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

12 In the Matter of the Accusation Against:

Case No. 79/19-7845

13 **ERUBEY SANCHEZ dba MARIO TEST**
ONLY

14 5420 W. Mission Blvd.
15 Ontario, CA 91762

ACCUSATION

16 **Automotive Repair Dealer Registration**
No. ARD 273983
17 **Smog Check, Test Only, Station License**
No. TC 273983

18 and

19 **ESTEBAN SALTO**
16230 Beekley Rd.
20 Phelan, CA 92371

21 **Smog Check Inspector No. EO 637020**

22 Respondents.
23

24 **PARTIES**

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

27 2. On or about August 19, 2013, the Bureau of Automotive Repair issued Automotive
28 Repair Dealer Registration Number ARD 273983 to Erubey Sanchez, dba Mario Test Only. The

1 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
2 charges brought herein and will expire on August 31, 2019, unless renewed.

3 3. On or about September 26, 2013, the Bureau of Automotive Repair issued Smog
4 Check, Test Only, Station License Number TC 273983 to Erubey Sanchez, dba Mario Test Only
5 (Respondent Sanchez). The Smog Check, Test Only, Station License was in full force and effect
6 at all times relevant to the charges brought herein and will expire on August 31, 2019, unless
7 renewed.

8 4. On or about June 20, 2014, the Bureau of Automotive Repair issued Smog Check
9 Inspector License Number EO 637020 to Esteban Salto (Respondent Salto). The Smog Check
10 Inspector License was in full force and effect at all times relevant to the charges brought herein
11 and will expire on November 30, 2020, unless renewed.

12 **JURISDICTION**

13 5. Business and Professions Code (“BPC”) section 9884.13 provides, in pertinent part,
14 that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed
15 with a disciplinary proceeding against an automotive repair dealer or to render a decision
16 temporarily or permanently invalidating (suspending or revoking) a registration.

17 6. Health and Safety Code (“HSC”) section 44002 provides, in pertinent part, that the
18 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
19 the Motor Vehicle Inspection Program.

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

24 **STATUTORY PROVISIONS**

25 8. Section 9884.7 of the BPC states, in pertinent part:

26 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
27 error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an
28 automotive repair dealer for any of the following acts or omissions related to the conduct of the

1 business of the automotive repair dealer, which are done by the automotive repair dealer or any
2 automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

6 (4) Any other conduct which constitutes fraud.

7

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

10 9. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations
11 shall be performed in accordance with procedures prescribed by the department.

12 10. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance
13 shall be issued if a vehicle meets the requirements of HSC section 40012.

14 11. Section 44032 of the HSC states, in pertinent part, that: (1) no person may perform
15 tests or repairs of emission control devices or systems of motor vehicles required by the Motor
16 Vehicle Inspection Program unless the person performing the test or repair is a licensed qualified
17 smog check technician; and (2) all tests must be conducted in accordance with section 44012 (i.e.
18 Motor Vehicle Inspection Program Requirements).

19 12. Section 44059 of the HSC provides:

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

24 13. Section 44072.2 of the HSC states, in pertinent part:

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

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1 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
2 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
3 article

4 16. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
5 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
6 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
7 this article and has all the required emission control equipment and devices installed and
8 functioning correctly.”

9 17. CCR, title 16, section 3340.41, subdivision (b), provides: “No person shall enter into
10 the emissions inspection system any access or qualification number other than as authorized by
11 the bureau, nor in any way tamper with the emissions inspection system.”

12 18. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
13 procedures which apply to all vehicles inspected in the State of California

14 **COST RECOVERY**

15 19. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board
16 “may request the administrative law judge to direct a licentiate found to have committed a
17 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
18 investigation and enforcement of the case.”

19 **CALIFORNIA AUTOMOTIVE REPAIR ACT AND SMOG CHECK PROGRAM**

20 20. California's Smog Check Program requires most vehicles in the State to undergo a
21 smog check inspection every two years or when the vehicle's title is transferred.

