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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **EDUARDO PALMA GOMEZ, OWNER, d.b.a. N&K SMOG TEST ONLY** **7572 Indiana Avenue** **Riverside, CA 92504** **Automotive Repair Dealer Registration Number ARD 268060, Smog Check Test Only Station License Number TC 268060,** **MARCO ANTONIO GOMEZ,** **4550 Berkley Avenue,** **Hemet, Ca. 92544,** **Advanced Emission Specialist Technician License Number EA 632070 (to be redesignated upon renewal as EO 632070 and/or EI 632070)** **ISMAEL ENRIQUEZ ALEMAN** **3004 N. Orange Avenue,** **Rialto, Ca. 92377** **Smog Check Inspector License Number EO 635098** **EDWARD LOPEZ,** **5751 Willard Way,** **Riverside, Ca. 92504** **Smog Check Inspector License Number EO 635079** Respondent.	Case No. 79/14-20 **ACCUSATION** **(Smog Check)**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On or about February 23, 2012, the Bureau issued Automotive Repair Dealer Registration Number ARD 268060 ("registration") to Eduardo Palma Gomez ("Respondent N&K"), doing business as N&K Smog Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2014, unless renewed.

Smog Check Test Only Station License

3. On or about March 20, 2012, the Bureau issued Smog Check Test Only Station License Number TC 268060 ("station license") to Respondent N&K. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2014, unless renewed.

Marco Antonio Gomez- Advanced Emission Specialist Technician License

4. On or about May 12, 2010, the Bureau issued Advanced Emission Specialist Technician License Number EA 632070 to Marco Antonio Gomez ("Respondent Gomez"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2014, unless renewed. Upon timely renewal of the license, the license will be redesignated as EO 632070 and/or EI 632070.[1]

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[1] Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

Ismael Enriquez Aleman-Smog Check Inspector License

5. On or about January 7, 2013, the Bureau issued Smog Check Inspector License Number EO 635098 ("inspector license") (previously EA 635098) to Ismael Enriquez Aleman ("Respondent Aleman"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2014, unless renewed.

Edward Lopez-Smog Check Inspector License

6. On or about December 31, 2012, the Bureau issued Smog Check Inspector License Number EO 635079 ("inspector license") (previously EA 635079) to Edward Lopez ("Respondent Lopez"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

JURISDICTION

7. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

8. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

9. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

10. Health & Saf. Code section 44072.6 provides, in pertinent part, that the 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.

STATUTORY AND REGULATORY PROVISIONS

11. Bus. & Prof. Code section 9884.7 states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke or place on probation the registration of an automotive repair dealer for any of the following acts or omissions

related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

. . . .

(4) Any other conduct that constitutes fraud.

. . . .

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

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

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

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

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

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

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

. . . .

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

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

15. Health & Saf. Code section 44072.10 states, in pertinent part:

. . . .

(c) The department shall revoke the license of any smog check technician

or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department . . .

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

17. California Code of Regulations, title 16, section 3340.1 states, in pertinent:

. . . .

"Clean piping," for the purposes of Health and Safety Code section 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle . . .

COST RECOVERY

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

UNDERCOVER OPERATION #1: 1995 ACURA

19. On September 26, 2012, a representative of the Bureau, acting in an undercover capacity ("operator"), took the Bureau's 1995 Acura to Respondent Gomez's facility. The positive crankcase ventilation ("PCV") system on the Bureau-documented vehicle was missing, the three-way catalytic converter ("TWC") was missing, certain emission related components were disconnected, illegal adjustable camshaft gears had been installed on the vehicle, and the vehicle had failed a smog test as a "gross polluter". The operator met with a male employee ("Employee #1") and requested a smog inspection. The operator further told the employee that she was looking for a person named "Marco" and was referred by a friend. Employee #1 then pointed to another employee working at the other end of the shop and identified him as "Marco". Employee #1 then asked the operator, "You don't have a catalytic converter, do you?" The operator told Employee #1 that she was not sure. Approximately five minutes later, Employee #1

approached the operator and told her that since the car failed previously, they might have to fail it and have her come back another day to pass it. He said "it wouldn't look good otherwise." Approximately ten minutes later, Employee #1 called the operator into the shop area. He told the operator "we're going to pass it for $120, but don't say anything." The operator agreed to pay the employee $120 to certify the vehicle. The operator then observed the Bureau's 1995 Acura being pulled into the test bay and could hear the car driving on the rollers. A short time later Marco came back into the office and asked the operator to fill out an invoice with her personal information which she did. Marco gave the operator a vehicle inspection report ("VIR") but did not give her any type of an invoice indicating that she paid for a smog test.

