

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

In the Matter of the Accusation Against:

**ALUM ROCK EVERYDAY SMOG
BELTRAN CISNEROS CRUZ, Owner**
2149 Alum Rock Ave
San Jose, CA 95116

Automotive Repair Dealer Registration No.
ARD 274747
Smog Check, Test Only Station License No.
TC 274747

GUSTAVO C. JIMENEZ
2634 Gassmann Dr.
San Jose, CA 95121

Smog Check Inspector License EO 154823
Smog Check Repair Technician EI 154823
(formerly Advanced Emission Specialist
Technician License EA 154823)

Respondent.

Case No. 79/15-74

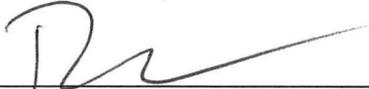
OAH No. 2015031147

DECISION

The attached Stipulated Settlement and Disciplinary 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 October 28, 2015.

DATED: October 16, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
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Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
9 **STATE OF CALIFORNIA**

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11 In the Matter of the Accusation Against:

Case No. 79/15-74

12 **ALUM ROCK EVERYDAY SMOG**
BELTRAN CISNEROS CRUZ, Owner
13 2149 Alum Rock Ave
San Jose, CA 95116

OAH No. 2015031147

14 **Automotive Repair Dealer Registration No**
15 **ARD 274747**
Smog Check, Test Only Station License No.
16 **TC 274747**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 **GUSTAVO C. JIMENEZ**
2634 Gassmann Dr.
18 San Jose, CA 95121

19 **Smog Check Inspector License EO 154823**
Smog Check Repair Technician EI 154823
20 **(Formerly Advanced Emission Specialist**
Technician License EA 154823)

21 Respondent.
22

23
24
25 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
26 entitled proceedings that the following matters are true:

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PARTIES

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2 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
3 brought this action solely in his official capacity and is represented in this matter by Kamala D.
4 Harris, Attorney General of the State of California, by Justin R. Surber, Deputy Attorney General.

5 2. Respondent Beltran Cisneros Cruz dba Alum Rock Everyday Smog ("Respondent
6 Alum Rock") is represented in this proceeding by attorney William Dean Ferreira, Esq., whose
7 address is: 582 Market Street, Suite 1608, San Francisco, CA 94104.

8 3. Respondent Gustavo C. Jimenez ("Respondent Jimenez") is represented in this
9 proceeding by attorney William Dean Ferreira, Esq., whose address is: 582 Market Street, Suite
10 1608, San Francisco, CA 94104

11 4. On or about November 13, 2013, the Bureau of Automotive Repair issued
12 Automotive Repair Dealer Registration Number ARD 274747 to Alum Rock Everyday Smog,
13 Beltran Cisneros Cruz- Owner. The Automotive Repair Dealer Registration was in full force and
14 effect at all times relevant to the charges brought herein and will expire on November 30, 2015,
15 unless renewed.

16 5. On or about December 3, 2013, the Bureau of Automotive Repair issued Smog
17 Check, Test Only, Station License Number TC 274747 to Respondent Alum Rock. The Smog
18 Check, Test Only, Station License was in full force and effect at all times relevant to the charges
19 brought herein and will expire on November 30, 2015, unless renewed.

20 6. On or about January 30, 2014, the Bureau of Automotive Repair certified Respondent
21 Alum Rock as a STAR Station.

22 7. In or about 2007, the Director issued Advanced Emission Specialist Technician
23 License Number EA 154823 to Gustavo C. Jimenez. Respondent Jimenez's advanced emission
24 specialist technician license was due to expire on January 31, 2014. Pursuant to California Code
25 of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
26 Respondent's election, as Smog Check Inspector License EO 154823 and Smog Check Repair
27
28

1 Technician License EI 154823. Respondent Jimenez's Smog Check Inspector License and Smog
2 Check Repair Technician License will expire on January 31, 2016, unless renewed.¹

3 JURISDICTION

4 8. Accusation No. 79/15-74 was filed before the Director of Consumer Affairs
5 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on both Respondents on November 14, 2014. Respondents timely filed their Notices of Defense
8 contesting the Accusation.

9 9. A copy of Accusation No. 79/15-74 is attached as exhibit A and incorporated herein
10 by reference.

11 ADVISEMENT AND WAIVERS

12 10. Respondent Alum Rock has carefully read, fully discussed with counsel, and
13 understands the charges and allegations in Accusation No. 79/15-74. Respondent has also
14 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
15 Settlement and Disciplinary Order.

16 11. Respondent Jimenez has carefully read, fully discussed with counsel, and understands
17 the charges and allegations in Accusation No. 79/15-74. Respondent has also carefully read, fully
18 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
19 Order.

