

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

In the Matter of the Accusation Against:

SAN RAFAEL SMOG
PATRICIA CAROLINA MERLOS (Owner)
36 Lisbon Street
San Rafael, California 94901

Automotive Repair Dealer Registration No.
ARD 270542
Smog Check, Test Only, Station License
No. TC 270542

Erinc Emer
2409 Aberdeen Way Unit 36
Richmond, CA 94806

Smog Check Inspector EO 632592
(formerly Advanced Emission Specialist
Technician EA 632592)

Respondent.

Case No. 79/14-63

OAH No. 2014010716

DECISION

The attached Stipulated Revocation and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

September 19, 2014.

DATED: August 27, 2014



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
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6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 79/14-63

12 **SAN RAFAEL SMOG**
13 **PATRICIA CAROLINA MERLOS**
(Owner)
14 **36 Lisbon Street**
San Rafael, California 94901

OAH No. 2014010716

STIPULATED REVOCATION AND
DISCIPLINARY ORDER

15 **Automotive Repair Dealer Registration No.**
ARD 270542
16 **Smog Check, Test Only, Station License No.**
TC 270542

17 **Erinc Emer**
18 **2409 Aberdeen Way Unit 36**
Richmond, CA 94806

19 **Smog Check Inspector EO 632592**
20 **(formerly Advanced Emission Specialist**
Technician EA632592)

21 Respondent.
22

23
24 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
25 entitled proceedings that the following matters are true:

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PARTIES

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2 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
3 brought this action solely in his official capacity and is represented in this matter by Kamala D.
4 Harris, Attorney General of the State of California, by Justin R. Surber, Deputy Attorney General.

5 2. Respondents Patricia Carolina Merlos dba San Rafael Smog, and Erinc Emer, Smog
6 Check Inspector (collectively "Respondents") are represented in this proceeding by attorney
7 William Dean Ferreira, Esq., whose address is: 582 Market Street, Suite 1608
8 San Francisco, CA 94104

9 3. On or about October 11, 2012, the Bureau of Automotive Repair issued Automotive
10 Repair Dealer Registration No. ARD 270542 to Patricia Carolina Merlos dba San Rafael Smog,
11 ("Respondent Merlos"). The Automotive Repair Dealer Registration was in full force and effect
12 at all times relevant to the charges brought in Accusation No. 79/14-63 and will expire on
13 October 31, 2014, unless renewed.

14 4. On or about October 18, 2012, the Bureau of Automotive Repair issued Smog Check,
15 Test Only, Station License No. TC 270542 to Respondent Merlos. The Smog Check, Test Only,
16 Station License was in full force and effect at all times relevant to the charges brought in
17 Accusation No. 79/14-63 but was cancelled on November 14, 2013.

18 5. On or about October 14, 2010, the Director issued Advanced Emission Specialist
19 Technician License Number EA 632592 to Erinc Emer ("Respondent Emer"). Respondent Emer's
20 advanced emission specialist technician license was due to expire on September 30, 2012.
21 Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license
22 was renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EO
23 632592 ("inspector license"). Respondent Emer's inspector license will expire on September 30,
24 2014, unless renewed.¹

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

1 prior to the time the Director considers and acts upon it. If the Director fails to adopt this
2 stipulation as the Decision and Order, the Stipulated Revocation and Disciplinary Order shall be
3 of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
4 between the parties, and the Director shall not be disqualified from further action by having
5 considered this matter.

6 20. The parties understand and agree that Portable Document Format (PDF) and facsimile
7 copies of this Stipulated Revocation and Disciplinary Order, including Portable Document
8 Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the
9 originals.

10 21. This Stipulated Revocation and Disciplinary Order is intended by the parties to be an
11 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
12 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
13 negotiations, and commitments (written or oral). This Stipulated Revocation and Disciplinary
14 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
15 writing executed by an authorized representative of each of the parties.

16 22. In consideration of the foregoing admissions and stipulations, the parties agree that
17 the Director may, without further notice or formal proceeding, issue and enter the following
18 Disciplinary Order:

19 **DISCIPLINARY ORDER**

20 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 270542
21 and Smog Check, Test Only, Station License No. TC 270542 issued to Respondent Patricia
22 Carolina Merlos dba San Rafael Smog (“Respondent Merlos”) are revoked by the Director of
23 Consumer Affairs.

24 IT IS HEREBY ORDERED that Smog Check Inspector License Number EO 632592 issued
25 to Respondent Erinc Emer (“Respondent Emer”) is revoked by the Director of Consumer Affairs.

26 1. The revocation of Respondent Merlos’s Automotive Repair Dealer License and Smog
27 Check, Test Only, Station License shall constitute the imposition of discipline against Respondent
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1 Merlos. This stipulation constitutes a record of the discipline and shall become a part of
2 Respondent Merlos's license history with the Bureau of Automotive Repair.

3 2. Respondent Merlos shall lose all rights and privileges as an Automotive Repair
4 Dealer and Smog Check, Test Only, Station in California as of the effective date of the Director's
5 Decision and Order.

