

1 XAVIER BECERRA
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DANIEL J. CROSS
Deputy Attorney General
4 State Bar No. 203017
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9058
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/17-4330

13 **JEFFERSON SMOG GO, dba JEFFERSON SMOG**
STAR STATION, RAY RAUL HERNANDEZ, President,
14 **MARISELA HERNANDEZ, Secretary**
26622 Jefferson Avenue, Ste 101 & 108
15 Murietta, CA 92562

A C C U S A T I O N

16 Automotive Repair Dealer Registration No. ARD 228256
Smog Check Station License No. RC 228256

17 **RAY RAUL HERNANDEZ**
18 24288 Verona Ct.
Wildomar, CA 92595

19 Smog Check Inspector License No. EO 140936
20 Smog Check Repair Technician License No. EI 140936

21 **EDWARD GUTIERREZ**
22 3434 Potomac Ct.
Perris, CA 92570

23 Smog Check Inspector License No. EO 635346

24 **MARKUSS AARON SPRUELL**
25 32266 Renoir Rd.
Winchester, CA 92596

26 Smog Check Inspector License No. EO 634107
27 Smog Check Repair Technician License No. EI 634107

28 Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 2. In 2003, the Bureau of Automotive Repair issued Automotive Repair Dealer
6 Registration Number ARD 228256 to Jefferson Smog Go, doing business as (dba) Jefferson
7 Smog Star Station, with Ray Raul Hernandez as President, and Marisela Hernandez as Secretary
8 (Respondent Jefferson Smog). The Automotive Repair Dealer Registration was in full force and
9 effect at all times relevant to the charges brought herein and will expire on June 30, 2019, unless
10 renewed.

11 3. On or about January 29, 2013, the Bureau of Automotive Repair issued Smog Check
12 Station License Number RC 228256 to Respondent Jefferson Smog. The Smog Check Station
13 License was in full force and effect at all times relevant to the charges brought herein and will
14 expire on June 30, 2019, unless renewed.

15 4. In 1999, the Bureau of Automotive Repair issued Advanced Emission Specialist
16 Technician License Number EA 140936 to Ray Raul Hernandez (Respondent Hernandez). The
17 Advanced Emission Specialist Technician License was due to expire on July 31, 2013, but was
18 cancelled on June 20, 2013. Pursuant to California Code of Regulations, title 16, section 3340.28,
19 subdivision (e), the license was renewed pursuant to Respondent Hernandez's election as Smog
20 Check Inspector License No. EO 140936 and Smog Check Repair Technician License No. EI
21 140936, effective June 20, 2013.¹ The licenses were in full force and effect at all times relevant
22 to the charges brought herein and will expire on July 31, 2019, unless renewed.

23 5. On or about March 25, 2013, the Bureau of Automotive Repair issued Smog Check
24 Inspector License number EO 635346 to Edward Gutierrez (Respondent Gutierrez). The Smog
25

26
27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29,
28 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/or Smog Check Repair Technician (EI) license.

1 Check Inspector License was in full force and effect at all times relevant to the charges brought
2 herein and will expire on June 30, 2019, unless renewed.

3 6. On or about March 9, 2012, the Bureau of Automotive Repair issued Advanced
4 Emission Specialist Technician License Number EA 634107 to Markuss Aaron Spruell
5 (Respondent Spruell). The Advanced Emission Specialist Technician License was due to expire
6 on March 31, 2014, but was cancelled on January 7, 2014. Pursuant to California Code of
7 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed pursuant to
8 Respondent Spruell's election as Smog Check Inspector License No. EO 634107 and Smog Check
9 Repair Technician License No. EI 634107, effective January 7, 2014. The Smog Check Inspector
10 License will expire on March 31, 2020, unless renewed, and the Smog Check Repair Technician
11 License expired on March 31, 2016, and has not been renewed.

12 7. At all times relevant to the allegations of this Accusation, Respondents Hernandez,
13 Gutierrez and Spruell each were acting in the course and within the scope of his duties as a
14 technician, inspector, employee, agent, officer, or other representative of Respondent Jefferson
15 Smog.

16 JURISDICTION

17 8. Section 118, subdivision (b) of the Code provides that the suspension, expiration, or
18 cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
19 disciplinary action during the period within which the license may be renewed, restored, reissued
20 or reinstated.

21 9. Section 477 of the Code states:

22 "As used in this division:

23 (a) "Board" includes "bureau," "commission," "committee," "department,"
24 "division," "examining committee," "program," and "agency."

25 (b) "License" includes certificate, registration or other means to engage in a
26 business or profession regulated by this code.

27 10. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
28 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

3 11. Section 9884.22 of the Code states:

4 (a) Notwithstanding any other provision of law, the director may revoke,
5 suspend, or deny at any time any registration required by this article on any of the
6 grounds for disciplinary action provided in this article. The proceedings under this
7 article shall be conducted in accordance with Chapter 5 (commencing with Section
8 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director
9 shall have all the powers granted therein.

10

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

14 13. Section 44072.4 of the Health and Safety Code states:

15 The director may take disciplinary action against any licensee after a hearing
16 as provided in this article by any of the following:

17 (a) Imposing probation upon terms and conditions to be set forth by the
18 director.

19 (b) Suspending the license.

20 (c) Revoking the license.

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

25 15. Section 44072.7 of the Health and Safety Code states:

26 All accusations against licensees shall be filed within three years after the act
27 or omission alleged as the ground for disciplinary action, except that with respect
28 to an accusation alleging a violation of subdivision (d) of Section 44072.2, the
accusation may be filed within two years after the discovery by the bureau of the
alleged facts constituting the fraud or misrepresentation prohibited by that section.

