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

11 In the Matter of the Accusation Against:

Case No. **79/15-84**

12 **PBK AUTO CARE,**
13 **DBA AUTO CARE USA,**
14 **JOSEPH MICHAEL BERTINE,**
15 **PRESIDENT/SECRETARY/TREASURER**
16 **31638 Railroad Canyon Road**
17 **Canyon Lake, CA 92587**

A C C U S A T I O N
S M O G C H E C K

18 **Automotive Repair Dealer Registration No.**
19 **ARD 267889**
20 **Smog Check Station License No. RC 267889,**

21 **DANIEL NATHAN BLANCATO**
22 **23650 Madison Avenue**
23 **Murrietta, CA 92562**

24 **Smog Check Inspector No. EO 153170**
25 **Smog Check Repair Technician No. EI 153170**
26 **(formerly Advanced Emission Specialist**
27 **Technician License No. EA 153170),**

28 **and**

29 **PAUL JOSEPH-MICHE CHENETTE**
30 **31638 Railroad Canyon Road**
31 **Canyon Lake, CA 92587**

32 **Smog Check Inspector No. EO 125236**
33 **Smog Check Repair Technician No. EI 125236**
34 **(formerly Advanced Emission Specialist**
35 **Technician License No. EA 125236)**

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration of Respondent PBK Auto Care**

6 2. On February 6, 2012, the Bureau of Automotive Repair issued Automotive Repair
7 Dealer Registration Number ARD 267889 to PBK Auto Care doing business as Auto Care USA,
8 with Joseph Michael Bertine, President, Secretary, and Treasurer (Respondent PBK). The
9 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
10 charges brought herein and will expire on February 28, 2015, unless renewed.

11 **Smog Check Station License of Respondent PBK Auto Care**

12 3. On February 29, 2012, the Bureau of Automotive Repair issued Smog Check
13 Station License Number RC 267889 to Respondent PBK. The Smog Check Station License was
14 in full force and effect at all times relevant to the charges brought herein and will expire on
15 February 28, 2015, unless renewed.

16 **Smog Check Licenses of Respondent Daniel Nathan Blancato**

17 4. In 2006, the Director issued Advanced Emission Specialist Technician License
18 Number EA 153170 to Daniel Nathan Blancato (Respondent Blancato). Respondent Blancato's
19 advanced emission specialist technician license was due to expire on July 31, 2012. Pursuant to
20 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
21 renewed, in accordance with Respondent Blancato's election, as Smog Check Inspector License
22 Number EO 153170 and Smog Check Repair Technician License Number EI 153170, effective
23 July 24, 2012. Respondent Blancato's smog check licenses will expire on July 31, 2016, unless
24 renewed.¹

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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 10. Code section 9884.5 provides in pertinent part that a registration that is not
2 renewed within three years following its expiration shall not be renewed, restored, or reinstated
3 thereafter, and the delinquent registration shall be canceled immediately upon expiration of the
4 three-year period.

5 11. Code section 9884.7 provides that the Director may revoke an automotive repair
6 dealer registration.

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

11 13. Code section 9889.1 provides, in pertinent part, that the Director may suspend or
12 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
13 Automotive Repair Act.

14 14. Code section 9889.7 provides, in pertinent part, that the expiration or suspension
15 of a license by operation of law or by order or decision of the Director or a court of law, or the
16 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any
17 disciplinary proceedings.

18 15. Health and Safety Code (H & S Code) section 44002 provides, in pertinent part,
19 that the Director has all the powers and authority granted under the Automotive Repair Act for
20 enforcing the Motor Vehicle Inspection Program.

21 16. H & S Code section 44072.2 states:

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

25 (a) Violates any section of this chapter and the regulations adopted
26 pursuant to it, which related to the licensed activities.

27 (b) Is convicted of any crime substantially related to the qualifications,
28 functions, or duties of the licenseholder in question.

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

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

3 (e) Has misrepresented a material fact in obtaining a license.

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

5 (g) Fails to make and keep records showing his or her transactions as a
6 licensee, or fails to have those records available for inspection by the director or
7 his or her duly authorized representative for a period of not less than three years
after completion of any transaction to which the records refer, or refuses to
8 comply with a written request of the director to make the records available for
inspection.

