

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

In the Matter of the Accusation Against:

ALBERT ANAYA
2762 Fig Street
Selma, CA 93662

Case No. 79/13-72

Advanced Emission Specialist Technician
License No. EA 634854 (to be re-designated
upon renewal as EO 634854 and/or EI 634854)

Respondent.

DECISION

The attached Stipulated Revocation of License and Order is hereby accepted
and adopted as the Decision of the Director of the Department of Consumer Affairs in
the above-entitled matter.

This Decision shall become effective

SEP 03 2013

DATED: August 8, 2013


DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 79/13-72

ALBERT ANAYA
2762 Fig Street
Selma, CA 93662

**STIPULATED REVOCATION OF
LICENSE AND ORDER**

**Advanced Emission Specialist Technician
License No. EA 634854 (to be re-designated
upon renewal as EO 634854 and/or EI
634854)**

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Jeffrey M. Phillips, Deputy Attorney General.

2. Albert Anaya (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

11

1 3. On or about October 19, 2012, the Director issued Advanced Emission Specialist
2 Technician License Number EA 634854 ("technician license") to Albert Anaya ("Respondent
3 Anaya" or "Anaya"). Respondent's technician license is currently under suspension. On May 22,
4 2013, the Office of Administrative Hearings issued an interim order pursuant to Business and
5 Professions Code section 494 suspending Respondent Anaya's technician license, which license
6 currently remains suspended. Respondent's technician license is due to expire on January 31,
7 2015. Upon renewal of the license, the license will be re-designated as EO 634854 and/or EI
8 634854.

JURISDICTION

10 4. Accusation No. 79/13-72 was filed before the Director of Consumer Affairs
11 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
12 Respondent. The Accusation and all other statutorily required documents were properly served
13 on Respondent on June 4, 2013. Respondent timely filed his Notice of Defense contesting the
14 Accusation. A copy of Accusation No. 79/13-72 is attached as Exhibit A and incorporated by
15 reference.

ADVISEMENT AND WAIVERS

17 5. Respondent has carefully read, and understands the charges and allegations in
18 Accusation No. 79/13-72. Respondent also has carefully read, and understands the effects of this
19 Stipulated Revocation of License and Order.

20 6. Respondent is fully aware of his legal rights in this matter, including the right to a
21 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
22 his own expense; the right to confront and cross-examine the witnesses against him; the right to
23 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
24 the attendance of witnesses and the production of documents; the right to reconsideration and
25 court review of an adverse decision; and all other rights accorded by the California
26 Administrative Procedure Act and other applicable laws.

27 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
28 every right set forth above.

CULPABILITY

2 8. Respondent understands that the charges and allegations in Accusation No. 79/13-72,
3 if proven at a hearing, constitute cause for imposing discipline on his Advanced Emission
4 Specialist Technician License.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation and that those charges constitute cause for discipline.
8 Respondent hereby gives up his right to contest that cause for discipline exists based on those
9 charges.

10 10. Respondent understands that by signing this stipulation he enables the Director to
11 issue his order accepting the Revocation of his Advanced Emission Specialist Technician License
12 without further process.

RESERVATION

14 11. The admissions made by Respondent herein are only for the purposes of this
15 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
16 Automotive Repair or other professional licensing agency is involved, and shall not be admissible
17 in any other criminal or civil proceeding.

CONTINGENCY

19 12. This stipulation shall be subject to approval by the Director or the Director's designee.
20 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of
21 Automotive Repair may communicate directly with the Director and staff regarding this
22 stipulation and Revocation, without notice to or participation by Respondent. By signing the
23 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
24 to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director
25 fails to adopt this stipulation as the Decision and Order, the Stipulated Revocation and
26 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
27 in any legal action between the parties, and the Director shall not be disqualified from further
28 action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Revocation of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Revocation of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Revocation of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Smog Check Technician License No. EA 634854, issued to Respondent Albert Anaya, to be re-designated upon renewal as EO 634854 and/or EI 634854, is hereby revoked and accepted by the Director of Consumer Affairs.

1. The revocation of Respondent's Smog Check Technician License and the acceptance of the revoked license by the Bureau shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Bureau of Automotive Repair.

2. Respondent shall lose all rights and privileges as a smog check technician in California as of the effective date of the Director's Decision and Order.

3. Respondent shall cause to be delivered to the Bureau his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Bureau shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in

1 Accusation No. 79/13-72 shall be deemed to be true, correct and admitted by Respondent when
2 the Director determines whether to grant or deny the petition.

3 5. Respondent shall pay the agency its costs of investigation and enforcement in the
4 amount of \$17,092.80, prior to issuance of a new or reinstated license.

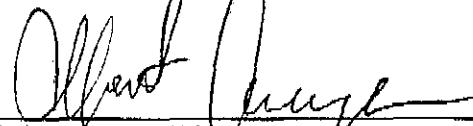
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6 ACCEPTANCE

7 I have carefully read the Stipulated Revocation of License and Order. I understand the
8 stipulation and the effect it will have on my Smog Check Technician License. I enter into this
9 Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and agree
10 to be bound by the Decision and Order of the Director of Consumer Affairs.

11

12 DATED: 7-3-13


13 ALBERT ANAYA,
14 Smog Check Technician, Respondent

15

16 ENDORSEMENT

17 The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted
18 for consideration by the Director of Consumer Affairs.

19

20 Dated: 7/5/13

21 Respectfully submitted,

22 KAMALA D. HARRIS
23 Attorney General of California
24 JANICE K. LACHMAN
25 Supervising Deputy Attorney General


26 JEFFREY M. PHILLIPS
27 Deputy Attorney General
28 Attorneys for Complainant


29
30 SA2013110919
31 Stipulation.rtf

Exhibit A

Accusation No. 79/13-72

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2 Attorney General of California
3 JANICE K. LACHMAN
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Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 79/13-72

**AA PROFESSIONAL SMOG 2
PAUL N. TORRES, OWNER
2927 N. Blackstone Avenue
Fresno, CA 93703**

ACCUSATION

(Smog Check)

15 **Automotive Repair Dealer Reg. No. ARD 263711**
16 **Smog Check, Test Only, Station License No.**
17 **TC 263711,**

17 PAUL N. TORRES
18 2927 N. Blackstone Avenue
Fresno, CA 93703

19 Smog Check Inspector License No. EO 142999
20 Smog Check Repair Technician License
No. EI 142999 (formerly Advanced Emission
Specialist Technician License No. EA 142999),

and

23 ALBERT ANAYA
2762 Fig Street
Selma, CA 93662

25 Advanced Emission Specialist Technician
License No. EA 634854 (to be re-designated
upon renewal as EO 634854 and/or EI 634854).