///

16. Section 44072.8 of the Health and Safety Code states:

When a license has 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.

STATUTORY PROVISIONS

17. 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.

....

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

18. 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:

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

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

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

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

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

16 (f) A visual or functional check is made of emission control devices
17 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
18 44001. The visual or functional check shall be performed in accordance with
procedures prescribed by the department.

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

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

25 19. Section 44015(a) and (b) of the Health and Safety Code states:

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

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

2 (2) A vehicle that, prior to repairs, has been initially identified by the smog
3 check station as a gross polluter. Certification of a gross polluting vehicle shall be
4 conducted by a designated test-only facility, or a test-and-repair station that is both
5 licensed and certified pursuant to Sections 44014 and 44014.2 and is participating
6 in the pilot program pursuant to subparagraph (B) of paragraph (2) of subdivision
7 (g) of Section 44014.5.

8 (3) A vehicle described in subdivision (c).

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

12 20. Section 44032 of the Health and Safety Code states:

13 No person shall perform, for compensation, tests or repairs of emission
14 control devices or systems of motor vehicles required by this chapter unless the
15 person performing the test or repair is a qualified smog check technician and the
16 test or repair is performed at a licensed smog check station. Qualified technicians
17 shall perform tests of emission control devices and systems in accordance with
18 Section 44012.

19 21. Section 44035 of the Health and Safety Code states:

20 (a) A smog check station's license or a qualified smog check technician's
21 qualification may be suspended or revoked by the department, after a hearing, for
22 failure to meet or maintain the standards prescribed for qualification, equipment,
23 performance, or conduct. The department shall adopt rules and regulations
24 governing the suspension, revocation, and reinstatement of licenses and
25 qualifications and the conduct of the hearings.

26 (b) The department or its representatives, including quality assurance
27 inspectors, shall be provided access to licensed stations for the purpose of
28 examining property, station equipment, repair orders, emissions equipment
maintenance records, and any emission inspection items, as defined by the
department.

22. 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.

1 23. Section 44072.2 of the Health and Safety Code states:

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

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

8

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

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

13

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

16 24. Section 44072.10 of the Health and Safety Code states:

17 (a) Notwithstanding Sections 44072 and 44072.4, the director, or the
18 director's designee, pending a hearing conducted pursuant to subdivision (e), may
19 temporarily suspend any smog check station or technician's license issued under
20 this chapter, for a period not to exceed 60 days, if the department determines that
21 the licensee's conduct would endanger the public health, safety, or welfare before
22 the matter could be heard pursuant to subdivision (e), based upon reasonable
23 evidence of any of the following:

24 (1) Fraud.

25 (2) Tampering.

26 (3) Intentional or willful violation of this chapter or any regulation, standard,
27 or procedure of the department implementing this chapter.

28 (4) A pattern or regular practice of violating this chapter or any regulation,
29 standard, or procedure of the department implementing this chapter.

30

31 (c) The department shall revoke the license of any smog check technician or
32 station licensee who fraudulently certifies vehicles or participates in the fraudulent

1 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
2 the following:

3 (1) Clean piping, as defined by the department.

4 (2) Tampering with a vehicle emission control system or test analyzer
5 system.

6 (3) Tampering with a vehicle in a manner that would cause the vehicle to
7 falsely pass or falsely fail an inspection.

8 (4) Intentional or willful violation of this chapter or any regulation, standard,
9 or procedure of the department implementing this chapter.

10 **REGULATORY PROVISIONS**

11 25. California Code of Regulations, title 16, section 3340.24(c), states:

12 (c) The bureau may suspend or revoke the license of or pursue other legal
13 action against a licensee, if the licensee falsely or fraudulently issues or obtains a
14 certificate of compliance or a certificate of noncompliance.

15 26. California Code of Regulations, title 16, section 3340.30, states:

16 A smog check technician shall comply with the following requirements at all
17 times while licensed.

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

21 (b) A licensed technician shall maintain on file with the bureau a correct
22 mailing address pursuant to section 3303.3 of Article 1 of this Chapter.

23 (c) A licensed technician shall notify the bureau in writing within two weeks
24 of any change of employment.

25 (d) A licensed technician whose license has expired shall immediately cease
26 to inspect, test, or repair failed vehicles.

27 27. California Code of Regulations, title 16, section 3340.35(c), states:

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

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

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

4 28. California Code of Regulations, title 16, section 3340.41, states:

5 "...

6 "(b) No person shall enter into the emissions inspection system any access
7 or qualification number other than as authorized by the bureau, nor in any way
8 tamper with the emissions inspection system.

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

12 "(d) The specifications and procedures required by Section 44016 of the
13 Health and Safety Code shall be the vehicle manufacturer's recommended
14 procedures for emission problem diagnosis and repair or the emission diagnosis
15 and repair procedures found in industry-standard reference manuals and
16 periodicals published by nationally recognized repair information providers.
Smog check stations and smog check technicians shall, at a minimum, follow the
applicable specifications and procedures when diagnosing defects or performing
repairs for vehicles that fail a smog check test.

