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

13
14 In the Matter of the Accusation Against:

Case No. 79/19-8089

15 **JAVIER ALEJANDRO AYALA-JICILIANO,**
16 **DBA LOS PAISANOS TEST ONLY**
6151 Columbus Street
Riverside, CA 92504

ACCUSATION

17 Automotive Repair Dealer Registration No. ARD
276883
18 Smog Check, Test Only, Station License No. TC
276883,

19 and

20 **ROLANDO GARCIA**
21 5501 Golden West Ave.
Riverside, CA 92509

22 Smog Check Inspector License No. EO 636922,

23 Respondents.
24

1 **PARTIES**

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

4 2. On June 10, 2014, the Bureau issued Automotive Repair Dealer Registration Number
5 ARD 276883 to Javier Alejandro Ayala-Jiciliano, dba Los Paisanos Test Only (Respondent
6 Ayala-Jiciliano). The Automotive Repair Dealer Registration was in full force and effect at all
7 times relevant to the charges brought herein and will expire on June 30, 2020, unless renewed.

8 3. On July 8, 2014, the Bureau issued Smog Check Test Only Station License Number
9 TC 276883 to Respondent Ayala-Jiciliano. The Smog Check Test Only Station License was in
10 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
11 2020, unless renewed.

12 4. On May 23, 2014, the Bureau issued Smog Check Inspector License Number EO
13 636922 to Rolando Garcia (Respondent Garcia). The Smog Check Inspector License was in full
14 force and effect at all times relevant to the charges brought herein and will expire on December
15 31, 2019, unless renewed.

16 5. At all times relevant to the allegations of this Accusation, Respondent Garcia was
17 acting in the course and within the scope of his duties as a technician, inspector, employee, agent,
18 or other representative of Respondent Ayala-Jiliciano.

19 **JURISDICTION**

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

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

26 8. Pursuant to code section 477, Code section references to the term “board” include the
27 Bureau, and references to the term “license” includes Automobile Repair Dealer Registrations.

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1 9. Code section 9884.13 provides that the expiration of a valid registration shall not
2 deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an
3 automotive repair dealer or to render a decision invalidating a registration temporarily or
4 permanently.

5 10. Code section 9884.22 provides that the Director may revoke or suspend a registration
6 on any grounds for disciplinary action provided in the article, and proceedings shall be conducted
7 in accordance with the Administrative Procedure Act.

8 11. Health and Safety Code section 44002 provides that the Director has all the powers
9 and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle
10 Inspection Program.

11 12. Health and Safety Code section 44072.4 provides that after a hearing, the Director
12 may take disciplinary action including imposing probation upon terms and conditions the Director
13 sets forth, license suspension, or revocation

14 13. Health and Safety Code section 44072.6 provides that (a) expiration or suspension of
15 a license by operation of law, the Director, or a court, or (b) voluntary surrender of a license, shall
16 not deprive the Director of jurisdiction to proceed with disciplinary action.

17 14. Health and Safety Code section 44072.7 states:

18 All accusations against licensees shall be filed within three years after the act
19 or omission alleged as the ground for disciplinary action, except that with respect
20 to an accusation alleging a violation of subdivision (d) of Section 44072.2, the
21 accusation may be filed within two years after the discovery by the bureau of the
alleged facts constituting the fraud or misrepresentation prohibited by that section.

22 15. Health and Safety Code section 44072.8 states:

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

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STATUTORY PROVISIONS

16. Code section 9884.7 states:

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

....

(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.

....

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

17. Health and Safety Code section 44012 states:

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

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

1 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions
2 of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an
3 idle mode or loaded mode are tested in accordance with procedures prescribed by
4 the department. In determining how loaded mode and evaporative emissions
5 testing shall be conducted, the department shall ensure that the emission reduction
6 targets for the enhanced program are met.

7 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
8 system and crankcase ventilation system are tested to reduce any nonexhaust
9 sources of volatile organic compound emissions, in accordance with procedures
10 prescribed by the department.

