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7

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

12 In the Matter of the Accusation Against:
13 **JOVANIES ELECTRO MECHANICS**
ORLANDO ARISTIZABAL,
14 **aka ORLANDO DEJ ARISTIZABAL, OWNER**
11577 Sheldon Avenue
Sun Valley, CA 91352-1012
15 Automotive Repair Dealer Reg. No. ARD 140167
Smog Check Station License No. RC 140167
16 Lamp Station License No. LS 140167
Brake Station License No. BS 140167
17

18 and

19 **ORLANDO DEJ ARISTIZABAL**
11577 Sheldon Street
Sun Valley, CA 91352
20 Advanced Emission Specialist Technician License
No. EA 306961
21 Lamp Adjuster License No. LA 306961
Brake Adjuster License No. BA 306961
22

23 Respondents.

Case No. 77/10-42

ACCUSATION

24 Complainant alleges:

25 **PARTIES/LICENSE INFORMATION**

26 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
27 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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1 **Jovanies Electro Mechanics; Orlando Aristizabal aka Orlando Dej Aristizabal, Owner**

2 2. On or about May 26, 1988, the Director of Consumer Affairs ("Director") issued
3 Automotive Repair Dealer Registration Number ARD 140167 ("registration") to Orlando
4 Aristizabal, also known as Orlando Dej Aristizabal ("Respondent"), owner of Jovanies Electro
5 Mechanics. Respondent's registration was in full force and effect at all times relevant to the
6 charges brought herein and will expire on June 30, 2011, unless renewed.

7 3. On or about July 8, 1988, the Director issued Smog Check Station License Number
8 RC 140167 to Respondent. Respondent's smog check station license was in full force and effect
9 at all times relevant to the charges brought herein and will expire on June 30, 2011, unless
10 renewed.

11 4. On or about September 4, 1998, the Director issued Lamp Station License Number
12 LS 140167 to Respondent. Respondent's lamp station license was in full force and effect at all
13 times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

14 5. On or about September 4, 1998, the Director issued Brake Station License Number
15 BS 140167 to Respondent. Respondent's brake station license was in full force and effect at all
16 times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

17 **Orlando Aristizabal**

18 6. In or about 1998, the Director issued Advanced Emission Specialist Technician
19 License Number EA 306961 ("technician license") to Respondent. Respondent's technician
20 license was in full force and effect at all times relevant to the charges brought herein and will
21 expire on October 31, 2012, unless renewed.

22 7. In or about 1989, the Director issued Lamp Adjuster License Number LA 306961 to
23 Respondent. Respondent's lamp adjuster license was in full force and effect at all times relevant
24 to the charges brought herein and will expire on October 31, 2011, unless renewed.

25 8. In or about 1989, the Director issued Brake Adjuster License Number BA 306961 to
26 Respondent. Respondent's brake adjuster license was in full force and effect at all times relevant
27 to the charges brought herein and will expire on October 31, 2011, unless renewed.

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

4

5 (3) Failing or refusing to give to a customer a copy of any document
6 requiring his or her signature, as soon as the customer signs the document

7 (4) Any other conduct that constitutes fraud.

8

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

11

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

17 16. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

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

17. Bus. & Prof. Code section 9889.3 states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action
against a license as provided in this article [Article 7 (commencing with section
9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or
director thereof:

(a) Violates any section of the Business and Professions Code which
relates to his or her licensed activities.

. . . .

///

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

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

4

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

6 18. Bus. & Prof. Code section 9889.16 states:

7 Whenever a licensed adjuster in a licensed station upon an inspection or
8 after an adjustment, made in conformity with the instructions of the bureau,
determines that the lamps or the brakes upon any vehicle conform with the
9 requirements of the Vehicle Code, he shall, when requested by the owner or driver of
the vehicle, issue a certificate of adjustment on a form prescribed by the director,
10 which certificate shall contain the date of issuance, the make and registration number
of the vehicle, the name of the owner of the vehicle, and the official license of the
11 station.

12 19. Bus. & Prof. Code section 9889.22 states:

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

16 20. Bus. & Prof. Code section 9889.9 states that "[w]hen any license has been revoked or
17 suspended following a hearing under the provisions of this article [Article 7 (commencing with
18 section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and
19 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the
20 director."

