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

12
13 **In the Matter of the Accusation Against:**
RODOLFO MADRID GUTIERREZ DBA
14 **AUTO PROS**
15 **44136 10th St. West #205**
Lancaster, CA 93534

Case No. 79/20-11696

ACCUSATION

16 **Automotive Repair Dealer Registration No.**
17 **ARD 204090**
18 **Smog Check, Station License No. RC 204090**
19 **Brake Station License No. BS 204090, class C**
20 **Lamp Station License No. LS 204090, class A**

21 **and**

22 **RODOLFO MADRID GUTIERREZ**
44136 N. 10th St. West #205
Lancaster, CA 93534

23 **Smog Check Inspector License No. EO 26647**
24 **Smog Check Repair Technician License No.**
EI 26647
25 **Brake Adjuster License No. BA 26647, class C**
Lamp Adjuster License No. LA 26647, class A

26 **Respondent.**
27
28

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, Department of Consumer Affairs.

4 2. In 1999, the Bureau of Automotive Repair issued Automotive Repair Dealer
5 Registration Number ARD 204090 to Rodolfo Madrid Gutierrez dba Auto Pros (Respondent
6 Auto Pros). The Automotive Repair Dealer Registration was in full force and effect at all times
7 relevant to the charges brought herein and will expire on March 31, 2021, unless renewed.

8 3. On or about April 12, 1999, the Bureau of Automotive Repair issued Smog Check,
9 Station License Number RC 204090 to Respondent Auto Pros. The Smog Check, Station License
10 was in full force and effect at all times relevant to the charges brought herein and will expire on
11 March 31, 2021, unless renewed.

12 4. On or about February 4, 2010, the Bureau of Automotive Repair issued Brake Station
13 License Number BS 204090, class C to Respondent Auto Pros. The Lamp Station License was in
14 full force and effect at all times relevant to the charges brought herein and will expire on March
15 31, 2021, unless renewed.

16 5. On or about February 4, 2010, the Bureau of Automotive Repair issued Lamp Station
17 License Number LS 204090, class A to Respondent Auto Pros. The Lamp Station License was in
18 full force and effect at all times relevant to the charges brought herein and will expire on March
19 31, 2021, unless renewed.

20 6. On or about August 15, 2012, the Bureau of Automotive Repair issued Smog Check
21 Inspector License Number EO 26647 to Respondent Rodolfo Madrid Gutierrez (Respondent
22 Gutierrez). The Smog Check Inspector License was in full force and effect at all times relevant to
23 the charges brought herein and will expire on September 30, 2022, unless renewed.

24 7. On or about August 15, 2012, the Bureau of Automotive Repair issued Smog Check
25 Repair Technician License Number EI 26647 to Respondent Gutierrez. The Smog Check Repair
26 Technician License was in full force and effect at all times relevant to the charges brought herein
27 and will expire on September 30, 2023, unless renewed.

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.

...

(4) Any other conduct which constitutes fraud.

...

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

...

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

22. Section 44012 of the Health and Safety Code states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

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

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

6 (g) A determination as to whether the motor vehicle complies with the
7 emission standards for that vehicle's class and model-year as prescribed by the
8 department.

9 (h) The test procedures may authorize smog check stations to refuse the testing
10 of a vehicle that would be unsafe to test, or that cannot physically be inspected, as
11 specified by the department by regulation. The refusal to test a vehicle for those
12 reasons shall not excuse or exempt the vehicle from compliance with all applicable
13 requirements of this chapter.

14 23. Section 44012, subdivision (f) of the Health & Safety Code states that, "A visual or
15 functional check is made of emission control devices specified by the department, including the
16 catalytic converter in those instances in which the department determines it to be necessary to
17 meet the findings of Section 44001. The visual or functional check shall be performed in
18 accordance with procedures prescribed by the department."

19 24. Section 44015, subdivision (b), of the Health & Safety Code states that a certificate of
20 compliance shall be issued if a vehicle meets the requirements of the Health & Safety Code
21 section 40012.

22 25. Section 44032 of the Health and Safety Code states:

23 No person shall perform, for compensation, tests or repairs of emission control
24 devices or systems of motor vehicles required by this chapter unless the person
25 performing the test or repair is a qualified smog check technician and the test or
26 repair is performed at a licensed smog check station. Qualified technicians shall
27 perform tests of emission control devices and systems in accordance with Section
28 44012.

29 26. Section 44059 of the Health and Safety Code states:

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

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

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

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

3 ...

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

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

6 **REGULATORY PROVISIONS**

7 28. California Code of Regulations (CCR), title 16, section 3340.24, states, in pertinent
8 part, “(c) The bureau may suspend or revoke the license of or pursue other legal action against a
9 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
10 certificate of noncompliance.”

11 29. CCR title 16, section 3340.30, states, in pertinent part:

12 A smog check technician shall comply with the following requirements at all
13 times while licensed.

14 (a) A licensed technician shall inspect, test and repair vehicles in accordance
with section 44012 of the Health and Safety Code, section 44035 of the Health and
15 Safety Code, and section 3340.42 of this article.

16 ...

17 30. CCR, title 16, section 3340.35, states, in pertinent part:

18 ...

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

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

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

25 ...

26 31. CCR, title 16, section 3340.41, states, in pertinent part:

27 ...

1 (c) No person shall enter into the BAR-97 Emissions Inspection System or the
2 OBD Inspection System any vehicle identification information or emission control
3 system identification data for any vehicle other than the one being tested. Nor shall
4 any person knowingly enter into the BAR-97 Emissions Inspection System or the
5 OBD Inspection System any false information about the vehicle being tested.

6 ...

7 32. California Code of Regulations, title 16, section 3340.42, states:

8 Smog check inspection methods are prescribed in the Smog Check Manual,
9 referenced by section 3340.45.

10 (a) All vehicles subject to a smog check inspection, shall receive one of the
11 following test methods:

12 (1) A loaded-mode test shall be the test method used to inspect 1976 -
13 1999 model-year vehicle, except diesel-powered, registered in the enhanced
14 program areas of the state. The loaded-mode test shall measure hydrocarbon,
15 carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as
16 contained in the bureau's specifications referenced in subsection (a) of Section
17 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation
18 Mode (ASM) test equipment, including a chassis dynamometer, certified by the
19 bureau.

20 On and after March 31, 2010, exhaust emissions from a vehicle subject to
21 this inspection shall be measured and compared to the emissions standards
22 shown in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards
23 (Cutpoints) Table, dated March 2010, which is hereby incorporated by
24 reference. If the emissions standards for a specific vehicle are not included in
25 this table then the exhaust emissions shall be compared to the emissions
26 standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes
27 the loaded-mode test if all of its measured emissions are less than or equal to
28 the applicable emission standards specified in the applicable table.

(2) A two-speed idle mode test shall be the test method used to inspect
1976 - 1999 model-year vehicles, except diesel-powered, registered in all
program areas of the state, except in those areas of the state where the enhanced
program has been implemented. The two-speed idle mode test shall measure
hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
again at idle RPM, as contained in the bureau's specifications referenced in
subsection (a) of Section 3340.17 of this article. Exhaust emissions from a
vehicle subject to this inspection shall be measured and compared to the
emission standards set forth in this section and as shown in TABLE III. A
vehicle passes the two-speed idle mode test if all of its measured emissions are
less than or equal to the applicable emissions standards specified in Table III.

(3) An OBD-focused test, shall be the test method used to inspect
gasoline-powered vehicles 2000 model-year and newer, and diesel-powered
vehicles 1998 model-year and newer. The OBD test failure criteria are
specified in section 3340.42.2.

(b) In addition to subsection (a), all vehicles subject to the smog check program
shall receive the following:

(1) A visual inspection of emission control components and systems to
verify the vehicle's emission control systems are properly installed.

1 (2) A functional inspection of emission control systems as specified in the
2 Smog Check Manual, referenced by section 3340.45, which may include an
OBD test, to verify their proper operation.

3 (c) The bureau may require any combination of the inspection methods in
4 sections (a) and (b) under any of the following circumstances:

5 (1) Vehicles that the department randomly selects pursuant to Health and
6 Safety Code section 44014.7 as a means of identifying potential operational
7 problems with vehicle OBD systems.

8 (2) Vehicles identified by the bureau as being operationally or physically
9 incompatible with inspection equipment.

10 (3) Vehicles with OBD systems that have demonstrated operational
11 problems.

12 (d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter
13 standards are as follows:

14 (1) A gross polluter means a vehicle with excess hydrocarbon, carbon
15 monoxide, or oxides of nitrogen emissions pursuant to the gross polluter
16 emissions standards included in the tables described in subsection (a), as
17 applicable.

18 (2) Vehicles with emission levels exceeding the emission standards for
19 gross polluters during an initial inspection will be considered gross polluters
20 and the provisions pertaining to gross polluting vehicles will apply, including,
21 but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety
22 Code.

23 (3) A gross polluting vehicle shall not be passed or issued a certificate of
24 compliance until the vehicle's emissions are reduced to or below the applicable
25 emissions standards for the vehicle included in the tables described in
26 subsection (a), as applicable. However, the provisions described in section
27 44017 of the Health and Safety Code may apply.

28 (4) This subsection applies in all program areas statewide to vehicles
requiring inspection pursuant to sections 44005 and 44011 of the Health and
Safety Code.

33. CCR, title 16, section 3373, states:

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

COST RECOVERY

34. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **FACTUAL ALLEGATIONS**

6 35. A Bureau Representative conducted a review of the Vehicle Identification Database
7 (“VID”) data for Smog Check inspections performed at Respondent Auto Pros. The review
8 showed a pattern of vehicles being certified with a different eVIN. The data for the vehicles
9 certified also contained different communication protocols and different Parameter Identification¹
10 (“PID”) amounts that do not match the expected protocols or PID amounts for the vehicles being
11 certified.

12 36. The data from the certified vehicles were compared to the OIS test data of similar
13 vehicles of the same year, make and model that received passing Smog Check inspections and
14 received smog certificates.

15 37. The data comparison showed multiple discrepancies with seven (7) vehicles that were
16 all certified without transmitting the correct e-VINs, incorrect vehicle communication protocols²
17 and incorrect PID counts, which confirms the vehicles receiving smog certificates were
18 fraudulently tested during the smog inspections using the clean plugging method³. The following
19 chart illustrates the clean plugging activities of Respondents Auto Pros and Gutierrez between
20 April 1, 2019 and September 18, 2020:

21
22
23
24 ¹ Parameter Identifications (PIDs) are data points reported by the OBD II computer to the scan tool or BAR
OIS.

25 ² Protocol is simply the language used to communicate with a vehicle’s computer(s). Protocol is a
26 communication interface. This automated determination of the communication interface, or protocol, is built into the
Data Acquisition Device (DAD) unit. This automatic function identifies five (5) protocols used by vehicles
manufactured and sold in the United States that are subject to the Smog Check program.

27 ³ Clean Plugging” refers to the use of another vehicle’s properly functioning On Board Diagnostic,
28 generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing
fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for
testing.

TABLE 1

Test No.	Test Date and Time	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details
1.	04/01/2019	2007 Dodge Magnum SE CA License #7NUH623	ID733774C	EO 26647 (Respondent Gutierrez)	Comm. Protocol: I914 (expected ICAN11bt5) PID Count: 16 (expected 43) e-VIN No.: Not Reported Expected e-VIN: 2D4FV47TX7H 717551
2.	04/01/2019	2001 Ford Mustang CA License #7GLS334	ID733775C	EO 26647 (Respondent Gutierrez)	Comm. Protocol: ICAN11bt5 (expected JPWM) PID Count: 27 (expected 21) e-VIN No.: 1LNHM86S54 Y632199 Expected e-VIN: 1FAFP44481F2 09727
3.	12/20/2019	2004 Cadillac SRX CA License #8BAR716	RC172162C	EO 26647 (Respondent Gutierrez)	Comm. Protocol: JVPW (expected ICAN11bt5) PID Count: 22 (expected 43 3) e-VIN No.: 3GNEC12T94G 232132 Expected

Test No.	Test Date and Time	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details
					e-VIN: 1GYDE63A740 156417
4.	02/21/2020	2002 Oldsmobile Alero GL CA License #5LAS569	RE907457C	EO 26647 (Respondent Gutierrez)	Comm. Protocol: JVPW (expected JVPW) PID Count: 22 (expected 18) e-VIN No.: J 3GNEC12T94G 232132 Expected e-VIN: 1G3NL52F92C 209153
5.	02/28/2020	2001 GMC Sierra K2500 Heavy Duty CA License #27649S1	RE907468C	EO 26647 (Respondent Gutierrez)	Comm. Protocol: 1914 (expected JVPW) PID Count: 21 (expected 20 or 20 1 or 23 1 or 23 2) e-VIN No.: Not Reported Expected e-VIN: 1GTHK29G51 E189855
6.	08/14/2020	2001 GMC New Sierra C1500 CA License # 85235P2	RO244716C	EO 26647 (Respondent Gutierrez)	Comm. Protocol: 1914 (expected JVPW) PID Count: 21 (expected 22 or 23) e-VIN No.: Not Reported

Test No.	Test Date and Time	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details
					Expected e-VIN: 2GTEC19V211120972
7.	09/18/2020	2010 Cadillac SRX Luxury Collection CA License #7DOD127	RO959218C	EO 26647 (Respondent Gutierrez)	Comm. Protocol: JPWM (expected ICAN11bt5) PID Count: 19 (expected 45 7 8) e-VIN No.: 1FTYR10U61TA44294 Expected e-VIN: 3GYFNAEY2AS620174

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

38. Respondent Auto Pros Automotive Repair Dealer Registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that between April 1, 2019 and September 18, 2020, Respondent made or authorized statements which Respondent knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Auto Pros certified that vehicles 1 through 7, set forth above in Table 1, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Auto Pros conducted the inspections on the vehicles using the clean plugging method by substituting or using different vehicles or another source during the functional tests in order to issue smog certificates of compliance for the seven (7) vehicles, and did not test or inspect the seven (7) vehicles as required by Health and Safety Code section 44012. Complainant refers to and by this

1 reference incorporates the allegations contained in paragraphs 35-37, above, as though set forth
2 fully herein.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 39. Respondent Auto Pros Automotive Repair Dealer Registration is subject to discipline
6 pursuant to Code section 9884.7, subdivision (a)(4), in that between April 1, 2019 and September
7 18, 2020, Respondent Auto Pros committed acts which constitute fraud by issuing electronic
8 smog certificates of compliance for vehicles 1 through 7, set forth above in Table 1, without
9 performing bona fide inspections of the emission control devices and systems on those vehicles,
10 thereby depriving the People of the State of California of the protection afforded by the Motor
11 Vehicle Inspection Program. Complainant refers to and by this reference incorporates the
12 allegations contained in paragraphs 35-37, above, as though set forth fully herein.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with the Automotive Repair Act)**

15 40. Respondent Auto Pros Automotive Repair Dealer Registration is subject to discipline
16 pursuant to Code section 9884.7, subdivision (a)(6), in that between April 1, 2019 and September
17 18, 2020, Respondent Auto Pros failed to comply with the provisions of this chapter or
18 regulations adopted pursuant to it when he issued electronic certificates of compliance for
19 vehicles 1 through 7, set forth above in Table 1, without performing bona fide inspections of the
20 emission control devices and systems on those vehicles, thereby depriving the People of the State
21 of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
22 refers to and by this reference incorporates the allegations contained in paragraphs 35-37, above,
23 as though set forth fully herein.

24 **FOURTH CAUSE FOR DISCIPLINE**

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

26 41. Respondent Auto Pros Smog Check Station License is subject to discipline pursuant
27 to Health and Safety Code section 44072.2, subdivision (a), in that between April 1, 2019 and
28

1 September 18, 2020, regarding vehicles 1 through 7, set forth above in Table 1, Respondent Auto
2 Pros failed to comply with the following sections of the Health and Safety Code:

3 a. **Section 44012:** Respondent Auto Pros failed to ensure that the emission control tests
4 were performed on vehicles 1 through 7, in accordance with procedures prescribed by the
5 department.

6 b. **Section 44015:** Respondent Auto Pros issued electronic smog certificates of compliance
7 for vehicles 1 through 7, without ensuring that the vehicles were properly tested and inspected to
8 determine if they were in compliance with Health and Safety Code section 44012.

9 c. **Section 44059:** Respondent Auto Pros willfully made false entries for the electronic
10 smog certificates of compliance by certifying that those vehicles had been inspected as required
11 when, in fact, they had not.

12 Complainant refers to and by this reference incorporates the allegations contained in
13 paragraphs 35-37, above, as though set forth fully herein.

14 **FIFTH CAUSE FOR DISCIPLINE**

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

17 42. Respondent Auto Pros Smog Check Station License is subject to discipline pursuant
18 to Health and Safety Code section 44072.2, subdivision (c), in that between April 1, 2019 and
19 September 18, 2020, regarding vehicles 1 through 7, set forth above in Table 1, Respondent failed
20 to comply with provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.24, subdivision (c):** Respondent Auto Pros falsely or fraudulently issued
22 electronic smog certificates of compliance for those vehicles without performing bona fide
23 inspections of the emission control devices and systems on the vehicles as required by Health and
24 Safety Code section 44012.

25 b. **Section 3340.35, subdivision (c):** Respondent Auto Pros issued electronic smog
26 certificates of compliance even though those vehicles had not been inspected in accordance with
27 section 3340.42 of that Code.

28

1 c. **Section 3340.42**: Respondent Auto Pros failed to conduct the required smog tests and
2 inspections on those vehicles in accordance with the Bureau's specifications.

3 Complainant refers to and by this reference incorporates the allegations contained in
4 paragraphs 35-37, above, as though set forth fully herein.

5 **SIXTH CAUSE FOR DISCIPLINE**

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

7 43. Respondent Auto Pros Smog Check Station License is subject to discipline pursuant
8 to Health and Safety Code section 44072.2, subdivision (d), in that between April 1, 2019 and
9 September 18, 2020, regarding vehicles 1 through 7, set forth above in Table 1, Respondent Auto
10 Pros committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
11 electronic smog certificates of compliance for those vehicles without performing bona fide
12 inspections of the emission control devices and systems on the vehicles, thereby depriving the
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program. Complainant refers to and by this reference incorporates the allegations contained in
15 paragraphs 35-37, above, as though set forth fully herein.

16 **SEVENTH CAUSE FOR DISCIPLINE**

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

18 44. Respondent Gutierrez's Smog Check inspector license is subject to discipline
19 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between April 1,
20 2019 and September 18, 2020, regarding vehicles 1 through 7, set forth above in Table 1, he
21 failed to comply with section 44012 of that Code in a material respect, as follows: Respondent
22 Gutierrez failed to perform the emission control tests on those vehicles in accordance with
23 procedures prescribed by the department. Complainant refers to and by this reference
24 incorporates the allegations contained in paragraphs 35-37, above, as though set forth fully
25 herein.

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

4 45. Respondent Gutierrez’s Smog Check inspector license is subject to discipline
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between April 1,
6 2019 and September 18, 2020, regarding vehicles 1 through 7, set forth above in Table 1, he
7 failed to comply with provisions of California Code of Regulations, title 16, as follows:

8 a. **Section 3340.24, subdivision (c)**: Respondent Gutierrez falsely or fraudulently issued
9 electronic smog certificates of compliance without performing bona fide inspections of the
10 emission control devices and systems on those vehicles as required by Health and Safety Code
11 section 44012.

12 b. **Section 3340.30 subdivision (a)**: Respondent Gutierrez failed to inspect and test those
13 vehicles in accordance with Health and Safety Code sections 44012.

14 c. **Section 3340.42**: Respondent Gutierrez failed to conduct the required smog tests and
15 inspections on those vehicles in accordance with the Bureau's specifications.

16 Complainant refers to and by this reference incorporates the allegations contained in
17 paragraphs 35-37, above, as though set forth fully herein.

18 **NINTH CAUSE FOR DISCIPLINE**

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

20 46. Respondent Gutierrez’s Smog Check inspector license is subject to discipline
21 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that between April 1,
22 2019 and September 18, 2020, regarding vehicles 1 through 7, set forth above in Table 1, he
23 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
24 electronic smog certificates of compliance without performing bona fide inspections of the
25 emission control devices and systems on those vehicles, thereby depriving the People of the State
26 of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
27 refers to and by this reference incorporates the allegations contained in paragraphs 35-37, above,
28 as though set forth fully herein.

1 **TENTH CAUSE FOR DISCIPLINE**

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

3 47. Respondent Gutierrez’s Brake Adjuster License, Lamp Adjuster License, Brake
4 Station License, and Lamp Station License are subject to discipline pursuant to Code section
5 9889.3, subdivision (d), in that between April 1, 2019 and September 18, 2020, regarding
6 vehicles 1 through 7, set forth above in Table 1, he committed acts involving dishonesty, fraud or
7 deceit whereby another was injured by issuing electronic smog certificates of compliance without
8 performing bona fide inspections of the emission control devices and systems on those vehicles,
9 thereby depriving the People of the State of California of the protection afforded by the Motor
10 Vehicle Inspection Program. Complainant refers to and by this reference incorporates the
11 allegations contained in paragraphs 35-37, above, as though set forth fully herein.

12 **DISCIPLINE CONSIDERATIONS**

13 48. To determine the degree of discipline, if any, to be imposed on Respondent,
14 Complainant alleges that from November 13, 2001 to June 3, 2015, the Bureau issued Respondent
15 Rodolfo Madrid Gutierrez dba Auto Pros (ARD/RC 204090) four citations (Nos. C02-0300, C04-
16 0090, C04-0367, C2015-0679) for improper Smog Check certifications. During that same
17 timeframe, the Bureau issued Respondent Rodolfo Madrid Gutierrez (EO/EI/EA 26647) three
18 citations (Nos. M02-0301, M04-0091, M2015-0680) for improper Smog Check certifications.
19 Respondent's was disciplined through fines, training courses, and an order of abatement. Those
20 decisions are now final.

21 **OTHER MATTERS**

22 49. Section 9884.7, subdivision (c), of the Code states that, “the director may suspend,
23 revoke, or place on probation the registration for all places of business operated in this state by an
24 automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a
25 course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.”

26 50. Section 44072.8 of the Health and Safety Code states that, “When a license has been
27 revoked or suspended following a hearing under this article, any additional license issued under
28 this chapter in the name of the licensee may be likewise revoked or suspended by the director.”

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 204090, issued to Rodolfo Madrid Gutierrez dba Auto Pros;
2. Revoking or suspending Smog Check, Station License Number RC 204090, issued to Rodolfo Madrid Gutierrez dba Auto Pros;
3. Revoking or suspending Brake Station License Number BS 204090, class C, issued to Rodolfo Madrid Gutierrez dba Auto Pros;
4. Revoking or suspending Lamp Station License Number LS 204090, class A, issued to Rodolfo Madrid Gutierrez dba Auto Pros;
5. Revoking or suspending Smog Check Inspector License Number EO 26647, issued to Rodolfo Madrid Gutierrez;
6. Revoking or suspending Smog Check Repair Technician License Number EI 26647, issued to Rodolfo Madrid Gutierrez;
7. Revoking or suspending Brake Adjuster License Number BA 26647, class C, issued to Rodolfo Madrid Gutierrez;
8. Revoking or suspending Lamp Adjuster License Number LA 26647, class A, issued to Rodolfo Madrid Gutierrez;
9. Revoking or suspending any other automotive repair dealer registration issued to Rodolfo Madrid Gutierrez;
10. 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 Rodolfo Madrid Gutierrez;
11. Ordering Rodolfo Madrid Gutierrez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: February 10, 2021

Signature on file

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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