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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 **URBANO SALGADO MENDOZA,**  
**DBA XPRESS SMOG**  
13 **1202 E. Lincoln Avenue**  
**Anaheim, CA 92805**  
14 **Automotive Repair Dealer Registration**  
**No. ARD 252160**  
15 **Smog Check-Test Only Station License**  
**No. TC 252160**

16  
17 **URBANO SALGADO MENDOZA**  
**11572 Santa Cruz Street**  
18 **Stanton, CA 90680**  
**Smog Check Inspector License No. EO**  
19 **146684**  
**Smog Check Repair Technician License**  
20 **No. EI 146684**  
**(formerly Advanced Emission Specialist**  
21 **Technician License No. EA 146684)**

22 **ERNESTO DANIEL MENDOZA**  
**11572 Santa Cruz Street**  
23 **Stanton, CA 90680**  
**Smog Check Inspector License No. EO**  
24 **631350**  
**Smog Check Repair Technician License**  
25 **No. EI 631350**  
**(formerly Advanced Emission Specialist**  
26 **Technician License No. EA 631350)**

Case No. 79/16-59

ACCUSATION

(SMOG CHECK)

1 **JOSE MIGUEL NEGRETE**  
2 **11572 Santa Cruz Street**  
3 **Stanton, CA 90680**  
4 **Smog Check Inspector License No. EO**  
5 **637378**

Respondents.

Complainant alleges:

**PARTIES/LICENSE INFORMATION**

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

**Urbano Salgado Mendoza DBA Xpress Smog**

2. On or about October 16, 2007, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 252160 (Registration) to Urbano Salgado Mendoza, doing business as Xpress Smog (Xpress Smog). The Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2016, unless renewed.

3. On or about October 19, 2007, the Bureau of Automotive Repair issued Smog Check-Test Only Station License Number TC 252160 to Xpress Smog. The Smog Check-Test Only Station License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2016, unless renewed.

**Urbano Salgado Mendoza**

4. In 2003, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License Number EA 146684 to Urbano Salgado Mendoza (Respondent Urbano Mendoza). Respondent Urbano Mendoza's advanced emission specialist technician license expired on May 31, 2013. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent Urbano Mendoza's election, as Smog Check Inspector License Number EO 146684 and Smog Check Repair Technician License

1 Number EI 146684 (technician licenses), effective June 25, 2013. Respondent Urbano  
2 Mendoza's technician licenses will expire on May 31, 2017, unless renewed.<sup>1</sup>

3 **Ernesto Daniel Mendoza**

4 5. On September 22, 2009, the Bureau of Automotive Repair issued Advanced  
5 Emission Specialist Technician License Number EA 631350 to Ernesto Daniel Mendoza  
6 (Respondent Ernesto Mendoza). Respondent Ernesto Mendoza's advanced emission specialist  
7 technician license expired on September 30, 2013. Pursuant to California Code of Regulations,  
8 title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent  
9 Ernesto Mendoza's election, as Smog Check Inspector License Number EO 631350 and Smog  
10 Check Repair Technician License Number EI 631350 (technician licenses), effective October 9,  
11 2013. Respondent Ernesto Mendoza's technician licenses will expire on September 30, 2017,  
12 unless renewed.

13 **Jose Miguel Negrete**

14 6. On or about October 6, 2014, the Bureau of Automotive Repair issued Smog Check  
15 Inspector License Number EO 637378 to Jose Miguel Negrete (Respondent Negrete). The Smog  
16 Check Inspector License was in full force and effect at all times relevant to the charges brought  
17 herein and will expire on January 31, 2017, unless renewed.

18 **JURISDICTION**

19 7. This Accusation is brought before the Director of the Department of Consumer  
20 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

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

23 9. 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

26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,  
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced  
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
Check Inspector (EO) license and 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 10. Bus. & Prof. Code section 9889.1 provides, in pertinent part, that the Director may  
4 suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of  
5 the Automotive Repair Act.

6 11. Bus. & Prof. Code section 9889.7 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 or a court of  
8 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to  
9 proceed with any disciplinary proceedings.

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

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

17 **STATUTORY PROVISIONS**

18 14. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

25 (2) Causing or allowing a customer to sign any work order which does  
26 not state the repairs requested by the customer or the automobile's odometer reading  
27 at the time of repair.

27 . . . .

28 (4) Any other conduct that constitutes fraud.

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

....

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

15. Bus. & Prof. Code section 9889.3 states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

(a) Violates any section of the Business and Professions Code which relates to his or her licensed activities.

....