20. The Bureau's VID (vehicle information database) data indicated that the vehicle passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No. [redacted]. The VID data showed that Respondent Gomez performed the smog inspection on the vehicle.

21. On October 3, 2012, the Bureau inspected the vehicle and found that the condition of the vehicle had not changed. The PCV components and catalytic converter were still missing. The adjustable camshaft timing gears were still installed. A smog inspection was then performed on the vehicle. The vehicle failed the inspection due to excessive tailpipe emissions. The Bureau concluded that Respondent Gomez performed the smog inspection on the vehicle using clean piping methods, resulting in the issuance of a fraudulent smog certificate of compliance.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent N&K allowed his employee, Respondent Gomez, to certify under penalty of perjury on the VIR that he performed the smog inspection on the Bureau's 1995 Acura in accordance with all Bureau requirements and that the vehicle had passed the inspection and was

in compliance with applicable laws and regulations. In fact, Respondent Gomez used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

23. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes fraud, as follows: Respondent N&K allowed his employee, i.e. Respondent Gomez to issue an electronic smog certificate of compliance for the Bureau's 1995 Acura without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

24. Respondent N&K'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 N&K failed to ensure that the emission control tests were performed on the Bureau's 1995 Acura in accordance with procedures prescribed by the department.

b. **Section 44015**: Respondent N&K allowed his employee, i.e., Respondent Gomez to issue an electronic smog certificate of compliance for the Bureau's 1995 Acura without ensuring that the vehicle was properly tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

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FOURTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.35, subdivision (c):** Respondent N&K allowed his employee Respondent Gomez to issue an electronic smog certificate of compliance for the Bureau's 1995 Acura even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

b. **3340.41, subdivision (c):** Respondent N&K allowed his employee, i.e., Respondent Gomez to enter false information into the Emissions Inspection System ("EIS") by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent N&K failed to ensure that the required smog tests were conducted on the Bureau's 1995 Acura in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

26. Respondent N&K's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by allowing his employee Respondent Gomez to issue an electronic smog certificate of compliance for the Bureau's 1995 Acura without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

27. Respondent Gomez's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission control tests on the Bureau's 1995 Acura in accordance with procedures prescribed by the department.

SEVENTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.30, subdivision (a):** Respondent Gomez failed to inspect and test the Bureau's 1995 Acura in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Gomez entered false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent Gomez failed to conduct the required smog tests on the Bureau's 1995 Acura in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

29. Respondent Gomez's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1995 Acura without performing a bona fide inspection of the

emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION #2: 1995 CHEVROLET

30. On November 13, 2012, a Bureau undercover operator took the Bureau's 1995 Chevrolet to Respondent N&K's facility. The truck was equipped with a disabled EGR system and a modified oxygen sensor circuit which caused the vehicle to emit excessive tailpipe emissions. The operator went into the office and was met by Respondent Gomez and his assistant Ismael. The operator requested a smog test on the vehicle. Respondent Gomez asked the operator if the truck had failed at any other shops to which she replied no. The operator was asked to wait in the waiting room while other vehicles were tested. While she waited Respondent Gomez apologized for how long it was taking, and informed her that he would definitely "make the truck pass." Respondent Gomez approached her thereafter and she was asked to fill out paperwork but she did not sign the paperwork nor received a copy of it. After the test was completed, Respondent Gomez informed her that she owed him $120 for the test, and he normally charged $140. She paid Respondent Gomez $120 and informed him that she would send him more business. Respondent Gomez then told the operator that she was "part of the family" and gave her a passing VIR for the vehicle.

31. The Bureau's VID (vehicle information database) data indicated that the vehicle passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No. [redacted]. The VID data showed that Respondent Gomez performed the smog inspection on the vehicle.

32. On November 14, 2012, the Bureau performed a smog inspection on the vehicle. The vehicle failed the inspection due to excessive tailpipe emissions, which were at gross polluter levels. The tamper indicators on the EGR valve and oxygen sensor circuit defect were still intact indicating that the system defects had not been corrected. The Bureau concluded that Respondent Gomez had performed the smog inspection on the vehicle using clean piping methods, resulting in the issuance of a fraudulent smog certificate of compliance.

