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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. 79/14-94

12 **DINUBA SMOG**  
13 **MARTIN ROJAS, OWNER**  
14 **1818 East El Monte Way, Suite C**  
**Dinuba, CA 93618**

**A C C U S A T I O N**

(Smog Check)

15 **Automotive Repair Dealer Reg. No. ARD 269789**  
16 **Smog Check, Test Only, Station License No.**  
**TC 269789,**

17 **and**

18 **JOSE ROJAS**  
19 **38668 Monson Drive**  
**Dinuba, CA 93618**

20 **Advanced Emission Specialist Technician**  
21 **License No. EA 634558 (to be re-designated**  
**upon renewal as EO 634558 and/or EI 634558)**

22 Respondents.

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24 Complainant alleges:

25 **PARTIES**

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

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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 . . .

**COST RECOVERY**

16. 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.

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1 **VIDEO SURVEILLANCE OPERATION OF AUGUST 6, 2013**

2 17. On August 6, 2013, at approximately 0754 hours, a representative of the Bureau  
3 commenced a video surveillance operation of Respondent Martin Rojas' smog check facility. At  
4 approximately 1500 hours, the representative visited the facility and observed Respondent Jose  
5 Rojas ("Jose") on the premises. The surveillance operation was concluded at approximately 1657  
6 hours. Later, the representative reviewed the surveillance video and information obtained from  
7 the Bureau's vehicle information database ("VID"). The video and VID data revealed that  
8 between 1643 and 1654 hours, Jose performed a smog inspection on a 1993 Honda Civic, License  
9 No. 5DJH275, resulting in the issuance of electronic smog Certificate of Compliance No.  
10 XX295371C. In fact, Jose conducted the inspection using the exhaust emissions of a Dodge  
11 Neon, a method known as clean piping<sup>2</sup>, resulting in the issuance of a fraudulent smog certificate  
12 of compliance for the 1993 Honda Civic.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 18. Respondent Martin Rojas' registration is subject to disciplinary action pursuant to  
16 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a  
17 statement which he knew or in the exercise of reasonable care should have known to be untrue or  
18 misleading, as follows: Respondent Martin Rojas' technician, Respondent Jose Rojas, certified  
19 that the 1993 Honda Civic had passed inspection and was in compliance with applicable laws and  
20 regulations. In fact, Respondent Jose Rojas used clean piping methods in order to issue a  
21 certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code  
22 section 44012.

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26 <sup>2</sup> California Code of Regulations, title 16, section 3340, states, in pertinent part, that  
27 "[c]lean piping' for the purposes of Health and Safety Code section 44072.10(c)(1), means the  
28 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".





1 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1993  
8 Honda Civic in accordance with Health & Saf. Code sections 44012 and 44035, and California  
9 Code of Regulations, title 16, section 3340.42.

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

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1993  
14 Honda in accordance with the Bureau's specifications.

15 **EIGHTH CAUSE FOR DISCIPLINE**

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

17 25. Respondent Jose Rojas' smog technician license is subject to disciplinary action  
18 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a  
19 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog  
20 certificate of compliance for the 1993 Honda Civic without performing a bona fide inspection of  
21 the emission control devices and systems on the vehicle, thereby depriving the People of the State  
22 of California of the protection afforded by the Motor Vehicle Inspection Program.

23 **VIDEO SURVEILLANCE OPERATION OF AUGUST 12, 2013**

24 26. On August 12, 2013, from approximately 0803 to 1941 hours, a representative of the  
25 Bureau conducted a video surveillance operation of Respondent Martin Rojas' smog check  
26 facility. The surveillance video and information obtained from the Bureau's VID revealed that  
27 between 1048 and 1104 hours, Jose performed a smog inspection on a 1996 Acura Integra,  
28 License No. 4CIM843, resulting in the issuance of electronic smog Certificate of Compliance No.