(c) Violates any of the regulations promulgated by the director pursuant to this chapter.

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

....

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

16. Bus. & Prof. Code section 9889.9 states that “[w]hen any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.”

17. Health & Safety Code section 44012 states, in pertinent part:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode

1 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles  
2 only, beginning no earlier than January 1, 2013. However, the department, in  
3 consultation with the state board, may prescribe alternative test procedures that  
4 include loaded mode dynamometer or two-speed idle testing for vehicles with  
onboard diagnostic systems that the department and the state board determine  
exhibit operational problems. The department shall ensure, as appropriate to the  
test method, the following:

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

7 ....

8 (f) A visual or functional check is made of emission control devices specified by  
9 the department, including the catalytic converter in those instances in which the  
10 department determines it to be necessary to meet the findings of Section 44001.  
The visual or functional check shall be performed in accordance with procedures  
prescribed by the department.

11 18. Health & Safety Code section 44015, subsection (b), states that “[i]f a vehicle meets  
12 the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a  
13 certificate of compliance or a certificate of noncompliance.”

### 14 REGULATIONS

15 19. California Code of Regulations section 3340.35, subsection (c), states that “[a]  
16 licensed station shall issue a certificate of compliance or noncompliance to the owner or operator  
17 of any vehicle that has been inspected in accordance with the procedures specified in section  
18 3340.42 of this article and has all the required emission control equipment and devices installed  
19 and functioning correctly.”

20 20. California Code of Regulations section 3340.42, states, in pertinent part, that Smog  
21 check inspection methods shall be performed as prescribed in the Smog Check Manual,  
22 referenced by section 3340.45.

23 21. California Code of Regulations section 3340.30, subsection (a), states:

24 A licensed smog check inspector and/or repair technician shall comply with the  
25 following requirements at all times while licensed:

26 (a) Inspect, test and repair vehicles, as applicable, in accordance with section  
27 44012 of the Health and Safety Code, section 44035 of the Health and Safety  
28 Code, and section 3340.42 of this article.

1 .....  
2 22. California Code of Regulations section 3340.41, subsection (b), states:

3 .....  
4 (b) No person shall enter into the emissions inspection system any access or  
5 qualification number other than as authorized by the bureau, nor in any way  
6 tamper with the emissions inspection system.

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

12 .....  
13 23. California Code of Regulations section 3340.45 states:

14 (a) All Smog Check inspections shall be performed in accordance with  
15 requirements and procedures prescribed in the following:

16 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is  
17 hereby incorporated by reference. This manual shall be in effect until  
18 subparagraph (2) is implemented.

19 (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference.  
20 This manual shall become effective on or after January 1, 2013.

21 **COST RECOVERY**

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

28 **UNDERCOVER OPERATION: 2008 FORD PICKUP**

29 25. On October 28, 2014, at 9:49 a.m., a Bureau undercover operator drove a Bureau-  
30 documented 2008 Ford pickup truck to Xpress Smog and requested a smog inspection. The  
31 following introduced malfunctions were placed on the vehicle: the diesel particulate filter and  
32 Periodic Trap Oxidizer (DPF/PTOX) on the Bureau documented vehicle was removed and a  
33 DPF/PTOX delete pipe was installed in its place. A vehicle in this condition will fail a properly  
34 performed smog check vehicle inspection.



1 untrue or misleading as follows: Respondent Xpress Smog's employee certified that the Bureau's  
2 documented 2008 Ford pickup truck was properly inspected and passed its smog inspection, when  
3 in fact and in truth, Respondent Xpress Smog knew this vehicle was not properly inspected.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Dishonesty, Fraud, Deceit)**

6 31. Complainant re-alleges and incorporates by reference the allegations set forth above  
7 in paragraphs 25 through 28.

8 32. Respondent Xpress Smog's Registration is subject to disciplinary action under Code  
9 section 9884.7, subdivision (a)(4), and Respondent Xpress Smog's Station License is subject to  
10 disciplinary action under Health and Safety Code section 44072.10, subdivision (c), in that  
11 Respondent Xpress Smog committed dishonest, fraudulent, or deceitful acts whereby another is  
12 injured by issuing a smog inspection certificate for the vehicle described in paragraphs 25 through  
13 28 without performing bona fide inspections of the emission control devices and systems on  
14 them, thereby depriving the People of the State of California of the protection afforded by the  
15 Motor Vehicle Inspection Program.

16 **THIRD CAUSE FOR DISCIPLINE**

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

18 33. Complainant re-alleges and incorporates by reference the allegations set forth above  
19 in paragraphs 25 through 28.

