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

11 In the Matter of the Accusation Against:  
12 **MANNY SMOG CHECK TEST ONLY**  
**Eustolia Vanessa Chalacan, Owner**  
13 4252 Crenshaw Blvd.  
Los Angeles, CA 90008  
14 Automotive Repair Dealer Registration No.  
ARD 260589  
15 Smog Check Station License No. TC 260589  
16 and  
17 **ERIK PULIDO**  
903 ½ East 49<sup>th</sup> St.  
18 Los Angeles, CA 90011  
Smog Check Inspector License No. EO 637048  
19  
20 Respondents.

Case No. **79/15-11996**

**A C C U S A T I O N**  
(SMOG CHECK)

21 Complainant alleges:

22 **PARTIES**

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

25 **Manny Smog Check Test Only**

26 2. On or about January 28, 2010, the Bureau issued Automotive Repair Dealer  
27 Registration No. ARD No. 260589 to Eustolia Vanessa Chalacan, d.b.a. Manny Smog Check Test  
28

1 Only (“Respondent Manny Smog”). The Automotive Repair Dealer Registration was in full force  
2 and effect at all times relevant to the charges brought herein. It expired on December 31, 2015,  
3 and has not been renewed.

4 3. On or about March 30, 2010, the Bureau issued Smog Check, Test Only, Station  
5 License No. TC 260589 to Respondent Manny Smog. The Smog Check Test Only Station license  
6 was in full force and effect at all times relevant to the charges brought herein. It expired on  
7 December 31, 2015, and has not been renewed.

8 **Erick Pulido**

9 4. On or about June 30, 2014, the Bureau issued Smog Check Inspector License No. EO  
10 637048 to Erick Pulido (“Respondent Pulido”). The Smog Check Inspector License was in full  
11 force and effect at all times relevant to the charges brought herein. It expired on May 31, 2016,  
12 and has not been renewed.

13 **JURISDICTION**

14 5. This Accusation is brought before the Director of Consumer Affairs (“Director”) for  
15 the Bureau of Automotive Repair, under the authority of the following laws.

16 6. Section 9884.13 of the Business and Professions Code provides, in pertinent part, that  
17 “[t]he expiration of a valid registration shall not deprive the director or chief of jurisdiction to  
18 proceed with . . . [a] disciplinary proceeding against an automotive repair dealer or to render a  
19 decision invalidating a registration temporarily or permanently.”

20 7. Section 9884.7 of the Bus. & Prof. Code states, in pertinent part:

21 “(a) The director, where the automotive repair dealer cannot show there was a bona  
22 fide error, may refuse to validate, or may invalidate temporarily or permanently, the  
23 registration of an automotive repair dealer for any of the following acts or omissions  
24 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.

25 “(1) Making or authorizing in any manner or by any means whatever any statement  
26 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 . . .

27 . . . .

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

2           . . . .

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

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

6           “‘It is unlawful for any person, firm, corporation. . . or any employee thereof with intent. . .  
7 to dispose of. . . property or to perform services, professional or otherwise, . . . to make or  
8 disseminate or cause to be made or disseminated before the public in this state, or to make  
9 or disseminate. . . before the public. . . any statement, concerning that. . . property 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 misleading. . .’”

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

13          10.    Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog  
14 check stations shall be performed in accordance with procedures prescribed by the department.

15          11.    Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate  
16 of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section  
17 40012.

18          12.    Section 44032 of the Health & Saf. Code provides, in pertinent part, that “[q]ualified  
19 technicians shall perform tests of emission control devices and systems in accordance with  
20 Section 44012.”

21          13.    Section 44059 of the Health & Saf. Code provides:

22           “‘The willful making of any false statement or entry with regard to a material matter  
23 in any oath, affidavit, certificate of compliance or noncompliance, or application form  
24 which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of  
25 Division 3 of the Business and Professions Code, constitutes perjury and is punishable  
as provided in the Penal Code.’”

26          14.    Section 44072.2 of the Health & Saf. Code states, in pertinent part:

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

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

7 “(b) Is convicted of any crime substantially related to the qualifications, functions,  
8 or duties of the license holder in question.

