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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. 79/16-143

12 **A AND A SMOG,**
13 **AUGUSTIN REYES, Owner**
18998 Valley Blvd., St. B
Bloomington, CA 92316
14 **Automotive Repair Dealer Registration No.**
ARD 251592
15 **Smog Check Station License No. TC 251592;**

ACCUSATION
(SMOG CHECK)

16 **AUGUSTIN REYES**
229 W. Rosewood St.
17 Rialto, CA 92376
Smog Check Inspector License No. EO 153952
18 **Smog Check Repair Technician License No. EI**
153952;

19 and

20 **GABRIEL AVIDAN CALDERA**
21 9051 Sunflower St.
Rancho Cucamonga, CA 91701
22 **Smog Check Inspector License No. EO 635541;**

23 Respondents.

24
25 Complainant alleges:

26 **PARTIES**

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

1 **A and A Smog**

2 2. On or about August 20, 2007, the Director of Consumer Affairs (“Director”) issued
3 Automotive Repair Dealer Registration (“registration”) No. ARD 251592 to Agustin Reyes,
4 doing business as A and A Smog (“Respondent A and A”). The registration was in full force and
5 effect at all times relevant to the charges brought herein. It will expire on July 31, 2016, unless
6 renewed.

7 3. On or about October 2, 2007, the Director issued Smog Check, Test Only, Station
8 License (“station license”) No. TC 251592 to Respondent A and A. The license was in full force
9 and effect at all times relevant to the charges brought herein. It will on July 31, 2016, unless
10 renewed.

11 **Augustin Reyes**

12 4. In 2007, the Bureau issued Advanced Emission Specialist Technician License No. EA
13 153952 to Augustin Reyes (“Respondent Reyes”). License No. EA 153952 expired on December
14 31, 2012, and was cancelled on December 31, 2012. Pursuant to California Code of Regulations,
15 title 16, section 3340.28, subdivision (e)¹, said license was renewed pursuant to Augustin Reyes’
16 election as Smog Check Inspector License No. EO 153952 and Smog Check Repair Technician
17 License No. EI 153952 (“technician licenses”), effective December 31, 2012. The technician
18 licenses were in full force and effect at all times relevant to the charges brought herein and each
19 will expire on December 31, 2016, unless renewed.

20 **Gabriel Avidan Caldera**

21 5. On or about May 17, 2013, the Bureau issued Smog Check Inspector License No. EO
22 635541 (“technician license”) Gabriel Avidan Caldera (“Respondent Caldera”). The technician
23 license was in full force and effect at all times relevant to the charges brought herein. It will
24 expired on July 31, 2017, unless renewed.

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

JURISDICTION

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2 6. Business and Professions Code (“Code”) section 9884.7 provides that the Director
3 may revoke an automotive repair dealer registration.

4 7. Code section 9884.13 provides, in pertinent part: that the expiration of a valid
5 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
6 against an automotive repair dealer or to render a decision temporarily or permanently
7 invalidating (suspending or revoking) a registration.

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

11 9. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
12 [u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
13 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
14 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

STATUTORY PROVISIONS

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16 10. Section 9884.7 of the Business and Professions Code (“Code”) states, in pertinent
17 part:

18 “(a) The director, where the automotive repair dealer cannot show there was a bona
19 fide error, may refuse to validate, or may invalidate temporarily or permanently, the
20 registration of an automotive repair dealer for any of the following acts or omissions related
21 to the conduct of the business of the automotive repair dealer, which are done by the
22 automotive repair dealer or any automotive technician, employee, partner, officer, or
23 member of the automotive repair dealer.

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

27 “....
28 “(3) Failing or refusing to give to a customer a copy of any document requiring his or
her signature, as soon as the customer signs the document.

 “(4) Any other conduct which constitutes fraud.
 “....

1 “(6) Failure in any material respect to comply with the provisions of this chapter [the
2 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted
pursuant to it.”

3 11. Section 9884.8 of the Code states, in pertinent part:

4 “All work done by an automotive repair dealer, including all warranty work, shall be
5 recorded on an invoice and shall describe all service work done and parts supplied. . . One
6 copy of the invoice shall be given to the customer and one copy shall be retained by the
automotive repair dealer.”

