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7

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

11 In the Matter of the Accusation Against:
12 **REY'S TEST ONLY STATION,**
RICHARD JOHN REY, Owner
13 9511 East Artesia Blvd.
Bellflower, CA 90706
14 **Automotive Repair Dealer Registration No.**
ARD 255886
15 **Smog Check Station License No. TC 255886,**
16 **RICHARD JOHN REY**
6214 Turnergrove Dr.
17 Lakewood, CA 90713
Smog Check Inspector License No. EO 301825
18 (formerly designated as Advanced Emission
Specialist Technician License No. EA 301825),
19
and
20 **RICHARD CHARLES REY**
6214 Turnergrove Dr.
21 Lakewood, CA 90713
Smog Check Inspector License No. EO 633960
22 **Smog Check Repair Technician No. EI 633960**
23 (formerly designated as Advanced Emission
24 Specialist Technician License No. EA 633960),
25
26 Respondents.

Case No. 79/16-116

ACCUSATION
(SMOG CHECK)

27 Complainant alleges:
28 ///

1 **PARTIES**

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

4 **Rey's Test Only Station**

5 2. On or about August 20, 2008, the Director of Consumer Affairs ("Director") issued
6 Automotive Repair Dealer Registration ("registration") No. ARD 255886 to Richard John Rey,
7 doing business as Rey's Test Only Station ("Respondent Rey's"). The registration was in full
8 force and effect at all times relevant to the charges brought herein. It will expire on July 31, 2016,
9 unless renewed.

10 3. On or about August 27, 2008, the Director issued Smog Check, Test Only, Station
11 License ("station license") No. TC 255886 to Respondent Rey's. The license was in full force and
12 effect at all times relevant to the charges brought herein. It will on July 31, 2016, unless renewed.

13 **Richard John Rey**

14 4. On or about 1996, the Bureau issued Advanced Emission Specialist Technician
15 License No. EA 301825 to Richard John Rey ("Respondent John"). Respondent John's
16 Advanced Emission Specialist Technician License was due to expire on September 20, 2012,
17 however, it was cancelled on September 27, 2012.¹ Pursuant to California Code of Regulations,
18 title 16, section 3340.28, subdivision (e), said license was renewed as Smog Check Inspector
19 License No. EO 301825 ("technician license"), effective September 27, 2012. Respondent
20 John's technician license was in full force and effect at all times relevant to the charges brought
21 herein. It will expire on September 30, 2016, unless renewed.

22 **Richard Charles Rey**

23 5. On January 19, 2012, the Bureau issued Advanced Emission Specialist Technician
24 License No. EA 633960 to Richard Charles Rey ("Respondent Charles"). Respondent Charles's
25 Advanced Emission Specialist Technician License was due to expire on August 31, 2013,

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

1 however, it was cancelled on July 31, 2013. Pursuant to California Code of Regulations, title 16,
2 section 3340.28, subdivision (e), said license was renewed as Smog Check Inspector License No.
3 EO 633960 and Smog Check Repair Technician License No. EI 633960 ("technician licenses"),
4 effective July 31, 2013. Respondent Charles' technician licenses were in full force and effect at
5 all times relevant to the charges brought herein. They will each expire on August 31, 2017, unless
6 renewed.

7 JURISDICTION

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

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

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

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

21 STATUTORY PROVISIONS

22 10. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
23 part:

24 "(a) The director, where the automotive repair dealer cannot show there was a bona
25 fide error, may refuse to validate, or may invalidate temporarily or permanently, the
26 registration of an automotive repair dealer for any of the following acts or omissions related
27 to the conduct of the business of the automotive repair dealer, which are done by the
28 automotive repair dealer or any automotive technician, employee, partner, officer, or
member of the automotive repair dealer.

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

3 “
4 “(3) Failing or refusing to give to a customer a copy of any document requiring his or
her signature, as soon as the customer signs the document.

5 “(4) Any other conduct which constitutes fraud.

6 “
7 “(6) Failure in any material respect to comply with the provisions of this chapter [the
Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted
pursuant to it.”

8 11. Section 9884.8 of the Code states, in pertinent part:

9 “All work done by an automotive repair dealer, including all warranty work, shall be
10 recorded on an invoice and shall describe all service work done and parts supplied. . . One
11 copy of the invoice shall be given to the customer and one copy shall be retained by the
automotive repair dealer.”

12 12. Section 9884.9 of the Code provides, in pertinent part:

13 “(a) The automotive repair dealer shall give to the customer a written estimated price
14 for labor and parts necessary for a specific job. No work shall be done and no charges shall
15 accrue before authorization to proceed is obtained from the customer.”