22 ***Inspection of Pre-2000 Model Year Vehicles***

23 21. A smog check inspection of a pre-2000 model year vehicle includes three parts:
24 visual, functional, and tailpipe. Technicians are required to perform the test in accordance with
25 the Smog Check Manual. Technicians are required to enter the results of the inspection into the
26 Emission Inspection System (EIS), which determines whether a vehicle passed the inspection
27 based on the results of the tailpipe, visual, and functional tests. A vehicle must pass all three
28

1 parts to pass the overall inspection and receive a Certificate of Compliance. The Certificate of
2 Compliance is then transmitted electronically to the Vehicle Information Database.

3 22. In the visual portion, the technician inspects the emission control components to
4 verify that the required emission control devices are present and properly connected.

5 23. The functional test includes checking the malfunction indicator light. On-Board
6 Diagnostics (OBD) is a term used to describe a vehicle's computer system that controls the
7 emission control, along with many other features. This system includes self-diagnostic and
8 reporting functions. OBD systems monitor the vehicle's emission control system performance
9 and notify the driver when defects that cause an increase in air pollution are identified.

10 a. For vehicles pre-1996 model year, the technician must also check the
11 ignition timing and Exhaust Gas Recirculation system, conduct a low pressure test of the
12 evaporative emissions controls, conduct a visible smoke test, and conduct a pressure test of the
13 fuel cap.

14 b. For vehicles that are 1996 model year or newer, the functional test is
15 performed using the vehicle's OBD II system. During an OBD II functional test, the technician is
16 required to connect a test cable from the BAR-97 analyzer to a Diagnostic Link Connector,
17 located in the passenger compartment, which outputs information from the vehicle's on-board
18 computer about the status of readiness indicators, trouble codes, and the malfunction indicator
19 light.

20 24. The tailpipe inspection requires different testing equipment based on the area
21 where the vehicle is registered: Enhanced Areas, Basic Areas, and Change of Ownership Areas.

22 a. Acceleration Simulation Mode Inspection: Pre-2000 model year vehicles
23 registered in Enhanced Areas require an Acceleration Simulation Mode (ASM) inspection, which
24 is performed using an EIS, also known as a BAR-97. The EIS is a computer based, five-gas
25 analyzer that measures Hydrocarbons (HC), Carbon Monoxide (CO), Nitrogen Oxide (NO_x),
26 Carbon Dioxide (CO₂) and Oxygen (O₂). The ASM inspection entails two loaded mode
27 sequences (i.e., "Mode 1" and "Mode 2") that measure the vehicle's tailpipe emissions on a
28 dynamometer. The vehicle's drive wheels are placed onto rollers, and the vehicle is driven at

1 speeds of 15 miles per hour during Mode 1 of the ASM and 25 miles per hour during Mode 2 of
2 the ASM. The purpose of the ASM inspection is to simulate driving conditions while the
3 emissions are sampled and measured by the EIS.

4 b. Two Speed Idle Inspection: Pre-2000 model year vehicles registered in
5 Basic Areas or Change Ownership Areas, and vehicles that are incompatible with the ASM
6 inspection¹, require a Two Speed Idle (TSI) inspection. Rather than applying a load to the
7 vehicle's drive wheels with a dynamometer, the EIS measures the emissions of HC, CO, O₂, and
8 CO₂ at two test sequences—2500 revolutions per minute and idle.

