performed. To
26 “False Fail,” the technician uses an exhaust gas sample and/or functional/visual data that will fail
27 the Smog Check emissions test, while entering data into the analyzer for the vehicle to be
28 fraudulently failed. This practice can be used to manipulate a station and or technicians
performance measures, specifically the vehicle failure rate which affects STAR program
eligibility.

1 **Clean Plug No. 2 – October 11, 2013 – Respondent Hernandez**

2 On or about October 11, 2013, a 2005 Toyota Corolla was tested and a Smog Certificate
3 No. PA313162C was issued under licensed Smog Check Technician No. EA634552, Respondent
4 Hernandez. The Bar 97 Test detail shows code P2004 was stored in the PCM memory at the time
5 of certification. Service information shows that this code does not apply or match to the 2005
6 Toyota Corolla.

7 **Clean Plug No. 3 – October 15, 2013 – Respondent Hernandez**

8 On or about October 15, 2013, a 2002 Dodge Viper was tested and Smog Certificate No.
9 PA313185C was issued under licensed Smog Check Technician No. EA634552, Respondent
10 Hernandez. The Bar 97 Test detail shows code P2004 was stored in the PCM memory at the time
11 of certification. Service information shows that this code does not apply or match to the 2002
12 Dodge Viper.

13 **Clean Plug No. 4 – December 26, 2013 - Respondent Monares**

14 On or about December 26, 2013, a 1998 Chrysler Town & Country was tested and Smog
15 Certificate No. PC268675C was issued under licensed Smog Check Technician No. E0632615,
16 Respondent Monares. The Bar 97 Test detail shows code P0325 was stored in the PCM memory
17 at the time of certification. Service information shows that this code does not apply or match the
18 1998 Chrysler Town & Country.

19 **Clean Plug No. 5 – December 27, 2013 - Respondent Monares**

20 On or about December 27, 2013, a 2002 Dodge Dakota was tested and Smog Certificate
21 No. PC268690C was issued under licensed Smog Check Technician No. EO632615, Respondent
22 Monares. The Bar 97 Test detail shows code P0325 was stored in the PCM memory at the time of
23 certification. Service information shows that this code does not apply or match to the 2002
24 Dodge Dakota.

25 **Clean Plug No. 6 – December 27, 2013 Respondent Monares**

26 On or about December 27, 2013, a 1998 Audi A4 Quattro was tested and Smog Certificate
27 No. PC268694C was issued under licensed Smog Check Technician No. EO632615, Respondent
28 Monares. The Bar 97 Test detail shows code P0325 was stored in the PCM memory at the time of

1 certification. Service information shows that this code does not apply or match the 1998 Audi A4
2 Quattro.

3 **Clean Plug No. 7 – January 11, 2014 Respondent Monares**

4 During the Bureau investigation Respondent Monares confessed that on or about January
5 11, 2014 he “clean plugged” a 2008 Ford Taurus by using the OBDII connector from an Audi to
6 perform the OBDII portion of the smog check. Smog Certificate No. PC475096C was issued
7 under licensed Smog Check Technician No. EO632615, Respondent Monares.

8 **FURTHER BUREAU INVESTIGATION**

9 34. Further Bureau investigation determined there were multiple illegal smogs performed
10 by Respondent Yih. Respondent Yih, who is not licensed as a smog technician also directed that
11 Respondent technician Monares provide his smog technicians’ access code to Respondent Yih for
12 the express purpose of allowing Respondent Yih to use the technician access code information in
13 order to conduct illegal smog checks on vehicles for which Respondent Yih was not licensed or
14 authorized. In return for access to Respondent Monares’ technician access code, Respondent Yih
15 promised to compensate him with extra wages. Respondent Monares provided his Smog Check
16 technician access code to Respondent Yih, with knowledge that Respondent Yih did not have a
17 Smog Check technician license and would be performing illegal Smog Check Inspections.

18 35. On or about January 13, 2014, the Bureau conducted an investigation of smogs
19 performed on that day at the subject facility Advanced Smog. Documentation established that
20 illegal smogs were performed January 13, 2014 by Respondent Yih under the license and access
21 code information of Respondent Monares who was not present at the subject facility the entire
22 day. Respondent Yih performed a total of six (6) unlicensed smog check inspections on January
23 13, 2014.

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1 **Illegal Smog 1 – January 13, 2014 - Respondent Yih**

2 On or about January 13, 2014, a 2002 Nissan Frontier was tested and Smog Certificate No.
3 PC475097C was issued under licensed Smog Check Technician No. EO632615, Respondent
4 Monares. Respondent Monares was not present at the facility that day. The illegal smog was
5 performed by Respondent Yih.