16 13. Section 17200 of the Code states:

17 “As used in this chapter, unfair competition shall mean and include any unlawful,
18 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part
3 of Division 7 of the Business and Professions Code.”

19 14. Section 17500 of the Code states, in pertinent part:

20 “It is unlawful for any person, firm, corporation. . . or any employee thereof with
21 intent. . . to dispose of. . . property or to perform services, professional or otherwise, . . . to
22 make or disseminate or cause to be made or disseminated before the public in this state, or
to make or disseminate. . . before the public. . . any statement, concerning that. . . property
23 or those services, professional or otherwise, . . . which is untrue or misleading, and which is
known, or which by the exercise of reasonable care should be known, to be untrue or
24 misleading. . .”

25 15. Section 477 of the Code provides, in pertinent part, that “Board” includes “bureau,”
26 “commission,” “committee,” “department,” “division,” “examining committee,” “program,”
and “agency.” “License” includes certificate, registration or other means to engage in a
27 business or profession regulated by the Code.

28 16. Section 118(b) of the Code states:

1 “The suspension, expiration, or forfeiture by operation of law of a license
2 issued by a board in the department, or its suspension, forfeiture, or cancellation by
3 order of the board or by order of a court of law, or its surrender without the written
4 consent of the board, shall not, during any period in which it may be renewed,
5 restored, reissued, or reinstated, deprive the board of its authority to institute or
6 continue a disciplinary proceeding against the licensee upon any ground provided by
7 law or to enter an order suspending or revoking the license or otherwise taking
8 disciplinary action against the licensee on any such ground.”

9 17. Section 44012 of the Health and Safety Code states, in pertinent part:

10 “The test at the smog check station shall be performed in accordance with procedures
11 prescribed by the department.

12 “(f) A visual or functional check is made of emission control devices specified by the
13 department.”

14 18. Section 44015 of the Health and Safety Code states, in pertinent part:

15 “(b) If a vehicle meets the requirements of Section 44012, a smog check station
16 licensed to issue certificates shall issue a certificate of compliance or a certificate of
17 noncompliance.”

18 19. Section 44032 of the Health and Safety Code states:

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

24 20. Section 44033 of the Health and Safety Code states, in pertinent part:

25 “(c) If a motor vehicle, including a commercial vehicle, is tested at a facility licensed
26 to perform tests and repairs pursuant to this chapter, the facility shall provide the customer
27 with a written estimate pursuant to Section 9884.9 of the Business and Professions Code.
28 The written estimate shall contain a notice to the customer stating that the customer may
choose another smog check station to perform needed repairs, installations, adjustments, or
subsequent tests.”

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

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

1 “(c) No person shall enter into the emissions inspection system any vehicle
2 identification information or emission control system identification data for any
3 vehicle other than the one being tested. Nor shall any person knowingly enter into the
4 emissions inspection system any false information about the vehicle being tested.”

5 28. Section 3340.42 of the CCR, title 16, states in pertinent part that licensed smog
6 check stations and technicians shall conduct tests and inspections in accordance with smog
7 check emissions test methods and standards.

8 **COST RECOVERY**

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

13 **FACTUAL BACKGROUND**

14 30. On February 17, 2015, based upon prior smog check data review and a history of
15 prior smog check related citations issued to Respondent Rey’s and its owner/technician,
16 Respondent Richard John Rey, the Bureau conducted three undercover vehicle runs at the facility.
17 Each resulted in the issuance of a fraudulent electronic Smog Check certificate of compliance to
18 Bureau undercover vehicles that, in their documented condition, could not pass a valid smog
19 inspection.

20 31. Vehicles of model year 1995 and older require performance of a Low Pressure Fuel
21 Evaporative Test (“LPFET”) as a component of an official smog check inspection. The LPFET
22 requires a smog technician to install an adaptor and hose to the vehicle’s fuel fill pipe and “pinch
23 off” or close the vapor line in the engine compartment. The vehicle’s fuel system is then
24 pressurized with nitrogen gas. If a leak exceeding the prescribed test limit is detected, the vehicle
25 fails the LPFET, and the overall test result for the smog inspection should also be a fail.

26 **UNDERCOVER OPERATION # 1**

27 32. A Bureau Documentation Lab Representative inspected a 1991 Jeep owned by the
28 Bureau and verified that all the required emission control components were installed. He
performed a Smog Check inspection and the vehicle passed. He then installed a replacement fuel
tank vent hose that had been altered to a condition that would render it unable to maintain fuel

1 evaporative pressure. With this modification, this vehicle would not pass a LPFET portion of the
2 inspection. He performed another inspection and the vehicle failed the LPFET test.

