

**BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**JOSUE MATEOS MONTOYA dba  
SAN JOSE SMOG CHECK,**

Automotive Repair Dealer Registration No.  
ARD 270981  
Smog Check Station License No. RC 270981

and

**JOSUE MATEOS MONTOYA,**

Smog Check Inspector License No. EO 631761  
Smog Check Repair Technician License No.  
EI 631761

and

**DOUGLAS ALLEN NIELSEN,**

Smog Check Inspector License No. EO 142249  
Smog Check Repair Technician License No.  
EI 142249 S

Respondents.


Case No. 79/15-2746

OAH No. 2017060403

**NOTICE OF ADOPTION OF PROPOSED DECISION**

As no further decision has been issued, pursuant to Government Code section 11517(c)(2)(E)(iv), the Proposed Decision of October 25, 2017 is deemed adopted as the final decision in this matter.

IT IS SO NOTICED this 16 day of April, 2018.

  
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GRACE ARUPO RODRIGUEZ  
Assistant Deputy Director  
Legal Affairs Division  
Department of Consumer Affairs

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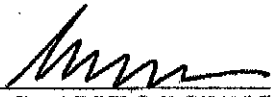
Case No. 79/15-2746

OAH No. 2017060403

**ORDER FIXING DATE FOR SUBMISSION OF WRITTEN ARGUMENT**

The transcript of the hearing in the above-entitled matter having now become available, the parties are hereby notified, in accordance with the Order of Rejection of Proposed Decision dated November 29, 2017, that any written argument they may wish to submit pursuant to said Order shall be filed with the Bureau of Automotive Repair, 10949 North Mather Boulevard, Rancho Cordova, CA 95670 on or before March 1, 2018.

IT IS SO ORDERED this 18<sup>th</sup> day of January, 2018.

  
GRACE ARUPO RODRIGUEZ  
Assistant Deputy Director  
Legal Affairs Division  
Department of Consumer Affairs

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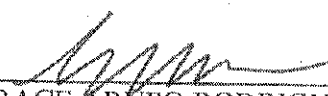
Case No. 79/15-2746

OAH No. 2017060403

**ORDER OF REJECTION OF PROPOSED DECISION**

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The Director of the Department of Consumer Affairs will decide the case upon the record. The record will include any written argument as the parties may wish to submit. The parties will be notified of the date for the submission of such arguments when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 29th day of November, 2017.

  
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GRACE ARUPO RODRIGUEZ  
Assistant Deputy Director  
Legal Affairs Division  
Department of Consumer Affairs

BEFORE THE  
DEPARTMENT OF CONSUMER AFFAIRS  
FOR THE BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOSUE MATEOS MONTOYA dba  
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DOUGLAS ALLEN NIELSEN,

Smog Check Inspector License No. EO 142249  
Smog Check Repair Technician License No. EI 142249

Respondents.

Case No. 79/15-2746

OAH No. 2017060403

**PROPOSED DECISION**

Administrative Law Judge Regina Brown, Office of Administrative Hearings, State of California, heard this matter on October 11, 2017, in Oakland, California.

Aspasia A. Papavassiliou, Deputy Attorney General, represented complainant Patrick Dorais.

Respondent Josue Mateos Montoya represented himself and San Jose Smog Check. There was no appearance by or on behalf of respondent Douglas Allen Nielsen.

The matter was submitted on October 11, 2017.

## FACTUAL FINDINGS

1. Complainant Patrick Dorais filed the Accusation in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

2. The Bureau issued Automotive Repair Dealer Registration number ARD 270981 (registration) on November 29, 2012, and Smog Check Station License number RC 270981 on September 26, 2013, to respondent Josue Mateos Montoya, doing business as (dba) San Jose Smog Check, located at 147 East Santa Clara Street, San Jose. The registration and license expired on November 30, 2015, and have not been renewed.<sup>1</sup>

3. The Bureau issued Smog Check Inspector License number EO 631761 and Smog Check Repair Technician License number EI 631761 to respondent Josue Mateos Montoya.<sup>2</sup> These licenses were to expire on July 31, 2018. However, the inspector license is delinquent and the repair technician license has been cancelled.

4. The Bureau issued Smog Check Inspector License number EO 142249 and Smog Check Repair Technician License number EI 142249 to respondent Douglas Allen Nielsen.<sup>3</sup> These licenses were suspended on July 16, 2017.

5. The purpose of the smog check program is to ensure cleaner air for the public in California. Smog check stations and technicians must follow the rules and regulations, and failure to do so, can compromise the integrity of the program. The Bureau issues each licensed smog check inspector a unique code to access the computerized Emissions Inspection System (EIS) to perform a smog check inspection. Each smog check inspector must secure his access code, and disclosure of an access code to another smog check inspector (or anyone else) is prohibited.

6. On February 19, 2015, a Bureau undercover operator drove a 1994 Toyota Pickup to San Jose Smog Check for a smog check inspection. The Pulsed Secondary Air Injection (P.A.I.R.) system valve assembly had been removed from the vehicle and a block off plate was installed onto the exhaust manifold. In that condition, the vehicle could not

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<sup>1</sup> The suspension, expiration, or forfeiture by operation of law of a license issued by the Bureau will not deprive the Bureau of its authority to institute disciplinary proceeding against a licensee. (Bus. & Prof. Code, § 118.)

<sup>2</sup> Respondent Montoya's advanced emission specialist technician license issued on February 16, 2012, was canceled on August 14, 2012, and renewed as Smog Check Inspector and Smog Check Repair Technician licenses.

<sup>3</sup> Respondent Nielsen's advanced emission specialist technician license issued in 2003, was canceled on January 2, 2014, and renewed as Smog Check Inspector and Smog Check Repair Technician licenses.

pass the visual portion of the smog check inspection. The underhood vehicle emission control information label and emission control vacuum hose routing label show that the vehicle's required emission control system included a P.A.I.R. valve and its associated components.