20 12. Respondents are fully aware of their 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 their own expense; the right to confront and cross-examine the witnesses against him; the right to
23 present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
24 compel the attendance of witnesses and the production of documents; the right to reconsideration
25

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 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 and/or Smog Check Repair Technician (EI) license.

1 and court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

3 13. Respondent Alum Rock voluntarily, knowingly, and intelligently waives and gives up
4 each and every right set forth above.

5 14. Respondent Jimenez voluntarily, knowingly, and intelligently waives and gives up
6 each and every right set forth above.

7 CULPABILITY

8 15. Respondent Alum Rock admits the truth of each and every charge and allegation in
9 Accusation No. 79/15-74.

10 16. Respondent Alum Rock agrees that his Automotive Repair Dealer Registration and
11 Smog Check, Test Only Station License are subject to discipline and he agrees to be bound by the
12 Director's probationary terms as set forth in the Disciplinary Order below.

13 17. Respondent Jimenez admits the truth of each and every charge and allegation in
14 Accusation No. 79/15-74, and agrees that cause exists for discipline and the revocation of his
15 Smog Check Inspector License and Smog Check Repair Technician License.

16 18. Respondent Jimenez understands that by signing this stipulation he enables the
17 Director to issue a decision revoking his Smog Check Inspector License and Smog Check Repair
18 Technician License without further process.

19 CONTINGENCY

20 19. This stipulation shall be subject to approval by the Director of Consumer Affairs or
21 the Director's designee. Respondents understand and agree that counsel for Complainant and the
22 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
23 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
24 or participation by Respondent or his counsel. By signing the stipulation, Respondents
25 understand and agree that they may not withdraw this agreement or seek to rescind the stipulation
26 prior to the time the Director considers and acts upon it. If the Director fails to adopt this
27 stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
28 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between

1 the parties, and the Director shall not be disqualified from further action by having considered
2 this matter.

3 20. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
5 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

12 22. In consideration of the foregoing admissions and stipulations, the parties agree that
13 the Director may, without further notice or formal proceeding, issue and enter the following
14 Disciplinary Orders:

15 **DISCIPLINARY ORDER**

16 (Respondent Jimenez)

17 IT IS HEREBY ORDERED that Smog Check Inspector License EO 154823 and Smog
18 Check Repair Technician License EI 154823 issued to Respondent Gustavo C. Jimenez, are
19 revoked by the Director of Consumer Affairs.

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

24 2. Respondent Jimenez shall lose all rights and privileges as a Smog Check Inspector
25 and Smog Check Repair Technician in California as of the effective date of the Director's
26 Decision and Order.

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

1 in any other business required to be registered pursuant to Section 9884.6 of the Business and
2 Professions Code.

3 5. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
4 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

5 6. **Jurisdiction.** If an accusation is filed against Respondent during the term of
6 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
7 until the final decision on the accusation, and the period of probation shall be extended until such
8 decision.

9 7. **Violation of Probation.** Should the Director of Consumer Affairs determine that
10 Respondent has failed to comply with the terms and conditions of probation, the Department may,
11 after giving notice and opportunity to be heard, temporarily or permanently invalidate the
12 registration and/or suspend or revoke the license.

13 8. **False and Misleading Advertising.** If the accusation involves false and misleading
14 advertising, during the period of probation, Respondent shall submit any proposed advertising
15 copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

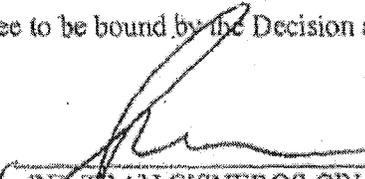
16 9. **Restrictions.** During the period of probation, Respondent shall not perform any form
17 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
18 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
19 properly perform such work, and BAR has been given 10 days notice of the availability of the
20 equipment for inspection by a BAR representative.

21 10. **Cost Recovery.** Payment to the Bureau of cost recovery in the amount of \$3,358.56
22 payable in twenty four (24) consecutive, equal monthly installments with the final payment due
23 twelve (12) months before the termination of probation. Failure to complete payment of cost
24 recovery within this time frame shall constitute a violation of probation which may subject
25 Respondent's licenses and registration to outright revocation; however, the Director or the
26 Director's Bureau of Automotive Repair designee may elect to continue probation until such time
27 as reimbursement of the entire cost recovery amount has been made to the Bureau.