20 34. Respondent Xpress Smog's Registration is subject to disciplinary action under Code  
21 section 9884.7, subdivision (a)(4), and Respondent Xpress Smog's Station License is subject to  
22 disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that  
23 Respondent Xpress Smog committed dishonest, fraudulent, or deceitful acts whereby another is  
24 injured by issuing a smog inspection certificate for the vehicle described in paragraphs 25 through  
25 28 without performing bona fide inspections of the emission control devices and systems on  
26 them, thereby depriving the People of the State of California of the protection afforded by the  
27 Motor Vehicle Inspection Program.

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 35. Complainant re-alleges and incorporates by reference the allegations set forth above  
4 in paragraphs 25 through 28.

5 36. Respondent Xpress Smog's Station License is subject to disciplinary action under  
6 Health & Safety Code sections 44072.10, subdivision (c), and 44072.2, subdivision (a), in that  
7 Respondent Xpress Smog failed to comply with the following sections of the Health & Safety  
8 Code:

9 a. **Section 44012:** Respondent Xpress Smog failed to perform a smog check  
10 inspection in accordance with the procedures prescribed by the department, pursuant to 44013 of  
11 the Health & Safety Code.

12 b. **Section 44012, subdivision (f):** Respondent Xpress Smog failed to perform a  
13 visual or functional test in accordance with the procedures prescribed by the department, pursuant  
14 to Section 44013 of the Health & Safety Code.

15 c. **Section 44015, subsection (b):** Respondent Xpress Smog issued a Certificate  
16 of Compliance without inspecting the Bureau's documented 2008 Ford pickup truck in  
17 accordance with Section 44012 of the Health & Safety Code.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Violation of Regulations)**

20 37. Complainant re-alleges and incorporates by reference the allegations set forth above  
21 in paragraphs 25 through 28.

22 38. Respondent Xpress Smog's registration is subject to disciplinary action under Code  
23 section 9884.7, subdivision (a)(6), in that Xpress Smog violated the following regulations  
24 promulgated by the Director:

25 a. **Code of Regulations, title 16, section 3340.42:** Respondent Xpress Smog  
26 failed to conduct the required smog tests and inspections on the vehicle in accordance with the  
27 Bureau's specifications.  
28



1 c. **Section 44032:** Respondent Ernesto Mendoza failed to conduct tests in  
2 accordance with Section 44012 of the Health & Safety Code.

3  
4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Violation of Regulations)**

6 43. Complainant re-alleges and incorporates by reference the allegations set forth above  
7 in paragraphs 25 through 28.

8 44. Respondent Ernesto Mendoza's Smog Check Inspector license is subject to  
9 disciplinary action under Health and Safety Code sections 44072.10, subdivision (c), and  
10 44072.2, subdivision (d), in that Ernesto Mendoza violated the following regulations promulgated  
11 by the Director:

12 a. **Code of Regulations, title 16, section 3340.30, subsection (a):** Respondent  
13 Ernesto Mendoza failed to inspect, test, and repair vehicles in accordance with Health & Safety  
14 Code Section 44012.

15 b. **Code of Regulations, title 16, section 3340.1, subsection (b):** Respondent  
16 Ernesto Mendoza permitted an unauthorized individual to access and enter a qualification number  
17 into the EIS.

18 c. **Code of Regulations, title 16, section 3340.1, subsection (c):** Respondent  
19 Ernesto Mendoza entered vehicle information or emission control system identification data for a  
20 vehicle other than the one being tested into the EIS.

21 d. **Code of Regulations, title 16, section 3340.45:** Respondent Ernesto Mendoza  
22 failed to perform an inspection in accordance with the requirements and procedures prescribed in  
23 the Smog Check Inspection Procedures Manual dated 2013, which became effective on January 1,  
24 2013.

25 **NINTH CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 45. Complainant re-alleges and incorporates by reference the allegations set forth above  
28 in paragraphs 25 through 28.





1 Inspections. Respondent Negrete was later interviewed and stated that Respondent Ernesto  
2 Mendoza provided him Respondent Ernesto Mendoza's secure EIS access code so that  
3 Respondent Negrete could perform Smog Check inspections for Respondent Ernesto Mendoza.  
4 Respondent Negrete then provided the Bureau Representatives with three Vehicle Inspection  
5 Reports that he had signed using Respondent Ernesto Mendoza's name.