7 12. Section 9884.9 of the Code provides, in pertinent part:

8 “(a) The automotive repair dealer shall give to the customer a written estimated price
9 for labor and parts necessary for a specific job. No work shall be done and no charges shall
accrue before authorization to proceed is obtained from the customer.”

10 13. Section 17200 of the Code states:

11 “As used in this chapter, unfair competition shall mean and include any unlawful,
12 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
13 advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part
3 of Division 7 of the Business and Professions Code.”

14 14. Section 17500 of the Code states, in pertinent part:

15 “It is unlawful for any person, firm, corporation. . . or any employee thereof with
16 intent. . . to dispose of. . . property or to perform services, professional or otherwise, . . . to
17 make or disseminate or cause to be made or disseminated before the public in this state, or
to make or disseminate. . . before the public. . . any statement, concerning that. . . property
18 or those services, professional or otherwise, . . . which is untrue or misleading, and which is
known, or which by the exercise of reasonable care should be known, to be untrue or
19 misleading. . .”

20 15. Section 477 of the Code provides, in pertinent part, that “Board” includes “bureau,”
21 “commission,” “committee,” “department,” “division,” “examining committee,” “program,”
and “agency.” “License” includes certificate, registration or other means to engage in a
22 business or profession regulated by the Code.

23 16. Section 118(b) of the Code states:

24 “The suspension, expiration, or forfeiture by operation of law of a license
25 issued by a board in the department, or its suspension, forfeiture, or cancellation by
order of the board or by order of a court of law, or its surrender without the written
26 consent of the board, shall not, during any period in which it may be renewed,
restored, reissued, or reinstated, deprive the board of its authority to institute or
27 continue a disciplinary proceeding against the licensee upon any ground provided by
law or to enter an order suspending or revoking the license or otherwise taking
28 disciplinary action against the licensee on any such ground.”

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

“The test at the smog check station shall be performed in accordance with procedures prescribed by the department.

“(f) A visual or functional check is made of emission control devices specified by the department.”

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

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

19. Section 44032 of the Health and Safety Code states:

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

20. Section 44033 of the Health and Safety Code states, in pertinent part:

“(c) If a motor vehicle, including a commercial vehicle, is tested at a facility licensed to perform tests and repairs pursuant to this chapter, the facility shall provide the customer with a written estimate pursuant to Section 9884.9 of the Business and Professions Code. The written estimate shall contain a notice to the customer stating that the customer may choose another smog check station to perform needed repairs, installations, adjustments, or subsequent tests.”

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

“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 Safety Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

“(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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COST RECOVERY

29. Code section 125.3 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.

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FACTUAL BACKGROUND

30. On September 9, 2014, based on a review of Respondent A and A Smog's smog check test data, the Bureau initiated an investigation of the facility. The Bureau subsequently conducted three undercover vehicle runs at three different smog check facilities, including one at A and A. Each resulted in improper smog check inspections by Respondents A and A and Caldera of Bureau undercover vehicles that, in their documented condition, could not pass a valid smog inspection.

31. Vehicles of model year 1995 and older require performance of a Low Pressure Fuel Evaporative Test ("LPFET") as a component of an official smog check inspection. The LPFET requires a smog technician to install an adaptor and hose to the vehicle's fuel fill pipe and "pinch off" or close the vapor line in the engine compartment. The vehicle's fuel system is then pressurized with nitrogen gas. If a leak exceeding the prescribed test limit is detected, the vehicle fails the LPFET, and the overall test result for the smog inspection should also be a fail.

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UNDERCOVER OPERATION # 1

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32. On September 18, 2014, the Bureau conducted an undercover vehicle operation at A and A Smog. The Bureau's vehicle, a 1992 Toyota, had been documented by a Bureau Representative at one of the Bureau's Documentation Laboratories. He determined the required emission con-trols for the vehicle and the vehicle's base timing specification was at 10 degrees Before Top Dead Center (BTDC). He then adjusted the vehicle's base timing to 22 degrees BTDC, which would cause the vehicle to fail the functional check portion of the Smog Check inspection. The representative then installed tamper indicators to detect adjustment of vehicle's base ignition timing.