21 21. Bus. & Prof. Code section 22, subdivision (a), states:

22 "Board" as used in any provision of this Code, refers to the board in
23 which the administration of the provision is vested, and unless otherwise expressly
provided, shall include "bureau," "commission," "committee," "department,"
24 "division," "examining committee," "program," and "agency."

25 22. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
26 "license" includes "registration" and "certificate."

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1 23. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

8

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

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

13 24. Health & Saf. Code section 44072.8 states that when a license has been revoked or
14 suspended following a hearing under this article, any additional license issued under this chapter
15 in the name of the licensee may be likewise revoked or suspended by the director.

16 **COST RECOVERY**

17 25. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
18 the administrative law judge to direct a licentiate found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 **UNDERCOVER OPERATION #1: 2000 MAZDA PROTÉGÉ**

22 26. On May 18, 2009, an undercover operator of the Bureau ("operator") took the
23 Bureau's 2000 Mazda Protégé to Respondent's facility and requested brake, lamp, and smog
24 inspections on the vehicle. The rear brake drums on the Bureau-documented vehicle were
25 machined beyond the manufacturer's discard specifications, the right headlamp was out of
26 adjustment, and the license plate light bulbs and the fuel cap were defective. Respondent told the
27 operator that the inspections would take about thirty minutes to complete and provided her with a
28 written estimate totaling \$138. The operator left the facility.

29 27. At approximately 1218 hours that same day, the operator called the facility and spoke
30 with Respondent. Respondent told the operator that the vehicle needed two rear license plate
31 light bulbs and that the repair would cost \$25. The operator authorized the work.

1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 31. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(4), Respondent committed acts that constitute fraud, as
5 follows:

6 a. Respondent issued an electronic smog certificate of compliance for the Bureau's 2000
7 Mazda Protégé without performing a bona fide inspection of the emission control devices and
8 systems on the vehicle, thereby depriving the People of the State of California of the protection
9 afforded by the Motor Vehicle Inspection Program.

10 b. Respondent obtained payment from the operator for performing the applicable
11 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 2000
12 Mazda Protégé as specified by the Bureau and in accordance with the Vehicle Code. In fact,
13 Respondent failed to perform the necessary inspections, adjustments, and repairs in compliance
14 with Bureau Regulations or the Vehicle Code.

15 THIRD CAUSE FOR DISCIPLINE

16 (Failure to Comply with the Bus. & Prof. Code)

17 32. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
18 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of
19 that Code in the following material respects:

20 a. Section 9884.9, subdivision (a): Respondent failed to record on the invoice the
21 operator's authorization for the additional repairs on the vehicle; i.e., the replacement of the
22 defective license plate light bulbs.

23 b. Section 9889.16: Respondent issued Brake Certificate No. BC844303 and Lamp
24 Certificate No. LC831294 as to the Bureau's 2000 Mazda Protégé when the vehicle was not in
25 compliance with Bureau Regulations or the requirements of the Vehicle Code.

26 c. Section 9889.22: Respondent willfully made false statements or entries on Brake
27 Certificate No. BC844303 and Lamp Certificate No. LC831294 , as set forth in subparagraphs 30
28 (b) and (c) above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 33. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of
5 California Code of Regulations, title 16, in the following material respects:

6 a. **Section 3305, subdivision (a)**: Respondent failed to perform the inspection of the
7 brake system and inspection and adjustment of the lamp system on the Bureau's 2000 Mazda
8 Protégé in accordance with the specifications, instructions, and directives issued by the Bureau
9 and the vehicle manufacturer.

10 b. **Section 3316, subdivision (d)(2)**: Respondent issued Lamp Certificate No.
11 LC831294 as to the Bureau's 2000 Mazda Protégé when all of the lamps, lighting equipment,
12 and/or related electrical systems on the vehicle were not in compliance with Bureau regulations.

13 c. **Section 3321, subdivision (c)(2)**: Respondent issued Brake Certificate No.
14 BC844303 as to the Bureau's 2000 Mazda Protégé when the brake system on the vehicle had not
15 been completely tested or inspected.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Bus. & Prof. Code)**

18 34. Respondent's brake and lamp station licenses are subject to disciplinary action
19 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
20 violated the provisions of Bus. & Prof. Code sections 9884.9, subdivision (a), 9889.16, and
21 9889.22 relating to Respondent's licensed activities, as set forth in paragraph 32 above.