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **AA Professional Smog 2; Paul N. Torres, Owner**

6 2. On or about January 6, 2011, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 263711 ("registration") to Paul N. Torres
8 ("Respondent Torres" or "Torres"), owner of AA Professional Smog 2. Respondent's registration
9 is currently under suspension, as set forth in paragraph 6 below. Respondent's registration will
10 expire on January 31, 2014, unless renewed.

11 3. On or about January 13, 2011, the Director issued Smog Check, Test Only, Station
12 License Number TC 263711 ("smog check station license") to Respondent Torres. Respondent's
13 smog check station license is currently under suspension, as set forth in paragraph 6 below.
14 Respondent's smog check station license will expire on January 31, 2014, unless renewed.

15 **Paul N. Torres**

16 4. In or about 2001, the Director issued Advanced Emission Specialist Technician
17 License Number EA 142999 to Respondent Torres. Respondent's advanced emission specialist
18 technician license was due to expire on November 30, 2012. Pursuant to California Code of
19 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
20 Respondent's election, as Smog Check Inspector License Number EO 142999 and Smog Check
21 Repair Technician License Number EI 142999 ("technician licenses"), effective January 18,
22 2013.¹ Respondent's technician licenses are currently under suspension, as set forth in paragraph
23 6 below. Respondent's technician licenses will expire on November 30, 2014, unless renewed.

24 ///

25 ///

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 **Albert Anaya**

2 5. On or about October 19, 2012, the Director issued Advanced Emission Specialist
3 Technician License Number EA 634854 ("technician license") to Albert Anaya ("Respondent
4 Anaya" or "Anaya"). Respondent's technician license is currently under suspension, as set forth
5 in paragraph 6 below. Respondent's technician license is due to expire on January 31, 2015.
6 Upon renewal of the license, the license will be re-designated as EO 634854 and/or EI 634854.

7 **Interim Suspension Order**

8 6. On May 22, 2013, following a hearing in the disciplinary proceeding entitled "In the
9 Matter of the Interim Suspension Order Against: AA Professional Smog 2", et al., the Office of
10 Administrative Hearings issued an interim order pursuant to Business and Professions Code
11 ("Bus. & Prof. Code") section 494 suspending Respondent Torres' registration, smog check
12 station license, and technician licenses, and Respondent Anaya's technician license until the
13 within Accusation is filed and a decision is issued thereon.

14 **JURISDICTION**

15 7. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an
16 automotive repair dealer registration.

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

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

24 10. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
25 suspension of a license by operation of law, or by order or decision of the Director of Consumer
26 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
27 of jurisdiction to proceed with disciplinary action.

28 //

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

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

8 **STATUTORY PROVISIONS**

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

10 (a) The director, where the automotive repair dealer cannot show there
11 was a bona fide error, may deny, suspend, revoke or place on probation the
12 registration of an automotive repair dealer for any of the following acts or omissions
13 related to the conduct of the business of the automotive repair dealer, which are done
14 by the automotive repair dealer or any automotive technician, employee, partner,
15 officer, or member of the automotive repair dealer.

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

19 (4) Any other conduct that constitutes fraud.

20 (6) Failure in any material respect to comply with the provisions of this
21 chapter or regulations adopted pursuant to it.

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

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

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

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

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

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

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

10

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

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

15

16 (f) Aids or abets unlicensed persons to evade the provisions of this
17 chapter . . .

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

19

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

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

25

26 (4) Intentional or willful violation of this chapter or any regulation,
27 standard, or procedure of the department implementing this chapter . . .

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

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32 ///

33 ///

COST RECOVERY

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

FRAUDULENT CERTIFICATE #1

7 20. On October 24, 2012, a representative of the Bureau, acting in an undercover capacity
8 ("operator"), took the Bureau's 1990 Chevrolet pickup to Respondent Torres' facility. Upon
9 arrival, the operator observed an unknown female operating the EIS (Emissions Inspection
10 System). A Honda Civic was on the dynamometer in the smog check bay, but the EIS exhaust
11 sample probe was inserted in the tailpipe of a different vehicle, which was parked close to the
12 door of the shop. The operator met with Torres and requested a smog inspection on the 1990
13 Chevrolet. The operator then told Torres that his son was going to college in Oregon and was
14 using the operator's 1993 GMC pickup, that the vehicle needed a smog inspection for registration
15 purposes, and that he wanted someone to perform the inspection without the vehicle present,
16 using the information on the DMV renewal form. The operator stated that he still wanted a smog
17 check on the 1990 Chevrolet. Torres performed the inspection on the vehicle and informed the
18 operator that it had passed. The operator paid Torres \$58 and received copies of an estimate,
19 invoice, and vehicle inspection report ("VIR"). The operator asked Torres if he would
20 recommend someone who could help him with the smog inspection on the 1993 GMC. Torres
21 told the operator to come back on Saturday and they "would talk about it". The operator asked
22 Torres how much it would cost if he should decide to help out the operator. Torres replied
23 "\$250".