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

10 “(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.”

11 15. Section 44072.8 of the Health & Saf. Code states:

12 “When a license has been revoked or suspended following a hearing under this article, any  
13 additional license issued under this chapter in the name of the licensee may be likewise revoked  
14 or suspended by the director.”

15 16. Section 44072.10 of the Health & Saf. Code states, in pertinent part:

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

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

20 “(2) Tampering with a vehicle emission control system or test analyzer system.

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

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

### 25 REGULATORY PROVISIONS

26 17. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),  
27 states:

28 “The bureau may suspend or revoke the license of or pursue other legal action against a  
licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
certificate of noncompliance.”

1 18. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician  
2 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section  
3 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42  
4 of this article.”

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

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

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

17 22. CCR, title 16, section 3340.45 provides that all Smog Check inspections shall be  
18 performed in accordance with requirements and procedures prescribed in the Bureau’s Smog  
19 Check Manual, which became effective January 1, 2013.

20 **COST RECOVERY**

21 23. Section 125.3, subdivision (a), of the Bus. & Prof. Code provides, in pertinent part,  
22 that a Board “may request the administrative law judge to direct a licentiate found to have  
23 committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable  
24 costs of the investigation and enforcement of the case.”

25 **SMOG CHECK PROGRAM BACKGROUND**

26 24. Smog Check tests are performed using a BAR97 Emissions Inspection System  
27 (“EIS”). The EIS is a computer-based analyzer that samples a vehicle’s exhaust emissions  
28 through an exhaust sample probe that is placed in the tailpipe of the vehicle being inspected. The

1 EIS accepts entries from the licensed technician per his/her visual and functional inspection of the  
2 vehicle, as well as the information specific to the particular vehicle being tested; such as, model  
3 year, make, model, license plate number, VIN, etc. The licensed technician gains access to the  
4 EIS by using a confidential personal access code assigned by the Bureau. The EIS uses the  
5 information entered by the technician, along with the data from the analyzer, to determine  
6 whether the vehicle passes the test.

7 25. The Smog Check test consists of a three-part inspection; a visual inspection of the  
8 vehicle's emission control components, an exhaust emission sample, and a functional test of  
9 certain emission-related components. If the vehicle passes the test, the EIS issues a Certificate of  
10 Compliance number. This certificate number and all test information are automatically  
11 transmitted via modem to the Bureau's Vehicle Information Database ("VID").

12 26. Beginning March 9, 2015, California's Smog Check Program was updated to keep  
13 pace with ever advancing vehicle technology. The program update requires use of an On Board  
14 Diagnostic Inspection System (known as the "BAR-OIS"). BAR-OIS is the Smog Check  
15 equipment required in all areas of the State when inspecting most model-year 2000 and newer  
16 gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a  
17 Data Acquisition Device ("DAD"), and other "off the shelf" equipment, a computer, bar code  
18 scanner, and printer. The "off the shelf" equipment must meet minimum performance  
19 requirements to ensure compatibility with BAR OIS software. The BAR-OIS uses the California  
20 BAR-OIS software to communicate with BAR's central database through the Internet connection.  
21 The California BAR-OIS software requires a continuous internet connection when performing a  
22 Smog Check inspection.

23 27. The DAD is the only BAR-certified component of the BAR-OIS. The DAD connects  
24 between the BAR-OIS computer and the vehicle's DLC. The DAD is an OBD II scan tool that,  
25 when requested by the California BAR-OIS software, retrieves OBD II data from the vehicle. All  
26 supported OBD II data requested by the California BAR-OIS software will be retrieved. Some of  
27 the data retrieved and recorded during a BAR-OIS Smog Check inspection includes the Vehicle

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1 Identification Number (“VIN”), the OBD II communication protocol, and the Parameter  
2 Identification (PID) count.

3 28. The VIN is programmed into the vehicle’s OBD II system electronic control unit  
4 (“ECU”) on 2005 and newer vehicles, and on many occasions was programmed into the OBD II  
5 system ECU in earlier model-years. This electronically programmed VIN, referred to as the  
6 “eVIN”, is captured by BAR during a Smog Check inspection, and under normal circumstances  
7 matches the physical VIN on the vehicle.