6 **Illegal Smog 2 – January 13, 2014- Respondent Yih**

7 On or about January 13, 2014, a 2008 Infiniti G35 was tested under licensed Smog Check
8 Technician No. EO632615, Respondent Monares. Respondent Monares was not present at the
9 facility that day. The illegal smog was performed by Respondent Yih. The vehicle received a fail.

10 **Illegal Smog 3 – January 13, 2014- Respondent Yih**

11 On or about January 13, 2014, a 2008 Infiniti G35 was tested a second time after an
12 immediate previous fail and Smog Certificate No. PC475098C was issued under licensed Smog
13 Check Technician No. EO632615, Respondent Monares. Respondent Monares was not present at
14 the facility that day. The illegal smog was performed by Respondent Yih.

15 **Illegal Smog 4 – January 13, 2014- Respondent Yih**

16 On or about January 13, 2014, a 2006 Ford Focus was tested and a Smog Certificate No.
17 PC475099C was issued under licensed Smog Check Technician No. EO632615, Respondent
18 Monares. Respondent Monares was not present at the facility that day. The illegal smog was
19 performed by Respondent Yih.

20 **Illegal Smog 5 – January 13, 2014- Respondent Yih**

21 On or about January 13, 2014, a 2003 Toyota Camry was tested under licensed Smog Check
22 Technician No. EO632615, Respondent Monares. Respondent Monares was not present at the
23 facility that day. The illegal smog was performed by Respondent Yih. The vehicle received a fail.

24 **Illegal Smog 6 – January 13, 2014 - Respondent Yih**

25 On or about January 13, 2014, a 2003 Toyota Camry was tested a second time following an
26 immediate previous fail and Smog Certificate No. PC475100C was issued under licensed Smog
27 Check Technician No. EO632615, Respondent Monares. Respondent Monares was not present at
28 the facility that day. The illegal smog was performed by Respondent Yih.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 36. Respondent Yih's station license is subject to discipline pursuant to Health and
4 Safety Code section 44072.2, subdivision (d), in that on or about January 13, 2014, Respondent
5 Yih performed six (6) illegal smog tests for which he was not licensed while using the access
6 code of Respondent technician Monares, thereby depriving the People of the State of California
7 the protection afforded by the Motor Vehicle Inspection Program. The following violations apply:

8 a. **Section 44012:** The test at the Smog Check Station shall be performed in accordance
9 with the procedures prescribed by the department, pursuant to Section 44013 of the Health and
10 Safety Code.

11 b. **Section 44012, subdivision (f):** Failure to perform a visual and/or functional check
12 of required emission control devices.

13 c. **Section 44059:** False statement or entry on a certificate of compliance.

14 d. **Section 44032:** Failure of the qualified technician to perform test of emission
15 control devices and systems in accordance with section 44012.

16 **SECOND CAUSE FOR DISCIPLINE**

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

18 37. Respondent Yih's station license is subject to discipline pursuant to Health and Safety
19 Code section 44072.2, subdivision (d), in that on or about January 13, 2014, regarding the 2002
20 Nissan Frontier, he committed dishonest, fraudulent or deceitful actions whereby another is
21 injured by issuing electronic Certificate of Compliance No. PC 475097 for the vehicle.

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THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, Deceit)

38. Respondent Yih's station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about January 13, 2014, regarding the 2008 Infiniti G35, he committed dishonest, fraudulent or deceitful actions whereby another is injured by issuing electronic Certificate of Compliance No. PC475098C for the vehicle.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, Deceit)

39. Respondent Yih's station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about January 13, 2014, regarding the 2006 Ford Focus, he committed dishonest, fraudulent or deceitful actions whereby another is injured by issuing electronic Certificate of Compliance No. PC475099C for the vehicle.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, Deceit)

40. Respondent Yih's station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about January 13, 2014, regarding the 2003 Toyota Camry, he committed dishonest, fraudulent or deceitful actions whereby another is injured by issuing electronic Certificate of Compliance No. PC475100C for the vehicle.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 41. Respondent Yih's station license is subject to discipline pursuant to Health and Safety
4 Code section 44072.2, subdivision (d), in that on or about January 13, 2014, Respondent
5 performed six (6) illegal smog tests for which he was not licensed. The following sections were
6 violated:

7 a. **Section 44030, subdivision (a):** All Smog Checks shall be performed by qualified
8 Smog Check Technicians.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(False and Misleading Statements)**

11 42. Respondent Yih's station license is subject to discipline pursuant to section 9889.22
12 in that on or about January 13, 2014, Respondent made false statements which he knew or which
13 by exercise of reasonable care should have known to be untrue or misleading by issuing four (4)
14 Certificates of compliance on vehicles which were illegally smogged by Respondent Yih who was
15 not licensed to conduct smog checks.