24 21. On October 27, 2012, the operator took the 1990 Chevrolet to the facility and met
25 with a man, who identified himself as "Alberto" (Respondent Anaya told the operator during the
26 undercover operation described in paragraphs 64 through 66 below that Alberto was not a
27 licensed smog check technician). The operator told Alberto about his conversation with Torres.
28 Alberto informed the operator that Torres was not at the facility. Alberto then told the operator

1 that he could perform the smog inspection, but it would cost the operator \$300. The operator
2 gave Alberto the DMV registration renewal notice for the Bureau's 1993 GMC. Alberto asked
3 the operator if the 1990 Chevrolet had passed the smog inspection performed by Torres. The
4 operator indicated that the vehicle had passed. Alberto drove the 1990 Chevrolet into the
5 inspection bay. The operator observed Alberto enter the information from the renewal form into
6 the EIS, insert the exhaust sample probe into the tailpipe of the 1990 Chevrolet, and perform the
7 smog inspection. After the inspection was completed, the operator paid Alberto \$300 in cash and
8 received copies of an estimate, Invoice No. [REDACTED] and a VIR. The VIR indicated that the 1993
9 GMC had passed the inspection. The operator told Alberto that he would return the following
10 month to get another vehicle certified and left the facility.

11 22. Later, the Bureau obtained information from the vehicle information database
12 ("VID") showing that Torres had performed a smog inspection on the 1993 GMC on October 27,
13 2012, between 1017 and 1026 hours, resulting in the issuance of electronic smog Certificate of
14 Compliance No. [REDACTED] The Bureau determined that Alberto had conducted the smog
15 inspection on the 1993 GMC using the exhaust tailpipe readings from the 1990 Chevrolet, a
16 method known as clean piping², resulting in the issuance of a fraudulent certificate of compliance
17 for the 1993 GMC.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

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

24 a. Respondent's unlicensed technician, Alberto, certified that the Bureau's 1993 GMC
25 had passed the smog inspection and was in compliance with applicable laws and regulations. In

26 _____
27 ² Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping"
28 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.

1 fact, Alberto used clean piping methods in order to issue a certificate for the vehicle and did not
2 test or inspect the vehicle as required by Health & Saf. Code section 44012.

3 b. Respondent's unlicensed technician, Alberto, certified that Respondent performed the
4 smog inspection on the Bureau's 1993 GMC when, in fact, Alberto accessed the EIS using
5 Respondent's confidential access code and conducted the inspection on the vehicle using clean
6 piping methods, as set forth above.

7 c. Respondent or his unlicensed technician, Alberto, represented on Invoice No. [REDACTED]
8 that the operator had paid \$58 for the smog inspection on the Bureau's 1993 GMC. In fact, the
9 operator had paid Alberto \$300 for the inspection.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 24. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
13 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
14 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1993
15 GMC without ensuring that a bona fide inspection was performed of the emission control devices
16 and systems on the vehicle, thereby depriving the People of the State of California of the
17 protection afforded by the Motor Vehicle Inspection Program.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Violations of the Bus. & Prof. Code)**

20 25. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
21 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section
22 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent and his
23 unlicensed technician, Alberto, failed to provide the operator with written estimates before
24 performing the smog inspections described in paragraphs 20 to 22 above.

25 ///

26 ///

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FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

3 26. Respondent Torres' smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
5 comply with provisions of that Code, as follows:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on the Bureau's 1993 GMC in accordance with procedures prescribed by the
8 department.

9 b. **Section 44014:** Respondent allowed his unlicensed technician, Alberto, to perform a
10 smog inspection on the Bureau's 1993 GMC using cleaning piping methods, as set forth above.

11 c. Section 44015: Respondent issued an electronic smog certificate of compliance for
12 the Bureau's 1993 GMC without ensuring that the vehicle was properly tested and inspected to
13 determine if it was in compliance with Health & Saf. Code section 44012.

FIFTH CAUSE FOR DISCIPLINE

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

17 27. Respondent Torres' smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
19 comply with provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
21 of compliance for the Bureau's 1993 GMC even though the vehicle had not been inspected in
22 accordance with section 3340.42.

23 b. **Section 3340.41, subdivision (b):** Respondent permitted his unlicensed technician,
24 Alberto, to access the EIS using Respondent's confidential access code and to enter false
25 information into the unit concerning the identity of the person performing the alleged smog
26 inspection on the Bureau's 1993 GMC.

27 //

28 | //

1 c. **Section 3340.41, subdivision (c):** Respondent permitted his unlicensed technician,
2 Alberto, to enter false information into the EIS by entering vehicle identification information or
3 emission control system identification data for a vehicle other than the one being tested.

4 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
5 conducted on the Bureau's 1993 GMC in accordance with the Bureau's specifications.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

8 28. Respondent Torres' smog check station license is subject to disciplinary action
9 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
10 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
11 certificate of compliance for the Bureau's 1993 GMC without ensuring that a bona fide inspection
12 was performed of the emission control devices and systems on the vehicle, thereby depriving the
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program.

SEVENTH CAUSE FOR DISCIPLINE

(Aiding or Abetting Unlicensed Persons)

17 29. Respondent Torres' smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and
19 abetted his unlicensed technician, Alberto, to evade the provisions of the Motor Vehicle
20 Inspection Program, as set forth above.

EIGHTH CAUSE FOR DISCIPLINE

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

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

27 a. **Section 3340.41, subdivision (b):** Respondent permitted Alberto to access the EIS
28 using Respondent's confidential access code and to enter false information into the unit

1 concerning the identity of the person performing the alleged smog tests on the Bureau's 1993
2 GMC.

3 b. **Section 3340.41, subdivision (c):** Respondent permitted Alberto to enter false
4 information into the EIS by entering vehicle identification information or emission control system
5 identification data for a vehicle other than the one being tested.

NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

8 31. Respondent Torres' technician license(s) are subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
10 fraudulent or deceitful act whereby another is injured, as follows: Respondent permitted Alberto
11 to access the EIS using Respondent's confidential access code, thereby enabling Alberto to
12 conduct a smog inspection on the Bureau's 1993 GMC using clean piping methods, resulting in
13 the issuance of a fraudulent certificate of compliance for the vehicle. Consequently, a bona fide
14 inspection was not performed of the emission control devices and systems on the vehicle, thereby
15 depriving the People of the State of California of the protection afforded by the Motor Vehicle
16 Inspection Program.

TENTH CAUSE FOR DISCIPLINE

(Aiding or Abetting Unlicensed Persons)

19 32. Respondent Torres' technician license(s) are subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and abetted his
21 unlicensed technician, Alberto, to evade the provisions of the Motor Vehicle Inspection Program,
22 as set forth above.

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FRAUDULENT CERTIFICATE #2

33. On November 7, 2012, the operator took the Bureau's 1990 Chevrolet to Respondent Torres' facility and met with a man, who identified himself as "Junior" (Respondent Anaya told the operator during the undercover operation described in paragraphs 64 through 66 below that "Junior" (Chavez) was not a licensed smog check technician). The operator explained to Junior that Alberto had helped him with a smog certification on a 1993 GMC pickup and had told him to return if he needed another certificate. Junior informed the operator that Alberto was not at the facility and asked the operator if he could help him. The operator stated that he needed smog certificates for a Honda and a Buick. Junior told the operator that he "could do the Honda" for \$250, but the operator would have to wait "to get the Buick done" later. The operator gave Junior the DMV registration renewal notice for the Bureau's 1994 Honda and left the facility.

34. On November 8, 2012, at approximately 1145 hours, Junior called the operator and asked him for the 1994 Honda's odometer reading. Junior also asked about the size of the motor and whether the vehicle had an EGR (exhaust gas recirculation) valve. The operator told Junior that he would have to obtain the information. Junior stated that he would call back in an hour.

35. At approximately 1247 hours that same day, the operator received a call from Junior and gave him the information on the vehicle.

36. At approximately 1330 hours, Junior contacted the operator and told him that the smog inspection was completed.

37. At approximately 1355 hours, the operator returned to the facility, paid Junior \$250 in cash, and was given the DMV renewal notice for the 1994 Honda as well as a VIR. The VIR indicated that the 1994 Honda had passed the inspection. The operator then gave Junior the renewal notice for the Bureau's 1984 Buick and asked him if he could obtain a smog certificate for the vehicle. Junior told the operator that it would be a week or so before he could do the inspection and that the cost would be same as the Honda; i.e., \$250.

38. Later, the Bureau obtained information from the VID showing that Torres had performed a smog inspection on the 1994 Honda on November 8, 2012, between 1208 and 1213 hours, resulting in the issuance of electronic smog Certificate of Compliance No. [REDACTED].

1 The VID data also showed that the vehicle information which had been entered into the EIS had
2 been obtained, in part, by scanning the DMV renewal form. The Bureau determined that the
3 smog inspection had been conducted on the 1994 Honda using clean piping methods, resulting in
4 the issuance of a fraudulent certificate of compliance for the vehicle.

5 39. On January 22, 2013, Torres came into the Bureau's Fresno Field Office,
6 accompanied by Junior, and met with Bureau Representatives G.S. and A.L. G.S. asked Junior
7 for his legal name. Junior told G.S. that his name was Faustino Molinar Chavez ("Chavez").
8 G.S. informed Torres the Bureau had evidence indicating that Chavez was selling and performing
9 illegal smog check inspections. Torres admitted that he was aware his employees had obtained
10 his confidential access code and were performing smog check inspections using his access code,
11 that he should have notified the Bureau that his access code had been compromised, but had
12 failed to do so, and that he also performed illegal smog check inspections using clean piping
13 methods for extra cash due to hard times.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

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

20 a. Respondent's unlicensed technician, Chavez, certified that the Bureau's 1994 Honda
21 had passed the smog inspection and was in compliance with applicable laws and regulations. In
22 fact, Chavez used clean piping methods in order to issue a certificate for the vehicle and did not
23 test or inspect the vehicle as required by Health & Saf. Code section 44012. Further, the vehicle's
24 exhaust emissions were at gross polluter levels³; the vehicle had been illegally modified in that it
25 had an unapproved exhaust header, an unapproved intake manifold, a Nitrous Oxide system,

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27 ³ Pursuant to Health & Safety Code section 39032.5, "gross polluter" means a vehicle
28 with excess hydrocarbon, carbon monoxide, or oxides of nitrogen (NOX) emissions as
established by the department in consultation with the state board.

1 adjustable timing gears, an adjustable fuel pressure regulator, a cold air intake tube, and an open
2 PCV (positive crankcase ventilation) system; and the catalytic converter was missing. As such,
3 the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

4 b. Respondent's unlicensed technician, Chavez, certified that Respondent performed the
5 smog inspection on the Bureau's 1994 Honda when, in fact, Chavez accessed the EIS using
6 Respondent's confidential access code and conducted the inspection on the vehicle using clean
7 piping methods, as set forth above.

TWELFTH CAUSE FOR DISCIPLINE

(Fraud)

10 41. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
11 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
12 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1994
13 Honda without ensuring that a bona fide inspection was performed of the emission control
14 devices and systems on the vehicle, thereby depriving the People of the State of California of the
15 protection afforded by the Motor Vehicle Inspection Program.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

18 42. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
19 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
20 provisions of that Code in the following material respects:

21 a. **Section 9884.8:** Respondent's unlicensed technician, Chavez, failed to provide the
22 operator with an invoice for the smog inspection on the Bureau's 1994 Honda.

23 b. Section 9884.9, subdivision (a): Respondent's unlicensed technician, Chavez, failed
24 to provide the operator with a written estimate for the smog inspection on the Bureau's 1994
25 Honda.

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FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

3 43. Respondent Torres' smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
5 comply with provisions of that Code, as follows:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on the Bureau's 1994 Honda in accordance with procedures prescribed by the
8 department.