11 (e) For diesel-powered vehicles, if the department determines that the
12 inclusion of those vehicles is technologically and economically feasible, a visual
13 inspection is made of emission control devices and the vehicle's exhaust emissions
14 in an idle mode or loaded mode are tested in accordance with procedures
15 prescribed by the department. The test may include testing of emissions of any or
16 all of the pollutants specified in subdivision (c) and, upon the adoption of
17 applicable standards, measurement of emissions of smoke or particulates, or both.

18 (f) A visual or functional check is made of emission control devices
19 specified by the department, including the catalytic converter in those instances in
20 which the department determines it to be necessary to meet the findings of Section
21 44001. The visual or functional check shall be performed in accordance with
22 procedures prescribed by the department.

23 (g) A determination as to whether the motor vehicle complies with the
24 emission standards for that vehicle's class and model-year as prescribed by the
25 department.

26 (h) The test procedures may authorize smog check stations to refuse the
27 testing of a vehicle that would be unsafe to test, or that cannot physically be
28 inspected, as specified by the department by regulation. The refusal to test a
vehicle for those reasons shall not excuse or exempt the vehicle from compliance
with all applicable requirements of this chapter.

18. Health and Safety Code section 44015, subdivision (b), states:

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

19. Health and Safety Code section 44032 states:

No person shall perform, for compensation, tests or repairs of emission
control devices or systems of motor vehicles required by this chapter unless the
person performing the test or repair is a qualified smog check technician and the
test or repair is performed at a licensed smog check station. Qualified technicians

1 shall perform tests of emission control devices and systems in accordance with
2 Section 44012.

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11 20. Health and Safety Code section 44035 states:

(a) A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. The department shall adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses and qualifications and the conduct of the hearings.

(b) The department or its representatives, including quality assurance inspectors, shall be provided access to licensed stations for the purpose of examining property, station equipment, repair orders, emissions equipment maintenance records, and any emission inspection items, as defined by the department.

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28 21. Health and Safety Code section 44059 states:

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

22. Health and Safety Code section 44072.2 states:

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

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

....

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

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

....

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

1 23. Health and Safety Code section 44072.10 states:

2 (a) Notwithstanding Sections 44072 and 44072.4, the director, or the
3 director's designee, pending a hearing conducted pursuant to subdivision (e), may
4 temporarily suspend any smog check station or technician's license issued under
5 this chapter, for a period not to exceed 60 days, if the department determines that
6 the licensee's conduct would endanger the public health, safety, or welfare before
7 the matter could be heard pursuant to subdivision (e), based upon reasonable
8 evidence of any of the following:

9 (1) Fraud.

10 ...

11 (3) Intentional or willful violation of this chapter or any regulation, standard,
12 or procedure of the department implementing this chapter.

13 (4) A pattern or regular practice of violating this chapter or any regulation,
14 standard, or procedure of the department implementing this chapter.

15

16 (c) The department shall revoke the license of any smog check technician or
17 station licensee who fraudulently certifies vehicles or participates in the fraudulent
18 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
19 the following:

20 ...

21 (4) Intentional or willful violation of this chapter or any regulation, standard,
22 or procedure of the department implementing this chapter.

23 **REGULATORY PROVISIONS**

24 24. California Code of Regulations, title 16, section 3340.24(c), states:

25 (c) The bureau may suspend or revoke the license of or pursue other legal
26 action against a licensee, if the licensee falsely or fraudulently issues or obtains a
27 certificate of compliance or a certificate of noncompliance.

28 25. California Code of Regulations, title 16, section 3340.30, states:

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

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

3 (b) A licensed technician shall maintain on file with the bureau a correct
4 mailing address pursuant to section 3303.3 of Article 1 of this Chapter.

5 (c) A licensed technician shall notify the bureau in writing within two weeks
6 of any change of employment.

7 (d) A licensed technician whose license has expired shall immediately cease
8 to inspect, test, or repair failed vehicles.

