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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 79/11-97

13 **ACCURATE DIAGNOSTICS AND SMOGS**
14 **390 Industrial Way, Suite C**
15 **Dixon, CA 95620**
16 **LUIS C. NAVARRO, OWNER**
17 **Automotive Repair Dealer Registration No.**
18 **ARD 248267**
19 **Smog Check Station License No. RC 248267,**

FIRST AMENDED ACCUSATION
SMOG CHECK

and

17 **RICARDO GALLARDO**
18 **410 West H Street**
19 **Dixon, CA 95620**
20 **Advanced Emission Specialist Technician**
21 **License No. EA 146134**

Respondent.

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23 Complainant alleges:

24 **PARTIES**

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

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1 (b) Except as provided for in subdivision (c), if an automotive repair
2 dealer operates more than one place of business in this state, the director pursuant to
3 subdivision (a) shall only suspend, revoke, or place on probation the registration of
the specific place of business which has violated any of the provisions of this chapter.
This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

4 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
5 place on probation the registration for all places of business operated in this state by
6 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.

7 6. Code section 118, subdivision (b) states:

8 The suspension, expiration, or forfeiture by operation of law of a license
9 issued by a board in the department, or its suspension, forfeiture, or cancellation by
10 order of the board or by order of a court of law, or its surrender without the written
11 consent of the board, shall not, during any period in which it may be renewed,
12 restored, reissued, or reinstated, deprive the board of its authority to institute or
continue a disciplinary proceeding against the licensee upon any ground provided by
law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the licensee on any such ground.

13 7. Code section 9884.9 states, in pertinent part:

14 (a) The automotive repair dealer shall give to the customer a written
15 estimated price for labor and parts necessary for a specific job. No work shall be done
16 and no charges shall accrue before authorization to proceed is obtained from the
17 customer. No charge shall be made for work done or parts supplied in excess of the
18 estimated price without the oral or written consent of the customer that shall be
19 obtained at some time after it is determined that the estimated price is insufficient and
before the work not estimated is done or the parts not estimated are supplied. Written
consent or authorization for an increase in the original estimated price may be
provided by electronic mail or facsimile transmission from the customer. The bureau
may specify in regulation the procedures to be followed by an automotive repair
dealer if 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
20 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
21 specification of the additional parts and labor and the total additional cost, and shall
do either of the following:

22 (1) Make a notation on the invoice of the same facts set forth in the
23 notation on the work order.

24 (2) Upon completion of the repairs, obtain the customer's signature or
25 initials to an acknowledgment of notice and consent, if there is an oral consent of the
customer to additional repairs, in the following language:

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1 "I acknowledge notice and oral approval of an increase in the original
2 estimated price.

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4 (signature or initials)"

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

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

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

16 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 23. Respondent Gallardo has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (a), in that on or about June 14, 2010, regarding the
5 1995 Chevrolet Impala, he violated sections of that Code, as follows:

6 a. **Section 44012, subdivision (a):** Respondent Gallardo failed to determine that all
7 emission control devices and systems required by law were installed and functioning correctly in
8 accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent Gallardo failed to perform emission
10 control tests on that vehicle in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent Gallardo failed to perform tests of the emission control
12 devices and systems on that vehicle in accordance with section 44012 of that Code.

13 **NINTH CAUSE FOR DISCIPLINE**

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

15 24. Respondent Gallardo has subjected his technician license to discipline under Health
16 and Safety Code section 44072.2, subdivision (c), in that on or about June 14, 2010, regarding the
17 1995 Chevrolet Impala, he violated sections of the California Code of Regulations, title 16, as
18 follows:

19 a. **Section 3340.30, subdivision (a):** Respondent Gallardo failed to inspect and test that
20 vehicle in accordance with Health and Safety Code section 44012.

21 b. **Section 3340.41, subdivision (c):** Respondent Gallardo entered false information
22 into the Emission Inspection System for electronic Certificate of Compliance No. NU437907 by
23 entering "Pass" for the visual inspection for the PCV system when, in fact, the vehicle could not
24 pass the visual inspection because the vehicle's PCV system had been modified.

25 c. **Section 3340.42:** Respondent Gallardo failed to conduct the required smog tests and
26 inspections on that vehicle in accordance with the Bureau's specifications.

