

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

In the Matter of the Accusation Against:

Case No.: 79/15-6206

ARMANDO G. REAL, Owner.
dba JR SMOG N TUNE
565 Scaroni Rd.
Calexico, CA 92231

OAH No.: 2018100783

Automotive Repair Dealer Registration No.:
ARD 227126
Smog Check Station License No.: RC 227126
Lamp Station License No.: Class A, LS
227126
Brake Station License No.: Class C, BS
227126

and

ARMANDO G. REAL
1213 Jasmine St.
Calexico, CA 92231

Mailing Address:
1436 Van Buren Ave
Calexico, CA 92231

Smog Check Inspector License No.: EO
146027
Brake Adjuster Class C License No.: BA
146027

and

JAIME M. GOMEZ
2209 Nixon Ave.,
Calexico, CA 92231

Smog Check Inspector License No.: EO
637411


Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order AS TO RESPONDENT JAIME M. GOMEZ ONLY is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on August 2, 2019.

DATED: June 27, 2019



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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Supervising Deputy Attorney General
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10 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **ARMANDO G. REAL, OWNER,**
DOING BUSINESS AS JR SMOG N TUNE
14 **563 Searoul Rd.**
Calexico, CA 92231
15 **Automotive Repair Dealer Registration No. ARD 227126**
Smog Check Station License No. RC 227126
16 **Lamp Station License No. Class A LS 227126**
Brake Station License No. Class C BS 227126

17 **ARMANDO G. REAL**
18 **Address of Record:**
1213 Jasmine St.
19 **Calexico, CA 92231**
Smog Check Inspector License No. EO 146027
20 **Brake Adjuster Class C License No. BA 146027**
Mailing Address:
21 **1436 Van Buren Ave.,**
Calexico, CA 92231

22 and

23 **JAIME M. GOMEZ**
24 **2209 Nixon Ave.,**
Calexico, CA 92231
25 **Smog Check Inspector License No. EO 637411**

26 Respondents.
27
28

Case No. 79/15-6206

OAH No. 2018100783

STIPULATED
SETTLEMENT AND
DISCIPLINARY ORDER
AS TO RESPONDENT
JAIME M. GOMEZ, ONLY

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
5 (Bureau). He brought this action solely in his official capacity and is represented in this matter by
6 Xavier Becerra, Attorney General of the State of California, by Erin M. Sunseri, Deputy Attorney
7 General.

8 2. Respondent Jaime M. Gomez (Respondent Gomez) is representing himself in this
9 proceeding and has chosen not to exercise his right to be represented by counsel.

10 3. On or about October 15, 2014, the Bureau issued Smog Check Inspector License
11 Number EO 637411 to Respondent Gomez. The license was in full force and effect at all times
12 relevant to the charges brought herein and will expire on August 31, 2020, unless renewed.

13 **JURISDICTION**

14 4. Accusation No. 79/15-6206 was filed before the Director, and is currently pending
15 against Respondent Gomez. The Accusation and all other statutorily required documents were
16 properly served on Respondent on October 16, 2017. Respondent timely filed his Notice of
17 Defense contesting the Accusation.

18 5. A copy of Accusation No. 79/15-6206 is attached as Exhibit A and incorporated
19 herein by reference.

20 **ADVISEMENT AND WAIVERS**

21 6. Respondent Gomez has carefully read, and understands the charges and allegations in
22 Accusation No. 79/15-6206. Respondent Gomez has also carefully read, and understands the
23 effects of this Stipulated Settlement and Disciplinary Order.

24 7. Respondent Gomez is fully aware of his legal rights in this matter, including the right
25 to a hearing on the charges and allegations in the Accusation; the right to be represented by
26 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
27 the right to present evidence and to testify on his own behalf; the right to the issuance of
28 subpoenas to compel the attendance of witnesses and the production of documents; the right to

1 reconsideration and court review of an adverse decision; and all other rights accorded by the
2 California Administrative Procedure Act and other applicable laws.

3 8. Respondent Gomez voluntarily, knowingly, and intelligently waives and gives up
4 each and every right set forth above.

5 CULPABILITY

6 9. Respondent Gomez admits the truth of each and every charge and allegation in
7 Accusation No. 79/15-6206.

8 10. Respondent Gomez agrees that his Smog Check Inspector license is subject to
9 discipline and he agrees to be bound by the Director's probationary terms as set forth in the
10 Disciplinary Order below.

11 RESERVATION

12 11. The admissions made by Respondent Gomez herein are only for the purposes of this
13 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
14 Automotive Repair, or other professional licensing agency is involved, and shall not be
15 admissible in any other criminal or civil proceeding.

16 CONTINGENCY

17 12. This stipulation shall be subject to approval by the Director of Consumer Affairs or
18 the Director's designee. Respondent Gomez understands and agrees that counsel for Complainant
19 and the staff of the Bureau of Automotive Repair may communicate directly with the Director
20 and staff of the Department of Consumer Affairs regarding this stipulation and settlement,
21 without notice to or participation by Respondent Gomez. By signing the stipulation, Respondent
22 Gomez understands and agrees that he may not withdraw his agreement or seek to rescind the
23 stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt
24 this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall
25 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
26 between the parties, and the Director shall not be disqualified from further action by having
27 considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Smog Check Inspector Number EO 637411 issued to Respondent Jaime M. Gomez, is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by Respondent.

2. **Quarterly Reporting.** During the period of probation, Respondent shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. **Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Respondent shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California. All provisions of probation other than cost reimbursement requirements, restitution requirements, training

requirements, and that Respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which Respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

4. **Violation of Probation.** If Respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

5. **Maintain Valid License.** Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with BAR, including any period during which suspension or probation is tolled. If Respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by Respondent within 30 days of that date. If Respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal Respondent's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

6. **Cost Recovery.** Respondent shall pay the Bureau of Automotive Repair \$4,249.92 for the reasonable costs of the investigation and enforcement of case No. 79/15-6206. Respondent shall make such payment as follows: 48 equal monthly payments of \$88.54. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost

1 recovery payment for case No. 79/15-6206. Any order for payment of cost recovery shall remain
2 in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery
3 payment has been made. BAR reserves the right to pursue any other lawful measures in collecting
4 on the costs ordered and past due, in addition to taking action based upon the violation of
5 probation.