3 33. On February 17, 2015, a Bureau Field Representative ("Field Rep") activated a
4 hidden video recorder on the Jeep and released custody of the vehicle to a Bureau undercover
5 operator who was instructed to drive to Respondent Rey's and request a Smog Check inspection.
6 At 1035 hours, the operator arrived at the station. Based upon a photograph he had been shown
7 previously, he identified Respondent Charles as the person who greeted him and inspected the
8 Jeep. The operator signed a shop work order but did not receive a copy. After the inspection, the
9 operator paid \$65 to Respondent Charles and received invoice [REDACTED] and a VIR (vehicle
10 information report). The operator then returned the Jeep to the Field Rep.

11 34. Later at the field office, the Field Rep reviewed the surveillance video, which showed
12 that between 1039 and 1047 hours, Respondent Charles sat in the driver seat, opened the hood,
13 connected and disconnected RPM lead to and from the vehicle, and operated the Jeep. The Field
14 Rep accessed the Bureau's database and printed out the BAR97 Test Detail and the LPFET Test
15 Detail for the Jeep's earlier smog inspection at Respondent Rey's and found the following:

16 a. According to the BAR97 Test Detail and the VIR, Respondents Rey's and Charles
17 issued smog certificate of compliance [REDACTED] for the Jeep using Respondent Charles' smog
18 technician license number.

19 b. According to the BAR97 Test Detail, the LPFET test received a passing entry, which
20 was a manually input into the state's computer database.

21 c. According to the LPFET Test Detail, the LPFET had performed a test and had a
22 passing result when, in fact, the vehicle was documented so that it would fail a proper LPFET
23 test.

24 35. On March 2, 2015, the same Documentation Laboratory re-inspected the Jeep. It
25 failed Smog Check inspection due to a failed LPFET test. He concluded, in its documented
26 condition the Jeep could not pass a properly performed inspection.

27 **UNDERCOVER OPERATION # 2**

28 36. Another Bureau Documentation Lab Representative inspected a 1995 Toyota owned

1 by the Bureau and verified that all the required emission control components were installed. He
2 performed a Smog Check inspection and the vehicle passed. He then created a leak in the fuel
3 filler neck vent pipe that would make the vehicle fail a properly performed LPFET. He performed
4 another inspection, in which the vehicle failed the LPFET test.

5 37. On February 17, 2015, the Field Rep obtained custody of the Toyota, activated the
6 hidden video recorder, and released custody to a different undercover operator, who was
7 instructed to drive to Respondent Rey's and request a Smog Check inspection.

8 38. At 1127 hours, the operator arrived at the station. An unknown person, who was later
9 identified as Respondent John, greeted the operator and said that he was working on another
10 vehicle and that he would do the operator's vehicle in about 15 minutes. During this time, the
11 operator saw Respondent Charles inside the station. Eventually, John asked him to sign a
12 document but did not give a copy of the signed document to the operator. John said that the
13 vehicle failed the evaporative test and that another person in the same complex could fix it for the
14 operator. The operator replied that he did not have time. John offered to pass the vehicle for a
15 higher price. The operator asked how much and John said \$160. The operator said that he did not
16 have time. John said, "no problem, go get it fixed and bring it back for a re inspection."

17 39. At 1411 hours, the operator returned in the Toyota to the station, met with John, and
18 negotiated a lower price. John agreed to pass the vehicle for \$150. After the inspection was
19 completed, the operator paid John \$150 and was handed invoice [REDACTED] and a VIR for the
20 Toyota. However, the total amount shown on the invoice was only \$65. A few minutes later, the
21 operator released custody of the car to the Field Rep.

22 40. Later at the office, the Field Rep reviewed the surveillance video. During the
23 operator's initial run, the video showed that between 1150 and 1206 hours, Respondents John and
24 Charles together performed an inspection on the Toyota. John clamped the fuel evaporative hose,
25 checked the timing. Charles operated the EIS and sat in the driver seat. The Field Rep accessed
26 the Bureau's database and printed out the BAR97 Test Detail and the LPFET Test Detail for the
27 Toyota. According to the BAR97 Test Detail, the car failed the inspection because it failed the
28 LPFET test. According to the LPFET Test Detail, the LPFET had performed a test and had a

1 failing result.