22 **SIXTH CAUSE FOR DISCIPLINE**

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

24 35. Respondent's brake and lamp station licenses are subject to disciplinary action
25 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
26 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
27 (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 33 above.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 36. Respondent's brake and lamp station licenses are subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed acts
5 involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 31
6 above.

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Bus. & Prof. Code)**

9 37. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that he violated the
11 provisions of Bus. & Prof. Code sections 9884.9, subdivision (a), 9889.16, and 9889.22 relating
12 to his licensed activities, as set forth in paragraph 32 above.

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Violations of Regulations)**

15 38. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he failed to comply with the
17 provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316,
18 subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 33 above.

19 **TENTH CAUSE FOR DISCIPLINE**

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

21 39. Respondent's smog check station license is subject to disciplinary action pursuant to
22 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
23 following sections of that Code:

24 a. **Section 44012:** Respondent failed to perform the emission control tests on the
25 Bureau's 2000 Mazda Protégé in accordance with procedures prescribed by the department.

26 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
27 the Bureau's 2000 Mazda Protégé without properly testing and inspecting the vehicle to
28 determine if it was in compliance with Health & Saf. Code section 44012.

1 c. **Section 44033, subdivision (c)**: Respondent failed to include on the written estimate
2 the required notice stating that the customer may choose another smog check station to perform
3 needed repairs, installations, adjustments, or subsequent tests.

4 **ELEVENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant**
6 **to the Motor Vehicle Inspection Program)**

7 40. Respondent's smog check station license is subject to disciplinary action pursuant to
8 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the
9 provisions of California Code of Regulations, title 16, as follows:

10 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an
11 electronic smog certificate of compliance for the Bureau's 2000 Mazda Protégé.

12 b. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
13 of compliance for the Bureau's 2000 Mazda Protégé even though the vehicle had not been
14 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

15 c. **3340.41, subdivision (c)**: Respondent knowingly entered into the emissions
16 inspection system ("EIS") false information about the Bureau's 2000 Mazda Protégé.

17 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
18 Bureau's 2000 Mazda Protégé in accordance with the Bureau's specifications.

19 **TWELFTH CAUSE FOR DISCIPLINE**

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

21 41. Respondent's smog check station license is subject to disciplinary action pursuant to
22 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
23 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
24 compliance for the Bureau's 2000 Mazda Protégé without performing a bona fide inspection of
25 the emission control devices and systems on the vehicle, thereby depriving the People of the State
26 of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 42. Respondent's technician license is subject to disciplinary action pursuant to Health &
4 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
5 following sections of that Code:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the
7 Bureau's 2000 Mazda Protégé in accordance with procedures prescribed by the department.

8 b. **Section 44059:** Respondent willfully made a false entry on the vehicle inspection
9 report, as set forth in subparagraph 30 (a) above.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant**
12 **to the Motor Vehicle Inspection Program)**

13 43. Respondent's technician license is subject to disciplinary action pursuant to Health &
14 Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions of
15 California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
17 electronic smog certificate of compliance for the Bureau's 2000 Mazda Protégé.

18 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
19 2000 Mazda Protégé in accordance with Health & Saf. Code sections 44012 and 44035, and
20 Regulation 3340.42.

21 c. **3340.41, subdivision (c):** Respondent knowingly entered into the EIS false
22 information about the Bureau's 2000 Mazda Protégé.

23 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
24 Bureau's 2000 Mazda Protégé in accordance with the Bureau's specifications.

25 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

27 44. Respondent's technician license is subject to disciplinary action pursuant to Health &
28 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent,

1 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
2 for the Bureau's 2000 Mazda Protégé without performing a bona fide inspection of the emission
3 control devices and systems on the vehicle, thereby depriving the People of the State of California
4 of the protection afforded by the Motor Vehicle Inspection Program.