6 3. Respondent Merlos shall cause to be delivered to the Bureau her pocket licenses and,
7 if one was issued, her wall certificates on or before the effective date of the Decision and Order.

8 4. The revocation of Respondent Emer's Smog Check Inspector License shall constitute
9 the imposition of discipline against Respondent Emer. This stipulation constitutes a record of the
10 discipline and shall become a part of Respondent Emer's license history with the Bureau of
11 Automotive Repair.

12 5. Respondent Emer shall lose all rights and privileges as a Smog Check Inspector in
13 California as of the effective date of the Director's Decision and Order.

14 6. Respondent Emer shall cause to be delivered to the Bureau his pocket license and, if
15 one was issued, his wall certificate on or before the effective date of the Decision and Order.

16 7. If either Respondent Merlos or Respondent Emer or any organization or entity in
17 which either Respondent Merlos or Emer is involved as an owner, partner, officer, member,
18 consultant, contractor, or employee ever applies for licensure or petitions for reinstatement in the
19 State of California, the Bureau shall treat it as a new application for licensure. Respondents must
20 comply with all the laws, regulations and procedures for licensure in effect at the time the
21 application or petition is filed, and all of the remaining charges and allegations contained in
22 Accusation No. 79/14-63 shall be deemed to be true, correct and admitted by Respondents when
23 the Director determines whether to grant or deny the application or petition.

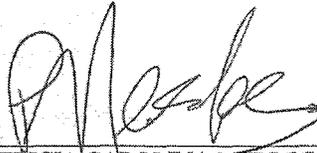
24 8. Respondent Merlos and Respondent Emer shall pay the agency its costs of
25 investigation and enforcement in the amount of \$30,718.76 prior to issuance of a new or
26 reinstated registration or license. This amount is due both jointly and severally and shall be paid
27 in its entirety before a registration or license is issued to either Respondent Merlos, Respondent
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1 Emer, or any organization or entity in which either Respondent Merlos or Emer is involved as an
2 owner, partner, officer, member, consultant, contractor, or employee.

3 ACCEPTANCE

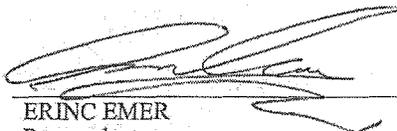
4 I have carefully read the above Stipulated Revocation and Disciplinary Order and have
5 fully discussed it with my attorney, William Dean Ferreira, Esq. I understand the stipulation and
6 the effect it will have on my Automotive Repair Dealer Registration, and Smog Check, Test
7 Only, Station License. I enter into this Stipulated Revocation and Disciplinary Order voluntarily,
8 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of
9 Consumer Affairs.

10
11 DATED: 07-21-14


12 PATRICIA CAROLINA MERLOS
13 Respondent

14 I have carefully read the above Stipulated Revocation and Disciplinary Order and have
15 fully discussed it with my attorney, William Dean Ferreira, Esq. I understand the stipulation and
16 the effect it will have on my Smog Check Inspector License. I enter into this Stipulated
17 Revocation and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
18 bound by the Decision and Order of the Director of Consumer Affairs.

19
20 DATED: 07/21/14


21 ERINC EMER
22 Respondent

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1 I have read and fully discussed with Respondent Patricia Carolina Merlos and Respondent
2 Erinc Emer the terms and conditions and other matters contained in the above Stipulated
3 Revocation and Disciplinary Order. I approve its form and content.

4
5 DATED: 7/21/14


6 WILLIAM DEAN FERREIRA, Esq.
7 Attorney for Respondent

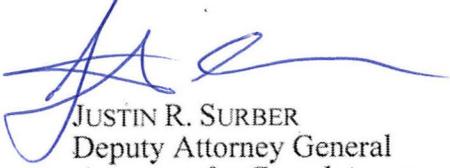
8 ENDORSEMENT

9 The foregoing Stipulated Revocation and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Director of Consumer Affairs

11 Dated: 7/21/14

12 Respectfully submitted,

13 KAMALA D. HARRIS
14 Attorney General of California
15 FRANK H. PACOE
16 Supervising Deputy Attorney General


17 JUSTIN R. SURBER
18 Deputy Attorney General
19 *Attorneys for Complainant*

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21 41026114.doc

Exhibit A

Accusation No. 79/14-63

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Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
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Automotive Repair Dealer Registration No.
15 **ARD 270542**
Smog Check, Test Only, Station License No.
16 **TC 270542**
17 **Erinc Emer**
2409 Aberdeen Way Unit 36
18 **Richmond, CA 94806**
19 **Smog Check Inspector EO 632592**
(formerly Advanced Emission Specialist
20 **Technician EA632592)**
21 Respondent.

Case No. **79/14-63**

ACCUSATION
(SMOG CHECK)

22
23 Complainant alleges:

24 **PARTIES**

- 25 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
26 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
27 2. On or about October 11, 2012, the Bureau of Automotive Repair issued Automotive
28 Repair Dealer Registration Number ARD 270542 ("Registration") to San Rafael Smog, Patricia

1 Carolina Merlos, owner, ("Respondent Merlos"). The Automotive Repair Dealer Registration
2 was in full force and effect at all times relevant to the charges brought herein and will expire on
3 October 31, 2014, unless renewed.

