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8 **BEFORE THE**
9 **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. **79/24-21809**

13 **JAVIER IGNACIO MENDEZ DBA SURF**
14 **CITY SMOG CHECK**
15 **1974 Placentia Ave Unit C**
16 **Costa Mesa, CA 92627**

ACCUSATION

17 **Automotive Repair Dealer Registration No.**
18 **ARD 303499**
19 **Smog Check, Test-Only, Station License No.**
20 **TC 303499,**

21 **and**

22 **RENE TRUJILLO PEREZ**
23 **16538 Lake Shore Dr**
24 **Lake Elsinore, CA 92530**

25 **Smog Check Inspector License No. EO**
26 **634379, Smog Check Repair Technician (EI)**
27 **License No. 634379**

28 Respondents.

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.

2. On or about August 19, 2022, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 303499 to Javier Ignacio Mendez dba Surf City Smog

1 Check (Respondent Surf City Smog Check). The Automotive Repair Dealer Registration was in
2 full force and effect at all times relevant to the charges brought herein and will expire on August
3 31, 2026, unless renewed.

4 3. On or about October 20, 2022, the Bureau of Automotive Repair issued Smog Check,
5 Test-Only, Station License Number TC 303499 to Javier Ignacio Mendez dba Surf City Smog
6 Check. The Smog Check, Test-Only, Station License was in full force and effect at all times
7 relevant to the charges brought herein and will expire on August 31, 2026, unless renewed.

8 4. On or about February 27, 2014, the Bureau of Automotive Repair issued Smog Check
9 Inspector License Number EO 634379 to Rene Trujillo Perez (Respondent Perez). The Smog
10 Check Inspector License was in full force and effect at all times relevant to the charges brought
11 herein and will expire on February 28, 2026, unless renewed.

12 5. On or about February 27, 2014, the Bureau of Automotive Repair issued Smog Check
13 Repair Technician License Number (EI) 634379 to Rene Trujillo Perez (Respondent Perez). The
14 Smog Check Repair Technician (EI) License expired on February 28, 2016, and has not been
15 renewed.

16 **JURISDICTION**

17 6. This Accusation is brought before the Director of the Department of Consumer
18 Affairs ("Director") for the Bureau, under the authority of the following laws.

19 7. Section 9884.7 of the Business and Professions Code¹ provides that the Director may
20 revoke an ARD registration.

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

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28 ¹ All statutory references herein shall be to the Business and Professions Code unless
specifically stated otherwise.

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

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

STATUTORY PROVISIONS

11. Section 9884.7 of the Code states:

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

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

• • •

(4) Any other conduct which constitutes fraud.

• • •

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

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

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

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

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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.

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1 **COST RECOVERY**

2 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **VID DATA REVIEW**

9 19. Beginning March 9, 2015, California's Smog Check Program was updated to require
10 the use of an On-Board Diagnostic Inspection System ("OIS"). OIS is the Smog Check
11 equipment required in all areas of the State when inspecting most model-year 2000 and newer
12 gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a
13 certified Data Acquisition Device ("DAD"), computer, bar code scanner, and printer. The DAD
14 is an On Board Diagnostic ("OBD") scan tool that, when requested by the California OIS
15 software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it
16 supports is requested by the California OIS software and will be retrieved. The DAD connects
17 between the OIS computer and the vehicle's DLC. The California OIS software requires a
18 continuous Internet connection when performing a Smog Check inspection and the OIS software
19 communicates with BAR's central database through the Internet connection. The bar code
20 scanner is used to input technician information, the vehicles identification number ("VIN"), and
21 DMV renewal information. The printer provides a Vehicle Inspection Report ("VIR") containing
22 inspection results for motorists and a Smog Check Certificate of Compliance number for passing
23 vehicles.

24 20. Data retrieved and recorded during an OIS smog check includes; the eVIN, which is
25 the digitally stored VIN programmed into the vehicle's Powertrain Control Module ("PCM"); the
26 communication protocol, which is the manufacturer/vehicle specific language the PCM uses to
27 relay information; and the number of Parameter Identifications ("PIDs"), which is the number of
28 specific data values each PCM uses related to emissions controls.

21. During an OIS inspection, engine operating parameters are retrieved from the vehicle's OBD II system and recorded to the VID. This is accomplished during the functional portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- Engine speed in revolutions per minute (RPM)
- Throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full throttle.
- Manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at sea level.
- Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract. Measured in grams per second (gps).²
- Ignition timing is set by the vehicle PCM based on engine speed and load, and is measured in degrees Before Top Dead Center (BTDC).

