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7

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

11 In the Matter of the Accusation Against:

Case No. 79/14-108

12 **ONE STOP TEST ONLY; MARIA I. SANCHEZ**
13 630 W. Rialto Ave, #B8
14 Rialto, CA 92376

ACCUSATION

15 Automotive Repair Dealer Registration No. ARD 266963
Smog Check, Test Only, Station License No. TC 266963

16 and

17 **BRIAN WILLIAM AYALA-SICILLIANO**
18 5506 Norman Way
Riverside, CA 92504

19 Advanced Emission Specialist Technician License No. EA
20 634046 (to be redesignated upon renewal as EO 634046 and/or
EI 634046)

21 and

22 **JAVIER ALEJANDRO AYALA-SICILIANO**
23 5506 Norman Way
24 Riverside, CA 92504

25 Smog Check Inspector License No. EO 633774; Smog Check
26 Repair Technician License No. EI 633744 (formerly Advanced
Emission Specialist Technician License No. EA 633774)

27 Respondents.
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1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. On or about October 26, 2011, the Bureau of Automotive Repair issued Automotive
7 Repair Dealer Registration Number ARD 266963 (registration) to One Stop Test Only, Maria I.
8 Sanchez (Respondent One Stop). The registration was in full force and effect at all times relevant
9 to the charges brought herein and will expire on October 31, 2014, unless renewed.

10 **Smog Check Test Only Station License**

11 3. On or about November 9, 2011, the Bureau of Automotive Repair issued Smog
12 Check, Test Only, Station License Number TC 266963 (station license) to Respondent One Stop.
13 The station license was in full force and effect at all times relevant to the charges brought herein
14 and will expire on October 31, 2014, unless renewed.

15 **Technician Licenses**

16 4. On or about February 14, 2012, the Director issued Advanced Emission Specialist
17 Technician License Number EA 634046 to Brian William Ayala-Sicilliano. (Respondent Brian
18 Ayala-Sicilliano). Respondent Brian Ayala-Sicilliano's advanced emission specialist technician
19 license was in full force and effect at all times relevant to the charges brought herein and will
20 expire on July 31, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28,
21 subdivision (e), upon renewal of the license, the license will be redesignated as EO 634046 and/or
22 EI 634046.¹

23 5. On or about November 3, 2011, the Director issued Advanced Emission Specialist
24 Technician License Number EA 633774 to Javier Alcjandro Ayala-Siciliano (Respondent Javier
25 Ayala-Siciliano). Respondent Javier Ayala-Siciliano's advanced emission specialist technician

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 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.

1 license was in full force and effect at all times relevant to the charges brought herein and pursuant
2 to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
3 renewed, pursuant to Respondent Javier Ayala-Siciliano's election, as Smog Check Inspector
4 License Number EO 633774, and Smog Check Repair Technician License No.
5 EI 633774 (technician licenses), effective July 31, 2013. Respondent Javier Ayala-Siciliano's
6 technician licenses will expire on July 31, 2015, unless renewed.

7 JURISDICTION

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

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

14 8. Bus. & Prof. Code section 9889.1 provides, in pertinent part, that the Director may
15 suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
16 Automotive Repair Act.

17 9. California Code of Regulations, title 16, section 3340.28, subdivision (e) states that
18 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
19 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
20 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

21 10. Bus. & Prof. Code section 9889.7 provides, in pertinent part, that the expiration or
22 suspension of a license by operation of law, or by order or decision of the Director or a court of law,
23 or the voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with
24 any disciplinary proceedings.

25 11. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
26 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
27 the Motor Vehicle Inspection Program.

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1 14. Section 44012 of the Health and Safety Code states, in pertinent part:

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

6 ...

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

11 15. Section 44015 of the Health and Safety Code states, in pertinent part:

12 ...

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

15 16. Section 44032 of the Health and Safety Code states:

16 "No person shall perform, for compensation, tests or repairs of emission control devices or
17 systems of motor vehicles required by this chapter unless the person performing the test or repair
18 is a qualified smog check technician and the test or repair is performed at a licensed smog check
19 station. Qualified technicians shall perform tests of emission control devices and systems in
20 accordance with Section 44012."

21 17. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

25 ...

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

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1 18. Section 44072.10 of the Health and Safety Code states, in pertinent part:

2 ...

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

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

7 "(2) Tampering with a vehicle emission control system or test
8 analyzer system."

9 **REGULATORY PROVISIONS**

10 19. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

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

13 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
14 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
15 3340.42 of this article."

16 20. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

17 ...

18 "(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner
19 or operator of any vehicle that has been inspected in accordance with the procedures specified in
20 section 3340.42 of this article and has all the required emission control equipment and devices
21 installed and functioning correctly."

22 21. California Code of Regulations, title 16, section 3340.41, states, in pertinent part:

23 ...

24 "(c) No person shall enter into the emissions inspection system any vehicle identification
25 information or emission control system identification data for any vehicle other than the one being
26 tested. Nor shall any person knowingly enter into the emissions inspection system any false
27 information about the vehicle being tested."

