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**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:
DAVID OMAR SANCHEZ
979 North Elmwood Avenue
Rialto, CA 92376
Smog Check Inspector License
No. EO 635746

Respondent.

Case No. 79/14-124

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 22, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/14-124 against David Omar Sanchez (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about July 11, 2013, the Bureau of Automotive Repair (Bureau) issued Smog Check Inspector License No. EO 635746 to Respondent. The Smog Check Inspector License issued to Respondent David Omar Sanchez will expire on May 31, 2015, unless renewed.

3. On or about June 11, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 79/14-124, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
2 section 136, is required to be reported and maintained with the Bureau. Respondent's address of
3 record was and is: 979 N. Elmwood Ave. Rialto, CA 92376.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

7 5. On or about June 13, 2014, the Return Receipt for the Certified Mail containing
8 Accusation No. 79/14-124 and all pertinent documents sent to Respondent was returned to the
9 Office of the Attorney General of California, and contained a signature of receipt. The address on
10 the documents was the same as the address on file with the Bureau. Respondent failed to provide
11 a Notice of Defense.

12 6. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts
15 of the accusation not expressly admitted. Failure to file a notice of defense shall
16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
17 may nevertheless grant a hearing.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
20 79/14-124.

21 8. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
25 respondent.

26 9. Pursuant to its authority under Government Code section 11520, the Director after
27 having reviewed the proof of service dated June 11, 2014, signed by Teresa Sutton, (and return
28 envelopes) finds Respondent is in default. The Director will take action without further hearing
and, based on Accusation, No. 79/14-124, proof of service and on the Affidavit of Bureau
Representative Matthew J. Bradfield, finds that the allegations in Accusation are true.

///

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent David Omar Sanchez has
3 subjected his Smog Check Inspector License No. EO 635746 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Director of Consumer Affairs is authorized to revoke Respondent's Smog Check
6 Inspector License based upon the following violations alleged in the Accusation which are
7 supported by the evidence contained in the affidavit of Bureau Representative Matthew Bradfield
8 in this case:

9 a. Respondent Sanchez has subjected his Smog Check Inspector License to discipline by
10 violating California Code of Regulations sections §3340.30(a), §3340.41(c), and Health and
11 Safety Code sections §44012, §44012(f), and §44032. On December 19, 2013 and January 7,
12 2014, Matthew Bradfield, a Program Representative for the Bureau, conducted surveillance of
13 Echo Smog. During the surveillance operations, David Omar Sanchez performed ten fraudulent
14 Smog Check inspections resulting in Echo Smog issuing eight fraudulent Certificates of
15 Compliance.

16 ORDER

17 IT IS SO ORDERED that Smog Check Inspector License No. EO 635746 heretofore issued
18 to Respondent David Omar Sanchez, is revoked. Pursuant to Government Code section 11520,
19 subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated
20 and stating the grounds relied on within seven (7) days after service of the Decision on
21 Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D.
22 Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion
23 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
24 statute.

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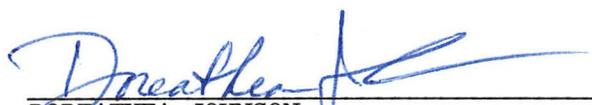
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This Decision shall become effective on October 14, 2014.

It is so ORDERED September 19, 2014



DORÉATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

51569420.DOCX
DOJ Matter ID:LA2014511492

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation and Pleading Packet/Return Envelopes

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/14-124

13 **ECHO SMOG**
14 **DAVID NEIL GARDNER, OWNER**
15 **1377 South Lilac #104**
16 **Bloomington, CA 92316**
17 **Automotive Repair Dealer Reg. No. ARD 273607**
18 **Smog Check, Test Only, Station License No.**
19 **TC 273607**

ACCUSATION

(Smog Check)

17 **and**

18 **8570 Palmetto Avenue,**
19 **Fontana, Ca. 92335**

20 **and**

21 **DAVID OMAR SANCHEZ**
22 **979 North Elmwood Avenue**
23 **Rialto, CA 92376**
24 **Smog Check Inspector License No. EO 635746**

Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 **Echo Smog; David Neil Gardner, Owner**

6 2. On or about July 9, 2013, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 273607 ("registration") to David Neil
8 Gardner ("Respondent"), owner, doing business as Echo Smog. Respondent's registration was in
9 full force and effect at all times relevant to the charges brought herein and will expire on July 31,
10 2014, unless renewed.

11 3. On or about July 19, 2013, the Director issued Smog Check, Test Only, Station
12 License Number TC 273607 ("smog check station license") to Respondent. Respondent's smog
13 check station license was in full force and effect at all times relevant to the charges brought herein
14 and will expire on July 31, 2014, unless renewed.