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

10 17. H & S Code section 44072.4 states:

11 The director may take disciplinary action against any licensee after a
12 hearing as provided in this article by any of the following:

13 (a) Imposing probation upon terms and conditions to be set forth by
the director.

14 (b) Suspending the license.

15 (c) Revoking the license.

16 18. H & S Code section 44072.6 provides, in pertinent part, that the expiration or
17 suspension of a license by operation of law, or by order or decision of the Director, or a court of
18 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
19 proceed with disciplinary action.

20 19. H & S Code section 44072.7 provides that all accusations against licensees shall be
21 filed within three years after the act or omission alleged as the ground for disciplinary action,
22 except that with respect to an accusation alleging a violation of subdivision (d) of Section
23 44072.2, the accusation may be filed within two years after the discovery by the Bureau of the
24 alleged facts constituting the fraud or misrepresentation prohibited by that section.

25 20. H & S Code section 44072.8 states:

26 When a license has been revoked or suspended following a hearing under
27 this article, any additional license issued under this chapter in the name of the
licensee may be likewise revoked or suspended by the director.

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1 related to the qualifications, functions, or duties of the business or profession for
2 which the licensee's license was issued.

3 (c) A conviction within the meaning of this section means a plea or
4 verdict of guilty or a conviction following a plea of *nolo contendere*. Any action
5 that a board is permitted to take following the establishment of a conviction may
6 be taken when the time for appeal has elapsed, or the judgment of conviction has
7 been affirmed on appeal, or when an order granting probation is made suspending
8 the imposition of sentence, irrespective of a subsequent order under the provisions
9 of Section 1203.4 of the Penal Code.

10 (d) The Legislature hereby finds and declares that the application of
11 this section has been made unclear by the holding in *Petropoulos v. Department*
12 *of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has
13 placed a significant number of statutes and regulations in question, resulting in
14 potential harm to the consumers of California from licensees who have been
15 convicted of crimes. Therefore, the Legislature finds and declares that this section
16 establishes an independent basis for a board to impose discipline upon a licensee,
17 and that the amendments to this section made by Senate Bill 797 of the 2007-08
18 Regular Session do not constitute a change to, but rather are declaratory of,
19 existing law.

20 25. Code section 493 states:

21 Notwithstanding any other provision of law, in a proceeding conducted by
22 a board within the department pursuant to law to deny an application for a license
23 or to suspend or revoke a license or otherwise take disciplinary action against a
24 person who holds a license, upon the ground that the applicant or the licensee has
25 been convicted of a crime substantially related to the qualifications, functions, and
26 duties of the licensee in question, the record of conviction of the crime shall be
27 conclusive evidence of the fact that the conviction occurred, but only of that fact,
28 and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

26. Code section 9884.7 states, in pertinent part:

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

(1) Making or authorizing in any manner or by any means
whatever any statement 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.

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(4) Any other conduct that constitutes fraud.

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

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27. Code section 17200 states:

As used in this chapter, unfair competition shall mean and include any unlawful, 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.

28. Code section 17500 states:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, 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, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

29. H & S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as

1 determined by the department in consultation with the state board. The
2 department shall implement testing using onboard diagnostic systems, in lieu of
3 loaded mode dynamometer or two-speed idle testing, on model year 2000 and
4 newer vehicles only, beginning no earlier than January 1, 2013. However, the
5 department, in consultation with the state board, may prescribe alternative test
6 procedures that include loaded mode dynamometer or two-speed idle testing for
7 vehicles with onboard diagnostic systems that the department and the state board
8 determine exhibit operational problems. The department shall ensure, as
9 appropriate to the test method, the following:

10 (a) Emission control systems required by state and federal law are
11 reducing excess emissions in accordance with the standards adopted pursuant to
12 subdivisions (a) and (c) of Section 44013.

13

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

19

20 30. H&S Code section 44013 states:

21 (a) (1) The department, in cooperation with the state board, shall prescribe
22 maximum emission standards to be applied in inspecting motor vehicles under
23 this chapter.

24 (2) In prescribing the standards, the department shall undertake studies
25 and experiments which are necessary and feasible, evaluate available data, and
26 confer with automotive engineers.

