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

In the Matter of the Accusation Against:

# FUTURE INNOVATIONS, LLC ADELE THORNTON-POPP & MICHAEL ALAN POPP, Members dba M & M SMOG TEST ONLY 23253 Madero, Suite A114 Mission Viejo, CA 92691

Automotive Repair Dealer Registration No.: ARD 280063 Smog Check Station License. No.: TC 280063

and

**RONALD ALBERT SHARP JR.** PO Box 1781

Burbank, CA 91507

116 Ave Del Grulla, Unit B San Clemente, CA 92672

Mailing Address: 27598 Starrise Lane San Juan Capistrano, CA 92675

Smog Check Inspector License No.: EO 637584

Respondents.

Case No.: 79/17-15021

OAH No.: 2018090984

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#### DECISION

The attached Stipulated Settlement and Disciplinary Order AS TO RESPONDENT RONALD ALBERT SHARP JR. 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 July 22, 2019

DATED: \_\_\_\_\_ June 12, 2019

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

1	XAVIER BECERRA	
2	Attorney General of California GREGORY J. SALUTE	
3	Supervising Deputy Attorney General MOLLY E. SELWAY	
4	Deputy Attorney General State Bar No. 234519	
5	600 West Broadway, Suite 1800 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 738-9082 Facsimile: (619) 645-2031	
8	Attorneys for Complainant	
9	BEFOR	
10	DEPARTMENT OF C FOR THE BUREAU OF A	AUTOMOTIVE REPAIR
11	STATE OF C	ALIFORNIA
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14	In the Matter of the Accusation Against:	Case No. 79/17-15021
15	RONALD ALBERT SHARP, JR. 27598 Starrise Lane	OAH No. 2018090984
16	San Juan Capistrano, CA 92675	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER
17	Smog Check Inspector License No. EO 637584	DISCH LINART ORDER
18	Respondent.	
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21		EED by and between the parties to the above-
22	entitled proceedings that the following matters are	
23	PART	
24		hief of the Bureau of Automotive Repair
25	(Bureau). He brought this action solely in his offi	
26	Xavier Becerra, Attorney General of the State of California, by Molly E. Selway, Deputy	
27	Attorney General.	
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1	2. Respondent Ronald Albert Sharp Jr. (Respondent) is representing himself in this
2	proceeding and has chosen not to exercise his right to be represented by counsel.
3	3. On or about January 1, 1990, the Bureau issued Smog Check Inspector (EO) License
4	No. EO 637584 to Ronald Albert Sharp Jr. (Respondent). The Smog Check Inspector License
5	was in full force and effect at all times relevant to the charges brought in Accusation No. 79/17-
6	15021, and will expire on April 30, 2021, unless renewed.
7	JURISDICTION
8	4. Accusation No. 79/17-15021 was filed before the Director of Consumer Affairs
9	(Director) and is currently pending against Respondent. The Accusation and all other statutorily
10	required documents were properly served on Respondent on April 9, 2018. Respondent timely
11	filed his Notice of Defense contesting the Accusation.
12	5. A copy of Accusation No. 79/17-15021 is attached as exhibit A and incorporated
13	herein by reference.
14	ADVISEMENT AND WAIVERS
15	6. Respondent has carefully read, and understands the charges and allegations in
16	Accusation No. 79/17-15021. Respondent has also carefully read, and understands the effects of
17	this Stipulated Settlement and Disciplinary Order.
18	7. Respondent is fully aware of his legal rights in this matter, including the right to a
19	hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
20	his own expense; the right to confront and cross-examine the witnesses against him; the right to
21	present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
22	the attendance of witnesses and the production of documents; the right to reconsideration and
23	court review of an adverse decision; and all other rights accorded by the California
24	Administrative Procedure Act and other applicable laws.
25	8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
26	every right set forth above.
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	STIPULATED SETTLEMENT (79/17-15021)

1	CULPABILITY
2	9. Respondent admits the truth of each and every charge and allegation in Accusation
3	No. 79/17-15021.
4	10. Respondent agrees that his Smog Check Inspector License is subject to discipline and
5	he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order
6	below.
7	CONTINGENCY
8	11. This stipulation shall be subject to approval by the Director of Consumer Affairs or
9	the Director's designee. Respondent understands and agrees that counsel for Complainant and the
10	staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
11	the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
12	or participation by Respondent. By signing the stipulation, Respondent understands and agrees
13	that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
14	Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision
15	and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
16	for this paragraph, it shall be inadmissible in any legal action between the parties, and the
17	Director shall not be disqualified from further action by having considered this matter.
18	12. The parties understand and agree that Portable Document Format (PDF) and facsimile
19	copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
20	signatures thereto, shall have the same force and effect as the originals.
21	13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
22	integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23	It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24	negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
25	Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
26	writing executed by an authorized representative of each of the parties.
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1 14. In consideration of the foregoing admissions and stipulations, the parties agree that
 2 the Director may, without further notice or formal proceeding, issue and enter the following
 3 Disciplinary Order:

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### **DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Smog Check Inspector License No. EO 637584 issued to
Respondent Ronald Albert Sharp Jr. is revoked. However, the revocation is stayed and
Respondent is placed on probation for five (5) years on the following terms and conditions.

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.

Posting of Sign. During the period of suspension, Respondent shall prominently post
 a sign or signs, provided by BAR, indicating the beginning and ending dates of the suspension
 and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed
 in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall
 be approved by BAR and shall remain posted during the entire period of actual suspension.

