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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. *79/15-60*

13 **VICTOR MANUEL MARTINEZ,**
14 **MEMBER- FAST AUTO, LLC,**

A C C U S A T I O N

15 **DBA, INSTANT SMOG CHECK - STAR +**
16 **4805 W. Point Loma Blvd., Suite A**
17 **San Diego, CA 92107,**

(S M O G C H E C K)

18 **1144 Chimney Flats Lane**
19 **Chula Vista, CA 91915,**

20 **Automotive Repair Dealer License No. ARD**
21 **274211,**
22 **Smog Check Station License No. RC**
23 **274211;**

24 **OSCAR G. GARCIA,**
25 **320 Telegraph Canyon Road, #74**
26 **Chula Vista, CA 91910,**

27 **Smog Check Inspector License No. EO**
28 **632032,**
Smog Check Repair Technician License No.
EI 632032
(Formerly Advanced Emission Specialist
Technician License No. EA 632032);

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about September 10, 2013, the Bureau of Automotive Repair issued
6 Automotive Repair Dealer License Number ARD 274211 to Victor Manuel Martinez, former sole
7 proprietor of Instant Smog Check – Star+, and current Member, Fast Auto LLC, dba Instant
8 Smog Check - Star + (“Respondent Martinez/Instant Smog” or “Instant Smog”). The Automotive
9 Repair Dealer License was in full force and effect at all times relevant to the charges brought
10 herein and was due to expire on September 30, 2014, however was canceled on October 7, 2014.

11 3. On or about October 10, 2013, the Bureau of Automotive Repair issued Smog Check
12 Station License Number RC 274211 to Martinez/Instant Smog. The Smog Check Station License
13 was in full force and effect at all times relevant to the charges brought herein and was due to
14 expire on September 30, 2014, however was canceled on October 7, 2014.

15 4. On or about May 4, 2010, the Bureau issued Advanced Emission Specialist
16 Technician license EA 632032 (“technician license”) to Oscar G. Garcia (“Respondent Garcia”)
17 which was due to expire on December 31, 2013. The Advanced Emission Specialist Technician
18 License was in full force and effect at all times relevant to the charges brought herein. The
19 technician license was cancelled on December 23, 2013. Pursuant to California Code of
20 Regulations, title 16, section 3340.28, subdivision (e), the technician license was renewed,
21 pursuant to Respondent Garcia’s election, as Smog Check Inspector License Number EO 632032
22 and Smog Check Repair Technician License EI 632032 (“following licenses”), effective
23 December 23, 2013, and were in full force and effect at all times relevant to the charges brought
24 herein. The Smog Check Inspector License and Smog Check Repair Technician License will
25 expire on December 31, 2015, unless renewed¹.

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (“EA”) license and Basic Area (“EB”) Technician license to
Smog Check Inspector (“EO”) license and/or Smog Check Repair Technician (“EI”) license.

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"(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.

"...

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

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

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

"...

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

"...

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

16. Section 44059 of the Health and Safety Code states:

"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 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

17. Section 44072.8 of the Health and Safety Code states: "When a license had been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

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

5 23. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part,
6 that smog check stations and smog check technicians shall conduct tests and inspections in
7 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in
8 subsections (a) and (b) of Section 3340.17.

9 24. California Code of Regulations, title 16, section 3353, states in pertinent part:
10 "No work for compensation shall be commenced and no charges shall accrue without
11 specific authorization from the customer in accordance with the following requirements:

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

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

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

20 **COST RECOVERY**

21 26. 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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FACTUAL BACKGROUND

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2 27. On October 10, 2013, Victor Martinez, Sole Proprietor Owner of Instant Smog
3 Check-Star +, (“Instant Smog”), license ARD 271306 and Smog Station license RC 271306, was
4 in the process of transferring ownership from Instant Smog, to Fast Auto LLC, in which he was
5 listed as the only Member.

6 28. On October 10, 2013, Bureau personnel performed an initial station inspection for
7 Fast Auto LLC’s registration number ARD 274211 and Smog Station License RC 274211.
8 During the initial station inspection, Bureau personnel directed Respondent Garcia to perform a
9 calibration and communication test between the station’s Low Pressure Fuel Evaporative Test
10 (“LPFET”) machine, number SY 002557, and the State Vehicle Information Database (“VID”).
11 The station’s LPFET machine passed the calibration.

12 29. On October 17, 2013, after receiving custody of the Bureau 1993 Mazda (“Mazda”),
13 the undercover operator (“operator”) drove the Mazda to Instant Smog for a smog check. Upon
14 arrival, the odometer of the Mazda read, 183,147. The Mazda had been prepared to fail the
15 LPFET portion of a Smog Check Inspection by damaging the fuel filler neck. A vehicle with a
16 damaged fuel filler neck will fail the functional portion of a properly conducted smog check due
17 to LPFET failure.

18 30. Upon arrival at Instant Smog, the operator requested a smog check and signed an
19 estimate for the work. The operator did not receive a copy of the estimate of the work order that
20 he had signed.