9 25. Carbon Dioxide (CO₂) is a byproduct of most combustion processes and any level
10 of emissions will not result in a failing smog check. The measurement is meant as a diagnostic
11 tool for inspectors. Oxygen (O₂) is necessary for engine combustion to occur. High levels of O₂
12 in the exhaust indicate a problem with the catalytic converter, but any level of O₂ emissions will
13 not result in failing smog check. The measurement is meant as a diagnostic tool for inspectors.
14 Carbon Monoxide (CO) is a pollutant and is often the byproduct of an overly rich fuel mixture.
15 Unhealthy CO emissions will result in a vehicle failing smog check. Hydrocarbon (HC), a
16 pollutant, is unburned fuel. High levels of HC emissions indicate incomplete fuel combustion,
17 either as the result of a misfire or low engine compression, and result in a vehicle failing its smog
18 check. Nitrogen Oxide (NO_x) is a pollutant that results from excessive engine combustion
19 chamber temperature, which could be caused by a lean fuel mixture, advanced timing, carbon
20 buildup, malfunctioning EGR, or a malfunctioning engine cooling system. Unhealthy levels of
21 NO_x emissions result in a vehicle failing its smog inspection.

22 **Respondents Fraudulent Inspections Via the “Clean Gassing” Process**

23 26. “Clean gassing” refers to a fraudulent smog inspection practice in which a
24 surrogate gas is introduced into the Emission Inspection System (EIS) during an inspection in
25 order to skew pollutant emission readings. The surrogate gas alters the vehicle exhaust samples
26 and causes the EIS to issue a passing test result based on a reading of false/altered exhaust

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28 ¹ Vehicles that are incompatible with the ASM, such as all-wheel drive vehicles are vehicles with
traction control issues, must receive the Two Speed Idle (TSI) test.

1 emissions rather than a reading of the actual vehicle emissions. The Bureau is able to identify
2 fraudulent clean gassing activities by analyzing specific “second-by-second” emissions data that
3 is recorded by the EIS during a smog inspection. Second-by-second data refers to vehicle
4 emissions and speed data that is recorded on a second-by-second basis throughout the smog
5 check acceleration simulation mode (ASM) test. For example, dramatic simultaneous drops
6 and/or rises in the concentrations of NO_x, CO and/or HC during a smog inspection indicates that
7 a surrogate gas was introduced at specific times during the inspection in order to obtain passable
8 readings for those pollutants.

9 27. Based on a review of confidential smog check data collected and maintained by
10 the Bureau, a Bureau Program Representative initiated an investigation of the smog check
11 activities at the Mario Test Only smog check station. During his investigation, the Bureau
12 Program Representative conducted a detailed review of second-by-second emissions data for
13 smog inspections performed at the Mario Test Only smog check station. That second-by-second
14 data revealed that Respondent Sanchez and Respondent Salto (collectively, “Respondents”) have
15 been engaged in the fraudulent smog inspection practice of clean gassing described above.
16 Specifically, the investigation identified the following thirteen (13) separate instances of clean
17 gassing by Respondents at the Mario Test Only smog check station:

18 **a. 1992 Chevrolet C1500 Blazer:** On July 3, 2018 at 10:34 a.m., Respondent
19 Salto inspected a 1992 Chevrolet C1500 Blazer (license no. 3BGP040). The second-by-second
20 test data reveals that a surrogate gas was introduced during Mode 1 of the ASM, at a period of
21 steady state vehicle speed, which resulted in dramatic simultaneous drops the in concentration
22 levels for NO_x, CO and HC at the 34 second mark of the test. Those simultaneous drops were
23 followed by a simultaneous rise of the same three pollutants at the 63 second mark and then
24 another dramatic simultaneous drop of all three pollutants during Mode 2 of the ASM at the 84
25 second mark. As a result of Respondents’ fraudulent clean gassing activities, the vehicle passed
26 the ASM inspection based on false/altered exhaust emissions readings rather than readings of the
27 vehicle’s true emissions levels, leading to the fraudulent issuance of Certificate of Compliance
28 No. QK210754C by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show

1 that the vehicle failed a prior smog inspection, performed by Respondent Salto on June 28, 2016,
2 due to elevated pollutant concentration levels measured by the EIS during the ASM test.