3. 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.

4. Report Financial Interests. Respondent shall, within 30 days of the effective date
of the decision and within 30 days from the date of any request by BAR during the period of
probation, report any financial interest which any Respondent or any partners, officers, or owners
of any Respondent facility may have in any other business required to be registered pursuant to
Section 9884.6 of the Business and Professions Code.

5. Access to Examine Vehicles and Records. Respondent shall provide BAR
representatives unrestricted access to examine all vehicles (including parts) undergoing service,
inspection, or repairs, up to and including the point of completion. Respondent shall also provide
BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

6. **Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of 1 California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction 2 of California, Respondent shall notify BAR in writing within 10 days of the dates of departure 3 4 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 5 requirements, and that Respondent obey all laws, shall be held in abeyance during any period of 6 time of 30 days or more in which Respondent is not residing or engaging in business within the 7 jurisdiction of California. All provisions of probation shall recommence on the effective date of 8 9 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 10 11 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 12 registration is conducted or performed during the tolling period. 13

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

8. Maintain Valid License. Respondent shall, at all times while on probation, maintain 19 a current and active registration and/or license(s) with BAR, including any period during which 20suspension or probation is tolled. If Respondent's registration or license is expired at the time the 21 decision becomes effective, the registration or license must be renewed by Respondent within 30 22 days of that date. If Respondent's registration or license expires during a term of probation, by 23 24 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 25 maintain a current and active registration and/or license during the period of probation shall also 26constitute a violation of probation. 27

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9. Cost Recovery. Respondent shall pay the Bureau of Automotive Repair \$1,991 for

the reasonable costs of the investigation and enforcement of case No. 79/17-15021. Respondent 1 shall make such payment as follows: Forty-eight (48) equal installments with the last payment 2 3 due twelve (12) months prior to the end of probation. Respondent shall make payment by check 4 or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 79/17-15021. Any order for 5 payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall 6 not terminate until full cost recovery payment has been made. BAR reserves the right to pursue 7 8 any other lawful measures in collecting on the costs ordered and past due, in addition to taking 9 action based upon the violation of probation.

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

14 11. **License Surrender.** Following the effective date of a decision that orders a stay of invalidation or revocation, if Respondent ceases business operations or is otherwise unable to 15 satisfy the terms and conditions of probation, Respondent may request that the stay be vacated. 16 17 Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate the Respondent's request and to exercise discretion whether to grant the request or 18 19 take any other action deemed appropriate or reasonable under the circumstances. Upon formal 20granting of the request, the Director will vacate the stay order and carry out the disciplinary order 21 provided in the decision. Respondent may not petition the Director for reinstatement of the surrendered registration and/or license, or apply for a new registration or license under the 22 23 jurisdiction of BAR at any time before the date of the originally scheduled completion of 24 probation. If Respondent applies to BAR for a registration or license at any time after that date, Respondent must meet all current requirements for registration or licensure and pay all 25 outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender. 26 12. Actual Suspension. Smog Check Inspector License No. EO 637584 issued to 27

28 Respondent Ronald Albert Sharp Jr. is suspended for thirty (30) consecutive days beginning on

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12. Actual Suspension. Smog Check Inspector License No. EO 637584 issued to 1 Respondent Ronald Albert Sharp Jr. is suspended for thirty (30) consecutive days beginning on 2 the effective date of the Decision and Order.

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13. Training Course. During the period of probation, Respondent shall attend and 4 successfully complete the Level 1 Engine and Emissions Control Fundamentals, a BAR-specified 5 and -approved training course in inspection, diagnosis and/or repair of emission systems failures 6 and engine performance, applicable to the class of license held by the Respondent. Respondent 7 shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date 8 of the decision, and proof of successful course completion within 180 days of the effective date of 9 the decision. Failure to provide proof of enrollment and/or successful course completion to the 10 Bureau within the timeframes specified shall constitute a violation of probation, and Respondent 11 shall be prohibited from issuing any certificate of compliance or noncompliance until such proof 12 is received. 13

Notification to Employer - When performing services that fall within the scope of 14. 14 his license, Respondent shall provide each of his current or future employers a copy of the 15 decision and the underlying Accusation or Statement of Issues before commencing employment. 16 Notification to Respondent's current employer shall occur no later than the effective date of the 17 decision. Respondent shall submit to BAR, upon request, satisfactory evidence of compliance 18 19 with this term of probation.

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# **ACCEPTANCE**

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the 21stipulation and the effect it will have on my Smog Check Inspector License. I enter into this 22 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree 23 to be bound by the Decision and Order of the Director of Consumer Affains 24 2526 RONALD ALBERT SH 27Respondent 28 III7

1	ENDORSEMENT	
2	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully	
3	submitted for consideration by the Director of Consumer Affairs.	
4	Dubula	
5	Dated: 4/2.4/19 Respectfully submitted,	
6 7	XAVIER BECERRA Attorney General of California GREGORY J. SALUTE Supervising Deputy Attorney General	
8	Supervising Deputy Automety General	
9		
10	MOLLY E. SELWAY Deputy Attorney General Attorneys for Complainant	
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	STIPULATED SETTLEMENT (79/17-150)	