2 41. During the operator's return run, the video shows that Respondent John was in and
3 out of the driver seat of the Toyota between 1417 and 1424 hours and moving between the Toyota
4 and the EIS (emission inspection system computer). The gas cap door was not opened; indicating
5 the LPFET test was not performed on the Toyota. The Field Rep then accessed the Bureau's
6 database and printed out the BAR97 Test Detail and the LPFET Test Detail for the Toyota's
7 earlier inspection at Respondent Rey's and found the following:

8 a. According to the BAR97 Test Detail and the VIR, Respondents Rey's and Charles
9 issued Smog Check certificate of compliance [REDACTED] for the Toyota using Respondent
10 Charles' smog technician license number.

11 b. According to the BAR97 Test Detail, the LPFET test received a pass entry, which
12 was a manually input into the state's computer database.

13 c. According to the LPFET Test Detail, the LPFET had performed a test and had a
14 passing result when, in fact, the car was documented so that it would fail a proper LPFET test.

15 42. On February 26, 2015, the same Documentation Lab Representative re-inspected the
16 Toyota. It failed a Smog Check inspection due to a leak detected during the LPFET Test. He
17 concluded that in its documented condition, the 1995 Toyota could not pass a properly performed
18 inspection.

19 **UNDERCOVER OPERATION # 3**

20 43. A Bureau Documentation Lab Representative inspected a Bureau-owned 1989 Nissan
21 and verified that all the required emission control components were installed. He performed a
22 Smog Check inspection and the vehicle passed. He then installed a replacement fuel tank vent
23 hose that had been altered to a condition that would render it unable to maintain fuel evaporative
24 pressure. With this modification, the vehicle would not pass a LPFET portion of the inspection.
25 He performed another inspection, in which the vehicle failed the LPFET test.

26 44. On February 17, 2015, the Field Rep obtained custody of the Nissan, activated the
27 hidden video recorder, and released custody to a yet another undercover operator, who was
28 instructed to drive to Respondent Rey's and request a Smog Check inspection.

1 45. At 1235 hours, the operator arrived at the station, was met by Respondent John. He
2 asked John the cost for an inspection. John told him \$70. The operator signed an estimate
3 authorizing the inspection but was not given a copy of the estimate. He then sat in a chair where
4 he had a clear view of the rear and driver side of the vehicle and the EIS. John, who was the only
5 person in the test bay, began the inspection. The operator saw John standing at the EIS, sitting in
6 the driver seat of the vehicle, opening the gas cap door and connecting a hose to the gas filler
7 neck. John said, "Normally there should be a relieve sound when the gas cap is removed. Since
8 there was no sound, there is a leak somewhere in the system and this would cause the vehicle to
9 fail." The operator asked, "Is there anything we can do?" John said, "I can pass the vehicle but it
10 would cost more." The operator asked how much it would cost and John said, "Normally \$180 to
11 \$250, but I could do it for \$160." After some negotiation, he agreed to do it for \$150 and said,
12 "I'll do it right now."

13 46. John returned to the inspection. A customer drove up; John stopped the inspection
14 and went to talk with the customer. At this time, the operator saw, for the first time, Respondent
15 Charles walk into the test bay from inside the office. John told Charles, "Just press enter 4 times".
16 Charles went to the EIS and pressed the keyboard. John asked Charles to go take care of another
17 customer. Charles said that he was almost done. The operator noticed the printer began to print.
18 John brought an invoice to the operator and asked him to fill out his information, which the
19 operator did and he gave John \$150. John signed the VIR and wrote an amount on the invoice.
20 John handed both invoice and VIR to the operator and explained that he just put on the regular
21 inspection price (\$65). The operator left the shop and returned custody of the Nissan to the Field
22 Rep.

23 47. Later at the office, the Field Rep reviewed the video. The video showed that at 1239
24 and 1256, Respondent John was in the driver seat of the Nissan and that John was present at the
25 test area while the fraudulent inspection occurred. The video also showed that a hose was
26 connected to the fuel tank at 1241 hours and removed at 1253 hours. The video shows a fuel
27 evaporative hose was clamped at 1243 hours and unclamped at 1250 hours. The Field Rep
28 accessed the Bureau's database and printed out the BAR97 Test Detail and the LPFET Test Detail

1 and determined the following:

2 a. According to the BAR97 Test Detail and the VIR, Respondents Rey's and Charles
3 issued Smog Check certificate of compliance [REDACTED] for the Nissan using Respondent
4 Charles' smog technician license number.

5 b. According to the BAR97 Test Detail, the LPFET test received a pass entry, which
6 was a manually input into the state's computer database.

7 c. According to the LPFET Test Detail, three tests were performed on the Nissan
8 between 1241 and 1254 hours. The first two tests were aborted and the third test had a passing
9 result when, in fact, the vehicle was documented so that it would fail a proper LPFET test.

