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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 **AUTO SMOG EXPRESS #2; MICHAEL C.**
14 **MENSAH**
2601 East Alondra Blvd
15 Compton, CA 90221
Automotive Repair Dealer Registration No.
16 **ARD 260305**
Smog Check, Test Only, Station License No.
TC 260305,
17 **AUTO SMOG EXPRESS; MICHAEL C.**
18 **MENSAH**
4201 E. Rosencrans Ave.
19 Compton, CA 90221
Automotive Repair Dealer Registration No.
20 **ARD 254379**
Smog Check, Test Only, Station License No.
21 **TC 254379,**
22 **AUTO SMOG EXPRESS #3; MICHAEL C.**
23 **MENSAH**
2215 E-Alondra Blvd.
24 Compton, CA 90220
Automotive Repair Dealer Registration No.
25 **ARD 267711**
Smog Check, Test Only, Station License No.
26 **TC 267711,**
27 **MICHAEL C. MENSAH**
8674 Harrison Way
28 Buena Park, CA 90620
Advanced Emission Specialist Technician
License No. EA 155148,

Case No. 79/12-118

OAH No.

A C C U S A T I O N

SMOG CHECK

1 **RUBEN PALOMARES**
2 **6812 Motz Street**
3 **Paramount, CA 90723**
4 **Advanced Emission Specialist Technician**
5 **License No. EA 155105,**

6 **EVERARDO RODRIGUEZ, JR.**
7 **1313 W. Park Western Drive, #22**
8 **San Pedro, CA 90732**
9 **Advanced Emission Specialist Technician**
10 **License No. EA 632939,**

11 **and**

12 **JOSEPH O. OKAI**
13 **10070 Gilbert Street, Apt. #10**
14 **Anaheim, CA 92804**
15 **Advanced Emission Specialist Technician**
16 **License No. EA 630113**

17 Respondents.

18 Complainant alleges:

19 **PARTIES**

20 1. John Wallauch (Complainant) brings this Accusation solely in his official capacity as
21 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

22 **Automotive Repair Dealer Registrations**

23 2. On or about December 22, 2009, the Bureau of Automotive Repair issued
24 Automotive Repair Dealer Registration Number ARD 260305 to Auto Smog Express #2; Michael
25 C. Mensah. The Automotive Repair Dealer Registration was in full force and effect at all times
26 relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

27 3. On or about April 8, 2008, the Bureau of Automotive Repair issued Automotive
28 Repair Dealer Registration Number ARD 254379 to Auto Smog Express; Michael C. Mensah.
The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
charges brought herein and will expire on April 30, 2013, unless renewed.

4. On or about January 13, 2012, the Bureau of Automotive Repair issued Automotive
Repair Dealer Registration Number ARD 267711 to Auto Smog Express #3; Michael C. Mensah.

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1 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
2 charges brought herein and will expire on January 31, 2013, unless renewed.

3 **Smog Check Test Only Station Licenses**

4 5. On or about December 23, 2009, the Bureau of Automotive Repair issued Smog
5 Check, Test Only, Station License Number TC 260305 to Auto Smog Express #2; Michael C.
6 Mensah. The Smog Check, Test Only, Station License was in full force and effect at all times
7 relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

8 6. On or about April 21, 2008, the Bureau of Automotive Repair issued Smog Check,
9 Test Only, Station License Number TC 254379 to Auto Smog Express; Michael C. Mensah. The
10 Smog Check, Test Only, Station License was in full force and effect at all times relevant to the
11 charges brought herein and will expire on April 30, 2013, unless renewed.

12 7. On or about February 2, 2012, the Bureau of Automotive Repair issued Smog Check,
13 Test Only, Station License Number TC 267711 to Auto Smog Express #3; Michael C. Mensah.
14 The Smog Check, Test Only, Station License was in full force and effect at all times relevant to
15 the charges brought herein and will expire on January 31, 2013, unless renewed.

16 **Advanced Emission Specialist Technician Licenses**

17 8. On a date uncertain in 2008, the Bureau of Automotive Repair issued Advanced
18 Emission Specialist Technician License Number EA 155148 to Michael C. Mensah. The
19 Advanced Emission Specialist Technician License was in full force and effect at all times
20 relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

21 9. On a date uncertain in 2008, the Bureau of Automotive Repair issued Advanced
22 Emission Specialist Technician License Number EA 155105 to Ruben Palomares. The Advanced
23 Emission Specialist Technician License expired on April 30, 2012.

24 10. On or about March 21, 2011, the Bureau of Automotive Repair issued Advanced
25 Emission Specialist Technician License Number EA 632939 to Everardo Rodriguez, Jr. The
26 Advanced Emission Specialist Technician License was in full force and effect at all times
27 relevant to the charges brought herein and will expire on July 31, 2013, unless renewed.