6 **7. Completion of Probation.** Upon successful completion of probation, Respondent's
7 affected registration and/or license will be fully restored or issued without restriction, if
8 Respondent meets all current requirements for registration or licensure and has paid all
9 outstanding fees, monetary penalties, or cost recovery owed to BAR.

10 **8. License Surrender.** Following the effective date of a decision that orders a stay of
11 invalidation or revocation, if Respondent ceases business operations or is otherwise unable to
12 satisfy the terms and conditions of probation, Respondent may request that the stay be vacated.
13 Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right
14 to evaluate the Respondent's request and to exercise discretion whether to grant the request or
15 take any other action deemed appropriate or reasonable under the circumstances. Upon formal
16 granting of the request, the Director will vacate the stay order and carry out the disciplinary order
17 provided in the decision. Respondent may not petition the Director for reinstatement of the
18 surrendered registration and/or license, or apply for a new registration or license under the
19 jurisdiction of BAR at any time before the date of the originally scheduled completion of
20 probation. If Respondent applies to BAR for a registration or license at any time after that date,
21 Respondent must meet all current requirements for registration or licensure and pay all
22 outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

23 **9. Training Course.** During the period of probation, Respondent shall attend and
24 successfully complete 68 hours of BAR-specified and -approved training course(s) in inspection,
25 diagnosis and/or repair of emission systems failures and engine performance, applicable to the
26 class of license held by the Respondent. Respondent shall provide to the Bureau proof of
27 enrollment in the course(s) within 30 days of the effective date of the decision, and proof of
28 successful course completion within 180 days of the effective date of the decision. Failure to

1 provide proof of enrollment and/or successful course completion to the Bureau within the
2 timeframes specified shall constitute a violation of probation, and Respondent shall be prohibited
3 from issuing any certificate of compliance or noncompliance until such proof is received.

4 10. **Notification to Employer.** When performing services that fall within the scope of his
5 license, Respondent shall provide each of his current or future employers a copy of the decision
6 and the underlying Accusation before commencing employment. Notification to Respondent's
7 current employer shall occur no later than the effective date of the decision. Respondent shall
8 submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

9 11. **Cooperation with BAR Employees or Designees.** Respondent shall fully cooperate
10 with BAR employees or designees in its investigation and/or enforcement of the allegations set
11 forth in Accusation No. 79/15-6206, and the defenses to said allegations as set forth by
12 Respondent throughout the course of this matter. Any failure to cooperate fully with BAR
13 employees or designees shall constitute a violation of probation.

14 12. **Confidentiality.** Other than as necessary in the preparation or presentation of his
15 defense to any criminal proceeding, Respondent shall not discuss or disclose the defenses he has
16 alleged in response to the allegations in Accusation No. 79/15-6206, including but not limited to,
17 any method of creating, purchasing, switching, or replacing the VIN label on any vehicle. This
18 term does not apply to Respondent's attorney(s), witness(es) in any criminal proceeding, or any
19 prosecuting attorney, or as otherwise prohibited by law.

20 **ACCEPTANCE**

21 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
22 stipulation and the effect it will have on my Smog Check Inspector License. I enter into this
23 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
24 to be bound by the Decision and Order of the Director of Consumer Affairs.

25
26 DATED: 03/19/19

27 JAIME M. GOMEZ
28 Respondent

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Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

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15 Calexico, CA 92231
Automotive Repair Dealer Registration No. ARD 227126
16 Smog Check Station License No. RC 227126
Lamp Station License No. Class A LS 227126
17 Brake Station License No. Class C BS 227126

ACCUSATION

18 **ARMANDO G. REAL**
Address of Record:
19 1213 Jasmine St.
Calexico, CA 92231
Smog Check Inspector License No. EO 146027
20 Brake Adjuster Class C License No. BA 146027

21 and

22 **JAIME M. GOMEZ**
2209 Nixon Ave.,
23 Calexico, CA 92231

24 Smog Check Inspector License No. EO 637411

25 Respondents.

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1 Complainant alleges:

2 PARTIES

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

5 2. On or about June 24, 2003, the Bureau of Automotive Repair (Bureau) issued
6 Automotive Repair Dealer Registration No. ARD 227126 to Respondent Armando G. Real,
7 Owner, doing business as JR Smog N Tune (collectively JR Smog N Tune). The registration was
8 in full force and effect at all times relevant to the charges brought herein and will expire on April
9 30, 2018, unless renewed.

10 3. On or about July 28, 2003, the Bureau issued Smog Check Station License No. RC
11 227126 to JR Smog N Tune. The license was in full force and effect at all times relevant to the
12 charges brought herein and will expire on April 30, 2018, unless renewed.

13 4. On or about October 12, 2005, the Bureau issued Lamp Station License No. LS
14 227126 to JR Smog N Tune. The license was in full force and effect at all times relevant to the
15 charges brought herein and will expire on April 30, 2018, unless renewed.

16 5. On or about October 12, 2005, the Bureau issued Brake Station License No. BS
17 227126 to JR Smog N Tune. The license was in full force and effect at all times relevant to the
18 charges brought herein and will expire on April 30, 2018, unless renewed.

19 6. In 2002, the Bureau issued Smog Check Inspector License No. EO 146027 to
20 Armando G. Real (Respondent Real). The license was in full force and effect at all times relevant
21 to the charges brought herein, expired on June 30, 2016, and has not been renewed.

22 7. On or about July 3, 2015, the Bureau issued Brake Adjuster License No. BA 146027
23 to Respondent Real. The license was in full force and effect at all times relevant to the charges
24 brought herein and will expire on June 30, 2019, unless renewed.