10 48. The Field Rep next compared the information on the LPFET Test Detail of the
11 passing test and the video. The passing test started at 1253 hours and ended at 1254 hours. During
12 the testing time between 1253 and 1254 hours, the fuel evaporative hose must be clamped and the
13 LPFET tester hose must be connected to the fuel tank. Yet the video shows that the fuel
14 evaporative hose was unclamped at 1250 hours; and a hose was disconnected from the fuel tank
15 at 1253 hours.

16 49. On February 26, 2015, the same Documentation Lab Representative re-inspected the
17 Nissan. It failed a Smog Check inspection due to a leak detected during the LPFET Test. He
18 concluded that in its documented condition, the Nissan could not pass a properly performed
19 inspection.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 50. Respondent Rey's registration is subject to disciplinary action pursuant to Code section
23 9884.7, subdivision (a)(1), in that on or about February 17, 2015, it made or authorized statements
24 which it knew, or in the exercise of reasonable care should have known, to be untrue or misleading as
25 follows: Respondent Rey's certified that at least three "1995 model year or older" vehicles had passed
26 inspection and were in compliance with applicable laws and regulations when in fact, Respondent
27 conducted the inspections on the vehicle without performing all portions of a smog check inspection
28 including the LPFET, as required by Health and Safety Code section 44012. Complainant refers to,

1 and by this reference incorporates, the allegations set forth above in paragraphs 32 through 49 above,
2 as though set forth fully herein.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 51. Respondent Rey's registration is subject to disciplinary action pursuant to Code
6 section 9884.7, subdivision (a)(4), in that on or about February 17, 2015, it committed acts that
7 constitute fraud by issuing electronic smog Certificates of Compliance for at least three "1995
8 model year or older" vehicles without performing bona fide inspections of the emission control
9 devices and systems on the vehicles, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
11 reference incorporates, the allegations set forth above in paragraphs 32 through 49 above, as
12 though set forth fully herein.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Failure to Provide Signed Estimate as Required)**

15 52. Respondent Rey's registration is subject to disciplinary action pursuant to Code
16 section 9884.7, subdivision (a)(3), in conjunction with section 9884.9, subdivision (a), in that on
17 or about February 17, 2015 it failed or refused at least three times to give to at least three different
18 customers a copy of an estimate requiring his or her signature as soon as the customer had signed
19 the document. Complainant refers to, and by this reference incorporates, the allegations set forth
20 above in paragraphs 32 through 49 above, as though set forth fully herein.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Material Violation of Automotive Repair Act)**

23 53. Respondent Rey's registration is subject to disciplinary action pursuant to Code
24 section 9884.7, subdivision (a)(6), in that on or about February 17, 2015, it failed in a "material
25 respect to comply with the provisions of this chapter or regulations adopted pursuant to it" when
26 it issued electronic certificates of compliance for certain vehicles without performing bona fide
27 inspections of the emission control devices and systems on those vehicles, thereby depriving the
28 People of the State of California of the protection afforded by the Motor Vehicle Inspection

1 Program. Complainant refers to, and by this reference incorporates, the allegations set forth above
2 in paragraphs 32 through 49 above, as though set forth fully herein.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Unfair Competition and/or Fraudulent Business Acts)**

5 54. Respondent Rey's registration is subject to disciplinary action pursuant to Code
6 section 17200, in that on or about February 17, 2015, it conducted unlawful, unfair, fraudulent
7 and deceptive business acts when it issued electronic certificates of compliance for at least three
8 Bureau-owned vehicles without performing bona fide inspections of the emission control devices
9 and systems on those vehicles. Complainant refers to, and by this reference incorporates, the
10 allegations set forth above in paragraphs 32 through 49 above, as though set forth fully herein.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(False or Misleading Statements)**

13 55. Respondent Rey's registration is subject to disciplinary action pursuant to Code
14 section 17500, in that on or about February 17, 2015, it disseminated untrue or misleading
15 information into the state's database that the LPFET portions of smog inspections had been
16 performed on at least three "1995 model year or older" vehicles when, in fact, they had not, and
17 by issuing electronic smog certificates of compliance to those same vehicles which would not
18 have passed a valid smog inspection. Complainant refers to, and by this reference incorporates,
19 the allegations set forth above in paragraphs 32 through 49 above, as though set forth fully herein.

20 **SEVENTH CAUSE FOR DISCIPLINE**

21 **(Failure to Perform Tests in Accordance with Prescribed Procedures)**

22 56. Respondent Rey's has subjected its station license to discipline under Health &
23 Safety Code section 44012, in that on or about February 17, 2015, it failed to perform Smog
24 Check inspections and LPFET tests in accordance with procedures prescribed by the department.
25 Complainant refers to, and by this reference incorporates, the allegations set forth above in
26 paragraphs 32 through 49 above, as though set forth fully herein.