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1 Ramos and Galvan observed respondents Rodriguez and Palomares at the Auto Smog Express #2
2 smog check station during the surveillance period. The surveillance operation and information
3 obtained from the Bureau's VID revealed that between approximately 1604 hours and 1908
4 hours, respondents Palomares and Rodriguez, with the assistance of an unlicensed individual
5 identified as Raul Padilla, combined to perform a total of ten (10) illegal smog inspections,
6 resulting in the issuance by respondent Auto Smog Express #2; Michael C. Mensah of nine (9)
7 fraudulent certificates of compliance and one (1) fraudulent test failure. The details of
8 Respondents' fraudulent activities on October 6, 2011, are as follows:

9 a. The Bureau's surveillance operation and information obtained from the Bureau's
10 VID revealed that between approximately 1604 and 1628 hours, respondent Rodriguez's smog
11 technician license (EA 632939) and access code were used to perform a smog inspection that
12 resulted in the issuance of electronic Certificate of Compliance No. WZ670711C for a 1987
13 Dodge B250 Van, certifying that he had tested and inspected that vehicle and that the vehicle was
14 in compliance with applicable laws and regulations. At no time during the test period was the
15 Dodge B250 Van seen in or around the station's test bay. Instead, the tail pipe emissions of a
16 green 1997 Nissan Pathfinder, license plate 3WUM668, registered to the aforementioned Raul
17 Padilla, were used in a method known as "clean piping"¹ to issue a fraudulent electronic
18 certificate of compliance.

19 b. The Bureau's surveillance operation and information obtained from the Bureau's
20 VID revealed that between approximately 1722 and 1727 hours, respondent Palomares' smog
21 technician license (EA 155105) and access code were used to perform a smog inspection that
22 resulted in the issuance of electronic Certificate of Compliance No. WZ670712C for a 1978
23 Toyota pickup truck, certifying that he had tested and inspected that vehicle and that the vehicle
24 was in compliance with applicable laws and regulations. At no time during the test period was the
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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 Toyota pickup truck seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan
2 Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of
3 compliance through the clean piping method as previously described.

4 c. The Bureau's surveillance operation and information obtained from the Bureau's
5 VID revealed that between approximately 1733 and 1737 hours, respondent Palomares' smog
6 technician license (EA 155105) and access code were used to perform a smog inspection that
7 resulted in a failed test for a 1987 Mercedes 300E. This vehicle was fraudulently tested. At no
8 time during the test period was the 1987 Mercedes 300E seen in or around the station's test bay.
9 Instead, Padilla's green 1997 Nissan Pathfinder, license plate 3WUM668, remained in the test
10 bay during the test period.

11 d. The Bureau's surveillance operation and information obtained from the Bureau's
12 VID revealed that between approximately 1740 and 1746 hours, respondent Palomares' smog
13 technician license (EA 155105) and access code were used to perform a smog inspection that
14 resulted in the issuance of electronic Certificate of Compliance No. WZ670713C for a 2001
15 Dodge Neon, certifying that he had tested and inspected that vehicle and that the vehicle was in
16 compliance with applicable laws and regulations. At no time during the test period was the Dodge
17 Neon seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan Pathfinder,
18 license plate 3WUM668, was used to issue a fraudulent electronic certificate of compliance
19 through the clean piping method as previously described.

20 e. The Bureau's surveillance operation and information obtained from the Bureau's
21 VID revealed that between approximately 1753 and 1758 hours, respondent Palomares' smog
22 technician license (EA 155105) and access code were used to perform a smog inspection that
23 resulted in the issuance of electronic Certificate of Compliance No. WZ670714C for a 1994
24 Honda Civic, certifying that he had tested and inspected that vehicle and that the vehicle was in
25 compliance with applicable laws and regulations. At no time during the test period was the Honda
26 Civic seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan Pathfinder,
27 license plate 3WUM668, was used to issue a fraudulent electronic certificate of compliance
28 through the clean piping method as previously described.

1 f. The Bureau's surveillance operation and information obtained from the Bureau's
2 VID revealed that between approximately 1803 and 1810 hours, respondent Palomares' smog
3 technician license (EA 155105) and access code were used to perform a smog inspection that
4 resulted in the issuance of electronic Certificate of Compliance No. WZ670715C for a 1988
5 Honda Civic, certifying that he had tested and inspected that vehicle and that the vehicle was in
6 compliance with applicable laws and regulations. At no time during the test period was the Honda
7 Civic seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan
8 Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of
9 compliance through the clean piping method as previously described.