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1 **TENTH CAUSE FOR DISCIPLINE**

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

3 25. Respondent Gallardo has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (d), in that on or about June 14, 2010, regarding the
5 1995 Chevrolet Impala, he committed acts involving dishonesty, fraud or deceit whereby another
6 was injured by issuing electronic Certificate of Compliance No. NU437907 without performing a
7 bona fide inspection of the emission control devices and systems on that vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **RECORDS INSPECTION - 1999 Porsche Boxter**

11 26. On or about November 13, 2010, Morris Hood (“consumer”) purchased a 1999
12 Porsche Boxter from Super Amigos Auto Plaza. Immediately, the consumer noted a coolant leak
13 and the vehicle’s malfunction indicator light (“MIL”) was illuminated. He took the vehicle back
14 to the facility; however, the problems were never resolved. On December 2, 2010, the Bureau
15 received a complaint from the consumer regarding the problems with the vehicle.

16 27. A check of the vehicle test information revealed that on December 1, 2010,
17 Respondent Gallardo issued Certificate of Compliance No. NY684324C for this vehicle;
18 however, on that date, the vehicle was in the possession of the consumer and not at Respondent
19 Accurate’s facility. In fact, Respondent Gallardo used the clean piping method¹ by using the tail
20 pipe emissions of a vehicle other than the vehicle certified in order to issue the certificate of
21 compliance to the 1999 Porsche Boxter.

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26 ¹ “Clean piping” is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 28. Respondent Accurate has subjected his registration to discipline under Code section
4 9884.7, subdivision (a)(1), in that on or about December 1, 2010, he made statements which he
5 knew or which by exercise of reasonable care he should have known were untrue or misleading
6 when he issued electronic Certificate of Compliance No. NY684324C for the 1999 Porsche
7 Boxter, certifying that the vehicle was in compliance with applicable laws and regulations when,
8 in fact, the vehicle had been clean piped.

9 **TWELFTH CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 29. Respondent Accurate has subjected his registration to discipline under Code section
12 9884.7, subdivision (a)(4), in that on or about December 1, 2010, he committed acts which
13 constitute fraud by issuing electronic Certificate of Compliance No. NY684324C for the 1999
14 Porsche Boxter, without performing a bona fide inspection of the emission control devices and
15 systems on that vehicle, thereby depriving the People of the State of California of the protection
16 afforded by the Motor Vehicle Inspection Program.

17 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

19 30. Respondent Accurate has subjected his station license to discipline under Health and
20 Safety Code section 44072.2, subdivision (a), in that on or about December 1, 2010, regarding the
21 1999 Porsche Boxter, he violated sections of that Code, as follows:

22 a. **Section 44012, subdivision (a):** Respondent Accurate failed to determine that all
23 emission control devices and systems required by law were installed and functioning correctly in
24 accordance with test procedures.

25 b. **Section 44012, subdivision (f):** Respondent Accurate failed to perform emission
26 control tests on that vehicle in accordance with procedures prescribed by the department.

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1 c. **Section 44015, subdivision (b):** Respondent Accurate issued electronic Certificate
2 of Compliance No. NY684324C without properly testing and inspecting the vehicle to determine
3 if it was in compliance with section 44012 of that Code.

4 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

6 31. Respondent Accurate has subjected his station license to discipline under Health and
7 Safety Code section 44072.2, subdivision (c), in that on or about December 1, 2010, regarding the
8 1999 Porsche Boxter, he violated sections of the California Code of Regulations, title 16, as
9 follows:

10 a. **Section 3340.35, subdivision (c):** Respondent Accurate issued electronic Certificate
11 of Compliance No. NY684324C even though that vehicle had not been inspected in accordance
12 with section 3340.42 of that Code.

13 b. **Section 3340.42:** Respondent Accurate failed to conduct the required smog tests and
14 inspections on that vehicle in accordance with the Bureau's specifications.

15 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

17 32. Respondent Accurate has subjected his station license to discipline under Health and
18 Safety Code section 44072.2, subdivision (d), in that on or about December 1, 2010, regarding the
19 1999 Porsche Boxter, he committed acts involving dishonesty, fraud or deceit whereby another
20 was injured by issuing electronic Certificate of Compliance No. NY684324C for that vehicle
21 without performing a bona fide inspection of the emission control devices and system on the
22 vehicle, thereby depriving the People of the State of California of the protection afforded by the
23 Motor Vehicle Inspection Program.