27 (3) The standards shall be set at a level reasonably achievable for each
28 class and model of motor vehicle when operating in a reasonably sound
mechanical condition, allowing for the effects of installed motor vehicle pollution
control devices and the motor vehicle's age and total mileage.

(4) The standards shall be designed so that motor vehicles failing the
test specified in Section 44012 will be operated, as soon as possible, with a
substantial reduction in emissions, and shall be revised from time to time as
experience justifies.

. . . .

(c) Notwithstanding any other provision of this chapter, the maximum
emission standards and test procedures prescribed in subdivisions (a) and (b) for a
motor vehicle class and model-year shall not be more stringent than the emission
standards and test procedures under which that motor vehicle's class and model-
year was certified. Emission standards and test procedures prescribed by the
department shall ensure that not more than 5 percent of the vehicles or engines,

1 which would otherwise meet the requirements of this part, will fail the inspection
2 and maintenance test for that class of vehicle or engine.

3

4 31. H & S Code section 44015 states in pertinent part:

5

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

9

10 32. H & S Code section 44032 states:

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

17 33. H & S Code section 44059 states:

18 The willful making of any false statement or entry with regard to a
19 material matter in any oath, affidavit, certificate of compliance or noncompliance,
20 or application form which is required by this chapter or Chapter 20.3
21 (commencing with Section 9880) of Division 3 of the Business and Professions
22 Code, constitutes perjury and is punishable as provided in the Penal Code.

23 **REGULATORY PROVISIONS**

24 34. California Code of Regulations, title 16 (CCR), section 3340.24 states in pertinent
25 part:

26

27 (c) The bureau may suspend or revoke the license of or pursue other legal
28 action against a licensee, if the licensee falsely or fraudulently issues or obtains a
certificate of compliance or a certificate of noncompliance.

35. CCR section 3340.30 states in pertinent part:

A licensed smog check inspector and/or repair technician shall comply
with the following requirements at all times while licensed:

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1 (a) Inspect, test and repair vehicles, as applicable, in accordance with
2 section 44012 of the Health and Safety Code, section 44035 of the Health and
3 Safety Code, and section 3340.42 of this article.

4

5 36. CCR section 3340.35 states in pertinent part:

6

7 (c) A licensed station shall issue a certificate of compliance or
8 noncompliance to the owner or operator of any vehicle that has been inspected in
9 accordance with the procedures specified in section 3340.42 of this article and has
10 all the required emission control equipment and devices installed and functioning
11 correctly. The following conditions shall apply:

12 (1) Customers shall be charged the same price for certificates as
13 that paid by the licensed station; and

14 (2) Sales tax shall not be assessed on the price of certificates.

15

16 37. CCR section 3340.41, subdivision (c), states:

17 No person shall enter into the emissions inspection system any vehicle
18 identification information or emission control system identification data for any
19 vehicle other than the one being tested. Nor shall any person knowingly enter into
20 the emissions inspection system any false information about the vehicle being
21 tested.

22 COST RECOVERY

23 38. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request
24 the administrative law judge to direct a licentiate found to have committed a violation or
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
26 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
27 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
28 may be included in a stipulated settlement.

BACKGROUND

39. Based on a report and a review of smog check data, on May 13 and 28, 2014, the
Bureau of Automotive Repair (BAR) investigated the smog check activities of PBK Auto Care,
doing business as Auto Care USA (Respondent PBK) and found six serious instances of fraud.
As smog check inspectors, Daniel Nathan Blancato (Respondent Blancato) and Paul Joseph-

1 Miche Chenette (Respondent Chenette) are required to properly smog test a vehicle to ensure
2 that it is in good operating condition and meets emissions standards. During the two days of
3 surveillance, Respondents Blancato and Chenette were video recorded on six separate occasions
4 falsifying smog test results. Respondents Blancato and Chenette entered the information of a
5 client's vehicle into the Emission Inspection System (EIS) or BAR 97, then simply attached the
6 testing instrument to a different clean vehicle they knew would pass smog. Respondents
7 Blancato and Chenette reported to BAR that a client's vehicle had passed inspection, when in
8 fact the client's vehicle had not been tested and in all six instances the vehicles were not even
9 present at the test facility.