# Exhibit A

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Accusation No. 79/17-15021

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1	XAVIER BECERRA	
2	Attorney General of California GREGORY J. SALUTE	· ·
3	Supervising Deputy Attorney General MOLLY E. SELWAY	
4	Deputy Attorney General State Bar No. 234519	
5	600 West Broadway, Suite 1800 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
- 7	Telephone: (619) 738-9082 Facsimile: (619) 645-2031	
8	Attorneys for Complainant	
9	DEPARTMENT OF C	RE THE CONSUMER AFFAIRS
10		AUTOMOTIVE REPAIR California
11		1
12	In the Matter of the Accusation Against:	Case No. 79/17-15021
13	FUTURE INNOVATIONS, LLC; ANNA	
14	ADELE THORNTON-POPP AND MICHAEL ALAN POPP, MEMBERS DBA	ACCUSATION
15	M & M SMOG CHECK TEST ONLY 23253 Madero, Suite A114	
16	Mission Viejo, CA 92691	
17	Automotive Repair Dealer Registration No. ARD280063	
18	Smog Check, Test Only Station License No. TC280063	
19	and	
20	RONALD ALBERT SHARP JR.	
21	PO Box 1781 Burbank, CA 91507	
22	116 Ave Del Grulla, #B	
23	San Clemente, CA 92672	
24 25	Smog Check Inspector License No.	
25	EO637584	
26	Respondents.	
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		MOG TEST ONLY; ANNA ADELE THORNTON-POPP; PP and RONALD ALBERT SHARP, JR.) ACCUSATION
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Complainant alleges:

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# PARTIES

21. 判断的现代

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

2. On or about April 27, 2015, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 280063 to Future Innovations, LLC, dba M&M Smog Test Only; Anna Adele Thornton-Popp; Michael Alan Popp (Respondent M& M). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2018, unless renewed.

On or about May 5, 2015, the Bureau of Automotive Repair issued Smog Check Test
 Only Station License, Number TC 280063 to Future Innovations, LLC, dba M&M Smog Test
 Only; Anna Adele Thornton-Popp; Michael Alan Popp (Respondent M & M). 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 April 30, 2018, unless renewed.

4. On or about December 1, 2014, the Bureau of Automotive Repair issued Smog Check
 Inspector License Number EO 637584 to Ronald Albert Sharp, Jr. (Respondent Sharp). The
 Smog Check Inspector License was in full force and effect at all times relevant to the charges
 brought herein and will expire on April 30, 2019, unless renewed.

## JURISDICTION

This Accusation is brought before the Director of the Department of Consumer
 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
 All references are to the business code unless otherwise stated.

6. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
...." "License" includes certificate, registration or other means to engage in a business or
profession regulated by the Code.

7. 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.

(FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP; MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION

1	8. 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 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.
8	9. Section 44072.2 of the Health and Safety Code states:
9 10	The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
11 12	(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, [] 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
13	₹ <b>&gt;</b> *
14 15	(d) Commits any act involving dishonesty, fraud, or decelt whereby another is injured
16	10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
17	expiration or suspension of a license by operation of law, or by order or decision of the Director
18	of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
19	the Director of jurisdiction to proceed with disciplinary action.
20	11. Section 44072.7 of the Health and Safety Code states:
21	All accusations against licensees shall be filed within three years after the act
22	or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (d) of Section 44072.2, the
23	accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.
24	
5	12. Section 44072.8 of the Health and Safety Code states:
16 17	When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the
28	licensee may be likewise revoked or suspended by the director.
out of second second	(FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POP MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATIO

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	-	12 Contract Addres 10 - Caller Tracht and 5 Caller Britan State
	].	13. Section 44072.10 of the Health and Safety Code states:
	2	(a) Notwithstanding Sections 44072 and 44072.4, the director, or the director's designee, pending a hearing conducted pursuant to subdivision (e), may temporarily
	3	suspend any smog check station or technician's license issued under this chapter, for a period not to exceed 60 days, if the department determines that the licensee's conduct
	4 5	would endanger the public health, safety, or welfare before the matter could be heard pursuant to subdivision (e), based upon reasonable evidence of any of the following:
		(1) Fraud.
	6	(2) Tampering.
	7 8	(3) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.
	9	(4) A pattern or regular practice of violating this chapter or any
	10	regulation, standard, or procedure of the department implementing this chapter,
	11	
	12	(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent
	13	inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:
	14	(1) Clean piping, as defined by the department.
,	15	(2) Tampering with a vehicle emission control system or test analyzer system.
• •	16	(3) Tampering with a vehicle in a manner that would cause the vehicle to
	17	falsely pass or falsely fail an inspection.
:	18	(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.
	19	anneeding al me be an alson a read is directoris the foreign for the period period parts
	20	14. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:
	21	Upon renewal of an unexpired Basic Area Technician license or an
•	22	Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector,
	23	Smog Check Repair Technician, or both.
	24	15. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
	25	surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed with
	26	a disciplinary action during the period within which the license may be renewed, restored,
	27	reissued or reinstated.
	28	
		(FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP, MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION

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1	16. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
2	registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
3	proceeding against an automotive repair dealer or to render a decision invalidating a registration
4	temporarily or permanently.
5	17. Section 9884.20 of the Code states:
6	All accusations against automotive repair dealers shall be filed within three years after
7	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
8	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.
9	misrepresentation.
10	18. Section 9884,22 of the Code states:
11	(a) Notwithstanding any other provision of law, the director may revoke, suspend, or
12	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
13	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
14	powers granted therein
15	STATUTORY PROVISIONS
16	19. Section 22 of the Code states:
16 17	(a) 'Board' as used in any provisions of this Code, refers to the board in which the
17 18	(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
17	(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.'
17 18	<ul> <li>(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.'</li> <li>(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</li> </ul>
17 18 19	<ul> <li>(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.'</li> <li>(b) Whenever the regulatory program of a board that is subject to review by the Joint</li> </ul>
17 18 19 20	<ul> <li>(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.'</li> <li>(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.'</li> </ul>
17 18 19 20 21	<ul> <li>(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.'</li> <li>(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</li> </ul>
17 18 19 20 21 22	<ul> <li>(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.'</li> <li>(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.'</li> <li>20. Section 23.7 of the Code states:</li> <li>"Unless otherwise expressly provided, license means license, certificate, registration,</li> </ul>
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	<ul> <li>(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.'</li> <li>(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.'</li> <li>20. Section 23.7 of the Code states:</li> <li>"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."</li> </ul>
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	<ul> <li>(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.'</li> <li>(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.'</li> <li>20. Section 23.7 of the Code states:</li> <li>"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</li> </ul>
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>	<ul> <li>(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.'</li> <li>(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.'</li> <li>20. Section 23.7 of the Code states:</li> <li>"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."</li> <li>21. Section 9884.7 of the Code states:</li> <li>(a) The director, where the automotive repair dealer cannot show there was a bona</li> </ul>
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	<ul> <li>(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.'</li> <li>(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.'</li> <li>20. Section 23.7 of the Code states:</li> <li>"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."</li> <li>21. Section 9884.7 of the Code states:</li> <li>(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</li> </ul>
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>	<ul> <li>(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.'</li> <li>(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.'</li> <li>20. Section 23.7 of the Code states:</li> <li>"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."</li> <li>21. Section 9884.7 of the Code states:</li> <li>(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</li> </ul>

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.

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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.

22. Section 44012 of the Health and Safety Code states:

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 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that 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:

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

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

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle

(FUTURE INNOVATIONS, LLC, DBA MAM SMOO TEST ONLY; ANNA ADELE THORNTON-POPP; MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

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

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

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the 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.

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

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

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

23. Section 44015 of the Health and Safety Code states:

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

(1) A vehicle that has been tampered with,

(FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP; MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION (b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

24. Section 44059 of the Health and Safety Code states:

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

#### COSTS

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

#### **CLEAN PLUGGING**

26. At all times alleged in this Accusation, Respondent Sharp was acting in the course and within the scope of a technician, employee, partner, officer, or member of Respondent M & M Smog Check.

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

28. Parameter Identifications (PID) are data points reported by the OBD II system electronic control unit to the scan tool or OIS. Examples of PIDs are engine speed (rpm), vehicle speed, engine temperature, and other input and output values utilized by the OBD II system electronic control unit. The PID count is the number of data points reported by the OBD II system electronic control unit and is programmed during manufacture.

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29. The Vehicle Identification Number (VIN) that is physically present on all vehicles is also required to be programmed into the vehicle's OBD II on 2005 and newer vehicles, and on many occasions was programmed into the OBD II system electronic control unit in earlier modelyears, This electronically programmed VIN, also known as the "eVIN," is captured by BAR during a Smog Check, and should match the physical VIN on the vehicle.

During a Bureau representative's review of Respondents' certified test results in the 30. б 7 Vehicle Information Database (VID) for inspections purportedly performed on the OIS between June 2016 and September 2017, eight (8) vehicles identified below had deviations in one or more 8 of the following: eVIN, incorrect vehicle communication protocol, and/or incorrect PID count. 9 This indicates that the vehicles receiving smog certificates were fraudulently tested during the 10 smog check inspection by a method known as Clean Plugging,<sup>1</sup> A detailed explanation of each fraudulent smog check is as follows: 12

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31. Clean Plug No. 1:

On June 28, 2016, between 9:15 a.m. and 9:20 a.m., a 2002 Volvo S60 [VIN 14 15 YV1RS61R422191425, CA License No. 4YXF869] was inspected. A Certificate of Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to Smog Check 16 17 Inspector Sharp. OIS Test Details showed an eVIN reported of YV1622FS0C2053213, the protocol reported ICAN11bt5, and the PID count was 36/16. Comparative OIS Test Data for One 18 Thousand (1000)<sup>2</sup>, 2002 Volvo S60 vehicles shows that 95.9% do not report the eVIN, have a 19 communication protocol of 1914, and report a PID count of 17 or 17/7. 20

DMV registration information indicates VIN #YV1622FS0C2053213 corresponds to a 2012 21 Volvo vehicle, not a 2002 Volvo S60. The discrepancies in the OIS Test Data prove that M & M 22 23 Smog's OIS Data Acquisition Device (DAD) was not connected to the 2002 Volvo S60 being 24 certified, resulting in the issuance of a fraudulent Certificate of Compliance.

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<sup>1</sup> To "clean plug" a vehicle, the technician uses another vehicle's properly functioning OBD II system, or another source, to generate passing 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.

<sup>2</sup> This number is based on the most recent available total number of similar vehicles tested statewide, or up to one thousand (1000).

hda.

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## 32. Clean Plug No. 2:

On July 5, 2016, between 12:19 p.m. and 12:26 p.m., a 2002 Mercedes-Benz C230K, [VIN# WDBRN47J92A223079, CA License No. 5WWV526] was inspected. A Certificate of Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as WDDGF56X28F011790, the protocol reported ICAN11bt5, and the PID count was 45/12. Comparative OIS Test Data for One Thousand (1000), 2002 Mercedes-Benz C230K vehicles shows that 96.3% do not report the eVIN, have a communication protocol of KWPF and report a PID count of 17.