8 29. Dishonest Smog Check Stations and Smog Check Inspectors can issue  
9 improper/fraudulent Smog Check Certificates of Compliance by using a method known as “**clean**  
10 **plugging.**” Clean plugging involves using another vehicle’s properly functioning OBD II  
11 system, or another source, to generate passing diagnostic readings for the purpose of issuing  
12 fraudulent Certificates of Compliance to vehicles that are not in compliance and/or not present for  
13 testing.

#### 14 **BUREAU INVESTIGATION**

15 30. On June 30, 2015, the Bureau initiated an investigation into the business practices  
16 of Manny Smog Check Test Only based on abnormalities observed within the VID information  
17 transmitted by the business, specifically associated with Smog Check inspections completed by  
18 licensed Smog Check Inspector Erick Pulido.

19 31. In reviewing the VID information, to include the OIS Test Data from Respondent  
20 Manny Smog for vehicles reportedly inspected and certified revealed a consistent pattern of gross  
21 irregularities in the expected OBD II test data that is uniquely specific to a vehicle’s year, make,  
22 and model type vehicles. This data from the certified vehicles was also compared to data of other  
23 vehicles of the same year, make, and model. The data comparison also supported the consistent  
24 pattern of gross irregularity specifically regarding:

25 a. **Incorrect readiness monitors** – The OBD II system communicates with readiness  
26 monitors that display which monitors are ready, supported, and not supported. Each vehicle’s  
27 readiness monitors and their individual expected reporting values are specific to each vehicle’s  
28 make, and model as identified by the POLKID Detail.

b. **Incorrect vehicle communication protocol** – The OBD II communication protocol describes the SAE specified communication “language” used by the OBD II computer to communicate to scan tools and other devices such as the Bureau’s OBD Inspection System (OIS). The communication protocol is programmed into the vehicle’s OBD II computer during manufacture and does not change.

c. **Incorrect PID count** – The Parameter Identifications (PIDs) are data points reported by the OBD II computer to the scan tool or the Bureau’s OIS. Examples of PIDs are engine speed (rpm), vehicle speed, engine temperature, and other input and output values utilized by the OBD II computer. The PID Count is the number of data points reported by the OBD II computer and is programmed during manufacture.

32. The Bureau’s review and comparison of OIS Test Data identified fifteen (15) vehicles that were certified by Respondents Manny Smog and Pulido with incorrect monitor reporting, incorrect vehicle communication protocol, and incorrect PID counts so egregious as to constitute fraud and “Clean Plugging” as summarized below:

Test # Date	Vehicle Tested and Certified	Reported Heated Catalyst Monitor	Expected Heated Catalyst Monitor	Reported Protocol	Expected Protocol	Reported PID Count	Expected PID Count
1. 3/19/15	2005 Subaru Impreza 6TUX769	supported	<i>Non supported</i>	I9140808	<i>KWPF</i>	3	19
2. 4/10/15	2004 GMC Yukon 5FKC289	supported	<i>Non supported</i>	I9140808	<i>JVPW</i>	3	22
3. 4/14/15	2005 Dodge Dakota 98447L1	supported	<i>Non supported</i>	I9140808	<i>ICAN-11bt5</i>	3	39/8
4. 4/16/15	2000 Ford Expedition 5MUS320	supported	<i>Non supported</i>	I9140808	<i>JPWM</i>	3	20
5. 4/20/15	2005 Dodge Magnum 6RHR416	supported	<i>Non supported</i>	I9140808	<i>ICAN-11bt5</i>	3	43/6