10 g. The Bureau's surveillance operation and information obtained from the Bureau's
11 VID revealed that between approximately 1823 and 1827 hours, respondent Palomares' smog
12 technician license (EA 155105) and access code were used to perform a smog inspection that
13 resulted in the issuance of electronic Certificate of Compliance No. WZ670716C for a 1999
14 Honda Civic, certifying that he had tested and inspected that vehicle and that the vehicle was in
15 compliance with applicable laws and regulations. At no time during the test period was the Honda
16 Civic seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan Pathfinder,
17 license plate 3WUM668, was used to issue a fraudulent electronic certificate of compliance
18 through the clean piping method as previously described.

19 h. The Bureau's surveillance operation and information obtained from the Bureau's
20 VID revealed that between approximately 1832 and 1836 hours, respondent Palomares' smog
21 technician license (EA 155105) and access code were used to perform a smog inspection that
22 resulted in the issuance of electronic Certificate of Compliance No. WZ670717C for a 2001
23 Chevrolet Monte Carlo, certifying that he had tested and inspected that vehicle and that the
24 vehicle was in compliance with applicable laws and regulations. At no time during the test period
25 was the Chevrolet Monte Carlo seen in or around the station's test bay. Instead, Padilla's green
26 1997 Nissan Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic
27 certificate of compliance through the clean piping method as previously described.

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i. The Bureau's surveillance operation and information obtained from the Bureau's VID revealed that between approximately 1841 and 1845 hours, respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670718C for a 1990 Ford Mustang, certifying that he had tested and inspected that vehicle and that the vehicle was in compliance with applicable laws and regulations. At no time during the test period was the Ford Mustang seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of compliance through the clean piping method as previously described.

j. The Bureau's surveillance operation and information obtained from the Bureau's VID revealed that between approximately 1852 and 1908 hours, respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670719C for a 1997 Ford Explorer, certifying that he had tested and inspected that vehicle and that the vehicle was in compliance with applicable laws and regulations. At no time during the test period was the Ford Explorer seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of compliance through the clean piping method as previously described.

The following chart ("Table 1") illustrates the illegal smog tests performed at Auto Smog Express #2 on October 6, 2011:

Table 1				
Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
10/6/2011 1604-1628 hours	1987 Dodge B250 Van 7F32378	1997 Nissan Pathfinder 3WUM668	WZ670711C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Rodriguez.

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10/6/2011 1722-1727 hours	1978 Toyota Pickup 6G00334	1997 Nissan Pathfinder 3WUM668	WZ670712C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10/6/2011 1733-1737 hours	1987 Mercedes 300E 4MST075	1997 Nissan Pathfinder 3WUM668	None	Vehicle not seen at shop during time that test was performed. Vehicle falsely failed by respondent Palomares.
10/6/2011 1740-1746 hours	2001 Dodge Neon 4ZZK669	1997 Nissan Pathfinder 3WUM668	WZ670713C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10/6/2011 1753-1758 hours	1994 Honda Civic 4LJP450	1997 Nissan Pathfinder 3WUM668	WZ670714C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10/6/2011 1803-1810 hours	1988 Honda Civic 6APK928	1997 Nissan Pathfinder 3WUM668	WZ670715C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10/6/2011 1823-1827 hours	1999 Honda Civic 4HKU256	1997 Nissan Pathfinder 3WUM668	WZ670716C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.

1	10/6/2011	2001 Chevrolet Monte Carlo 5GBJ009	1997 Nissan Pathfinder 3WUM668	WZ670717C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
2	1832-1836 hours				
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5	10/6/2011	1990 Ford Mustang 5PNG142	1997 Nissan Pathfinder 3WUM668	WZ670718C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
6	1841-1845 hours				
7					
8					
9	10/6/2011	1997 Ford Explorer 6HNE979	1997 Nissan Pathfinder 3WUM668	WZ670719C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10	1852-1908 hours				
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13 29. On or about October 27, 2011, Bureau program representatives Albert Ramos and
14 Raul Galvan performed a second video-taped surveillance of the Auto Smog Express #2 smog
15 check station, located at 2601 East Alondra Blvd., Compton, CA. Bureau program representatives
16 Ramos and Galvan observed respondent Palomares at the Auto Smog Express #2 smog check
17 station during the surveillance period. The surveillance operation and information obtained from
18 the Bureau's VID revealed that between approximately 1710 hours and 1834 hours, respondent
19 Palomares, with the assistance of an unlicensed individual identified as Raul Padilla, performed a
20 total of six (6) illegal smog inspections, resulting in the issuance by respondent Auto Smog
21 Express #2; Michael C. Mensah of six (6) fraudulent certificates of compliance. The details of
22 Respondents' fraudulent activities on October 27, 2011, are as follows:

23 a. The Bureau's surveillance operation and information obtained from the Bureau's
24 VID revealed that between approximately 1710 and 1716 hours, respondent Palomares' smog
25 technician license (EA 155105) and access code were used to perform a smog inspection that
26 resulted in the issuance of electronic Certificate of Compliance No. WZ926240C for a 1995
27 Nissan Altima, license plate number 3KMR077, certifying that he had tested and inspected that
28 vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1995

1 Nissan Altima was a Bureau undercover vehicle that had been equipped with several hidden
2 cameras to obtain surveillance video of the smog inspection. The surveillance video obtained
3 from the vehicle's onboard cameras demonstrates that respondent Palomares failed to perform a
4 visual inspection and a functional inspection of the vehicle, both of which are required under state
5 law.