10 **CLEAN PIPED VEHICLE #1**

11 **40. Undercover Surveillance – Inspection Number 1 on May 13, 2014**

12 On May 13, 2014, Daniel Nathan Blancato (Respondent Blancato), a licensed smog
13 inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK),
14 issued a smog Certificate of Compliance for a 1988 Mazda RX7, VIN JM1FC3329J0605359,
15 CA License 6VQB583 (1988 Mazda). According to the information provided to BAR by
16 Respondent Blancato, the 1988 Mazda was smog tested between 6:31 a.m. and 6:39 a.m., on
17 May 13, 2014.

18 41. A BAR representative observed and recorded Respondent Blancato using the
19 clean-piping method to fraudulently certify the 1988 Mazda. Respondent PBK has only one
20 testing bay. The BAR representative videotaped the activities at Respondent PBK's smog check
21 station during the time the 1988 Mazda was allegedly being tested. The BAR representative
22 observed and recorded that between 6:19 a.m. and 6:29 a.m., Respondent PBK's testing bay
23 remained empty. The BAR representative also observed and recorded that between 6:29 a.m. and
24 6:38 a.m., a 2001 PT Cruiser was the only vehicle in Respondent PBK's test bay. Respondent
25 Blancato represented to BAR that he was testing the 1988 Mazda from 6:31 a.m. to 6:39 a.m.,
26 when in actuality he was testing the 2001 PT Cruiser. Respondent Blancato used the "clean"
27 exhaust from the 2001 PT Cruiser to certify the exhaust of the 1988 Mazda. In actuality the 1988
28 Mazda was not even present at Respondent PBK's test bay during the smog test. Respondent

1 Blancato certified to BAR that he had smog tested the 1988 Mazda and issued passing smog
2 Certificate of Compliance No. YF566406C for the 1988 Mazda RX7, VIN
3 JM1FC3329J0605359, CA License 6VQB583.

4 **CLEAN PIPED VEHICLE #2**

5 **42. Undercover Surveillance – Inspection Number 2 on May 13, 2014**

6 On May 13, 2014, Daniel Nathan Blancato (Respondent Blancato), a licensed smog
7 inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK),
8 issued a smog Certificate of Compliance for a 1995 Volvo 850, VIN YV1LS5510S2236509, no
9 CA License plate (1995 Volvo). According to the information provided to BAR by Respondent
10 Blancato, the 1995 Volvo was smog tested between 6:50 a.m. and 6:57 a.m., on May 13, 2014.

11 43. A BAR representative observed and recorded Respondent Blancato again using
12 the clean-piping method to fraudulently certify the 1995 Volvo. Respondent PBK has only one
13 testing bay. The BAR representative videotaped the activities at Respondent PBK's smog check
14 station during the time the 1995 Volvo was allegedly being tested. The BAR representative
15 observed and recorded that at 6:53 a.m Respondent Blancato was observed inserting the analyzer
16 probe into the tailpipe of the 2001 PT Cruiser. At 6:54 a.m. Respondent Blancato was observed
17 entering the 2001 PT Cruiser. At 6:56 a.m., Respondent Blancato was observed exiting the 2001
18 PT Cruiser and removing the probe from its tailpipe. At 6:57 a.m., Respondent Blancato drove
19 the 2001 PT Cruiser out of the smog check testing bay. Respondent Blancato represented to BAR
20 that he was testing the 1995 Volvo from 6:50 a.m. to 6:57 a.m., when in reality he was testing the
21 2001 PT Cruiser. Respondent Blancato used the "clean" exhaust from the 2001 PT Cruiser to
22 certify the exhaust of the 1995 Volvo. In reality, the 1995 Volvo was not even present at
23 Respondent PBK's testing bay during the smog test on record. Respondent Blancato certified to
24 BAR that he had smog tested the 1995 Volvo and issued smog Certificate of Compliance No.
25 YF566407C for the 1995 Volvo 850, VIN YV1LS5510S2236509, no CA License plate.

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CLEAN PIPED VEHICLE #3

44. **Undercover Surveillance – Inspection Number 3 on May 13, 2014**

On May 13, 2014, Paul Joseph-Miche Chenette (Respondent Chenette), a licensed smog inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK), issued a smog Certificate of Compliance for a 2006 Chevrolet Cobalt, VIN 1G1AK55F967855796, CA License 5SFK181 (2006 Chevrolet). According to the information provided to BAR by Respondent Chenette, the 2006 Chevrolet was smog tested between 9:24 a.m. and 9:33 a.m., on May 13, 2014.