1	6.	2003 Chevrolet Corvette 7HUP655	supported	<i>Non supported</i>	I9140808	<i>JVPW</i>	3	22
2	4/29/15							
3	7.	2001 Mercedes SLK320 6RKK883	supported	<i>Non supported</i>	I9140808	<i>KWPF</i>	3	22
4	5/1/15							
5	8.	2009 Honda Civic SI 6JYN073	supported	<i>Non supported</i>	I9140808	<i>ICAN- 29bt5</i>	3	37
6	5/4/15							
7	9.	2005 Cadillac SRX 6DNZ328	supported	<i>Non supported</i>	I9140808	<i>ICAN- 11bt5</i>	3	43/7
8	5/5/15							
9	10.	2001 Honda Passport 6LDP738	supported	<i>Non supported</i>	I9140808	<i>JVPW</i>	3	21
10	5/6/15							
11	11.	2003 Ford F150 7C89455	supported	<i>Non supported</i>	I9140808	<i>JPWM</i>	3	20
12	5/7/15							
13	12.	2006 Chrysler PT Cruiser (VIN # 3A4FY58 B46T3364 86)	supported	<i>Non supported</i>	I9140808	<i>ICAN- 11bt5</i>	3	32/8
14	5/12/15							
15	13.	2005 Subaru Impreza 5MXR541	supported	<i>Non supported</i>	I9140808	<i>KWPF</i>	2	19
16	5/15/15							
17	14.	2007 Honda Civic SI 6HAE002	supported	<i>Non supported</i>	I9140808	<i>ICAN- 29bt5</i>	2	37
18	5/21/15							
19	15.	2004 Dodge RAM (VIN# 1D7HA18 NX4S678 499)	supported	<i>Non supported</i>	I9140808	<i>JVPW</i>	2	23/3
20	5/28/15							
21								
22								
23								
24								

25 33. A comprehensive OIS Test Data collection was done by a Bureau representative  
26 for comparison of the OBD II characteristic(s) reported above by Respondents Manny Smog and  
27 ///

1 Pulido consistent with all similar vehicles in the Bureau's OIS. The vehicles were compared by  
 2 their respective year, make, and model and associated test number to which they correspond.  
 3 Review of comparative OIS Test Data records revealed the following discrepancies with  
 4 Respondents' reported findings with the overall test data:

5 Test # 6 Above	7 Vehicle 8 Allegedly Tested 9 and Certified by 10 Respondents	11 No. of Similar 12 Vehicles in OIS 13 Test Data	14 Percentage of Similar Vehicles 15 Showing <i>Expected</i> Results/Values 16 Above (i.e., different from those 17 reported by Respondents)
18 1.	19 2005 Subaru 20 Impreza WRX 21 STI	22 900	23 92.11%
24 2.	25 2004 GMC 26 Yukon	27 2,027	28 99.21%
29 3.	30 2005 Dodge 31 Dakota Quad Cab 32 SLT	33 1,106	34 98.46%
35 4.	36 2000 Ford 37 Expedition XLT	38 3,313	39 96.98%
40 5.	41 2005 Dodge 42 Magnum SXT	43 59	44 98.31%
45 6.	46 2003 Chevrolet 47 Corvette Z06	48 816	49 98.90%
50 7.	51 2001 Mercedes 52 SLK320	53 1,641	54 98.66%
55 8.	56 2009 Honda Civic 57 SI	58 1,291	59 96.59%
60 9.	61 2005 Cadillac 62 SRX	63 436	64 98.17%
65 10.	66 2001 Honda 67 Passport EX/LX	68 1,116	69 97.94%
70 11.	71 2003 Ford F150	72 1,012	73 94.76%
74 12.	75 2006 Chrysler PT 76 Cruiser Touring 77 Edition	78 3,480	79 97.33%
80 13.	81 2005 Subaru 82 Impreza WRX 83 STI	84 900	85 92.11%

14.	2007 Honda Civic SI	2,348	96.76%
15.	2004 Dodge RAM 1500 Quad ST/SLT	3,886	96.32%

34. The gross irregularities in the OIS test data transmitted from Respondent Manny Smog for the fifteen vehicles reported tested and certified by Respondent Pulido demonstrate the certifications were fraudulent. The Certificates of Compliance for each vehicle were purchased through and delivered through the OIS at Respondent Manny Smog using an Automated Clearing House payment method and delivered between March 19 and May 28, 2015, and, as such, were under the exclusive control of Manny Smog Check Test Only for issuance by its OIS.