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NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent N&K's technician, Respondent Gomez, certified under penalty of perjury on the VIR that he performed the smog inspection on the Bureau's 1995 Chevrolet in accordance with all Bureau requirements and that the vehicle had passed the inspection and was in compliance with applicable laws and regulations. In fact, Respondent Gomez used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012. As such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

34. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent N&K committed an act that constitutes fraud, as follows: Respondent N&K allowed his employee to issue an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

ELEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent N&K failed to ensure that the emission control tests were performed on the Bureau's 1995 Chevrolet in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent N&K allowed his employee to issue an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet without ensuring that the vehicle was properly tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

TWELFTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.35, subdivision (c):** Respondent Gomez issued an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

b. **3340.41, subdivision (c):** Respondent N&K permitted his technician, Respondent Gomez, to enter false information into the EIS unit by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent N&K failed to ensure that the required smog tests were conducted on the Bureau's 1995 Chevrolet in accordance with the Bureau's specifications.

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

37. Respondent N&K's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby

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

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

38. Respondent Gomez's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission control tests on the Bureau's 1995 Chevrolet in accordance with procedures prescribed by the department.

FIFTEENTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.30, subdivision (a):** Respondent Gomez failed to inspect and test the Bureau's 1995 Chevrolet in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Gomez entered false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent Gomez failed to conduct the required smog tests on the Bureau's 1995 Chevrolet in accordance with the Bureau's specifications.

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

40. Respondent Gomez's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of

compliance for the Bureau's 1995 Chevrolet without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION #3: 1999 DODGE

41. On January 18, 2013, a Bureau undercover operator took the Bureau's 1999 Dodge to Respondent N&K's facility. The vehicle was equipped with a modified heated oxygen sensor circuit which caused the vehicle to emit excessive tailpipe emissions. The operator went into the office and was greeted by Respondent Lopez. The operator requested a smog test on the vehicle. The operator was approached thereafter and told to fill out paperwork which he completed but did not receive a copy of it. The operator then observed Respondent Lopez drive the vehicle into the testing bay and sit inside the Dodge while Respondent Aleman inserted the analyzer probe into the vehicle. Respondent Lopez stated that the emissions levels were high and asked Respondent Aleman if he wanted to "use his car cold". Respondent Aleman repled "ok". Respondent Lopez then exited the Dodge and walked over to a white Lincoln Towncar parked adjacent to the testing bay and started the engine. Respondent Lopez then took the analyzer probe that was previously inserted in the Dodge and walked it over to the rear of the Lincoln Towncar. Respondent Aleman inserted a "dummy probe[2]" into the tailpipe of the Dodge. Respondent Lopez then got into the Lincoln Towncar and raised the engine speed while Respondent Aleman drove the Dodge onto the dynamometer. Respondent Aleman then exited the Dodge, removed the "dummy probe" from the tailpipe of the Dodge, and walked over to the analyzer. Respondent Lopez exited the Lincoln Towncar and walked back to the analyzer with the analyzer probe in his hand. A few minutes later, Respondent Aleman informed the operator that the test was completed.

42. After the test was completed, Respondent Aleman informed the operator that he owed him $140 for the test. The operator paid Respondent Aleman $140 and asked Respondent Aleman

[2] The "dummy probe" is a short probe not connected to the analyzer but made to look like a probe is connected to the analyzer to disguise anyone conducting surveillance that the actual car is being tested and not a different car. In this case, the undercover operator could see the end of the probe lying near the rear tire of the Dodge.

if he could bring more cars to him that needed "help" with the smog test. Respondent Aleman said that he could but to call first.

43. The Bureau's VID (vehicle information database) data indicated that the vehicle passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No. [redacted]. The VID data showed that Respondent Aleman performed the smog inspection on the vehicle.