6 b. The Bureau's surveillance operation and information obtained from the Bureau's
7 VID revealed that between approximately 1721 and 1727 hours, respondent Palomares' smog
8 technician license (EA 155105) and access code were used to perform a smog inspection that
9 resulted in the issuance of electronic Certificate of Compliance No. WZ926241C for a 2002
10 Toyota Camry, certifying that he had tested and inspected that vehicle and that the vehicle was in
11 compliance with applicable laws and regulations. At no time during the test period was the
12 Toyota Camry seen in or around the station's test bay. Instead, the Bureau's undercover Nissan
13 Altima, license plate number 3KMR077, was used to issue a fraudulent electronic certificate of
14 compliance through the clean piping method as previously described.

15 c. The Bureau's surveillance operation and information obtained from the Bureau's
16 VID revealed that between approximately 1733 and 1742 hours, respondent Palomares' smog
17 technician license (EA 155105) and access code were used to perform a smog inspection that
18 resulted in the issuance of electronic Certificate of Compliance No. WZ926242C for a 2001
19 Toyota Camry Solara, certifying that he had tested and inspected that vehicle and that the vehicle
20 was in compliance with applicable laws and regulations. At no time during the test period was the
21 Toyota Camry Solara seen in or around the station's test bay. Instead, the Bureau's undercover
22 Nissan Altima, license plate number 3KMR077, was used to issue a fraudulent electronic
23 certificate of compliance through the clean piping method as previously described.

24 d. The Bureau's surveillance operation and information obtained from the Bureau's
25 VID revealed that between approximately 1746 and 1801 hours, respondent Palomares' smog
26 technician license (EA 155105) and access code were used to perform a smog inspection that
27 resulted in the issuance of electronic Certificate of Compliance No. WZ926243C for a 1990
28 Cadillac Deville, certifying that he had tested and inspected that vehicle and that the vehicle was

1 in compliance with applicable laws and regulations. At no time during the test period was the
2 Cadillac Deville seen in or around the station's test bay. Instead, the green 1997 Nissan
3 Pathfinder, license plate 3WUM668, registered to the aforementioned Raul Padilla was used to
4 issue a fraudulent electronic certificate of compliance through the clean piping method as
5 previously described.

6 e. The Bureau's surveillance operation and information obtained from the Bureau's
7 VID revealed that between approximately 1812 and 1819 hours, respondent Palomares' smog
8 technician license (EA 155105) and access code were used to perform a smog inspection that
9 resulted in the issuance of electronic Certificate of Compliance No. WZ926244C for a 1996 GMC
10 S15 Sonoma, certifying that he had tested and inspected that vehicle and that the vehicle was in
11 compliance with applicable laws and regulations. At no time during the test period was the GMC
12 S15 Sonoma seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan
13 Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of
14 compliance through the clean piping method as previously described.

15 f. The Bureau's surveillance operation and information obtained from the Bureau's
16 VID revealed that between approximately 1825 and 1834 hours, respondent Palomares' smog
17 technician license (EA 155105) and access code were used to perform a smog inspection that
18 resulted in the issuance of electronic Certificate of Compliance No. WZ926245C for a 2000 Ford
19 Windstar, certifying that he had tested and inspected that vehicle and that the vehicle was in
20 compliance with applicable laws and regulations. At no time during the test period was the Ford
21 Windstar seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan Pathfinder,
22 license plate 3WUM668, was used to issue a fraudulent electronic certificate of compliance
23 through the clean piping method as previously described.

24 g. Bureau program representatives Ramos and Galvan observed Raul Padilla
25 performing tasks which should only be done by a licensed Qualified Smog Technician. Padilla
26 was allowed to position vehicles on the dynamometer, drive the trace, and type information into
27 the EIS analyzer.

