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

12 In the Matter of the Accusation Against:

13 **JAVIER REGALADO, OWNER,**
14 **DOING BUSINESS AS JR SMOG CHECK ONLY**
15 **P.O. Box 52559**
Riverside, CA 92517

16 **3720 Rubidoux Boulevard, #C**
17 **Riverside, CA 92509**

18 **Automotive Repair Dealer Registration No. ARD**
267929
19 **Smog Check-Test Only Station License No. TC**
20 **267929**

21 **JAVIER REGALADO, OWNER,**
22 **DOING BUSINESS AS JR AUTO TECH AND**
TRANS FLEET SERVICE
23 **323 W. La Cadena Dr.**
Riverside, CA 92501

24 **Automotive Repair Dealer Registration No. ARD**
25 **271569**

26 Respondents.

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Case No. 79/15-38

OAH No. 2014100527

FIRST AMENDED
ACCUSATION

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 February 10, 2012, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 267929 (the Registration) to Javier Regalado, Owner,
7 doing business as JR Smog Check Only (Respondent Regalado). The Automotive Repair Dealer
8 Registration was in full force and effect at all times relevant to the charges brought herein and
9 will expire on February 28, 2015, unless renewed.

10 3. On or about March 5, 2012, the Bureau of Automotive Repair issued Smog Check-
11 Test Only Station License Number TC 267929 (the Station License) to Respondent Regalado.
12 The Station License was in full force and effect at all times relevant to the charges brought herein
13 and will expire on February 28, 2015, unless renewed.

14 4. On or about January 29, 2013, the Bureau of Automotive Repair issued Automotive
15 Repair Dealer Registration Number ARD 271569 (the Affiliated Registration) to Respondent
16 Regalado, doing business as JR Auto Tech and Trans Fleet Service. The Affiliated Registration
17 was in full force and effect at all times relevant to the charges brought herein and will expire on
18 January 31, 2016, unless renewed.

19 **JURISDICTION**

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

22 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
23 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
24 disciplinary action during the period within which the license may be renewed, restored, reissued
25 or reinstated.

26 7. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
27 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
28

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

3 8. Section 9884.20 of the Code states:

4 "All accusations against automotive repair dealers shall be filed within three years after the
5 performance of the act or omission alleged as the ground for disciplinary action, except that with
6 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,
7 the accusation may be filed within two years after the discovery, by the bureau, of the alleged
8 facts constituting the fraud or misrepresentation."

9 9. Section 9884.22 of the Code states:

10 "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny
11 at any time any registration required by this article on any of the grounds for disciplinary action
12 provided in this article. The proceedings under this article shall be conducted in accordance with
13 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
14 Code, and the director shall have all the powers granted therein.

15 "..."

16 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
17 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
18 the Motor Vehicle Inspection Program.

19 11. Section 44072 of the Health and Safety Code states:

20 "Any license issued under this chapter and the regulations adopted pursuant to it may be
21 suspended or revoked by the director. The director may refuse to issue a license to any applicant
22 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted
23 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
24 of the Government Code, and the director shall have all the powers granted therein."

25 12. Section 44072.4 of the Health and Safety Code states:

26 "The director may take disciplinary action against any licensee after a hearing as provided
27 in this article by any of the following:

28 "(a) Imposing probation upon terms and conditions to be set forth by the director.

1 17. Section 23.7 of the Code states:

2 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or
3 other means to engage in a business or profession regulated by this code or referred to in Section
4 1000 or 3600."

5 18. Section 9884.7 of the Code states:

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

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

14 "...

15 "(4) Any other conduct that constitutes fraud.

16 "...

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

21 19. Section 44072.2 of the Health and Safety Code states:

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

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

28 "..."

FIRST UNDERCOVER RUN

1
2 23. At all times alleged in this Accusation, Edgar Chavez (Chavez) and Jessie were acting
3 in the course and within the scope of a technician, employee, partner, officer, or member of
4 Respondent Regalado.

5 24. On January 9, 2014, at approximately 1045 hours, a Bureau representative gave an
6 undercover operator (the Operator) a Bureau-documented 2001 Honda. In its documented
7 condition, the 2001 Honda had the following parts removed: exhaust manifold, catalytic
8 converter, air intake cleaner assembly, Positive Crankcase Ventilation hose, camshaft gears, and
9 fuel pressure regulator. It had aftermarket exhaust headers and pipes without a catalytic
10 converter, an aftermarket air intake system, adjustable camshaft gears, an adjustable fuel pressure
11 regulator, and a breather assembly in place of the Positive Crankcase Ventilation hose. This
12 condition rendered the vehicle incapable of passing a proper smog inspection because of Gross
13 Polluter tailpipe emissions, missing and modified parts, and an illuminated system malfunction
14 light with a P0420 Catalyst System Efficiency code. The Operator was instructed to take the
15 vehicle to Respondent Regalado's smog station, JR Smog Check Only, for a smog inspection.