25 8. On or about October 15, 2014, the Bureau issued Smog Check Inspector Number EO
26 637411 to Jaime M. Gomez (Respondent Gomez). The license was in full force and effect at all
27 times relevant to the charges brought herein and will expire on August 31, 2018, unless renewed.

28 ///

JURISDICTION

9. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All references are to the Business and Professions Code unless otherwise stated.

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

11. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

12. Section 9884.20 of the Code states:

All accusations against automotive repair dealers shall be filed within three years after the performance of the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the accusation may be filed within two years after the discovery, by the bureau, of the alleged facts constituting the fraud or misrepresentation.

13. Section 9884.22 of the Code states:

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

....

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

1 15. Section 44072.4 of the Health and Safety Code states:

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

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

5 (b) Suspending the license.

6 (c) Revoking the license.

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

11 17. Section 44072.7 of the Health and Safety Code states:

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

17 18. Section 44072.8 of the Health and Safety Code states:

18 When a license has been revoked or suspended following a hearing under this article, any
19 additional license issued under this chapter in the name of the licensee may be likewise revoked
20 or suspended by the director.

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

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27 ///

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STATUTORY PROVISIONS

20. Section 22 of the Code states:

(a) 'Board' as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a 'bureau.'

21. Section 23.7 of the Code states:

Unless otherwise expressly provided, license means license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

22. Section 9884.7 of the Code states:

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

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

....

(4) Any other conduct that constitutes fraud.

....

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

1
2 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
3 probation the registration for all places of business operated in this state by an automotive repair
4 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
5 and willful violations of this chapter, or regulations adopted pursuant to it.

6 23. Section 44012 of the Health and Safety Code states:

7 The test at the smog check stations shall be performed in accordance with procedures
8 prescribed by the department and may require loaded mode dynamometer testing in enhanced
9 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other
10 appropriate test systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model
11 year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the
12 department, in consultation with the state board, may prescribe alternative test procedures that
13 included loaded mode dynamometer or two-speed idle testing for vehicles with onboard
14 diagnostic systems that the department and the state board determine exhibit operational
15 problems. The department shall ensure, as appropriate to the test method, the following:

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

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

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

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

1 (e) For diesel-powered vehicles, a visual inspection is made of emission control devices and
2 the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
3 department, that may include, but are not limited to, onboard diagnostic testing. The test may
4 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
5 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

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

12 (h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a
13 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
14 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
15 would have passed a tailpipe test.

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

20 24. Section 44015 of the Health and Safety Code states:

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

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

24 (2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of
25 Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision
26 (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error
27 can explain the irregularity, or whether the vehicle otherwise meets smog check requirements,
28

1 allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a
2 referee or another smog check station.

3 (3) A vehicle that, prior to repairs, has been initially identified by the smog check station as
4 a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-
5 only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections
6 44014 and 44014.2.

7 (4) A vehicle described in subdivision (c).

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

10 (c)(1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity
11 authorized to perform referee functions for a vehicle that has been properly tested but does not
12 meet the applicable emission standards when it is determined that no adjustment or repair can be
13 made that will reduce emissions from the inspected motor vehicle without exceeding the
14 applicable repair cost limit established under Section 44017 and that every defect specified by
15 paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision
16 (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph
17 shall be accepted in lieu of a certificate of compliance for the purposes of compliance with
18 Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No
19 repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the
20 applicable repair cost limit specified in Section 44017.

21 (2) An economic hardship extension shall be issued, upon request of a qualified low-income
22 motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle
23 that has been properly tested but does not meet the applicable emission standards when it is
24 determined that no adjustment or repair can be made that will reduce emissions from the
25 inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant
26 to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section
27 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that
28 the low-income vehicle owner would suffer an economic hardship if the extension is not issued,

1 and that all appropriate emissions-related repairs up to the amount of the applicable repair cost
2 limit in Section 44017.1 have been performed.

3 (d) No repair cost waiver or economic hardship extension shall be issued under any of the
4 following circumstances:

5 (1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the
6 previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension
7 may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that
8 owner. However, a repair cost waiver or economic hardship extension may be issued for a motor
9 vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as
10 determined by the department. For waivers or extensions issued in the program operative on or
11 after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per
12 owner.

13 (2) Upon initial registration of all of the following:

14 (A) A direct import motor vehicle.

15 (B) A motor vehicle previously registered outside this state.

16 (C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

17 (D) A motor vehicle that has had an engine change.

18 (E) An alternate fuel vehicle.

19 (F) A specially constructed vehicle.

20 (e) Except as provided in subdivision (f), a certificate of compliance or noncompliance shall
21 be valid for 90 days.

22 (f) Excluding any vehicle whose transfer of ownership and registration is described in
23 subdivision (d) of Section 4000.1 of the Vehicle Code, and except as otherwise provided in
24 Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle
25 dealer shall be responsible for having a smog check inspection performed on, and a certificate of
26 compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate
27 issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle
28 is sold and registered to a retail buyer, whichever occurs first.

1 (g) A test may be made at any time within 90 days prior to the date otherwise required.

2 25. Section 44035 of the Health and Safety Code states:

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

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

12 26. Section 44072.2 of the Health and Safety Code states:

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

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

19 ...

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

21

22 27. Section 44072.10 of the Health and Safety Code states:

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

1 (1) Fraud.

2 (2) Tampering.

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

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

7

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

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

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

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

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

17 REGULATORY PROVISIONS

18 28. California Code of Regulations, title 16, section 3340.35 states, in pertinent part:

19

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

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

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

27

28 ///

1 29. California Code of Regulations, title 16, section 3340.41 states, in pertinent part:

2

3 (c) No person shall enter into the emissions inspection system any vehicle identification
4 information or emission control system identification data for any vehicle other than the one
5 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
6 information about the vehicle being tested.

7

8 30. California Code of Regulations, title 16, section 3340.42 states:

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

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

13 (1) A loaded-mode test shall be the test method used to inspect 1976-1999 model-year
14 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-
15 mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen
16 emissions, as contained in the bureau's specifications referenced in subsection (a) of Section
17 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test
18 equipment, including a chassis dynamometer, certified by the bureau.