**FIRST CAUSE FOR DISCIPLINE**

**(Misleading Statements)**

35. Respondent Manny Smog has subjected its Registration to discipline pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that between March 19 and May 28, 2015, it made statements which it knew or which by exercise of reasonable care should have known were untrue or misleading when it issued electronic certificates of compliance for certain vehicles, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had not been inspected. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 30 through 34, as though set forth fully herein.

**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

36. Respondent Manny Smog has subjected its Registration to discipline pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that between March 19 and May 28, 2015, it committed acts which constitute fraud by issuing electronic certificates of compliance for certain vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference

1 incorporates, the allegations set forth above in paragraphs 30 through 34, as though set forth fully  
2 herein.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 37. Respondent Manny Smog has subjected its Registration to discipline pursuant to Bus.  
6 & Prof. Code section 9884.7, subdivision (a)(6), in that between March 19 and May 28, 2015, it  
7 failed in a “material respect to comply with the provisions of this chapter or regulations adopted  
8 pursuant to it” when it issued electronic certificates of compliance for certain vehicles without  
9 performing bona fide inspections of the emission control devices and systems on those vehicles,  
10 thereby depriving the People of the State of California of the protection afforded by the Motor  
11 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the  
12 allegations set forth above in paragraphs 30 through 34, as though set forth fully herein.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(False and/or Misleading Statements)**

15 38. Respondent Manny Smog has subjected its Registration to discipline pursuant to Bus.  
16 & Prof. Code section 17500, in that between March 19 and May 28, 2015, it disseminated untrue  
17 and/or misleading information into the state’s database that smog check inspections had been  
18 performed on vehicles when, in fact, they had not, and by issuing electronic smog certificates of  
19 compliance to those same vehicles which would not have passed a valid smog inspection.  
20 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
21 paragraphs 30 through 34 above, as though set forth fully herein.

22 **FIFTH CAUSE FOR DISCIPLINE**

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

24 39. Respondent Manny Smog has subjected its Station License to discipline under Health  
25 & Saf. Code section 44072.2, subdivision (a), in that between March 19 and May 28, 2015,  
26 Respondent violated the following sections of the Health & Saf. Code with respect to the  
27 inspection of certain vehicles:

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

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

6 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates  
7 of compliance by certifying that those vehicles had been inspected as required when, in fact, they  
8 had not.

9 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
10 paragraphs 30 through 34, as though set forth fully herein.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

13 40. Respondent Manny Smog has subjected its Station License to discipline under Health  
14 & Saf. Code section 44072.2, subdivision (c), in that between March 19 and May 28, 2015,  
15 Respondent violated the following sections of title 16 of the CCR with respect to the inspection of  
16 certain vehicles:

17 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
18 electronic certificates of compliance without performing bona fide inspections of the emission  
19 control devices and systems on those vehicles as required by Health & Saf. Code section 44012.

20 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
21 compliance even though those vehicles had not been inspected in accordance with section  
22 3340.42 of the Health & Saf. Code.

23 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
24 inspections on those vehicles in accordance with the Bureau's specifications.

25 d. **Section 3340.45:** Respondent failed to perform Smog Check inspections in  
26 accordance with requirements and procedures prescribed in the Bureau's Smog Check Manual.

27 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
28 paragraphs 30 through 34, as though set forth fully herein.

1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 41. Respondent Manny Smog has subjected its Station License to discipline under Health  
4 & Saf. Code section 44072.2, subdivision (d), in that between March 19 and May 28, 2015,  
5 Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by  
6 issuing electronic certificates of compliance for certain vehicles without performing bona fide  
7 inspections of the emission control devices and systems on those vehicles, thereby depriving the  
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
9 Program. Complainant refers to, and by this reference incorporates, the allegations set forth  
10 above in paragraphs 30 through 34, as though set forth fully herein.

11 **EIGHTH CAUSE FOR DISCIPLINE**

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

13 42. Respondent Pulido has subjected his Smog Check Inspector License to discipline  
14 under Health & Saf. Code section 44072.2, subdivision (a), in that between March 19 and May  
15 28, 2015, he violated the following sections of the Health & Saf. Code with respect to the  
16 inspection of certain vehicles:

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

19 b. **Section 44032:** Respondent failed to perform tests of the emission control devices  
20 and systems on those vehicles in accordance with section 44012 of the Health & Saf. Code, in  
21 that the vehicles had been clean plugged.