7. Prior to the smog check inspection, the undercover operator was not provided with a written estimate or invoice.

8. An individual by the name of "Mario" inspected and tested the vehicle. Following the inspection, a Vehicle Inspection Report (VIR) with Certificate of Compliance number [REDACTED] was issued to the undercover operator certifying that the vehicle passed the visual inspection of its emission control systems. The vehicle was not in a condition to receive such certification. The technician's name and number on the Certificate of Compliance indicated that respondent Nielson had performed the smog inspection. When the undercover operator returned the vehicle to the Bureau, he informed the assigned representative that the Hispanic individual named "Mario," who performed the smog inspection, did not appear to match the name of the technician printed on the Vehicle Inspection Report. After reviewing a photograph of respondent Neilsen, the undercover operator confirmed that the photograph was not the same individual who had performed the smog inspection.

9. On February 25, 2015, Joseph Sunseri, Bureau representative, interviewed respondent Montoya, respondent Nielsen, and respondent's brother Mario Mateos-Montoya. Respondent Nielsen admitted that he gave Mario Mateos-Montoya his security access code to perform the smog check inspection on February 19, 2015. During his interview, Mario Mateos-Montoya admitted that he performed the smog check and input respondent Nielsen's access code and other information into the EIS. Mario Mateos-Montoya also stated that he had been a licensed technician beginning in 2007, but his license was revoked in July 2011. During his interview, respondent Montoya said that he was not aware of their actions.

10. Respondent Montoya was not present at the station when his brother performed the smog check inspection. However, as the owner of San Jose Smog Check, respondent Montoya should have known that his brother was performing the smog check inspection using respondent Nielsen's access code and that untrue or misleading statements were made with respect to issuance of the Certificate of Compliance. In sum, San Jose Smog Check issued the Certificate of Compliance for the smog check inspection performed by Mario Mateos-Montoya (an unlicensed person) using respondent Neilsen's access code falsely certifying under penalty of perjury that the smog check inspection was performed by respondent Neilsen.

11. An Accusation was issued, and respondents filed timely appeals. Respondent Nielsen was properly served with the Accusation and Notice of Hearing in compliance with the notice and service requirements of Government Code sections 11505 and 11509. This matter proceeded as a default hearing against respondent Nielsen under Government Code section 11520.

12. Joseph Sunseri, Bureau representative, confirmed that he was in charge of the undercover operation and that he and Lance West, a retired Bureau representative, conducted the interviews of respondents and Mario Mateos-Montoya. At hearing, neither Sunseri nor West cast any doubts on respondent Montoya's claim that he was unaware of respondent Neilsen and his brother's actions.

#### *Respondents' Evidence*

13. Respondent Montoya reiterated that he was not aware of the conduct of respondent Neilsen and his brother and if he had been aware, he would have stopped them from engaging in the activity. According to respondent Montoya, his brother occasionally helped around the shop. Respondent Montoya explained that usually he arrived at the shop around 9:00 a.m. However, on that day, he was helping to prepare for his little sister's birthday party. This was why he was not present at the time and was completely unaware of what was going on at the shop. Although respondent Montoya is found to be credible, this does not absolve him from his responsibility as the owner of San Jose Smog Check.

14. Respondent Montoya has owned San Jose Smog Check since 2012. He has been licensed as a technician since he was 18 years old. He has no prior citations. He closed San Jose Smog Check at the end of 2015. Although he is not actively working as a technician, he would like to maintain his technician license for use in the future.

15. Respondent Nielsen requested a hearing in this matter, but he did not appear at the hearing. He made no showing of mitigation or rehabilitation.

#### *Costs*

16. The Bureau certified that it has incurred costs in connection with the investigation and enforcement in the total amount of \$8,821.58. The Bureau investigator's costs were \$2,334.08, and the costs billed by the Office of the Attorney General totaled \$6,487.50. The amount of the costs is reasonable.

### LEGAL CONCLUSIONS

#### *Respondent Montoya dba San Jose Smog Check-Registration*

1. Business and Professions Code section 9884.7, subdivision (a)(1), authorizes the suspension, revocation, or placing on probation of an automotive repair dealer registration if an automotive repair dealer makes or authorizes any statement that the dealer knows, or in the exercise of reasonable care should have known, is untrue or misleading. Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), to revoke the automotive repair dealer registration issued to respondent Montoya, dba San Jose Smog Check, by reason of the matters set forth in Factual Findings 5 through 10.

2. Business and Professions Code section 9884.8,<sup>4</sup> and California Code of Regulations title 16, section 3356, subdivision (a), provide that all work done by an automotive repair dealer must be recorded on an invoice and describe all work performed. Cause exists, pursuant to Business and Professions Code sections 9884.8 and 9884.7<sup>5</sup>, and California Code of Regulations title 16, section 3356, subdivision (a), to revoke the registration issued to respondent Montoya dba San Jose Smog Check, by reason of the matters set forth in Factual Findings 5 through 10.

3. Business and Professions Code section 9884.9, subdivision (a), and California Code of Regulations title 16, section 3353, subdivision (a), provide that an automotive repair dealer must give the customer a written estimated price for labor and parts necessary for a specific job. Cause exists, pursuant to Business and Professions Code sections 9884.9, subdivision (a), and 9884.7, and California Code of Regulations title 16, section 3353, subdivision (a), to revoke the registration issued to respondent Montoya dba San Jose Smog Check, by reason of the matters set forth in Factual Findings 5 through 10.

4. Business and Professions Code section 9884.11, and California Code of Regulations title 16, section 3358, subdivision (c), provide that an automotive repair dealer must maintain any records (including invoices and estimates) that are required by the regulations and must be available for reasonable inspection by the Bureau. The accusation alleges that on February 25, 2015, Bureau representatives interviewed respondent Montoya dba San Jose Smog Check, and requested all records for February 19, 2015, and the requested records were not provided. There is insufficient evidence to establish that respondent Montoya dba San Jose Smog Check, failed to do so. Cause has not been established to discipline the registration.

*Respondent Montoya dba San Jose Smog Check-Station License*

5. Health and Safety Code section 44072.2, subdivision (a), authorizes suspension, revocation, or other disciplinary action against a licensee who violates any provisions of the Motor Vehicle Inspection Program or regulations related to licensed activity or regulations adopted by the Director.

6. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline the smog station license issued to respondent Montoya, dba San Jose Smog Check Station, by reason of the matters set forth in Factual Findings 5 through 10, and Legal Conclusion 5, for violations of:

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<sup>4</sup> The accusation erroneously cites to Business and Professions Code section 9884.6, which refers to when a person must register as an automotive repair dealer.

<sup>5</sup> Business and Professions Code section 9884.7, subdivision (a)(6), authorizes the suspension, revocation, or placing on probation of an automotive repair dealer registration if an automotive repair dealer fails in any material respect to comply with the provisions of the Automotive Repair Act or its regulations.



- A. Health and Safety Code section 44012, subdivision (f) (failure to perform the required visual check of emission control devices);
- B. Health and Safety Code section 44014, subdivision (a) (smog test conducted by an unlicensed technician);
- C. Health and Safety Code section 44015, subdivision (a)(1) (issuing a certificate of compliance for a vehicle with a tampered emission control system);
- D. California Code of Regulations, title 16, section 3340.30, subdivision (a) (failure to perform the required visual check of emission control devices);
- E. California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance for a vehicle that was not properly tested);
- F. California Code of Regulations, title 16, section 3340.35, subdivision (d) (issuing a certificate of compliance for a vehicle inspected by an unlicensed technician);
- G. California Code of Regulations, title 16, section 3340.41, subdivision (c) (entering false information into the Emissions Inspection System);
- H. California Code of Regulations, title 16, section 3340.42 (failure to conduct tests and inspections in accordance with the Bureau's BAR97 specifications).

7. Health and Safety Code section 44072.2, subdivision (f), authorizes suspension, revocation, or other disciplinary action against a licensee who aids or abets unlicensed persons to evade the provisions of the Motor Vehicle Inspection Program. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (f), to discipline the smog station license issued to respondent Montoya dba as San Jose Smog Check, by reason of the matters set forth in Factual Findings 5 through 10.

8. Health and Safety Code section 44072.2, subdivision (g), authorizes suspension, revocation, or other disciplinary action against a licensee who fails to make and keep records showing transactions as a licensee or fails to have those records available for inspection by the Director or duly authorized representative for a period of not less than three years after completion of any transaction. Cause has not been established to discipline the license issued to respondent Montoya dba San Jose Smog Check. (See Legal Conclusion 4.)

### *Respondent Nielsen*

9. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision, subdivision (f), to discipline respondent Nielsen's Smog Check Inspector and Smog Check Repair Technician licenses, for aiding and abetting an unlicensed person, as set forth in Factual Findings 5 through 10, and Legal Conclusion 7.

### *Other Matters*

10. Business and Professions Code section 9884.7, subdivision (c), provides that: "the director may suspend, revoke, or place on probation the registration of 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 [Chapter 20.3 Automotive Repair Act] or regulations adopted pursuant to it."

11. There is insufficient evidence to establish repeated and willful violations of the Automotive Repair Act. Cause has not been established, pursuant to Business and Professions Code section 9884.7, subdivision (c), to discipline the registrations for all places of business operated in the state by respondent Montoya dba San Jose Smog Check.

12. Health and Safety Code section 44072.8, provides that when a license has been revoked or suspended under the Motor Vehicle Inspection Program, this constitutes cause to suspend or revoke any additional license issued under the Motor Vehicle Inspection Program in the name of the licensee.

13. Cause exists, pursuant to Health and Safety Code section 44072.8, to revoke or suspend any other license issued to respondent Montoya dba San Jose Smog Check under the Motor Vehicle Inspection Program.

14. No cause exists to discipline any license issued to respondent Montoya in his individual capacity as a licensed smog check inspector or repair technician. Under the circumstances, discipline is not warranted as respondent Montoya did not condone or participate in the unlawful activities of respondent Nielsen and his brother, as set forth in Factual Findings 5 through 10, and 12 through 14. Respondent Montoya has established that he can practice safely as a technician albeit under the supervision of a licensed employer.

15. Cause exists, pursuant to Health and Safety Code section 44072.8, to revoke or suspend any other license issued to respondent Nielsen under the Motor Vehicle Inspection Program.

### *Disciplinary Considerations*

16. Respondent Montoya, as owner of San Jose Smog Check, by failing to properly supervise, allowed his employee to commit an act involving untrue and misleading statements in the issuing of a certificate of compliance by an unlicensed person. Considering

all the facts and circumstances, it is determined that it would be contrary to the public interest to permit respondent Montoya, as owner of San Jose Smog Check, to retain his registration and smog check station license.

17. Respondent Nielsen requested a hearing in this matter, but he did not appear at the hearing. He made no showing of mitigation or rehabilitation. Considering all the facts and circumstances, it is determined that it would be contrary to the public interest to permit respondent Nielsen to retain his licenses.

#### *Cost Recovery*

18. Business and Professions Code section 125.3, provides that respondents may be ordered to pay the Bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Bureau's certification of the actual costs constitutes prima facie evidence of its costs, as set forth in Factual Finding 16.

19. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Court set forth the factors to be considered in determining the reasonableness of costs. Those factors include: whether respondent has been successful at the hearing in getting charges reduced or dismissed; respondent's subjective good faith belief in the merits of his position; whether respondent has raised a colorable challenge to the proposed discipline; respondent's financial ability to pay the cost award; and, whether the scope of the investigation was appropriate to the alleged conduct of the respondent.

Applying the *Zuckerman* factors, there is no reason to reduce the award of costs. Respondents Montoya dba San Jose Smog Check and Neilsen shall, jointly and severally, be responsible for reimbursing the remaining reasonable costs of investigation and enforcement which are determined to be \$8,821.58.

#### ORDER

##### *Respondent Montoya dba San Jose Smog Check*

1. Automotive Repair Dealer Registration number ARD 270981 issued to Josue Mateos Montoya, doing business as San Jose Smog Check, is permanently invalidated and revoked.