9 26. California Code of Regulations, title 16, section 3340.35(c), states:

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

15 (1) Customers shall be charged the same price for certificates as that paid by
16 the licensed station; and

17 (2) Sales tax shall not be assessed on the price of certificates.

18 27. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

19 No person shall enter into the emissions inspection system any vehicle
20 identification information or emission control system identification data for any
21 vehicle other than the one being tested. Nor shall any person knowingly enter into
22 the emissions inspection system any false information about the vehicle being
23 tested.

24 28. California Code of Regulations, title 16, section 3340.42, states:

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

27 (a) All vehicles subject to a smog check inspection, shall receive one of the
28 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

1 article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test
2 equipment, including a chassis dynamometer, certified by the bureau.

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

12 (2) A two-speed idle mode test shall be the test method used to inspect 1976
13 - 1999 model-year vehicles, except diesel-powered, registered in all program areas
14 of the state, except in those areas of the state where the enhanced program has
15 been implemented. The two-speed idle mode test shall measure hydrocarbon,
16 carbon monoxide and carbon dioxide emissions at high RPM and again at idle
17 RPM, as contained in the bureau's specifications referenced in subsection (a) of
18 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this
19 inspection shall be measured and compared to the emission standards set forth in
20 this section and as shown in TABLE III. A vehicle passes the two-speed idle
21 mode test if all of its measured emissions are less than or equal to the applicable
22 emissions standards specified in Table III.

23 (3) An OBD-focused test, shall be the test method used to inspect gasoline-
24 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998
25 model-year and newer. The OBD test failure criteria are specified in section
26 3340.42.2.

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

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

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

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

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

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

1 (3) Vehicles with OBD systems that have demonstrated operational
2 problems.

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

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

7 (2) Vehicles with emission levels exceeding the emission standards for gross
8 polluters during an initial inspection will be considered gross polluters and the
9 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.

10 (3) A gross polluting vehicle shall not be passed or issued a certificate of
11 compliance until the vehicle's emissions are reduced to or below the applicable
12 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.

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

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

17 No automotive repair dealer or individual in charge shall, in filling out an
18 estimate, invoice, or work order, or record required to be maintained by section
19 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
20 information which will cause any such document to be false or misleading, or
where the tendency or effect thereby would be to mislead or deceive customers,
prospective customers, or the public.

21 **COST RECOVERY**

22 30. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.
28

FACTUAL ALLEGATIONS

1
2 31. California’s Smog Check Program requires the owners of most motor vehicles in the
3 State to periodically pass a smog check inspection and receive a certificate of compliance. These
4 inspections are performed by smog check inspectors at smog check stations, both of which are
5 licensed by the Bureau of Automotive Repair. The Smog Check Program is designed and
6 intended to reduce air pollution by identifying and requiring the repair of polluting vehicles.

7 32. A smog check inspection of pre-2000 model-year vehicles includes three parts:
8 tailpipe, visual, and functional. Smog check inspectors are required to perform the test in
9 accordance with the Smog Check Program’s codes, regulations, and Smog Check Manual.
10 Inspectors are required to enter the results of the inspection into the Emission Inspection System
11 (EIS), which determines whether a vehicle passed the inspection based on the results of the
12 tailpipe, visual, and functional tests. A vehicle must pass all three parts to pass the overall
13 inspection and receive a certificate of compliance. If the vehicle passes, the inspector
14 electronically transmits a certification of compliance to the Bureau’s vehicle information database.

15 33. The tailpipe portion of the smog inspection is at issue here. The tailpipe portion of
16 a smog check inspection of a pre-2000 model-year vehicle registered in Enhanced Areas requires
17 an Acceleration Simulation Mode (ASM) inspection, which an inspector performs using the EIS.¹
18 The EIS is a computer-based, five-gas analyzer that measures Hydrocarbons, Carbon Monoxide,
19 Nitrogen Oxide, Carbon Dioxide and Oxygen. The ASM inspection entails two loaded mode
20 sequences that test the vehicle's tailpipe emissions on a dynamometer. With the vehicle’s drive
21 wheels on rollers, the inspector operates the vehicle at speeds of 15 miles per hour and 25 miles
22 per hour to simulate driving conditions while the EIS samples the vehicle’s exhaust emissions.
23 The vehicle emission samples and speed data generated throughout the ASM test are then stored
24 in the vehicle information database.