21 31. Respondent Garcia performed the Smog Check Inspection.

22 32. Upon completion of the Smog Check, Instant Smog released the Mazda to the
23 operator, providing the operator with invoice # [REDACTED] and the VIR. The odometer read 183,147.
24 The operator then drove the Mazda to a designated area and returned custody of the Mazda to a
25 Bureau representative together with the invoice and VIR.

26 33. The representative noted that the invoice listed the additional \$10.00 fee for the
27 LPFET. The invoice also listed an inaccurate “Mileage” total of “1256041”. The VIR reported
28 that the Mazda did not pass the Smog Check Inspection and no Certificate of Compliance was

1 issued. The reason listed for failing the Smog Check Inspection on the VIR was a “modified”
2 catalytic converter. The VIR listed that the Mazda passed the “Fuel Evaporative Controls”
3 functional test. The VIR also reported an overall test result indicating a “TAMPERED”
4 Comprehensive Visual Inspection result; a “PASS” Functional Check; and a “PASS” Emissions
5 Test.

6 34. On October 18, 2013, Bureau Documentation Laboratory personnel performed a re-
7 inspection of the Mazda. During the re-inspection, the Mazda failed the Smog Check Inspection
8 for LPFET failure. Bureau personnel also determined that the catalytic converter installed on the
9 Mazda was proper, not modified, and complied with the California Air Resources Board
10 Executive Order.

11 35. Bureau personnel reviewed Instant Smog’s VID data between October 2013 and
12 December 2013, and discovered multiple inspections in which LPFET data was missing.

13 36. On January 23, 2014, Bureau personnel visited Instant Smog and requested inspection
14 records for the last calendar quarter of 2013. Instant Smog produced twelve invoices and VIR’s
15 and nine work orders for vehicles that received a “PASS” for the LPFET. Invoices for eight
16 vehicles, including the Mazda, listed the additional \$10.00 fee to perform the LPFET.
17 Respondent Garcia verified the records and that he performed the inspections.

18 37. On March 11, 2014, Respondent Garcia explained to Bureau personnel that the
19 missing LPFET data from the VID between October-December 2013 was because Instant Smog
20 ran out of nitrogen to perform the LPFET and that the LPFET machine, #SY002557, had
21 developed a leak and was unable to conduct a test. Respondent Garcia reported that Instant Smog
22 management personnel directed him to continue performing Smog Check Inspections for all
23 vehicles, including ones needing an LPFET. During that time, he did not perform LPFET’s,
24 although he entered inaccurate data.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Untrue, False or Misleading Statements)**

27 38. Respondent Martinez/Instant Smog is subject to disciplinary action under Business
28 and Professions Code sections 9884.7(a)(1), in that Respondent Martinez/Instant Smog made or

1 authorized statements which Respondent Martinez/Instant Smog knew or in the exercise of
2 reasonable care should have known to be untrue, false or misleading, as follows: Between
3 October and December 2013, Respondent did not actually test/inspect vehicles as required by
4 Health and Safety Code section 44012 and certified vehicles as having passed a Smog Check
5 Inspection and were in compliance with applicable laws and regulations, and/or entered untrue,
6 false or misleading information for vehicles, including the Mazda, into its Emission Inspection
7 System ("EIS") and then transmitting the data to the VID. Respondent Martinez/Instant Smog
8 repeatedly failed to perform the required LPFET, repeatedly indicated passing results for the
9 LPFET functional tests, and indicated the Mazda's catalytic converter as "MODIFIED". The
10 circumstances are more fully set forth in paragraphs 27-37 inclusive herein above and
11 incorporated herein by this reference.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 39. Respondent Martinez/Instant Smog is subject to disciplinary action under Business
15 and Professions Code sections 9884.7(a)(4) in that between October and December 2013,
16 Respondent Martinez/Instant Smog committed acts that constitute fraud by issuing smog
17 Certificates of Compliance for vehicles without performing bona fide smog inspections of the
18 emission control devices and systems on the vehicles, specifically not performing proper LPFET,
19 thereby depriving the People of the State of California of the protections afforded by the Motor
20 Vehicle Inspection Program. The circumstances are as more fully set forth in paragraphs 27-37
21 inclusive herein above and incorporated herein by this reference.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Violations of Motor Vehicle Inspection Program)**

24 40. Respondent Martinez/Instant Smog is subject to disciplinary action under Business
25 and Professions Code section 9884.7(a)(6) and Health and Safety Code section 44072.2(a), (d)
26 and (h) in that Respondent Martinez/Instant Smog failed to comply with the following sections of
27 the Health and Safety Code as follows and as more fully set forth in paragraphs 27-37 inclusive
28 herein above and incorporated herein by this reference:

1 a. **Section 44012:** Between October and December 2013, Respondent Martinez/Instant
2 Smog failed to follow prescribed test procedures and/or failed to perform complete Smog Check
3 Inspections on numerous vehicles.