5 **UNDERCOVER OPERATION #2: 1994 CHEVROLET S-10 PICKUP**

6 45. On August 13, 2009, an undercover operator of the Bureau ("operator") took the
7 Bureau's 1994 Chevrolet S-10 pickup to Respondent's facility to have brake, lamp, and smog
8 inspections performed on the vehicle. The rear brake drums on the Bureau-documented vehicle
9 were machined beyond the manufacturer's discard specifications, the right headlamp was out of
10 adjustment, both backup light bulbs were defective, and the positive crankcase ventilation
11 ("PCV") system was missing. A male individual told the operator that the inspections would cost
12 a total of \$138 and requested payment in advance. The operator paid the individual \$138 in cash,
13 was given an invoice, and left the facility.

14 46. At approximately 1046 hours that same day, the operator received a call from the
15 facility. A male individual told the operator that he had performed the inspections and that the
16 vehicle failed. The individual stated that the backup lights were inoperative, the fuel evaporative
17 canister was disconnected, and the ignition timing was incorrect. The operator asked the
18 individual if he could repair the vehicle so that it would pass the inspections. The individual
19 indicated that he could, and stated that it would cost \$45.50 to repair the backup lights and \$150
20 to repair the disconnected fuel evaporative canister. The individual also recommended a fuel
21 injector service, a decarbonizer, and the adjustment of the ignition timing to the correct setting for
22 \$124.50, for total repair costs on the vehicle of \$458. The operator authorized the repairs.

23 47. At approximately 1120 hours, the operator went to the facility and met with
24 Respondent. Respondent stated that he had performed the brake, lamp, and smog inspections on
25 the vehicle, but the vehicle failed the inspections. Respondent told the operator that the vehicle
26 needed two new backup light bulbs, a wiring repair to the backup lights, a fuel injector service, a
27 decarbonizer, the repair of the fuel evaporative canister, and the adjustment of the ignition timing,
28 and that the repairs would be completed by 1500 hours. The operator left the facility.

1 48. At approximately 1446 hours, the operator called the facility and spoke with
2 Respondent. Respondent stated that the vehicle passed the brake and lamp inspections and that
3 the backup lights were repaired and operating properly; however, the vehicle still failed the smog
4 inspection. Respondent asked the operator if he had the engine oil on the vehicle changed
5 recently. The operator stated that he had not. Respondent stated that it looked like the vehicle
6 needed a major engine overhaul, but that he would try to do the smog inspection one more time.

7 49. At approximately 1503 hours, Respondent called the operator and told him that the
8 vehicle passed the smog inspection and was ready for pick up.

9 50. At approximately 1510 hours, the operator went to the facility and met with
10 Respondent. Respondent told the operator that he would give him a discount on the repairs and
11 asked the operator for \$308. The operator paid Respondent \$308 in cash and received copies of
12 an invoice, three vehicle inspection reports, the first issued at 0959 hours, the second issued at
13 1342 hours, and the third issued at 1444 hours, Certificate of Lamp Adjustment No. LC859285,
14 and Certificate of Brake Adjustment No. BC872396. That same day, electronic smog Certificate
15 of Compliance No. NK867559C was issued for the vehicle.

16 51. On August 20, 2009, the Bureau inspected the vehicle and found that the PCV system
17 was still missing, the right headlamp was still out of adjustment, one of the backup light bulbs
18 was still inoperative, none of the wheels had been removed, indicating that the brake system had
19 not been inspected, and the rear brake drums were not within manufacturer's specifications.

20 **SIXTEENTH CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 52. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
23 Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which he
24 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
25 follows:

26 a. Respondent represented to the operator that the Bureau's 1994 Chevrolet S-10 pickup
27 needed a fuel injector service, a decarbonizer, the repair of the fuel evaporative canister, and the
28 adjustment of the ignition timing. In fact, none of those repairs were needed on the vehicle.

1 b. Respondent certified under penalty of perjury on the vehicle inspection report issued
2 at 0959 hours that the Bureau's 1994 Chevrolet S-10 pickup had failed the functional low-
3 pressure fuel evaporation test (LPFET) and the functional ignition timing test. In fact, the fuel
4 evaporative system was not in need of servicing or replacement and the ignition timing was set to
5 manufacturer's specifications and was not in need of adjustment at the time the vehicle was taken
6 to Respondent's facility.