44. On January 25, 2013, the Bureau performed a smog inspection on the vehicle. The vehicle failed the inspection due to excessive tailpipe emissions. The Bureau concluded that Respondent Aleman had performed the smog inspection on the vehicle using clean piping methods, resulting in the issuance of a fraudulent smog certificate of compliance.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent N&K's technician, Respondent Aleman, with the assistance of Respondent Lopez, certified under penalty of perjury on the VIR that he performed the smog inspection on the Bureau's 1999 Dodge in accordance with all Bureau requirements and that the vehicle had passed the inspection and was in compliance with applicable laws and regulations. In fact, Respondent Aleman used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012. As such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Fraud)

46. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent N&K committed an act that constitutes fraud, as follows: Respondent N&K allowed his employee to issue an electronic smog

certificate of compliance for the Bureau's 1999 Dodge without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

NINETEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent N&K failed to ensure that the emission control tests were performed on the Bureau's 1999 Dodge in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent N&K allowed his employee to issue an electronic smog certificate of compliance for the Bureau's 1999 Dodge without ensuring that the vehicle was properly tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

TWENTIETH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.35, subdivision (c):** Respondent Aleman, with the assistance of Respondent Lopez, issued an electronic smog certificate of compliance for the Bureau's 1999 Dodge even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

b. **3340.41, subdivision (c):** Respondent N&K permitted his technician, Respondent Aleman, with the assistance of Respondent Lopez, to enter false information into the EIS unit by

entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent N&K failed to ensure that the required smog tests were conducted on the Bureau's 1999 Dodge in accordance with the Bureau's specifications.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

49. Respondent N&K's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1999 Dodge without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

50. Respondents Aleman and Lopez inspector licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that both Respondents failed to comply with section 44012 of that Code in a material respect, as follows: Respondents failed to perform the emission control tests on the Bureau's 1999 Dodge in accordance with procedures prescribed by the department.

TWENTY-THIRD CAUSE FOR DISCIPLINE

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

51. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that both Respondents failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondents failed to inspect and test the Bureau's 1999 Dodge in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Aleman with the assistance of Respondent Lopez entered false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondents failed to conduct the required smog tests on the Bureau's 1999 Dodge in accordance with the Bureau's specifications.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

52. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondents committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1999 Dodge without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION #4: 1992 PLYMOUTH

53. On February 1, 2013, a Bureau undercover operator took the Bureau's 1992 Plymouth to Respondent N&K's facility. The vehicle was equipped with a three-way catalytic converter with its internal material removed which caused the vehicle to emit excessive tailpipe emissions. Once he arrived, the operator went into the office and was greeted by Respondent Lopez. The operator requested a smog test on the vehicle. The operator was told by Respondent Lopez that the smog test would cost $50.00. The operator stated to Respondent Lopez that the vehicle "needed some help". Respondent Lopez asked the operator if he had spoken to Respondent Aleman to which the operator stated that he had. Respondent Lopez then replied "no problem". The operator was told to fill out paperwork which he completed but did not receive a copy of it.

The operator then observed Respondent Aleman start a Buick Regal parked in the shop adjacent to the testing bay while Respondent Lopez drove the 1992 Plymouth into the testing bay. Respondent Aleman then checked the emissions of the 1992 Plymouth in manual mode after Respondent Lopez inserted the analyzer probe into the 1992 Plymouth 's tailpipe. Respondent Lopez was overheard by the operator stating: "Yes, it's dirty. That's why it has that smell."

54. Respondent Lopez then removed the analyzer probe from the 1992 Plymouth and placed it next to the analyzer. Respondent Aleman then picked up the probe and walked over to the rear of the Buick Regal. He then bent down behind the Regal and walked back to the 1992 Plymouth where he inserted a "dummy probe" into the tailpipe. The undercover operator observed the end of the "dummy probe" lying near the rear tire of the 1992 Plymouth. Respondent Lopez then got inside the Buick Regal and raised the engine speed while Respondent Aleman drove the 1992 Plymouth on the dynamometer. After the 1992 Plymouth was done running on the dynamometer, Respondent Lopez exited the Buick Regal and walked back to the analyzer with the analyzer probe in his hand. Respondent Aleman exited the 1992 Plymouth and removed the "dummy probe" from the Plymouth's exhaust. The operator then observed both Respondent Lopez and Respondent Aleman standing in front of the analyzer while Respondent Lopez entered data into the EIS. Respondent Lopez then drove the 1992 Plymouth out of the test bay. Respondent Aleman indicated that the test was done. The operator asked Respondent Aleman if he could have a discount if he brought more cars into the shop and Respondent Aleman replied that he could do it for $120.00.