4 3. On or about October 18, 2012, the Bureau of Automotive Repair issued Smog Check,
5 Test Only, Station License Number TC 270542 ("Smog License") to Respondent Merlos. The
6 Smog Check, Test Only, Station License was in full force and effect at all times relevant to the
7 charges brought herein and will expire on October 31, 2014, unless renewed.

8 4. On or about October 14, 2010, the Director issued Advanced Emission Specialist
9 Technician License Number EA 632592 to Erinc Emer ("Respondent Emer"). Respondent Emer's
10 advanced emission specialist technician license was due to expire on September 30, 2012.
11 Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license
12 was renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EO
13 632592 ("inspector license"). Respondent's inspector license will expire on September 30, 2014,
14 unless renewed¹.

15 JURISDICTION

16 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the
17 Bureau of Automotive Repair, under the authority of the following laws.

18 STATUTORY PROVISIONS

19 6. Section 9884.13 of the Business and Profession Code ("Code") provides, in pertinent
20 part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction
21 to proceed with a disciplinary proceeding against an automotive repair dealer or to render a
22 decision invalidating a registration temporarily or permanently.

23 7. Section 9884.7 of the Code states:

24 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
25 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 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 and/or Smog Check Repair Technician (EI) license.

1 dealer for any of the following acts or omissions related to the conduct of the business of the
2 automotive repair dealer, which are done by the automotive repair dealer or any automotive
3 technician, employee, partner, officer, or member of the automotive repair dealer.

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

7 ...

8 (4) Any other conduct that constitutes fraud.

9 ...

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

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

17 9. Section 44072.2 of the Health and Safety Code states:

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

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

24 ...

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

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

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

28 ...

1 the director of jurisdiction to proceed with any investigation of, or action or disciplinary
2 proceedings against, the licensee, or to render a decision suspending or revoking the license.

3 14. Health and Safety Code section 44072.8 states:

4 "When a license has been revoked or suspended following a hearing under this article, any
5 additional license issued under this chapter in the name of the licensee may be likewise revoked
6 or suspended by the director."

7 **REGULATORY PROVISIONS**

8 15. California Code of Regulations Title 16, Section 3340.24, subsection (c) states:

9 "The bureau may suspend or revoke the license of or pursue other legal action against a
10 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
11 certificate of noncompliance."

12 16. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:

13 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
14 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
15 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

16 17. California Code of Regulations Title 16, Section 3340.30 states"

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

19 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
20 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
21 article.

22 ..."

23 18. California Code of Regulations, title 16, Section 3340.42 stated²:

24 "... (e) In addition to the test methods prescribed in this section, the following tests shall
25 apply to all vehicles, except diesel powered vehicles, during the Smog Check inspection:

26 ² This was the applicable regulation in effect at the time of the alleged violations. The sub
27 sections cited have been deleted in the current version of the regulation. However, this portion of
28 the smog inspection is still required by the Smog Inspection Manual that is incorporated by
California Code of Regulations Title 16, Section 3340.45.

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(2) A functional inspection of the vehicle's emission control systems. During the functional inspection, the technician shall conduct, as applicable, the following tests and verifications of the vehicle:

...

- (C) proper setting of ignition timing,
- (D) a low pressure check of the fuel evaporative control system,
- ..."

COSTS

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

FIRST CAUSE FOR DISCIPLINE

(Untrue or misleading Statements-Registration)

20. Respondent Merlos' Registration is subject to disciplinary action under section 9884.7(a)(1) of the code in that she knowingly made statements that were untrue or misleading. Respondent informed the Bureau in writing that her relationship with Erinc Emer was a business relationship. In fact, Respondent was married to Erinc Emer when this statement was made.

SECOND CAUSE FOR DISCIPLINE

(Misrepresentation of a Material Fact-Station License)

21. Respondent Merlos' Smog License is subject to disciplinary action under section 44072.2(e) of the Health and Safety code in that she misrepresented a material fact in obtaining a license. Respondent informed the Bureau in writing that her relationship with Erinc Emer was a business relationship. In fact, Respondent was married to Erinc Emer when this statement was made.

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1 the vehicle was in compliance with applicable laws and regulations when, in fact the vehicle was
2 smoking excessively and should have failed the "Other Emission Related Components" section
3 of the visual inspection portion of the smog test. Respondent Merlos also indicated the Acura
4 passed the Low Pressure Fuel Evaporative Test when in fact that test was not performed.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Fraud-Registration)**

7 24. Respondent's Merlos' registration is subject to discipline under Code section
8 9884.7(a)(4), in that on or about December 13, 2012, he committed acts constituting fraud by
9 issuing electronic Certificate of Compliance No. OS209243C for the Acura without performing a
10 bona fide inspection of the emission control devices and systems on the vehicle; thereby
11 depriving the People of the State of California of the protection afforded by the Motor Vehicle
12 Inspection Program.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Violations of the Motor Vehicle Inspection Program-Station License)**

15 25. Respondent Merlos' station license is subject to discipline pursuant to Health &
16 Safety Code section 44072.2, subdivisions (a) and (c), in that on or about December 13, 2012,
17 Respondent Merlos failed to comply with the following sections of the Health and Safety Code
18 and applicable regulations regarding the Acura as set forth above in paragraph 22, as follows:

19 a. **Section 44012, subdivision (f):** Respondent Merlos failed to perform emission
20 control inspections on the Acura in accordance with procedures prescribed by the department.