7 c. Respondent certified under penalty of perjury on all three vehicle inspection reports
8 that the PCV system on the Bureau's 1994 Chevrolet S-10 pickup had passed the visual portion of
9 the smog inspection. In fact, the PCV system was missing at the time the vehicle was taken to
10 Respondent's facility.

11 d. Respondent certified under penalty of perjury on all three vehicle inspection reports
12 that he performed the smog inspections on the Bureau's 1994 Chevrolet S-10 pickup in
13 accordance with all Bureau requirements. In fact, Respondent failed to perform, or properly
14 perform, the functional ignition timing check on the vehicle.

15 e. Respondent certified under penalty of perjury on the vehicle inspection report issued
16 at 1444 hours that the Bureau's 1994 Chevrolet S-10 pickup had passed inspection and was in
17 compliance with applicable laws and regulations. In fact, the PCV system was missing and as
18 such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

19 f. Respondent certified under penalty of perjury on the vehicle inspection report issued
20 at 1444 hours that he had repaired the vapor lines and the ignition timing on the Bureau's 1994
21 Chevrolet S-10 pickup. In fact, the ignition timing had not been repaired or adjusted and no
22 repairs were performed on the fuel evaporative system. Further, the vacuum line to the
23 evaporative canister purge valve had been removed from the throttle body and was plugged with a
24 small bolt, and the orifice at the throttle body was left open and was leaking vacuum during off-
25 idle engine operation (ported vacuum).

26 g. Respondent certified under penalty of perjury on Brake Certificate No. BC872396
27 that the applicable inspection was performed on the brake system on the Bureau's 1994 Chevrolet
28 S-10 pickup. In fact, Respondent failed to inspect the brakes on the vehicle.

1 h. Respondent certified under penalty of perjury on Brake Certificate No. BC872396
2 that the rear brake drums on the Bureau's 1994 Chevrolet S-10 pickup were in a satisfactory
3 condition. In fact, the rear brake drums had been machined beyond the manufacturer's drum
4 discard diameter specifications.

5 i. Respondent certified under penalty of perjury on Lamp Certificate No. LC859285
6 that the applicable adjustment had been performed on the lighting system on the Bureau's 1994
7 Chevrolet S-10 pickup. In fact, the right headlamp was out of adjustment and one of the backup
8 light bulbs was still inoperative at the time the Bureau inspected the vehicle following the
9 undercover operation.

10 **SEVENTEENTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 53. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
13 Code section 9884.7, subdivision (a)(4), Respondent committed acts that constitute fraud, as
14 follows:

15 a. Respondent made false or misleading representations to the operator regarding the
16 Bureau's 1994 Chevrolet S-10 pickup, as set forth in subparagraph 52 (a) above, in order to
17 induce the operator to purchase unnecessary repairs on the vehicle, then sold the operator
18 unnecessary repairs, including the fuel injection service, the decarbonizer, the repair of the fuel
19 evaporative canister, and the adjustment of the ignition timing.

20 b. Respondent issued an electronic smog certificate of compliance for the Bureau's 1994
21 Chevrolet S-10 pickup without performing a bona fide inspection of the emission control devices
22 and systems on the vehicle, thereby depriving the People of the State of California of the
23 protection afforded by the Motor Vehicle Inspection Program.

24 c. Respondent obtained payment from the operator for performing the applicable
25 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 1994
26 Chevrolet S-10 pickup as specified by the Bureau and in accordance with the Vehicle Code. In
27 fact, Respondent failed to perform the necessary inspections, adjustments, and repairs in
28 compliance with Bureau Regulations or the Vehicle Code.

1 d. Respondent charged the operator twice for the brake, lamp, and smog inspections on
2 the Bureau's 1994 Chevrolet S-10 pickup and the brake, lamp, and smog certificates.

3 **EIGHTEENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with the Bus. & Prof. Code)**

5 54. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
6 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of
7 that Code in the following material respects:

8 a. **Section 9884.9, subdivision (a)**: Respondent failed to record on the invoice the
9 operator's authorization for the additional repairs on the vehicle.

10 b. **Section 9889.16**: Respondent issued Brake Certificate No. BC872396 and Lamp
11 Certificate No. LC859285 as to the Bureau's 1994 Chevrolet S-10 pickup when the vehicle was
12 not in compliance with Bureau Regulations or the requirements of the Vehicle Code.