2. Smog Check Station License number RC 270981 issued to Josue Mateos Montoya, doing business as San Jose Smog Check, is revoked.

3. Any additional license issued under the Motor Vehicle Inspection Program to Josue Mateos Montoya, doing business as San Jose Smog Check, is revoked.

*Respondent Montoya*

4. Insofar as the accusation seeks to impose discipline against Smog Check Inspector License number EO 631761 and Smog Check Repair Technician License number EI 631761 issued to Josue Mateos Montoya, the accusation is dismissed. No costs are awarded against respondent Montoya in his capacity as a licensed smog check inspector or smog check repair technician.

*Respondent Nielsen*

5. Smog Check Inspector License number EO 142249 and Smog Check Repair Technician License number EI 142249 issued to Douglas Allen Nielsen are revoked.

6. Any additional license issued under the Motor Vehicle Inspection Program to Douglas Allen Nielsen is revoked.

*Cost Recovery*

7. Within 60 days of this decision and order, or pursuant to any payment plan which the Bureau in its discretion may otherwise order, respondents Josue Mateos Montoya, doing business as San Jose Smog Check, and Douglas Allen Nielsen, shall, jointly and severally, pay the Bureau's costs of investigation and enforcement in the amount of \$8,821.58.

DATED: October 25, 2017

DocuSigned by:  
Regina Brown  
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REGINA BROWN  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF CONSUMER AFFAIRS  
FOR THE BUREAU OF AUTOMOTIVE REPAIR  
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Smog Check Inspector License No. EO 142249  
Smog Check Repair Technician License No. EI 142249

Respondents.

Case No. 79/15-2746

OAH No. 2017060403

**PROPOSED DECISION**

Administrative Law Judge Regina Brown, Office of Administrative Hearings, State of California, heard this matter on October 11, 2017, in Oakland, California.

Aspasia A. Papavassiliou, Deputy Attorney General, represented complainant Patrick Dorais.

Respondent Josue Mateos Montoya represented himself and San Jose Smog Check. There was no appearance by or on behalf of respondent Douglas Allen Nielsen.

The matter was submitted on October 11, 2017.

pass the visual portion of the smog check inspection. The underhood vehicle emission control information label and emission control vacuum hose routing label show that the vehicle's required emission control system included a P.A.I.R. valve and its associated components.

7. Prior to the smog check inspection, the undercover operator was not provided with a written estimate or invoice.

8. An individual by the name of "Mario" inspected and tested the vehicle. Following the inspection, a Vehicle Inspection Report (VIR) with Certificate of Compliance number [REDACTED] was issued to the undercover operator certifying that the vehicle passed the visual inspection of its emission control systems. The vehicle was not in a condition to receive such certification. The technician's name and number on the Certificate of Compliance indicated that respondent Nielson had performed the smog inspection. When the undercover operator returned the vehicle to the Bureau, he informed the assigned representative that the Hispanic individual named "Mario," who performed the smog inspection, did not appear to match the name of the technician printed on the Vehicle Inspection Report. After reviewing a photograph of respondent Neilsen, the undercover operator confirmed that the photograph was not the same individual who had performed the smog inspection.

9. On February 25, 2015, Joseph Sunseri, Bureau representative, interviewed respondent Montoya, respondent Nielsen, and respondent's brother Mario Mateos-Montoya. Respondent Nielson admitted that he gave Mario Mateos-Montoya his security access code to perform the smog check inspection on February 19, 2015. During his interview, Mario Mateos-Montoya admitted that he performed the smog check and input respondent Nielsen's access code and other information into the EIS. Mario Mateos-Montoya also stated that he had been a licensed technician beginning in 2007, but his license was revoked in July 2011. During his interview, respondent Montoya said that he was not aware of their actions.

10. Respondent Montoya was not present at the station when his brother performed the smog check inspection. However, as the owner of San Jose Smog Check, respondent Montoya should have known that his brother was performing the smog check inspection using respondent Nielsen's access code and that untrue or misleading statements were made with respect to issuance of the Certificate of Compliance. In sum, San Jose Smog Check issued the Certificate of Compliance for the smog check inspection performed by Mario Mateos-Montoya (an unlicensed person) using respondent Neilsen's access code falsely certifying under penalty of perjury that the smog check inspection was performed by respondent Neilsen.

11. An Accusation was issued, and respondents filed timely appeals. Respondent Nielsen was properly served with the Accusation and Notice of Hearing in compliance with the notice and service requirements of Government Code sections 11505 and 11509. This matter proceeded as a default hearing against respondent Nielsen under Government Code section 11520.

2. Business and Professions Code section 9884.8,<sup>4</sup> and California Code of Regulations title 16, section 3356, subdivision (a), provide that all work done by an automotive repair dealer must be recorded on an invoice and describe all work performed. Cause exists, pursuant to Business and Professions Code sections 9884.8 and 9884.7<sup>5</sup>, and California Code of Regulations title 16, section 3356, subdivision (a), to revoke the registration issued to respondent Montoya dba San Jose Smog Check, by reason of the matters set forth in Factual Findings 5 through 10.

3. Business and Professions Code section 9884.9, subdivision (a), and California Code of Regulations title 16, section 3353, subdivision (a), provide that an automotive repair dealer must give the customer a written estimated price for labor and parts necessary for a specific job. Cause exists, pursuant to Business and Professions Code sections 9884.9, subdivision (a), and 9884.7, and California Code of Regulations title 16, section 3353, subdivision (a), to revoke the registration issued to respondent Montoya dba San Jose Smog Check, by reason of the matters set forth in Factual Findings 5 through 10.

4. Business and Professions Code section 9884.11, and California Code of Regulations title 16, section 3358, subdivision (c), provide that an automotive repair dealer must maintain any records (including invoices and estimates) that are required by the regulations and must be available for reasonable inspection by the Bureau. The accusation alleges that on February 25, 2015, Bureau representatives interviewed respondent Montoya dba San Jose Smog Check, and requested all records for February 19, 2015, and the requested records were not provided. There is insufficient evidence to establish that respondent Montoya dba San Jose Smog Check, failed to do so. Cause has not been established to discipline the registration.