The OIS Test Data shows that a 2008 Mercedes-Benz C350, VIN WDDGF56X28F011790 10 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2002 11 Mercedes-Benz C230K. The 2008 Mercedes-Benz C350 was certified by Smog Check Inspector 12 Sharp at M & M Smog on August 23, 2016. The OIS Test Data transmitted for the 2008 13 Mercedes-Benz C350 matches the OIS Test Data for the fraudulent inspection of the 2002 14 15 Mercedes-Benz C230K for the eVIN, Protocol and PID count. The discrepancies in the OIS Test Data prove that M & M Smog's OIS DAD was not connected to the 2002 Mercedes-Benz C230K. 16 17 being certified, resulting in the issuance of a fraudulent Certificate of Compliance.

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33. Clean Plug No. 3:

19 On July 20, 2016, between 12:12 p.m. and 12:15 p.m., a 2003 Ford Mustang Cobra SVT. 20[VIN# 1FAFP49Y33F301861, CA License No. 4YDY689] was inspected. A Certificate of Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to 21 Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as 22 23IFTYR44E38PA56233, the protocol reported ICAN11bt5, and the PID count was 40. Comparative OIS Test Data for Two Hundred Fourteen (214), 2003 Ford Mustang Cobra SVT 24 vehicles shows that 88.3% have an eVIN reported, have a communication protocol of JPWM and 25report a PID count of 20 or 21 or 23. 26

The OIS Test Data shows that a 2008 Ford Ranger, VIN 1FTYR44E38PA56233 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2003 Ford

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(FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP; MICHAEL ALAN POPP and RONALD ALBERT SHARP, IR.) ACCUSATION Mustang Cobra SVT. The 2008 Ford Ranger was certified under Smog Check Inspector Sharp at
 M & M Smog on the same day, July 20, 2016. The OIS Test Data transmitted for the 2008 Ford
 Ranger matches the OIS Test Data for the fraudulent inspection of the 2003 Ford Mustang Cobra
 SVT for the eVIN, Protocol and PID count. The discrepancies in the OIS Test Data prove that M
 & M Smog's OIS DAD was not connected to the 2003 Ford Mustang Cobra SVT being certified,
 resulting in the issuance of a fraudulent Certificate of Compliance.

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34. Clean Plug No. 4:

On September 14, 2016, between 9:25 a.m. and 9:29 a.m., a 2005 Mercedes-Benz C230K,
[VIN# WDBRF40J65F669575] was inspected. A Certificate of Compliance was issued by
Respondent M & M Smog using license EO 637584, belonging to Smog Check Inspector Sharp.
OIS Test Details showed the eVIN was transmitted as 4JGBF71EX8A389077, the protocol
reported ICAN11bt5, and the PID count was 44/12. Comparative OIS Test Data for One
Thousand (1000), 2005 Mercedes-Benz C230K vehicles shows that 99.9% have an eVIN
reported, have a communication protocol of KWPF and report a PID count of 17 or 20.

The OIS Test Data shows that a 2008 Mercedes-Benz GL450 4 Matic, VIN 15 4JGBF71EX8A389077, was the vehicle used to generate the fraudulent Smog Certificate of 16 Compliance for the 2005 Mercedes-Benz C230K. The 2008 Mercedes-Benz GL450 4 Matic was 17 certified under Smog Check Inspector Sharp at M & M Smog on the same day, September 14, 18 19 2016, as the fraudulent inspection of the 2005 Mercedes-Benz C230K. The OIS Test Data 20 transmitted for the 2008 Mercedes-Benz GL450 4 Matic matches the OIS Test Data for the 21 fraudulent inspection of the 2005 Mercedes-Benz C230K for the eVin, Protocol and PID count. 22 The discrepancies in the OIS Test Data prove that M & M Smog's OIS DAD was not connected 23 to the 2005 Mercedes-Benz C230K being certified, resulting in the issuance of a fraudulent Certificate of Compliance. 24

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35. Clean Plug No. 5:

On December 23, 2016, between 2:08 p.m. and 2:11 p.m., a 2000 Mercedes-Benz S 500,
[VIN# WDBNG75J3YA090602, CA License No. 7ANZ656] was inspected. A Certificate of
Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to

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Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as WDBUF56X07B069365, the protocol reported ICAN11bt5, and the PID count was 44. Comparative OIS Test Data for One Thousand (1000), 2000 Mercedes-Benz S 500 vehicles shows that 97.2% do not have an eVIN reported, have a communication protocol of 1914 and report a PID count of 21.

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The OIS Test Data shows that a 2007 Mercedes-Benz E 350, VIN WDBUF56X07B069365, was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2000 Mercedes-Benz S 500. The 2007 Mercedes-Benz E 350 was certified under Smog Check Inspector Sharp at M & M Smog on the same day, December 23, 2016, as the fraudulent inspection of the 2000 Mercedes-Benz S 500. The OIS Test Data transmitted for the 2007 Mercedes-Benz E 350 matches the OIS Test Data for the fraudulent inspection of the 2000 Mercedes-Benz E 350 matches the OIS Test Data for the fraudulent inspection of the 2000 Mercedes-Benz S 500 for the eVin, Protocol and PID count. The discrepancies in the OIS Test Data prove that M & M Smog's OIS DAD was not connected to the 2000 Mercedes-Benz S 500 being certified, resulting in the issuance of a fraudulent Certificate of Compliance.