21 b. **Section 44059:** Respondent Merlos willfully made false entries for the electronic
22 certificate of compliance by certifying that the Acura had been inspected as required when, in
23 fact, it had not.

24 c. **California Code of Regulations, Title 16, Section 3340.24, subdivision (c):**
25 Respondent Merlos falsely or fraudulently issued an electronic certificate of compliance for the
26 Acura without performing a bona fide inspection of the emission control devices and systems on
27 the vehicle as required by Health and Safety Code section 44012 and California Code of
28 Regulations, Title 16, Section 3340.42.

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program-Station License)**

3 29. Respondent Merlos' station license is subject to discipline pursuant to Health &
4 Safety Code section 44072.2, subdivisions (a) and (c), in that on or about December 13, 2012,
5 Respondent Merlos failed to comply with the following sections of the Health and Safety Code
6 and applicable regulations regarding the Toyota as set forth above in paragraph 22, as follows:

7 a. **Section 44012, subdivision (f):** Respondent Merlos failed to perform emission
8 control inspections on the Toyota in accordance with procedures prescribed by the department.

9 b. **Section 44059:** Respondent Merlos willfully made false entries for the electronic
10 certificate of compliance by certifying that the Toyota had been inspected as required when, in
11 fact, it had not.

12 c. **California Code of Regulations, Title 16, Section 3340.24, subdivision (c):**
13 Respondent Merlos falsely or fraudulently issued an electronic certificate of compliance for the
14 Toyota without performing a bona fide inspection of the emission control devices and systems on
15 the vehicle as required by Health and Safety Code section 44012 and California Code of
16 Regulations, Title 16, Section 3340.42.

17 d. **California Code of Regulations, title 16, Section 3340.42:** Respondent Merlos
18 failed to perform an emission control inspection on the Toyota in accordance with procedures
19 prescribed by the department.

20 **TENTH CAUSE FOR DISCIPLINE**

21 **(Dishonesty, Fraud or Deceit-Station License)**

22 30. Respondent Merlos' station license is subject to discipline pursuant to Health &
23 Safety Code section 44072.2, subdivision (d), in that on or about December 13, 2012, she
24 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
25 Certificate of Compliance No. OS209244C for the Toyota without performing a bona fide
26 inspection of the emission control devices and systems on the vehicle, thereby depriving the
27 People of the State of California of the protection afforded by the Motor Vehicle Inspection
28 Program.

1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program – Inspector License)

3 31. Respondent Emer has subjected his inspector license to discipline under Health and
4 Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of the Health
5 and Safety Code and applicable regulations regarding the Acura as set forth above in paragraph
6 22, as follows:

7 a. **Section 44012:** Respondent Emer failed to ensure that the emission control tests
8 were performed on the Acura in accordance with procedures prescribed by the department.

9 c. **Section 44032:** Respondent Emer issued an electronic certificate of compliance for
10 the Acura without ensuring that the vehicle was properly tested and inspected to determine if it
11 was in compliance with Health and Safety Code section 44012.

12 c. **Section 44059:** Respondent Emer willfully made false entries for the electronic
13 certificate of compliance by certifying that the Acura had been inspected as required when, in
14 fact, it had not.

15 d. **California Code of Regulations, Title 16, Section 3340.24, subdivision (c):**
16 Respondent Emer falsely or fraudulently issued an electronic certificate of compliance for the
17 Acura without performing a bona fide inspection of the emission control devices and systems on
18 the vehicle as required by Health and Safety Code section 44012 and California Code of
19 Regulations, Title 16, Section 3340.42.

20 e. **California Code of Regulations, Title 16, Section 3340.30, subdivision (a):**
21 Respondent Emer failed to inspect and test the Acura in accordance with Health and Safety Code
22 section 44012 and California Code of Regulations, Title 16, Section 3340.42.

23 f. **California Code of Regulations, Title 16, Section 3340.42:** Respondent Emer
24 failed to conduct the required smog test and inspection on the vehicle in accordance with the
25 Bureau's specifications.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit – Inspector License)**

3 32. Respondent Emer subjected his inspector license to discipline under Health and
4 Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
5 fraud or deceit, whereby another was injured by issuing an electronic certificate of compliance for
6 the Acura without performing bona fide inspections of the emission control devices and systems
7 on the vehicle, thereby depriving the People of the State of California of the protection afforded
8 by the Motor Vehicle Inspection Program, as set forth above in paragraph 22.