17 "(e) A smog check station shall not perform an initial test, except for an
18 official pre-test, on or issue a certificate of compliance to any vehicle that has
19 been directed to a test-only station for its biennial smog check pursuant to
20 Sections 44010.5 or 44014.7 of the Health and Safety Code, unless the station is
21 licensed as a test-only station pursuant to subdivision (b) of Section 44014 of the
22 Health and Safety Code. The reinspection and certification of a test-only directed
23 vehicle that has failed an initial test at a test-only station and has undergone
subsequent repairs to correct the cause of the failure, may be performed by a test-
only station, or by a test-and- repair station that performs those repairs and that is
also certified as a Gold Shield station pursuant to Section 44014.2 of the Health
and Safety Code and Article 10 (commencing with section 3392.1) of this chapter.

24 29. California Code of Regulations, title 16, section 3340.42, states:

25 Smog check inspection methods are prescribed in the Smog Check Manual,
26 referenced by section 3340.45.

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

1 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999
2 model-year vehicle, except diesel-powered, registered in the enhanced program
3 areas of the state. The loaded-mode test shall measure hydrocarbon, carbon
4 monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the
bureau's specifications referenced in subsection (a) of Section 3340.17 of this
article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test
equipment, including a chassis dynamometer, certified by the bureau.

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

11 (2) A two-speed idle mode test shall be the test method used to inspect 1976
12 - 1999 model-year vehicles, except diesel-powered, registered in all program areas
13 of the state, except in those areas of the state where the enhanced program has
14 been implemented. The two-speed idle mode test shall measure hydrocarbon,
15 carbon monoxide and carbon dioxide emissions at high RPM and again at idle
16 RPM, as contained in the bureau's specifications referenced in subsection (a) of
17 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this
inspection shall be measured and compared to the emission standards set forth in
this section and as shown in TABLE III. A vehicle passes the two-speed idle
mode test if all of its measured emissions are less than or equal to the applicable
emissions standards specified in Table III.

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

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

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

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

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

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

4 (2) Vehicles identified by the bureau as being operationally or physically
5 incompatible with inspection equipment.

6 (3) Vehicles with OBD systems that have demonstrated operational
7 problems.

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

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

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

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

22 (4) This subsection applies in all program areas statewide to vehicles
23 requiring inspection pursuant to sections 44005 and 44011 of the Health and
24 Safety Code.

25 30. California Code of Regulations, title 16, section 3340.42.2, states, in relevant part:

26 "...

27 "(c) Starting on or after January 1, 2013, OBD equipped vehicles shall fail
28 the OBD inspection if any one of the following conditions occurs as applicable to
the vehicle:

29 "...

30 "(7) The vehicle's OBD system data is inappropriate for the vehicle being
31 tested;

32 "(8) The vehicle's OBD system data does not match the original equipment
33 manufacturer (OEM) or an Air Resources Board (ARB) exempted OBD software
34 configuration. . ."

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

36 No automotive repair dealer or individual in charge shall, in filling out an
37 estimate, invoice, or work order, or record required to be maintained by section
38 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or

1 information which will cause any such document to be false or misleading, or
2 where the tendency or effect thereby would be to mislead or deceive customers,
3 prospective customers, or the public.

32. California Code of Regulations, title 16, section 3395.4, states:

4 In reaching a decision on a disciplinary action under the Administrative
5 Procedure Act (Government Code Section 11400 et seq.), including formal
6 hearings conducted by the Office of Administrative Hearing, the Bureau of
7 Automotive Repair shall consider the disciplinary guidelines entitled 'Guidelines
8 for Disciplinary Penalties and Terms of Probation' [March 2016] which are hereby
9 incorporated by reference. The 'Guidelines for Disciplinary Penalties and Terms of
10 Probation' are advisory. Deviation from these guidelines and orders, including the
11 standard terms of probation, is appropriate where the Bureau of Automotive
12 Repair in its sole discretion determines that the facts of the particular case warrant
13 such deviation -for example: the presence of mitigating factors; the age of the case;
14 evidentiary problems.

11 **COST RECOVERY**

12 33. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
16 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
17 included in a stipulated settlement.

18 **FACTUAL BACKGROUND**

19 34. California's Smog Check Program requires the owners of most motor vehicles in the
20 State to periodically pass a Smog Check inspection and receive a Certificate of Compliance.
21 These inspections are performed by Smog Check Inspectors at Smog Check Stations, both of
22 which are licensed by the Bureau of Automotive Repair. The Smog Check Program is designed
23 and intended to reduce air pollution by identifying and requiring the repair of polluting vehicles.

24 35. On March 9, 2015, the Bureau implemented a statewide regulatory change to the
25 Smog Check Program requiring the use of a new On-Board Diagnostic Inspection System (OIS)
26 for the smog inspections of most 2000 model year and newer gas powered vehicles, and 1998 and
27 newer diesel powered vehicles. The OIS consists of a certified Data Acquisition Device (DAD),
28

1 among other components. The DAD is an On Board Diagnostic (OBD) scan tool that, when
2 requested by the California BAR-OIS software, retrieves OBD data from the vehicle.

3 36. Data retrieved during an OIS Smog Check inspection includes: (1) the
4 communication protocol (the specific language the vehicle's computer uses to relay information
5 OIS); (2) the number of Parameter Identifications or PIDs (the number of specific data values
6 related to emission controls the vehicle's computer reports); and for many vehicles (3) the
7 electronic vehicle identification number or eVIN (the vehicle's VIN which has been programmed
8 and stored in the vehicle's computer). The communication protocol, PID count and (where
9 applicable) eVIN are programmed into a vehicle's OBD II system electronic control unit during
10 manufacture. The communication protocol and eVIN do not change.