45. A BAR representative observed and recorded Respondent Chenette using the clean-piping method to fraudulently certify the 2006 Chevrolet. PBK Auto Care, doing business as Auto Care USA (Respondent PBK) has only one testing bay. The BAR representative videotaped the activities at Respondent PBK's smog check station during the time the 2006 Chevrolet was allegedly being tested. The BAR representative observed and recorded that at 9:27 a.m Respondent Chenette was observed driving the 2001 PT Cruiser into Respondent PBK's testing bay. At 9:28 a.m. Respondent Chenette was observed inserting the analyzer probe into the tailpipe of the 2001 PT Cruiser and thereafter entering the vehicle. At 9:31 a.m., Respondent Chenette was observed exiting the 2001 PT Cruiser and removing the probe from its tailpipe. At 9:34 a.m., Respondent Chenette drove the 2001 PT Cruiser out of the smog check testing bay. Respondent Chenette represented to BAR that he was testing the 2006 Chevrolet from 9:24 a.m. to 9:33 a.m., when in reality he was testing the 2001 PT Cruiser. Respondent Chenette used the "clean" exhaust from the 2001 PT Cruiser to certify the exhaust of the 2006 Chevrolet. In reality, the 2006 Chevrolet was not even present at Respondent PBK's testing bay during the smog test on record. Respondent Chenette certified to BAR that he had smog tested the 2006 Chevrolet and issued smog Certificate of Compliance No. YF566408C for the 2006 Chevrolet Cobalt, VIN 1G1AK55F967855796, CA License 5SFK181.

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1 **CLEAN PIPED VEHICLE #4**

2 46. **Undercover Surveillance – Inspection Number 1 on May 28, 2014**

3 On May 28, 2014, Daniel Nathan Blancato (Respondent Blancato), a licensed smog
4 inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK),
5 issued a smog Certificate of Compliance for a 2001 Ford Focus, VIN 3FAFP31301R239426, CA
6 License 6VCJ243 (2001 Ford). According to the information provided to BAR by Respondent
7 Blancato, the 2001 Ford was smog tested between 7:34 a.m. and 7:40 a.m., on May 28, 2014.

8 47. A BAR representative observed and recorded Respondent Blancato using the
9 clean-piping method to fraudulently certify the 2001 Ford. Respondent PBK has only one testing
10 bay. The BAR representative videotaped the activities at Respondent PBK's smog check station
11 during the time the 2001 Ford was allegedly being tested. The BAR representative observed and
12 recorded that at 7:30 a.m. Respondent Blancato drove a 2001 PT Cruiser into Respondent PBK's
13 testing bay. The BAR representative also observed and recorded that Respondent Blancato at
14 7:38 a.m. inserted the exhaust test probe into the tailpipe of the 2001 PT Cruiser, at 7:39 a.m.
15 entered the vehicle, and at 7:40 a.m. exited the vehicle and removed the exhaust test probe from
16 the tailpipe of the 2001 PT Cruiser. At 7:41 a.m. Respondent Blancato drove the 2001 PT
17 Cruiser out of Respondent PBK's test bay. Respondent Blancato represented to BAR that he was
18 testing the 2001 Ford from 7:34 a.m. to 7:40 a.m., when in actuality he was testing the 2001 PT
19 Cruiser. Respondent Blancato used the "clean" exhaust from the 2001 PT Cruiser to certify the
20 exhaust of the 2001 Ford. In actuality the 2001 Ford was not even present at Respondent PBK's
21 test bay during the smog test. Respondent Blancato certified to BAR that he had smog tested the
22 2001 Ford and issued passing smog Certificate of Compliance No. YF737064C for the 2001
23 Ford Focus, VIN 3FAFP31301R239426, CA License 6VCJ243.

24 **CLEAN PIPED VEHICLE #5**

25 48. **Undercover Surveillance – Inspection Number 2 on May 28, 2014**

26 On May 28, 2014, Daniel Nathan Blancato (Respondent Blancato), a licensed smog
27 inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK),
28 issued a smog Certificate of Compliance for a 1982 Chevrolet Camaro, VIN

1 1G1AP87H0CL169795, CA License 6GCR098 (1982 Chevrolet). According to the information
2 provided to BAR by Respondent Blancato, the 1982 Chevrolet was smog tested between 3:03
3 p.m. and 3:09 p.m., on May 28, 2014.