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33. On September 18, 2014, a Bureau undercover operator received custody of a 1992

1 Toyota. He was instructed to drive the vehicle to A and A Smog and to request a smog check
2 inspection.

3 34. The operator arrived at A and A Smog and was contacted by two employees. One
4 spoke to the operator in Spanish as he provided the operator with a document requesting that the
5 operator complete the customer information section along with providing a signature. The
6 operator filled out the document as requested using an assumed name, signed it, and then returned
7 it to the employee. The employee did not give a copy to the operator. The operator then gave the
8 vehicle's key to the other employee upon his request. That employee entered the vehicle and
9 drove into the test bay of A and A. From the operator's position, he had an unobstructed view of
10 the test bay, the vehicle, and the inspector's testing activities. The employee entered in
11 information into the Emission Information System (EIS) machine. He then placed the exhaust
12 sample probe into the exhaust pipe of the Bureau's vehicle and drove the vehicle onto the
13 dynamometer's rollers. He stopped the engine and opened the vehicle's hood. At this point, he
14 connected a timing light and appeared to check the ignition timing. The employee then walked
15 over to the Low Pressure Fuel Evaporation Tester (LPFET) and entered in information into the
16 unit. While near the LPFET, he connected its test hose directly to the LPFET's test calibration
17 tank – instead of connecting the test hose to the vehicle being tested as required. Shortly
18 thereafter, the employee approached the operator and informed him that the vehicle had failed due
19 to timing being out of adjustment. The employee then provided the operator with a Vehicle
20 Inspection Report (VIR), stated that there was no charge for the test and for the operator to have
21 the timing properly adjusted and then return. At no time did the employee or anyone else at A
22 and A Smog connect the LPFET test hose to the Bureau's vehicle. The operator left A and A
23 Smog.

24 35. On September 19, 2014, Bureau Representatives downloaded the BAR 97 Test Detail
25 from the VID and the BAR 97 LPFET Test Report, and using the VIR information, confirmed
26 that the 1992 Toyota had failed the functional timing test, but passed the LPFET. Both reports
27 indicated that Smog Check Inspector License No. EO 635541, belonging to Respondent Gabriel
28 Avidan Caldera had been used for the smog check inspection. Respondent Caldera knowingly

1 performed a fraudulent inspection by not performing the Low Pressure Fuel Evaporation Test on
2 the Bureau's undercover vehicle. The operator later positively identified Respondent Caldera
3 from a photographic line-up of six people as being the individual who performed the smog check
4 on the Bureau's vehicle at A and A Smog Check.

5 **UNDERCOVER OPERATION # 2**

6 36. On September 30, 2014, the Bureau conducted an undercover vehicle operation at
7 another smog check facility, Fox Test Only. The Bureau's vehicle, a 1986 Chevrolet, had been
8 documented by a Documentation Laboratory Representative, who removed the catalytic converter
9 and removed the internal substrate and reinstalled the catalytic converter. He then adjusted the
10 carburetor to a rich fuel mixture. The Chevrolet failed the smog check emission test as a gross
11 polluter.

12 37. On September 30, 2014, custody of the 1986 Chevrolet was transferred to an
13 undercover operator who was instructed to drive to Fox Test Only located in San Bernardino and
14 to ask for a Smog Check inspection. The operator drove to Fox Test Only where he encountered
15 an individual named Omar who he had previously dealt with during previous undercover
16 operations. The operator informed Omar that he had a vehicle for him for a smog check
17 inspection and that it was a "star car" (must be tested at a Star certified station). Omar stated that
18 he would be able to get it tested and asked for the vehicle's keys and \$250.00 for the smog check
19 inspection. The operator gave Omar \$260.00 in cash and told him that the vehicle's keys were in
20 the vehicle. Omar told the operator that he did not have change for the \$260.00 but stated that he
21 would give it to him upon his return with the car. Omar stated that he would return in
22 approximately one hour. The operator then observed Omar telephone someone and heard him tell
23 the person on the phone that he had another car for him and asked, "What kind of deal can you
24 do?" Omar then stated, "Okay, come pick up the car" and ended the phone call.