*Respondent Montoya dba San Jose Smog Check-Station License*

5. Health and Safety Code section 44072.2, subdivision (a), authorizes suspension, revocation, or other disciplinary action against a licensee who violates any provisions of the Motor Vehicle Inspection Program or regulations related to licensed activity or regulations adopted by the Director.

6. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline the smog station license issued to respondent Montoya, dba San Jose Smog Check Station, by reason of the matters set forth in Factual Findings 5 through 10, and Legal Conclusion 5, for violations of:

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<sup>4</sup> The accusation erroneously cites to Business and Professions Code section 9884.6, which refers to when a person must register as an automotive repair dealer.

<sup>5</sup> Business and Professions Code section 9884.7, subdivision (a)(6), authorizes the suspension, revocation, or placing on probation of an automotive repair dealer registration if an automotive repair dealer fails in any material respect to comply with the provisions of the Automotive Repair Act or its regulations.

### *Respondent Nielsen*

9. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision, subdivision (f), to discipline respondent Nielsen's Smog Check Inspector and Smog Check Repair Technician licenses, for aiding and abetting an unlicensed person, as set forth in Factual Findings 5 through 10, and Legal Conclusion 7.

### *Other Matters*

10. Business and Professions Code section 9884.7, subdivision (c), provides that: "the director may suspend, revoke, or place on probation the registration of 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 [Chapter 20.3 Automotive Repair Act] or regulations adopted pursuant to it."

11. There is insufficient evidence to establish repeated and willful violations of the Automotive Repair Act. Cause has not been established, pursuant to Business and Professions Code section 9884.7, subdivision (c), to discipline the registrations for all places of business operated in the state by respondent Montoya dba San Jose Smog Check.

12. Health and Safety Code section 44072.8, provides that when a license has been revoked or suspended under the Motor Vehicle Inspection Program, this constitutes cause to suspend or revoke any additional license issued under the Motor Vehicle Inspection Program in the name of the licensee.

13. Cause exists, pursuant to Health and Safety Code section 44072.8, to revoke or suspend any other license issued to respondent Montoya dba San Jose Smog Check under the Motor Vehicle Inspection Program.

14. No cause exists to discipline any license issued to respondent Montoya in his individual capacity as a licensed smog check inspector or repair technician. Under the circumstances, discipline is not warranted as respondent Montoya did not condone or participate in the unlawful activities of respondent Nielsen and his brother, as set forth in Factual Findings 5 through 10, and 12 through 14. Respondent Montoya has established that he can practice safely as a technician albeit under the supervision of a licensed employer.

15. Cause exists, pursuant to Health and Safety Code section 44072.8, to revoke or suspend any other license issued to respondent Nielsen under the Motor Vehicle Inspection Program.

### *Disciplinary Considerations*

16. Respondent Montoya, as owner of San Jose Smog Check, by failing to properly supervise, allowed his employee to commit an act involving untrue and misleading statements in the issuing of a certificate of compliance by an unlicensed person. Considering



*Respondent Montoya*

4. Insofar as the accusation seeks to impose discipline against Smog Check Inspector License number EO 631761 and Smog Check Repair Technician License number EI 631761 issued to Josue Mateos Montoya, the accusation is dismissed. No costs are awarded against respondent Montoya in his capacity as a licensed smog check inspector or smog check repair technician.

*Respondent Nielsen*

5. Smog Check Inspector License number EO 142249 and Smog Check Repair Technician License number EI 142249 issued to Douglas Allen Nielsen are revoked.

6. Any additional license issued under the Motor Vehicle Inspection Program to Douglas Allen Nielsen is revoked.

*Cost Recovery*

7. Within 60 days of this decision and order, or pursuant to any payment plan which the Bureau in its discretion may otherwise order, respondents Josue Mateos Montoya, doing business as San Jose Smog Check, and Douglas Allen Nielsen, shall, jointly and severally, pay the Bureau's costs of investigation and enforcement in the amount of \$8,821.58.

DATED: October 25, 2017

DocuSigned by:

*Regina Brown*

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REGINA BROWN

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 79/15-2746

13 **JOSUE MATEOS MONTOYA d.b.a.**  
**SAN JOSE SMOG CHECK**  
14 147 East Santa Clara Street  
San Jose, CA 95113

**ACCUSATION**

15 **Automotive Repair Dealer Registration No.**  
16 **ARD 270981 and Smog Check Station**  
17 **License No. RC 270981**

18 **JOSUE MATEOS MONTOYA**  
2219 Pacina Drive  
San Jose, CA 95116

19 **Smog Check Inspector License No. EO**  
20 **631761 and Smog Check Repair Technician**  
21 **License No. EI 631761**

22 **and**

23 **DOUGLAS ALLEN NIELSEN**  
219 Vineyard Drive  
San Jose, CA 95119

24 **Smog Check Inspector License No. EO**  
25 **142249 and Smog Check Repair Technician**  
26 **License No. EI 142249**

27 Respondents.

28 Complainant alleges:



PARTIES

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

*Respondent Station*

2. On or about November 29, 2012, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 270981 to Josue Mateos Montoya doing business as San Jose Smog Check (Respondent Station). The Automotive Repair Dealer Registration expired on November 30, 2015, and has not been renewed.

3. On or about September 26, 2013, the Bureau of Automotive Repair issued Smog Check Station License Number RC 270981 to Respondent Station. The Smog Check Station License expired on November 30, 2015, and has not been renewed.

*Respondent Station Owner's Other Licenses*

4. On or about February 16, 2010, the Bureau issued Advanced Emission Specialist License No. EA 631761 to the Josue Mateos Montoya who subsequently became licensed as Respondent Station as described in paragraphs 2-3, above. On or about August 14, 2012, the Advanced Emission Specialist was cancelled due to a restructure of the Bureau's licensing program, and Josue Mateos Montoya was issued Smog Check Inspector License No. EO 631761 and Smog Check Repair Technician License No. EI 631761. The Smog Check Inspector License and Smog Check Repair Technician Licenses expired on July 31, 2016, and have not been renewed.