6 54. On November 4, 2014, Respondent Ernesto Mendoza visited BAR's Irvine Field  
7 Office. Respondent Ernesto Mendoza acknowledged providing his secure EIS access code to  
8 Respondent Negrete and that Respondent Negrete had performed at least 15 Smog Check  
9 inspections using Respondent Ernesto Mendoza's EIS access code. Respondent Ernesto Mendoza  
10 further admitted that Respondent Negrete had issued electronic Smog Check certificates despite  
11 the fact that Respondent Negrete was not authorized to do so.

12 55. On November 4, 2014, Respondent Negrete visited BAR's Irvine Field Office.  
13 Respondent Negrete admitted he had performed at least 15 Smog Check inspections using  
14 Respondent Ernesto Mendoza's EIS access code. Respondent Negrete further admitted that he  
15 had issued electronic Smog Check certificates despite the fact that he was not authorized to do so.

16 **THIRTEENTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Code)**

18 56. Complainant re-alleges and incorporates by reference the allegations set forth above  
19 in paragraphs 53 through 55.

20 57. Respondent Ernesto Mendoza's Smog Check Inspector license and Smog Check  
21 Repair Technician license are subject to disciplinary action under Health and Safety Code  
22 sections 44072.10, subdivision (c), and 44072.2, subdivision (d), in that Respondent Ernesto  
23 Mendoza failed to comply with the following sections of the Code:

24 a. **Section 44012:** Respondent Ernesto Mendoza failed to perform smog check  
25 inspections in accordance with the procedures prescribed by the department, pursuant to 44013 of  
26 the Health & Safety Code.









1 Urbano Mendoza, dba Xpress Smog, upon a finding that Respondent Xpress Smog has, or is,  
2 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an  
3 automotive repair dealer.

4 75. Pursuant to Health & Saf. Code section 44072.8, if Smog Check-Test Only Station  
5 License No. TC 252160, issued to Respondent Urbano Mendoza, dba Xpress Smog, is revoked or  
6 suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name  
7 of said licensee may be likewise revoked or suspended by the Director.

8 76. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Repair Technician  
9 License Number EI 146684 (formerly Advanced Emission Specialist Technician License No. EA  
10 146684), issued to Respondent Urbano Mendoza, is revoked or suspended, any additional license  
11 issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise  
12 revoked or suspended by the Director.

13 77. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
14 Number EO 146684, issued to Respondent Urbano Mendoza, is revoked or suspended, any  
15 additional license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee  
16 may be likewise revoked or suspended by the Director.

17 78. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Repair Technician  
18 License Number EI 631350 (formerly Advanced Emission Specialist Technician License No. EA  
19 631350), issued to Respondent Ernesto Mendoza, is revoked or suspended, any additional license  
20 issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise  
21 revoked or suspended by the Director.

22 79. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
23 Number EO 631350 (formerly Advanced Emission Specialist Technician License No. EA  
24 631350), issued to Respondent Ernesto Mendoza, is revoked or suspended, any additional license  
25 issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise  
26 revoked or suspended by the Director.

27 80. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
28 Number EO 637378, issued to Respondent Negrete, is revoked or suspended, any additional

1 license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be  
2 likewise revoked or suspended by the Director.

3 PRAYER

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

- 6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
7 252160, issued to Urbano Salgado Mendoza, dba Xpress Smog;
- 8 2. Revoking or suspending Smog Check-Test Only Station License Number TC 252160,  
9 issued to Urbano Salgado Mendoza, dba Xpress Smog;
- 10 3. Revoking or suspending Smog Check Inspector License No. EO 631350 and Smog  
11 Check Repair Technician License No. EI 631350, issued to Ernesto Daniel Mendoza;
- 12 10. Revoking or suspending any additional license issued under Articles 5 and 6 of  
13 Chapter 20.3 of the Business and Professions Code in the name of Ernesto Daniel Mendoza;
- 14 4. Revoking or suspending Smog Check Inspector License No. EO 637378 issued to  
15 Jose Miguel Negrete;
- 16 10. Revoking or suspending any additional license issued under Articles 5 and 6 of  
17 Chapter 20.3 of the Business and Professions Code in the name of Jose Miguel Negrete;
- 18 5. Ordering Xpress Smog, Urbano Salgado Mendoza, Ernesto Daniel Mendoza, and  
19 Jose Miguel Negrete to pay the Bureau of Automotive Repair the reasonable costs of the  
20 investigation and enforcement of this case, pursuant to Business and Professions Code section  
21 125.3;
- 22 6. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: February 5, 2016



25 PATRICK DORAIS  
26 Chief  
27 Bureau of Automotive Repair  
28 Department of Consumer Affairs  
State of California  
*Complainant*

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