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36. Clean Plug No. 6:

On March 31, 2017, between 12:41 p.m. and 12:47 p.m., a 2009 Jaguar XF Luxury, JVIN# 16 SAJWA05B49HR24104, CA License No. 7JMV381] was inspected. A Certificate of 17 Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to 18 19 Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as SAJEA01T23FM81318, the protocol reported 1914, and the PID count was 25. Comparative OIS 20 Test Data for Three Hundred Bighty-Seven (387), 2009 Jaguar XF Luxury vehicles shows that 21 98.4% have an eVIN reported, have a communication protocol of ICAN11bt5 and report a PID 2223count of 43/16.

The OIS Test Data shows that a 2003 Jaguar S Type, VIN SAJEA01T23FM81318, was the
vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2009 Jaguar XF
Luxury. The 2003 Jaguar S Type was certified under Smog Check Inspector Sharp at M & M
Smog on the same day, March 31, 2017, as the fraudulent inspection of the 2009 Jaguar XF
Luxury. The OIS Test Data transmitted for the 2003 Jaguar S Type matches the OIS Test Data for

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(FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP; MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION. the fraudulent inspection of the 2009 Jaguar XF Luxury for the eVin, Protocol and PID count. The discrepancies in the OIS Test Data prove that M & M Smog's OIS DAD was not connected to the 2009 Jaguar XF Luxury being certified, resulting in the issuance of a fraudulent Certificate of Compliance.

37. Clean Plug No. 7:

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On July 27, 2017, between 2:14 p.m. and 2:19 p.m., a 2007 Chevrolet Express G2500, [VIN# 1GCGG25V771243352, CA License No. 8J06160] was inspected. A Certificate of Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as 1GCZGFBAXA1105426, the protocol reported ICAN11bt5, and the PID count was 44/7. Comparative OIS Test Data for One Thousand (1000), 2007 Chevrolet Express G2500 vehicles shows that 98.2% have an eVIN reported, have a communication protocol of JVPW and report a PID count of 22.

On August 3, 2015, another licensed Smog Check facility performed a Smog Check
Inspection on the 2007 Chevrolet Express G2500, [VIN# 1GCGG25V771243352, CA License
No. 8J06160]. The OIS Test Dotails shows the vehicle transmitted the correct eVIN, had the
expected communication protocol JVPW, and transmitted a PID count of 22.

18 The OIS Test Data shows that a 2010 Chevrolet Express G2500, VIN 1GCZOFBAXA1105426, was the vehicle used to generate the fraudulent Smog Certificate of 19 Compliance for the 2007 Chevrolet Express G2500. The 2010 Chevrolet Express G2500 was 20certified under Smog Check Inspector Sharp at M & M Smog on January 18, 2017, as the 21fraudulent inspection of the 2007 Chevrolet Express G2500. The OIS Test Data transmitted for 22the 2010 Chevrolet Express G2500 matches the OIS Test Data for the fraudulent inspection of the 232007 Chevrolet Express G2500 for the eVin, Protocol and PID count. The discrepancies in the 24 25 OIS Test Data prove that M & M Smog's OIS DAD was not connected to the 2007 Chevrolet Express G2500 being certified, resulting in the issuance of a fraudulent Certificate of Compliance. 26 27 III

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1	38. Clean Plug No. 8:	
2	On September 1, 2017, between 11:01 a.m. and 11:09 a.m., a 2007 Toyota Camry New	
3	Generation Hybrid, [VIN# JTNBB46K773027686, CA License No. 5XFA422] was inspected. A	
4	Certificate of Compliance was issued by Respondent M & M Smog using license EO 637584,	
5	belonging to Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as	
6	5J6RM3H77EL016484, the protocol reported ICAN29bt5, and the PID count was 37.	
7	Comparative OIS Test Data for One Thousand (1000), 2007 Toyota Camry New Generation	
8	Hybrid vehicles shows that 99.8% have an eVIN reported, have a communication protocol of	
9	ICAN11bt5 and report a PID count of 38/21.	
10	On September 5, 2015, another licensed Smog Check facility performed a Smog Check	
11	Inspection on the 2007 Toyota Camry New Generation Hybrid, [VIN# JTNBB46K773027686,	
12	CA License No. 5XFA422]. The OIS Test Details shows the vehicle transmitted the correct eVIN,	
13	had the expected communication protocol 1CAN11bt5, and transmitted a PID count of 38/21. The	
14	discrepancies in the OIS Test Data prove that M & M Smog's OIS DAD was not connected to the	
15	2007 Toyota Camry New Generation Hybrid being certified, resulting in the issuance of a	
16	fraudulent Certificate of Compliance.	
17	FIRST CAUSE FOR DISCIPLINE	
	FIRST CAUSE FOR DISCIPLINE (Untrue or Misleading Statement)	
17		
17 18	(Untrue or Misleading Statement)	
17 18 19	(Untrue or Misleading Statement) 39. Complainant re-alleges and incorporates by reference the allegations set forth above	
17 18 19 20	(Untrue or Misleading Statement) 39. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.	
17 18 19 20 21	<ul> <li>(Untrue or Misleading Statement)</li> <li>39. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.</li> <li>40. Respondent M &amp; M Smog's Registration is subject to disciplinary action under</li> </ul>	
17 18 19 20 21 22	<ul> <li>(Untrue or Misleading Statement)</li> <li>39. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.</li> <li>40. Respondent M &amp; M Smog's Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1), in that Respondent M &amp; M Smog made or authorized</li> </ul>	
17 18 19 20 21 22 23	<ul> <li>(Untrue or Misleading Statement)</li> <li>39. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.</li> <li>40. Respondent M &amp; M Smog's Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1), in that Respondent M &amp; M Smog made or authorized statements which Respondent M &amp; M Smog knew or in the exercise of reasonable care should</li> </ul>	
17 18 19 20 21 22 23 24	<ul> <li>(Untrue or Misleading Statement)</li> <li>39. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.</li> <li>40. Respondent M &amp; M Smog's Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1), in that Respondent M &amp; M Smog made or authorized statements which Respondent M &amp; M Smog knew or in the exercise of reasonable care should have known to be untrue or misleading.</li> </ul>	
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<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	<ul> <li>(Untrue or Misleading Statement)</li> <li>39. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.</li> <li>40. Respondent M &amp; M Smog's Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1), in that Respondent M &amp; M Smog made or authorized statements which Respondent M &amp; M Smog knew or in the exercise of reasonable care should have known to be untrue or misleading.</li> <li>41. Respondent M &amp; M Smog certified that the vehicles listed in paragraphs 31-38, had passed inspection and were in compliance with all applicable laws and regulations, when in fact</li> </ul>	
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>	<ul> <li>(Untrue or Misleading Statement)</li> <li>39. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.</li> <li>40. Respondent M &amp; M Smog's Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1), in that Respondent M &amp; M Smog made or authorized statements which Respondent M &amp; M Smog knew or in the exercise of reasonable care should have known to be untrue or misleading.</li> <li>41. Respondent M &amp; M Smog certified that the vehicles listed in paragraphs 31-38, had passed inspection and were in compliance with all applicable laws and regulations, when in fact and in truth, Respondent M &amp; M Smog inspected the vehicles using the clean plugging method to</li> </ul>	