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

27 (2) A two-speed idle mode test shall be the test method used to inspect 1976-1999 model-
28 year vehicles, except diesel-powered, registered in all program areas of the state, except in those

1 areas of the state where the enhanced program has been implemented. The two-speed idle mode
2 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
3 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of
4 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall
5 be measured and compared to the emission standards set forth in this section and as shown in
6 TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less
7 than or equal to the applicable emissions standards specified in TABLE III.

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

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

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

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

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

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

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

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

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

28 ///

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

4 (2) Vehicles with emission levels exceeding the emission standards for gross polluters
5 during an initial inspection will be considered gross polluters and the provisions pertaining to
6 gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and
7 44081 of the Health and Safety Code.

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

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

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

15 In reaching a decision on a disciplinary action under the Administrative Procedure Act
16 (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of
17 Administrative Hearing, the Bureau of Automotive Repair shall consider the disciplinary
18 guidelines entitled 'Guidelines for Disciplinary Penalties and Terms of Probation' [May, 1997]
19 which are hereby incorporated by reference. The 'Guidelines for Disciplinary Penalties and
20 Terms of Probation' are advisory. Deviation from these guidelines and orders, including the
21 standard terms of probation, is appropriate where the Bureau of Automotive Repair in its sole
22 discretion determines that the facts of the particular case warrant such deviation -for example: the
23 presence of mitigating factors; the age of the case; evidentiary problems.

24 COSTS

25 32. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
26 administrative law judge to direct a licensee found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case, with failure of the licensee to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 CLEAN PLUGGING

4 33. At all times alleged in this Accusation, Respondent Real and Respondent Gomez
5 were acting in the course and within the scope of a technician, employee, partner, officer, or
6 member of JR Smog N Tune.

7 34. The OBD II communication protocol describes the specified communication
8 "language" used by the OBD II system electronic control unit to communicate to scan tools and
9 other devices such as the On-Board Diagnostic Inspection System (OIS). The communication
10 protocol is programmed into the OBD II system electronic control unit during manufacture and
11 does not change.

12 35. Parameter Identifications are data points reported by the OBD II system electronic
13 control unit to the scan tool or On-Board Diagnostic Inspection System. Examples of Parameter
14 Identifications are engine speed (rpm), vehicle speed, engine temperature, and other input and
15 output values utilized by the OBD II system electronic control unit. The Parameter Identifications
16 count is the number of data points reported by the OBD II system electronic control unit and is
17 programmed during manufacture.

18 36. The Vehicle Identification Number that is physically present on all vehicles is also
19 required to be programmed into the vehicle's On-Board Diagnostics -- Generation II (OBD II) on
20 2005 and newer vehicles, and on many occasions was programmed into the OBD II system
21 electronic control unit in earlier model-years. This electronically programmed Vehicle
22 Identification Number, also known as the "eVIN," is captured by BAR during a Smog Check, and
23 should match the physical Vehicle Identification Number on the vehicle.

24 37. During a Bureau representative's review of Respondents' certified test results in the
25 Vehicle Information Database for inspections purportedly performed on the OIS between June 19,
26 2015 to August 12, 2015, ten vehicles identified below had information stored in the Vehicle
27 Identification Database which did not apply to those vehicles. The Vehicle Information Database

28 ///

1 showed that Respondents inspected these vehicles using the method known as "clean plugging."¹
2 This resulted in the issuance of fraudulent certificates of compliance thusly:

3 a. Fraudulent Inspection No. 1

4 OIS Test Details indicate on June 19, 2015, between 0818 and 0821 hours, a 2005 Honda
5 Accord EX, VIN 1HGCM56725A181379, no license plate, passed an OIS inspection and
6 Certificate of Compliance #YT159627C was issued under the license of Smog Check Inspector
7 Respondent Gomez. The Test Detail shows eVIN 1HGCP264X9A003625 was stored in the
8 Powertrain Control Module (PCM) memory during this OIS inspection. This eVIN does not
9 match the VIN of the 2005 Honda Accord EX that Respondents certified.

10 OIS test data shows VIN 1HGCP264X9A003625 belongs to a 2009 Honda Accord LX-P
11 that was previously certified at JR Smog N Tune on June 17, 2015, between 0818 and 0821 hours
12 under Smog Check Inspector license EO 637411, issued to Respondent Gomez. Respondent
13 Gomez certified this 2009 Honda Accord LX-P two days before he illegally certified the 2005
14 Honda Accord EX.

15 The test detail of both vehicles not only shows they share the same eVIN that belongs to
16 the 2009 Honda Accord LX-P, but both vehicles had the same communication protocol of
17 "ICAN29bt500" and a parameter identification count (PID) of "37." Comparative OIS Test Data
18 for 2005 Honda Accord EX vehicles show this vehicle reports the eVIN that matches the vehicle
19 being tested, the communication protocol of "1914", and a parameter identification count of "21."

20 These discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device
21 (DAD) was not connected to the 2005 Honda Accord EX being certified, causing the issuance of
22 an illegal Certificate of Compliance.

23 b. Fraudulent Inspection No. 2

24 OIS Test Details indicate on June 22, 2015, between 0943 and 0947 hours, a 2010 Honda
25 Accord LX, VIN 1HGCS1B33AA002987, no license plate, passed an OIS inspection and

26 ¹ To "clean plug" a vehicle, the technician uses another vehicle's properly functioning On
27 Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing
28 diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to
vehicles that are not in smog compliance or not present during the certified test.

1 Certificate of Compliance #PS733573C was issued under the license of Smog Check Inspector
2 Respondent Gomez. The Test Detail shows eVIN 1HGCP264X9A003625 was stored in the PCM
3 memory during this OIS inspection. This eVIN does not match the VIN of the 2010 Honda
4 Accord LX that Respondents certified.