25 38. Omar drove off in the Chevrolet. Two Bureau Representatives followed him to
26 18998 Valley Blvd., Suite B, in Bloomington, California, which was later identified as being A
27 and A Smog as there was no business signs posted at that time. The representatives saw the
28 Chevrolet driven into A and A Smog at 1136 hours. At 1158 hours, the car was driven out of A

1 and A Smog and parked on the street. At 1210 hours, the car was then driven away from A and A
2 Smog.

3 39. At approximately 1225 hours, Omar returned to Fox Test Only with the Chevrolet.
4 Omar stated that the vehicle was ready and that the paperwork was in the vehicle and handed the
5 operator \$10.00 in change he owed him. The operator observed the VIR on the passenger's seat.

6 40. Later that day a Bureau Representative downloaded the BAR 97 Test Detail from the
7 VID and, using the VIR information, confirmed that the 1986 Chevrolet was issued Certificate of
8 Compliance [REDACTED] by Respondent A and A Smog using the license of Smog Check
9 Inspector Gabriel Avidan Caldera. The representative also downloaded a complete Test Data
10 Summary of all vehicles tested on September 30, 2014, at Fox Test Only and at A and A Smog.
11 Another representative then performed a Station Inspection of A and A Smog. He reviewed smog
12 check invoices and VIR's between the period of September 26, 2014 and September 30, 2014,
13 and identified Respondent Caldera as the smog technician listed in the EIS (database). Caldera
14 told the representative that he did not allow any other persons to use his Technician Access Code
15 or his Smog Technician License (i.e. Technician Badge). Caldera acknowledged that he
16 performed all five smog tests between the period of September 26, 2014 and September 30, 2014,
17 including the Bureau's Chevrolet.

18 41. On October 2, 2014, the Documentation Laboratory Representative re-inspected on
19 the Chevrolet and confirmed the introduced malfunctions were still the same. He performed an
20 ASM Smog Check inspection on the car and it failed the emission test as a gross polluter. He
21 concluded that the car was not in a condition to pass a properly performed California smog heck
22 because carburetor was adjusted to provide a rich fuel mixture and catalytic converter was hollow
23 with the substrate removed causing the emissions to exceed exhaust limits as a gross polluter.

24 **UNDERCOVER OPERATION # 3**

25 42. On June 11, 2015, the Bureau initiated the documentation of an undercover vehicle
26 for an undercover operation at "1 or 2 Test and Repair" in the city of San Bernardino. The
27 Bureau's vehicle, a 1995 Oldsmobile had been documented by Documentation Laboratory
28 Bureau Representative who created two (2) malfunctions. He created the first malfunction by

1 bending a spark plug's ground electrode so that it contacted the center electrode creating a "short
2 circuit" between electrodes. He created the second malfunction by removing the catalytic
3 converter from the vehicle and removing the internal substrate. He then reinstalled the modified
4 catalytic converter back onto the vehicle's exhaust system. The modified catalytic converter and
5 "short circuited" spark plug caused the Oldsmobile to fail a smog check inspection for Gross
6 Polluter tailpipe emissions.

7 43. On July 23, 2015, the Oldsmobile was released to an undercover operator who was
8 instructed to drive the car to drive the vehicle to "1 or 2 Test and Repair" and request a smog
9 check inspection. When the operator arrived at "1 or 2 Test and Repair" she was met by an
10 employee who later identified himself as "Nicko," who stated that he could test the vehicle.
11 Another drove the Oldsmobile into the smog testing bay. Nicko insert the exhaust emissions
12 probe from the smog machine into the tailpipe of the Oldsmobile and subsequently operated the
13 vehicle on the dynamometer. Nicko told the operator that he had some bad news for her, stating
14 that the vehicle did not pass the smog check inspection. Nicko stated that the vehicle was pol-
15 luting the air and that is was in need of a tune up and catalytic converter. He told the operator
16 that the vehicle needed to be repaired to pass a smog inspection, which could be very expensive,
17 but that he could get her an "undercover smog". Nicko then went on to state that he could not
18 perform the undercover smog at his facility because the vehicle needed to go to a Star Station
19 stating that he could take the vehicle down the street to another facility and that they would be
20 able to do the smog there. Nicko informed the operator that it would cost \$200.00 in cash to have
21 the vehicle smogged. He then instructed her to return the vehicle the following morning (July 24,
22 2015) and that he would take care of the smog then.