13 c. **Section 9889.22**: Respondent willfully made false statements or entries on Brake
14 Certificate No. BC872396 and Lamp Certificate No. LC859285, as set forth in subparagraphs 52
15 (g) through (i) above.

16 **NINETEENTH CAUSE FOR DISCIPLINE**

17 **(Violations of Regulations)**

18 55. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
19 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of
20 California Code of Regulations, title 16, in the following material respects:

21 a. **Section 3305, subdivision (a)**: Respondent failed to perform the inspection of the
22 brake system and inspection and adjustment of the lamp system on the Bureau's 1994 Chevrolet
23 S-10 pickup in accordance with the specifications, instructions, and directives issued by the
24 Bureau and the vehicle manufacturer.

25 b. **Section 3316, subdivision (d)(2)**: Respondent issued Lamp Certificate No.
26 LC859285 as to the Bureau's 1994 Chevrolet S-10 pickup when all of the lamps, lighting
27 equipment, and/or related electrical systems on the vehicle were not in compliance with Bureau
28 regulations.

1 c. **Section 3321, subdivision (c)(2)**: Respondent issued Brake Certificate No.
2 BC872396 as to the Bureau's 1994 Chevrolet S-10 pickup when the brake system on the vehicle
3 had not been completely tested or inspected.

4 d. **Section 3356, subdivision (a)(2)(B)**: Respondent failed to state on the invoice
5 whether the light bulb(s) installed on the Bureau's 1994 Chevrolet S10-pickup were new, used,
6 reconditioned, or rebuilt.

7 **TWENTIETH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Bus. & Prof. Code)**

9 56. Respondent's brake and lamp station licenses are subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
11 violated the provisions of Bus. & Prof. Code sections 9884.9, subdivision (a), 9889.16, and
12 9889.22 relating to Respondent's licensed activities, as set forth in paragraph 54 above.

13 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

15 57. Respondent's brake and lamp station licenses are subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
17 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
18 (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and 3356, subdivision (a)(2)(B), as set
19 forth in paragraph 55 above.

20 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

22 58. Respondent's brake and lamp station licenses are subject to disciplinary action
23 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed acts
24 involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 53
25 above.

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TWENTY-THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Bus. & Prof. Code)

59. Respondent's brake and lamp adjuster licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that he violated the provisions of Bus. & Prof. Code sections 9884.9, subdivision (a), 9889.16, and 9889.22 relating to his licensed activities, as set forth in paragraph 54 above.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

60. Respondent's brake and lamp adjuster licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and 3356, subdivision (a)(B)(2), as set forth in paragraph 55 above.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

61. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1994 Chevrolet S-10 pickup in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for the Bureau's 1994 Chevrolet S-10 pickup without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

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1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 62. Respondent's smog check station license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
8 electronic smog certificate of compliance for the Bureau's 1994 Chevrolet S-10 pickup.

9 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
10 of compliance for the Bureau's 1994 Chevrolet S-10 pickup even though the vehicle had not been
11 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

12 c. **3340.41, subdivision (c):** Respondent knowingly entered into the EIS false
13 information about the Bureau's 1994 Chevrolet S-10 pickup.

14 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
15 Bureau's 1994 Chevrolet S-10 pickup in accordance with the Bureau's specifications.

16 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

18 63. Respondent's smog check station license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
20 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
21 compliance for the Bureau's 1994 Chevrolet S-10 pickup without performing a bona fide
22 inspection of the emission control devices and systems on the vehicle, thereby depriving the
23 People of the State of California of the protection afforded by the Motor Vehicle Inspection
24 Program.

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1 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

3 64. Respondent's technician license is subject to disciplinary action pursuant to Health &
4 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
5 following sections of that Code:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the
7 Bureau's 1994 Chevrolet S-10 pickup in accordance with procedures prescribed by the
8 department.

9 b. **Section 44059:** Respondent willfully made false entries on the vehicle inspection
10 reports, as set forth in subparagraphs 52 (b) through (f) above.

11 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant**
13 **to the Motor Vehicle Inspection Program)**

14 65. Respondent's technician license is subject to disciplinary action pursuant to Health &
15 Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions of
16 California Code of Regulations, title 16, as follows:

17 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
18 electronic smog certificate of compliance for the Bureau's 1994 Chevrolet S-10 pickup.