3 **b. 1992 Toyota Corolla:** On August 13, 2018 at 11:28 a.m., Respondent Salto
4 inspected a 1992 Toyota Corolla (license no. 7GEJ091). The second-by-second test data reveals
5 that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state
6 vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
7 NOx, CO and HC at the 28 second mark of the test. Those simultaneous drops were followed by
8 a simultaneous rise of the same three pollutants at the 58 second mark and then another dramatic
9 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 74 second mark. As a
10 result of Respondents' fraudulent clean gassing activities, the vehicle passed the ASM inspection
11 based on false/altered exhaust emissions readings rather than readings of the vehicle's true
12 emissions levels, leading to the fraudulent issuance of Certificate of Compliance No.
13 QM098757C by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that
14 the vehicle failed a prior smog inspection, performed by Respondent Salto on August 9, 2018,
15 due to elevated pollutant concentration levels measured by the EIS during the ASM test.

16 **c. 1999 Honda Civic:** On August 16, 2018 at 3:36 p.m., Respondent Salto
17 inspected a 1999 Honda Civic (license no. 6BTE857). The second-by-second test data reveals
18 that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state
19 vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
20 NOx, CO and HC at the 37 second mark of the test. Those simultaneous drops were followed by
21 a simultaneous rise of the same three pollutants at the 67 second mark and then another dramatic
22 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 90 second mark. As a
23 result of Respondents' fraudulent clean gassing activities, the vehicle passed the ASM inspection
24 based on false/altered exhaust emissions readings rather than readings of the vehicle's true
25 emissions levels, leading to the fraudulent issuance of Certificate of Compliance No.
26 QM098763C by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that
27 the vehicle failed a prior smog inspection, performed by Respondent Salto on August 15, 2018,
28 due to elevated pollutant concentration levels measured by the EIS during the ASM test.

1 **d. 1996 Dodge Ram 1500:** On September 7, 2018 at 9:21 a.m., Respondent
2 Salto inspected a 1996 Dodge Ram 1500 (license no. 6R02990). The second-by-second test data
3 reveals that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady
4 state vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
5 NOx, CO and HC at the 39 second mark of the test. Those simultaneous drops were followed by
6 a simultaneous rise of the same three pollutants at the 65 second mark and then another dramatic
7 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 86 second mark. As a
8 result of Respondents' fraudulent clean gassing activities, the vehicle passed the ASM inspection
9 based on false/altered exhaust emissions readings rather than readings of the vehicle's true
10 emissions levels, leading to the fraudulent issuance of Certificate of Compliance No.
11 QO027554C by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that
12 the vehicle failed a prior smog inspection, performed by Respondent Salto on September 5,
13 2018, due to elevated pollutant concentration levels measured by the EIS during the ASM test.

14 **e. 1999 Chevrolet Tahoe:** On September 14, 2018 at 12:53 p.m., Respondent
15 Salto inspected a 1999 Chevrolet Tahoe (license no. 7PNN539). The second-by-second test data
16 reveals that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady
17 state vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
18 NOx, CO and HC at the 38 second mark of the test. Those simultaneous drops were followed
19 by a simultaneous rise of the same three pollutants at the 68 second mark and then another
20 dramatic simultaneous drop of all three pollutants during Mode 2 of the ASM at the 86 second
21 mark. As a result of Respondents' fraudulent clean gassing activities, the vehicle passed the
22 ASM inspection based on false/altered exhaust emissions readings rather than readings of the
23 vehicle's true emissions levels, leading to the fraudulent issuance of Certificate of Compliance
24 No. QO027568 by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that
25 the vehicle failed a prior smog inspection, performed by Respondent Salto on September 12,
26 2018, due to elevated pollutant concentration levels measured by the EIS during the ASM test.

