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7

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. 79/17-16585

12 **JOSE ALVAREZ, DBA ALVAREZ TEST**
13 **ONLY**

A C C U S A T I O N

13 13419 Lambert Road
14 Whittier, CA 90605

15 **Automotive Repair Dealer Registration No.**
16 **ARD268026**
17 **Smog Check Test Only Station License No.**
18 **TC268026**

17 **JOSE G. ALVAREZ**
18 13419 Lambert Road
19 Whittier, CA 90602

19 **Smog Check Inspector License No. EO150079**
20 **Smog Check Repair Technician License No.**
21 **EI150079**

21 **and**

22 **MARCO ANTONIO ALVAREZ**
23 11217 Arroyo Drive
24 Whittier, CA 90602

24 **Smog Check Inspector License No. EO639543**

25 Respondents.
26

27 Complainant alleges:

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PARTIES

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

4 **A. Jose Alvarez, dba Alvarez Test Only: Automotive Repair Dealer Registration**
5 **Number ARD268026**

6 2. On February 22, 2012, the Bureau issued Automotive Repair Dealer Registration
7 number ARD268026 to Jose Alvarez, doing business as Alvarez Test Only (Alvarez Test Only or
8 Respondent Jose Alvarez). Said registration was in full force and effect at all times relevant to the
9 charges brought herein and will expire on February 28, 2019, unless renewed.

10 Notwithstanding the expiration of the aforementioned license, the Bureau retains
11 jurisdiction in this matter pursuant to Business and Professions Code section 9884.13.

12 **B. Jose Alvarez, dba Alvarez Test Only: Smog Check Test Only Station License**
13 **Number TC268026**

14 3. On March 15, 2012, the Bureau issued Smog Check Test Only Station License
15 number TC268026 to Respondent Jose Alvarez. Said license was in full force and effect at all
16 times relevant to the charges brought herein and will expire on February 28, 2019, unless
17 renewed.

18 **C. STAR Station**

19 4. On February 12, 2013, the Bureau certified Alvarez Test Only as a STAR Station.
20 The certification has no expiration date and will remain active unless the Automotive Repair
21 Dealer registration and/or Smog Check Test Only Station license is revoked, canceled, or
22 becomes delinquent.

23 **D. Jose G. Alvarez: Smog Check Inspector License Number EO150079; Smog Check**
24 **Repair Technician License Number EI150079¹**

25
26 _____
27 ¹ Effective August 1, 2012, California Code of Regulation, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure of the Smog Check
Technician (EA/EB) license types to Smog Check Inspector (EO) license and Smog Check Repair
Technician (EI) license.

1 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
2 Director of jurisdiction to proceed with disciplinary action.

3 STATUTES

4 12. Business and Professions Code section 9884.7 states, in pertinent part:

5 (a) The director, where the automotive repair dealer cannot show there was a
6 bona fide error, may refuse to validate, or may invalidate temporarily or permanently,
7 the registration of an automotive repair dealer for any of the following acts or

8 omissions related to the conduct of the business of the automotive repair dealer,
9 which are done by the automotive repair dealer or any automotive technician,
10 employee, partner, officer, or member of the automotive repair dealer.

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

14

15 (4) Any other conduct that constitutes fraud.

16

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

19

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

25 13. Business and Professions Code section 9889.22 states, in pertinent part:

26 The willful making of any false statement or entry with regard to a material
27 matter in any oath, affidavit, certificate of compliance or noncompliance, or
28 application form which is required by this chapter or Chapter 5 (commencing with
Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes
perjury and is punishable as provided in the Penal Code.

14. Business and Professions Code section 17200 states, in pertinent part:

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.