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EIGHTH CAUSE FOR DISCIPLINE
**(Failure to Perform Visual or Functional Check
in Accordance with Prescribed Procedures)**

57. Respondent Rey's has subjected its station license to discipline under Health & Safety Code section 44012, subdivision (f), in that on or about February 17, 2015, it failed to perform visual and/or functional checks of required emission control devices in accordance with procedures prescribed by the department. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 32 through 49 above, as though set forth fully herein.

NINTH CAUSE FOR DISCIPLINE

(Issuance of Certificates of Compliance to Prohibited/ Unqualified Vehicles)

58. Respondent Rey's has subjected its station license to discipline under Health & Safety Code section 44015, subdivision (b), in that on or about February 17, 2015, it issued electronic Smog Check certificates of compliance to vehicles that failed to meet the requirements of section 44012. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 32 through 49 above, as though set forth fully herein.

TENTH CAUSE FOR DISCIPLINE

(Failure to Provide Required Written Estimate)

59. Respondent Rey's has subjected its station license to discipline under Health & Safety Code section 44033, subdivision (c), in that on or about February 17, 2015, it failed to provide customers with a written estimate pursuant to Section 9884.9 of the Business & Professions Code containing a notice that the customer may choose another smog check station to perform needed repairs, installations, adjustments, or subsequent tests. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 32 through 49 above, as though set forth fully herein.

ELEVENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

60. Respondent Rey's has subjected its station license to discipline under Health & Safety Code section 44072.2, subdivision (a), in that on or about February 17, 2015, it violated the following sections of the Health & Safety Code with respect to the inspection of certain

1 vehicles:

2 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
3 performed on those vehicles in accordance with procedures prescribed by the department.

4 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
5 compliance without properly testing and inspecting the vehicles to determine if they were in
6 compliance with section 44012 of the Health & Saf. Code.

7 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
8 and systems on those vehicles in accordance with section 44012 of the Health & Saf. Code.

9 Complainant refers to, and by this reference incorporates, the allegations set forth above in
10 paragraphs 32 through 49 above, as though set forth fully herein.

11 **TWELFTH CAUSE FOR DISCIPLINE**

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

13 61. Respondent Rey's has subjected its station license to disciplinary action pursuant to
14 Health & Safety Code section 44072.2, subdivision (c), in that on or about February 17, 2015, it
15 failed to comply with provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic smog Certificates of Compliance without performing bona fide inspections on the
18 emission control devices and systems on those vehicles as required by Health & Safety Code
19 section 44012.

20 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles in
21 accordance with Health & Safety Code sections 44012 and 44035, and California Code of
22 Regulations, title 16, section 3340.42.

23 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog Certificates
24 of Compliance for vehicles even though the vehicles had not been inspected in accordance with
25 section 3340.42.

26 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
27 conducted on vehicles in accordance with Bureau specifications.

28 Complainant refers to, and by this reference incorporates, the allegations set forth above in

1 paragraphs 32 through 49 above, as though set forth fully herein.

2 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

4 62. Respondent Rey's has subjected its station license to disciplinary action pursuant
5 to Health & Safety Code section 44072.2, subdivision (d), in that on or about February 17, 2015,
6 it committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing
7 electronic smog Certificates of Compliance for vehicles without performing bona fide inspections
8 of the emission control devices and systems on the vehicles, thereby depriving the People of the
9 State of California of the protection afforded by the Motor Vehicle Inspection Program.

10 Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraphs 32 through 49 above, as though set forth fully herein.

12 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

14 63. Respondent John Rey has subjected his Smog Check Inspector License to
15 disciplinary action pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on
16 or about February 17, 2015, he failed to comply with the following sections of that Code:

17 **a. Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
18 devices and systems required by law for the vehicles tested were installed and functioning
19 correctly in accordance with test procedures.

20 **b. Section 44012, subdivision (f):** Respondent failed to perform the emissions control
21 tests on the vehicles in accordance with procedures prescribed by the department.

22 **c. Section 44032:** Respondent failed to perform tests of the emission control devices and
23 systems on vehicles in accordance with section 44012, in that the LPFET portions of the
24 inspections were not performed.

25 Complainant refers to, and by this reference incorporates, the allegations set forth above in
26 paragraphs 32 through 49 above, as though set forth fully herein.

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FIFTEENTH CAUSE FOR DISCIPLINE

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

64. Respondent John Rey has subjected his Smog Check Inspector License to disciplinary action pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about February 17, 2015, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect vehicles in accordance with Health & Safety Code section 44012, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct all required portions of smog tests on vehicles tested in accordance with the Bureau’s specifications.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 32 through 49 above, as though set forth fully herein.