27 **f. 1993 Ford Ranger Super Cab:** On October 29, 2018 at 9:25 a.m.,
28 Respondent Salto inspected a 1993 Ford Ranger Super Cab (VIN 1FTDR15X2PPA32954). The

1 second-by-second test data reveals that a surrogate gas was introduced during Mode 1 of the
2 ASM, at a period of steady state vehicle speed, which resulted in dramatic simultaneous drops
3 the in concentration levels for NO_x, CO and HC at the 30 second mark of the test. Those
4 simultaneous drops were followed by a simultaneous rise of the same three pollutants at the 59
5 second mark and then another dramatic simultaneous drop of all three pollutants during Mode 2
6 of the ASM at the 76 second mark. As a result of Respondents' fraudulent clean gassing
7 activities, the vehicle passed the ASM inspection based on false/altered exhaust emissions
8 readings rather than readings of the vehicle's true emissions levels, leading to the fraudulent
9 issuance of Certificate of Compliance No. HX014861C by Respondent Erubey Sanchez dba
10 Mario Test Only. Bureau records show that the vehicle failed a prior smog inspection,
11 performed by Respondent Salto on October 27, 2018, due to elevated pollutant concentration
12 levels measured by the EIS during the ASM test.

13 **g. 1985 Chevrolet S10 Pickup:** On November 3, 2018 at 12:12 p.m.,
14 Respondent Salto inspected a 1985 Chevrolet S10 Pickup (license no. 5U75706). The second-
15 by-second test data reveals that a surrogate gas was introduced during Mode 1 of the ASM, at a
16 period of steady state vehicle speed, which resulted in dramatic simultaneous drops the in
17 concentration levels for NO_x, CO and HC at the 47 second mark of the test. Those simultaneous
18 drops were followed by a simultaneous rise of the same three pollutants at the 76 second mark
19 and then another dramatic simultaneous drop of all three pollutants during Mode 2 of the ASM at
20 the 91 second mark. As a result of Respondents' fraudulent clean gassing activities, the vehicle
21 passed the ASM inspection based on false/altered exhaust emissions readings rather than
22 readings of the vehicle's true emissions levels, leading to the fraudulent issuance of Certificate of
23 Compliance No. HX014883C by Respondent Erubey Sanchez dba Mario Test Only. Bureau
24 records show that the vehicle failed a prior smog inspection, performed by Respondent Salto on
25 October 31, 2018, due to elevated pollutant concentration levels measured by the EIS during the
26 ASM test.

27 **h. 1995 Toyota Camry:** On November 13, 2018 at 11:13 a.m., Respondent Salto
28 inspected a 1995 Toyota Camry (license no. 6TIH570). The second-by-second test data reveals

1 that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state
2 vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
3 NOx, CO and HC at the 52 second mark of the test. Those simultaneous drops were followed by
4 a simultaneous rise of the same three pollutants at the 81 second mark and then another dramatic
5 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 100 second mark. As
6 a result of Respondents' fraudulent clean gassing activities, the vehicle passed the ASM
7 inspection based on false/altered exhaust emissions readings rather than readings of the vehicle's
8 true emissions levels, leading to the fraudulent issuance of Certificate of Compliance No.
9 HX363432C by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that
10 the vehicle failed a prior smog inspection, performed by Respondent Salto on November 10,
11 2018, due to elevated pollutant concentration levels measured by the EIS during the ASM test.

12 **i. 1989 Nissan 240SX:** On November 21, 2018 at 9:44 a.m., Respondent Salto
13 inspected a 1989 Nissan 240SX (license no. 7TOV405). The second-by-second test data reveals
14 that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state
15 vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
16 NOx, CO and HC at the 42 second mark of the test. Those simultaneous drops were followed by
17 a simultaneous rise of the same three pollutants at the 69 second mark and then another dramatic
18 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 90 second mark. As a
19 result of Respondents' fraudulent clean gassing activities, the vehicle passed the ASM inspection
20 based on false/altered exhaust emissions readings rather than readings of the vehicle's true
21 emissions levels, leading to the fraudulent issuance of Certificate of Compliance No.
22 HX612976C by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that
23 the vehicle failed a prior smog inspection, performed by Respondent Salto on November 17,
24 2018, due to elevated pollutant concentration levels measured by the EIS during the ASM test.