11 37. To "clean plug" a vehicle, a smog technician and/or station uses another vehicle's
12 properly functioning OBD system, or another source such as a simulator, to generate passing
13 diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to
14 vehicles that are not in smog compliance or not present during the certified test. When a car is
15 clean plugged, the PID count, communication protocol and/or eVIN retrieved during the OIS
16 smog inspection for the vehicle supposedly being tested, will not match the actual PID count
17 value, communication protocol and/or eVIN belonging to that vehicle.

18 38. A Bureau representative's review of Respondents' certified test results for the period
19 from June 2016 through April 2017 revealed that Respondents inspected and certified at least 7
20 vehicles identified below that had deviations in eVIN reporting, incorrect vehicle communication
21 protocol and/or incorrect PID count. These deviations indicate that the vehicles receiving smog
22 certificates were fraudulently tested during the smog check inspection using the Clean Plugging
23 method. A detailed explanation of each fraudulent smog check is as follows:

24 **a. Clean Plug 1**

25 OIS Test Data indicates that on June 4, 2016, a 2004 F150 pickup truck, VIN
26 1FTPW12504KB97385, was tested by licensed Smog Check Technician EO 634107, Markuss
27 Aaron Spruell, and Respondent Jefferson Smog issued Certificate of Compliance ZF354417C.
28 The OIS Test Data for the 2004 F150 showed the eVIN was transmitted as

1 JTDKB20U677668047 and the PID count was 38/21/17. Similar Vehicle OIS Test Data for 2004
2 F150 vehicles show they transmit the correct eVIN and have a PID count of 27 or 27/15.

3 Additional review of the OIS Test Data revealed the same 2004 F150 was inspected on
4 February 16, 2016 at another facility and failed the inspection due to incomplete readiness
5 monitors. OIS Test Detail shows during that inspection the correct eVIN was transmitted, and it
6 had the expected PID count of 27.

7 The OIS Test Data also shows that a 2007 Toyota Prius, VIN JTDKB20U677668047 was
8 the vehicle used to generate the fraudulent Certificate of Compliance for the 2004 F150. The
9 2007 Toyota Prius was certified by Respondent Spruell at Jefferson Smog on the same day, June
10 4, 2016, as the fraudulent inspection of the 2004 F150. The OIS Test Data transmitted for the
11 2007 Toyota Prius matches the OIS Test Data transmitted during the fraudulent inspection of the
12 2004 F150.

13 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was
14 not connected to the 2004 F150 being certified, thereby causing the issuance of a fraudulent
15 Certificate of Compliance.

16 **b. Clean Plug 2**

17 OIS Test Data indicates that on August 8, 2016, a 2008 GMC Yukon Denali XL, VIN
18 1GKFK66868J205403, was tested by licensed Smog Check Technician EO 634107, Markuss
19 Aaron Spruell; and Respondent Jefferson Smog issued Certificate of Compliance ZH848844C.
20 The OIS Test Data for the 2008 GMC Yukon Denali XL showed the eVIN was transmitted as
21 5TFJX4GN5DX023344 and the PID count was 43. Similar Vehicle OIS Test Data for 2008
22 GMC Yukon Denali XL vehicles show they transmit the correct eVIN and have a PID count of
23 44/7 or 44/7/8.

24 Additional review of the OIS Test Data revealed the same 2008 GMC Yukon Denali XL
25 was inspected again by Respondent Spruell at Jefferson Smog on August 24, 2016. OIS Test
26 Detail shows during that inspection the correct eVIN was transmitted, and the expected PID count
27 44/7/8 was transmitted.

28 ///

1 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was
2 not connected to the 2008 GMC Yukon Denali XL being certified, thereby causing the issuance
3 of a fraudulent Smog Certificate of Compliance.

4 **c. Clean Plug 3**

5 OIS Test Data indicates that on September 13, 2016, a 2002 Ford Mustang GT, VIN
6 1FAFP45X42F217785, was tested by licensed Smog Check Technician EO 634107, Markuss
7 Aaron Spruell, and Respondent Jefferson Smog issued Certificate of Compliance QE197104C.
8 The OIS Test Data for the 2002 Ford Mustang GT showed the eVIN was transmitted as
9 2FMDK36C58BB07730, the communication protocol was transmitted as ICAN11bt5, and the
10 PID count was 43. Similar Vehicle OIS Test Data for 2002 Ford Mustang GT vehicles show they
11 transmit the correct eVIN, have the expected communication protocol JPWM, and have a PID
12 count of 21.

13 The OIS Test Data also shows that a 2008 Ford Edge SE, VIN 2FMDK36C58BB07730
14 was the vehicle used to generate the fraudulent Certificate of Compliance for the 2002 Ford
15 Mustang GT. The 2008 Ford Edge SE was certified by Respondent Spruell at Jefferson Smog on
16 the same day, September 13, 2016, as the fraudulent inspection of the 2002 Ford Mustang GT.
17 The OIS Test Data transmitted for the 2008 Ford Edge SE matches the OIS Test Data transmitted
18 during the fraudulent inspection of the 2002 Ford Mustang GT.

19 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was
20 not connected to the 2002 Ford Mustang GT being certified, thereby causing the issuance of a
21 fraudulent Certificate of Compliance.

22 **d. Clean Plug 4**

23 OIS Test Data indicates that on September 15, 2016, a 2005 Toyota Camry LE/XLE/SE,
24 VIN 4T1BE32K55U409004, was tested by licensed Smog Check Inspector EO 635346 Edward
25 Gutierrez, and Respondent Jefferson Smog issued Certificate of Compliance QE261293C. The
26 OIS Test Data for the 2005 Toyota Camry LE/XLE/SE showed the eVIN was transmitted as
27 JTEBU11F670016747, the communication protocol was transmitted as ICAN11bt5, and the PID
28 count was 46. Similar Vehicle OIS Test Data for 2005 Toyota Camry LE/XLE/SE vehicles show

1 they transmit the correct eVIN, have the expected communication protocol I914, and have a PID
2 count of 17 or 18.