*Respondent Technician*

5. In 2003, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License Number EA 142249 to Douglas Allen Nielsen (Respondent Technician). On or about January 2, 2014, the Advanced Emission Specialist Technician License was cancelled due to a restructure of the Bureau's licensing program and Respondent was issued new licenses, as described in paragraphs 6-7, below.

1           6.    On or about January 2, 2014, the Bureau of Automotive Repair issued Smog Check  
2 Inspector License Number EO 142249 to Respondent Technician. The Smog Check Inspector  
3 License was in full force will expire on July 31, 2017, unless renewed.

4           7.    On or about January 2, 2014, the Bureau of Automotive Repair issued Smog Check  
5 Repair Technician License Number EI 142249 to Respondent Technician. The Smog Check  
6 Repair Technician License will expire on July 31, 2017, unless renewed.

#### 7 JURISDICTION

8           8.    This Accusation is brought before the Director of the Department of Consumer Affairs  
9 (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All  
10 section references are to the Business and Professions Code (Code), unless otherwise specified.

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

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

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

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

#### 26 STATUTORY PROVISIONS

1        *Business and Professions Code*

2        13. Section 9884.7 of the Code states, in pertinent part:

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

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

11       14. Section 9884.8 of the Code states:

12       "All work done by an automotive repair dealer, including all warranty work, shall be  
13 recorded on an invoice and shall describe all service work done and parts supplied. Service work  
14 and parts shall be listed separately on the invoice, which shall also state separately the subtotal  
15 prices for service work and for parts, not including sales tax, and shall state separately the sales  
16 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice  
17 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt  
18 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a  
19 statement indicating whether any crash parts are original equipment manufacturer crash parts or  
20 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be  
21 given to the customer and one copy shall be retained by the automotive repair dealer."

22       15. Section 9884.9 of the Code states, in pertinent part:

23       "(a) The automotive repair dealer shall give to the customer a written estimated price for  
24 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue  
25 before authorization to proceed is obtained from the customer. No charge shall be made for work  
26 done or parts supplied in excess of the estimated price without the oral or written consent of the  
27 customer that shall be obtained at some time after it is determined that the estimated price is  
28 insufficient and before the work not estimated is done or the parts not estimated are supplied.

1 Written consent or authorization for an increase in the original estimated price may be provided by  
2 electronic mail or facsimile transmission from the customer. The bureau may specify in regulation  
3 the procedures to be followed by an automotive repair dealer if an authorization or consent for an  
4 increase in the original estimated price is provided by electronic mail or facsimile transmission. If  
5 that consent is oral, the dealer shall make a notation on the work order of the date, time, name of  
6 person authorizing the additional repairs and telephone number called, if any, together with a  
7 specification of the additional parts and labor and the total additional cost, and shall do either of  
8 the following:

9 "(1) Make a notation on the invoice of the same facts set forth in the notation on the work  
10 order .

11 "(2) Upon completion of the repairs, obtain the customer's signature or initials to an  
12 acknowledgment of notice and consent, if there is an oral consent of the customer to additional  
13 repairs, in the following language:

14 "I acknowledge notice and oral approval of an increase in the original estimated price.

15 \_\_\_\_\_  
16 (signature or initials)"

17 "Nothing in this section shall be construed as requiring an automotive repair dealer to give a  
18 written estimated price if the dealer does not agree to perform the requested repair."

19 16. Section 9884.11 of the Code states that "[e]ach automotive repair dealer shall maintain  
20 any records that are required by regulations adopted to carry out this chapter [the Automotive  
21 Repair Act]. Those records shall be open for reasonable inspection by the chief or other law  
22 enforcement officials. All of those records shall be maintained for at least three years."

23 *Health and Safety Code*

24 17. Section 44014 of the Health and Safety Code states, in pertinent part:

25 "(a) Except as otherwise provided in this chapter, the testing and repair portion of the  
26 program shall be conducted by smog check stations licensed by the department, and by smog  
27 check technicians who have qualified pursuant to this chapter."

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

1       "(a) A licensed smog check station shall not issue a certificate of compliance, except as  
2 authorized by this chapter, to any vehicle that meets the following criteria:

3       "(1) A vehicle that has been tampered with."

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

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

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

11       ...

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

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

18       20. Section 44012 of the Health and Safety Code states, in pertinent part:

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

23       ...

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

28       21. Section 44014, subdivision (a), of the Health and Safety Code states, in pertinent part:

1 "Except as otherwise provided in this chapter, the testing and repair portion of the program  
2 shall be conducted by smog check stations licensed by the department, and by smog check  
3 technicians who have qualified pursuant to this chapter."

4 22. Section 44015 of the Health and Safety Code states, in pertinent part:

5 "(a) A licensed smog check station shall not issue a certificate of compliance, except as  
6 authorized by this chapter, to any vehicle that meets the following criteria:

7 (1) A vehicle that has been tampered with."

8 REGULATORY PROVISIONS

9 23. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

10 "A smog check technician shall comply with the following requirements at all times while  
11 licensed.

12 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
13 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
14 3340.42 of this article."

15 24. California Code of Regulations, title 16, section 3340.35 states in pertinent part:

16 ...

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

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

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

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

26 25. California Code of Regulations, title 16, section 3340.41, subdivision (d), states that  
27 the specifications and procedures required by Section 44016 of the Health and Safety Code shall  
28 be the vehicle manufacturer's recommended procedures for emission problem diagnosis and repair



1 or the emission diagnosis and repair procedures found in industry-standard reference manuals and  
2 periodicals published by nationally recognized repair information providers. Smog check stations  
3 and smog check technicians shall, at a minimum, follow the applicable specifications and  
4 procedures when diagnosing defects or performing repairs for vehicles that fail a smog check test.

5 26. California Code of Regulations, title 16, section 3340.41, states, in pertinent part:

6 ...