22. During normal engine operation at idle, engine speed is relatively steady around its target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or MAF readings are also steady. For the engine speed to increase, the throttle would have to be opened to increase airflow through the engine. The engine's management systems supply fuel and spark timing appropriate to any changes in throttle position and engine speed. An increase in throttle, measured by the TPS, which increases engine RPM, would result in corresponding increases in MAF as well as a change in MAP. Stated another way, any movement in the throttle from the idle position will result in an increase of airflow through the engine with corresponding increases RPM and/or MAF along with changes in MAP.

² Not all vehicles include both MAP and MAF parameters. Many vehicles will have either MAP or MAF parameters separately.

1 23. During an OIS Smog Check inspection, along with other visual and functional
2 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
3 with the engine idling and, when requested by the OIS analyzer, and an elevated or increased
4 engine speed.

5 24. If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
6 inspection, and a Certificate of Compliance is issued and transmitted electronically to the Vehicle
7 Information Database (“VID”). These Certificates of Compliance are purchased in blocks of fifty
8 (50) through the EIS or OIS from the VID, using a pre-arranged electronic bank account debit
9 system or by check, via mail, from Bureau Headquarters in Sacramento. Each Certificate of
10 Compliance has a unique control number so that it can be tracked to determine which Smog
11 Check Station purchased the Certificate of Compliance and to which vehicle it was issued.

12 25. The VID contains registration data from Department of Motor Vehicles (“DMV”)
13 plus emission standards, vehicle smog check inspections, smog check stations and technicians,
14 and Certificates of Compliance. The VID receives the passing smog check results immediately
15 following the inspection. During the vehicle registration process, the DMV accesses the VID to
16 verify that the vehicle has been tested and certified. The Bureau can also access the VID to view
17 test data on smog check inspections performed at any Smog Check Station, or search for, retrieve,
18 and print a test record for a particular vehicle which has been tested. The EIS or OIS, depending
19 on the test type, also prints a Vehicle Inspection Report (“VIR”), which is a physical record of the
20 test results and shows the Certificate of Compliance number that was issued if the vehicle passed
21 the smog inspection.

22 26. The smog check technician must sign the VIR under penalty of perjury to indicate
23 that the inspection was done within Bureau guidelines. Smog Check Stations are required by law
24 to maintain a copy of the VIR along with a copy of the repair invoice for three years. The
25 consumer’s VIR serves as a receipt and proof that the VID was updated, and a Certificate of
26 Compliance was issued. Licensed Smog Check Technicians are the only persons authorized by
27 the Bureau to perform official inspections. They are issued a personal access code and a license,
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1 which are used to gain access to the EIS and OIS to perform smog check inspections.

2 Unauthorized use of another technician's access code or license is prohibited.

3 **Dynamic Mismatch eVIN**

4 27. Bureau Program Representative Salvador Arreola (Arreola) conducted a detailed
5 review of the VID data for Smog Check inspections performed at Surf City Smog Check. This
6 review showed a pattern of vehicles being certified with eVINs that did not match the VIN for the
7 vehicle being tested. The eVIN transmitted during the dynamic portion or the OBDII functional
8 test was different than the eVIN transmitted during the static portion of the OBDII functional test.
9 This confirms the vehicles receiving smog certificates were not tested during the OBD II
10 Dynamic Test of the Smog Check inspection, which constitutes clean plugging.

11 28. During the functional portion of the OIS Smog Check inspection the OIS analyzer
12 collects Static OBDII data that is transmitted from the vehicle through the DAD, while the engine
13 is at idle. During static data collection, the DAD asks the vehicle what OBD data it supports, then
14 proceeds to collect all that data.

15 29. At the completion of the Static OBDII data collection, the OIS analyzer performs a
16 "Dynamic OBDII Test". During the dynamic test, the DAD repeatedly collects a smaller subset of
17 OBD data. The Dynamic test starts with the engine at idle speed, then the technician is prompted
18 by OIS analyzer to increase the engine speed and hold it steady at that speed. During the Dynamic
19 OBDII Test, the OIS analyzer collects Dynamic OBDII data that is being transmitted from the
20 vehicle through the DAD, while the engine is operating at idle, then an increased speed.