24 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

26 33. Respondent Gallardo has subjected his technician license to discipline under Health
27 and Safety Code section 44072.2, subdivision (a), in that on or about December 1, 2010,
28 regarding the 1999 Porsche Boxter, he violated sections of that Code, as follows:

1 a. **Section 44012, subdivision (a):** Respondent Gallardo failed to determine that all
2 emission control devices and systems required by law were installed and functioning correctly in
3 accordance with test procedures.

4 b. **Section 44012, subdivision (f):** Respondent Gallardo failed to perform emission
5 control tests on that vehicle in accordance with procedures prescribed by the department.

6 c. **Section 44032:** Respondent Gallardo failed to perform tests of the emission control
7 devices and systems on that vehicle in accordance with section 44012 of that Code.

8 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

10 34. Respondent Gallardo has subjected his technician license to discipline under Health
11 and Safety Code section 44072.2, subdivision (c), in that on or about December 1, 2010,
12 regarding the 1999 Porsche Boxter, he violated sections of the California Code of Regulations,
13 title 16, as follows:

14 a. **Section 3340.30, subdivision (a):** Respondent Gallardo failed to inspect and test that
15 vehicle in accordance with Health and Safety Code section 44012.

16 b. **Section 3340.41, subdivision (c):** Respondent Gallardo entered false information
17 into the EIS for electronic Certificate of Compliance No. NY684324C by entering vehicle
18 identification information or emission control information for a vehicle other than the vehicle
19 being certified.

20 c. **Section 3340.42:** Respondent Gallardo failed to conduct the required smog tests and
21 inspections on that vehicle in accordance with the Bureau's specifications.

22 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

24 35. Respondent Gallardo has subjected his technician license to discipline under Health
25 and Safety Code section 44072.2, subdivision (d), in that on or about December 1, 2010,
26 regarding the 1999 Porsche Boxter, he committed acts involving dishonesty, fraud or deceit
27 whereby another was injured by issuing electronic Certificate of Compliance No. NY684324C
28 without performing a bona fide inspection of the emission control devices and systems on that

1 vehicle, thereby depriving the People of the State of California of the protection afforded by the
2 Motor Vehicle Inspection Program.

3 **RECORDS INSPECTION – 2005 Nissan Quest**

4 36. On or about January 16, 2010, Omar and Norma Garcia (“consumers”) purchased a
5 2005 Nissan Quest from Super Amigos Auto Plaza. Immediately, the consumers noted that the
6 vehicle’s malfunction indicator light (“MIL”) was illuminated. They took the vehicle back to the
7 facility; however, the problems were never resolved.

8 37. A check of the vehicle test information revealed that on January 26, 2010,
9 Respondent Gallardo issued Certificate of Compliance No. NQ299000C for this vehicle;
10 however, on that date, the vehicle was in the possession of the consumer and not at Respondent
11 Accurate’s facility. Respondent Gallardo used the clean piping method by using the tail pipe
12 emissions of a vehicle other than the vehicle being certified in to issue the certificate of
13 compliance to the 2005 Nissan Quest.

14 **NINETEENTH CAUSE FOR DISCIPLINE**

15 **(Misleading Statements)**

16 38. Respondent Accurate has subjected his registration to discipline under Code section
17 9884.7, subdivision (a)(1), in that on or about January 26, 2010, he made statements which he
18 knew or which by exercise of reasonable care he should have known were untrue or misleading
19 when he issued electronic Certificate of Compliance No. NQ299000C for the 2005 Nissan Quest,
20 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
21 the vehicle had been clean piped.

22 **TWENTIETH CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 39. Respondent Accurate has subjected his registration to discipline under Code section
25 9884.7, subdivision (a)(4), in that on or about January 26, 2010, he committed acts which
26 constitute fraud by issuing electronic Certificate of Compliance No. NQ299000C for the 2005
27 Nissan Quest, without performing a bona fide inspection of the emission control devices and

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1 systems on that vehicle, thereby depriving the People of the State of California of the protection
2 afforded by the Motor Vehicle Inspection Program.

3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

5 40. Respondent Accurate has subjected his station license to discipline under Health and
6 Safety Code section 44072.2, subdivision (a), in that on or about January 26, 2010, regarding the
7 2005 Nissan Quest, he violated sections of that Code, as follows:

8 a. **Section 44012, subdivision (a):** Respondent Accurate failed to determine that all
9 emission control devices and systems required by law were installed and functioning correctly in
10 accordance with test procedures.

11 b. **Section 44012, subdivision (f):** Respondent Accurate failed to perform emission
12 control tests on that vehicle in accordance with procedures prescribed by the department.