3 The OIS Test Data also shows that a 2007 Toyota FJ Cruiser, VIN JTEBU11F670016747
4 was the vehicle used to generate the fraudulent Certificate of Compliance for the 2005 Toyota
5 Camry LE/XLE/SE. The 2007 Toyota FJ Cruiser was certified by Respondent Gutierrez at
6 Jefferson Smog on February 3, 2017. The OIS Test Data transmitted for the 2007 Toyota FJ
7 Cruiser matches the OIS Test Data transmitted during the fraudulent inspection of the 2005
8 Toyota Camry LE/XLE/SE.

9 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was
10 not connected to the 2005 Toyota Camry LE/XLE/SE being certified, thereby causing the
11 issuance of a fraudulent Certificate of Compliance.

12 **e. Clean Plug 5**

13 OIS Test Data indicates that on November 4, 2016, a 2012 Ford Escape XLT, VIN
14 1FMCU0DG5CKB79567, was tested by licensed Smog Check Technician EO 140936 Ray Raul
15 Hernandez, and Respondent Jefferson Smog issued Certificate of Compliance QG306971C. The
16 OIS Test Data for the 2012 Ford Escape XLT showed the eVIN was transmitted as
17 1GKEK63U96J159883, the communication protocol was transmitted as JVPW, and the PID
18 count was 22. Similar Vehicle OIS Test Data for 2012 Ford Escape XLT vehicles show they
19 transmit the correct eVIN, have the expected communication protocol ICAN11bt5, and have a
20 PID count of 45.

21 The OIS Test Data also shows that a 2006 GMC Yukon Denali, VIN
22 1GKEK63U96J159883 was the vehicle used to generate the fraudulent Certificate of Compliance
23 for the 2012 Ford Escape XLT. The 2006 GMC Yukon Denali was certified by Respondent
24 Hernandez at Jefferson Smog on November 4, 2016. The OIS Test Data transmitted for the 2006
25 GMC Yukon Denali matches the OIS Test Data transmitted during the fraudulent inspection of
26 the 2012 Ford Escape XLT.

27 ///

28 ///

1 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was
2 not connected to the 2012 Ford Escape XLT being certified, thereby causing the issuance of a
3 fraudulent Certificate of Compliance.

4 **f. Clean Plug 6**

5 OIS Test Data indicates that on February 26, 2017, a 2009 Toyota Corolla Base, VIN
6 JTDBL40E399081460, was tested by licensed Smog Check Technician EO 140936 Ray Raul
7 Hernandez, and Respondent Jefferson Smog issued Certificate of Compliance ZP976984C. The
8 OIS Test Data for the 2009 Toyota Corolla Base showed the eVIN was transmitted as
9 3N1AB61E89L621680, and the PID count was 38. Similar Vehicle OIS Test Data for 2009
10 Toyota Corolla Base vehicles show they transmit the correct eVIN and have a PID count of 39.

11 Additional review of the OIS Test Data revealed the same 2009 Toyota Corolla Base was
12 previously inspected by Respondent Spruell at Jefferson Smog on January 18, 2015. OIS Test
13 Detail shows during that inspection the correct eVIN was transmitted, and the expected PID count
14 39 was transmitted.

15 The OIS Test Data also shows that a 2009 Nissan Sentra 2.0, VIN 3N1AB61E89L621680
16 was the vehicle used to generate the fraudulent Certificate of Compliance for the 2009 Toyota
17 Corolla Base. The 2009 Nissan Sentra 2.0 was certified by Respondent Hernandez at Jefferson
18 Smog on the same day, February 26, 2017, as the fraudulent inspection of the 2009 Toyota
19 Corolla Base. The OIS Test Data transmitted for the 2009 Nissan Sentra 2.0 matches the OIS
20 Test Data transmitted during the fraudulent inspection of the 2009 Toyota Corolla Base.

21 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was
22 not connected to the 2009 Toyota Corolla Base being certified, thereby causing the issuance of a
23 fraudulent Certificate of Compliance.

24 **g. Clean Plug 7**

25 OIS Test Data indicates that on April 4, 2017, a 2005 Toyota Camry LE, VIN
26 4T1BE32KX5U581058, was tested by licensed Smog Check Inspector EO 635346 Edward
27 Gutierrez, and Respondent Jefferson Smog issued Certificate of Compliance ZT073590C. The
28 OIS Test Data for the 2005 Toyota Camry LE showed the eVIN was transmitted as

1 3GSCL33P89S562379, the communication protocol was ICAN11bt5, and the PID count was
2 39/7/8. Similar Vehicle OIS Test Data for 2005 Toyota Camry LE vehicles show they transmit
3 the correct eVIN and have a PID count of 17 or 18.

4 Additional review of the OIS Test Data revealed the same 2005 Toyota Camry LE was
5 previously inspected by Smog Check Technician EO 634584 Tiffany Archer at Jefferson Smog
6 on July 29, 2015. OIS Test Detail shows during that inspection the correct eVIN was transmitted,
7 it had the expected communication protocol I914, and the expected PID count 18 was transmitted.