15. Business and Professions Code section 17200 states, in pertinent part:

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

1 to induce the public to enter into any obligation relating thereto, to make or
2 disseminate or cause to be made or disseminated before the public in this state, or to
3 make or disseminate or cause to be made or disseminated from this state before the
4 public in any state, in any newspaper or other publication, or any advertising device,
5 or by public outcry or proclamation, or in any other manner or means whatever,
6 including over the Internet, any statement, concerning that real or personal property
7 or those services, professional or otherwise, or concerning any circumstance or matter
8 of fact connected with the proposed performance or disposition thereof, which is
9 untrue or misleading, and which is known, or which by the exercise of reasonable
10 care should be known, to be untrue or misleading, or for any person, firm, or
11 corporation to so make or disseminate or cause to be so made or disseminated any
12 such statement as part of a plan or scheme with the intent not to sell that personal
13 property or those services, professional or otherwise, so advertised at the price stated
14 therein, or as so advertised. Any violation of the provisions of this section is a
15 misdemeanor punishable by imprisonment in the county jail not exceeding six
16 months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by
17 both that imprisonment and fine.

18 16. Health and Safety Code section 44012 states, in pertinent part:

19 The test at the smog check stations shall be performed in accordance with
20 procedures prescribed by the department and may require loaded mode dynamometer
21 testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard
22 diagnostic system, or other appropriate test procedures as determined by the
23 department in consultation with the state board. The department shall implement
24 testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or
25 two-speed idle testing, on model year 2000 and newer vehicles only, beginning no
26 earlier than January 1, 2013. However, the department, in consultation with the state
27 board, may prescribe alternative test procedures that include loaded mode
28 dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems
that the department and the state board determine exhibit operational problems. The
department shall ensure, as appropriate to the test method, the following:

.....

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

17. Health and Safety Code section 44015, subdivision (b), provides that a certificate of
compliance shall be issued if a vehicle meets the requirements of Health and Safety Code section
40012.

18. Health and Safety Code section 44032 states, in pertinent part:

No person shall perform, for compensation, tests or repairs of emission control
devices or systems of motor vehicles required by this chapter unless the person

1 performing the test or repair is a qualified smog check technician and the test or repair
2 is performed at a licensed smog check station. Qualified technicians shall perform
tests of emission control devices and systems in accordance with Section 44012.

3 19. Health and Safety Code section 44059 states, in pertinent part:

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

7 20. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

12

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

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

15 21. Health & Safety Code section 44072.10 states, in pertinent part:

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

19

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

21 22. Health and Safety Code section 44072.8 states that when a license has been revoked
22 or suspended following a hearing under this article, any additional license issued under this
23 chapter in the name of the licensee may be likewise revoked or suspended by the director.

24 **REGULATIONS**

25 23. California Code of Regulations, title 16, section 3340.15, subdivision (h), prohibits a
26 licensed smog check station from subletting inspections or repairs required as part of the Smog
27 Check Program.

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1 24. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

2 The bureau may suspend or revoke the license of or pursue other legal action
3 against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate
4 of compliance or a certificate of noncompliance.

5 25. California Code of Regulations, title 16, section 3340.30, subdivision (a), states that a
6 licensed smog technician shall at all times:

7 [i]nspect, test and repair vehicles, as applicable, in accordance with section
8 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and
9 section 3340.42 of this article.

10 26. California Code of Regulations, title 16, section 3340.35, subdivision (c), states that a
11 licensed smog check station:

12 shall issue a certificate of compliance or noncompliance to the owner or
13 operator of any vehicle that has been inspected in accordance with the procedures
14 specified in section 3340.42 of this article and has all the required emission control
15 equipment and devices installed and functioning correctly.

16 27. California Code of Regulations, title 16, section 3340.41, subdivision (c), states that:

17 [n]o 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 tested.

21 28. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions
22 test methods and procedures which apply to all vehicles inspected in the State of California.

23 29. California Code of Regulations, title 16, section 3373, states that:

24 No automotive repair dealer or individual in charge shall, in filling out an
25 estimate, invoice, or work order, or record required to be maintained by section
26 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or
27 information which will cause any such document to be false or misleading, or where
28 the tendency or effect thereby would be to mislead or deceive customers, prospective
customers, or the public.

COST RECOVERY

30. Business and Professions Code section 125.3 provides, in pertinent part, that the
Bureau may request the administrative law judge to direct a licentiate found to have committed a
violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
and enforcement of the case.