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1 regarding the subject smog inspection. Though the Chevrolet should have failed the smog
2 inspection, it passed and electronic Certificate of Compliance [REDACTED] was issued by
3 Respondent One Stop for that vehicle. The operator paid \$160.00 in cash to Respondent Javier
4 Ayala-Siciliano for the smog test and was given a copy of the Vehicle Inspection Report, but was
5 never provided with any actual invoice or receipt.

6 25. On the following day, April 11, 2013, a Bureau representative performed a Smog
7 Check inspection on the Chevrolet. The vehicle failed and exceeded the limits of oxides of
8 nitrogen at 15 mph and 25 mph as a gross polluter. Thereafter, on April 16, 2013, a Bureau
9 representative inspected and photographed the EGR valve tamper seal and oxygen sensor circuit
10 tamper seal on the Chevrolet and verified the tamper seals were intact, demonstrating the defects
11 had not been corrected. That same Bureau representative also received and reviewed a copy of
12 the VIR for the inspection performed on the Chevrolet by Respondent One Stop and concluded
13 that the emissions readings recorded on the VIR do not represent the emissions of the
14 Chevrolet and that the Chevrolet was not tested according to Bureau requirements. The Bureau
15 representative also noted the VIR reflected that a functional test of the evaporative emissions
16 system had been performed on the Chevrolet truck, which test was not appropriate for that
17 vehicle.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 26. Respondent One Stop has subjected its registration to discipline under Code section
21 9884.7, subdivision (a)(1), in that on or about April 10, 2013, it made statements which it knew or
22 which by exercise of reasonable care it should have known were untrue or misleading when it
23 issued an electronic certificate of compliance for the vehicle set forth in paragraphs 24 and 25
24 above, certifying that such vehicle was in compliance with applicable laws and regulations when, in
25 fact, the vehicle was not in compliance at such time.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent Brian Ayala-Sicilliano has subjected his technician license to discipline
4 under Health and Safety Code section 44072.2, subdivision (c), in that on or about April 10, 2013,
5 regarding the vehicle set forth in paragraphs 24 and 25, above, he violated sections of the
6 California Code of Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Brian Ayala-Sicilliano failed to inspect
8 and test the vehicle in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.41, subdivision (c):** Respondent Brian Ayala-Sicilliano entered false
10 information into the Emissions Inspection System on the vehicle.

11 **EIGHTH CAUSE FOR DISCIPLINE**

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

13 33. Respondent Brian Ayala-Sicilliano has subjected his technician license to discipline
14 under Health and Safety Code section 44072.2, subdivision (d), in that on or about April 10, 2013,
15 regarding the vehicle set forth in paragraphs 24 and 25, above, he committed acts of dishonesty,
16 fraud or deceit whereby another is injured.

17 **NINTH CAUSE FOR DISCIPLINE**

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

19 34. Respondent Javier Ayala-Siciliano has subjected his technician licenses to discipline
20 under Health and Safety Code section 44072.2, subdivision (d), in that on or about April 10, 2013,
21 regarding the vehicle set forth in paragraphs 24 and 25, above, he committed acts of dishonesty,
22 fraud or deceit whcreby another is injured.

23 **UNDERCOVER VEHICLE OPERATION #2 - APRIL 23, 2013**

24 35. On April 23, 2013 the Bureau conducted a second undercover vehicle operation at
25 Respondent One Stop. The Bureau's vehicle, a 1997 Acura (Acura), was documented by a
26 representative from one of the Bureau's Forensic Documentation Laboratories. The Acura's
27 emission control systems were inspected by the Bureau representative. All of its emission control
28 systems were present and visually intact except for the positive crankcase ventilation system

1 components; an exhaust header pipe that had not received an Executive Order (E.O.) Exemption
2 from the California Air Resources Board; a missing catalytic converter and secondary heated
3 oxygen sensor, adjustable fuel pressure regulator; external ignition coil and control unit; adjustable
4 timing gears on both engine camshafts that are visible due to an alteration of the engine's cylinder
5 head cover. The Acura was also purposely set-up to fail a smog inspection for "Gross Polluter"
6 tailpipe emissions levels. On April 23, 2013, the same operator who had participated in the
7 previous undercover operation referenced in paragraphs 24 and 25 above drove the Acura to
8 Respondent One Stop in furtherance of another undercover operation. Upon arriving at the
9 station, the operator went into the office and spoke with Respondent Javier Ayala-Siciliano, whom
10 the operator recognized from the previous undercover operation. The operator then proceeded to
11 inform Respondent Javier Ayala-Siciliano that he had brought his son's friend's Acura to the
12 station for a smog test. Respondent Javier Ayala-Siciliano then inspected the Acura and informed
13 the operator that the smog test would cost \$200 because of the "nitrous" and "other stuff" on the
14 engine. The operator paid Respondent Javier Ayala-Siciliano \$200 after the Acura was tested by
15 Respondent Brian Ayala-Siciliano. The Acura passed the smog inspection and Certificate of
16 Compliance # [REDACTED] was issued by Respondent One Stop and given to the operator, along
17 with a passing Vehicle Inspection Report (VIR). However, the operator was never provided with
18 any actual invoice or receipt.