9 **THIRTEENTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Motor Vehicle Inspection Program – Inspector License)**

11 33. Respondent Emer has subjected his inspector license to discipline under Health and
12 Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of the Health
13 and Safety Code and applicable regulations regarding the Toyota as set forth above in paragraph
14 22, as follows:

15 a. **Section 44012:** Respondent Emer failed to ensure that the emission control tests
16 were performed on the Toyota in accordance with procedures prescribed by the department.

17 b. **Section 44032:** Respondent Emer issued an electronic certificate of compliance for
18 the Toyota without ensuring that the vehicle was properly tested and inspected to determine if it
19 was in compliance with Health and Safety Code section 44012.

20 c. **Section 44059:** Respondent Emer willfully made false entries for the electronic
21 certificate of compliance by certifying that the Toyota had been inspected as required when, in
22 fact, it had not.

23 d. **California Code of Regulations, Title 16, Section 3340.24, subdivision (c):**
24 Respondent Emer falsely or fraudulently issued an electronic certificate of compliance for the
25 Toyota without performing a bona fide inspection of the emission control devices and systems on
26 the vehicle as required by Health and Safety Code section 44012 and California Code of
27 Regulations, Title 16, Section 3340.42.

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1 e. **California Code of Regulations, Title 16, Section 3340.30, subdivision (a):**
2 Respondent Emer failed to inspect and test the Toyota in accordance with Health and Safety Code
3 section 44012 and California Code of Regulations, Title 16, Section 3340.42.

4 f. **California Code of Regulations, Title 16, Section 3340.42:** Respondent Emer
5 failed to conduct the required smog test and inspection on the Toyota in accordance with the
6 Bureau's specifications.

7 **FOURTEENTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit – Inspector License)**

9 34. Respondent Emer subjected his inspector license to discipline under Health and
10 Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
11 fraud or deceit, whereby another was injured by issuing an electronic certificate of compliance for
12 the Toyota without performing bona fide inspections of the emission control devices and systems
13 on the vehicle, thereby depriving the People of the State of California of the protection afforded
14 by the Motor Vehicle Inspection Program, as set forth above in paragraph 22.

15 **RECORDED SURVEILLANCE, DECEMBER 14, 2012**

16 35. On December 14, 2012 the Bureau's investigative staff conducted an undercover
17 surveillance operation at Respondent Merlos shop, San Rafael Smog. Respondents⁴ were
18 observed to perform a fraudulent smog inspection, as follows:

19 a. Respondents purported to test a 1992 Mercedes Benz, CA license # 3RUR240,
20 entered information in the Emissions Inspection System regarding said vehicle, and issued
21 Certificate of Compliance No. OS252956C to said vehicle. In reality, the vehicle that
22 Respondents tested was a 2000 Ford Pickup, CA license # 6BTB666. The 1992 Mercedes Benz
23 was not in the test bay of the facility at the time of the certification.

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28 ⁴ Respondent Emer performed Smog inspection on behalf of Respondent Merlos.

1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements-Registration)**

3 36. Respondent Merlos has subjected her registration to discipline under Code section
4 9884.7, subdivision (a)(1), in that she made statements which she knew or which by exercise of
5 reasonable care she should have known were untrue or misleading, as set forth above in
6 paragraph 35. Respondent Merlos fraudulently purported to test the 1992 Mercedes Benz
7 (Mercedes), and certified that the vehicle passed inspection and was in compliance with
8 applicable laws and regulations. In fact, Respondent Merlos did not test the 1992 Mercedes Benz
9 and used the tailpipe emissions of another vehicle to pass the 1992 Mercedes Benz.

10 **SIXTEENTH CAUSE FOR DISCIPLINE**

11 **(Fraud - Registration)**

12 37. Respondent Merlos has subjected her registration to discipline under Code section
13 9884.7, subdivision (a)(4), in that she committed acts which constitute fraud, as set forth above in
14 paragraph 35.

15 **SEVENTEENTH CAUSE FOR DISCIPLINE**

16 **(Violation of the Motor Vehicle Inspection Program – Station License)**

17 38. Respondent Merlos has subjected her station license to discipline under Health and
18 Safety Code section 44072.2, subdivisions (a) and (c), in that she violated sections of the Health
19 and Safety Code and applicable regulations with regards to the Mercedes as set forth above in
20 paragraphs 35, as follows:

21 a. **Section 44012, subdivision (f):** Respondent Merlos failed to perform emission
22 control inspections on the Mercedes in accordance with procedures prescribed by the department.

23 b. **Section 44059:** Respondent Merlos willfully made false entries for the electronic
24 certificate of compliance by certifying that the Mercedes had been inspected as required when, in
25 fact, it had not.

26 c. **California Code of Regulations, Title 16, Section 3340.24, subdivision (c):**
27 Respondent Merlos falsely or fraudulently issued an electronic certificate of compliance for the
28 Mercedes without performing a bona fide inspection of the emission control devices and systems

1 on the vehicle as required by Health and Safety Code section 44012 and California Code of
2 Regulations, Title 16, Section 3340.42.