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VID DATA REVIEW

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2 31. On March 9, 2015, the Bureau implemented a policy change requiring the use of
3 an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas
4 powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer
5 diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data lists differences in
6 Vehicle Identification Numbers (VIN) for vehicles that have received smog inspections, in
7 addition to communication protocol (the language used to communicate) and Parameter ID (PID)
8 differences with vehicles that have been certified correctly that are the same make and model
9 vehicles.

10 32. On or about October 10, 2017, Bureau representative Nicholas H. Magana initiated
11 an investigation in which he reviewed OIS test data for Alvarez Test Only. Representative
12 Nicholas H. Magana's investigation revealed that the data related to certain vehicles certified by
13 Alvarez Test Only contained a pattern of unmistakable discrepancies between the information
14 transmitted during the inspections and documented information known about the subject vehicles.
15 Specifically, representative Nicholas H. Magana compared the data received from the certified
16 vehicles to data from vehicles of the same year, make, and model and determined that the data
17 from four the certified vehicles contained two or more of the following unmistakable
18 discrepancies: (1) missing eVINs; (2) incorrect vehicle communication protocols; and (3)
19 incorrect PID counts. These documented discrepancies confirm that the vehicles receiving smog
20 certificates from Alvarez Test Only were fraudulently tested during the smog inspection using the
21 clean plugging method. Clean plugging refers to the use of another vehicle's properly functioning
22 On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing
23 diagnostic readings for the purpose of issuing fraudulent smog Certificates of Compliance to
24 vehicles that are not in smog compliance or were not present for testing.

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33. The following table illustrates the documented clean plugging activities of Respondents from June 13, 2016 through August 14, 2017.

No.	Test Date	Vehicle Certified & VIN/Plate No.	Certificate No.	Technician	OIS Test Data Details
1.	6/13/2016	2002 Honda Civic LX VIN: 2HGES16502H582867 Plate No: 5UXU462	ZF326965C	Respondent Jose G. Alvarez (EO150079)	Comm. Protocol: JVPW (Expected: 1914) PID Count: 18 3 (Expected: 16 or 17) eVIN: Incorrect; Reported, but Not Expected
2.	6/13/2016	2002 Acura RSX VIN: JH4DC54812C028816 Plate No: 4XMK062	ZF326966C	Respondent Jose G. Alvarez (EO150079)	Comm. Protocol: JVPW (Expected: 1914) PID Count: 18 3 Expected: 16 or 17) eVIN: Incorrect; Reported, but Not Expected
3.	6/15/2017	2007 Honda Accord LX VIN: 1HGCM56457A096514 Plate No: 6AQM674	ZX082727C	Respondent Jose G. Alvarez (EO150079)	Comm. Protocol: ICAN29bt5 (Expected: 1914) PID Count: 37 20 Expected: 21) eVIN: Reported, but Does Not Match
4.	8/14/2017	2007 Toyota Camry New Generation LE VIN: 4T1BK46K77U558784 Plate No: 6BLS301	HD402002C	Respondent Marco Antonio Alvarez (EO639543)	Comm. Protocol: ICAN11bt5 (Expected: ICAN11bt5) PID Count: 39 7 Expected: 46 17) eVIN: Incorrect; Reported, but Not Expected

1 34. The data analysis conducted on Alvarez Test Only (covering a period from June 13,
2 2016 through August 14, 2017) shows that Respondents participated in a scheme to perform four
3 fraudulent Smog Check inspections resulting in the issuance of four fraudulent electronic Smog
4 Check Certificates of Compliance.

5 35. Additionally, for vehicle numbers 1 and 2 on the chart above, OIS Test Data shows
6 that the 2005 Dodge Neon SXT was previously certified under Respondent Jose G. Alvarez on
7 June 7, 2016. The OIS Test Data transmitted for the 2005 Dodge Neon SXT matches the OIS Test
8 Data for the fraudulent inspection of the 2002 Honda Civic LX for the eVIN, protocol, and PID
9 count.

10 36. Additionally, for vehicle number 3 on the chart above, OIS Test Data shows that the
11 2007 Honda Accord LX was previously tested under Respondent Jose G. Alvarez on July 17,
12 2015, and transmitted the correct OIS Test Data for the eVIN, protocol, and PID count.