15 **David Omar Sanchez**

16 4. On or about July 11, 2013, the Director issued Smog Check Inspector License
17 Number EO 635746¹ ("inspector license") to Respondent David Omar Sanchez ("Respondent
18 Sanchez"). Respondent Sanchez's inspector license was in full force and effect at all times
19 relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

20 **JURISDICTION**

21 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
22 the Director may revoke an automotive repair dealer registration.

23 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
24 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary

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

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

3 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
4 part, that the Director has all the powers and authority granted under the Automotive Repair Act
5 for enforcing the Motor Vehicle Inspection Program.

6 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
7 suspension of a license by operation of law, or by order or decision of the Director of Consumer
8 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
9 of jurisdiction to proceed with disciplinary action.

10 STATUTORY PROVISIONS

11 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

21

22 (4) Any other conduct that constitutes fraud.

23

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

10. Bus. & Prof. Code section 118, subdivision (b), states:

The suspension, expiration, or forfeiture by operation of law of a license
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
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
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

1 disciplinary action against the licensee on any such ground.

2 11. Bus. & Prof. Code section 22, subdivision (a), states:

3 "Board" as used in any provision of this Code, refers to the board in
4 which the administration of the provision is vested, and unless otherwise expressly
5 provided, shall include "bureau," "commission," "committee," "department,"
6 "division," "examining committee," "program," and "agency."

7 12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
8 "license" includes "registration" and "certificate."

9 13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

16

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

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

21 14. Health & Saf. Code section 44072.10 states, in pertinent part:

22

23 (c) The department shall revoke the license of any smog check technician
24 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
25 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
26 the following:

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

28

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

15. Health & Saf. Code section 44072.8 states that 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.

///

1 REGULATORY PROVISIONS

2 16. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),
3 states: “[T]he bureau may suspend or revoke the license of or pursue other legal action against a
4 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
5 certificate of noncompliance.”

6 17. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
7 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section
8 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
9 3340.42 of this article.”

10 18. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
11 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
12 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
13 this article and has all the required emission control equipment and devices installed and
14 functioning correctly.”

15 19. CCR, title 16, section 3340.41, subdivision (c), provides: “No person shall enter into
16 the emissions inspection system any vehicle identification information or emission control system
17 identification data for any vehicle other than the one being tested. Nor shall any person
18 knowingly enter into the emissions inspection system any false information about the vehicle
19 being tested.”

20 20. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
21 procedures which apply to all vehicles inspected in the State of California.

22 21. CCR, title 16, section 3340.28, subdivision (e), states that “[u]pon renewal of an
23 unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license
24 issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog
25 Check Inspector, Smog Check Repair Technician, or both.”

26 COST RECOVERY

27 22. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
28 the administrative law judge to direct a licentiate found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 **VIDEO SURVEILLANCE OPERATION OF DECEMBER 19, 2013**

4 23. On or about December 19, 2013, representatives of the Bureau conducted a video
5 surveillance operation of Respondent's smog check facility. The surveillance operation and the
6 information from the Bureau's vehicle identification database ("VID") revealed that Respondent
7 Sanchez issued electronic smog certificates of compliance, certifying that he had tested and
8 inspected the vehicles identified in Table 1 and that the vehicles were in compliance with
9 applicable laws and regulations. In fact, Respondent Sanchez conducted the inspections using the
10 clean piping method², resulting in the issuance of the following fraudulent certificates of
11 compliance for the vehicles:

12 **TABLE 1**

13

14 Time of Inspection	Vehicle Certified & License No.	Vehicle Actually Tested	Certificate No.
15 1. 0855-0914 ³	1991 Toyota Pickup (VIN#JT4VN13D4M5044667)	1998 Honda Accord (VIN#1HGCG554XWA002201)	YB446909C
16 2. 1134-1207	1980 Toyota Pickup (VIN#RN37019759)	1998 Honda Accord (VIN#1HGCG554XWA002201)	YB446911C
17 3. 1238-1254	1984 Chevrolet Camaro (VIN#1G1AP87H9EL131159)	1998 Honda Accord (VIN#1HGCG554XWA002201)	None
18 4. 1422-1450	2002 GMC Envoy (VIN#1GKDT13S522226686)	1998 Honda Accord (VIN#1HGCG554XWA002201)	None
19 5. 1509-1535	1999 BMW 7-Series (VIN#WBAGG8339XDN74157)	1998 Honda Accord (VIN#1HGCG554XWA002201)	YB446915C

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26 ² Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping"
27 means the use of a substitute exhaust emissions sample in place of the actual test vehicle's
28 exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle.