13 c. **Section 44015, subdivision (b):** Respondent Accurate issued electronic Certificate
14 of Compliance No. NQ299000C without properly testing and inspecting the vehicle to determine
15 if it was in compliance with section 44012 of that Code.

16 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

18 41. Respondent Accurate has subjected his station license to discipline under Health and
19 Safety Code section 44072.2, subdivision (c), in that on or about January 26, 2010, regarding the
20 2005 Nissan Quest, he violated sections of the California Code of Regulations, title 16, as
21 follows:

22 a. **Section 3340.35, subdivision (c):** Respondent Accurate issued electronic Certificate
23 of Compliance No. NQ299000C even though that vehicle had not been inspected in accordance
24 with section 3340.42 of that Code.

25 b. **Section 3340.42:** Respondent Accurate failed to conduct the required smog tests and
26 inspections on that vehicle in accordance with the Bureau's specifications.

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1 a. **Section 3340.30, subdivision (a):** Respondent Gallardo failed to inspect and test that
2 vehicle in accordance with Health and Safety Code section 44012.

3 b. **Section 3340.41, subdivision (c):** Respondent Gallardo entered false information
4 into the EIS for electronic Certificate of Compliance No. NQ299000C by entering vehicle
5 identification information or emission control information for a vehicle other than the vehicle
6 being certified.

7 c. **Section 3340.42:** Respondent Gallardo failed to conduct the required smog tests and
8 inspections on that vehicle in accordance with the Bureau's specifications.

9 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

11 45. Respondent Gallardo has subjected his technician license to discipline under Health
12 and Safety Code section 44072.2, subdivision (d), in that on or about January 26, 2010, regarding
13 the 2005 Nissan Quest, he committed acts involving dishonesty, fraud or deceit whereby another
14 was injured by issuing electronic Certificate of Compliance No. NQ299000C without performing
15 a bona fide inspection of the emission control devices and systems on that vehicle, thereby
16 depriving the People of the State of California of the protection afforded by the Motor Vehicle
17 Inspection Program.

18 **RECORDS INSPECTION – 1997 BMW 528I**

19 46. On or about July 27, 2010, Manual Garcia ("consumer") purchased a 1997 BMW
20 528I from Super Amigos Auto Plaza. Immediately, the consumer noted a door handle that
21 needed to be repaired and vehicle's MIL was illuminated. He took the vehicle back to the facility
22 and the door handle was repaired; however, the MIL light was still illuminated.

23 47. A check of the vehicle test information revealed that on July 29, 2010, Respondent
24 Gallardo issued Certificate of Compliance No. WL928463C for this vehicle; however, on that
25 date, the vehicle was in the possession of the consumer and not at Respondent Accurate's facility.
26 Respondent Gallardo used the clean piping method by using the tail pipe emissions of a vehicle
27 other than the vehicle being certified in order to issue the certificate of compliance to the 1997
28 BMW 528I.

1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 48. Respondent Accurate has subjected his registration to discipline under Code section
4 9884.7, subdivision (a)(1), in that on or about July 29, 2010, he made statements which he knew
5 or which by exercise of reasonable care he should have known were untrue or misleading when
6 he issued electronic Certificate of Compliance No. WL928463C for the 1997 BMW 528I,
7 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
8 the vehicle had been clean piped.

9 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 49. Respondent Accurate has subjected his registration to discipline under Code section
12 9884.7, subdivision (a)(4), in that on or about July 29, 2010, he committed acts which constitute
13 fraud by issuing electronic Certificate of Compliance No. WL928463C for the 1997 BMW 528I,
14 without performing a bona fide inspection of the emission control devices and systems on that
15 vehicle, thereby depriving the People of the State of California of the protection afforded by the
16 Motor Vehicle Inspection Program.

17 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

19 50. Respondent Accurate has subjected his station license to discipline under Health and
20 Safety Code section 44072.2, subdivision (a), in that on or about July 29, 2010, regarding the
21 1997 BMW 528I, he violated sections of that Code, as follows:

22 a. **Section 44012, subdivision (a):** Respondent Accurate failed to determine that all
23 emission control devices and systems required by law were installed and functioning correctly in
24 accordance with test procedures.

25 b. **Section 44012, subdivision (f):** Respondent Accurate failed to perform emission
26 control tests on that vehicle in accordance with procedures prescribed by the department.