5 OIS test data shows VIN 1HGCP264X9A003625 belongs to a 2009 Honda Accord LX-P
6 that was previously certified at JR Smog N Tune on June 17, 2015, between 0818 and 0821 hours
7 under the Smog Check Inspector license of Respondent Gomez. Respondent Gomez certified this
8 2009 Honda Accord LX-P five days before he illegally certified the 2010 Honda Accord LX.

9 The test detail of both vehicles not only shows they share the same eVIN that belongs to
10 the 2009 Honda Accord LX-P, but both vehicles had the same communication protocol of
11 "ICAN29bt5" and a PID count of "37." Comparative OIS Test Data for 2010 Honda Accord LX
12 vehicles show this vehicle reports the eVIN that matches the vehicle being tested, the
13 communication protocol of "ICAN29bt5", and a PID count of "37/20."

14 These discrepancies in the OIS Test Data prove that the OIS DAD was not connected to the
15 2010 Honda Accord LX being certified, causing the issuance of an illegal Certificate of
16 Compliance.

17 c. Fraudulent Inspection No. 3

18 OIS Test Details indicate on July 14, 2015, between 0832 and 0837 hours, a 2009 Honda
19 Accord EX-L, VIN 1HGCP26879A005738, no license plate, passed an OIS inspection and
20 Certificate of Compliance #PU093494C was issued under the license of Smog Check Inspector
21 Respondent Gomez. The Test Detail shows eVIN 1HGCP26358A086452 was stored in the PCM
22 memory during this OIS inspection. This eVIN does not match the VIN of the 2009 Honda
23 Accord EX-L that Respondents certified.

24 OIS test data shows VIN 1HGCP26358A086452 belongs to a 2008 Honda Accord LX
25 that was previously certified at JR Smog N Tune on July 9, 2015, between 1109 and 1112 hours
26 under the Smog Check Inspector license of Respondent Real. Respondent Real certified this 2008
27 Honda Accord LX five days before Respondent Gomez illegally certified the 2009 Honda Accord
28 EX-L.

1 The test detail of both vehicles not only shows they share the same eVIN that belongs to
2 the 2008 Honda Accord LX, but both vehicles had the same communication protocol of
3 "ICAN29bt5" and a PID count of "37." Comparative OIS Test Data for 2009 Honda Accord EX-
4 L vehicles show this vehicle reports the eVIN that matches the vehicle being tested, the
5 communication protocol of "ICAN29bt5," and a PID count of "37/19."

6 These discrepancies in the OIS Test Data prove that the OIS DAD was not connected to the
7 2009 Honda Accord EX-L being certified, causing the issuance of an illegal Certificate of
8 Compliance.

9 d. Fraudulent Inspection No. 4

10 OIS Test Details indicate on July 14, 2015, between 0920 and 1004 hours, a 2009 Toyota
11 Corolla/S/LE/XLE, VIN 1NXBU40E99Z142963, no license plate, passed an OIS inspection and
12 Certificate of Compliance #PU093500C was issued under the license of Smog Check Inspector
13 Respondent Gomez. The Test Detail shows eVIN 1NXBU4EE8AZ187454 was stored in the
14 PCM memory during this OIS inspection. This eVIN does not match the VIN of the 2009 Toyota
15 Corolla/S/LE/XLE that Respondents certified.

16 OIS test data shows VIN 1NXBU4EE8AZ187454 belongs to a 2010 Toyota
17 Corolla/S/LE/XLE that was previously certified at JR Smog N Tune on July 7, 2015, between
18 1132 and 1135 hours under the Smog Check Inspector license of Respondent Gomez. Respondent
19 Gomez certified this 2010 Toyota Corolla/S/LE/XLE seven days before he illegally certified the
20 2009 Toyota Corolla/S/LE/XLE.

21 The test detail of both vehicles not only shows they share the same eVIN that belongs to
22 the 2010 Toyota Corolla/S/LE/XLE, but both vehicles had the same communication protocol of
23 "ICAN11bt5" and a PID count of "39." Comparative OIS Test Data for 2009 Toyota
24 Corolla/S/LE/XLE vehicles show this vehicle reports the eVIN that matches the vehicle being
25 tested, the communication protocol of "ICAN11bt5," and a PID count of "39."

26 These discrepancies in the OIS Test Data prove that the OIS DAD was not connected to the
27 2009 Toyota Corolla/S/LE/XLE being certified, causing the issuance of an illegal Certificate of
28 Compliance.

1 e. Fraudulent Inspection No. 5

2 OIS Test Details indicate on July 21, 2015, between 0831 and 0834 hours, a 2009 Toyota
3 Corolla/S/LE/XLE, VIN 1NXBU40E79Z004354, no license plate, passed an OIS inspection and
4 Certificate of Compliance #PU363404C was issued under the license of Smog Check Inspector
5 Respondent Gomez. The Test Detail shows eVIN 2T1BU40E69C042935 was stored in the PCM
6 memory during this OIS inspection. This eVIN does not match the VIN of the 2009 Toyota
7 Corolla/S/LE/XLE that Respondents certified.

8 OIS test data shows VIN 2T1BU40E69C042935 belongs to a 2009 Toyota
9 Corolla/S/LE/XLE that was previously certified at JR Smog N Tune on July 20, 2015, between
10 0849 and 0859 hours under the Smog Check Inspector license of Respondent Gomez. Respondent
11 Gomez certified this 2009 Toyota Corolla/S/LE/XLE one day before he illegally certified the
12 other 2009 Toyota Corolla/S/LE/XLE.

13 The test detail of both vehicles not only shows they share the same eVIN that belongs to
14 the "first" 2009 Toyota Corolla/S/LE/XLE, but both vehicles had the same communication
15 protocol of "ICAN11bt5" and a PID count of "39." Comparative OIS Test Data for 2009 Toyota
16 Corolla/S/LE/XLE vehicles show this vehicle reports the eVIN that matches the vehicle being
17 tested, the communication protocol of "ICAN11bt5," and a PID count of "39."