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The following chart ("Table 2") illustrates the illegal smog tests performed at Auto Smog Express #2 on October 27, 2011:

Table 2

Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
10/27/2011 1710-1716 hours	1995 Nissan Altima 3KMR077 (BAR Undercover vehicle)	1995 Nissan Altima 3KMR077 (BAR Undercover vehicle)	WZ926240C	No visual inspection or functional inspection performed. Vehicle certified by respondent Palomares.
10/27/2011 1721-1727 hours	2002 Toyota Camry 4VGP895	1995 Nissan Altima 3KMR077 (BAR Undercover vehicle)	WZ926241C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10/27/2011 1733-1742 hours	2001 Toyota Camry Solara 4TSJ114	1995 Nissan Altima 3KMR077 (BAR Undercover vehicle)	WZ926242C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10/27/2011 1746-1801 hours	1990 Cadillac Deville 4WFS334	1997 Nissan Pathfinder 3WUM668	WZ926243C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10/27/2011 1812-1819 hours	1996 GMC S15 Sonoma 7P44690	1997 Nissan Pathfinder 3WUM668	WZ926244C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.

1 2 3 4	10/27/2011 1825-1834 hours	2000 Ford Windstar VIN# 2FNZA5147YBB92252	1997 Nissan Pathfinder 3WUM668	WZ926245C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
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6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Misleading Statements)**

8 30. Respondent Auto Smog Express #2; Michael C. Mensah, owner, has subjected his
9 registration to discipline under BPC section 9884.7, subdivision (a)(1), in that on or about
10 October 6, 2011, and October 27, 2011, he made statements which he knew or which by exercise
11 of reasonable care should have known were untrue or misleading when he issued electronic
12 certificates of compliance for the vehicles set forth in Tables 1 and 2 above, certifying that those
13 vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles
14 had not been inspected.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 31. Respondent Auto Smog Express #2; Michael C. Mensah, owner, has subjected his
18 registration to discipline under BPC section 9884.7, subdivision (a)(4), in that on or about
19 October 6, 2011 and October 27, 2011, he committed acts which constitute fraud by issuing
20 electronic certificates of compliance for the vehicles set forth in Tables 1 and 2 above, without
21 performing bona fide inspections of the emission control devices and systems on those vehicles,
22 thereby depriving the People of the State of California of the protection afforded by the Motor
23 Vehicle Inspection Program.

24 **THIRD CAUSE FOR DISCIPLINE**

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

26 32. Respondent Auto Smog Express #2; Michael C. Mensah, owner, has subjected his
27 registration to discipline under BPC section 9884.7, subdivision (a)(6), in that on or about
28 October 6, 2011 and October 27, 2011, he failed in a "material respect to comply with the

1 provisions of this chapter or regulations adopted pursuant to it” when he issued electronic
2 certificates of compliance for the vehicles set forth in Tables 1 and 2 above, without performing
3 bona fide inspections of the emission control devices and systems on those vehicles, thereby
4 depriving the People of the State of California of the protection afforded by the Motor Vehicle
5 Inspection Program.

6 **FOURTH CAUSE FOR DISCIPLINE**

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

8 33. Respondent Auto Smog Express #2; Michael C. Mensah, owner, has subjected his
9 station license to discipline under HSC section 44072.2, subdivision (a), in that, with respect to
10 the vehicles set forth in Tables 1 and 2, above, on or about October 6, 2011 and October 27, 2011,
11 Respondent violated the following sections of the HSC:

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

14 b. **Section 44014:** Respondent Mensah allowed an unlicensed person, Raul Padilla, to
15 perform emission control tests on those vehicles in violation of procedures prescribed by the
16 department.

17 c. **Section 44015, subdivision (b):** Respondent Mensah issued electronic certificates of
18 compliance without properly testing and inspecting the vehicles to determine if they were in
19 compliance with section 44012 of the HSC.

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

23 **FIFTH CAUSE FOR DISCIPLINE**

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

25 34. Respondent Auto Smog Express #2; Michael C. Mensah, owner, has subjected his
26 station license to discipline under HSC section 44072.2, subdivision (c), in that, with respect to
27 the vehicles set forth in Tables 1 and 2 above, on or about October 6, 2011 and October 27, 2011,
28 Respondent violated the following sections of title 16 of the CCR:

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

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

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

9 **SIXTH CAUSE FOR DISCIPLINE**

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

11 35. Respondent Auto Smog Express #2; Michael C. Mensah, owner, has subjected his
12 station license to discipline under HSC section 44072.2, subdivision (d), in that, with respect to
13 the vehicles set forth in Tables 1 and 2 above, on or about October 6, 2011 and October 27, 2011,
14 Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by
15 issuing electronic certificates of compliance for those vehicles without performing bona fide
16 inspections of the emission control devices and systems on those vehicles, thereby depriving the
17 People of the State of California of the protection afforded by the Motor Vehicle Inspection
18 Program.