25 34. Clean-gassing is a method by which a smog check inspector introduces a surrogate
26 gas into the EIS during the tailpipe portion of the smog inspection. As discussed above, during a

27 _____
28 ¹ A two speed idle inspection is used in some circumstances but the vehicles at issue here
were subject to the ASM test.

1 properly administered tailpipe test the EIS measures the vehicle's exhaust emissions. When an
2 inspector clean gasses a vehicle, the EIS measures the surrogate gas or a mixture of the surrogate
3 gas and the vehicle's exhaust. Introducing a surrogate gas in this manner alters the exhaust the
4 EIS samples and causes it to issue a passing test result based on the fraudulent reading.

5 35. The Bureau can detect clean-gassing through analysis of the second-by-second data
6 collected and stored in the vehicle information database. Throughout the ASM test, the EIS
7 samples and transmits the vehicle emission and speed data on a second-by-second basis. The
8 second-by-second data generated when a station is clean gassing often show a distinctly different
9 pattern from the data generated during legitimate ASM smog check inspections. The second-by-
10 second data generated during clean-gassing exhibit an abrupt drop in the level of hydrocarbons,
11 carbon monoxide, and nitrogen oxides when the inspector introduces the surrogate gas. The levels
12 remain low for a short period and then rise when the surrogate gas dissipates. These sharp drops
13 and rises during periods of steady vehicle speed do not occur during legitimate ASM tests.

14 36. A Bureau representative reviewed the test data Respondents transmitted to the
15 Bureau through the EIS and found that the second-by-second data revealed a pattern of fraudulent
16 inspections using the clean-gassing method. The Bureau representative found that with respect to
17 12 separate vehicles, the second-by-second data Respondents transmitted exhibited a highly
18 irregular and unexpected pattern of gas readings consistent with clean-gassing. Specifically, in
19 each case, the data revealed at least one sharp simultaneous drop and at least one sharp simultaneous
20 rise in the concentrations of pollutants during the test.

21 37. Moreover, for each vehicle in question, the representative located results of a prior
22 test of the vehicle and reviewed the second-by-second data generated during that test. In each case,
23 Respondent performed the prior test in which the vehicle failed the tailpipe portion. In each case,
24 the data patterns from the prior test were normal and did not exhibit the simultaneous drops and
25 rise of pollutant concentrations. In each case, Respondent retested the vehicle a few days later and
26 it passed the tailpipe portion of the test. And in each case, during the second test, the vehicle
27 transmitted data patterns indicating Respondent clean gassed the vehicle in order to cause it to pass.
28 A summary of each fraudulent smog check is as follows:

1 **a. Vehicle # 1.** On July 8, 2016, Respondents tested a 1993 Toyota Previa that failed
2 the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the
3 applicable threshold. On July 9, 2016, Respondents re-inspected the vehicle using the clean-
4 gassing method and it passed.

5 **b. Vehicle # 2.** On July 15, 2016, Respondents tested a 1995 Toyota T100 that failed
6 the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the “gross
7 polluter” threshold. On July 18, 2016, Respondents re-inspected the vehicle using the clean-
8 gassing method and it passed.

9 **c. Vehicle # 3.** On September 24, 2016, Respondents inspected a 1992 Nissan Sentra
10 that failed the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded
11 the “gross polluter” threshold. On September 29, 2016, Respondents re-inspected the vehicle
12 using the clean-gassing method and it passed.