18 These discrepancies in the OIS Test Data prove that the OIS DAD was not connected to
19 the "second" 2009 Toyota Corolla/S/LE/XLE being certified, causing the issuance of an illegal
20 Certificate of Compliance.

21 f. Fraudulent Inspection No. 6

22 OIS Test Details indicate on July 27, 2015, between 1131 and 1138 hours, a 2010 Nissan
23 Sentra/S/SR/SL, VIN 3N1AB6AP3AL686698, no license plate, passed an OIS inspection and
24 Certificate of Compliance #YT718403C was issued under the license of Smog Check Inspector
25 Respondent Gomez. The Test Detail shows eVIN 3FAHP0GA5AR192455 was stored in the
26 PCM memory during this OIS inspection. This eVIN does not match the VIN of the 2010 Nissan
27 Sentra/S/SR/SL that Respondents certified.

1 OIS test data shows VIN 3FAHP0GA5AR192455 belongs to a 2010 Ford Fusion S that
2 was previously certified at JR Smog N Tune on July 27, 2015, between 1140 and 1144 hours
3 under the Smog Check Inspector license of Respondent Gomez. Respondent Gomez certified this
4 2010 Ford Fusion S immediately after he illegally certified the 2010 Nissan Sentra/S/SR/SL.

5 The test detail of both vehicles not only shows they share the same eVIN that belongs to
6 the 2010 Ford Fusion S, but both vehicles had the same permanent Diagnostic Trouble Code
7 (DTC) P0442, the same communication protocol of "ICAN11bt5" and a PID count of "39."
8 Comparative OIS Test Data for 2010 Nissan Sentra/S/SR/SL vehicles show this vehicle reports
9 the eVIN that matches the vehicle being tested, the communication protocol of "ICAN11bt5," and
10 a PID count of "39."

11 These discrepancies in the OIS Test Data prove that the OIS DAD was not connected to
12 the 2010 Nissan Sentra/S/SR/SL being certified, causing the issuance of an Illegal Certificate of
13 Compliance.

14 g. Fraudulent Inspection No. 7

15 OIS Test Details indicate on July 31, 2015, between 0844 and 0848 hours, a 2009 Honda
16 Civic EX, VIN 2HGFA168X9H348487, no license plate, passed an OIS inspection and
17 Certificate of Compliance #PU436883C was issued under the license of Smog Check Inspector
18 Respondent Gomez. The Test Detail shows eVIN 2HGFA16379H329948 was stored in the PCM
19 memory during this OIS inspection. This eVIN does not match the VIN of the 2009 Honda Civic
20 EX that Respondents certified.

21 OIS test data shows VIN 2HGFA16379H329948 belongs to a 2009 Honda Civic DX VP
22 that was previously certified at JR Smog N Tune on July 28, 2015, between 1126 and 1129 hours
23 under the Smog Check Inspector license of Respondent Gomez. Respondent Gomez certified this
24 2009 Honda Civic DX VP three days before he illegally certified the 2009 Honda Civic EX.

25 The test detail of both vehicles not only shows they share the same eVIN that belongs to
26 the Honda Civic DX VP, but both vehicles had the same communication protocol of
27 "ICAN29bt5" and a PID count of "39." Comparative OIS Test Data for Honda Civic EX vehicles
28

1 show this vehicle reports the eVIN that matches the vehicle being tested, the communication
2 protocol of "ICAN11bt5," and a PID count of "39/19."

3 These discrepancies in the OIS Test Data prove that the OIS DAD was not connected to the
4 Honda Civic EX being certified, causing the issuance of an illegal Certificate of Compliance.

5 h. Fraudulent Inspection No. 8

6 OIS Test Details indicate on August 7, 2015, between 0938 and 0944 hours, a 2009
7 Honda Civic LX, VIN 2HGFG12639H542149, no license plate, passed an OIS inspection and
8 Certificate of Compliance #PU654991C was issued under the license of Smog Check Inspector
9 Respondent Gomez. The Test Detail shows eVIN 2HGFA1F53AH524287 was stored in the
10 PCM memory during this OIS inspection. This eVIN does not match the VIN of the Honda Civic
11 LX that Respondents certified.

12 OIS test data shows VIN 2HGFA1F53AH524287 belongs to a 2010 Honda Civic LX that
13 was previously certified at a different smog station in Calexico on August 7, 2015, between 0914
14 and 0918 hours under the Smog Check Inspector license of a different technician. This technician
15 certified the 2010 Honda Civic LX twenty-six minutes before Respondent Gomez illegally
16 certified the 2009 Honda Civic LX.

17 The test detail of both vehicles not only shows they share the same eVIN that belongs to
18 the 2010 Honda Civic LX, but both vehicles had the same communication protocol of
19 "ICAN29bt5" and a PID count of "39." Comparative OIS Test Data for 2009 Honda Civic LX
20 vehicles show this vehicle reports the eVIN that matches the vehicle being tested, the
21 communication protocol of "ICAN29bt5," and a PID count of "39/19."

22 These discrepancies in the OIS Test Data prove that the OIS DAD was not connected to the
23 2009 Honda Civic LX being certified, causing the issuance of an illegal Certificate of
24 Compliance.

25 i. Fraudulent Inspection No. 9

26 OIS Test Details indicate on August 11, 2015, between 0836 and 0839 hours, a 2009
27 Honda Civic LX, VIN 2HGFA165X9H513640, no license plate, passed an OIS inspection and
28 Certificate of Compliance #PU729785C was issued under the license of Smog Check Inspector

1 Respondent Gomez. The Test Detail shows eVIN 2HGFA1F53AH524287 was stored in the
2 PCM memory during this OIS inspection. This eVIN does not match the VIN of the 2009 Honda
3 Civic LX that Respondents certified.

4 OIS test data shows VIN 2HGFA1F53AH524287 belongs to a 2010 Honda Civic LX that
5 was previously certified at a different smog station in Calexico on August 7, 2015, between 0914
6 and 0918 hours under the Smog Check Inspector license of a different technician. This technician
7 certified the 2010 Honda Civic LX four days before Respondent Gomez illegally certified the
8 2009 Honda Civic LX.