23 44. On July 24, 2015, the operator returned to "1 or 2 Test and Repair" and was met by
24 the same employee who had driven the Oldsmobile into the smog-testing bay the day prior. He
25 stated that they could do the smog and that it would be \$200.00 in cash, to which the operator
26 agreed. At this point, another male asked for the vehicle keys and the DMV document, and
27 subsequently drove away in the Oldsmobile.

28 45. Approximately one hour later, the male returned with the Oldsmobile. The operator

1 gave him \$200.00 in cash and the male gave her the VIR, which indicated that the car had been
2 tested and certified by Respondent Gabriel Avidan Caldera (EO 635541) and issued a Certificate
3 of Compliance by Respondent A & A Smog: The operator then left "1 or 2 Test and Repair."

4 46. On August 10, 2015, the Documentation Laboratory Representative re-inspected the
5 Bureau's 1995 Oldsmobile, which still failed the smog check inspection(s) as a Gross Polluter.
6 He confirmed that the Oldsmobile still had the shorted spark plug and modified catalytic
7 converter installed. Additionally, the Oldsmobile also failed the Low Pressure Fuel Evaporation
8 Tests (LPFETs), which are a required part of California smog check inspection(s) for cars 1995
9 model year or older.

10 47. On September 1, 2015, a Bureau Representative performed a Station Inspection of A
11 and A Smog. He met with Respondent Caldera, who identified himself as the manager and
12 primary smog check technician (Smog Check Inspector). Caldera specifically stated that he does
13 not allow any other person to use his Technician Access Code and does not allow any other
14 person to use his Smog Check Inspector License for testing or any other purpose. Caldera
15 voluntarily provided, upon request, all Smog Check invoices and Vehicle Inspection Reports
16 (VIR's) for the period of July 22, 2015 to July 30, 2015. Only ten of the records (both invoices
17 and VIR's) were chosen and reviewed with Caldera. Caldera confirmed that he in fact did
18 perform all ten smog check inspections. One of the ten invoices/VIR's that were reviewed was
19 that of the Bureau's Oldsmobile that was used in the undercover operation of July 23 and 24,
20 2015.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 48. Respondent A and A's registration is subject to disciplinary action pursuant to Code
24 section 9884.7, subdivision (a)(1), in that it made or authorized statements which it knew, or in the
25 exercise of reasonable care should have known, to be untrue or misleading as follows: Respondent
26 certified that it had inspected vehicles in compliance with applicable laws and regulations when in
27 fact, Respondent conducted the inspections on the vehicles without properly performing all portions
28 of a smog check inspection including the LPFET, as required by Health and Safety Code section

1 44012. Complainant refers to, and by this reference incorporates, the allegations set forth above in
2 paragraphs 32 through 47 above, as though set forth fully herein.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 49. Respondent A and A's registration is subject to disciplinary action pursuant to Code
6 section 9884.7, subdivision (a)(4), in that it committed acts that constitute fraud by issuing
7 electronic smog Certificates of Compliance for at least two vehicles without performing bona fide
8 inspections of the emission control devices and systems on the vehicles, thereby depriving the
9 People of the State of California of the protection afforded by the Motor Vehicle Inspection
10 Program. Complainant refers to, and by this reference incorporates, the allegations set forth above
11 in paragraphs 32 through 47 above, as though set forth fully herein.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Failure to Provide Signed Estimate as Required)**