25 **j. 1998 Ford Explorer:** On December 28, 2018 at 9:57 a.m., Respondent Salto
26 inspected a 1998 Ford Explorer (license no. 4AAM129). The second-by-second test data reveals
27 that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state
28 vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for

1 NOx, CO and HC at the 42 second mark of the test. Those simultaneous drops were followed by
2 a simultaneous rise of the same three pollutants at the 71 second mark and then another dramatic
3 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 89 second mark. As a
4 result of Respondents' fraudulent clean gassing activities, the vehicle passed the ASM inspection
5 based on false/altered exhaust emissions readings rather than readings of the vehicle's true
6 emissions levels, leading to the fraudulent issuance of Certificate of Compliance No.

7 HZ389422C by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that
8 the vehicle failed a prior smog inspection, performed by Respondent Salto on December 26,
9 2018, due to elevated pollutant concentration levels measured by the EIS during the ASM test.

10 **k. 1990 Toyota Celica:** On February 23, 2019 at 9:23 a.m., Respondent Salto
11 inspected a 1990 Toyota Celica (license no. 5NYH869). The second-by-second test data reveals
12 that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state
13 vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
14 NOx, CO and HC at the 51 second mark of the test. Those simultaneous drops were followed by
15 a simultaneous rise of the same three pollutants at the 80 second mark and then another dramatic
16 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 94 second mark. As a
17 result of Respondents' fraudulent clean gassing activities, the vehicle passed the ASM inspection
18 based on false/altered exhaust emissions readings rather than readings of the vehicle's true
19 emissions levels, leading to the fraudulent issuance of Certificate of Compliance No. IB960270C
20 by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that the vehicle
21 failed a prior smog inspection, performed by Respondent Salto on February 22, 2019, due to
22 elevated pollutant concentration levels measured by the EIS during the ASM test.

23 **l. 1998 Toyota Tacoma:** On March 5, 2019 at 12:04 p.m., Respondent Salto
24 inspected a 1998 Toyota Tacoma (license no. 5U02965). The second-by-second test data reveals
25 that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state
26 vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
27 NOx, CO and HC at the 52 second mark of the test. Those simultaneous drops were followed by
28 a simultaneous rise of the same three pollutants at the 82 second mark and then another dramatic

1 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 92 second mark. As a
2 result of Respondents' fraudulent clean gassing activities, the vehicle passed the ASM inspection
3 based on false/altered exhaust emissions readings rather than readings of the vehicle's true
4 emissions levels, leading to the fraudulent issuance of Certificate of Compliance No. ID293272C
5 by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that the vehicle
6 failed a prior smog inspection, performed by Respondent Salto on March 2, 2019, due to
7 elevated pollutant concentration levels measured by the EIS during the ASM test.

8 **m. 1997 Chevrolet Cavalier:** On April 29, 2019 at 11:48 a.m., Respondent Salto
9 inspected a 1997 Chevrolet Cavalier (license no. 4HKP247). The second-by-second test data
10 reveals that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady
11 state vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
12 NOx, CO and HC at the 38 second mark of the test. Those simultaneous drops were followed by
13 a simultaneous rise of the same three pollutants at the 66 second mark and then another dramatic
14 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 76 second mark. As a
15 result of Respondents' fraudulent clean gassing activities, the vehicle passed the ASM inspection
16 based on false/altered exhaust emissions readings rather than readings of the vehicle's true
17 emissions levels, leading to the fraudulent issuance of Certificate of Compliance No.
18 QS324153C by Respondent Erubey Sanchez dba Mario Test Only. Bureau records show that
19 the vehicle failed a prior smog inspection, performed by Respondent Salto on April 27, 2019,
20 due to elevated pollutant concentration levels measured by the EIS during the ASM test.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Misleading Statements)**