55. Respondent Aleman then asked the operator to come into the waiting area and asked Respondent Aleman if it was $120 to which he replied "yes." The operator handed Respondent Aleman $120 in cash and in return received a VIR (vehicle inspection report) and the DMV document. Respondent Aleman stated to the operator "anytime you need help, bring them by."

56. The Bureau's VID (vehicle information database) data indicated that the vehicle passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No. [redacted] The VID data showed that Respondent Lopez performed the smog inspection on the vehicle.

57. On February 5, 2013, the Bureau re-inspected the vehicle and performed a smog inspection on the vehicle. The vehicle failed the inspection due to excessive tailpipe emissions. The Bureau concluded that Respondent Lopez had performed the smog inspection on the vehicle using clean piping methods, resulting in the issuance of a fraudulent smog certificate of compliance.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent N&K's technician, Respondent Lopez, with the assistance of Respondent Aleman, certified under penalty of perjury on the VIR that he performed the smog inspection on the Bureau's 1992 Plymouth in accordance with all Bureau requirements and that the vehicle had passed the inspection and was in compliance with applicable laws and regulations. In fact, Respondent Lopez used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012. As such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Fraud)

59. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent N&K committed an act that constitutes fraud, as follows: Respondent N&K allowed his employee to issue an electronic smog certificate of compliance for the Bureau's 1992 Plymouth without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent N&K failed to ensure that the emission control tests were performed on the Bureau's 1992 Plymouth in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent N&K allowed his employee to issue an electronic smog certificate of compliance for the Bureau's 1992 Plymouth without ensuring that the vehicle was properly tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.35, subdivision (c):** Respondent Lopez, with the assistance of Respondent Aleman, issued an electronic smog certificate of compliance for the Bureau's 1992 Plymouth even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

b. **3340.41, subdivision (c):** Respondent N&K permitted his technician, Respondent Lopez, with the assistance of Respondent Aleman, to enter false information into the EIS unit by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent N&K failed to ensure that the required smog tests were conducted on the Bureau's 1992 Plymouth in accordance with the Bureau's specifications.

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

62. Respondent N&K's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1992 Plymouth without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRTIETH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

63. Respondents Aleman and Lopez inspector licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that both Respondents failed to comply with section 44012 of that Code in a material respect, as follows: Respondents failed to perform the emission control tests on the Bureau's 1992 Plymouth in accordance with procedures prescribed by the department.

THIRTY-FIRST CAUSE FOR DISCIPLINE

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

64. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that both Respondents failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondents failed to inspect and test the Bureau's 1992 Plymouth in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Lopez with the assistance of Respondent Aleman entered false information into the EIS by entering vehicle identification

information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondents failed to conduct the required smog tests on the Bureau's 1992 Plymouth in accordance with the Bureau's specifications.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

65. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondents committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1992 Plymouth without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

66. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Eduardo Palma Gomez upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

67. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 268060, issued to Eduardo Palma Gomez, doing business as N&K Smog Test Only, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

68. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number currently designated as EA 632070 (and upon timely renewal of the license, to be redesignated as EO 632070 and/or EI 632070), issued to Marco Antonio Gomez, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

69. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License Number EO 635098, issued to Ismael Enriquez Aleman, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

70. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License Number EO 635079, issued to Edward Lopez, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

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, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 268060, issued to Eduardo Palma Gomez, doing business as N&K Smog Test Only;

2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued in the name Eduardo Palma Gomez;

3. Revoking or suspending Smog Check Test Only Station License Number TC 268060, issued to Eduardo Palma Gomez, doing business as N&K Smog Test Only;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Eduardo Palma Gomez;

5. Revoking or suspending Advanced Emission Specialist Technician License Number currently designated as EA 632070 (and upon timely renewal of the license, to be redesignated as EO 632070 and/or EI 632070), issued to Marco Antonio Gomez;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Marco Antonio Gomez;

7. Revoking or suspending Smog Check Inspector License Number EO 635098, issued to Ismael Enriquez Aleman;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Ismael Enriquez Aleman;

9. Revoking or suspending Smog Check Inspector License Number EO 635079, issued to Edward Lopez;

10. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Edward Lopez;

11. Ordering Eduardo Palma Gomez, Marco Antonio Gomez, Ismael Enriquez Aleman and Edward Lopez to jointly and severally 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; and,

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

DATED: August 30, 2013

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