16 **EIGHTH CAUSE FOR DISCIPLINE**

17 **(Violations of Automotive Repair Act)**

18 43. Respondent Yih's station license is subject to discipline pursuant to section
19 9884.7(a)(6) in that on or about January 13, 2014, Respondent conducted smogs of six (6)
20 vehicles and issued four (4) certificates of compliance on vehicles which he was not licensed or
21 authorized to smog. Thereby depriving the People of the State of California the protection
22 afforded by the Motor Vehicle Inspection Program by failing to comply with the provisions of the
23 Automotive Repair Act.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 44. Respondent Yih's station license is subject to discipline pursuant to section
4 9884.7(a)(4) in that on or about January 13, 2014, Respondent conducted smogs of six (6)
5 vehicles and issued four (4) certificates of compliance on vehicles which he was not licensed or
6 authorized to smog. Thereby depriving the People of the State of California the protection
7 afforded by the Motor Vehicle Inspection Program by failing to comply with the provisions of the
8 Automotive Repair Act.

9 **TENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with Regulations)**

11 45. Respondent Yih's station license is subject to discipline pursuant to Health and Safety
12 Code section 44072.2, subdivision (d), in that on or about January 13, 2014, Respondent
13 conducted six (6) illegal smog tests wherein he failed to comply with provisions of California
14 Code of Regulations, title 16, as follows:

15 a. **Section 3340.45:** All emissions tests conducted by a licensed Smog Check station
16 shall be performed in accordance with the EIS prompts and procedures prescribed by the
17 department.

18 b. **Section 3373:** False or misleading records.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 46. Respondent Yih's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statements
5 which he knew or in the exercise of reasonable care should have known to be untrue or
6 misleading, as follows: Respondent Yih certified that all of the vehicles had passed inspection
7 and were in compliance with applicable laws and regulations. In fact, Respondent Yih, who is not
8 licensed to conducts smogs, had conducted illegal smogs on vehicles.

9 **TWELFTH CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 47. Respondent Yih's registration is subject to disciplinary action pursuant to Bus. &
12 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute
13 fraud by issuing Smog Certificates for vehicles indicating that vehicles had passed inspection and
14 were in compliance with applicable laws and regulations. In fact, Respondent Yih, who is not
15 licensed to conduct smogs, had conducted illegal smogs on vehicles.

16 **THIRTEENTH CAUSE FOR DISCIPLINE**

17 **(Fraud - Aiding and Abetting Unlicensed Practice)**

18 48. Respondent Monares's technician licenses are subject to discipline pursuant to Health
19 and Safety Code section 44072.2, subdivision (f), in that on or about January 13, 2014,
20 Respondent Monares aided and abetted unlicensed activity by providing his smog check
21 technician access code to Respondent Yih, with knowledge that Respondent Yih did not have a
22 smog check technician license and would be performing illegal Smog Check Inspections.

23 **a. Section 44012, subdivision (a):** The test at the Smog C heck Station shall be
24 performed in accordance with the procedures prescribed by the department, pursuant to Section
25 44013 of the Health and Safety Code.

26 **b. Section 44012, subdivision (f):** Failure to perform a visual and/or functional check
27 of required emission control devices.

28 **c. Section 44059:** False statement or entry on a certificate of compliance.

1 **SIXTHTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply With Regulations)**

3 51. Respondent Monares' technician licenses are subject to discipline pursuant to Health
4 and Safety Code section 44072.2, subdivision (d), in that between September 25, 2013 thru
5 January 13, 2014 Respondent conducted four (4) illegal smog tests wherein he failed to comply
6 with provisions of California Code of Regulations, title 16, as follows:

7 **b. Section 3340.42, subdivision (e):** Failure to conduct the on-board diagnostics (OBD)
8 system test of a vehicle undergoing a Smog Check inspection.

9 **c. Section 3340.30, subdivision (a):** Failure of the licensed technician to inspect
10 vehicles in accordance with test procedures..

11 **d. Section 3340.41, subdivision (c):** Entering false information into the Emissions
12 Inspection System.