3 d. **California Code of Regulations, title 16, Section 3340.42:** Respondent Merlos
4 failed to perform an emission control inspection on the Mercedes in accordance with procedures
5 prescribed by the department.

6 **EIGHTEENTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit – Station License)**

8 39. Respondent Merlos subjected her station license to discipline under Health and Safety
9 Code section 44072.2, subdivision (d), in that she committed acts involving dishonesty, fraud or
10 deceit, whereby another was injured by issuing an electronic certificate of compliance for the
11 Mercedes without performing a bona fide inspection of the emission control devices and systems
12 on the vehicle, thereby depriving the People of the State of California of the protection afforded
13 by the Motor Vehicle Inspection Program, as set forth above in paragraph 35.

14 **NINETEENTH CAUSE FOR DISCIPLINE**

15 **(Violations of the Motor Vehicle Inspection Program – Inspector License)**

16 40. Respondent Emer has subjected his inspector license to discipline under Health and
17 Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of the Health
18 and Safety Code and applicable regulations regarding the Mercedes, as set forth above in
19 paragraph 35, as follows:

20 a. **Section 44012:** Respondent Emer failed to ensure that the emission control tests
21 were performed on the Mercedes in accordance with procedures prescribed by the department.

22 b. **Section 44032:** Respondent Emer issued an electronic certificate of compliance for
23 the Mercedes without ensuring that the vehicle was properly tested and inspected to determine if
24 it was in compliance with Health and Safety Code section 44012.

25 c. **Section 44059:** Respondent Emer willfully made false entries for the electronic
26 certificate of compliance by certifying that the Mercedes had been inspected as required when, in
27 fact, it had not.

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1 d. **California Code of Regulations, Title 16, Section 3340.24, subdivision (c):**
2 Respondent Emer falsely or fraudulently issued an electronic certificate of compliance for the
3 Mercedes without performing a bona fide inspection of the emission control devices and systems
4 on the vehicle as required by Health and Safety Code section 44012 and California Code of
5 Regulations, Title 16, Section 3340.42.

6 e. **California Code of Regulations, Title 16, Section 3340.30, subdivision (a):**
7 Respondent Emer failed to inspect and test the Mercedes in accordance with Health and Safety
8 Code section 44012 and California Code of Regulations, Title 16, Section 3340.42.

9 f. **California Code of Regulations, Title 16, Section 3340.42:** Respondent Emer
10 failed to conduct the required smog test and inspection on the Mercedes in accordance with the
11 Bureau's specifications.

12 **TWENTIETH CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud or Deceit – Inspector License)**

14 41. Respondent Emer subjected his inspector license to discipline under Health and
15 Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
16 fraud or deceit, whereby another was injured. Respondent Emer issued an electronic certificate of
17 compliance for the Mercedes without performing bona fide inspections of the emission control
18 devices and systems. Respondent Emer used the emissions of another vehicle to pass the
19 Mercedes, thereby depriving the People of the State of California of the protection afforded by
20 the Motor Vehicle Inspection Program, as set forth above in paragraph 35.

21 **RECORDED SURVEILLANCE, DECEMBER 15, 2012**

22 42. On December 15, 2012 the Bureau's investigative staff conducted an undercover
23 surveillance operation at Respondent Merlos shop, San Rafael Smog. Respondents were
24 observed to perform fraudulent smog inspections, as follows:

25 a. At or about 11:23 hours, a Honda Accord sedan (Honda) was pulled into San
26 Rafael Smog's service bay and received a smog inspection. Respondent Emer could be seen
27 during different times of the inspection and was the only licensed Smog Check Technician testing
28 on that day. Respondent Emer did not perform an LPFET on the Honda. The BAR97 Test

1 Summary and BAR97 Test Detail showed the Honda was tested by San Rafael Smog and
2 Respondent Emer. The BAR97 Test Detail and the signed VIR showed "P" Pass was entered for
3 the Functional inspection of the LPFET. However the LPFET was not performed.

4 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements-Registration)**

6 43. Respondent Merlos' registration is subject to discipline under Code section
7 9884.7(a)(1), in that on or about December 15, 2012, Respondent Merlos authorized statements
8 which she knew or which by exercise of reasonable care should have known to be untrue or
9 misleading by showing "P" Pass for the LPFET portion of the functional test when in fact the
10 LPFET test was not performed.

11 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud-Registration)**

13 44. Respondent's Merlos' registration is subject to discipline under Code section
14 9884.7(a)(4), in that on or about December 13, 2012, she committed acts constituting fraud by
15 showing "P" Pass for the LPFET portion of the functional test when in fact the LPFET test was
16 not performed; thereby depriving the consumer and the People of the State of California of the
17 protection afforded by the Motor Vehicle Inspection Program.