23 28. Respondent Sanchez has subjected his registration to discipline under BPC section
24 9884.7, subdivision (a)(1), in that he and/or his employee made statements which were known to
25 be untrue or misleading or, which by exercise of reasonable care should have been known to be
26 untrue or misleading, when issuing electronic smog certificates of compliance for the vehicles set
27 forth in paragraph 27, subparagraphs a - m, above, certifying that those vehicles were in
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1 compliance with applicable laws and regulations when, in fact, those vehicles had not been so
2 inspected. Complainant refers to, and by this reference incorporates, the allegations contained in
3 paragraphs 20 through 27, inclusive, as though set forth fully herein.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 29. Respondent Sanchez has subjected his registration to discipline under BPC section
7 9884.7, subdivision (a)(4), in that he and/or his employee committed acts which constitute fraud
8 by issuing electronic smog certificates of compliance for the vehicles set forth in paragraph 27,
9 subparagraphs a - m, above, without performing bona fide inspections of the emission control
10 devices and systems on those vehicles, thereby depriving the People of the State of California of
11 the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by
12 this reference incorporates, the allegations contained in paragraphs 20 through 27, inclusive, as
13 though set forth fully herein.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Material Violation of Automotive Repair Act)**

16 30. Respondent Sanchez has subjected his registration to discipline under BPC section
17 9884.7, subdivision (a)(6), in that he and/or his employee failed in a “material respect to comply
18 with the provisions of this chapter or regulations adopted pursuant to it” when issuing electronic
19 smog certificates of compliance for the vehicles set forth in paragraph 27, subparagraphs a - m,
20 above, without performing bona fide inspections of the emission control devices and systems on
21 those vehicles, thereby depriving the People of the State of California of the protection afforded
22 by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference
23 incorporates, the allegations contained in paragraphs 20 through 27, inclusive, as though set forth
24 fully herein.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent Sanchez has subjected his station license to discipline under HSC section
4 44072.2, subdivision (a), in that, with respect to the vehicles set forth in paragraph 27,
5 subparagraphs a - m, above, Respondent violated the following sections of the HSC:

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

8 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
9 compliance without properly testing and inspecting the vehicles to determine if they were in
10 compliance with section 44012 of the HSC.

11 **FIFTH CAUSE FOR DISCIPLINE**

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

13 32. Respondent Sanchez has subjected his station license to discipline under HSC section
14 44072.2, subdivision (c), in that, with respect to the vehicles set forth in paragraph 27,
15 subparagraphs a - m, above, Respondent violated the following sections of title 16 of the CCR:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic smog certificates of compliance without performing bona fide inspections of the
18 emission control devices and systems on those vehicles as required by HSC section 44012.

19 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
20 compliance even though those vehicles had not been inspected in accordance with section
21 3340.42 of the HSC.

22 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
23 inspections on those vehicles in accordance with the Bureau's specifications.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 33. Respondent Sanchez has subjected his station license to discipline under HSC section
27 44072.2, subdivision (d), in that, with respect to the vehicles set forth in paragraph 27,
28 subparagraphs a - m, above, Respondent committed acts involving dishonesty, fraud or deceit

1 whereby another was injured by issuing electronic smog certificates of compliance for those
2 vehicles without performing bona fide inspections and functional testing of the emission control
3 devices and systems on those vehicles, thereby depriving the People of the State of California of
4 the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by
5 this reference incorporates the allegations contained in in paragraphs 20 through 27, inclusive, as
6 though set forth fully herein.

7 **SEVENTH CAUSE FOR DISCIPLINE**

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

9 34. Respondent Salto has subjected his smog check inspector license to discipline under
10 HSC section 44072.2, subdivision (a), in that, with respect to the vehicles set forth in paragraph
11 27, subparagraphs a - m, above, Respondent violated the following sections of the HSC:

12 a. **Section 44012:** Respondent failed to ensure that the ASM tests were performed on
13 those vehicles in accordance with procedures prescribed by the department.

14 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
15 compliance without properly testing and inspecting the vehicles to determine if they were in
16 compliance with section 44012 of the HSC.