13 **d. Vehicle # 4.** On February 15, 2018, Respondents inspected a 1992 Mazda B-Series
14 that failed the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded
15 the “gross polluter” threshold. On February 17, 2018, Respondents re-inspected the vehicle using
16 the clean-gassing method and it passed.

17 **e. Vehicle # 5.** On March 9, 2018, Respondents inspected a 1987 Toyota Pickup that
18 failed the tailpipe portion of the smog inspection. On March 12, 2018, Respondents re-inspected
19 the vehicle using the clean-gassing method and it passed.

20 **f. Vehicle # 6.** On March 10, 2018, Respondents inspected a 1996 Nissan Maxima that
21 failed the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the
22 “gross polluter” threshold. On March 17, 2018, Respondents re-inspected the vehicle using the
23 clean-gassing method and it passed.

24 **g. Vehicle # 7.** On March 12, 2018, Respondents inspected a 1996 Toyota Tacoma that
25 failed the tailpipe portion of the smog inspection because the vehicle’s emissions exceeded the
26 “gross polluter” threshold. On March 19, 2018, Respondents re-inspected the vehicle using the
27 clean-gassing method and it passed.

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1 37, subparagraphs a. through l. above had passed inspection and were in compliance with all
2 applicable laws and regulations when, in fact and in truth, Respondents inspected the vehicles
3 using the clean gassing method and issued fraudulent certificates of compliance.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 40. Complainant re-alleges and incorporates by reference the allegations set forth in the
7 foregoing paragraphs.

8 41. Respondent Ayala-Jiliciano's Automotive Repair Dealer Registration is subject to
9 disciplinary action under section 9884.7, subdivision (a)(4), in that Respondents committed fraud
10 by certifying that the vehicles listed in paragraph 37, subparagraphs a. through l. above had
11 passed inspection and were in compliance with all applicable laws and regulations when, in fact
12 and in truth, Respondents inspected the vehicles using the clean gassing method and issued
13 fraudulent certificates of compliance.

14 **THIRD CAUSE FOR DISCIPLINE**

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

16 42. Complainant re-alleges and incorporates by reference the allegations set forth in the
17 foregoing paragraphs.

18 43. Respondent Ayala-Jiliciano's Smog Check Station License is subject to disciplinary
19 action under Health and Safety Code sections 44072.2, subdivision (a), and 44072.10,
20 subdivisions (a) and (c), in that Respondents failed to comply with the following sections of the
21 Health and Safety Code:

22 a. **Section 44012**: Respondents failed to perform the tests of the emission control
23 systems and devices on the vehicles listed in paragraph 37, subparagraphs a. through l. above, in
24 accordance with procedures prescribed by the Department.

25 b. **Section 44015, subd. (a) and (b)**: Respondents issued certificates of compliance for
26 the vehicles listed in paragraph 37, subparagraphs a. through l. above, without properly testing
27 and inspecting them to determine if they were in compliance with Health & Safety Code section
28 44012.

1 c. **Section 44035**: Respondents failed to meet or maintain the standards prescribed for
2 qualification, equipment, performance, or conduct by failing to properly perform smog
3 inspections on the vehicles listed in paragraph 37, subparagraphs a. through l. above, or certifying
4 that such tests had been performed, when in fact they were never performed.

5 d. **Section 44059**: Respondents willfully made false statements and entries with regard
6 to material matters when he issued a certificate of compliance for the vehicles listed in paragraph
7 37, subparagraphs a. through l. above, without properly testing and inspecting them to determine
8 if they were in compliance with Health & Safety Code section 44012.

9 **FOURTH CAUSE FOR DISCIPLINE**

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

11 44. Complainant re-alleges and incorporates by reference the allegations set forth above
12 in the foregoing paragraphs.

13 45. Respondent Ayala-Jiliciano's Smog Check Station License is subject to disciplinary
14 action under Health and Safety Code section 44072.2, subdivision (c), and 44072.10, subdivisions
15 (a) and (c), in that Respondents failed to comply with the following sections of Title 16,
16 California Code of Regulations:

17 a. **Section 3340.24, subdivision (c)**: Respondents falsely and fraudulently issued
18 certificates of compliance for the vehicles listed in paragraph 37, subparagraphs a. through l.
19 above, without properly testing and inspecting them to determine if they were in compliance with
20 Health & Safety Code section 44012.