19 36. Thereafter, on April 24, 2013, a Bureau representative performed a Smog Check
20 inspection on the Acura. The Acura failed the inspection because of modified PCV components,
21 an illuminated MIL, exhaust header pipe, missing catalytic converter, missing secondary heated
22 oxygen sensor, adjustable fuel pressure regulator and adjustable camshaft timing gears. The Acura
23 also failed the inspection due to "Gross Polluter" levels of tailpipe emissions.

24 TENTH CAUSE FOR DISCIPLINE

25 (Untrue or Misleading Statements)

26 37. Respondent One Stop has subjected its registration to discipline under Code section
27 9884.7, subdivision (a)(1), in that on or about April 23, 2013, it made statements which it knew or
28 which by exercise of reasonable care it should have known were untrue or misleading when it

1 issued an electronic certificate of compliance for the vehicle set forth in paragraphs 35 and 36
2 above, certifying that such vehicle was in compliance with applicable laws and regulations when, in
3 fact, the vehicle was not in compliance at such time.

4 **ELEVENTH CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 38. Respondent One Stop has subjected its registration to discipline under Code section
7 9884.7, subdivision (a)(4), in that on or about April 23, 2013, it committed acts which constitute
8 fraud by issuing an electronic certificate of compliance for the vehicle set forth in paragraphs 35
9 and 36 above, without performing bona fide inspections of the emission control devices and
10 systems on that vehicle, thereby depriving the People of the State of California of the protection
11 afforded by the Motor Vehicle Inspection Program.

12 **TWELFTH CAUSE FOR DISCIPLINE**

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

14 39. Respondent One Stop has subjected its station license to discipline under Health and
15 Safety Code section 44072.2, subdivision (a), in that on or about April 23, 2013, regarding the
16 vehicle set forth in paragraphs 35 and 36, above, it violated sections of that Code, as follows:

17 a. **Section 44012, subdivision (f):** Respondent One Stop failed to perform emission
18 control tests on that vehicle in accordance with procedures prescribed by the department.

19 b. **Section 44015, subdivision (b):** Respondent One Stop issued an electronic certificate
20 of compliance without properly testing and inspecting the vehicle to determine if it was in
21 compliance with section 44012 of that Code.

22 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

24 40. Respondent One Stop has subjected its station license to discipline under Health and
25 Safety Code section 44072.2, subdivision (c), in that on or about April 23, 2013, regarding the
26 vehicle set forth in paragraphs 35 and 36 above, it violated sections of the California Code of
27 Regulations, title 16, as follows:

28

1 a. **Section 3340.35, subdivision (c):** Respondent One Stop issued an electronic
2 certificate of compliance even though that vehicle had not been inspected in accordance with
3 section 3340.42 of that Code.

4 b. **Section 3340.42:** Respondent One Stop failed to conduct the required smog tests and
5 inspections on that vehicle in accordance with the Bureau's specifications.

6 c. **Section 3373:** Respondent One Stop generated false or misleading records on that
7 vehicle in accordance with the Bureau's specifications.

8 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

10 41. Respondent One Stop subjected its station license to discipline under Health and
11 Safety Code section 44072.2, subdivision (d), in that on or about April 23, 2013, regarding the
12 vehicle set forth in paragraphs 35 and 36 above, it committed acts involving dishonesty, fraud or
13 deceit whereby another was injured by issuing an electronic certificate of compliance for that
14 vehicle without performing bona fide inspections of the emission control devices and systems on
15 that vehicle, thereby depriving the People of the State of California of the protection afforded by
16 the Motor Vehicle Inspection Program.

17 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

19 42. Respondent Brian Ayala-Sicilliano has subjected his technician license to discipline
20 under Health and Safety Code section 44072.2, subdivision (a), in that on or about April 23, 2013,
21 regarding the vehicle set forth in paragraphs 35 and 36 above, he violated sections of that Code, as
22 follows:

23 b. **Section 44012, subdivision (f):** Respondent Brian Ayala-Sicilliano failed to perform
24 emission control tests on the vehicle in accordance with procedures prescribed by the department.

25 d. **Section 44032:** Respondent Brian Ayala-Sicilliano failed to perform tests of the
26 emission control devices and systems on the vehicle in accordance with section 44012 of that
27 Code.

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6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Brian William Ayala-Siciliano;

7. Revoking or suspending Smog Check Inspector License Number EO 633774 and Smog Check Repair Technician License Number EI 633774 (formerly Advanced Emission Specialist Technician License Number EA 633774) issued to Javier Alejandro Ayala-Siciliano;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Javier Alejandro Ayala-Siciliano;

9. Ordering Maria I. Sanchez, Brian William Ayala-Siciliano, and Javier Alejandro Ayala-Siciliano 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;

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

DATED: March 19, 2014



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

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