28 ACCEPTANCE

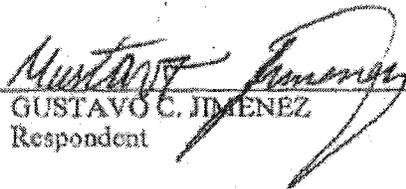
1 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
2 discussed it with my attorney, William Dean Ferreira, Esq.. I understand the stipulation and the
3 effect it will have on my Automotive Repair Dealer Registration, and Smog Check, Test Only,
4 Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
5 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of
6 Consumer Affairs.

7 DATED: 7-6-15


BELTRAN CISNEROS CRUZ
dba Alumi Rock Everyday Smog
Respondent

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, William Dean Ferreira, Esq. I understand the stipulation and the
13 effect it will have on my Smog Check Inspector License and Smog Check Repair Technician
14 License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly,
15 and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer
16 Affairs.

17 DATED: 7/6/2015


GUSTAVO C. JIMENEZ
Respondent

23 I have read and fully discussed with Respondent Beltran Cisneros Cruz and Gustavo C.
24 Jimenez the terms and conditions and other matters contained in the above Stipulated Settlement
25 and Disciplinary Order. I approve its form and content.

27 DATED: 2/8/15



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WILLIAM DEAN FERREIRA, Esq.
Attorney for Respondent

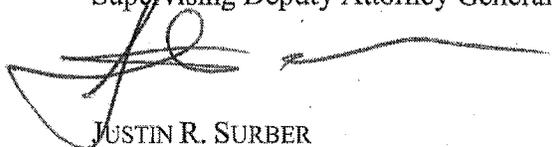
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 7/14/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General


JUSTIN R. SURBER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/15-74

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KAMALA D. HARRIS
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Attorneys for Complainant

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Technician License EA 154823)

Respondents.

Case No. 79/15-74
ACCUSATION
(SMOG CHECK)

Complainant alleges:

PARTIES

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

1 "A registration that is not renewed within three years following its expiration shall not be
2 renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled
3 immediately upon expiration of the three-year period.

4 "An automotive repair dealer whose registration has been canceled by operation of this
5 section shall obtain a new registration only if he or she again meets the requirements set forth in
6 this chapter relating to registration, is not subject to denial under Section 480, and pays the
7 applicable fees.

8 "An expired registration may be renewed at any time within three years after its expiration
9 upon the filing of an application for renewal on a form prescribed by the bureau and the payment
10 of all accrued renewal and delinquency fees. Renewal under this section shall be effective on the
11 date on which the application is filed and all renewal and delinquency fees are paid. If so
12 renewed, the registration shall continue in effect through the expiration date of the current
13 registration year as provided in Section 9884.3, at which time the registration shall be subject to
14 renewal."

15 7. Section 9884.7 of the Business and Professions Code states:

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

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

24 ...

25 (4) Any other conduct that constitutes fraud.

26 ...

27 "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
28 probation the registration for all places of business operated in this state by an automotive repair

1 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
2 and willful violations of this chapter, or regulations adopted pursuant to it."

3 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
4 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
5 proceeding against an automotive repair dealer or to render a decision invalidating a registration
6 temporarily or permanently.

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

10 10. Section 44014 of the Health and Safety Code states:

11 "(a) Except as otherwise provided in this chapter, the testing and repair portion of the
12 program shall be conducted by smog check stations licensed by the department, and by smog
13 check technicians who have qualified pursuant to this chapter.

14 ..."

15 11. Section 44072.2 of the Health and Safety Code states:

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

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

22 ...

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

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

25 ...

26 "(h) Violates or attempts to violate the provisions of this chapter relating to the particular
27 activity for which he or she is licensed."

28

1 is considered is when an inspector does not have an FPR score, either because that inspector is a
2 new licensee or does not have enough data to establish an FPR score.

3 17. Respondent Jimenez is not a STAR Smog Check Inspector. His FPR performance
4 rating as of July 2014 is 0.18. A performance rating of 0.40 or better is needed to be a STAR
5 Smog Check Inspector. Respondent Jimenez is not authorized to perform smog inspections at
6 Respondent Alum Rock's station.

7 18. Each licensed Smog Check Inspector is issued a unique access code allowing access
8 to the Emissions Inspection System (EIS), the equipment used to perform a smog check. This
9 access code is assigned by the Bureau of Automotive Repair. Each Smog Check Inspector must
10 maintain the security of his of her access code. Disclosure of one's code or use of another Smog
11 Check Inspector 's access code or license information is prohibited.

12 19. On May 16, 2014, The Bureau of Automotive Repair conducted an undercover
13 investigation of Respondent Alum Rock. The undercover investigation revealed that Respondent
14 Jimenez was performing smog inspections at Respondent Alum Rock's facility. Respondent
15 Jimenez performed the smog inspections at Respondent Alum Rock by using the access code of
16 another licensed Smog Check Inspector.