21 b. **Section 3340.35, subdivision (c)**: Respondents failed to inspect and test the vehicles
22 listed in paragraph 37, subparagraphs a. through l. above, in accordance with the procedures
23 specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the
24 required emission control equipment and devices installed and functioning correctly.

25 c. **Section 3340.41, subdivision (c)**: Respondents knowingly entered into the
26 Emissions Inspection System false information about the vehicles listed in paragraph 37,
27 subparagraphs a. through l. above, providing results for smog inspections that were not properly
28 performed.

1 d. **Section 3340.42**: Respondents failed to conduct the required smog tests on the
2 vehicles listed in paragraph 37, subparagraphs a. through l. above, in accordance with the
3 Bureau's specifications.

4 e. **Section 3373**: Respondents withheld and inserted in the certificates of compliance
5 issued for the vehicles listed in paragraph 37, subparagraphs a. through l. above, statements and
6 information that caused the certificates to be false or misleading, or had the tendency or effect to
7 mislead or deceive the public.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 46. Complainant re-alleges and incorporates by reference the allegations set forth above
11 in the foregoing paragraphs.

12 47. Respondent Ayala-Jiliciano's Smog Check Station License is subject to disciplinary
13 action under Health and Safety Code section 44072.2, subdivision (d), and 44072.10,
14 subdivisions (a) and (c), in that Respondents committed dishonest, fraudulent, or deceitful acts
15 whereby another is injured by issuing smog certificates of compliance for the vehicles listed in
16 paragraph 37, subparagraphs a. through l. above, without performing bona fide inspections of the
17 emission control devices and systems on the vehicles, thereby depriving the People of the State of
18 California of the protection afforded by the Motor Vehicle Inspection Program.

19 **SIXTH CAUSE FOR DISCIPLINE**

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

21 48. Complainant re-alleges and incorporates by reference the allegations set forth above
22 in the foregoing paragraphs.

23 49. Respondent Garcia's Smog Check Inspector License is subject to disciplinary action
24 under Health and Safety Code section 44072.2, subdivision (a), and 44072.10, subdivisions (a)
25 and (c), in that Respondent Garcia failed to comply with the following sections of that Code:

26 a. **Section 44012**: Respondent Garcia failed to perform the tests of the emission control
27 systems and devices on the vehicles listed in paragraph 37, subparagraphs a. through l. above, in
28 accordance with procedures prescribed by the Department.

1 c. **Section 44032**: Respondent Garcia failed to perform tests of the emission control
2 devices and systems on the vehicles listed in paragraph 37, subparagraphs a. through l. above, in
3 accordance with section 44012 of that Code, in that those vehicles had been clean gassed.

4 b. **Section 44059**: Respondent Garcia willfully made false statements and entries with
5 regard to material matters when they issued a certificate of compliance for the vehicles listed in
6 paragraph 37, subparagraphs a. through l. above, without properly testing and inspecting them to
7 determine if they were in compliance with Health & Safety Code section 44012.

8 **SEVENTH CAUSE FOR DISCIPLINE**

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

10 50. Complainant re-alleges and incorporates by reference the allegations set forth above
11 in the foregoing paragraphs.

12 51. Respondent Garcia's Smog Check Inspector License is subject to disciplinary action
13 under Health and Safety Code section 44072.2, subdivision (c), and 44072.10, subdivisions (a)
14 and (c), in that Respondent Garcia failed to comply with the following sections of Title 16,
15 California Code of Regulations:

16 a. **Section 3340.30, subdivision (a)**: Respondent Garcia failed to inspect and test the
17 vehicles listed in paragraph 37, subparagraphs a. through l. above, in accordance with sections
18 44012 and 44035 of the Health and Safety Code, and section 3340.42 of the Regulations

19 b. **Section 3340.41, subdivision (c)**: Respondent Garcia knowingly entered into the
20 Emissions Inspection System false information about the vehicles listed in paragraph 37,
21 subparagraphs a. through l. above, providing results for smog inspections that were not properly
22 performed.