13 37. Additionally, for vehicle number 4 on the chart above, a previous test was performed
14 at another licensed smog check station on February 13, 2015, and transmitted the correct OIS Test
15 Data for the eVIN, protocol, and PID count.

16 38. Additionally, for vehicle number 4 on the chart above, OIS Test Data shows that a
17 2010 Chevrolet Impala was used to generate the fraudulent Smog Certificate of Compliance of
18 the 2007 Toyota Camry New Generation LE. The 2010 Chevrolet Impala was previously certified
19 under Respondent Jose G. Alvarez on September 5, 2017. The OIS Test Data transmitted for the
20 2010 Chevrolet Impala matches the OIS Test Data for the fraudulent inspection of the 2007
21 Toyota Camry New Generation LE for the eVIN, protocol, and PID count.

22 **AS TO ALVAREZ TEST ONLY, RESPONDENT JOSE ALVAREZ:**
23 **AUTOMOTIVE REPAIR DEALER REGISTRATION NO. ARD268026**

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Untrue or Misleading Statements)**

26 39. Respondent Jose Alvarez's Automotive Repair Dealer Registration is subject to
27 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1),
28 in that Respondent Jose Alvarez made or authorized statements which Respondent Jose Alvarez

1 knew or in the exercise of reasonable care should have known to be untrue or misleading.

2 40. Respondent Jose Alvarez certified that the four vehicles identified in paragraph 33
3 above, had passed inspection and were in compliance with applicable laws and regulations. In
4 fact, Respondent Jose Alvarez conducted the inspections of the four vehicles identified in
5 paragraph 33 above, using clean-plugging methods in that he substituted or used a different
6 vehicle(s), or another source, during the OBD II functional tests in order to issue smog certificates
7 of compliance for the vehicles. Respondent Jose Alvarez did not test or inspect any of the four
8 vehicles as required by Health and Safety Code section 44012. Complainant realleges paragraphs
9 31 through 38.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 41. Respondent Jose Alvarez's Automotive Repair Dealer Registration is subject to
13 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4),
14 in that Respondent Jose Alvarez committed acts that constitute fraud by issuing electronic smog
15 certificates of compliance for the four vehicles identified in paragraph 33 above, without
16 performing bona fide inspections of the emission control devices and systems on the vehicles,
17 thereby depriving the People of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program. Complainant realleges paragraphs 31 through 38.

19 **THIRD CAUSE FOR DISCIPLINE**

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

21 42. Respondent Jose Alvarez's Automotive Repair Dealer Registration is subject to
22 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),
23 in that Respondent Jose Alvarez failed in a material respect to comply with the provisions of this
24 chapter or regulations adopted pursuant to it when he issued electronic certificates of compliance
25 for the four vehicles identified in paragraph 33 above, without performing bona fide inspections
26 of the emission control devices and systems on those vehicles, thereby depriving the People of the
27 State of California of the protection afforded by the Motor Vehicle Inspection Program.
28 Complainant realleges paragraphs 31 through 38.

1 AS TO ALVAREZ TEST ONLY, RESPONDENT JOSE ALVAREZ:
2 SMOG CHECK TEST ONLY STATION LICENSE NO. TC268026

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Violations of the Motor Vehicle Inspection Program)

5 43. Respondent Jose Alvarez's Smog Check Test Only Station License is subject to
6 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
7 Respondent Jose Alvarez failed to comply with the following sections of that Code:

8 a. **Section 44012:** Respondent Jose Alvarez failed to ensure that the emission control
9 tests were performed on the four vehicles identified in paragraph 33 above, in accordance with
10 procedures prescribed by the department.

11 b. **Section 44015:** Respondent Jose Alvarez issued electronic smog certificates of
12 compliance for the four vehicles identified in paragraph 33 above, without ensuring that the
13 vehicles were properly tested and inspected to determine if they were in compliance with Health
14 and Safety Code section 44012.

15 c. **Section 44059:** Respondent Jose Alvarez willfully made false entries for the
16 electronic certificates of compliance by certifying that the four vehicles identified in paragraph 33
17 above had been inspected as required when, in fact, they had not.