19 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
20 1994 Chevrolet S-10 pickup in accordance with Health & Saf. Code sections 44012 and 44035,
21 and Regulation 3340.42.

22 c. **3340.41, subdivision (c):** Respondent knowingly entered into the EIS false
23 information about the Bureau's 1994 Chevrolet S-10 pickup.

24 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
25 Bureau's 1994 Chevrolet S-10 pickup in accordance with the Bureau's specifications.

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1 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 72. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(4), Respondent committed acts that constitute fraud, as
5 follows:

6 a. Respondent issued an electronic smog certificate of compliance for the Bureau's 1990
7 Honda Accord without performing a bona fide inspection of the emission control devices and
8 systems on the vehicle, thereby depriving the People of the State of California of the protection
9 afforded by the Motor Vehicle Inspection Program.

10 b. Respondent obtained payment from the operator for performing the applicable
11 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 1990
12 Honda Accord as specified by the Bureau and in accordance with the Vehicle Code. In fact,
13 Respondent failed to perform the necessary inspections, adjustments, and repairs in compliance
14 with Bureau Regulations or the Vehicle Code.

15 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with the Bus. & Prof. Code)**

17 73. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
18 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of
19 that Code in the following material respects:

20 a. **Section 9889.16:** Respondent issued Brake Certificate No. BC911889 and Lamp
21 Certificate No. LC898680 as to the Bureau's 1990 Honda Accord when the vehicle was not in
22 compliance with Bureau Regulations or the requirements of the Vehicle Code.

23 b. **Section 9889.22:** Respondent willfully made false statements or entries on Brake
24 Certificate No. BC911889 and Lamp Certificate No. LC898680, as set forth in subparagraphs 70
25 (b) through (d) above.

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1 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 74. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of
5 California Code of Regulations, title 16, in the following material respects:

6 a. **Section 3305, subdivision (a)**: Respondent failed to perform the inspection of the
7 brake system and inspection and adjustment of the lamp system on the Bureau's 1990 Honda
8 Accord in accordance with the specifications, instructions, and directives issued by the Bureau
9 and the vehicle manufacturer.

10 b. **Section 3316, subdivision (d)(2)**: Respondent issued Lamp Certificate No.
11 LC898680 as to the Bureau's 1990 Honda Accord when all of the lamps, lighting equipment,
12 and/or related electrical systems on the vehicle were not in compliance with Bureau regulations.

13 c. **Section 3321, subdivision (c)(2)**: Respondent issued Brake Certificate No.
14 BC911889 as to the Bureau's 1990 Honda Accord when the brake system on the vehicle had not
15 been completely tested or inspected.

16 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Bus. & Prof. Code)**

18 75. Respondent's brake and lamp station licenses are subject to disciplinary action
19 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
20 violated the provisions of Bus. & Prof. Code sections 9884.9, subdivision (a), 9889.16, and
21 9889.22 relating to Respondent's licensed activities, as set forth in paragraph 73 above.

22 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

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

24 76. Respondent's brake and lamp station licenses are subject to disciplinary action
25 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
26 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
27 (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 74 above.

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1 **FORTY-SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 81. Respondent's smog check station license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
8 electronic smog certificate of compliance for the Bureau's 1990 Honda Accord.

9 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
10 of compliance for the Bureau's 1990 Honda Accord even though the vehicle had not been
11 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

12 c. **3340.41, subdivision (c):** Respondent knowingly entered into the EIS false
13 information about the Bureau's 1990 Honda Accord.

14 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
15 Bureau's 1990 Honda Accord in accordance with the Bureau's specifications.

16 **FORTY-THIRD CAUSE FOR DISCIPLINE**

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

18 82. Respondent's smog check station license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
20 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
21 compliance for the Bureau's 1990 Honda Accord without performing a bona fide inspection of
22 the emission control devices and systems on the vehicle, thereby depriving the People of the State
23 of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **FORTY-SIXTH CAUSE FOR DISCIPLINE**

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

3 85. Respondent's technician license is subject to disciplinary action pursuant to Health &
4 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent,
5 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
6 for the Bureau's 1990 Honda Accord without performing a bona fide inspection of the emission
7 control devices and systems on the vehicle, thereby depriving the People of the State of California
8 of the protection afforded by the Motor Vehicle Inspection Program.