4 49. A BAR representative observed and recorded Respondent Blancato again using
5 the clean-piping method to fraudulently certify the 1982 Chevrolet. Respondent PBK has only
6 one testing bay. The BAR representative videotaped the activities at Respondent PBK's testing
7 bay during the time the 1982 Chevrolet was allegedly being tested. The BAR representative
8 observed and recorded that at 2:59 p.m. Respondent Blancato drove a Toyota Tundra into
9 Respondent PBK's testing bay. At 3:06 p.m. Respondent Blancato was observed inserting the
10 analyzer probe into the tailpipe of the Toyota Tundra. At 3:09 p.m., Respondent Blancato was
11 observed removing the probe from the tailpipe of the Toyota Tundra. Respondent Blancato
12 represented to BAR that he was testing the 1982 Chevrolet from 3:03 p.m. to 3:09 p.m., when in
13 reality he was testing the Toyota Tundra. Respondent Blancato used the "clean" exhaust from the
14 Toyota Tundra to certify the exhaust of the 1982 Chevrolet. In reality, the 1982 Chevrolet was
15 not even present at Respondent PBK's testing bay during the smog test on record. Respondent
16 Blancato certified to BAR that he had smog tested the 1982 Chevrolet and issued smog
17 Certificate of Compliance No. YF737068C for the 1982 Chevrolet Camaro, VIN
18 1G1AP87H0CL169795, CA License 6GCR098.

19 **CLEAN PIPED VEHICLE #6**

20 50. **Undercover Surveillance – Inspection Number 3 on May 28, 2014**

21 On May 28, 2014, Paul Joseph-Miche Chenette (Respondent Chenette), a licensed smog
22 inspector technician at PBK Auto Care, doing business as Auto Care USA (Respondent PBK),
23 issued a smog Certificate of Compliance for a 2002 Chevrolet Avalanche, VIN
24 3GNEK13T42G132308, CA License 6X98915 (2002 Chevrolet). According to the information
25 provided to BAR by Respondent Chenette, the 2002 Chevrolet was smog tested between 3:31
26 p.m. and 3:38 p.m., on May 28, 2014.

27 51. A BAR representative observed and recorded Chad Russell (Russell), an
28 unlicensed person, using the clean-piping method to fraudulently certify the 2002 Chevrolet.

1 Respondent PBK has only one testing bay. The BAR representative videotaped the activities at
 2 Respondent PBK's testing bay during the time the 2002 Chevrolet was allegedly being tested.
 3 The BAR representative observed and recorded that at 3:36 p.m Russell inserted the analyzer
 4 probe into the tailpipe of a Toyota Tundra. At 3:38 p.m., Russell was observed removing the
 5 probe from the tailpipe of a Toyota Tundra. At 3:40 p.m., Russell drove the Toyota Tundra out
 6 of the smog check testing bay. Russell represented to BAR that he was testing the 2002
 7 Chevrolet from 3:31 p.m. to 3:38 p.m., when in reality he was testing the Toyota Tundra. Russell
 8 used the "clean" exhaust from the Toyota Tundra to certify the exhaust of the 2002 Chevrolet. In
 9 reality, the 2002 Chevrolet was not even present at Respondent PBK's testing bay during the
 10 smog test on record. Russell, using Respondent Chenette's smog inspector technician license,
 11 certified to BAR that he had smog tested the 2002 Chevrolet and issued smog Certificate of
 12 Compliance No. YF737070C for the 2002 Chevrolet Avalanche, VIN 3GNEK13T42G132308,
 13 CA License 6X98915.

14 52. Of the six fraudulent inspections set forth below, inspection numbers 1, 2, 4, and
 15 5 were performed under Respondent Blancato's smog check inspector license number and
 16 inspection numbers 3 and 6 were performed under Respondent Chenette's smog check inspector
 17 license number.