18 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

19 **(Violations of the Motor Vehicle Inspection Program-Station License)**

20 45. Respondent Merlos' station license is subject to discipline pursuant to Health &
21 Safety Code section 44072.2, subdivisions (a) and (c), in that on or about December 15, 2012,
22 Respondent Merlos failed to comply with the following sections of the Health and Safety Code
23 and applicable regulations regarding the Honda, as set forth above in paragraph 42, as follows:

24 a. **Section 44012, subdivision (f):** Respondent Merlos failed to perform emission
25 control inspections on the Honda in accordance with procedures prescribed by the department.

26 b. **Section 44059:** Respondent Merlos willfully made false entries into the EIS by
27 certifying that the Honda had been inspected as required when, in fact, it had not.

28 c. **California Code of Regulations, title 16, Section 3340.42:** Respondent Merlos

1 failed to perform an emission control inspection on the Honda in accordance with procedures
2 prescribed by the department.

3 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud or Deceit-Station License)**

5 46. Respondent Merlos' station license is subject to discipline pursuant to Health &
6 Safety Code section 44072.2, subdivision (d), in that on or about December 15, 2012, she
7 committed dishonest, fraudulent or deceitful acts whereby another is injured by showing "P" Pass
8 for the LPFET portion of the functional test for the Honda when in fact the LPFET test was not
9 performed, thereby depriving the consumer and the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

12 **(Violations of the Motor Vehicle Inspection Program – Inspector License)**

13 47. Respondent Emer has subjected his inspector license to discipline under Health and
14 Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of the Health
15 and Safety Code and applicable regulations regarding the Honda, as set forth above in paragraph
16 42, as follows:

17 a. **Section 44012:** Respondent Emer failed to ensure that the emission control tests
18 were performed on the Honda in accordance with procedures prescribed by the department.

19 b. **Section 44059:** Respondent Emer willfully made false entries into the EIS by
20 certifying that the Honda had been inspected as required when, in fact, it had not.

21 c. **California Code of Regulations, Title 16, Section 3340.30, subdivision (a):**
22 Respondent Emer failed to inspect and test the Honda in accordance with Health and Safety Code
23 section 44012 and California Code of Regulations, Title 16, Section 3340.42.

24 d. **California Code of Regulations, Title 16, Section 3340.42:** Respondent Emer
25 failed to conduct the required smog test and inspection on the Honda in accordance with the
26 Bureau's specifications.

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1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit – Inspector License)**

3 48. Respondent Emer subjected his inspector license to discipline under Health and
4 Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
5 fraud or deceit, whereby another was injured by entering “P” Pass for the LPFET portion of the
6 functional test when in fact the LPFET test was not performed thereby depriving consumer and
7 People of the State of California of the protection afforded by the Motor Vehicle Inspection
8 Program, as set forth above in paragraph 42.

9 **UNDERCOVER RUN, DECEMBER 15, 2012**

10 49. On December 15, 2012, a Bureau undercover operator (“operator”) drove a Bureau
11 documented 1990 Mercury (Mercury) to Respondent Merlos’ facility, San Rafael Smog, and
12 requested a smog inspection. The vehicle’s ignition timing had been adjusted out of the
13 manufacturer’s specification, rendering the vehicle incapable of passing a smog inspection.
14 Respondents Emer and Merlos performed the smog inspection and issued electronic Certificate of
15 Compliance No. [REDACTED] for the Mercury. Respondents certified they had tested and
16 inspected the Mercury and that it was in compliance with applicable laws and regulations when,
17 in fact, the vehicle could not have passed the functional portion of the smog inspection because
18 the vehicle’s ignition timing was out of specification.

19 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements-Registration)**

21 50. Respondent Merlos’ registration is subject to discipline under Code section
22 9884.7(a)(1), in that on or about December 15, 2012, Respondent Merlos made statements which
23 she knew or which by exercise of reasonable care should have known to be untrue or misleading
24 by issuing electronic Certificate of Compliance No. [REDACTED] for the Mercury and certifying
25 that the vehicle was in compliance with applicable laws and regulations when, in fact the
26 vehicle’s timing was out of specification and should have failed the smog inspection.

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1 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

2 **(Fraud-Registration)**

3 51. Respondent's Merlos' registration is subject to discipline under Code section
4 9884.7(a)(4), in that on or about December 15, 2012, she committed acts constituting fraud by
5 issuing electronic Certificate of Compliance No. [REDACTED] for the Mercury without performing
6 a bona fide inspection of the emission control devices and systems on the vehicle; thereby
7 depriving the People of the State of California of the protection afforded by the Motor Vehicle
8 Inspection Program.

9 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Motor Vehicle Inspection Program-Station License)**

11 52. Respondent Merlos' station license is subject to discipline pursuant to Health &
12 Safety Code section 44072.2, subdivisions (a) and (c), in that on or about December 15, 2012,
13 Respondent Merlos failed to comply with the following sections of the Health and Safety Code
14 and applicable regulations, regarding the Mercury, as set forth above in paragraph 49, as follows:

15 a. **Section 44012, subdivision (f):** Respondent Merlos failed to perform emission
16 control inspections on the Mercury in accordance with procedures prescribed by the department.