18 Complainant realleges paragraphs 31 through 38.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 44. Respondent Jose Alvarez's Smog Check Test Only Station License is subject to
22 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
23 Respondent Jose Alvarez failed to comply with provisions of California Code of Regulations, title
24 16, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent Jose Alvarez falsely or fraudulently
26 issued electronic smog certificates of compliance for the four vehicles identified in paragraph 33
27 above.

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1 provisions of Health and Safety Code, as follows:

2 a. **Section 44012:** Respondent Jose G. Alvarez failed to ensure that the emission control
3 tests were performed on three of the four vehicles identified in paragraph 33 above, in accordance
4 with procedures prescribed by the department.

5 b. **Section 44032:** Respondent Jose G. Alvarez failed to perform emission control
6 devices and systems for three of the four vehicles identified in paragraph 33 above in accordance
7 with Health and Safety Code section 44012.

8 c. **Section 44059:** Respondent Jose G. Alvarez willfully made false entries for the
9 electronic certificates of compliance by certifying that three of the four vehicles identified in
10 paragraph 33 above had been inspected as required when, in fact, they had not.

11 Complainant realleges paragraphs 31 through 38.

12 **EIGHTH CAUSE FOR DISCIPLINE**

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

14 47. Respondent Jose G. Alvarez's Smog Check Inspector License and Smog Check
15 Repair Technician License are subject to disciplinary action pursuant to Health and Safety Code
16 section 44072.2, subdivision (c), in that Respondent Jose G. Alvarez failed to comply with
17 provisions of California Code of Regulations, title 16, as follows:

18 a. **Section 3340.30, subdivision (a):** Respondent Jose G. Alvarez failed to inspect and
19 test three of the four vehicles identified in paragraph 33 above, in accordance with Health and
20 Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section
21 3340.42.

22 b. **Section 3340.41, subdivision (c):** Respondent Jose G. Alvarez knowingly entered
23 false information into the emissions inspection system for three of the four vehicles identified in
24 paragraph 33 above.

25 Complainant realleges paragraphs 31 through 38.

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1 **NINTH CAUSE FOR DISCIPLINE**

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

3 48. Respondent Jose G. Alvarez's Smog Check Inspector License and Smog Check
4 Repair Technician License are subject to disciplinary action pursuant to Health and Safety Code
5 section 44072.2, subdivision (d), in that Respondent Jose G. Alvarez committed dishonest,
6 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates
7 of compliance for three of the four vehicles identified in in paragraph 33 above, without
8 performing bona fide inspections of the emission control devices and systems on the vehicles,
9 thereby depriving the People of the State of California of the protection afforded by the Motor
10 Vehicle Inspection Program. Complainant realleges paragraphs 31 through 38.

11 **AS TO RESPONDENT MARCO ANTONIO ALVAREZ:**

12 **SMOG CHECK INSPECTOR LICENSE NO. EO 639543**

13 **TENTH CAUSE FOR DISCIPLINE**

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

15 49. Respondent Marco Antonio Alvarez's Smog Check Inspector License is subject to
16 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
17 Respondent Marco Antonio Alvarez failed to comply with provisions of Health and Safety Code,
18 as follows:

19 a. **Section 44012:** Respondent Marco Antonio Alvarez failed to ensure that the emission
20 control tests were performed on one of the four vehicles identified in paragraph 33 above, in
21 accordance with procedures prescribed by the department.

22 b. **Section 44032:** Respondent Marco Antonio Alvarez failed to perform emission
23 control devices and systems on one of the four vehicles identified in paragraph 33 above, in
24 accordance with Health and Safety Code section 44012 .

25 c. **Section 44059:** Respondent Marco Antonio Alvarez willfully made false entries for
26 the electronic certificates of compliance by certifying that one of the four vehicles identified in
27 paragraph 33 above had been inspected as required when, in fact, they had not.

28 Complainant realleges paragraphs 31 through 38.

1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 50. Respondent Marco Antonio Alvarez 's Smog Check Inspector License is subject to
4 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
5 Respondent Marco Antonio Alvarez failed to comply with provisions of California Code of
6 Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Marco Antonio Alvarez failed to
8 inspect and test one of the four vehicles identified in paragraph 33 above, in accordance with
9 Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16,
10 section 3340.42.

11 b. **Section 3340.41, subdivision (c):** Respondent Marco Antonio Alvarez knowingly
12 entered false information into the emissions inspection system for one of the four vehicles
13 identified in paragraph 33 above.

14 Complainant realleges paragraphs 31 through 38.

15 **TWELFTH CAUSE FOR DISCIPLINE**

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

17 51. Respondent Marco Antonio Alvarez 's Smog Check Inspector License is subject to
18 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that
19 Respondent Marco Antonio Alvarez committed dishonest, fraudulent, or deceitful acts whereby
20 another was injured by issuing an electronic smog certificate of compliance for one of the four
21 vehicles identified in in paragraph 33 above, without performing bona fide inspections of the
22 emission control devices and systems on the vehicles, thereby depriving the People of the State of
23 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
24 realleges paragraphs 31 through 38.

25 **DISCIPLINARY CONSIDERATIONS**

26 52. On August 28, 2015, the Bureau issued Respondent Jose Alvarez doing business as
27 Alvarez Test Only, Administrative Citation No. C2015-2039, for violation of Health and Safety
28 Code section 44012, and section 3340 of the California Code of Regulations, in that Respondent

1 Jose Alvarez unlawfully Smog Check inspected and certified a vehicle using BAR-97 when the
2 OIS test was required. A Citation Service Conference was held on September 8, 2015. The
3 Decision became effective on October 8, 2015.

4 53. On August 28, 2015, the Bureau issued Respondent Jose G. Alvarez, Administrative
5 Citation No. M2015-2040, for violation of Health and Safety Code section 44032, in that
6 Respondent Jose G. Alvarez unlawfully Smog Check inspected and certified a vehicle using
7 BAR-97 when the OIS test was required. A Citation Service Conference was held on September
8 8, 2015. The Decision became effective on November 26, 2015.

9 **OTHER MATTERS**

10 54. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the
11 Director may suspend, revoke, or place on probation the registration for all places of business
12 operated in this state by Respondent Jose Alvarez, upon a finding that Respondent Jose Alvarez
13 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
14 pertaining to an automotive repair dealer.

15 55. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
16 Station License No. TC268026, issued to Respondent Jose Alvarez, is revoked or suspended, any
17 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code
18 in the name of said licensee may be likewise revoked or suspended by the director.

19 56. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
20 License No. EO150079 and/or Smog Check Repair Technician License No. EI150079, issued to
21 Respondent Jose G. Alvarez, is revoked or suspended, any additional license issued under
22 Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may
23 be likewise revoked or suspended by the director.

24 57. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
25 License No. EO639543, issued to Respondent Marco Antonio Alvarez, is revoked or suspended,
26 any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety
27 Code in the name of said licensee may be likewise revoked or suspended by the director.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD268026, issued to Jose Alvarez, doing business as Alvarez Test Only;

2. Revoking or suspending any other automotive repair dealer registration issued to Jose Alvarez;

3. Revoking or suspending Smog Check Test Only Station License No. TC268026, issued to Jose Alvarez, doing business as Alvarez Test Only;

4. Revoking or suspending Smog Check Inspector License No. EO150079, issued to Jose G. Alvarez;

5. Revoking or suspending Smog Check Repair Technician License No. EI150079, issued to Jose G. Alvarez;

6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Jose G. Alvarez;

7. Revoking or suspending Smog Check Inspector License No. EO639543, issued to Marco Antonio Alvarez;

8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Marco Antonio Alvarez;

9. Ordering Jose Alvarez, doing business as Alvarez Test Only, Jose G. Alvarez, and Marco Antonio Alvarez to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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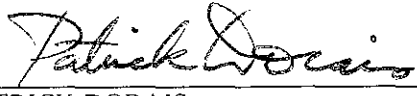
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10. Taking such other and further action as deemed necessary and proper.

DATED: August 10, 2018



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

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