8 The OIS Test Data also shows that a 2009 Saturn VUE XE, VIN 3GSCL33P89S562379
9 was the vehicle used to generate the fraudulent Certificate of Compliance for the 2005 Toyota
10 Camry LE. The 2009 Saturn VUE XE was certified by Respondent Gutierrez at Jefferson Smog
11 on June 5, 2015. The OIS Test Data transmitted for the 2009 Saturn VUE XE matches the OIS
12 Test Data transmitted during the fraudulent inspection of the 2005 Toyota Camry LE.

13 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was
14 not connected to the 2005 Toyota Camry LE being certified, thereby causing the issuance of a
15 fraudulent Certificate of Compliance.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statement)**

18 39. Complainant re-alleges and incorporates by reference the allegations set forth in the
19 foregoing paragraphs.

20 40. Respondent Jefferson Smog's Automotive Repair Dealer Registration is subject to
21 disciplinary action under section 9884.7, subdivision (a)(1), in that Respondent made or
22 authorized statements which Respondent knew or in the exercise of reasonable care should have
23 known to be untrue or misleading.

24 41. Respondents certified that the vehicles listed in paragraph 38, subparagraphs a.
25 through g. above had passed inspection and were in compliance with all applicable laws and
26 regulations when, in fact and in truth, Respondents inspected the vehicles using the clean
27 plugging method to issue fraudulent certificates of compliance.

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 42. Complainant re-alleges and incorporates by reference the allegations set forth in the
4 foregoing paragraphs.

5 43. Respondent Jefferson Smog's Automotive Repair Dealer Registration is subject to
6 disciplinary action under section 9884.7, subdivision (a)(4), in that Respondents committed fraud
7 by certifying that the vehicles listed in paragraph 38, subparagraphs a. through g. above had
8 passed inspection and were in compliance with all applicable laws and regulations when, in fact
9 and in truth, Respondents inspected the vehicles using the clean plugging method to issue
10 fraudulent certificates of compliance.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 44. Complainant re-alleges and incorporates by reference the allegations set forth in the
14 foregoing paragraphs.

15 45. Respondent Jefferson Smog's Smog Check Station License is subject to disciplinary
16 action under Health and Safety Code section 44072.2, subdivision (a), in that Respondents failed
17 to comply with the following sections of the Health and Safety Code:

18 a. **Section 44012**: Respondents failed to perform the tests of the emission control
19 systems and devices on the vehicles listed in paragraph 38, subparagraphs a. through g. above, in
20 accordance with procedures prescribed by the Department.

21 b. **Section 44015, subd. (a) and (b)**: Respondents issued a certificate of compliance for
22 the vehicles listed in paragraph 38, subparagraphs a. through g. above, without properly testing
23 and inspecting them to determine if they were in compliance with Health & Safety Code section
24 44012.

25 c. **Section 44035**: Respondents failed to meet or maintain the standards prescribed for
26 qualification, equipment, performance, or conduct by failing to properly perform a smog
27 inspection on the vehicles listed in paragraph 38, subparagraphs a. through g. above, or certifying
28 that such tests had been performed, when in fact they were never performed.

1 d. **Section 44059:** Respondents willfully made false statements and entries with regard
2 to material matters when they issued a certificate of compliance for the vehicles listed in
3 paragraph 38, subparagraphs a. through g. above, without properly testing and inspecting them to
4 determine if they were in compliance with Health & Safety Code section 44012.

5 **FOURTH CAUSE FOR DISCIPLINE**

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

7 46. Complainant re-alleges and incorporates by reference the allegations set forth above
8 in the foregoing paragraphs.

9 47. Respondent Jefferson Smog's Smog Check Station License is subject to disciplinary
10 action under Health and Safety Code section 44072.2, subdivision (c), in that Respondents failed
11 to comply with the following sections of Title 16, California Code of Regulations:

12 a. **Section 3340.24, subdivision (c):** Respondents falsely and fraudulently issued
13 certificates of compliance for the vehicles listed in paragraph 38, subparagraphs a. through g.
14 above, without properly testing and inspecting them to determine if they were in compliance with
15 Health & Safety Code section 44012.

16 b. **Section 3340.35, subdivision (c):** Respondents failed to inspect and test the vehicles
17 listed in paragraph 38, subparagraphs a. through g. above, in accordance with the procedures
18 specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the
19 required emission control equipment and devices installed and functioning correctly.

20 c. **Section 3340.41, subdivision (c):** Respondents knowingly entered into the
21 Emissions Inspection System false information about the vehicles listed in paragraph 38,
22 subparagraphs a. through g. above, providing results for smog inspections which were not
23 actually performed.

24 d. **Section 3340.42:** Respondents failed to conduct the required smog tests on the
25 vehicles listed in paragraph 38, subparagraphs a. through g. above, in accordance with the
26 Bureau's specifications.

27 ///

28 ///

1 e. **Section 3340.42.2(c)(7)**: Respondents failed to conduct OBD inspections for the
2 vehicles listed in paragraph 38, subparagraphs a. through g. above, within the Bureau's
3 specifications in that the OBD system data was inappropriate for the vehicle being tested.

4 f. **Section 3340.42.2(c)(8)**: Respondents failed to conduct OBD inspections for the
5 vehicles listed in paragraph 38, subparagraphs a. through g. above, within the Bureau's
6 specifications in that the OBD system data did not match the original equipment manufacturer or
7 an Air Resources Board exempted OBD software configuration.