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1 c. **Section 44015, subdivision (b):** Respondent Accurate issued electronic Certificate
2 of Compliance No. WL928463C without properly testing and inspecting the vehicle to determine
3 if it was in compliance with section 44012 of that Code.

4 **THIRTIETH CAUSE FOR DISCIPLINE**

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

6 51. Respondent Accurate has subjected his station license to discipline under Health and
7 Safety Code section 44072.2, subdivision (c), in that on or about July 29, 2010, regarding the
8 1997 BMW 528I, he violated sections of the California Code of Regulations, title 16, as follows:

9 a. **Section 3340.35, subdivision (c):** Respondent Accurate issued electronic Certificate
10 of Compliance No. WL928463C even though that vehicle had not been inspected in accordance
11 with section 3340.42 of that Code.

12 b. **Section 3340.42:** Respondent Accurate failed to conduct the required smog tests and
13 inspections on that vehicle in accordance with the Bureau's specifications.

14 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

16 52. Respondent Accurate has subjected his station license to discipline under Health and
17 Safety Code section 44072.2, subdivision (d), in that on or about July 29, 2010, regarding the
18 1997 BMW 528I, he committed acts involving dishonesty, fraud or deceit whereby another was
19 injured by issuing electronic Certificate of Compliance No. WL928463C for that vehicle without
20 performing a bona fide inspection of the emission control devices and system on the vehicle,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

25 53. Respondent Gallardo has subjected his technician license to discipline under Health
26 and Safety Code section 44072.2, subdivision (a), in that on or about July 29, 2010, regarding the
27 1997 BMW 528I, he violated sections of that Code, as follows:

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1 a. **Section 44012, subdivision (a):** Respondent Gallardo failed to determine that all
2 emission control devices and systems required by law were installed and functioning correctly in
3 accordance with test procedures.

4 b. **Section 44012, subdivision (f):** Respondent Gallardo failed to perform emission
5 control tests on that vehicle in accordance with procedures prescribed by the department.

6 c. **Section 44032:** Respondent Gallardo failed to perform tests of the emission control
7 devices and systems on that vehicle in accordance with section 44012 of that Code.

8 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

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

10 54. Respondent Gallardo has subjected his technician license to discipline under Health
11 and Safety Code section 44072.2, subdivision (c), in that on or about July 29, 2010, regarding the
12 1997 BMW 528I, he violated sections of the California Code of Regulations, title 16, as follows:

13 a. **Section 3340.30, subdivision (a):** Respondent Gallardo failed to inspect and test that
14 vehicle in accordance with Health and Safety Code section 44012.

15 b. **Section 3340.41, subdivision (c):** Respondent Gallardo entered false information
16 into the EIS for electronic Certificate of Compliance No. WL928463C by entering vehicle
17 identification information or emission control information for a vehicle other than the vehicle
18 being certified.

19 c. **Section 3340.42:** Respondent Gallardo failed to conduct the required smog tests and
20 inspections on that vehicle in accordance with the Bureau's specifications.

21 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

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

23 55. Respondent Gallardo has subjected his technician license to discipline under Health
24 and Safety Code section 44072.2, subdivision (d), in that on or about July 29, 2010, regarding the
25 1997 BMW 528I, he committed acts involving dishonesty, fraud or deceit whereby another was
26 injured by issuing electronic Certificate of Compliance No. WL928463C without performing a
27 bona fide inspection of the emission control devices and systems on that vehicle, thereby

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1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 **PRIOR CITATIONS**

4 56. To determine the degree of penalty, if any, to be imposed upon Respondents Accurate
5 and Gallardo, Complainant alleges as follows:

6 a. On December 30, 2008, the Bureau issued Citation No. C09-0769 to Respondent
7 Accurate against his registration and station licenses for violations of Health and Safety Code
8 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
9 devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35,
10 subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent
11 Accurate issued a certificate of compliance to a Bureau vehicle with a missing pulse air injection
12 reactor system. The Bureau assessed a civil penalty of \$500. Respondent Accurate complied
13 with this citation on February 19, 2009.

14 b. On June 19, 2009, the Bureau issued Citation No. C09-1402 to Respondent Accurate
15 against his registration and station licenses for violations of Health and Safety Code section
16 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
17 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
18 improperly tested). Respondent Accurate issued a certificate of compliance to a Bureau vehicle
19 with a missing EGR valve. The Bureau assessed a civil penalty of \$1,000. Respondent Accurate
20 complied with this citation on October 23, 2009.