Date & Time of Inspection	Vehicle Certified and License Number	Certificate No.
1. 5/13/2014 6:31 to 6:39 a.m.	1988 Mazda RX7, VIN JM1FC3329J0605359, CA License 6VQB583	YF566406C
2. 5/13/2014 6:50 to 6:57 a.m.	1995 Volvo 850, VIN YV1LS5510S2236509, no CA License plate	YF566407C
3. 5/13/2014 9:24 to 9:33 a.m.	2006 Chevrolet Cobalt, VIN 1G1AK55F967855796, CA License 5SFK181	YF566408C
4. 5/28/2014 7:34 to 7:40 a.m.	2001 Ford Focus, VIN 3FAFP31301R239426, CA License 6VCJ243	YF737064C
5. 5/28/2014 3:03 to 3:09 p.m.	1982 Chevrolet Camaro, VIN 1G1AP87H0CL169795, CA License 6GCR098	YF737068C
6. 5/28/2014 3:31 to 3:38 p.m.	2002 Chevrolet Avalanche, VIN 3GNEK13T42G132308, CA License 6X98915	YF737070C

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1 b. **Section 17500:** Respondent PBK certified that the vehicles as set forth
2 under paragraphs 41-54, above, had passed inspection and were in compliance with applicable
3 laws and regulations, which constitute untrue statements that were known to Respondent to be
4 misleading.

5 **FOURTH CAUSE FOR DISCIPLINE**
6 **Automotive Repair Dealer Registration**
7 **(Violations of the Motor Vehicle Inspection Program)**

8 56. Respondent PBK's Automotive Repair Dealer Registration is subject to
9 disciplinary action under H & S Code section 44072.2, subdivision (a), in that as set forth in
10 paragraphs 41-54, above, Respondent PBK failed to materially comply with the following
11 provisions of California Code of Regulations, Title 16:

12 a. **Section 3371:** Respondent PBK made untrue or misleading statements
13 with respect to the vehicles as set forth under paragraphs 41-54, above, by certifying that those
14 vehicles had passed inspection and were then in compliance with applicable state and federal
15 laws. In fact, those vehicles had not been tested or inspected as required by H & S Code section
16 44012.

17 b. **Section 3373:** Respondent PBK made false or misleading records with
18 respect to the vehicles as set forth under paragraphs 41-54, above, by issuing smog certificates of
19 compliance without performing bona fide inspections of the emission control devices and
20 systems on those vehicles, thereby depriving the People of the State of California of the
21 protections afforded under the Motor Vehicle Inspection Program (H & S Code section 44000, et
22 seq.).

23 **FIFTH CAUSE FOR DISCIPLINE**
24 **Smog Check Station License**
25 **(Violations of the Motor Vehicle Inspection Program)**

26 57. Respondent PBK's Smog Check Station License is subject to disciplinary action
27 under H & S Code section 44072.2, subdivision (a), in that as set forth in paragraphs 41-54,
28 above, Respondent PBK failed to materially comply with the following provisions of California
Code of Regulations, Title 16:

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1 a. **Section 44012, subdivision (a):** Respondent PBK failed to determine that
2 all emission control devices and systems required by law were installed and functioning correctly
3 in accordance with test procedures on the six vehicles referenced in paragraphs 41-54.

4 b. **Section 44012, subdivision (f):** Respondent PBK failed to perform
5 emission control tests in accordance with procedures prescribed by the department on the six
6 vehicles referenced in paragraphs 41-54.

7 c. **Section 44015, subdivision (b):** Respondent PBK issued an electronic
8 smog certificate of compliance for the six vehicles referenced in paragraphs 41-54, above,
9 without properly testing and inspecting the vehicles to determine if they were in compliance with
10 H & S Code section 44012.

11 **SIXTH CAUSE FOR DISCIPLINE**
12 **Smog Check Station License**
13 **(Failure to Comply with Regulations)**

14 58. Respondent PBK's Smog Check Station License is subject to disciplinary action
15 under H & S Code section 44072.2, subdivision (c), in that Respondent PBK failed to comply
16 with provisions of California Code of Regulations, Title 16, as follows:

17 a. **Section 3340.24, subdivision (c):** Respondent PBK falsely or fraudulently
18 issued an electronic smog certificate of compliance for the six vehicles referenced in paragraph
19 54, above.