22 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates  
23 of compliance by certifying that those vehicles had been inspected as required when, in fact, they  
24 had not.

25 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
26 paragraphs 30 through 34, as though set forth fully herein.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 43. Respondent Pulido has subjected his Smog Check Inspector License to discipline  
4 under Health & Saf. Code section 44072.2, subdivision (c), in that between March 19 and May  
5 28, 2015, he violated the following sections of the CCR, title 16, with respect to the inspection of  
6 certain vehicles:

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

9 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS  
10 for the electronic certificates of compliance issued that did not correspond to the vehicles  
11 allegedly tested.

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

14 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
15 paragraphs 30 through 34, as though set forth fully herein.

16 **TENTH CAUSE FOR DISCIPLINE**

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

18 44. Respondent Pulido has subjected his Smog Check Inspector License to discipline  
19 under Health & Saf. Code section 44072.2, subdivision (d), in that between March 19 and May  
20 28, 2015, he committed acts involving dishonesty, fraud or deceit whereby another was injured by  
21 issuing electronic certificates of compliance for certain vehicles without performing bona fide  
22 inspections of the emission control devices and systems on those vehicles, thereby depriving the  
23 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
24 Program. Complainant refers to, and by this reference incorporates, the allegations set forth  
25 above in paragraphs 30 through 34, as though set forth fully herein.

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1 **DISCIPLINARY CONSIDERATIONS**

2 45. In determining the degree of discipline to be imposed, the Bureau alleges that on May  
3 14, 2015, Respondent Pulido was issued Administrative Citation and Order of Abatement No.  
4 M2015-520 for his actions in violation of Health. & Saf. Code section 44032, in that he  
5 unlawfully smog check inspected and certified a vehicle using the BAR-97 system when the OBD  
6 Inspection System (OIS) was required.

7 **OTHER MATTERS**

8 46. Pursuant Bus. & Prof. Code section 9884.7, subdivision (c), the Director of Consumer  
9 Affairs may suspend, revoke, or place on probation the registrations for all places of business  
10 operated in this state by Eustolia Vanessa Chalacan, owner, doing business as Manny Smog  
11 Check Test Only, upon a finding that she has, or is, engaged in a course of repeated and willful  
12 violations of the laws and regulations pertaining to an automotive repair dealer.

13 47. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License  
14 Number TC 260589, issued to Eustolia Vanessa Chalacan, owner, doing business as Manny  
15 Smog Check Test Only, is revoked or suspended, any additional license issued under this chapter  
16 in the name of said licensees may be likewise revoked or suspended by the director.

17 48. Pursuant to Health & Saf. Code section 44072.8, if Respondent Erick Pulido's Smog  
18 Check Inspector License No. EO 637048 is revoked or suspended, any additional license issued  
19 under this chapter in the name of said licensee may be likewise revoked or suspended by the  
20 Director.

21 **PRAYER**

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

24 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 260589,  
25 issued to Eustolia Vanessa Chalacan, owner, doing business as Manny Smog Check Test Only;

26 2. Revoking or suspending any other automotive repair dealer registration issued to  
27 Eustolia Vanessa Chalacan;

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1           3.    Revoking or suspending Smog Check Station License No. TC 260589, issued to  
2 Eustolia Vanessa Chalacan, owner, doing business as Manny Smog Check Test Only;

3           4.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
4 & Saf. Code in the name of Eustolia Vanessa Chalacan;


5           5.    Revoking or suspending Smog Check Inspector License No. EO 637048, issued to  
6 Erick Pulido;

7           6.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
8 & Saf. Code in the name of Erick Pulido;

9           7.    Ordering Respondents Manny Smog Check Test Only and Erick Pulido jointly and  
10 severally to pay the Bureau of Automotive Repair the reasonable costs of the investigation and  
11 enforcement of this case, pursuant to Bus. & Prof. Code section 125.3; and

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

13  
14 DATED: April 26, 2017

  
15 PATRICK DORAIS  
16 Chief  
17 Bureau of Automotive Repair  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

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