16 25. When the Operator arrived at JR Smog Check Only, he spoke with one of Respondent
17 Regalado's employees, Jessie. The Operator told Jessie that he had a vehicle that needed to pass
18 its smog inspection. After quoting the Operator \$180.00, Jessie told the Operator that the
19 station's emission analyzer wasn't working and asked him to return another day. The Operator
20 left the smog station.

21 26. On January 14, 2014, at 1019 hours, the Operator returned to Respondent Regalado's
22 smog station, JR Smog Check Only, for the inspection. Three males were at the station, including
23 Jessie and Edgar Chavez. Jessie asked the Operator for the keys and drove the Honda into the
24 testing bay, and opened the hood.

25 27. Chavez clean-piped the Bureau-documented Honda using the exhaust sample from a
26 Mercedes Benz ML430, CA License Number 6WGS663.

27 28. After the inspection, Jessie removed the probes from the exhaust of both vehicles.
28 Chavez got out of the Honda, went to the analyzer, and typed on the keyboard. Jessie gave the

1 Operator a work order to fill out. Jessie gave the Operator a copy of the invoice and the Vehicle
2 Inspection Report showing that the vehicle passed and that a certificate of compliance had been
3 issued. The Operator paid Jessie \$180.00, left with the vehicle, and returned custody of it to a
4 Bureau representative.

5 29. Later, a Bureau representative re-inspected the Honda. He confirmed that the
6 condition of the Honda had not changed since he released custody of it previously for the
7 undercover operation and that it would still fail a proper smog inspection in its condition.

8 **SECOND UNDERCOVER RUN**

9 30. On February 25, 2014, a Bureau representative gave an Operator a Bureau-
10 documented 2002 Ford. In its documented condition, the vehicle had its existing catalytic
11 converter and H-pipe removed. A Bureau representative installed an illegal, off-road X-pipe that
12 had no catalytic converters. The vehicle's existing air filter housing and inlet tube had been
13 removed; they were replaced with a non-approved cold air inlet system that did not have an
14 Executive Order sticker and was illegal. The Bureau representative also installed an illegal open
15 breather and a modification to prevent the malfunction indicator light from illuminating. In its
16 documented condition, the vehicle would fail a proper smog inspection because of Gross Polluter
17 tailpipe emissions and missing and modified components. The Operator was instructed to take
18 the vehicle to Respondent Regalado's smog station, JR Smog Check Only, ask them to perform a
19 smog inspection on that vehicle, and tell them that it needed to pass.

20 31. At 1130 hours on February 25, 2014, the Operator arrived at Respondent Regalado's
21 smog station, JR Smog Check Only. Jessie and Chavez were there. The Operator told Jessie that
22 he needed to have the Ford pass its smog inspection. Jessie quoted him \$120.00 for the
23 inspection.

24 32. Jessie had the Operator fill out a work order. The Operator paid Jessie \$120.00. The
25 Operator received a copy of the invoice and Vehicle Inspection Report showing that a certificate
26 of compliance was issued. The Operator left with the Bureau-documented 2002 Ford and
27 returned custody of it to a Bureau representative.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 41. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in paragraphs 23-40.

5 42. Respondent Regalado's Registration is subject to disciplinary action under Code
6 section 9884.7, subdivision (a)(4), and Respondent Regalado's Station License is subject to
7 disciplinary action under Health and Safety Code sections 44072.10, subdivision (c) and 44072.2,
8 subdivision (d), in that Respondent Regalado committed dishonest, fraudulent, or deceitful acts
9 whereby another is injured by issuing smog inspection certificates for the vehicles described in
10 paragraphs 23-40 without performing bona fide inspections of the emission control devices and
11 systems on them, thereby depriving the People of the State of California of the protection afforded
12 by the Motor Vehicle Inspection Program.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Clean Piping)**

15 43. Complainant re-alleges and incorporates by reference the allegations set forth above
16 in paragraphs 23-42.

17 44. Respondent Regalado's Station license is subject to disciplinary action for clean
18 piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in California Code
19 of Regulations, title 16, section 3340.1, in that Respondent Regalado used a substitute exhaust
20 emission sample of one vehicle in place of another vehicle's exhaust emission sample in order to
21 cause the Emissions Inspection System to issue certificates of compliance for the inspections
22 described in paragraphs 23-42.

23 **OTHER MATTERS**

24 45. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or
25 place on probation the registration for all places of business operated in this State by Respondent
26 Regalado upon a finding that Respondent Regalado has, or is, engaged in a course of repeated and
27 willful violations of the laws and regulations pertaining to an automotive repair dealer.

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