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

65. Respondent John Rey has subjected his Smog Check Inspector License to disciplinary action pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about February 17, 2015, he committed dishonest, fraudulent, or deceitful acts whereby another is injured by aiding and abetting in the issuance of electronic smog Certificates of Compliance for vehicles alleged tested without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 32 through 49 above, as though set forth fully herein.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Unfair Competition and/or Fraudulent Business Acts)

66. Respondent John Rey has subjected his Smog Check Inspector License to disciplinary action pursuant to Code section 17200, in that on or about February 17, 2015, he conducted

1 unlawful, unfair, fraudulent and deceptive business acts when he aided and abetted in the issuance
2 of electronic certificates of compliance for at least three Bureau-owned vehicles without
3 performing bona fide inspections of the emission control devices and systems on those vehicles.
4 Complainant refers to, and by this reference incorporates, the allegations set forth above in
5 paragraphs 32 through 49 above, as though set forth fully herein.

6 **EIGHTEENTH CAUSE FOR DISCIPLINE**

7 **(False or Misleading Statements)**

8 67. Respondent John Rey has subjected his Smog Check Inspector License to disciplinary
9 action pursuant to Bus. & Prof. Code section 17500, in that on or about February 17, 2015, he
10 aided and abetted in disseminating untrue or misleading information into the state's database that
11 the LPFET portions of smog inspections had been performed on at least three "1995 model year
12 or older" vehicles when, in fact, they had not, and by aiding and abetting in the issuance of
13 electronic smog certificates of compliance to those same vehicles which would not have passed a
14 valid smog inspection. Complainant refers to, and by this reference incorporates, the allegations
15 set forth above in paragraphs 32 through 49 above, as though set forth fully herein.

16 **NINETEENTH CAUSE FOR DISCIPLINE**

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

18 68. Respondent Charles Rey has subjected his Smog Check Inspector and Smog Check
19 Repair Technician Licenses to disciplinary action pursuant to Health & Safety Code section
20 44072.2, subdivision (a), in that on or about February 17, 2015, he failed to comply with the
21 following sections of that Code:

22 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission
23 control devices and systems required by law for the vehicles tested were installed and functioning
24 correctly in accordance with test procedures.

25 b. **Section 44012, subdivision (f):** Respondent failed to perform the emissions
26 control tests on the vehicles in accordance with procedures prescribed by the department.

27 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
28 and systems on vehicles in accordance with section 44012, in that the LPFET portions of the

1 inspections were not performed.

2 d. **Section 44059:** Respondent willfully made false entries for electronic Certificates
3 of Compliance for vehicles tested by certifying that they had been inspected as required when, in
4 fact, they had not.

5 Complainant refers to, and by this reference incorporates, the allegations set forth
6 above in paragraphs 32 through 49 above, as though set forth fully herein.

7 **TWENTIETH CAUSE FOR DISCIPLINE**

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

9 69. Respondent Charles Rey has subjected his Smog Check Inspector and Smog Check
10 Repair Technician Licenses to disciplinary action pursuant to Health & Safety Code section
11 44072.2, subdivision (c), in that on or about February 17, 2015, he failed to comply with
12 provisions of California Code of Regulations, title 16, as follows:

13 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect vehicles in
14 accordance with Health & Safety Code section 44012, and California Code of Regulations, title
15 16, section 3340.42.

16 b. **Section 3340.42:** Respondent failed to conduct all required portions of smog tests
17 on vehicles tested in accordance with the Bureau's specifications.

18 Complainant refers to, and by this reference incorporates, the allegations set forth above in
19 paragraphs 32 through 49 above, as though set forth fully herein.

20 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

22 70. Respondent Charles Rey has subjected his Smog Check Inspector and Smog Check
23 Repair Technician Licenses to disciplinary action pursuant to Health & Safety Code section
24 44072.2, subdivision (d), in that on or about February 17, 2015, he committed dishonest,
25 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog Certificates of
26 Compliance for vehicles alleged tested without performing bona fide inspections of the emission
27 control devices and systems on the vehicles, thereby depriving the People of the State of
28 California of the protection afforded by the Motor Vehicle Inspection Program.

1 Complainant refers to, and by this reference incorporates, the allegations set forth above in
2 paragraphs 32 through 49 above, as though set forth fully herein.