8 g. **Section 3373**: Respondents withheld and inserted in the certificates of compliance
9 issued for the vehicles listed in paragraph 38, subparagraphs a. through g. above, statements and
10 information which caused the certificates to be false or misleading, or had the tendency or effect
11 to mislead or deceive the public.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud and Deceit)**

14 48. Complainant re-alleges and incorporates by reference the allegations set forth above
15 in the foregoing paragraphs.

16 49. Respondent Jefferson Smog's Smog Check Station License is subject to disciplinary
17 action under Health and Safety Code section 44072.2, subdivision (d), in that Respondents
18 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog
19 certificate of compliance for the vehicles listed in paragraph 38, subparagraphs a. through g.
20 above, without performing bona fide inspections of the emission control devices and systems on
21 the vehicles, thereby depriving the People of the State of California of the protection afforded by
22 the Motor Vehicle Inspection Program.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Violation of Motor Vehicle Inspection Program)**

25 50. Complainant re-alleges and incorporates by reference the allegations set forth above
26 in the foregoing paragraphs.

27 ///

28 ///

51. Respondent Hernandez's Smog Check Inspector License and Smog Check Repair Technician License are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply with the section of that Code:

a. **Section 44012**: Respondent failed to perform the tests of the emission control systems and devices on the vehicles listed in paragraph 38, subparagraphs e. and f. above, in accordance with procedures prescribed by the Department.

b. **Section 44059**: Respondent willfully made false statements and entries with regard to material matters when they issued a certificate of compliance for the vehicles listed in paragraph 38, subparagraphs e. and f. above, without properly testing and inspecting them to determine if they were in compliance with Health & Safety Code section 44012.

SEVENTH CAUSE FOR DISCIPLINE

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

52. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.

53. Respondent Hernandez's Smog Check Inspector License and Smog Check Repair Technician License are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c) in that Respondent failed to comply with the following sections of Title 16, California Code of Regulations:

a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the vehicles listed in paragraph 38, subparagraphs e. and f. above, in accordance with sections 44012 and 44035 of the Health and Safety Code, and section 3340.42 of the Regulations

b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the Emissions Inspection System false information about the vehicles listed in paragraph 38, subparagraphs e. and f. above, providing results for smog inspections which were not actually performed.

c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the vehicles listed in paragraph 38, subparagraphs e. and f. above, in accordance with the Bureau's specifications.

///

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 54. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in the foregoing paragraphs.

5 55. Respondent Hernandez's Smog Check Inspector License and Smog Check Repair
6 Technician License are subject to disciplinary action under Health and Safety Code section
7 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts
8 whereby another is injured by issuing a smog certificate of compliance for the vehicles listed in
9 paragraph 38, subparagraphs e. and f. above, without performing bona fide inspections of the
10 emission control devices and systems on the vehicles, thereby depriving the People of the State of
11 California of the protection afforded by the Motor Vehicle Inspection Program.

12 **NINTH CAUSE FOR DISCIPLINE**

13 **(Violation of Motor Vehicle Inspection Program)**

14 56. Complainant re-alleges and incorporates by reference the allegations set forth above
15 in the foregoing paragraphs.

16 57. Respondent Gutierrez's Smog Check Inspector License is subject to disciplinary
17 action under Health and Safety Code section 44072.2, subdivision (a), in that Respondent failed
18 to comply with the following sections of that Code:

19 a. **Section 44012**: Respondent failed to perform the tests of the emission control
20 systems and devices on the vehicles listed in paragraph 38, subparagraphs d. and g. above, in
21 accordance with procedures prescribed by the Department.

22 b. **Section 44059**: Respondent willfully made false statements and entries with regard
23 to material matters when they issued a certificate of compliance for the vehicles listed in
24 paragraph 38, subparagraphs d. and g. above, without properly testing and inspecting them to
25 determine if they were in compliance with Health & Safety Code section 44012.

26 ///

27 ///

28 ///

1 **TENTH CAUSE FOR DISCIPLINE**

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

3 58. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in the foregoing paragraphs.

5 59. Respondent Gutierrez's Smog Check Inspector License is subject to disciplinary
6 action under Health and Safety Code section 44072.2, subdivision (c) in that Respondent failed to
7 comply with the following sections of Title 16, California Code of Regulations:

8 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the vehicles
9 listed in paragraph 38, subparagraphs d. and g. above, in accordance with sections 44012 and
10 44035 of the Health and Safety Code, and section 3340.42 of the Regulations.

11 b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the Emissions
12 Inspection System false information about the vehicles listed in paragraph 38, subparagraphs d.
13 and g. above, providing results for smog inspections which were not actually performed.

14 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
15 vehicles listed in paragraph 38, subparagraphs d. and g. above, in accordance with the Bureau's
16 specifications.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

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

19 60. Complainant re-alleges and incorporates by reference the allegations set forth above
20 in the foregoing paragraphs.

21 61. Respondent Gutierrez's Smog Check Inspector License is subject to disciplinary
22 action under Health and Safety Code section 44072.2, subdivision (d), in that Respondent
23 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog
24 certificate of compliance for the vehicles listed in paragraph 38, subparagraphs d. and g. above,
25 without performing bona fide inspections of the emission control devices and systems on the
26 vehicles, thereby depriving the People of the State of California of the protection afforded by the
27 Motor Vehicle Inspection Program.

28 ///

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Violation of Motor Vehicle Inspection Program)**

3 62. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in the foregoing paragraphs.

5 63. Respondent Spruell's Smog Check Inspector License and Smog Check Repair
6 Technician License are subject to disciplinary action under Health and Safety Code section
7 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that
8 Code:

9 a. **Section 44012:** Respondent failed to perform the tests of the emission control
10 systems and devices on the vehicles listed in paragraph 38, subparagraphs a. through c. above, in
11 accordance with procedures prescribed by the Department.