20 b. **Section 3340.35, subdivision (c):** Respondent PBK issued an electronic
21 smog certificate of compliance for the six vehicles referenced in paragraph 54, above, even
22 though the vehicles had not been inspected in accordance with section 3340.42.

23 c. **Section 3340.41, subdivision (c):** Respondent PBK permitted false
24 information to be entered into the Emission Inspection System ("EIS") in that vehicle
25 identification information or emission control system identification data was entered for vehicles
26 other than the ones being tested, as referenced in paragraph 54, above.

27 d. **Section 3340.42:** Respondent PBK failed to conduct the required smog
28 tests on the six vehicles referenced in paragraph 54, above, in accordance with the Bureau's
specifications.

1 **NINTH CAUSE FOR DISCIPLINE**

2 **Smog Check Inspector License**
3 **(Violations of Regulations)**

4 21. Respondent Blancato's smog check inspector license is subject to discipline under
5 Health and Safety Code section 44072.2, subdivision (c), in that on May 13 and 28, 2014, he
6 violated sections of the California Code of Regulations, Title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent Blancato falsely or
8 fraudulently issued electronic Certificates of Compliance without performing a bona fide
9 inspection of the emission control devices and systems on those vehicles as required by Health
10 and Safety Code section 44012, on four of the six vehicles referenced in paragraphs 41-54.

11 b. **Section 3340.30, subdivision (a):** Respondent Blancato failed to inspect
12 and test on four of the six vehicles referenced in paragraphs 41-54, above, in accordance with
13 Health and Safety Code section 44012.

14 c. **Section 3340.41, subdivision (c):** Respondent Blancato entered false
15 information into the Emission Inspection System ("EIS") for electronic Certificates of
16 Compliance by entering vehicle emission control information for a vehicle other than on four of
17 the six vehicles referenced in paragraphs 41-54.

18 d. **Section 3340.42:** Respondent Blancato failed to conduct the required
19 smog tests and inspections on four of the six vehicles referenced in paragraphs 41-54, above, in
20 accordance with the Bureau's specifications.

21 **TENTH CAUSE FOR DISCIPLINE**

22 **Smog Check Inspector License**
23 **(Untrue or Misleading Statements)**

24 61. Respondent Blancato's Smog Check Inspector License is subject to disciplinary
25 action under H & S Code section 44072.2, subdivision (d), in that Respondent Blancato
26 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an
27 electronic smog certificate of compliance for four of the six vehicles referenced in paragraphs
28 41-54, above, without performing a bona fide inspection 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.

1 Repair Technician License Number EI 153170, and any additional license issued under this
2 chapter in the name of said licensee may be likewise revoked or suspended by the director.

3 67. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
4 Number EO 125236 issued to Paul Joseph-Miche Chenette, is revoked or suspended, Smog
5 Check Repair Technician License Number EI 125236, and any additional license issued under
6 this chapter in the name of said licensee may be likewise revoked or suspended by the director.

7 **PRAYER**

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

10 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
11 267889, issued to PBK Auto Care doing business as Auto Care USA, with Joseph Michael
12 Bertine, as President, Secretary, and Treasurer;

13 2. Revoking or suspending Smog Check Station License Number RC 267889, issued
14 to PBK Auto Care doing business as Auto Care USA, with Joseph Michael Bertine, as President,
15 Secretary, and Treasurer;

16 3. Revoking or suspending Smog Check Inspector License Number EO 153170,
17 issued to Daniel Nathan Blancato;

18 4. Revoking or suspending Smog Check Repair Technician License Number EI
19 153170, issued to Daniel Nathan Blancato;

20 5. Revoking or suspending Smog Check Inspector License Number EO 125236,
21 issued to Paul Joseph-Miche Chenette;

22 6. Revoking or suspending Smog Check Repair Technician License Number EI
23 125236, issued to Paul Joseph-Miche Chenette;

24 7. Ordering PBK Auto Care, Joseph Michael Bertine, Daniel Nathan Blancato, and
25 Paul Joseph-Miche Chenette to pay the Bureau of Automotive Repair the reasonable costs of

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1 the investigation and enforcement of this case, pursuant to Business and Professions Code
2 section 125.3; and

3 8. Taking such other and further action as deemed necessary and proper.
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6 DATED: December 4, 2014 

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

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