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 36. Respondent Palomares has subjected his technician license to discipline under HSC
22 section 44072.2, subdivision (a), in that on or about October 6, 2011, and October 27, 2011,
23 regarding the vehicles set forth in Tables 1 and 2 above, he violated sections of the HSC, as
24 follows:

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

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1 performing bona fide inspections of the emission control devices and systems on those vehicles,
2 thereby depriving the People of the State of California of the protection afforded by the Motor
3 Vehicle Inspection Program.

4 **TENTH CAUSE FOR DISCIPLINE**

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

6 39. Respondent Rodriguez has subjected his technician license to discipline under HSC
7 section 44072.2, subdivision (a), in that on or about October 6, 2011, regarding the vehicles set
8 forth in Table 1 above, he violated sections of the HSC, as follows:

9 a. **Section 44012:** Respondent Rodriguez failed to ensure that the emission control tests
10 were performed in accordance with procedures prescribed by the department with respect to the
11 vehicle issued Certificate of Compliance No. WZ670711C.

12 b. **Section 44032:** Respondent Rodriguez failed to perform tests of the emission control
13 devices and systems in accordance with section 44012 of the HSC with respect to the vehicle
14 issued Certificate of Compliance No. WZ670711C, in that the vehicle had been clean piped.

15 c. **Section 44059:** With respect to the vehicle issued Certificate of Compliance No.
16 WZ670711C, Respondent Rodriguez willfully made false entries for the electronic certificate of
17 compliance by certifying that the vehicle had been inspected as required when, in fact, it had not.

18 **ELEVENTH CAUSE FOR DISCIPLINE**

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

20 40. Respondent Rodriguez has subjected his technician license to discipline under HSC
21 section 44072.2, subdivision (c), in that on or about October 6, 2011, regarding the vehicles set
22 forth in Table 1 above, he violated sections of the CCR, title 16, as follows:

23 a. **Section 3340.24, subdivision (c):** Respondent Rodriguez falsely or fraudulently
24 issued Certificate of Compliance No. WZ670711C without performing a bona fide inspection of
25 the emission control devices and systems on the vehicle as required by HSC section 44012.

26 b. **Section 3340.30, subdivision (a):** Respondent Rodriguez failed to inspect and test
27 the vehicle issued Certificate of Compliance No. WZ670711C in accordance with HSC section
28 44012.

1 c. **Section 3340.41, subdivision (c):** With respect to the vehicle issued Certificate of
2 Compliance No. WZ670711C, Respondent Rodriguez entered false information into the EIS for
3 the electronic certificate of compliance by entering vehicle emission control information for a
4 vehicle other than the vehicle being certified.

5 d. **Section 3340.42:** With respect to the vehicle issued Certificate of Compliance No.
6 WZ670711C, Respondent Rodriguez failed to conduct the required smog test and inspection in
7 accordance with the Bureau's specifications.

8 **TWELFTH CAUSE FOR DISCIPLINE**

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

10 41. Respondent Rodriguez has subjected his technician license to discipline under
11 HSC section 44072.2, subdivision (d), in that on or about October 6, 2011, he committed acts
12 involving dishonesty, fraud or deceit whereby another was injured by issuing Certificate of
13 Compliance No. WZ670711C without performing a bona fide inspection of the emission control
14 devices and systems on the vehicle being certified, thereby depriving the People of the State of
15 California of the protection afforded by the Motor Vehicle Inspection Program.

16 **AUTO SMOG EXPRESS: CLEAN PLUGGING**

17 42. Between April 16, 2012 and May 2, 2012, Bureau representative Albert Ramos
18 downloaded and analyzed test data information from the vehicle information database (VID) for
19 smog tests conducted by respondent Auto Smog Express for the period of January 2010 through
20 April 15, 2012. Among other things, Bureau representative Ramos analyzed the diagnostic
21 trouble codes stored in the memories of the power train control modules ("PCM") on fourteen
22 (14) vehicles that were certified by respondent Auto Smog Express during that time period. After
23 researching the original equipment manufacturer ("OEM") service information for these vehicles,
24 and after consulting Mitchell On-Demand and Alldata Information Systems, Bureau
25 representative Ramos determined that certain trouble codes not applicable to these fourteen (14)
26 vehicles had been detected during their inspections, meaning that other vehicles were used in

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1 place of these fourteen (14) vehicles during their respective OBD II functional tests. This
 2 fraudulent conduct constitutes clean plugging.²

3 The following chart ("Table 3") illustrates the clean plugging activities discovered by
 4 Bureau Representative Ramos in analyzing the test data for smog tests conducted by respondent
 5 Auto Smog Express:

6 **Table 3**

7 Test Date and Time	Vehicle Certified & License No.	Certificate No.	Details
8 03/04/2010 9 1152-1204 hours	1999 Chevrolet Tahoe VIN# 3GNEK18R9XG151618	WH576729C	Inapplicable trouble code P1794 detected; vehicle certified by respondent Mensah.
11 03/04/2010 12 1237-1255 hours	1996 Land Rover Range Rover 6CXA108	WH576731C	Inapplicable trouble code P1794 detected; vehicle certified by respondent Okai.
13 03/04/2010 14 1451-1457 hours	2002 Hyundai Santa Fe 5YJD814	WH576734C	Inapplicable trouble code P1794 detected; vehicle certified by respondent Okai.
15 04/03/2010 16 1233-1244 hours	1997 Mitsubishi Eclipse 3UFF497	WH930792C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Mensah.
17 04/10/2010 18 1251-1258 hours	1996 GMC Safari 4DKJ865	WJ177865C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Mensah.
19 04/17/2010 20 1048-1101 hours	1997 Infinity I30 3UTB388	WJ177886C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Mensah.

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26 ² Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.
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1	04/22/2010	1996 Mitsubishi Galant 5UXU526	WJ386459C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Okai.
2	1709-1720 hours			
3	04/28/2010	2001 Ford 150 Super Crew Cab 7Z44411	WJ386485C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Okai.
4	1411-1424 hours			
5	04/28/2010	1997 Nissan Altima 6BWA161	WJ386486C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Okai.
6	1449-1506 hours			
7	07/21/2010	1996 Ford Thunderbird 4WLH987	WL567696C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Okai.
8	1528-1535 hours			
9	08/29/2011	1999 Volkswagen New Beetle 6JOS026	WX909127C	Inapplicable trouble code P1320 detected; vehicle certified by respondent Okai.
10	1342-1350 hours			
11	03/05/2012	2000 Ford Windstar 4JLW495	XD906128C	Inapplicable trouble code P1776 detected; vehicle certified by respondent Okai.
12	1636-1652 hours			
13	03/05/2012	2002 Toyota Celica 5YFH924	XD906129C	Inapplicable trouble code P1776 detected; vehicle certified by respondent Okai.
14	1707-1712 hours			
15	03/05/2012	2000 Ford Escort 4LFP973	XD906130C	Inapplicable trouble code P1776 detected; vehicle certified by respondent Okai.
16	1756-1808 hours			

THIRTEENTH CAUSE FOR DISCIPLINE

(Misleading Statements)

43. Respondent Auto Smog Express; Michael C. Mensah, owner, has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(1), in that between March 4, 2010 and March 5, 2012, he made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 3, above, certifying that those vehicles were in

1 compliance with applicable laws and regulations when, in fact, those vehicles had been clean
2 plugged.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 44. Respondent Auto Smog Express; Michael C. Mensah, owner, has subjected his
6 registration to discipline under BPC section 9884.7, subdivision (a)(4), in that between March 4,
7 2010 and March 5, 2012, he committed acts which constitute fraud by issuing electronic
8 certificates of compliance for the vehicles set forth in Table 3, above, without performing bona
9 fide inspections and functional testing of the emission control devices and systems on those
10 vehicles, thereby depriving the People of the State of California of the protection afforded by the
11 Motor Vehicle Inspection Program.

12 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

14 45. Respondent Auto Smog Express; Michael C. Mensah, owner, has subjected his
15 station license to discipline under HSC section 44072.2, subdivision (a), in that, with respect to
16 the vehicles set forth in Table 3, above, between March 4, 2010 and March 5, 2012, Respondent
17 violated the following sections of the HSC:

18 a. **Section 44012:** Respondent Mensah failed to ensure that the onboard diagnostic
19 system tests were performed on those vehicles in accordance with procedures prescribed by the
20 department.

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

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

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

3 46. Respondent Auto Smog Express; Michael C. Mensah, owner, has subjected his
4 station license and his technician license to discipline under HSC section 44072.2, subdivision
5 (c), in that, with respect to the vehicles set forth in Table 3, above, be between March 4, 2010 and
6 March 5, 2012, Respondent violated the following sections of title 16 of the CCR:

7 a. **Section 3340.24, subdivision (c):** Respondent Mensah falsely or fraudulently issued
8 electronic certificates of compliance without performing bona fide inspections and functional
9 testing of the emission control devices and systems on those vehicles as required by HSC section
10 44012.

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

13 c. **Section 3340.35, subdivision (c):** Respondent Mensah issued electronic certificates
14 of compliance even though those vehicles had not been inspected in accordance with section
15 3340.42 of the HSC.