12 b. **Section 44059:** Respondent willfully made false statements and entries with regard
13 to material matters when they issued a certificate of compliance for the vehicles listed in
14 paragraph 38, subparagraphs a. through c. above, without properly testing and inspecting them to
15 determine if they were in compliance with Health & Safety Code section 44012.

16 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

18 64. Complainant re-alleges and incorporates by reference the allegations set forth above
19 in the foregoing paragraphs.

20 65. Respondent Spruell's Smog Check Inspector License and Smog Check Repair
21 Technician License are subject to disciplinary action under Health and Safety Code section
22 44072.2, subdivision (c) in that Respondent failed to comply with the following sections of Title
23 16, California Code of Regulations:

24 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the vehicles
25 listed in paragraph 38, subparagraphs a. through c. above, in accordance with sections 44012 and
26 44035 of the Health and Safety Code, and section 3340.42 of the Regulations.

27 ///

28 ///

b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the Emissions Inspection System false information about the vehicles listed in paragraph 38, subparagraphs a. through c. above, providing results for smog inspections which were not actually performed.

c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the vehicles listed in paragraph 38, subparagraphs a. through c. above, in accordance with the Bureau's specifications.

FOURTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

66. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.

67. Respondent Spruell's Smog Check Inspector License and Smog Check Repair Technician License are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles listed in paragraph 38, subparagraphs a. through c. above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

68. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the Automotive Repair Dealer Registration for all places of business operated in this State by Respondent Jefferson Smog upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

69. Under Health & Safety Code section 44072.8, if Respondent Jefferson Smog's Smog Check Station License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Jefferson Smog.

1 70. Under Health and Safety Code section 44072.8, if Respondent Hernandez's Smog
2 Check Inspector License or Smog Check Repair Technician License is revoked or suspended, any
3 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code
4 in the name of Respondent Hernandez may be likewise revoked or suspended by the Director.

5 71. Under Health and Safety Code section 44072.8, if Respondent Gutierrez's Smog
6 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
7 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Gutierrez may
8 be likewise revoked or suspended by the Director.

9 72. Under Health and Safety Code section 44072.8, if Respondent Spruell's Smog Check
10 Inspector License or Smog Check Repair Technician License is revoked or suspended, any
11 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code
12 in the name of Respondent Spruell may be likewise revoked or suspended by the Director.

13 **DISCIPLINE CONSIDERATIONS**

14 73. To determine the degree of discipline, if any, to be imposed on Respondent Jefferson
15 Smog, Complainant alleges the following Citations, which are incorporated herein by reference:

16 (a) On or about May 16, 2013, the Bureau of Automotive Repair issued Respondent
17 Jefferson Smog, Citation Number C2013-0656 for issuing a Certificate of Compliance to a BAR
18 undercover vehicle with a non-functional EGR Valve. The BAR withdrew this citation.

19 (b) On or about June 16, 2015, the Bureau of Automotive Repair issued Respondent
20 Jefferson Smog, Citation Number C2015-1347 for inspecting and certifying a vehicle using the
21 BAR-97 test when the OIS test was required. Respondent entered into a stipulated settlement
22 affirming this citation as an order of abatement, effective October 13, 2017.

23 (c) On or about January 17, 2017, the Bureau of Automotive Repair issued
24 Respondent Jefferson Smog, Citation Number C2017-0117 for inspecting and certifying a vehicle
25 using the BAR-97 test when the OIS test was required. Respondent appealed this citation and the
26 appeal is currently pending.

27 74. To determine the degree of discipline, if any, to be imposed on Respondent Spruell,
28 Complainant alleges that on or about January 17, 2017, the Bureau of Automotive Repair issued

Respondent Spruell, Citation Number M2017-0119 with an Order of Abatement for inspecting and certifying a vehicle using the BAR-97 test when the OIS test was required. The Decision on this citation became effective April 3, 2017.

PRAYER

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

1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 228256, issued to Jefferson Smog Go, dba Jefferson Smog Star Station;

2. Revoking, suspending or placing on probation any other automotive repair dealer registration in the name of Ray Raul Hernandez or Marisela Hernandez;

3. Revoking, suspending or placing on probation Smog Check Station License Number RC 228256, issued to Jefferson Smog Go, dba Jefferson Smog Star Station;

4. Revoking, suspending or placing on probation any other license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Ray Raul Hernandez or Marisela Hernandez;

5. Revoking, suspending or placing on probation Smog Check Inspector License No. EO 140936 and Smog Check Repair Technician License No. EI 140936 issued to Ray Raul Hernandez;

6. Revoking, suspending or placing on probation Smog Check Inspector License No. EO 635346 issued to Edward Gutierrez;

7. Revoking, suspending or placing on probation any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Edward Gutierrez;

8. Revoking, suspending or placing on probation Smog Check Inspector License No. EO 634107 and Smog Check Repair Technician License No. EI 634107 issued to Markuss Aaron Spruell;

///

///

1 9. Revoking, suspending or placing on probation any additional license issued under
2 Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Markuss Aaron
3 Spruell;

4 10. Ordering Jefferson Smog Go, dba Jefferson Smog Star Station, Ray Raul Hernandez,
5 Marisela Hernandez, Edward Gutierrez, and Markuss Aaron Spruell, jointly and severally, to pay
6 the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of
7 this case, pursuant to Business and Professions Code section 125.3; and

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

9
10 DATED:

August 27, 2018



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