14 50. Respondent A and A's registration is subject to disciplinary action pursuant to
15 Code section 9884.7, subdivision (a)(3), in conjunction with section 9884.9, subdivision (a), in
16 that it failed or refused to give to a customer a copy of an estimate requiring his or her signature
17 as soon as the customer had signed the document, and on two occasions failed to provide any
18 estimate, signed or unsigned. Complainant refers to, and by this reference incorporates, the
19 allegations set forth above in paragraphs 32 through 47 above, as though set forth fully herein.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Material Violation of Automotive Repair Act)**

22 51. Respondent A and A's registration is subject to disciplinary action pursuant to
23 Code section 9884.7, subdivision (a)(6), in that it failed in a "material respect to comply with the
24 provisions of this chapter or regulations adopted pursuant to it" when it issued electronic
25 certificates of compliance for certain vehicles without performing bona fide inspections of the
26 emission control devices and systems on those vehicles, thereby depriving the People of the State
27 of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
28 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 32

1 through 47 above, as though set forth fully herein.

2 **FIFTH CAUSE FOR DISCIPLINE**

3 **(Failure to Provide Invoice to Customer)**

4 52. Respondent A and A's registration is subject to disciplinary action pursuant to
5 Code section 9884.8, in that it failed or refused on at least three occasions to provide an invoice to
6 customers describing all service work done. Complainant refers to, and by this reference
7 incorporates, the allegations set forth above in paragraphs 32 through 47 above, as though set
8 forth fully herein.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Unfair Competition and/or Fraudulent Business Acts)**

11 53. Respondent A and A's registration is subject to disciplinary action pursuant to
12 Code section 17200, in that it conducted unlawful, unfair, fraudulent and deceptive business acts
13 when it issued electronic certificates of compliance for two Bureau-owned vehicles without
14 performing bona fide inspections of the emission control devices and systems on those vehicles.
15 Complainant refers to, and by this reference incorporates, the allegations set forth above in
16 paragraphs 32 through 47 above, as though set forth fully herein.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(False or Misleading Statements)**

19 54. Respondent A and A's registration is subject to disciplinary action pursuant to
20 Code section 17500, in that it disseminated untrue or misleading information into the state's
21 database that the LPFET portions of smog inspections had been performed on three "1995 model
22 year or older" vehicles when, in fact, they had not, and by issuing electronic smog certificates of
23 compliance to two of those same vehicles which would not have passed a valid smog inspection.
24 Complainant refers to, and by this reference incorporates, the allegations set forth above in
25 paragraphs 32 through 47 above, as though set forth fully herein.

26 **EIGHTH CAUSE FOR DISCIPLINE**

27 **(Failure to Perform Tests in Accordance with Prescribed Procedures)**

28 55. Respondent A an A has subjected its station license to discipline under Health &

1 Safety Code section 44012, in that it failed to perform Smog Check inspections and LPFET tests
2 in accordance with procedures prescribed by the department. Complainant refers to, and by this
3 reference incorporates, the allegations set forth above in paragraphs 32 through 47 above, as
4 though set forth fully herein.

5 **NINTH CAUSE FOR DISCIPLINE**

6 **(Failure to Perform Visual or Functional Check**
7 **in Accordance with Prescribed Procedures)**

8 56. Respondent A and A has subjected its station license to discipline under Health &
9 Safety Code section 44012, subdivision (f), in that it failed to perform visual and/or functional
10 checks of required emission control devices in accordance with procedures prescribed by the
11 department. Complainant refers to, and by this reference incorporates, the allegations set forth
12 above in paragraphs 32 through 47 above, as though set forth fully herein.

13 **TENTH CAUSE FOR DISCIPLINE**

14 **(Issuance of Certificates of Compliance to Prohibited/ Unqualified Vehicles)**

15 57. Respondent A and A has subjected its station license to discipline under Health &
16 Safety Code section 44015, subdivision (b), in that it issued electronic Smog Check certificates of
17 compliance to vehicles that failed to meet the requirements of section 44012. Complainant refers
18 to, and by this reference incorporates, the allegations set forth above in paragraphs 36 through 47
19 above, as though set forth fully herein.