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14 **SEVENTEENTH CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 52. Respondent Hernandez' technician license is subject to discipline pursuant to Health
17 and Safety Code section 44072.2, subdivision (d), in that on or about September 25, 2013 through
18 January 13, 2014, Respondent Hernandez performed three (3) smog check inspections by "clean
19 plugging" methods, in order to pass the On Board Diagnostics portion of Smog Check inspection
20 and receive a certificate of compliance. The following violations apply:

21 **a. Section 44012:** The test at the Smog Check Station shall be performed in accordance
22 with the procedures prescribed by the department, pursuant to Section 44013 of the Health and
23 Safety Code.

24 **b. Section 44012, subdivision (f):** Failure to perform a visual and/or functional check
25 of required emission control devices.

26 **c. Section 44059:** False statement or entry on a certificate of compliance.

27 **d. Section 44032:** Failure of the qualified technician to perform test of emission
28 control devices and systems in accordance with section 44012.

1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 **(False and Misleading Statements)**

3 53. Respondent Hernandez' technician license is subject to discipline pursuant to section
4 9889.22 in that from September 25, 2013 through January 13, 2014, Respondent Hernandez made
5 statements which he knew or which by exercise of reasonable care should have known to be
6 untrue or misleading by issuing three (3) Certificates of Compliance on vehicles which were
7 illegally smogged.

8 **NINETEENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply With Regulations)**

10 54. Respondent Hernandez' technician license is subject to discipline pursuant to Health
11 and Safety Code section 44072.2, subdivision (d), in that September 25, 2013 through January 13,
12 2014 Respondent conducted three (3) illegal smog tests wherein he failed to comply with
13 provisions of California Code of Regulations, title 16, as follows:

14 **b. Section 3340.42, subdivision (e):** Failure to conduct the on-board diagnostics (OBD)
15 system test of a vehicle undergoing a Smog Check inspection.

16 **c. Section 3340.30, subdivision (a):** Failure of the licensed technician to inspect
17 vehicles in accordance with test procedures..

18 **d. Section 3340.41, subdivision (c):** Entering false information into the Emissions
19 Inspection System.

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OTHER MATTERS

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2 55. Pursuant to Business and Professions Code section 9884.7(c), the director may
3 suspend, revoke, or place on probation the registrations for all places of business operated in the
4 state by Eric Yih, upon a finding that he has, or is, engaged in a course of repeated and willful
5 violation of the laws and regulations pertaining to an automotive repair dealer.

6 56. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,
7 Station License Number TC 271480 issued to Eric Yih, is revoked, suspended, or placed on
8 probation, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health
9 and Safety Code in the name of said licensee may be likewise revoked, suspended, or placed on
10 probation by the director.

11 57. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
12 License Number EO 632615 and/or Smog Check Repair Technician License Number EI 632615,
13 (Formerly Advanced Emissions Specialist Technician License No. EA 632615) issued to Michael
14 Monares, is revoked, suspended, or placed on probation, any additional license issued under
15 Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may
16 be likewise revoked, suspended, or placed on probation by the director.

17 58. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
18 License Number EO 634552 (formerly Advanced Emissions Specialist Technician License No.
19 EA 634552) issued to Carlos Oswaldo Hernandez, is revoked, suspended, or placed on probation,
20 any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety
21 Code in the name of said licensee may be likewise revoked, suspended, or placed on probation by
22 the director.

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PRAYER

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

1. Revoking or suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 271480, issued to Eric Yih.
2. Revoking, suspending or placing on probation, Smog Check, Test Only, Station License Number TC 271480, issued to Eric Yih;
3. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Eric Yih;
4. Revoking, suspending, or placing on probation any additional license issued under Chapter 5 of the Health and Safety Code in the name of Eric Yih doing business as Advanced Smog;
5. Revoking, suspending, or placing on probation Smog Check Inspector License No. EO 632615 and Smog Check Repair Technician License No. EI 632615, issued to Michael Joseph Monares.
6. Revoking, suspending, or placing on probation any additional license issued under Chapter 5 of the Health and Safety Code in the name of Michael Joseph Monares;
7. Revoking, suspending, or placing on probation Smog Check Inspector License No. EO 634552 issued to Carlos Oswaldo Hernandez;
8. Revoking, suspending, or placing on probation any additional license issued under Chapter 5 of the Health and Safety Code in the name of Carlos Oswaldo Hernandez;
9. Ordering Eric Yih, Michael Joseph Monares, and Carlos Oswaldo 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;
10. Taking such other and further action as deemed necessary and proper.

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DATED: June 3, 2015



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

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