1 XX413011C. In fact, Jose conducted the inspection using the exhaust emissions of a Dodge  
2 Neon, a method known as clean piping, resulting in the issuance of a fraudulent smog certificate  
3 of compliance for the 1996 Acura Integra.

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 27. Respondent Martin Rojas' registration is subject to disciplinary action pursuant to  
7 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a  
8 statement which he knew or in the exercise of reasonable care should have known to be untrue or  
9 misleading, as follows: Respondent Martin Rojas' technician, Respondent Jose Rojas, certified  
10 that the 1996 Acura Integra had passed inspection and was in compliance with applicable laws  
11 and regulations. In fact, Respondent Jose Rojas used clean piping methods in order to issue a  
12 certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code  
13 section 44012.

14 **TENTH CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 28. Respondent Martin Rojas' registration is subject to disciplinary action pursuant to  
17 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that  
18 constitutes fraud by issuing an electronic smog certificate of compliance for the 1996 Acura  
19 Integra without ensuring that a bona fide inspection was performed of the emission control  
20 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
21 protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent Martin Rojas' smog check station license is subject to disciplinary action  
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a  
5 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog  
6 certificate of compliance for the 1996 Acura Integra without ensuring that a bona fide inspection  
7 was performed of the emission control devices and systems on the vehicle, thereby depriving the  
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
9 Program.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

12 32. Respondent Jose Rojas' smog technician license is subject to disciplinary action  
13 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
14 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to  
15 perform the emission control tests on the 1996 Acura Integra in accordance with procedures  
16 prescribed by the department.

17 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

20 33. Respondent Jose Rojas' smog technician license is subject to disciplinary action  
21 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to  
22 comply with provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1996  
24 Acura Integra in accordance with Health & Saf. Code sections 44012 and 44035, and California  
25 Code of Regulations, title 16, section 3340.42.

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

1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1996  
2 Acura Integra in accordance with the Bureau's specifications.

3 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

5 34. Respondent Jose Rojas' smog technician license is subject to disciplinary action  
6 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a  
7 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog  
8 certificate of compliance for the 1996 Acura Integra without performing a bona fide inspection of  
9 the emission control devices and systems on the vehicle, thereby depriving the People of the State  
10 of California of the protection afforded by the Motor Vehicle Inspection Program.

11 **OTHER MATTERS**

12 35. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
13 suspend, revoke, or place on probation the registration for all places of business operated in this  
14 state by Respondent Martin Rojas, owner of Dinuba Smog, upon a finding that Respondent has,  
15 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining  
16 to an automotive repair dealer.

17 36. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
18 License Number TC 269789, issued to Respondent Martin Rojas, owner of Dinuba Smog, is  
19 revoked or suspended, any additional license issued under this chapter in the name of said  
20 licensee may be likewise revoked or suspended by the Director.

21 37. Pursuant to Health & Saf. Code section 44072.8, if Respondent Jose Rojas' smog  
22 technician license, currently designated as EA 634558, but upon renewal will be re-designated as  
23 EO 634558 and/or EI 634558, is revoked or suspended, any additional license issued under this  
24 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

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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 269789, issued to Martin Rojas, owner of Dinuba Smog;
2. Revoking or suspending any other automotive repair dealer registration issued to Martin Rojas;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 269789, issued to Martin Rojas, owner of Dinuba Smog;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Martin Rojas;
5. Revoking or suspending Jose Rojas' smog technician license, currently designated as EA 634558, but which, upon renewal, will be re-designated as EO 634558 and/or EI 634558;
6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jose Rojas;
7. Ordering Martin Rojas, owner of Dinuba Smog, and Jose Rojas to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
8. Taking such other and further action as deemed necessary and proper.

DATED: 2/10/14

*Pat Dorais by Doug Balatti*  
 PATRICK DORAIS  
 Chief  
 Bureau of Automotive Repair  
 Department of Consumer Affairs  
 State of California  
 Complainant  
*Doug Balatti*  
 Assit. Chief

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