21 30. In the review, Arreola referenced the following data/information:

- 22 • VIN – Vehicle Identification Number to which the certificate is issued. The sources of the
23 VIN include from the vehicle's body/chassis and from inspector entry using a DMV
24 renewal document. A VIN entry may be a bar code scan or manually entered.
- 25 • Cert ID – Smog Check Certificate number issued.
- 26 • Static eVIN – Digitally stored VIN number in the vehicle's computer (PCM), transmitted
27 through the DAD and collected by the OIS during the static portion of the OBDII functional
28 test.

• Dynamic eVIN – Digitally stored VIN number in the vehicle PCM, transmitted through the DAD and collected by the OIS during the dynamic portion of the OBDII functional test.

31. Arreola's comprehensive review into the Smog Check activities at Surf City Smog Check confirmed the following fifteen (15) Smog Check Certificates were fraudulently issued to vehicles using the clean plugging method by Respondent Perez while employed by Respondent Surf City Smog on the following dates, November 13, 2024, November 19, 2024, November 20, 2024, November 28, 2024, December 3, 2024, December 4, 2024, December 5, 2024, December 7, 2024, December 12, 2024, and December 14, 2024, as set forth below:

| Vehicle | DMV VIN / Static eVIN | Dynamic eVIN | Certificate ID # |
|--------------------------|-----------------------|-------------------|------------------|
| 2013 Ford Mustang | 1ZVBP8CF3D5259302 | 1ZVHT82H875202977 | UG049680C |
| 2016 Toyota Tacoma | 5TFSX5EN2GX041351 | JTLZE4FEODJ041462 | UG049691C |
| 2010 Nissan GT-R | JN1AR5EF6AM230482 | JN1AR5EF1HM821006 | UG049692C |
| 2020 Ford Transit T- 250 | 1FTBR1Y86LKA08000 | NM0LS7CN5CT110419 | UG049693C |
| 2016 Subaru Outback | 4S4BSAFC9G3277907 | JF2SJABC8FH575588 | UG049696C |
| 2021 Kia Sorento | 5XYRL4LC3MG009805 | 3KPF34AD0LE219997 | UG049697C |
| 2012 Toyota Corolla | 5FYBU4EE2CP068528 | JTMBD32V776043328 | UG649456C |
| 2016 Chevrolet Corvette | 1G1YS2D61G5605528 | 1GKKRTKD9GJ324931 | UG649463C |
| 2016 Chevrolet Cruze | 1G1BE5SM5G7267801 | 1GKKRTKD9GJ324931 | UG649464C |
| 2020 Ford Mustang | 1FA6P8CF2L5177375 | 1FA6P8CF4M5102999 | UG649468C |
| 2013 Cadillac CTS-V | 1G6DV5EP5D0116390 | 1G6DJ5E31C0139138 | UG649472C |
| 2010 Chevrolet Silverado | 3GCRCREA0AG269620 | 1GKKRTKD9GJ324931 | UG649476C |
| 2013 Chevrolet Malibu | 1G11E5SA6DU135466 | KL8CB6SA7HC731821 | UG649484C |
| 2008 BMW 335i | WBAVB73508P102074 | WBAPH5G57ANM70078 | UG649491C |
| 2017 Nissan GT-R | JN1AR5EF1HM820325 | 1N4BL4CV5LC101283 | UG649493C |

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Respondent Surf City Smog Shop)

32. Respondent Surf City Smog Shop's registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(1), in that Respondents made or authorized statements which they knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondents certified that the vehicles set forth above in paragraphs 27-31, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using the clean plugging method in order to issue smog certificates of compliance, and did not test or inspect the vehicles as required by Health and Safety Code section 44012.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud - Respondent Surf City Smog Shop)**

3 33. Respondent Surf City Smog Shop's registration is subject to disciplinary action
4 pursuant to section 9884.7, subdivision (a)(4), in that Respondent Surf City Smog Shop's
5 employees committed acts which constitute fraud by issuing electronic certificates of compliance
6 for the vehicles set forth above in paragraphs 27-31, without performing bona fide inspections of
7 the emission control devices and systems on those vehicles, thereby depriving the People of the
8 State of California of the protection afforded by the Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with the Motor Vehicle Inspection Program –**
11 **Respondent Surf City Smog Shop)**

12 34. Respondent Surf City Smog Shop's smog station license is subject to disciplinary
13 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with
14 Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth
15 above in paragraphs 27-31, Respondents failed to comply with the following sections of the
16 Health and Safety Code:

17 (a) **Section 44012**: Respondent Surf City Smog Shop's employees failed to ensure that
18 the emission control tests were performed on the vehicles, in accordance with procedures
19 prescribed by the department.