23 c. **Section 3340.42**: Respondent Garcia failed to conduct the required smog tests on the
24 vehicles listed in paragraph 37, subparagraphs a. through l. above, in accordance with the
25 Bureau's specifications.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 52. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in the foregoing paragraphs.

5 53. Respondent Garcia’s Smog Check Inspector License is subject to disciplinary action
6 under Health and Safety Code section 44072.2, subdivision (d), and 44072.10, subdivisions (a)
7 and (c), in that Respondent Garcia committed dishonest, fraudulent, or deceitful acts whereby
8 another is injured by issuing smog certificates of compliance for the vehicles listed in paragraph
9 37, subparagraphs a. through l. above, without performing bona fide inspections of the emission
10 control devices and systems on the vehicles, thereby depriving the People of the State of
11 California of the protection afforded by the Motor Vehicle Inspection Program.

12 **OTHER MATTERS**

13 54. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or
14 place on probation the registration for all places of business operated in this state by Respondent
15 Ayala-Jiliciano upon a finding that he has, or is, engaged in a course of repeated and willful
16 violations of the laws and regulations pertaining to an automotive repair dealer.

17 55. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
18 License Number TC 276883, issued to Respondent Ayala-Jiliciano is revoked or suspended, any
19 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code
20 in Respondent Ayala-Jiliciano’s name may also be revoked or suspended by the Director.

21 56. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
22 No. EO 636922 issued to Respondent Garcia is revoked or suspended, any additional license
23 issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in Respondent
24 Garcia’s name may also be revoked or suspended by the Director.

25 **DISCIPLINE CONSIDERATIONS**

26 57. To determine the degree of discipline to be imposed on Respondent Ayala-Jiliciano,
27 Complainant alleges the following Citation, which is incorporated herein by reference. On March
28 30, 2016, the Bureau issued to Respondent Javier Alejandro Ayala-Jiliciano, dba Los Paisanos

1 Test Only, Citation Number C2016-658 for inspecting and certifying a vehicle using the BAR-97
2 test when the OIS test was required. The citation was affirmed and the decision became effective
3 November 22, 2017.

4 58. To determine the degree of discipline to be imposed on Respondent Garcia,
5 Complainant alleges the following Citation, which is incorporated herein by reference. On March
6 30, 2016, the Bureau issued to Respondent Rolando Garcia, Citation Number M2016-659 for
7 inspecting and certifying a vehicle using the BAR-97 test when the OIS test was required. The
8 citation was affirmed and the decision became effective November 22, 2017.

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 276883 issued to Javier Alejandro Ayala-Jiciliano, dba Los Paisanos Test Only;
- 14 2. Revoking or suspending any other Automotive Repair Dealer Registration issued in
15 the name of Javier Alejandro Ayala-Jiciliano;
- 16 3. Revoking or suspending Smog Check Test Only Station License Number TC 276883
17 issued to Javier Alejandro Ayala-Jiciliano, dba Los Paisanos Test Only;
- 18 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
19 Division 26 of the Health and Safety Code in the name of Javier Alejandro Ayala-Jiciliano;
- 20 5. Revoking or suspending Smog Check Inspector License Number EO 636922 issued
21 to Rolando Garcia;
- 22 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
23 Division 26 of the Health and Safety Code in the name of Rolando Garcia;
- 24 7. Ordering Javier Alejandro Ayala-Jiciliano and Rolando Garcia, jointly and severally,
25 to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement
26 of this case, pursuant to Business and Professions Code section 125.3; and

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8. Taking such other and further action as deemed necessary and proper.

DATED: October 2, 2019

Signature On File

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

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