³ All times noted are military times.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 24. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
5 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
6 follows: Respondent's employee certified that the vehicles identified in Table 1 above, had
7 passed inspection and were in compliance with applicable laws and regulations. In fact,
8 Respondent's employee used clean piping methods in order to issue certificates for the vehicles
9 and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 25. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
13 Code section 9884.7, subdivision (a)(4), in that Respondent's employee committed acts that
14 constitute fraud by issuing electronic smog certificates of compliance for the vehicles identified in
15 Table 1 above, without performing bona fide inspections of the emission control devices and
16 systems on the vehicles, thereby depriving the People of the State of California of the protection
17 afforded by the Motor Vehicle Inspection Program.

18 **THIRD CAUSE FOR DISCIPLINE**

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

20 26. Respondent's smog check station license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
22 provisions of that Code, as follows:

23 a. **Section 44012:** Respondent's employee failed to perform the emission control tests
24 on the vehicles identified in Table 1 above, in accordance with procedures prescribed by the
25 department.

26 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for the
27 vehicles identified in Table 1 above, without properly testing and inspecting the vehicles to
28 determine if they were in compliance with Health & Saf. Code section 44012.

1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 27. Respondent's smog check station license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.35, subdivision (c):** Respondent's employee issued electronic smog
8 certificates of compliance for the vehicles identified in Table 1 above, even though those vehicles
9 had not been inspected in accordance with section 3340.42.

10 b. **Section 3340.41, subdivision (c):** Respondent's employee entered false information
11 into the EIS unit by entering vehicle identification information or emission control system
12 identification data for vehicles other than the ones being tested.

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
14 vehicles identified in Table 1 above, in accordance with the Bureau's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 28. Respondent's smog check station license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
19 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
20 compliance for the vehicles identified in Table 1 above, without performing bona fide inspections
21 of the emission control devices and systems on the vehicles, thereby depriving the People of the
22 State of California of the protection afforded by the Motor Vehicle Inspection Program.

23 **SIXTH CAUSE FOR DISCIPLINE**

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

25 29. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
26 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent Sanchez failed to
27 comply with section 44012 of that Code in a material respect, as follows: Respondent Sanchez
28

1 failed to perform the emission control tests on the vehicles identified in Table 1 above, in
2 accordance with procedures prescribed by the department.

3 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 30. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent Sanchez failed to
8 comply with provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a):** Respondent Sanchez failed to inspect and test the
10 vehicles identified in Table 1 above, in accordance with Health & Saf. Code sections 44012 and
11 44035, and California Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.41, subdivision (c):** Respondent Sanchez entered false information
13 into the EIS by entering vehicle identification information or emission control system
14 identification data for vehicles other than the ones being tested.

15 c. **Section 3340.42:** Respondent Sanchez failed to conduct the required smog tests on
16 the vehicles identified in Table 1 above, in accordance with the Bureau's specifications.

17 **EIGHTH CAUSE FOR DISCIPLINE**

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

19 31. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent Sanchez committed
21 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
22 certificates of compliance for the vehicles identified in Table 1 above, without performing bona
23 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
24 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
25 Program.

26 **VIDEO SURVEILLANCE OPERATION OF JANUARY 7, 2014**

27 32. On or about January 7, 2014, representatives of the Bureau conducted a video
28 surveillance operation of Respondent's smog check facility. The surveillance operation and the

1 information from the Bureau's VID revealed that Respondent Sanchez issued electronic smog
 2 certificates of compliance, certifying that he had tested and inspected the vehicles identified in
 3 Table 2 and that the vehicles were in compliance with applicable laws and regulations. In fact,
 4 Respondent Sanchez conducted the inspections using the clean piping method, resulting in the
 5 issuance of the following fraudulent certificates of compliance for the vehicles:

6 **TABLE 2**

7 Time of Inspection	Vehicle Certified & License No.	Vehicle Actually Tested	Certificate No.
8 1. 0822-0834	2003 KIA Rio (VIN#KNADC125836278327)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	YB687718C
10 2. 0838-0851	2002 BMW 745LI (VIN#WBAGN63492DR07324)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	YB687719C
12 3. 0856-0920	1997 BMW 5 Series (VIN#WBADD6323VBW25541)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	YB687720C
14 4. 1014-1039	1990 Nissan 240SX (VIN#JN1HS36P5LW132940)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	YB687722C
16 5. 1207-1222	2000 Mitsubishi Mirage (VIN#JA3AY11A9YU062235)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	YB687726C

20
 21 **NINTH CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 33. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
 24 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
 25 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
 26 follows: Respondent's employee certified that the vehicles identified in Table 2 above, had
 27 passed inspection and were in compliance with applicable laws and regulations. In fact,
 28

1 Respondent's employee used the clean piping method in order to issue certificates for the vehicles
2 and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 34. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
6 Code section 9884.7, subdivision (a)(4); in that Respondent's employee committed acts that
7 constitute fraud by issuing electronic smog certificates of compliance for the vehicles identified in
8 Table 2 above, without performing bona fide inspections of the emission control devices and
9 systems on the vehicles, thereby depriving the People of the State of California of the protection
10 afforded by the Motor Vehicle Inspection Program.