ł	SECOND CAUSE FOR DISCIPLINE
2	(Violation of Motor Vehicle Inspection Program)
3	42. Complainant re-alleges and incorporates by reference the allegations set forth above
4	in the foregoing paragraphs.
5	43. Respondent M & M Smog's Smog Check Station License is subject to disciplinary
6	action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
7	subdivision (a), in that M & M Smog failed to comply with the following sections of that Code:
8	a. <u>Section 44012</u> : failed to perform the tests of the emission control systems and
9	devices on the vehicles listed in paragraphs 31-38, in accordance with procedures prescribed by
10	the Department.
11	b. <u>Section 44015, subd. (a) and (b)</u> : issued a certificate of compliance for the vehicles
12	listed in paragraphs 31-38, without properly testing and inspecting them to determine if they were
13	in compliance with Health & Safety Code section 44012.
14	c. <u>Section 44035</u> : failed to meet or maintain the standards prescribed for qualification,
15	equipment, performance, or conduct by failing to properly perform a smog inspection on the
16	vehicles listed in paragraphs 31-38 or certifying that such tests had been performed, when in fact
17	they were never performed.
18	THIRD CAUSE FOR DISCIPLINE
19	(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)
20	44. Complainant re-alleges and incorporates by reference the allegations set forth above
21	in the foregoing paragraphs.
22	45. Respondent M & M Smog's Smog Check Station License is subject to disciplinary
23	action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
24	subdivision (a), in that Respondent M & M Smog failed to comply with the following sections of
25	Title 16, California Code of Regulations:
26	a. Section 3340.35, subdivision (c): failed to inspect and test the vehicles listed in
27	paragraphs 31-38, in accordance with the procedures specified in section 3340.42 of the
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	(FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP; MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION

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Regulations and failed to ensure that the vehicles had all the required emission control equipment and devices installed and functioning correctly.

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b. <u>Section 3340.41. subdivision (c)</u>: knowingly entered into the Emissions Inspection System false information about the vehicles listed in paragraphs 31-38, providing results for smog inspections which were not actually performed.

c. <u>Section 3340.42</u>: failed to conduct the required smog tests on the vehicles listed in paragraphs 31-38, in accordance with the Bureau's specifications.

d. <u>Section 3340.45</u>: failed to conduct the required smog tests on the vehicles listed in paragraphs 31-38, in accordance with the Smog Check Manual, dated 2013.

## FOURTH CAUSE FOR DISCIPLANE

#### (Dishonesty, Fraud, or Deceit)

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

47. Respondent M & M Smog's Registration is subject to disciplinary action under Code 14 section 9884.7, subdivision (a)(4) and Respondent M & M Smog's Smog Check Station License 15 is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (a) 16 17 and (c) and 44072.2, subdivision (d), in that Respondent M & M Smog committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of 18 compliance for the vehicles listed in paragraphs 31-38 without performing bona fide inspections 19 of the emission control devices and systems on the vehicles, thereby depriving the People of the 20 21 State of California of the protection afforded by the Motor Vehicle Inspection Program.

# FIFTH CAUSE FOR DISCIPLINE

## (Violation of Motor Vehicle Inspection Program)

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

49. Respondent Sharp's Smog Check Inspector License is subject to disciplinary action
under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,

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subdivision (a), in that Respondent Sharp failed to comply with the following sections of that Code:

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 a. <u>Section 44012</u>: failed to perform the tests of the emission control systems and devices on the vehicles listed in paragraphs 31-38, in accordance with procedures prescribed by the Department.

b. <u>Section 44015, subd. (a) and (b)</u>: issued a certificate of compliance for the vehicles
listed in paragraphs 31-38, without properly testing and inspecting them to determine if they were
in compliance with Health & Safety Code section 44012.

c. Section 44035: failed to meet or maintain the standards prescribed for qualification,
equipment, performance, or conduct by failing to properly perform a smog inspection on the
vehicles listed in paragraphs 31-38, or certifying that such tests had been performed, when in fact
they were never performed.

d. <u>Section 44032</u>: failed to test emission control devices and systems in accordance with Section 44012 on the vehicles listed in paragraphs 31-38.