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

4 **(Unfair Competition and/or Fraudulent Business Acts)**

5 71. Respondent Charles Rey has subjected his Smog Check Inspector and Smog Check
6 Repair Technician Licenses to disciplinary action pursuant to Code section 17200, in that on or
7 about February 17, 2015, he conducted unlawful, unfair, fraudulent and deceptive business acts
8 when he issued electronic certificates of compliance for at least three Bureau-owned vehicles
9 without performing bona fide inspections of the emission control devices and systems on those
10 vehicles. Complainant refers to, and by this reference incorporates, the allegations set forth above
11 in paragraphs 32 through 49 above, as though set forth fully herein.

12 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

13 **(False or Misleading Statements)**

14 72. Respondent Charles Rey has subjected his Smog Check Inspector and Smog Check
15 Repair Technician Licenses to disciplinary action pursuant to Bus. & Prof. Code section 17500, in
16 that on or about February 17, 2015, he disseminated untrue or misleading information into the
17 state's database that the LPFET portions of smog inspections had been performed on at least three
18 "1995 model year or older" vehicles when, in fact, they had not, and by issuing electronic smog
19 certificates of compliance to those same vehicles which would not have passed a valid smog
20 inspection. Complainant refers to, and by this reference incorporates, the allegations set forth
21 above in paragraphs 32 through 49 above, as though set forth fully herein.

22 **DISCIPLINE CONSIDERATIONS**

23 73. To determine the degree of discipline, Complainant alleges that:

24 a. On January 29, 2010, the Bureau issued Respondent Rey's Test Only Station Citation
25 #C2010 0762 for \$500 for violating Health & Safety Code section 44012, subdivision (f), in
26 conjunction with C.C.R., title 13, section 3340.35, subdivision (c). The Bureau received payment
27 on March 10, 2010.

28 b. On January 23, 2001, the Bureau issued Respondent John Rey Citation #M2001 0241

1 for an eight-hour training class for violation of Health & Safety Code section 44032, in
2 conjunction with CCR, title 16, section 3340.30, subdivision (a), which he completed on February
3 20, 2001.

4 c. On April 24, 2002, the Bureau issued Respondent John Rey Citation #M2002 0846 for
5 an eight-hour training class, for violation of Health & Safety Code section 44032, in conjunction
6 with CCR, title 16, section 3340.30, subdivision (a), which he completed on May 20, 2002.

7 d. On January 29, 2010, the Bureau issued Respondent John Rey Citation #M2010 0763
8 for an eight-hour training class for violation of Health & Safety Code section 44032, in
9 conjunction with CCR, title 16, section 3340.30, subdivision (a), which he completed on March 6,
10 2010.

11 **OTHER MATTERS**

12 74. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
13 suspend, revoke or place on probation the registration for all places of business operated in this
14 state by Richard John Rey, owner of Rey's Test Only Station, upon a finding that he has, or is,
15 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
16 automotive repair dealer.

17 75. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
18 License Number TC 255886, issued to Richard John Rey, owner of Rey's Test Only Station, is
19 revoked or suspended, any additional license issued under the same chapter in the name of said
20 licensee may be likewise revoked or suspended by the Director.

21 76. Pursuant to Health & Safety Code section 44072.8, if Respondent Richard John Rey's
22 Smog Check Inspector License No. EO 301825 is revoked or suspended, any additional license
23 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
24 the Director.

25 77. Pursuant to Health & Safety Code section 44072.8, if Respondent Richard Charles
26 Rey's Smog Check Inspector License No. EO 633960 or Smog Check Repair Technician License
27 No. EI 633960 is revoked or suspended, any additional license issued under this chapter in the
28 name of said licensee may be likewise revoked or suspended by the Director.

1 PRAYER

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Director issue a decision:

- 4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
5 255886, issued to Richard John Rey, owner of Rey's Test Only Station;
- 6 2. Revoking or suspending any other automotive repair dealer registration issued to
7 Richard John Rey;
- 8 3. Revoking or suspending Smog Check Test Only Station License Number TC 255886,
9 issued to Richard John Rey, owner of Rey's Test Only Station;
- 10 4. Revoking or suspending Smog Check Inspector License No. EO 301825, issued to
11 Richard John Rey;
- 12 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
13 and Safety Code in the name of Richard John Rey;
- 14 6. Revoking or suspending Smog Check Inspector License No. EO 633960 and Smog
15 Check Repair Technician License No. EI 633960, issued to Richard Charles Rey;
- 16 7. Ordering Rey's Test Only Station, Richard John Rey, and Richard Charles Rey to pay
17 the Director the reasonable costs of the investigation and enforcement of this case, pursuant to
18 Business and Professions Code section 125.3; and
- 19 8. Taking such other and further action as deemed necessary and proper.

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21 DATED: May 9, 2016

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

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