9 b. **Section 44014:** Respondent allowed his unlicensed technician, Chavez, to perform a
10 smog inspection on the Bureau's 1994 Honda using cleaning piping methods, as set forth above.

11 c. Section 44015: Respondent issued an electronic smog certificate of compliance for
12 the Bureau's 1994 Honda without ensuring that the vehicle was properly tested and inspected to
13 determine if it was in compliance with Health & Saf. Code section 44012.

FIFTEENTH CAUSE FOR DISCIPLINE

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

17 44. Respondent Torres' smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
19 comply with provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
21 of compliance for the Bureau's 1994 Honda even though the vehicle had not been inspected in
22 accordance with section 3340.42.

23 b. **Section 3340.41, subdivision (b):** Respondent permitted his unlicensed technician,
24 Chavez, to access the EIS using Respondent's confidential access code and to enter false
25 information into the unit concerning the identity of the person performing the alleged smog
26 inspection on the Bureau's 1994 Honda.

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1 c. **Section 3340.41, subdivision (c):** Respondent permitted his unlicensed technician,
2 Chavez, to enter false information into the EIS by entering vehicle identification information or
3 emission control system identification data for a vehicle other than the one being tested.

4 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
5 conducted on the Bureau's 1994 Honda in accordance with the Bureau's specifications.

6 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

8 45. Respondent Torres' smog check station license is subject to disciplinary action
9 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
10 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
11 certificate of compliance for the Bureau's 1994 Honda without ensuring that a bona fide
12 inspection was performed of the emission control devices and systems on the vehicle, thereby
13 depriving the People of the State of California of the protection afforded by the Motor Vehicle
14 Inspection Program.

15 **SEVENTEENTH CAUSE FOR DISCIPLINE**

16 **(Aiding or Abetting Unlicensed Persons)**

17 46. Respondent Torres' smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and
19 abetted his unlicensed technician, Chavez, to evade the provisions of the Motor Vehicle
20 Inspection Program, as set forth above.

21 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

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

27 a. **Section 3340.41, subdivision (b):** Respondent permitted Chavez to access the EIS
28 using Respondent's confidential access code and to enter false information into the unit

1 concerning the identity of the person performing the alleged smog tests on the Bureau's 1994
2 Honda.

3 b. **Section 3340.41, subdivision (c):** Respondent permitted Chavez to enter false
4 information into the EIS by entering vehicle identification information or emission control system
5 identification data for a vehicle other than the one being tested.

6 **NINETEENTH CAUSE FOR DISCIPLINE**

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

8 48. Respondent Torres' technician license(s) are subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
10 fraudulent or deceitful act whereby another is injured, as follows: Respondent permitted Chavez
11 to access the EIS using Respondent's confidential access code, thereby enabling Chavez to
12 conduct a smog inspection on the Bureau's 1994 Honda using clean piping methods, resulting in
13 the issuance of a fraudulent certificate of compliance for the vehicle. Consequently, a bona fide
14 inspection was not performed of the emission control devices and systems on the vehicle, thereby
15 depriving the People of the State of California of the protection afforded by the Motor Vehicle
16 Inspection Program.

17 **TWENTIETH CAUSE FOR DISCIPLINE**

18 **(Aiding or Abetting Unlicensed Persons)**

19 49. Respondent Torres' technician license(s) are subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and abetted
21 unlicensed technician, Chavez, to evade the provisions of the Motor Vehicle Inspection Program,
22 as set forth above.

23 **FRAUDULENT CERTIFICATE #3**

24 50. Complainant incorporates by reference as though fully set forth herein the allegations
25 contained in paragraphs 33, 37, and 39 above.

26 51. On November 9, 2012, at approximately 1100 hours, Chavez called the operator and
27 asked him for the engine size and odometer reading on the 1984 Buick. The operator told Chavez
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1 that he would have to call him back. Later, the operator contacted Junior and provided him with
2 the information on the vehicle.

3 52. At approximately 1630 hours that same day, the operator received a call from Junior,
4 informing him that the smog inspection for the 1984 Buick had been completed. At
5 approximately 1745 hours, the operator took the Bureau's 1990 Chevrolet to Respondent Torres'
6 facility and met with Junior. The operator observed Torres on the premises. Torres got into a
7 vehicle with an unidentified woman and left the facility. The operator paid Junior \$250 in cash
8 and was given the DMV renewal notice for the 1984 Buick as well as a VIR. The VIR indicated
9 that the 1984 Buick had passed the inspection.

10 53. Later, the Bureau obtained information from the VID showing that Torres had
11 performed a smog inspection on the 1984 Buick on November 9, 2012, between 1711 and 1723
12 hours, resulting in the issuance of electronic smog Certificate of Compliance No. [REDACTED]
13 The VID data also showed that the vehicle information which had been entered into the EIS had
14 been obtained, in part, by scanning the DMV renewal form. The Bureau determined that the
15 smog inspection had been conducted on the 1984 Buick using clean piping methods, resulting in
16 the issuance of a fraudulent certificate of compliance for the vehicle.

17 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

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

23 a. Respondent's unlicensed technician, Chavez, certified that the Bureau's 1984 Buick
24 had passed the smog inspection and was in compliance with applicable laws and regulations. In
25 fact, Chavez used clean piping methods in order to issue a certificate for the vehicle and did not
26 test or inspect the vehicle as required by Health & Saf. Code section 44012.

27 b. Respondent's unlicensed technician, Chavez, certified that Respondent performed the
28 smog inspection on the Bureau's 1984 Buick when, in fact, Chavez accessed the EIS using

1 Respondent's confidential access code and conducted the inspection on the vehicle using clean
2 piping methods, as set forth above.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Fraud)

5 55. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
6 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
7 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1984
8 Buick without ensuring that a bona fide inspection was performed of the emission control devices
9 and systems on the vehicle, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

13 56. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
14 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
15 provisions of that Code in the following material respects:

16 a. **Section 9884.8:** Respondent's unlicensed technician, Chavez, failed to provide the
17 operator with an invoice for the smog inspection on the Bureau's 1984 Buick.