### SIXTH CAUSE FOR DISCIPLINE

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

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

19 51. Respondent Sharp's Smog Check Inspector License is subject to disciplinary action
20 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
21 subdivision (a) in that Respondent Sharp failed to comply with the following sections of Title 16

subdivision (a) in that Respondent Sharp failed to comply with the following sections of Title 16,
California Code of Regulations:

a. <u>Section 3340.35, subdivision (c)</u>: failed to inspect and test the vehicles listed in
 paragraphs 31-38, in accordance with the procedures specified in section 3340.42 of the
 Regulations and failed to ensure that the vehicles listed in paragraphs 31-38, had all the required
 emission control equipment and devices installed and functioning correctly.

(FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP; MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION

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b. Section 3340.41, subdivision (c): knowingly entered into the Emissions Inspection 1 2 System false information about the vehicles listed in paragraphs 31-38, providing results for smog inspections which were not actually performed. 3 Section 3340,42: failed to conduct the required smog tests on the vehicles listed in c. 4 paragraphs 31-38, in accordance with the Bureau's specifications. 5 d. Section 3340.45: failed to conduct the required smog tests on the vehicles listed in 6 7 paragraphs 31-38, in accordance with the Smog Check Manual, dated 2013. SEVENTH CAUSE FOR DISCIPLINE 8 (Dishonesty, Fraud, or Deceit) 9 52. Complainant re-alleges and incorporates by reference the allegations set forth above 10 in the foregoing paragraphs. 11 53. Respondent Sharp's Smog Check Inspector License is subject to disciplinary action 12 under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision 13 14 (d), in that Respondent Sharp committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles listed in paragraphs 31-38, 15 without performing bona fide inspections of the emission control devices and systems on the 16 vehicles, thereby depriving the People of the State of California of the protection afforded by the 17 Motor Vehicle Inspection Program, 18 19 **OTHER MATTERS** 54. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or 20 21 place on probation the registration for all places of business operated in this State by Respondent M & M Smog upon a finding that Respondent has, or is, engaged in a course of repeated and 22 willful violations of the laws and regulations pertaining to an automotive repair dealer. 23 55. Under Health & Safety Code section 44072.8, if Respondent M & M Smog's Smog 24 Check Station License is revoked or suspended, the Director may likewise revoke or suspend any 25 additional license issued under Chapter 5 of part 5 of Division 26 of the Health and Safety Code 26in the name of Respondent M & M Smog. 27 28 18

> (FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP; MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION

1	56. Under Health & Safety Code section 44072.8, if Respondent Sharp's Smog Check
2	Inspector License is revoked or suspended, the Director may likewise revoke or suspend any
3	additional license issued under Chapter 5 of part 5 of Division 26 of the Health and Safety Code
4	in the name of Respondent Sharp.
5	DISCIPLINE CONSIDERATIONS
6	57. To determine the degree of discipline, if any, to be imposed on Respondent Sharp,
7	Complainant alleges that on or about June 16, 2015, the Bureau of Automotive Repair issued
8	Citation Number M2015-1306, for his action in violation of section 44032 of the Health and
9	Safety code. Respondent Sharp unlawfully Smog Check inspected and certified a vehicle using
10	the BAR-97 when the OIS test was required.
11	PRAYER
12	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13	and that following the hearing, the Director of Consumer Affairs issue a decision:
14	1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15	280063, issued to Future Innovations, LLC, dba M&M Smog Test Only; Anna Adele Thornton-
16	Popp; Michael Alan Popp;
17	2. Revoking or suspending any other Automotive Repair Dealer Registration issued
18	Anna Adele Thornton-Popp or Michael Alan Popp;
19	3. Revoking or suspending Smog Check Test Only Station License, Number TC 280063,
20	issued to Future Innovations, LLC, dba M&M Smog Test Only; Anna Adele Thornton-Popp;
21	Michael Alan Popp;
22	4. Revoking any additional license under Chapter 5 of Part 5 of Division 26 of the
23	Health and Safety code in the name of Future Innovations, LLC, dba M&M Smog Test Only;
24	Anna Adele Thornton-Popp; Michael Alan Popp;
25	5. Revoking or suspending Smog Check Inspector License Number BO 637584, issued
26	to Ronald Albert Sharp, Jr.;
27	6. Revoked any additional license under Chapter 5 of Part 5 of Division 26 of the Health
28	and Safety code in the name of Ronald Albert Sharp, Jr.;
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	(FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP; MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION

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7. Ordering Anna Adele Thornton-Popp, Michael Alan Popp and Ronald Albert Sharp, Jr. to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, 8. Taking such other and further action as deemed necessary and proper. DATED: March 30, 2018 PATRICK Chief Bureau of Automotive Repair Department of Consumer Affairs State of California Complainant SD2018800310 81941277.doc (FUTURE INNOVATIONS, LLC, DBA M&M SMOG TEST ONLY; ANNA ADELE THORNTON-POPP: MICHAEL ALAN POPP and RONALD ALBERT SHARP, JR.) ACCUSATION