20 **ELEVENTH CAUSE FOR DISCIPLINE**

21 **(Failure to Provide Required Written Estimate)**

22 58. Respondent A and A has subjected its station license to discipline under Health &
23 Safety Code section 44033, subdivision (c), in that it failed to provide customers with a written
24 estimate pursuant to Section 9884.9 of the Business & Professions Code containing a notice that
25 the customer may choose another smog check station to perform needed repairs, installations,
26 adjustments, or subsequent tests. Complainant refers to, and by this reference incorporates, the
27 allegations set forth above in paragraphs 32 through 47 above, as though set forth fully herein.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

3 59. Respondent A and A has subjected its station license to discipline under Health &
4 Safety Code section 44072.2, subdivision (a), in that it violated the following sections of the
5 Health & Safety Code with respect to the inspection of certain vehicles:

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

8 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
9 compliance without properly testing and inspecting the vehicles to determine if they were in
10 compliance with section 44012 of the Health & Saf. Code.

11 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
12 and systems on those vehicles in accordance with section 44012 of the Health & Saf. Code.

13 Complainant refers to, and by this reference incorporates, the allegations set forth above in
14 paragraphs 36 through 47 above, as though set forth fully herein.

15 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

17 60. Respondent A and A has subjected its station license to disciplinary action pursuant
18 to Health & Safety Code section 44072.2, subdivision (c), in that it failed to comply with
19 provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
21 electronic smog Certificates of Compliance without performing bona fide inspections on the
22 emission control devices and systems on those vehicles as required by Health & Safety Code
23 section 44012.

24 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles in
25 accordance with Health & Safety Code sections 44012 and 44035, and California Code of
26 Regulations, title 16, section 3340.42.

27 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog Certificates
28 of Compliance for vehicles even though the vehicles had not been inspected in accordance with

1 section 3340.42.

2 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
3 conducted on vehicles in accordance with Bureau specifications.

4 Complainant refers to, and by this reference incorporates, the allegations set forth above in
5 paragraphs 36 through 47 above, as though set forth fully herein.

6 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

8 61. Respondent A and A has subjected its station license to disciplinary action
9 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that it committed
10 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
11 Certificates of Compliance for vehicles without performing bona fide inspections of the emission
12 control devices and systems on the vehicles, thereby depriving the People of the State of
13 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
14 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 36
15 through 47 above, as though set forth fully herein.

16 **FIFTEENTH CAUSE FOR DISCIPLINE**

17 **(Violations of the Motor Vehicle Inspection Program)**

18 62. Respondent Caldera has subjected his Smog Check Inspector License to
19 disciplinary action pursuant to Health & Safety Code section 44072.2, subdivision (a), in that he
20 failed to comply with the following sections of that Code:

21 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
22 devices and systems required by law for the vehicles tested were installed and functioning
23 correctly in accordance with test procedures.

24 b. **Section 44012, subdivision (f):** Respondent failed to perform the emissions control
25 tests on the vehicles in accordance with procedures prescribed by the department.

26 c. **Section 44032:** Respondent failed to perform tests of the emission control devices and
27 systems on vehicles in accordance with section 44012, in that the LPFET portions of the
28 inspections were not performed.

1 d. **Section 44059:** Respondent willfully made false entries for electronic Certificates of
2 Compliance for vehicles tested by certifying that they had been inspected as required when, in
3 fact, they had not.

4 Complainant refers to, and by this reference incorporates, the allegations set forth above in
5 paragraphs 32 through 47 above, as though set forth fully herein.

6 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

8 63. Respondent Caldera has subjected his Smog Check Inspector License to disciplinary
9 action pursuant to Health & Safety Code section 44072.2, subdivision (c), in that he failed to
10 comply with provisions of California Code of Regulations, title 16, as follows:

11 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect vehicles in accordance
12 with Health & Safety Code section 44012, and California Code of Regulations, title 16, section
13 3340.42.

14 b. **Section 3340.42:** Respondent failed to conduct all required portions of smog tests on
15 vehicles tested in accordance with the Bureau's specifications.

16 Complainant refers to, and by this reference incorporates, the allegations set forth above in
17 paragraphs 32 through 47 above, as though set forth fully herein.