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

18 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

20 47. Respondent Auto Smog Express; Michael C. Mensah, owner, has subjected his
21 station license to discipline under HSC section 44072.2, subdivision (d), in that, with respect to
22 the vehicles set forth in Table 3, above, between March 4, 2010 and March 5, 2012, he committed
23 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
24 certificates of compliance for those vehicles without performing bona fide inspections and
25 functional testing of the emission control devices and systems on those vehicles, thereby
26 depriving the People of the State of California of the protection afforded by the Motor Vehicle
27 Inspection Program.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

3 48. Respondents Mensah and Okai have subjected their technician licenses to discipline
4 under HSC section 44072.2, subdivision (a), in that, with respect to the vehicles set forth in Table
5 3, above, between March 4, 2010 and March 5, 2012, Respondents violated the following sections
6 of the HSC:

7 a. **Section 44012:** Respondents failed to ensure that the onboard diagnostic system tests
8 were performed on those vehicles in accordance with procedures prescribed by the department.

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

12 c. **Section 44032:** Respondents failed to perform tests of the onboard diagnostic
13 systems on those vehicles in accordance with section 44012 of the HSC.

14 d. **Section 44059:** Respondents willfully made false entries for the electronic
15 certificates of compliance by certifying that those vehicles had been inspected as required when,
16 in fact, they had not.

17 **NINETEENTH CAUSE FOR DISCIPLINE**

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

19 49. Respondents Mensah and Okai have subjected their technician licenses to discipline
20 under HSC section 44072.2, subdivision (c), in that, with respect to the vehicles set forth in Table
21 3, above, between March 4, 2010 and March 5, 2012, Respondents violated the following sections
22 of title 16 of the CCR:

23 a. **Section 3340.24, subdivision (c):** Respondents falsely or fraudulently issued
24 electronic certificates of compliance without performing bona fide inspections and functional
25 testing of the emission control devices and systems on those vehicles as required by HSC section
26 44012.

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

1 c. **Section 3340.35, subdivision (c):** Respondents issued electronic certificates of
2 compliance even though those vehicles had not been inspected in accordance with section
3 3340.42. of the HSC.

4 d. **Section 3340.41, subdivision (c):** Respondents knowingly entered false information
5 into the EIS about the vehicles being tested.

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

8 **TWENTIETH CAUSE FOR DISCIPLINE**

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

10 50. Respondents Mensah and Okai have subjected their technician licenses to discipline
11 under HSC section 44072.2, subdivision (d), in that, with respect to the vehicles set forth in Table
12 3, above, between March 4, 2010 and March 5, 2012, Respondents committed acts involving
13 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
14 compliance for those vehicles without performing bona fide inspections and functional testing of
15 the emission control devices and systems on those vehicles, thereby depriving the People of the
16 State of California of the protection afforded by the Motor Vehicle Inspection Program.

17 **AUTO SMOG EXPRESS #3**

18 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

19 **(Revocation of Additional Licenses)**

20 51. Respondent Mensah has subjected his Automotive Repair Dealer Registration No.
21 ARD 267711, his Smog Check, Test Only, Station License No. TC 267711, and his Advanced
22 Emission Specialist Technician License No. EA 155148 to discipline under section 44072.8 of the
23 Health and Safety Code in that Respondent Mensah has engaged in violations that have subjected
24 other licenses issued by the Bureau to discipline. Complainant refers to, and by this reference
25 incorporates, the allegations set forth above in paragraphs 27 - 49, inclusive, as though set forth
26 fully herein.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 260305, issued to Auto Smog Express #2; Michael C. Mensah;
2. Revoking or suspending Smog Check, Test Only, Station License Number TC 260305, issued to Auto Smog Express #2; Michael C. Mensah;
3. Revoking or suspending Automotive Repair Dealer Registration Number ARD 254379, issued to Auto Smog Express; Michael C. Mensah;
4. Revoking or suspending Smog Check, Test Only, Station License Number TC 254379, issued to Auto Smog Express; Michael C. Mensah;
5. Revoking or suspending Automotive Repair Dealer Registration Number ARD 267711, issued to Auto Smog Express #3; Michael C. Mensah;
6. Revoking or suspending Smog Check, Test Only, Station License Number TC 267711, issued to Auto Smog Express #3; Michael C. Mensah;
7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 155148, issued to Michael C. Mensah;
8. Revoking or suspending Advanced Emission Specialist Technician License Number EA 155105, issued to Ruben Palomares;
9. Revoking or suspending Advanced Emission Specialist Technician License Number EA 632939, issued to Everardo Rodriguez, Jr.;
10. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630113, issued to Joseph O. Okai;
11. Revoking or suspending any and all other licenses issued to Michael C. Mensah, Ruben Palomares, Everardo Rodriguez, Jr., and Joseph O. Okai by the Bureau of Automotive Repair pursuant to Health and Safety Code section 44072.8;

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12. Ordering Michael C. Mensah, Ruben Palomares, Everardo Rodriguez, Jr., and Joseph O. Okai to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: June 25, 2012
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JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant