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

11 **FOOTHILL TEST ONLY; KAYES**
12 **KOREL, OWNER**
17494 Foothill Blvd.
12 Fontana, CA 92335
Automotive Repair Dealer Registration No.
13 ARD 252896
Smog Check Station License No. TC 252896

Case No. 79/15-15538

A C C U S A T I O N

14
15 **and**

16 **ANTOINE LAZELL GAMBOA**
24542 Freeport Drive
Moreno Valley, CA 92551
Smog Check Inspector License No. EO 630028
Smog Check Repair Technician No. EI 630028

18
19 **and**

20 **SEAN MICHAEL BALL**
4070 N. Flame Tree Avenue
21 Rialto, CA 92377
Smog Check Inspector License No. EO 632349
Smog Check Repair Technician No. EI 632349

22
23 **and**

24 **FIRAS HATIM KARIM**
7878 Apple Lane
25 Fontana, CA 92336
Smog Check Inspector License No. EO 145046

26 Respondents.
27
28

1 Complainant alleges:

2 **PARTIES**

3 1. On or about January 9, 2008, the Bureau issued Automotive Repair Dealer
4 Registration No. ARD 252896 to Foothill Test Only; Kayes Korel. The Automotive Repair
5 Dealer Registration was in full force and effect at all times relevant to the charges brought herein
6 and will expire on November 30, 2017, unless renewed.

7 2. On or about January 14, 2008, the Bureau issued Smog Check Test Only Station
8 License No. TC 252896 to Foothill Test Only; Kayes Korel. The Smog Check Test Only Station
9 license was in full force and effect at all times relevant to the charges brought herein and will
10 expire on November 30, 2017, unless renewed.

11 3. On or about June 25, 2014, the Bureau issued Smog Check Inspector License No. EO
12 630028 and Smog Check Repair License No. EI 630028 to Antoine Lazell Gamboa. The Smog
13 Check Inspector license and Smog Check Repair License were in full force and effect at all times
14 relevant to the charges brought herein and will expire on June 30, 2018, unless renewed.

15 4. On or about January 7, 2014, the Bureau issued Smog Check Inspector License No.
16 EO 632349 and Smog Check Repair License No. EI 632349 to Sean Michael Ball. The Smog
17 Check Inspector license and Smog Check Repair License were in full force and effect at all times
18 relevant to the charges brought herein and will expire on February 28, 2018, unless renewed.

19 5. On or about October 23, 2012, the Bureau issued Smog Check Inspector License No.
20 EO 145046 to Firas Hatim Karim. The Smog Check Inspector license was in full force and effect
21 at all times relevant to the charges brought herein and will expire on October 31, 2018, unless
22 renewed.

23 **JURISDICTION**

24 6. This Accusation is brought before the Director of the Department of Consumer
25 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

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STATUTORY PROVISIONS

7. Section 9884.7 of the Code states:

"(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.

"...

"(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."

"...."

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

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

10. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which the license was issued.

11. Section 9889.22 of the Code provides:

“The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or 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.”

12. Section 17200 of the Code provides:

“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.”

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

14. Section 44072.2 of the Health and Safety Code states:

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

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

"(b) Is convicted of any crime substantially related to the qualifications, functions, and duties of the license holder in question.

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

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

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

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

"(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized

1 representative for a period of not less than three years after completion of any transaction to which
2 the records refer, or refuses to comply with a written request of the director to make the records
3 available for inspection.

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

6 15. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
7 expiration or suspension of a license by operation of law, or by order or decision of the Director
8 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
9 the Director of jurisdiction to proceed with disciplinary action.

10 16. Section 44012 of the Health and Safety Code states:

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

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

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

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

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

28 ////

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

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

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

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

17 17. Section 44015 of the Health and Safety Code states:

18 "...

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

21 18. Section 44059 of the Health and Safety Code states:

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

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

27 "No person shall perform, for compensation, tests or repairs of emission control devices or
28 systems of motor vehicles required by this chapter unless the person performing the test or repair

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

4 20. Section 20 of the California Vehicle Code states:

5 “It is unlawful to use a false or fictitious name, or to knowingly make any false statement or
6 knowingly conceal any material fact in any document filed with the Department of Motor
7 Vehicles or the Department of the California Highway Patrol.”

8 21. Section 4463 of the California Vehicle Code states in part:

9 “(a) A person who, with intent to prejudice, damage, or defraud, commits any of the
10 following acts is guilty of a felony and upon conviction thereof shall be punished by
11 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or
12 two or three years, or by imprisonment in a county jail for not more than one year:

13 “(1) Alters, forges, counterfeits, or falsifies a certificate of ownership, registration
14 card, certificate, license, license plate, device issued pursuant to Section 4853, special plate, or
15 permit provided for by this code or a comparable certificate of ownership, registration card,
16 certificate, license, license plate, device comparable to that issued pursuant to Section 4853,
17 special plate, or permit provided for by a foreign jurisdiction, or alters, forges, counterfeits, or
18 falsifies the document, device, or plate with intent to represent it as issued by the department, or
19 alters, forges, counterfeits, or falsifies with fraudulent intent an endorsement of transfer on a
20 certificate of ownership or other document evidencing ownership, or with fraudulent intent
21 displays or causes or permits to be displayed or have in his or her possession a blank, incomplete,
22 canceled, suspended, revoked, altered, forged, counterfeit, or false certificate of ownership,
23 registration card, certificate, license, license plate, device issued pursuant to Section 4853, special
24 plate, or permit.

25 “(2) Utters, publishes, passes, or attempts to pass, as true and genuine, a false,
26 altered, forged, or counterfeited matter listed in paragraph (1) knowing it to be false, altered,
27 forged, or counterfeited.

28 “....”

22. Section 115, subdivision (a) of the California Penal Code states:

“(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.”

“ ”
...

23. Section 118, subdivision (a) of the California Penal Code states:

“(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.”

24. Section 502, subdivision (c)(1) of the California Penal Code states:

“(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

“(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

“ ”

REGULATIONS

25. California Code of Regulations, title 16, section 3340.35, states:

///

1 "(a) A licensed station shall purchase certificates of compliance and noncompliance from
2 the bureau or an authorized agent of the bureau only, and under the following terms and
3 conditions:

4 "(1) A certificate of compliance or noncompliance shall be purchased by a licensed station
5 for a fee determined pursuant to section 3340.35.1 of these regulations; and

6 "(2) Full payment is required at the time the certificates are ordered.

7 "(b) A licensed station shall not sell or otherwise transfer unused certificates to another
8 licensed station, to a new owner of the business, or to any person other than a customer whose
9 vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this
10 article.

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

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

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

18 "(d) No person shall sell, issue, cause or permit to be issued any certificate purported to be
19 a valid certificate of compliance or noncompliance unless duly licensed to do so.

20 "(e) A repair cost waiver or an economic hardship extension shall be the same fee as a
21 certificate of compliance or noncompliance."

22 26. California Code of Regulations, title 16, section 3340.42, states:

23 "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
24 section 3340.45.

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

27 “(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year
28 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The

1 loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of
2 nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of
3 Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode
4 (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 27. California Code of Regulations, title 16, section 3373, states:

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

6 28. California Code of Regulations, title 16, section 3340.30, subdivision (a) states:

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

9 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of
10 the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of
11 this article."

12 "..."

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

14 "..."

15 "(c) No person shall enter into the emissions inspection system any vehicle identification
16 information or emission control system identification data for any vehicle other than the one being
17 tested. Nor shall any person knowingly enter into the emissions inspection system any false
18 information about the vehicle being tested.

19 "..."

20 **COST RECOVERY**

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

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28 ///

FACTUAL BACKGROUND

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

32. On August 24, 2015, a Bureau representative began reviewing current OIS test data transmitted from Foothill Test Only. After initial review of Foothill Test Only's EIS and OIS test data, it was apparent that the test data revealed anomalies consistent with fraudulent Smog Check activities. A further in depth analysis of this OIS test data revealed that there were a total (10) vehicles of various years, makes, and models that were issued Certificates of Compliance by using a surrogate vehicle's properly functioning On Board Diagnostic, Generation II, (OBD II) system or other source to generate passing diagnostic readings for the purpose of fraudulently issuing Smog Check certificates to vehicles that are not in smog compliance and/or not present for testing. The OIS test data from these ten (10) vehicles that received Smog Check certificates were compared to the OIS test data of similar vehicles of the same year, make, and model that received passing Smog Check inspections and received smog certificates. The data comparison showed multiple discrepancies with the ten (10) vehicles that were all certified with missing or mismatched eVIN, incorrect vehicle communication protocols and incorrect PID count. The OBD II communication protocol describes the specified communication "language" used by the OBD II computer to communicate to scan tools and other devices such as the OIS. The communication protocol is programed into the OBD II computer during manufacture. This confirms the vehicles receiving Smog Check certificates were fraudulently tested during the Smog Check inspection, which constitutes "Clean Plugging". The ten (10) vehicles in question are as follows:

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Test Date	Vehicle Certified & VIN #	Certificate No.	Details
04/05/2015	2004 Chevrolet Trail Blazer License Plate # 5FIJ414	PQ635129C	Test data does not support this vehicle.
06/27/2015	2008 Volkswagen New Beetle License Plate # 6WOZ426	YT261748C	Test data does not support this vehicle.
08/09/2015	2005 Nissan Sentra License Plate # 5PRX530	YT740491C	Test data does not support this vehicle.
08/16/2015	2002 Chevrolet Venture License Plate # 5YWS190	PU853767C	Test data does not support this vehicle.
09/06/2015	2007 Hyundai Sonata License Plate # 6FTZ215	PW257524C	Test data does not support this vehicle.
11/01/2015	2003 Kia Optima License Plate # 6ELZ473	PY730313C	Test data does not support this vehicle.
01/01/2016	2007 Nissan Quest License Plate # 5XGL347	QC208348C	Test data does not support this vehicle.
01/07/2016	2005 Cadillac C/T CTS License Plate # 6EBF058	QC113186C	Test data does not support this vehicle.
03/11/2016	2005 Dodge Caravan SE License Plate # 6FXR212	YZ714115C	Test data does not support this vehicle.

04/12/2016	2005 Toyota Sienna License Plate # 5NEB273	ZB754214C	Test data does not support this vehicle.
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33. The data analysis conducted on Foothill Test Only between April 5, 2015 and April 12, 2016, shows that Respondents participated in a scheme to perform at least ten (10) fraudulent Smog Check inspections resulting in the issuance of ten (10) fraudulent electronic Smog Check Certificates of Compliance.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements – Against Foothill Test Only, Kayes Korel Owner)

34. Respondent Foothill Test Only, Kayes Korel Owner is subject to disciplinary action under Business and Professions Code section 9884.7 subdivision (a)(1) in that he made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent participated in a scheme to perform at least ten (10) fraudulent Smog Check inspections resulting in the issuance of ten (10) fraudulent electronic Smog Check Certificates of Compliance. The circumstances surrounding these violations are set forth in paragraphs 31 through 33 above and are incorporated herein as though set forth in full.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Against Foothill Test Only, Kayes Korel Owner)

35. Respondent Foothill Test Only, Kayes Korel Owner is subject to disciplinary action under Business and Professions Code section 9884.7 subdivision (a)(4) in that he committed acts that constitute fraud by issuing electronic Smog Check Certificates of Compliance for the ten (10) vehicles identified in paragraph 32 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. The circumstances surrounding these violations are set forth in paragraphs 31 through 33 above and are incorporated herein as though set forth in full.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Failure to Comply with Automotive Repair Act - Against Foothill Test Only, Kayes Korel
3 Owner)

4 36. Respondent Foothill Test Only, Kayes Korel Owner is subject to disciplinary action
5 under Business and Professions Code section 9884.7 subdivision (a)(6) in that he failed in a
6 material respect to comply with the provisions of this chapter or regulations adopted pursuant to it
7 when he issued electronic Smog Check Certificates of Compliance for the ten (10) vehicles
8 identified in paragraph 32 above, without performing bona fide inspections of the emission
9 control devices and systems on those vehicles, thereby depriving the People of the State of
10 California of the protection afforded by the Motor Vehicle Inspection Program. The
11 circumstances surrounding these violations are set forth in paragraphs 31 through 33 above, and
12 are incorporated herein as though set forth in full.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 (Unfair, Deceptive or Fraudulent Business Practices - Against Foothill Test Only, Kayes Korel
15 Owner)

16 37. Respondent Foothill Test Only, Kayes Korel Owner is subject to disciplinary action
17 under Business and Professions Code section 17200 in that he engaged in unfair, deceptive
18 and/or fraudulent business practices when he issued the electronic Smog Check Certificates of
19 Compliance for ten (10) vehicles identified in paragraph 32 above, without performing bona fide
20 inspections of the emission control devices and systems on those vehicles, thereby depriving the
21 People of the State of California of the protection afforded by the Motor Vehicle Inspection
22 Program. The circumstances surrounding these violations are set forth in paragraphs 31 through
23 33 above, and are incorporated herein as though set forth in full.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 (False or Misleading Records - Against Foothill Test Only, Kayes Korel Owner)

26 38. Respondent Foothill Test Only, Kayes Korel Owner is subject to disciplinary action
27 under title 16 of the California Code of Regulations, section 3373 in that he created false or
28 misleading records for ten (10) vehicles identified in paragraph 32, thereby depriving the People

1 of the State of California of the protection afforded by the Motor Vehicle Inspection Program.
2 The circumstances surrounding these violations are set forth in paragraphs 31 through 33 above,
3 and are incorporated herein as though set forth in full.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 (Violations of the Motor Vehicle Inspection Program – Against Foothill Test Only, Kayes Korel,
6 Owner)

7 39. Respondent Foothill Test Only, Kayes Korel's Smog Check Test Only Station
8 License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,
9 subdivision (a), in that he failed to comply with the following sections of that Code:

10 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
11 performed on the ten (10) vehicles identified in paragraph 32 above, in accordance with
12 procedures prescribed by the department.

13 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for the
14 10 vehicles identified in paragraph 32 above, without ensuring that the vehicles were properly
15 tested and inspected to determine if they were in compliance with Health & Saf. Code section
16 44012.

17 Complainant refers to, and by this reference incorporates, the allegations contained in
18 paragraphs 31 through 33, above, as though set forth fully herein.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 (Failure to Comply with Regulations Pursuant

21 to the Motor Vehicle Inspection Program – Against Foothill Test Only, Kayes Korel, Owner)

22 40. Respondent Foothill Test Only, Kayes Korel's Smog Check Test Only Station
23 License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,
24 subdivision (c), in that he failed to comply with provisions of California Code of Regulations,
25 title 16, as follows:

26 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
27 compliance for the 10 vehicles identified in paragraph 32 above, even though the vehicles had not
28 been inspected in accordance with section 3340.42.

d. **Section 3340.42 subdivision (c)(7)**: Respondent failed to ensure that the vehicles' OBD System Data was inappropriate for ten (10) vehicles tested in regard to the vehicles identified in paragraph 32, in accordance with the Bureau's specifications.

e. **Section 3340.42 subdivision (c)(8)**: Respondent failed to ensure that vehicles' OBD System Data matched the original equipment manufacturer or an Air Resources Board exempted soft-ware configuration for ten (10) vehicles identified in paragraph 32, in accordance with the Bureau's specifications.

The circumstances surrounding these violations are set forth in paragraphs 31 through 33 above, and are incorporated herein as though set forth in full.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant

to the Motor Vehicle Inspection Program - Against Foothill Test Only, Kayes Korel, Owner,
Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim)

41. Respondent Foothill Test Only, Kayes Korel, Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that they failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.42** Respondents failed to conduct the required smog tests and inspections in accordance with BAR OIS specifications for the ten (10) vehicles identified in paragraph 32 above.

c. **Section 3340.30:** Respondent failed, as licensed technicians, to inspect vehicles in accordance with the testing procedures when they issued electronic Smog Check Certificates of Compliance for ten (10) vehicles identified in paragraph 32 above.

d. **Section 3340.41:** Respondents entered false information into the emissions inspection system for the ten (10) vehicles identified in paragraph 32 above.

The circumstances surrounding these violations are set forth in paragraphs 31 through 33 above, and are incorporated herein as though set forth in full.

1 **NINTH CAUSE FOR DISCIPLINE**

2 (False Statement on Certificate of Compliance – Against Foothill Test Only, Kayes Korel Owner)

3 42. Respondents Foothill Test Only, Kayes Korel Owner is subject to disciplinary action
4 under Business and Professions Code section 9889.22 in that he issued false statements or entries
5 on the electronic Smog Check Certificates of Compliance for the ten (10) vehicles identified in
6 paragraph 32 above, without performing bona fide inspections of the emission control devices and
7 systems on those vehicles, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program. The circumstances surrounding these
9 violations are set forth in paragraphs 31 through 33 above, and are incorporated herein as though
10 set forth in full.

11 **TENTH CAUSE FOR DISCIPLINE**

12 (Failure to Perform Visual Check of Emissions Device - Against Foothill Test Only, Kayes Korel
13 Owner)

14 43. Respondents Foothill Test Only, Kayes Korel Owner is subject to disciplinary action
15 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to perform a
16 visual and/or functional check of required emission control devices when he tested ten (10)
17 vehicles identified in paragraph 32 pursuant to Health and Safety Code section 44012 subdivision
18 (f), thereby depriving the People of the State of California of the protection afforded by the Motor
19 Vehicle Inspection Program. The circumstances surrounding these violations are set forth in
20 paragraphs 31 through 33 above, and are incorporated herein as though set forth in full.

21 **ELEVENTH CAUSE FOR DISCIPLINE**

22 (False Statement or Entry on Certificate of Compliance - Against Foothill Test Only, Kayes Korel
23 Owner)

24 44. Respondents Foothill Test Only, Kayes Korel Owner is subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he made false statements
26 or entries in testing ten (10) vehicles identified in paragraph 32 above, in violation of Health and
27 Safety Code section 44059, thereby depriving the People of the State of California of the
28 protection afforded by the Motor Vehicle Inspection Program. The circumstances surrounding

1 these violations are set forth in paragraphs 31 through 33 above, and are incorporated herein as
2 though set forth in full.

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 (False Statement on DMV Document - Against Foothill Test Only, Kayes Korel Owner)

5 45. Respondents Foothill Test Only, Kayes Korel Owner is subject to disciplinary action
6 under California Vehicle Code section 20 in that he made false statements on DMV Documents
7 pertaining to ten (10) vehicles they tested, which are identified in paragraph 32 above, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program. The circumstances surrounding these violations are set forth in paragraphs 31
10 through 33 above, and are incorporated herein as though set forth in full.

11 **THIRTEENTH CAUSE FOR DISCIPLINE**

12 (Falsification of Smog Check Certificates of Compliance - Against Foothill Test Only, Kayes
13 Korel Owner)

14 46. Respondents Foothill Test Only, Kayes Korel Owner is subject to disciplinary action
15 under California Vehicle Code section 4463 subdivision (a)(2) in that he made false statements in
16 issuing the electronic Smog Check Certificates of Compliance with regard to ten (10) vehicles
17 they tested, which are identified in paragraph 32 above, thereby depriving the People of the State
18 of California of the protection afforded by the Motor Vehicle Inspection Program. The
19 circumstances surrounding these violations are set forth in paragraphs 31 through 33 above, and
20 are incorporated herein as though set forth in full.

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

22 (False Statement on Certificate of Compliance – Against Antoine Lazell Gamboa, Sean Michael
23 Ball and Firas Hatim Karim)

24 47. Respondents Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim are
25 subject to disciplinary action under Business and Professions Code section 9889.22 in that they
26 issued false statements or entries on the electronic Smog Check Certificates of Compliance for the
27 ten (10) vehicles identified in paragraph 32 above, without performing bona fide inspections of
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1 the emission control devices and systems on those vehicles, thereby depriving the People of the
2 State of California of the protection afforded
3 by the Motor Vehicle Inspection Program. The circumstances surrounding these violations are set
4 forth in paragraphs 31 through 33 above, and are incorporated herein as though set forth in full.

5 **FIFTEENTH CAUSE FOR DISCIPLINE**

6 (Failure to Perform Visual Check of Emissions Device - Against Antoine Lazell Gamboa, Sean
7 Michael Ball and Firas Hatim Karim)

8 48. Respondents Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim are
9 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
10 that they failed to perform a visual and/or functional check of required emission control devices
11 when he tested ten (10) vehicles identified in paragraph 32 pursuant to Health and Safety Code
12 section 44012 subdivision (f), thereby depriving the People of the State of California of the
13 protection afforded by the Motor Vehicle Inspection Program. The circumstances surrounding
14 these violations are set forth in paragraphs 31 through 33 above, and are incorporated herein as
15 though set forth in full.

16 **SIXTEENTH CAUSE FOR DISCIPLINE**

17 (False Statement or Entry on Certificate of Compliance - Against Antoine Lazell Gamboa, Sean
18 Michael Ball and Firas Hatim Karim)

19 49. Respondents Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim are
20 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
21 that they made false statements or entries in testing ten (10) vehicles identified in paragraph 32
22 above, in violation of Health and Safety Code section 44059, thereby depriving the People of the
23 State of California of the protection afforded by the Motor Vehicle Inspection Program. The
24 circumstances surrounding these violations are set forth in paragraphs 31 through 33 above, and
25 are incorporated herein as though set forth in full.

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1 **SEVENTEENTH CAUSE FOR DISCIPLINE**

2 (False Statement on DMV Document - Against Antoine Lazell Gamboa, Sean Michael Ball and
3 Firas Hatim Karim)

4 50. Respondents Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim are
5 subject to disciplinary action under California Vehicle Code section 20 in that they made false
6 statements on DMV Documents pertaining to ten (10) vehicles they tested, which are identified in
7 paragraph 32 above, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program. The circumstances surrounding these
9 violations are set forth in paragraphs 31 through 33 above, and are incorporated herein as though
10 set forth in full.

11 **EIGHTEENTH CAUSE FOR DISCIPLINE**

12 (Falsification of Smog Check Certificates of Compliance - Against Antoine Lazell Gamboa, Sean
13 Michael Ball and Firas Hatim Karim)

14 51. Respondents Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim are
15 subject to disciplinary action under California Vehicle Code section 4463 subdivision (a)(2) in
16 that they made false statements in issuing the electronic Smog Check Certificates of Compliance
17 with regard to ten (10) vehicles they tested, which are identified in paragraph 32 above, thereby
18 depriving the People of the State of California of the protection afforded by the Motor Vehicle
19 Inspection Program. The circumstances surrounding these violations are set forth in paragraphs 31
20 through 33 above, and are incorporated herein as though set forth in full.

21 **NINETEENTH CAUSE FOR DISCIPLINE**

22 (Knowingly Offering a False Instrument to Be Filed – Against Antoine Lazell Gamboa, Sean
23 Michael Ball and Firas Hatim Karim)

24 52. Respondents Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim are
25 subject to disciplinary action under Penal Code section 115 subdivision (a) in that they offered a
26 false or forged instrument for filing with regard to the ten (10) vehicles identified in paragraph 32
27 above, thereby depriving the People of the State of California of the protection afforded by the
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Motor Vehicle Inspection Program. The circumstances surrounding these violations are set forth in paragraphs 31 through 33 above, and are incorporated herein as though set forth in full

TWENTIETH CAUSE FOR DISCIPLINE

(Knowingly Access or Alter Data to Defraud or Deceive or Obtain Money - Against Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim)

53. Respondents Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim are subject to disciplinary action under Penal Code section 502 subdivision (c)(1) in that they knowingly accessed and without permission altered, damaged, deleted, destroyed or otherwise used data, computer systems or computer networks in an effort to defraud, deceive or extort, and/or wrongfully obtain money when they issued electronic Smog Check Certificates of Compliance for ten (10) vehicles identified in paragraph 32 above, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. The circumstances surrounding these violations are set forth in paragraphs 31 through 33 above, and are incorporated herein as though set forth in full.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Failure of Technician to Perform Tests in Accordance with Health & Safety Code Section 44012

– Against Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim)

54. Respondents Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim Karim are subject to disciplinary action under Health and Safety Code section 44032 in that they failed, as qualified technicians, to perform tests of emission control devices and system in accordance with Health and Safety Code section 44012 when they issued electronic Smog Check Certificates of Compliance for ten (10) vehicles identified in paragraph 32 above, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. The circumstances surrounding these violations are set forth in paragraphs 31 through 33 above, and are incorporated herein as though set forth in full.

OTHER MATTERS

55. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this

1 state by Respondent Kayes Korel, upon a finding that he has, or is, engaged in a course of
2 repeated and willful violations of the laws and regulations pertaining to an automotive repair
3 dealer.

4 56. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
5 License No. TC 252896, issued to Respondent Kayes Korel, is revoked or suspended, any
6 additional license issued under this chapter in the name of said licensee may be likewise revoked
7 or suspended by the director.

8 57. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
9 Number EO 630028, issued to Antoine Lazell Gamboa, is revoked or suspended, any additional
10 license issued under this chapter in the name of said licensee may be likewise revoked or
11 suspended by the director.

12 58. Pursuant to Health & Saf. Code section 44072.8, suspending Smog Check Inspector
13 License Number EO 632349, issued to Sean Michael Ball, is revoked or suspended, any
14 additional license issued under this chapter in the name of said licensee may be likewise revoked
15 or suspended by the director.

16 59. Pursuant to Health & Saf. Code section 44072.8, suspending Smog Check Inspector
17 License Number EO 145046, issued to Firas Hatim Karim, is revoked or suspended, any
18 additional license issued under this chapter in the name of said licensee may be likewise revoked
19 or suspended by the director.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 252896, issued to Foothill Test Only, Kayes Korel, Owner;

25 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
26 Kayes Korel;

27 3. Revoking or suspending Smog Check Test Only, Station License Number TC
28 252896, issued to Foothill Test Only, Kayes Korel, Owner;

- 1 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 & Safety Code in the name of Kayes Korel;
- 3 5. Revoking or suspending Smog Check Inspector License Number EO 630028, issued
4 to Antoine Lazell Gamboa;
- 5 6. Revoking or suspending Smog Check Repair Technician License Number EI 630028,
6 issued to Antoine Lazell Gamboa;
- 7 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
8 & Safety Code in the name of Antoine Lazell Gamboa;
- 9 8. Revoking or suspending Smog Check Inspector License Number EO 632349, issued
10 to Sean Michael Ball;
- 11 9. Revoking or suspending Smog Check Repair Technician License Number EI 632349,
12 issued to Sean Michael Ball;
- 13 10. Revoking or suspending any additional license issued under Chapter 5 of the Health
14 & Safety Code in the name of Sean Michael Ball;
- 15 11. Revoking or suspending Smog Check Inspector License Number EO 145046, issued
16 to Firas Hatim Karim;
- 17 12. Revoking or suspending any additional license issued under Chapter 5 of the Health
18 & Safety Code in the name of Firas Hatim Karim;
- 19 13. Ordering Kayes Korel, Antoine Lazell Gamboa, Sean Michael Ball and Firas Hatim
20 Karim to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
21 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 22 14. Taking such other and further action as deemed necessary and proper.

23 DATED:

June 8, 2017


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

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