17 b. **Section 44059:** Respondent Merlos willfully made false entries for the electronic
18 certificate of compliance by certifying that the Mercury had been inspected as required when, in
19 fact, it had not.

20 c. **California Code of Regulations, Title 16, Section 3340.24, subdivision (c):**
21 Respondent Merlos falsely or fraudulently issued an electronic certificate of compliance for the
22 Mercury without performing a bona fide inspection of the emission control devices and systems
23 on the vehicle as required by Health and Safety Code section 44012 and California Code of
24 Regulations, Title 16, Section 3340.42.

25 d. **California Code of Regulations, title 16, Section 3340.42:** Respondent Merlos
26 failed to perform an emission control inspection on the Mercury in accordance with procedures
27 prescribed by the department.

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1 **THIRTIETH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit-Station License)**

3 53. Respondent Merlos' station license is subject to discipline pursuant to Health &
4 Safety Code section 44072.2, subdivision (d), in that on or about December 15, 2012, she
5 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
6 Certificate of Compliance No. [REDACTED] for the Mercury without performing a bona fide
7 inspection of the emission control devices and systems on the vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

11 **(Violations of the Motor Vehicle Inspection Program – Inspector License)**

12 54. Respondent Emer has subjected his inspector license to discipline under Health and
13 Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of the Health
14 and Safety Code and applicable regulations regarding the Mercury as set forth above in paragraph
15 49, as follows:

16 a. **Section 44012:** Respondent Emer failed to ensure that the emission control tests
17 were performed on the Mercury in accordance with procedures prescribed by the department.

18 b. **Section 44032:** Respondent Emer issued an electronic certificate of compliance for
19 the Mercury without ensuring that the vehicle was properly tested and inspected to determine if it
20 was in compliance with Health and Safety Code section 44012.

21 c. **Section 44059:** Respondent Emer willfully made false entries for the electronic
22 certificate of compliance by certifying that the Mercury had been inspected as required when, in
23 fact, it had not.

24 d. **California Code of Regulations, Title 16, Section 3340.24, subdivision (c):**
25 Respondent Emer falsely or fraudulently issued an electronic certificate of compliance for the
26 Mercury without performing a bona fide inspection of the emission control devices and systems
27 on the vehicle as required by Health and Safety Code section 44012 and California Code of
28 Regulations, Title 16, Section 3340.42.

1 e. **California Code of Regulations, Title 16, Section 3340.30, subdivision (a):**
2 Respondent Emer failed to inspect and test the Mercury in accordance with Health and Safety
3 Code section 44012 and California Code of Regulations, Title 16, Section 3340.42.

4 f. **California Code of Regulations, Title 16, Section 3340.42:** Respondent Emer
5 failed to conduct the required smog test and inspection on the Mercury in accordance with the
6 Bureau's specifications.

7 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit – Inspector License)**

9 55. Respondent Emer subjected his inspector license to discipline under Health and
10 Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
11 fraud or deceit, whereby another was injured by issuing an electronic certificate of compliance for
12 the Mercury without performing bona fide inspections of the emission control devices and
13 systems on the Mercury, thereby depriving the People of the State of California of the protection
14 afforded by the Motor Vehicle Inspection Program, as set forth above in paragraph 49.

15 **OTHER MATTERS**

16 56. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
17 probation the registrations for all places of business operated in this state by Patricia Carolina
18 Merlos, upon a finding that he has, or is, engaged in a course of repeated and willful violation of
19 the laws and regulations pertaining to an automotive repair dealer.

20 57. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,
21 Station License No. TC 270542, issued San Rafael Smog, Patricia Carolina Merlos-owner, is
22 revoked or suspended, any additional license issued under this chapter in the name of said
23 licensees may be likewise revoked or suspended by the director.

24 58. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
25 License EO 632592, issued Erinc Emer, is revoked or suspended, any additional license issued
26 under this chapter in the name of said licensee may be likewise revoked or suspended by the
27 director.

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1 PRAYER

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

4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
5 270542, issued to San Rafael Smog, Patricia Carolina Merlos, Owner;

6 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
7 270542, issued to San Rafael Smog, Patricia Carolina Merlos, Owner;

8 3. Revoking, suspending, or placing on probation any other automotive repair dealer
9 registration issued to Patricia Carolina Merlos.

10 4. Revoking or suspending any additional license issued under chapter 5, of the Health
11 and Safety Code in the name of Patricia Carolina Merlos.

12 5. Ordering Patricia Carolina Merlos to pay the Bureau of Automotive Repair the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3;

15 6. Revoking or suspending Smog Check Inspector License Number EO 632592
16 (formerly Advanced Emission Specialist Technician EA632592), Issued to Erinc Emer.

17 7. Revoking or suspending any additional license issued under chapter 5, of the Health
18 and Safety Code in the name of Erinc Emer.

19 7. Ordering Erinc Emer to pay the Bureau of Automotive Repair the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3;

22 8. Taking such other and further action as deemed necessary and proper.

23 DATED: December 2, 2013


24 PATRICK DORAIS
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant

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