21 c. On January 25, 2010, the Bureau issued Citation No. C2010-0723 to Respondent
22 Accurate against his registration and station licenses for violations of Health and Safety Code
23 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
24 devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a
25 vehicle improperly tested). Respondent Accurate issued a certificate of compliance to a Bureau
26 vehicle with a missing PCV system. The Bureau assessed a civil penalty of \$2,000. Respondent
27 Accurate complied with this citation on March 25, 2010.

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1 d. On December 30, 2009, the Bureau issued Citation No. M09-0770 to Respondent
2 Gallardo against his technician license for violations of Health and Safety Code section 44032,
3 (qualified technicians shall perform tests of emission control systems and devices in accordance
4 with section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”)
5 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
6 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
7 3340.42). Respondent Gallardo issued a certificate of compliance to a Bureau vehicle with a
8 missing pulse air injection reactor system. Respondent Gallardo was required to attend an 8-hour
9 training course. Respondent Gallardo complied with this citation on February 24, 2009.

10 e. On June 19, 2009, the Bureau issued Citation No. M09-1403 to Respondent Gallardo
11 against his technician license for violations of Health and Safety Code section 44032, (qualified
12 technicians shall perform tests of emission control systems and devices in accordance with
13 section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”) section
14 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
15 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
16 3340.42). Respondent Gallardo issued a certificate of compliance to a Bureau vehicle with a
17 missing EGR valve. Respondent Gallardo was required to attend a 16-hour training course.
18 Respondent Gallardo complied with this citation on October 23, 2009.

19 f. On January 25, 2010, the Bureau issued Citation No. M2010-0724 to Respondent
20 Gallardo against his technician license for violations of Health and Safety Code section 44032,
21 (qualified technicians shall perform tests of emission control systems and devices in accordance
22 with section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”)
23 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
24 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
25 3340.42). Respondent Gallardo issued a certificate of compliance to a Bureau vehicle with a
26 missing PCV system. Respondent Gallardo was required to attend a 68-hour training course.
27 Respondent Gallardo complied with this citation on April 8, 2010.

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1 **OTHER MATTERS**

2 57. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
3 or permanently or refuse to validate, the registrations for all places of business operated in this
4 state by to Luis C. Navarro doing business as Accurate Diagnostics and Smogs, upon a finding
5 that he has, or is, engaged in a course of repeated and willful violations of the laws and
6 regulations pertaining to an automotive repair dealer.

7 58. Under Health and Safety Code section 44072.8, if Smog Check Station License
8 Number RC 248267, issued to Luis C. Navarro doing business as Accurate Diagnostics and
9 Smogs, is revoked or suspended, any additional license issued under this chapter in the name of
10 said licensee may be likewise revoked or suspended by the director.

11 59. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
12 Technician License Number EA 146134, issued to Ricardo Gallardo, is revoked or suspended,
13 any additional license issued under this chapter in the name of said licensee may be likewise
14 revoked or suspended by the director.

15 **PRAYER**

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

18 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
19 Registration Number ARD 248267, issued to Luis C. Navarro doing business as Accurate
20 Diagnostics and Smogs;

21 2. Revoking, suspending, or placing on probation any other automotive repair dealer
22 registration issued in the name of Luis C. Navarro;

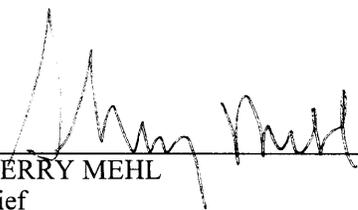
23 3. Revoking or suspending Smog Check Station License Number RC 248267, issued to
24 Luis C. Navarro doing business as Accurate Diagnostics and Smogs;

25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
26 and Safety Code in the name of Luis C. Navarro;

27 5. Revoking or suspending Advanced Emission Specialist Technician License Number
28 EA 146134, issued to Ricardo Gallardo;

- 1 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 2 and Safety Code in the name of Ricardo Gallardo;
- 3 7. Ordering Luis C. Navarro and Ricardo Gallardo to pay the Bureau of Automotive
- 4 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to
- 5 Business and Professions Code section 125.3; and,
- 6 8. Taking such other and further action as deemed necessary and proper.

8 DATED: 11/28/11

7 
9 _____
10 SHERRY MEHL
11 Chief
12 Bureau of Automotive Repair
13 Department of Consumer Affairs
14 State of California
15 *Complainant*