18 b. **Section 9884.9, subdivision (a):** Respondent's unlicensed technician, Chavez, failed
19 to provide the operator with a written estimate for the smog inspection on the Bureau's 1984
20 Buick.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

23 57. Respondent Torres' smog check station license is subject to disciplinary action
24 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
25 comply with provisions of that Code, as follows:

26 a. Section 44012: Respondent failed to ensure that the emission control tests were
27 performed on the Bureau's 1984 Buick in accordance with procedures prescribed by the
28 department.

1 b. Section 44014: Respondent allowed his unlicensed technician, Chavez, to perform a
2 smog inspection on the Bureau's 1984 Buick using cleaning piping methods, as set forth above.

3 c. Section 44015: Respondent issued an electronic smog certificate of compliance for
4 the Bureau's 1984 Buick without ensuring that the vehicle was properly tested and inspected to
5 determine if it was in compliance with Health & Saf. Code section 44012.

6 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Regulations Pursuant**

8 **to the Motor Vehicle Inspection Program)**

9 58. Respondent Torres' smog check station license is subject to disciplinary action
10 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
11 comply with provisions of California Code of Regulations, title 16, as follows:

12 a. Section 3340.35, subdivision (c): Respondent issued an electronic smog certificate
13 of compliance for the Bureau's 1984 Buick even though the vehicle had not been inspected in
14 accordance with section 3340.42.

15 b. Section 3340.41, subdivision (b): Respondent permitted his unlicensed technician,
16 Chavez, to access the EIS using Respondent's confidential access code and to enter false
17 information into the unit concerning the identity of the person performing the alleged smog
18 inspection on the Bureau's 1984 Buick.

19 c. Section 3340.41, subdivision (c): Respondent permitted his unlicensed technician,
20 Chavez, to enter false information into the EIS by entering vehicle identification information or
21 emission control system identification data for a vehicle other than the one being tested.

22 d. Section 3340.42: Respondent failed to ensure that the required smog tests were
23 conducted on the Bureau's 1984 Buick in accordance with the Bureau's specifications.

24 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

26 59. Respondent Torres' smog check station license is subject to disciplinary action
27 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
28 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog

1 certificate of compliance for the Bureau's 1984 Buick without ensuring that a bona fide inspection
2 was performed of the emission control devices and systems on the vehicle, thereby depriving the
3 People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

6 **(Aiding or Abetting Unlicensed Persons)**

7 60. Respondent Torres' smog check station license is subject to disciplinary action
8 pursuant to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and
9 abetted his unlicensed technician, Chavez, to evade the provisions of the Motor Vehicle
10 Inspection Program, as set forth above.

11 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

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

17 a. **Section 3340.41, subdivision (b):** Respondent permitted Chavez to access the EIS
18 using Respondent's confidential access code and to enter false information into the unit
19 concerning the identity of the person performing the alleged smog tests on the Bureau's 1984
20 Buick.

21 b. **Section 3340.41, subdivision (c):** Respondent permitted Chavez to enter false
22 information into the EIS by entering vehicle identification information or emission control system
23 identification data for a vehicle other than the one being tested.

24 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

26 62. Respondent Torres' technician license(s) are subject to disciplinary action pursuant to
27 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
28 fraudulent or deceitful act whereby another is injured, as follows: Respondent permitted Chavez

1 to access the EIS using Respondent's confidential access code, thereby enabling Chavez to
2 conduct a smog inspection on the Bureau's 1984 Buick using clean piping methods, resulting in
3 the issuance of a fraudulent certificate of compliance for the vehicle. Consequently, a bona fide
4 inspection was not performed of the emission control devices and systems on the vehicle, thereby
5 depriving the People of the State of California of the protection afforded by the Motor Vehicle
6 Inspection Program.

7 **THIRTIETH CAUSE FOR DISCIPLINE**

8 **(Aiding or Abetting Unlicensed Persons)**

9 63. Respondent Torres' technician license(s) are subject to disciplinary action pursuant to
10 Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and abetted
11 unlicensed technician, Chavez, to evade the provisions of the Motor Vehicle Inspection Program,
12 as set forth above.

13 **FRAUDULENT CERTIFICATE #4**

14 64. On January 11, 2013, the operator took the Bureau's 1990 Chevrolet to Respondent
15 Torres' facility and met with Respondent Anaya. The operator told Anaya that he was looking for
16 Alberto or Junior (Chavez). Anaya stated that neither gentleman was present at the facility and
17 asked the operator what he needed. The operator told Anaya that Alberto and Junior had sold him
18 smog certifications in the past and that he needed another certificate. Anaya stated that Alberto
19 and Junior were not licensed smog check technicians and "could not do smogs", that Anaya was
20 the only licensed technician at the facility, and that it would cost the operator \$300 if he wanted to
21 "buy a smog". The operator gave Anaya the DMV registration renewal notice for the Bureau's
22 1986 Oldsmobile and told him that he needed a certificate for the vehicle. Anaya stated that he
23 would have the vehicle "smogged" in about an hour and requested \$300 in advance. The operator
24 paid Anaya \$300 and left the facility.

25 65. At approximately 1508 hours that same day, Anaya called the operator and told him
26 that he could come in and pick up the paperwork. At approximately 1515 hours, the operator
27 took the 1990 Chevrolet to the facility and met with Anaya. Anaya gave the operator the renewal
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1 notice for the 1986 Oldsmobile and a VIR. The VIR indicated that the 1986 Oldsmobile had
2 passed the inspection.

3 66. Later, the Bureau obtained information from the VID showing that Anaya had
4 performed a smog inspection on the 1986 Oldsmobile on January 11, 2013, between 1456 and
5 1509 hours, resulting in the issuance of electronic smog Certificate of Compliance No.