9 The test detail of both vehicles not only shows they share the same eVIN that belongs to
10 the 2010 Honda Civic LX, but both vehicles had the same communication protocol of
11 "ICAN29bt5" and a PID count of "39." Comparative OIS Test Data for 2009 Honda Civic LX
12 vehicles show this vehicle reports the eVIN that matches the vehicle being tested, the
13 communication protocol of "ICAN29bt5," and a PID count of "39/19."

14 These discrepancies in the OIS Test Data prove that the OIS DAD was not connected to the
15 2009 Honda Civic LX being certified, causing the issuance of an illegal Certificate of
16 Compliance.

17 j. Fraudulent Inspection No. 10

18 OIS Test Details indicate on August 12, 2015, between 0748 and 0803 hours, a 2010
19 Honda Civic EX, VIN 2HGFG1B81AH521743, no license plate, passed an OIS inspection and
20 Certificate of Compliance #PU833763C was issued under the license of Smog Check Inspector
21 Respondent Gomez. The Test Detail shows eVIN 2HGFA1F53AH524287 was stored in the
22 PCM memory during this OIS inspection. This eVIN does not match the VIN of the 2010 Honda
23 Civic EX that Respondents certified.

24 OIS test data shows VIN 2HGFA1F53AH524287 belongs to a 2010 Honda Civic LX that
25 was previously certified at different smog station in Calexico on August 7, 2015, between 0914
26 and 0918 hours under the Smog Check Inspector license of a different technician. This technician
27 certified the 2010 Honda Civic LX five days before Respondent Gomez illegally certified the
28 2009 Honda Civic LX.

The test detail of both vehicles not only shows they share the same eVIN that belongs to the 2010 Honda Civic LX, but both vehicles had the same communication protocol of "ICAN29bt5" and a PID count of "39." Comparative OIS Test Data for 2010 Honda Civic EX vehicles show this vehicle reports the eVIN that matches the vehicle being tested, the communication protocol of "ICAN29bt5," and a PID count of "39/19."

These discrepancies in the OIS Test Data prove that the OIS DAD was not connected to the 2010 Honda Civic EX being certified, causing the issuance of an illegal Certificate of Compliance.

38. The following table summarizes Respondents' clean plugging:

TABLE 1

#	Date	Inspector	Veh Year	Make	Model	Certificate	Inspection VIN	AMN/Item (eVIN)	Received Protocol	Expected Protocol	Received PID	Expected PID
1	6/16/2015	EO637411	2005	Honda	Accord EX	YT109027C	1HGM80725A181379	1HGM80725A181379	ICAN29bt5	ICAN29bt5	37	37
2	6/22/2015	EO637411	2010	Honda	Accord LX	P8739578C	1HGC81B30AA002987	1HGM80725A181379	ICAN29bt5	ICAN29bt5	37	37/20
3	7/14/2015	EO637411	2009	Honda	Accord EX-L	PU093494C	1HGM80725A181379	1HGM80725A181379	ICAN29bt5	ICAN29bt5	37	37/19
4	7/14/2015	EO637411	2009	Toyota	Corolla S/EX LE	PU083500C	1NXBU40E99Z142063	1NXBU40E99Z142063	CAN11bt5	CAN11bt5	39	39
5	7/21/2015	EO637411	2009	Toyota	Corolla S/EX LE	PU853404C	1NXBU40E70Z004354	2T1BU40E68C029935	CAN11bt5	CAN11bt5	39	39
6	7/27/2015	EO637411	2010	Nissan	Sentra S/BR SL	YT710403C	3N1AB8AP3AL866008	3FAHP0GA5AR192455	CAN11bt5	CAN11bt5	39	39
7	7/31/2015	EO637411	2009	Honda	Civic EX	PU483600C	2HGFA160X0H340487	2HGFA160X0H340487	CAN29bt5	CAN29bt5	39	39/19
8	8/7/2015	EO637411	2009	Honda	Civic LX	PU854991C	2HGFG12639H542149	2HGFA1F53AH524287	CAN29bt5	CAN29bt5	39	39/19
9	8/11/2015	EO637411	2009	Honda	Civic LX	PU729785C	2HGFA165X9H513640	2HGFA1F53AH524287	CAN29bt5	CAN29bt5	39	39/19
10	8/12/2015	EO637411	2010	Honda	Civic EX	PU833783C	2HGFG1B81AH521743	2HGFA1F53AH524287	CAN29bt5	CAN29bt5	39	39/19

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statement)**

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

5 40. JR Smog N Tune's Registration is subject to disciplinary action under section 9884.7,
6 subdivision (a)(1), in that JR Smog N Tune made or authorized statements which JR Smog N
7 Tune knew or in the exercise of reasonable care should have known to be untrue or misleading.

8 41. JR Smog N Tune certified that the vehicle(s) in Table 1 above had passed inspection
9 and were in compliance with all applicable laws and regulations, when in fact and in truth JR
10 Smog N Tune inspected the vehicle(s) using the clean plugging method to issue certificates of
11 compliance.

12 **SECOND CAUSE FOR DISCIPLINE**

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

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

16 43. JR Smog N Tune's Smog Check Station License is subject to disciplinary action
17 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
18 subdivision (a), in that JR Smog N Tune failed to comply with the following sections of that
19 Code:

20 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
21 on the vehicle(s) in Table 1 in accordance with procedures prescribed by the Department.

22 b. **Section 44015**: issued a certificate of compliance for the vehicle(s) in Table 1 without
23 properly testing and inspecting them to determine if they were in compliance with Health &
24 Safety Code section 44012.

25 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
26 equipment, performance, or conduct by failing to properly perform a smog inspection on the
27 vehicle(s) in Table 1 or certifying that such test(s) had been performed, when in fact they were
28 never performed.