9 **OTHER MATTERS**

10 86. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
11 suspend, revoke or place on probation the registration for all places of business operated in this
12 state by Respondent Orlando Aristizabal, also known as Orlando Dej Aristizabal, owner of
13 Jovanies Electro Mechanics, upon a finding that said Respondent has, or is, engaged in a course
14 of repeated and willful violations of the laws and regulations pertaining to an automotive repair
15 dealer.

16 87. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
17 Number RC 140167, issued to Orlando Aristizabal, also known as Orlando Dej Aristizabal,
18 owner of Jovanies Electro Mechanics, is revoked or suspended, any additional license issued
19 under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise revoked
20 or suspended by the Director.

21 88. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Station License Number
22 LS 140167, issued to Respondent Orlando Aristizabal, also known as Orlando Dej Aristizabal,
23 owner of Jovanies Electro Mechanics, is revoked or suspended, any additional license issued
24 under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said licensee may
25 be likewise revoked or suspended by the Director.

26 89. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Station License Number
27 BS 140167, issued to Respondent Orlando Aristizabal, also known as Orlando Dej Aristizabal,
28 owner of Jovanies Electro Mechanics, is revoked or suspended, any additional license issued

1 under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said licensee may
2 be likewise revoked or suspended by the Director.

3 90. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
4 Technician License Number EA 306961, issued to Respondent Orlando Aristizabal, also known
5 as Orlando Dej Aristizabal, is revoked or suspended, any additional license issued under Chapter
6 5 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended
7 by the Director.

8 91. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number
9 BA 306961, issued to Respondent Orlando Aristizabal, also known as Orlando Dej Aristizabal, is
10 revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the
11 Bus. & Prof. Code in the name of said licensee may be likewise revoked or suspended by the
12 Director.

13 92. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Adjuster License Number
14 LA 306961, issued to Respondent Orlando Aristizabal, also known as Orlando Dej Aristizabal, is
15 revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the
16 Bus. & Prof. Code in the name of said licensee may be likewise revoked or suspended by the
17 Director.

18 **PRAYER**

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

21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 140167, issued to Orlando Aristizabal, also known as Orlando Dej Aristizabal, owner of Jovanies
23 Electro Mechanics;

24 2. Revoking or suspending any other automotive repair dealer registration issued to
25 Orlando Aristizabal, also known as Orlando Dej Aristizabal;

26 3. Revoking or suspending Smog Check Station License Number RC 140167, issued to
27 Orlando Aristizabal, also known as Orlando Dej Aristizabal, owner of Jovanies Electro
28 Mechanics;

1 4. Revoking or suspending Advanced Emission Specialist Technician License Number
2 EA 306961, issued to Orlando Aristizabal, also known as Orlando Dej Aristizabal;

3 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
4 and Safety Code in the name of Orlando Aristizabal, also known as Orlando Dej Aristizabal;

5 6. Revoking or suspending Lamp Station License Number LS 140167, issued to Orlando
6 Aristizabal, also known as Orlando Dej Aristizabal, owner of Jovanies Electro Mechanics;

7 7. Revoking or suspending Brake Station License Number BS 140167, issued to
8 Orlando Aristizabal, also known as Orlando Dej Aristizabal, owner of Jovanies Electro
9 Mechanics;

10 8. Revoking or suspending Brake Adjuster License Number BA 306961, issued to
11 Orlando Aristizabal, also known as Orlando Dej Aristizabal,

12 9. Revoking or suspending Lamp Adjuster License Number LA 306961, issued to
13 Orlando Aristizabal, also known as Orlando Dej Aristizabal;

14 10. Revoking or suspending any additional license issued under Articles 5 and 6 of
15 Chapter 20.3 of the Business and Professions Code in the name of Orlando Aristizabal, also
16 known as Orlando Dej Aristizabal;

17 11. Ordering Orlando Aristizabal, also known as Orlando Dej Aristizabal, individually,
18 and as owner of Jovanies Electro Mechanics to pay the Director of Consumer Affairs the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3;

21 12. Taking such other and further action as deemed necessary and proper.

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23 DATED: 3/22/11


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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