17 c. **Section 44032:** Respondent failed to perform ASM tests on those vehicles in
18 accordance with section 44012 of the HSC.

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

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 35. Respondent Salto has subjected his smog check inspector license to discipline under
25 HSC section 44072.2, subdivision (c), in that, with respect to the vehicles set forth in paragraph
26 27, subparagraphs a - m, above, Respondent violated the following sections of title 16 of the
27 CCR:

28

1 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
2 electronic smog certificates of compliance without performing bona fide inspections
3 of the emission control systems on those vehicles as required by HSC section 44012.

4 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those
5 vehicles in accordance with HSC section 44012.

6 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
7 compliance even though those vehicles had not been inspected in accordance with section
8 3340.42 of the HSC.

9 d. **Section 3340.41, subdivision (b):** Respondent tampered with the EIS system by
10 introducing a surrogate gas during inspections.

11 e. **Section 3340.42:** Respondent failed to conduct the required smog tests and
12 inspections on those vehicles in accordance with the Bureau's specifications.

13 **NINTH CAUSE FOR DISCIPLINE**

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

15 36. Respondent Salto has subjected his smog check inspector license to discipline under
16 HSC section 44072.2, subdivision (d), in that, with respect to the vehicles set forth in paragraph
17 27, subparagraphs a - m, above, Respondent committed acts involving dishonesty, fraud or deceit
18 whereby another was injured by issuing electronic smog certificates of compliance for those
19 vehicles without performing bona fide inspections of the emission control systems on those
20 vehicles, thereby depriving the People of the State of California of the protection afforded by the
21 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates the
22 allegations contained in in paragraphs 20 through 27, inclusive, as though set forth fully herein.

23 **OTHER MATTERS**

24 37. Section 9884.7, subdivision (c), of the BPC states that "the director may suspend,
25 revoke, or place on probation the registration for all places of business operated in this state by an
26 automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a
27 course of repeated and willful violations of this chapter, or regulations adopted pursuant to."

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1 38. Section 9889.9 of the BPC states:

2 “When any license has been revoked or suspended following a hearing under the provisions
3 of this article, any additional license issued under Articles 5 and 6 of [the Automotive Repair Act]
4 in the name of the licensee may be likewise revoked or suspended by the director.”

5 39. Section 44072.8 of the HSC states that when a license has been revoked or suspended
6 following a hearing, any additional license issued under the Motor Vehicle Inspection Program
7 (HSC sec. 44000, et seq.) in the name of the licensee may be likewise revoked or suspended by
8 the director.

9 **PRAYER**

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

12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD,
13 issued to 273983 to Erubey Sanchez, dba Mario Test Only;

14 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
15 273983, issued to Erubey Sanchez, dba Mario Test Only;

16 3. Revoking or suspending Smog Check Inspector License Number EO 637020 to
17 Esteban Salto;

18 4. Revoking or suspending any and all Automotive Repair Dealer Registrations in the
19 name Erubey Sanchez, pursuant to section 9884.7, subdivision (c), of the Business and
20 Professions Code;

21 5. Revoking or suspending any additional license issued under Articles 5 and 6 of [the
22 Automotive Repair Act] in the name of in the name of Erubey Sanchez, pursuant to section
23 9889.9 of the Business and Professions Code;

24 6. Revoking or suspending any and all licenses issued under the Motor Vehicle
25 Inspection Program (HSC sec. 44000, et seq.) in the name of Erubey Sanchez, pursuant to section
26 44072.8 of the Health and Safety Code;

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1 7. Revoking or suspending any and all licenses issued under the Motor Vehicle
2 Inspection Program (HSC sec. 44000, et seq.) in the name of Estaban Salto, pursuant to section
3 44072.8 of the Health and Safety Code;

4 8. Ordering Erubey Sanchez and Esteban Salto to pay the Bureau of Automotive Repair
5 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
6 Professions Code section 125.3; and

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

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DATED: October 2, 2019

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