11 **ELEVENTH CAUSE FOR DISCIPLINE**

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

13 35. Respondent's smog check station license is subject to disciplinary action pursuant to
14 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
15 provisions of that Code, as follows:

16 a. **Section 44012:** Respondent's employee failed to perform the emission control tests
17 on the vehicles identified in Table 2 above, in accordance with procedures prescribed by the
18 department.

19 b. **Section 44015:** Respondent's employee issued electronic smog certificates of
20 compliance for the vehicles identified in Table 2 above, without properly testing and inspecting
21 the vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

22 **TWELFTH CAUSE FOR DISCIPLINE**

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

25 36. Respondent's smog check station license is subject to disciplinary action pursuant to
26 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
27 provisions of California Code of Regulations, title 16, as follows:
28

1 a. **Section 3340.35, subdivision (c):** Respondent's employee issued electronic smog
2 certificates of compliance for the vehicles identified in Table 2 above, even though those vehicles
3 had not been inspected in accordance with section 3340.42.

4 b. **Section 3340.41, subdivision (c):** Respondent's employee entered false information
5 into the EIS unit by entering vehicle identification information or emission control system
6 identification data for vehicles other than the ones being tested.

7 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
8 vehicles identified in Table 2 above, in accordance with the Bureau's specifications.

9 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

11 37. Respondent's smog check station license is subject to disciplinary action pursuant to
12 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
13 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
14 compliance for the vehicles identified in Table 2 above, without performing bona fide inspections
15 of the emission control devices and systems on the vehicles, thereby depriving the People of the
16 State of California of the protection afforded by the Motor Vehicle Inspection Program.

17 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

19 38. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent Sanchez failed to
21 comply with section 44012 of that Code in a material respect, as follows: Respondent Sanchez
22 failed to perform the emission control tests on the vehicles identified in Table 2 above, in
23 accordance with procedures prescribed by the department.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

4 39. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent Sanchez failed to
6 comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a)**: Respondent Sanchez failed to inspect and test the
8 vehicles identified in Table 2 above, in accordance with Health & Saf. Code sections 44012 and
9 44035, and California Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.41, subdivision (c)**: Respondent Sanchez entered false information
11 into the EIS by entering vehicle identification information or emission control system
12 identification data for vehicles other than the ones being tested.

13 c. **Section 3340.42**: Respondent Sanchez failed to conduct the required smog tests on
14 the vehicles identified in Table 2 above, in accordance with the Bureau's specifications.

15 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

17 40. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent Sanchez committed
19 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
20 certificates of compliance for the vehicles identified in Table 2 above, without performing bona
21 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
22 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program.

24 **OTHER MATTERS**

25 41. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
26 suspend, revoke or place on probation the registration for all places of business operated in this
27 state by Respondent David Neil Gardner, owner of Echo Smog, upon a finding that said
28

1 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
2 regulations pertaining to an automotive repair dealer.

3 42. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
4 License Number TC 273607, issued to Respondent David Neil Gardner, owner of Echo Smog, is
5 revoked or suspended, any additional license issued under this chapter in the name of said
6 licensee may be likewise revoked or suspended by the Director.

7 43. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
8 Number EO 635746, issued to Respondent David Omar Sanchez, is revoked or suspended, any
9 additional license issued under this chapter in the name of said licensee may be likewise revoked
10 or suspended by the Director.

11 **PRAYER**

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 273607, issued to David Neil Gardner, owner of Echo Smog;

16 2. Revoking or suspending any other automotive repair dealer registration issued to
17 David Neil Gardner;

18 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
19 273607, issued to David Neil Gardner, owner of Echo Smog;

20 4. Revoking or suspending Smog Check Inspector License Number EO 635746, issued
21 to David Omar Sanchez;

22 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of David Omar Sanchez;

24 6. Ordering David Neil Gardner, individually, and as owner of Echo Smog, and David
25 Omar Sanchez to pay the Bureau of Automotive Repair the reasonable costs of the investigation
26 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

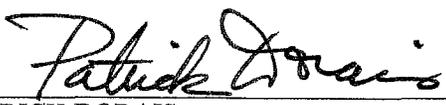
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7. Taking such other and further action as deemed necessary and proper.

DATED: April 22, 2014


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

LA2014511511