18 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

20 64. Respondent Caldera has subjected his Smog Check Inspector License to disciplinary
21 action pursuant to Health & Safety Code section 44072.2, subdivision (d), in that he committed
22 dishonest, fraudulent, or deceitful acts whereby another is injured by aiding and abetting in the
23 issuance of electronic smog Certificates of Compliance for vehicles alleged tested without
24 performing bona fide inspections of the emission control devices and systems on the vehicles,
25 thereby depriving the People of the State of California of the protection afforded by the Motor
26 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
27 allegations set forth above in paragraphs 36 through 47 above, as though set forth fully herein.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 **(False or Misleading Statements)**

3 65. Respondent Caldera has subjected his Smog Check Inspector License to disciplinary
4 action pursuant to Bus. & Prof. Code section 17500, in that he disseminated untrue or misleading
5 information into the state's database that the LPFET portions of smog inspections had been
6 performed on at least three "1995 model year or older" vehicles when, in fact, they had not, and
7 by issuing electronic smog certificates of compliance to two of those same vehicles which would
8 not have passed a valid smog inspection. Complainant refers to, and by this reference
9 incorporates, the allegations set forth above in paragraphs 32 through 47 above, as though set
10 forth fully herein.

11 **NINETEENTH CAUSE FOR DISCIPLINE**

12 **(Conviction of a Substantially Related Crime)**

13 66. Respondent Caldera has subjected his Smog Check Inspector License to disciplinary
14 action pursuant to Health & Saf. Code section 44072.2, subdivision (b), in that on or about
15 February 22, 2016, in the criminal matter entitled *People of the State of California v. Gabriel*
16 *Avidan Caldera* (San Bernardino County Superior Court Case No. FSB 1502836), Respondent
17 entered a plea of guilty and was convicted of one count of violating Penal Code section 502,
18 subdivision (c) [computer access and fraud], a felony. Respondent was sentenced to 3-years
19 formal probation on terms and conditions. In addition, the Court ordered Respondent "not to
20 engage in any smog certification activity." The circumstances surrounding the conviction are
21 outlined by Respondent's illegal conduct as set forth in paragraphs 32 through 47 above.

22 **OTHER MATTERS**

23 67. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
24 suspend, revoke or place on probation the registration for all places of business operated in this
25 state by Agustin Reyes, owner of A and A Smog, upon a finding that he has, or is, engaged in a
26 course of repeated and willful violations of the laws and regulations pertaining to an automotive
27 repair dealer.

28 68. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station

1 License Number TC 251592, issued to Agustin Reyes, owner of A and A Smog, is revoked or
2 suspended, any additional license issued under the same chapter in the name of said licensee may
3 be likewise revoked or suspended by the Director.

4 69. Pursuant to Health & Safety Code section 44072.8, if Respondent Gabriel Avidan
5 Caldera's Smog Check Inspector License No. EO 635541 is revoked or suspended, any additional
6 license issued under this chapter in the name of said licensee may be likewise revoked or
7 suspended by the Director.

8 **PRAYER**

9 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Director issue a decision:

11 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
12 251592, issued to Agustin Reyes, owner of A and A Smog;

13 2. Revoking or suspending any other automotive repair dealer registration issued to
14 Agustin Reyes;

15 3. Revoking or suspending Smog Check Test Only Station License Number TC 251592,
16 issued to Agustin Reyes, owner of A and A Smog;

17 4. Revoking or suspending Smog Check Inspector License No. EO 153952 and/or Smog
18 Check Repair Technician License No. EI 153952, issued to Augustin Reyes;

19 5. Revoking or suspending Smog Check Inspector License No. EO 635541, issued to
20 Gabriel Avidan Caldera;

21 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
22 and Safety Code in the name of Gabriel Avidan Caldera;

23 6. Ordering A and A Smog, Agustin Reyes, and Gabriel Avidan Caldera to pay the
24 Director the reasonable costs of the investigation and enforcement of this case, pursuant to
25 Business and Professions Code section 125.3; and

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

DATED: July 1, 2016

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

(rev.6/21/16)