6 [REDACTED] The VID data also showed that the vehicle information which had been entered into
7 the EIS had been obtained, in part, by scanning the DMV renewal form. The Bureau determined
8 that Anaya had performed the smog inspection on the 1986 Oldsmobile using clean piping
9 methods, resulting in the issuance of a fraudulent certificate of compliance for the vehicle.

THIRTY-FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

12 67. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
13 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement
14 which he knew or in the exercise of reasonable care should have known to be untrue or
15 misleading, as follows: Respondent Torres' smog check technician, Respondent Anaya, certified
16 that the Bureau's 1986 Oldsmobile had passed inspection and was in compliance with applicable
17 laws and regulations. In fact, Anaya used clean piping methods in order to issue a certificate for
18 the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section
19 44012.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Fraud)

22 68. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
23 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
24 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1986
25 Oldsmobile without ensuring that a bona fide inspection was performed of the emission control
26 devices and systems on the vehicle, thereby depriving the People of the State of California of the
27 protection afforded by the Motor Vehicle Inspection Program.

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THIRTY-THIRD CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

3 69. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
5 provisions of that Code in the following material respects:

6 a. **Section 9884.8:** Respondent Torres' smog check technician, Respondent Anaya,
7 failed to provide the operator with an invoice for the smog inspection on the Bureau's 1986
8 Oldsmobile.

9 b. Section 9884.9, subdivision (a): Respondent Torres' smog check technician,
10 Respondent Anaya, failed to provide the operator with a written estimate for the smog inspection
11 on the Bureau's 1986 Oldsmobile.

THIRTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

14 70. Respondent Torres' smog check station license is subject to disciplinary action
15 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
16 comply with provisions of that Code, as follows:

17 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
18 performed on the Bureau's 1986 Oldsmobile in accordance with procedures prescribed by the
19 department.

20 b. Section 44015: Respondent issued an electronic smog certificate of compliance for
21 the Bureau's 1986 Oldsmobile without ensuring that the vehicle was properly tested and inspected
22 to determine if it was in compliance with Health & Saf. Code section 44012.

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THIRTY-FIFTH CAUSE FOR DISCIPLINE

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

71. Respondent Torres' smog check station 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 3340.35, subdivision (c):** Respondent issued an electronic smog certificate of compliance for the Bureau's 1986 Oldsmobile even though the vehicle had not been inspected in accordance with section 3340.42.

b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were conducted on the Bureau's 1986 Oldsmobile in accordance with the Bureau's specifications.

THIRTY-SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

72. Respondent Torres' 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 1986 Oldsmobile 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.

THIRTY-SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

73. Respondent Anaya'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, as follows: Respondent failed to perform the emission control tests on the Bureau's 1986 Oldsmobile in accordance with procedures prescribed by the department.

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THIRTY-EIGHT CAUSE FOR DISCIPLINE

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

74. Respondent Anaya'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 failed to inspect and test the Bureau's 1986 Oldsmobile 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 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 failed to conduct the required smog tests on the Bureau's 1986 Oldsmobile in accordance with the Bureau's specifications.

THIRTY-NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

75. Respondent Anaya'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 1986 Oldsmobile 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.

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FRAUDULENT CERTIFICATE #5

2 76. On January 15, 2013, at approximately 1150 hours, the operator called Respondent
3 Anaya (on Anaya's cell phone) and asked him if he would provide the operator with another smog
4 certificate. Anaya stated that he could, then asked the operator to text him the license plate
5 number and information for the vehicle. The operator texted the information to Anaya as
6 requested.

7 77. At approximately 1210 hours that same day, the operator drove the Bureau's 1990
8 Chevrolet to Respondent Torres' facility and met with Anaya. The operator gave Anaya the
9 DMV registration renewal notice for a Bureau-documented 1993 Toyota as well as \$300 in cash
10 to pay for the certificate. The operator observed Torres at the facility, washing a vehicle. Anaya
11 told the operator to come back in an hour and he would have the paperwork ready.

12 78. At approximately 1445 hours, Anaya called the operator and told him that he could
13 come in and pick up the paperwork.

14 79. At approximately 1450 hours, the operator took the 1990 Chevrolet to the facility and
15 met with Anaya. Anaya gave the operator the renewal notice for the Bureau's 1993 Toyota,
16 Invoice No. [REDACTED] and a VIR. The VIR indicated that the 1993 Toyota had passed the
17 inspection.

18 80. Later, the Bureau obtained information from the VID showing that Anaya had
19 performed two smog inspections on the 1993 Toyota on January 15, 2013, between 1315 and
20 1338 hours. The first inspection on the vehicle was aborted. The second inspection showed that
21 a certificate had been issued for the vehicle, electronic smog Certificate of Compliance No.

22 [REDACTED] The VID data also showed that the vehicle information which had been entered into
23 the EIS had been obtained, in part, by scanning the DMV renewal form. The Bureau determined
24 that Anaya had performed the smog inspection on the 1993 Toyota using clean piping methods,
25 resulting in the issuance of a fraudulent certificate of compliance for the vehicle.

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FORTIETH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

7 a. Respondent Torres' smog check technician, Respondent Anaya, certified that the
8 Bureau's 1993 Toyota had passed inspection and was in compliance with applicable laws and
9 regulations. In fact, Anaya used clean piping methods in order to issue a certificate for the
10 vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.
11 Further, certain pulse air injection system components had been removed from the vehicle and as
12 such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

13 b. Respondent Torres or his smog check technician, Respondent Anaya, represented on
14 Invoice No. [REDACTED] that the operator had paid \$58 for the smog inspection on the Bureau's 1993
15 Toyota. In fact, the operator had paid Anaya \$300 for the inspection.

FORTY-FIRST CAUSE FOR DISCIPLINE

(Fraud)

18 82. Respondent Torres' registration is subject to disciplinary action pursuant to Bus. &
19 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
20 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1993
21 Toyota without ensuring that a bona fide inspection was performed of the emission control
22 devices and systems on the vehicle, thereby depriving the People of the State of California of the
23 protection afforded by the Motor Vehicle Inspection Program.