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

11 27. California Code of Regulations, title 16, section 3340.42, states, in pertinent part, that  
12 smog check stations and smog check technicians shall conduct tests and inspections in accordance  
13 with the bureau's BAR-97 Emissions Inspection System Specifications referenced in subsections  
14 (a) and (b) of Section 3340.17.

15 28. California Code of Regulations, title 16, section 3353, states, in pertinent part:

16 "No work for compensation shall be commenced and no charges shall accrue without  
17 specific authorization from the customer in accordance with the following requirements:

18 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a written  
19 estimated price for parts and labor for a specific job."

20 29. California Code of Regulations, title 16, section 3356, states, in pertinent part:

21 "(a) All invoices for service and repair work performed, and parts supplied, as provided for  
22 in Section 9884.8 of the Business and Professions Code, shall comply with the following:

23 (1) The invoice shall show the automotive repair dealer's registration number and the  
24 corresponding business name and address as shown in the Bureau's records. If the automotive  
25 repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b)  
26 of Section 3371 of this chapter.

27 (2) The invoice shall separately list, describe and identify all of the following:

28

1 (A) All service and repair work performed, including all diagnostic and warranty work, and  
2 the price for each described service and repair.

3 (B) Each part supplied, in such a manner that the customer can understand what was  
4 purchased, and the price for each described part. The description of each part shall state whether  
5 the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket  
6 crash part.

7 (C) The subtotal price for all service and repair work performed.

8 (D) The subtotal price for all parts supplied, not including sales tax.

9 (E) The applicable sales tax, if any."

10 30. California Code of Regulations, title 16, section 3358, states, in pertinent part:

11 "Each automotive repair dealer shall maintain legible copies of the following records for not  
12 less than three years:

13 ...

14 (c) All work orders and/or contracts for repairs, parts and labor. All such records shall be  
15 open for reasonable inspection and/or reproduction by the bureau or other law enforcement  
16 officials during normal business hours."

#### 17 COST RECOVERY PROVISION

18 31. Section 125.3 of the Code provides, in pertinent part, that a Board may request the  
19 administrative law judge to direct a licensee found to have committed a violation or violations of  
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
21 enforcement of the case.

#### 22 FACTUAL BACKGROUND

##### 23 *Vehicle Should Have Failed Smog Inspection, but Passed*

24 32. On or about February 19, 2015, a Bureau undercover operator acting as a customer  
25 (customer) requested and received a smog check inspection for a 1994 Toyota at Respondent  
26 Station's smog check station. The vehicle had a missing emission component (the pulse secondary  
27 air injection system had been removed), in order to fail a properly conducted smog inspection.  
28 The station, however, issued a smog certificate of compliance for the vehicle, and provided the

1 customer with a Vehicle Inspection Report (VIR) indicating that the vehicle passed smog  
2 inspection. The VIR report specifically stated that the vehicle had passed all applicable visual and  
3 functional tests, including a test of the Air Injection system.

4 *Inspection Conducted by Unlicensed Person*

5 33. The entire inspection was conducted by an unlicensed technician, Mario Alberto  
6 Mateos-Montoya (Mario Montoya). He had previously been licensed as a technician, but his  
7 license was revoked on or about July 18, 2011. In conducting the inspection, Mario Montoya  
8 used the access code of Respondent Technician, who provided his smog check security access  
9 code to Mario Montoya. As a result, the Vehicle Information Database as well as the VIR  
10 document Respondent Technician as having performed the inspection, when in fact the inspection  
11 was conducted by the unlicensed Mario Montoya.

12 *No Estimate or Invoice*

13 34. The station failed to provide the customer with a written estimate or invoice. The  
14 customer did not sign a work order or receive an estimate prior to the inspection. After the  
15 inspection, Mario Montoya told the customer that the vehicle had passed smog inspection, and he  
16 provided the customer with an invoice form to fill out and sign. The customer complied and gave  
17 the form to Mario Montoya, but when the customer asked for a copy of the invoice, Mario  
18 Montoya told him he did not need it, and did not provide the customer with a copy.

19 *Records Not Kept*

20 35. On or about February 25, 2015, Bureau representatives interviewed Respondent  
21 Station and requested all records for February 19, 2015, but Respondent Station failed to provide  
22 any of the requested records.

23 **Automotive Repair Dealer Registration**

24 **FIRST CAUSE FOR DISCIPLINE**

(Untrue Statements)

25 (Bus. & Prof. Code, § 9884.7, subd. (a)(1))

26 36. Respondent Station has subjected its automotive repair dealer registration to discipline  
27 for making untrue or misleading statements (Bus. & Prof. Code, § 9884.7, subd. (a)(1)). The  
28 circumstances are described in paragraphs 32-33, above.

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SECOND CAUSE FOR DISCIPLINE  
(Failure to Provide Customer with Legible Copy of Invoice)  
(Bus. & Prof. Code, § 9884.6; Cal. Code Regs., tit. 16, § 3356, subd. (a))

37. Respondent Station has subjected its automotive repair dealer registration to discipline for failing to provide the customer with a legible copy of the invoice (Bus. & Prof. Code, § 9884.6; Cal. Code Regs., tit. 16, § 3356, subd. (a)). The circumstances are described in paragraph 34, above.

THIRD CAUSE FOR DISCIPLINE  
(Failure to Provide Customer with Written Estimate)  
(Bus. & Prof. Code, § 9884.9, subd. (a); Cal. Code Regs., tit. 16, § 3353, subd. (a))

38. Respondent Station has subjected its automotive repair dealer registration to discipline for failing to provide the customer with a written estimate (Bus. & Prof. Code, § 9884.9, subd. (a); Cal. Code Regs., tit. 16, § 3353, subd. (a)). The circumstances are described in paragraph 34, above.

FOURTH CAUSE FOR DISCIPLINE  
(Failure to Keep Records)  
(Bus. & Prof. Code, § 9884.11; Cal. Code Regs., tit. 16, § 3358, subd. (c))

39. Respondent Station has subjected its automotive repair dealer registration to discipline for failing to keep records as required (Bus. & Prof. Code, § 9884.11; Cal. Code Regs., tit. 16, § 3358, subd. (c)). The circumstances are described in paragraph 35, above.