1 **THIRD CAUSE FOR DISCIPLINE**

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

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

5 45. JR Smog N Tune's Smog Check Station License is subject to disciplinary action
6 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
7 subdivision (a), in that JR Smog N Tune failed to comply with the following sections of Title 16,
8 California Code of Regulations:

9 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicle(s) in Table 1
10 in accordance with the procedures specified in section 3340.42 of the Regulations and failed to
11 ensure that the vehicle(s) had all the required emission control equipment and devices installed
12 and functioning correctly.

13 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
14 System false information about the vehicle(s) in Table 1, providing result(s) for smog
15 inspection(s) which were not actually performed.

16 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicle(s) in Table
17 1 in accordance with the Bureau's specifications.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

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

22 47. JR Smog N Tune's Registration is subject to disciplinary action under Code section
23 9884.7, subdivision (a)(4) and JR Smog N Tune Smog Check's Station License is subject to
24 disciplinary action under Health and Safety Code sections 44072.10, subdivision (a) and (c) and
25 44072.2, subdivision (d), in that JR Smog N Tune committed dishonest, fraudulent, or deceitful
26 acts whereby another is injured by issuing a smog certificate of compliance for the vehicle(s) in
27 Table 1 without performing bona fide inspections of the emission control devices and systems on
28

1 the vehicle(s), thereby depriving the People of the State of California of the protection afforded
2 by the Motor Vehicle Inspection Program.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

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

7 49. Respondent Real's Smog Check Inspector License, and Respondent Gomez's Smog
8 Check Inspector License are subject to disciplinary action under Health and Safety Code sections
9 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that Respondents failed to
10 comply with the following sections of that Code:

11 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
12 on the vehicle(s) in Table 1 in accordance with procedures prescribed by the Department.

13 b. **Section 44015**: issued a certificate of compliance for the vehicle(s) in Table 1 without
14 properly testing and inspecting them to determine if they were in compliance with Health &
15 Safety Code section 44012.

16 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
17 equipment, performance, or conduct by failing to properly perform a smog inspection on the
18 vehicle(s) in Table 1 or certifying that such test(s) had been performed, when in fact they were
19 never performed.

20 **SIXTH CAUSE FOR DISCIPLINE**

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

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

24 51. Respondent Real's Smog Check Inspector License, and Respondent Gomez's Smog
25 Check Inspector License are subject to disciplinary action under Health and Safety Code sections
26 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a) in that Respondents failed to
27 comply with the following sections of Title 16, California Code of Regulations:
28

1 a. Section 3340.35, subdivision (c): failed to inspect and test the vehicle(s) in Table I
2 in accordance with the procedures specified in section 3340.42 of the Regulations and failed to
3 ensure that the vehicle(s) had all the required emission control equipment and devices installed
4 and functioning correctly.

5 b. Section 3340.41, subdivision (c): knowingly entered into the Emissions Inspection
6 System false information about the vehicle(s) in Table 1, providing result(s) for smog
7 inspection(s) which were not actually performed.

8 c. Section 3340.42: failed to conduct the required smog tests on the vehicle(s) in Table
9 I in accordance with the Bureau's specifications.

10 SEVENTH CAUSE FOR DISCIPLINE

11 (Dishonesty, Fraud, or Deceit)

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

14 53. Respondent Real's Smog Check Inspector License, and Respondent Gomez's Smog
15 Check Inspector License are subject to disciplinary action under Health and Safety Code sections
16 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), in that Respondents committed
17 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of
18 compliance for the vehicle(s) in Table 1 without performing bona fide inspections of the emission
19 control devices and systems on the vehicle(s), thereby depriving the People of the State of
20 California of the protection afforded by the Motor Vehicle Inspection Program.

21 OTHER MATTERS

22 54. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or
23 place on probation the registration for all places of business operated in this State by Armando G.
24 Real, upon a finding that Armando G. Real, Owner, doing business as JR Smog N Tune has, or is,
25 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
26 automotive repair dealer.

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55. Under Health & Safety Code section 44072.8, if Armando G. Real, Owner, doing business as JR Smog N Tune's Smog Check Station License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Armando G. Real.

56. Under Health and Safety Code section 44072.8, if Armando G. Real's licenses are revoked or suspended, any additional license issued under the Motor Vehicle Inspection Program in the name of Armando G. Real may be likewise revoked or suspended by the Director.

57. Under Health and Safety Code section 44072.8, if Jaime M. Gomez's license is revoked or suspended, any additional license issued under the Motor Vehicle Inspection Program in the name of Jaime M. Gomez may be likewise revoked or suspended by the Director.

PRAYER.

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

1. Revoking or suspending Automotive Repair Dealer Number ARD 227126, issued to JR Smog N Tune, Armando G. Real, Owner;

2. Revoking or suspending any other automotive repair dealer registration issued to Armando G. Real;

3. Revoking or suspending Smog Check Station License Number RC 227126, issued to JR Smog N Tune, Armando G. Real, Owner;

4. Revoking or suspending Lamp Station License Number LS 227126, issued to JR Smog N Tune, Armando G. Real, Owner;

5. Revoking or suspending Brake Station License Number BS 227126, issued to JR Smog N Tune, Armando G. Real, Owner;

6. Revoking or suspending Smog Check Inspector License Number EO 146027, issued to Armando G. Real;

7. Revoking or suspending Brake Adjuster License Number BA 146027, issued to Armando G. Real;

1 8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
2 Division 26 of the Health and Safety Code in the name of Armando G. Real;

3 9. Revoking or suspending Smog Check Inspector Number EO 637411, issued to Jaime
4 M. Gomez;

5 10. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
6 Division 26 of the Health and Safety Code in the name of Jaime M. Gomez;

7 11. Revoking or suspending any additional license issued under Articles 5 and 6 of
8 Chapter 20.3 of Division 3 of the Business and Professions Code in the name of Armando G. Real
9 or Jaime M. Gomez;

10 12. Ordering Armando G. Real and Jaime M. Gomez to pay the Bureau of Automotive
11 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to
12 Business and Professions Code section 125.3;

13 13. Taking such other and further action as deemed necessary and proper.
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16 DATED: October 11, 2007

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

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