4 b. **Section 44012(d):** Between October and December 2013, Respondent
5 Martinez/Instant Smog failed to ensure the vehicles' evaporative systems and crankcase
6 ventilation systems were tested in accordance with procedures prescribed by the department.

7 c. **Section 44012(f):** Between October and December 2013, Respondent
8 Martinez/Instant Smog failed to perform a visual/functional check of emission control devices
9 according to procedures prescribed by the department, including but not limited to the Mazda's
10 catalytic converter that was in fact in compliance and not modified.

11 d. **Section 44015(b):** Between October and December 2013, Respondent
12 Martinez/Instant Smog issued smog Certificates of Compliance for various vehicles without
13 ensuring that the vehicles were properly tested and inspected to determine if they were in
14 compliance with Health and Safety Code section 44012 when in fact they were not.

15 e. **Section 44059:** Between October and December 2013, Respondent Martinez/Instant
16 Smog made false, untrue or misleading statements of compliance for various vehicles by
17 certifying that the vehicles had been inspected as required when, in fact, they had not.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 41. Respondent Martinez/Instant Smog is subject to disciplinary action under Health and
21 Safety Code section 44072.2(c) in that Respondent Martinez/Instant Smog failed to comply with
22 provisions of California Code of Regulations, title 16, as follows and as more fully set forth in
23 paragraphs 27-37 inclusive herein above and incorporated herein by this reference:

24 a. **Section 3340.21(c):** Between October and December 2013, Respondent
25 Martinez/Instant Smog falsely or fraudulently issued smog Certificates of Compliance for various
26 vehicles.

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1 d. **Section 3340.42:** Between October and December 2013, Respondent Garcia failed to
2 follow prescribed test procedures or perform complete smog checks/inspections on various
3 vehicles including but not limited to the Mazda.

4 **EIGHTH CAUSE FOR DISCIPLINE**

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

6 45. Respondent Garcia's technician license and following licenses are subject to
7 disciplinary action pursuant to Health and Safety Code section 44072.2(d), in that between
8 October and December 2013, Respondent Garcia committed dishonest, fraudulent, or deceitful
9 acts whereby another is injured by failing to perform smog checks/inspections according to
10 procedures prescribed by the department, certifying vehicles as in compliance with Health and
11 Safety Code section 44012 which were not, failing to comply with provisions of the California
12 Code of Regulations in the performance of smog checks/inspections, and issuing smog
13 Certificates of Compliance for various vehicles without performing bona fide inspections of the
14 emission control devices and systems on the vehicles, thereby depriving the People of the State of
15 California of the protections afforded by the Motor Vehicle Inspection Program.

16 **OTHER MATTERS**

17 46. Pursuant to Business and Professions Code section 9884.7(c), the Director may
18 suspend, revoke or place on probation the registration for all places of business operated in this
19 state by Respondent Victor Manuel Martinez, Member Fast Auto LLC, upon a finding that
20 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
21 regulations pertaining to an automotive repair dealer.

22 47. Pursuant to Health and Safety Code section 44072.8, If Smog Check Station License
23 Number RC 274211, issued to Respondent Victor Manuel Martinez, Member Fast Auto LLC, is
24 revoked or suspended, any additional license issued under this chapter in the name of said
25 licensee may be likewise revoked or suspended by the Director.

26 48. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
27 License No. EO 632032 and Smog Check Repair Technician License No. EI 632032, issued to
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1 Oscar G. Garcia, is revoked or suspended, any additional license issued under this chapter in the
2 name of said licensee may be likewise revoked or suspended by the Director.

3 **PRAYER**

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

6 1. Revoking or suspending Automotive Repair Dealer License Number ARD 274211,
7 issued to Victor Manuel Martinez, Member-Fast Auto LLC, dba Instant Smog Check - Star +;

8 2. Revoking or suspending any other Automotive Repair Dealer registration issued to
9 Victor Manuel Martinez;

10 3. Revoking or suspending Smog Check Station License Number RC 274211, issued to
11 Victor Manuel Martinez, Member-Fast Auto LLC, dba Instant Smog Check – Star +;

12 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
13 and Safety Code in the name of Victor Manuel Martinez, issued to, Fast Auto LLC, dba Instant
14 Smog Check – Star +;

15 5. Revoking or suspending Smog Check Inspector License Number EO 632032, issued
16 to Oscar G. Garcia;

17 6. Revoking or suspending Smog Check Repair Technician License Number EI 632032,
18 issued to Oscar G. Garcia;

19 7. Revoking or suspending any additional license issued to Oscar G. Garcia under the
20 appropriate Chapter 5 of the Health and Safety Code;

21 8. Ordering Victor Manuel Martinez, Member-Fast Auto LLC dba Instant Smog Check
22 – Star +, and Oscar G. Garcia, jointly and severally, to pay the Bureau of Automotive Repair the
23 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
24 Professions Code section 125.3;

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

DATED: October 23, 2014



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

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