17 20. Respondent Jimenez forged the signature of the other licensed Smog Check Inspector
18 on the Vehicle Inspection Reports. Respondent Jimenez falsely certified under penalty of perjury
19 that the smog inspections were performed by another smog inspector.

20 21. Respondent Jimenez performed smog inspections on a 2000 Saturn LS, license plate
21 number [REDACTED], and a 1999 Dodge Durango, license plate number [REDACTED], at Respondent
22 Alum Rock's smog check station. Respondent Jimenez performed smog inspections using the
23 identity of another Smog Check Inspector. Respondent Alum Rock issued certificate of
24 compliance number [REDACTED] to the 1999 Dodge Durango. Among other things, such actions
25 deprived the people of California of the legitimacy of the Motor Vehicle Inspection Program.

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Fraud, Dishonesty, or Deceit)

3 22. Respondent Jimenez's Smog Check Inspector and Smog Check Repair Technician
4 licenses are subject to disciplinary action under section 44072.2, subsection (d), of the Health and
5 Safety Code in that he committed acts involving dishonesty, fraud, or deceit whereby another is
6 injured. The circumstances are described in paragraphs 15-21, above.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Violation of Regulations)

9 23. Respondent Jimenez's Smog Check Inspector and Smog Check Repair Technician
10 licenses are subject to disciplinary action under section 44072.2, subsection (a), of the Health and
11 Safety Code in that he violated a regulation adopted by the director of the Department of
12 Consumer Affairs. Respondent Jimenez violated California Code of Regulations, title 16, section
13 3340.41 subsection (b) by entering the access code of another technician into an EIS. The
14 circumstances are further described in paragraphs, 15-21, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Violation of Chapter)

17 24. Respondent Jimenez's Smog Check Inspector and Smog Check Repair Technician
18 licenses are subject to disciplinary action under section 44072.2, subsection (c), of the Health and
19 Safety Code in that he violated a section of the Motor Vehicle Inspection Program. Respondent
20 Jimenez violated Health and Safety Code section 44014. Respondent Jimenez performed smog
21 inspections at Respondent Alum Rock's station. Respondent Jimenez was not qualified nor
22 authorized to perform smog inspections at Respondent Alum Rock's station. The circumstances
23 are further described in Paragraphs 15-21, above

24 **FOURTH CAUSE FOR DISCIPLINE**

25 (Misleading/Untrue Statements)

26 25. Respondent Alum Rock's ARD Registration is subject to disciplinary action under
27 section 9884.7, subsection (a)(1), of the Business and Professions Code in that Respondent Alum
28 Rock made or authorized statements that were untrue or misleading, and which Respondent Alum

1 Rock knew or should have known were untrue or misleading. Respondent Alum Rock issued
2 certificate of compliance number [REDACTED] to the 1999 Dodge Durango. This certificate falsely
3 states that the smog inspection was performed by one smog inspector when in fact it was
4 performed by another inspector. Respondent Alum Rock issued Vehicle Inspection Reports to
5 both the 1999 Dodge Durango and 2000 Saturn LS. The vehicle inspection reports falsely state
6 that the smog inspections were performed by one smog inspector when in fact they were
7 performed by another inspector. The circumstances are further described in paragraphs 15-21,
8 above.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 (Fraud)

11 26. Respondent Alum Rock's ARD Registration is subject to disciplinary action under
12 section 9884.7, subsection (a)(4), of the Business and Professions Code in that Respondent Alum
13 Rock committed acts that constitute fraud. The circumstances are described in paragraphs 15-21,
14 and 25, above.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 (Fraud, Dishonesty, or Deceit)

17 27. Respondent Alum Rock's station license subject to disciplinary action under section
18 44072.2, subsection (d), of the Health and Safety Code in that it committed acts involving
19 dishonesty, fraud, or deceit whereby another is injured. The circumstances are described in
20 paragraphs 15-21, and 25, above.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 (Violation of Chapter)

23 28. Respondent Alum Rock's station license is subject to disciplinary action under
24 section 44072.2, subsection (c), of the Health and Safety Code in that it violated a section of the
25 Motor Vehicle Inspection Program. Respondent Alum Rock violated Health and Safety Code
26 section 44014. Respondent Alum Rock performed smog inspections with a smog inspector who
27 was not qualified nor authorized to perform inspections at Respondent Alum Rock. The
28 circumstances are further described in Paragraphs 15-21 and 25, above.

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8. Ordering Gustavo C. Jimenez 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;

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

DATED: November 7, 2014



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

SF2014409486