**Smog Check Station License**

FIRST CAUSE FOR DISCIPLINE  
(Violation of Motor Vehicle Inspection Program and Regulations)  
(Health & Saf. Code, § 44072.2, subd. (a))

40. Respondent Station has subjected its smog check station license to discipline for violating the Motor Vehicle Inspection Program and its associated regulations (Health & Saf. Code, § 44072.2, subd. (a)). The factual circumstances are described in paragraphs 31-32, above. The specific violations are listed below.

- A. Respondent Station failed to perform the required visual and/or functional checks of emission control devices (Health & Saf. Code, § 44012, subd. (f)).
- B. Respondent Station conducted smog testing by using an unlicensed technician (Health & Saf. Code, § 44014, subd. (a)).

1 C. Respondent Station issued a certificate of compliance for a vehicle having a tampered  
2 emission control system (Health & Saf. Code, § 44015, subd. (a)(1)).

3 D. Respondent Station failed to have a licensed technician inspect vehicles in accordance  
4 with required test procedures (Cal. Code Regs, tit. 16, § 3340.30, subd. (a)).

5 E. Respondent Station issued a certificate of compliance for a vehicle that was not  
6 properly tested (Cal. Code Regs., tit. 16, § 3340.35, subd. (c)).

7 F. Respondent Station issued a certificate of compliance for a vehicle inspected by an  
8 unlicensed technician (Cal. Code Regs., tit. 16, § 3340.35, subd. (d)).

9 G. Respondent Station had false information entered into the Emissions Inspection  
10 System (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)).

11 H. Respondent Station failed to conduct tests and inspections in accordance with the  
12 Bureau's BAR97 specifications (Cal. Code Regs., tit. 16, § 3340.42).

13 SECOND CAUSE FOR DISCIPLINE  
14 (Aiding or Abetting Unlicensed Person)  
(Health & Saf. Code, § 4407.2.2, subd. (f))

15 41. Respondent Station has subjected its smog check station license to discipline for aiding  
16 or abetting an unlicensed person to evade the provisions of the Motor Vehicle Inspection Program  
17 (Health & Saf. Code, § 4407.2.2, subd. (f)). The circumstances are described in paragraph 32,  
18 above.

19 THIRD CAUSE FOR DISCIPLINE  
20 (Failure to Keep Records)  
(Health & Saf. Code, § 44072.2, subd. (g))

21 42. Respondent Station has subjected its smog check station license to discipline for  
22 failing to keep records as required (Health & Saf. Code, § 44072.2, subd. (g)). The circumstances  
23 are described in paragraph 34, above.

24 **Smog Check Inspector and Smog Check Repair Technician Licenses**

25 CAUSE FOR DISCIPLINE  
26 (Aiding or Abetting Unlicensed Person)  
(Health & Saf. Code, § 4407.2.2, subd. (f))

27 43. Respondent Technician has subjected his smog check inspector and smog check repair  
28 technician licenses to discipline for aiding or abetting an unlicensed person to evade the provisions

1 of the Motor Vehicle Inspection Program (Health & Saf. Code, § 4407.2.2, subd. (f)). The  
2 circumstances are described in paragraph 32, above.

3 OTHER MATTERS

4 44. Pursuant to Code section 9884.7, subd. (c), the Director may invalidate or suspend the  
5 registrations for all places of business operated in this state by Josue Mateos Montoya, upon a  
6 finding that he has, or is, engaged in a course of repeated and willful violation of the laws and  
7 regulations pertaining to an automotive repair dealer.

8 45. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License  
9 No. RC 270981, issued to Josue Mateos Montoya, doing business as San Jose Smog, is revoked  
10 or suspended, any additional license issued under this chapter in the name of said licensee may be  
11 likewise revoked or suspended by the director.

12 46. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector  
13 License No. EO 142249, issued to Douglas Allen Nielsen, is suspended or revoked, any additional  
14 license issued under this chapter in the name of said licensee may be likewise revoked or  
15 suspended by the Director.

16 47. Pursuant to Health and Safety Code section 44072.8, if Smog Check Repair  
17 Technician License No. EI 142249, issued to Douglas Allen Nielsen, is suspended or revoked, any  
18 additional license issued under this chapter in the name of said licensee may be likewise revoked or  
19 suspended by the Director.

20 PRAYER

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

23 1. Invalidating or suspending Automotive Repair Dealer Registration Number ARD  
24 270981, issued to Josue Mateos Montoya doing business as San Jose Smog Check;

25 2. Revoking or suspending any additional automotive repair registration issued to Josue  
26 Mateos Montoya;

- 1           3.    Revoking or suspending Smog Check Station License Number RC 270981, issued to  
2 Josue Mateos Montoya doing business as San Jose Smog Check;  
3           4.    Revoking or suspending any additional automotive repair registration issued to Josue  
4 Mateos Montoya;  
5           5.    Revoking or suspending Smog Check Inspector License Number EO 631761, issued  
6 to Josue Mateos Montoya;  
7           6.    Revoking or suspending Smog Check Repair Technician License Number EI 631761,  
8 issued to Josue Mateos Montoya;  
9           7.    Revoking or suspending any additional license issued under chapter 5 of the Health  
10 and Safety Code in the name of Josue Mateos Montoya;  
11           8.    Revoking or suspending Smog Check Inspector License Number EO 142249, issued  
12 to Douglas Allen Nielsen;  
13           9.    Revoking or suspending Smog Check Repair Technician License Number EO 142249,  
14 issued to Douglas Allen Nielsen;  
15           10.   Revoking or suspending any additional license issued under chapter 5 of the Health  
16 and Safety Code in the name of Douglas Allen Nielsen;  
17           11.   Ordering Josue Mateos Montoya and Douglas Allen Nielsen to pay the Bureau of  
18 Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant  
19 to Business and Professions Code section 125.3; and,  
20           12.   Taking such other and further action as deemed necessary and proper.

21  
22 DATED:

*December 19, 2016*

*Patrick Doraïs*

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

*Complainant*

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