20 (b) **Section 44015**: Respondent Surf City Smog Shop's employees issued electronic
21 certificates of compliance for the vehicles, without ensuring that the vehicles were properly tested
22 and inspected to determine if they were in compliance with Health and Safety Code section
23 44012.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program -**
26 **Respondent Surf City Smog Shop)**

27 35. Respondent Surf City Smog Shop's smog station license is subject to disciplinary
28 action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the

vehicles set forth above in paragraphs 27-31, Respondents failed to comply with the following provisions of the California Code of Regulations, Title 16, as follows:

(a) **Section 3340.35, subdivision (c)**: Respondent Surf City Smog Shop's employees issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42, Title 16, of the California Code of Regulations.

(b) **Section 3340.42**: Respondent Surf City Smog Shop's employees failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit - Respondent Surf City Smog Shop)

36. Respondent Surf City Smog Shop's smog station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in paragraphs 27-31, Respondents employees committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program – Respondent Perez)

37. Respondent Perez's Smog Check Inspector License and Smog Check Repair Technician License are subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth above in paragraphs 27-31, Respondent Perez failed to comply with section 44032 of the Health and Safety Code in a material respect, as follows: Respondent Perez failed to perform the emission control tests on those vehicles in accordance with procedures prescribed by the department.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

4 38. Respondent Perez's Smog Check Inspector License and Smog Check Repair
5 Technician License are subject to discipline pursuant to Health and Safety Code section 44072.2,
6 subdivision (c), in that regarding the vehicles set forth above in paragraphs 27-31, Respondent
7 Perez failed to comply with provisions of the California Code of Regulations, title 16, as follows:

8 (a) **Section 3340.30, subdivision (a)**: Respondent Perez failed to inspect and test those
9 vehicles in accordance with Health and Safety Code section 44012.

10 (b) **Section 3340.41, subdivision (c)**: Respondent Perez entered false information into
11 the OIS.

12 (c) **Section 3340.42**: Respondent Perez failed to conduct the required smog tests and
13 inspections on those vehicles in accordance with the Bureau's specifications.

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 **(Dishonesty, Fraud or Deceit - Respondent Perez)**

16 39. Respondent Perez's Smog Check Inspector License and Smog Check Repair
17 Technician License are subject to discipline pursuant to Health and Safety Code section 44072.2,
18 subdivision (d), in conjunction with Health and Safety Code section 44072.10 subdivision (c), in
19 that regarding the vehicles set forth above in paragraphs 27-31, Respondent Perez committed acts
20 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
21 certificates of compliance for those vehicles without performing bona fide inspections of the
22 emission control devices and systems on the vehicles, thereby depriving the People of the State of
23 California of the protection afforded by the Motor Vehicle Inspection Program.

24 **OTHER MATTERS**

25 40. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
26 may suspend, revoke, or place on probation the registration for all places of business operated in
27 this State by Respondent Surf City Smog Shop upon a finding that Respondent Surf City Smog
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1 Shop has, or is, engaged in a course of repeated and willful violations of the laws and regulations
2 pertaining to an automotive repair dealer.

3 41. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
4 License Number TC 303499 issued to Respondent Surf City Smog Shop is revoked or suspended
5 following a hearing under this article, any additional license issued under Chapter 5, Part 5,
6 Division 26 of the Health & Safety Code in the name of said licensee may be likewise revoked or
7 suspended by the Director.

8 42. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
9 Number EO 634379, or Smog Check Repair Technician License Number (EI) 634379 issued to
10 Respondent Perez, is revoked or suspended following a hearing under this article, any additional
11 license issued under Chapter 5, Part 5, Division 26 of the Health & Safety Code in the name of
12 said licensee may be likewise revoked or suspended by the Director.

13 **PRAYER**

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

17 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
18 303499, issued to Javier Ignacio Mendez dba Surf City Smog Check;

19 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
20 Respondent Javier Ignacio Mendez;

21 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
22 303499, issued to Javier Ignacio Mendez;

23 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
24 Division 26 of the Health and Safety Code in the name of Respondent Javier Ignacio Mendez;

25 5. Revoking or suspending Smog Check Inspector License Number EO 634379, issued
26 to Rene Trujillo Perez;

27 6. Revoking or suspending Smog Check Repair Technician License Number (EI)
28 634379, issued to Rene Trujillo Perez;

7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Rene Trujillo Perez;

8. Ordering Javier Ignacio Mendez and Rene Trujillo Perez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3 and if placed on probation, the costs of probation monitoring; and,

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

DATED: As of Digital Signature Date

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

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