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FORTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

83. Respondent Torres' 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 provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on the Bureau's 1993 Toyota in accordance with procedures prescribed by the department.

b. Section 44015: Respondent issued an electronic smog certificate of compliance for the Bureau's 1993 Toyota without ensuring that the vehicle was properly tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

FORTY-THIRD CAUSE FOR DISCIPLINE

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

84. Respondent Torres' smog check station 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 3340.35, subdivision (c):** Respondent issued an electronic smog certificate of compliance for the Bureau's 1993 Toyota even though the vehicle had not been inspected in accordance with section 3340.42.

b. Section 3340.42: Respondent failed to ensure that the required smog tests were conducted on the Bureau's 1993 Toyota in accordance with the Bureau's specifications.

FORTY-FOUR CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

85. Respondent Torres' 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 1993 Toyota without ensuring that a bona fide

1 inspection was performed of the emission control devices and systems on the vehicle, thereby
2 depriving the People of the State of California of the protection afforded by the Motor Vehicle
3 Inspection Program.

FORTY-FIFTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

6 86. Respondent Anaya's technician license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
8 section 44012 of that Code, as follows: Respondent failed to perform the emission control tests
9 on the Bureau's 1993 Toyota in accordance with procedures prescribed by the department.

FORTY-SIXTH CAUSE FOR DISCIPLINE

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

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

16 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the Bureau's
17 1993 Toyota in accordance with Health & Saf. Code sections 44012 and 44035, and California
18 Code of Regulations, title 16, section 3340.42.

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

22 c. Section 3340.42: Respondent failed to conduct the required smog tests on the
23 Bureau's 1993 Toyota in accordance with the Bureau's specifications.

FORTY-SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

1 compliance for the Bureau's 1993 Toyota without performing a bona fide inspection of the
2 emission control devices and systems on the vehicle, thereby depriving the People of the State of
3 California of the protection afforded by the Motor Vehicle Inspection Program.

4 **MATTERS IN AGGRAVATION**

5 89. To determine the degree of discipline, if any, to be imposed on Respondent Torres,
6 Complainant alleges as follows:

7 a. On or about March 23, 2012, the Bureau issued Citation No. C2012-1273 against
8 Respondent Torres, in his capacity as owner of AA Professional Smog 2, for violating Health &
9 Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
10 control devices according to procedures prescribed by the department). On February 21, 2012,
11 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a non-
12 functional EGR valve. The Bureau assessed civil penalties totaling \$1,000 against Respondent
13 for the violations. Respondent paid the fine on May 23, 2012.

14 b. On or about March 26, 2002, the Bureau issued Citation No. M02-0778 against
15 Respondent Torres' technician license for violations of Health & Saf. Code section 44032 (failure
16 to determine that emission control devices and systems required by State and Federal law are
17 installed and functioning correctly in accordance with test procedures); and California Code of
18 Regulations , title 16, section ("Regulation") 3340.30, subdivision (a) (failure to inspect vehicles
19 in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). On
20 March 12, 2002, Respondent had issued a certificate of compliance to a Bureau undercover
21 vehicle with incorrect ignition timing. Respondent was directed to complete an 8 hour training
22 course and to submit proof of completion to the Bureau within 30 days from receipt of the
23 citation. Respondent completed the training on April 20, 2002.

24 c. On or about March 23, 2012, the Bureau issued Citation No. M2012-1274 against
25 Respondent Torres' technician license for violating Health & Saf. Code section 44032 (qualified
26 technicians shall perform tests of emission control systems and devices in accordance with Health
27 & Saf. Code section 44012). On February 21, 2012, Respondent had issued a certificate of
28 compliance to a Bureau undercover vehicle with a non-functional EGR valve. Respondent was

1 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
2 within 30 days from receipt of the citation. Respondent has failed to comply with the citation.

OTHER MATTERS

4 90. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
5 suspend, revoke or place on probation the registration for all places of business operated in this
6 state by Respondent Paul N. Torres, owner of AA Professional Smog 2, upon a finding that said
7 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
8 regulations pertaining to an automotive repair dealer.

9 91. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
10 License Number TC 263711, issued to Respondent Paul N. Torres, owner of AA Professional
11 Smog 2, is revoked or suspended, any additional license issued under this chapter in the name of
12 said licensee may be likewise revoked or suspended by the Director.

13 92. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
14 Number EO 142999 and Smog Check Repair Technician License No. EI 142999, issued to
15 Respondent Paul N. Torres, is revoked or suspended, any additional license issued under this
16 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

17 93. Pursuant to Health & Saf. Code section 44072.8, if Respondent Albert Anaya's
18 technician license, currently designated as EA 634854, but upon renewal will be re-designated as
19 EO 634854 and/or EI 634854, is revoked or suspended, any additional license issued under this
20 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

24 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
25 263711, issued to Paul N. Torres, owner of AA Professional Smog 2;

26 2. Revoking or suspending any other automotive repair dealer registration issued to Paul
27 N. Torres;

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- 1 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
2 263711, issued to Paul N. Torres, owner of AA Professional Smog 2;
3 4. Revoking or suspending Smog Check Inspector License Number EO 142999 and
4 Smog Check Repair Technician License No. EI 142999, issued to Paul N. Torres;
5 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Paul N. Torres;
7 6. Revoking or suspending Albert Anaya's smog technician license, currently designated
8 as EA 634854, but which, upon renewal, will be re-designated as EO 634854 and/or EI 634854;
9 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
10 and Safety Code in the name of Albert Anaya;
11 8. Ordering Paul N. Torres, individually, and as owner of AA Professional Smog 2, and
12 Albert Anaya to pay the Bureau of Automotive Repair the reasonable costs of the investigation
13 and enforcement of this case, pursuant to Business and Professions Code section 125.3;
14 9. Taking such other and further action as deemed necessary and proper.

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16 DATED: June 3, 2013


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

28 SA2013110919