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

12 In the Matter of the Accusation Against:

Case No. 79/25-3070

13 **JESUS RODOLFO LOPEZ, dba**
14 **THE SPOT TEST ONLY**
3859 Broadway Pl. #4
Los Angeles, CA 90037

ACCUSATION

15 Mailing Address:
16 157 S. Alvarado St.
Los Angeles, CA 90057

17 Automotive Repair Dealer Registration No.
ARD 300311
18 Smog Check, Test Only Station License No.
TC 300311

19 **And**

20 **ANDRES MARTINEZ MARMOLEJO**
21 14417 S. White Ave.
Compton, CA 90221

22 Smog Check Inspector License No. EO 640702

23 Respondents.
24

25 **PARTIES**

26
27 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
28 the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

1 Automotive Repair Dealer

2 2. On or about July 7, 2021, Bureau of Automotive Repair issued Automotive Repair
3 Dealer Registration Number ARD 300311 to Jesus Rodolfo Lopez, dba The Spot Test Only
4 (Respondent The Spot Test Only). The Automotive Repair Dealer Registration was in full force
5 and effect at all times relevant to the charges brought herein and will expire on July 31, 2025,
6 unless renewed.

7 Smog Check, Test Only Station

8 3. On or about August 24, 2021, Bureau of Automotive Repair issued Smog Check, Test
9 Only, Station License Number TC 300311 to Respondent The Spot Test Only. The Smog Check,
10 Test Only, Station License was in full force and effect at all times relevant to the charges brought
11 herein and will expire on July 31, 2025, unless renewed.

12 STAR Certified Station

13 4. Respondent The Spot Test Only was certified as a STAR Station on October 29,
14 2021; however, it was suspended on August 21, 2024.

15 Smog Check Inspector

16 5. On or about November 3, 2017, Bureau of Automotive Repair issued Smog Check
17 Inspector License Number EO 640702 to Andres Martinez Marmolejo (Respondent Marmolejo).
18 The Smog Check Inspector License was in full force and effect at all times relevant to the charges
19 brought herein and will expire on August 31, 2025, unless renewed.

20 **JURISDICTION**

21 6. Business and Professions Code (“BPC”) section 9884.13 provides, in pertinent part,
22 that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed
23 with a disciplinary proceeding against an automotive repair dealer or to render a decision
24 temporarily or permanently invalidating (suspending or revoking) a registration.

25 7. Health and Safety Code (“HSC”) section 44002 provides, in pertinent part, that the
26 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
27 the Motor Vehicle Inspection Program.

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

9. Section 44072.10, subdivision (c), of the HSC provides in pertinent part that “[t]he department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles.”

STATUTORY PROVISIONS

10. Section 9884.7 of the BPC states, in pertinent part:

“(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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 which constitutes fraud.

• • • •

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

11. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

12. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance shall be issued if a vehicle meets the requirements of HSC section 40012.

13. Section 44032 of the HSC states, in pertinent part, that: (1) no person may perform tests or repairs of emission control devices or systems of motor vehicles required by the Motor Vehicle Inspection Program unless the person performing the test or repair is a licensed qualified

1 smog check technician; and (2) all tests must be conducted in accordance with section 44012 (i.e.
2 Motor Vehicle Inspection Program Requirements).

3 14. Section 44059 of the HSC provides:

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

8 15. Section 44072.2 of the HSC states, in pertinent part:

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

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

15

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

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

19

20 16. Section 44072.8 of the HSC states that when a license has been revoked or suspended
21 following a hearing under this article, any additional license issued under this chapter in the name
22 of the licensee may be likewise revoked or suspended by the director.

23 **REGULATORY PROVISIONS**

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

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

1 18. California Code of Regulations (“CCR”), title 16, section 3340.30, subdivision (a),
2 states in pertinent part:

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

5 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
6 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
7 article.

8

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

14 20. CCR, title 16, section 3340.41, subdivision (b), provides: “No person shall enter into
15 the emissions inspection system any access or qualification number other than as authorized by
16 the bureau, nor in any way tamper with the emissions inspection system.”

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

19 **COST RECOVERY**

20
21 22. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board
22 “may request the administrative law judge to direct a licensee found to have committed
23 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
24 investigation and enforcement of the case.”

25 **SUMMARY OF OIS SMOG CHECK INSPECTION PROGRAM**

26 23. Beginning March 9, 2015, California’s Smog Check Program was updated require the
27 use of an On-Board Diagnostic Inspection System (OIS). OIS is the Smog Check equipment
28 required in all areas of the State when inspecting most model-year 2000 and newer gasoline and

1 hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data
2 Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD is an On Board
3 Diagnostic (OBD) scan tool that, when requested by the California OIS software, retrieves OBD
4 data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the
5 California OIS software and will be retrieved.

6 24. The DAD connects between the OIS computer and the vehicle's Diagnostic Link
7 Connector (DLC) located in the vehicle's passenger compartment, which allows for the retrieval
8 of information from the vehicle's on-board computer system. The California OIS software
9 requires a continuous Internet connection when performing a Smog Check inspection and the OIS
10 software communicates with BAR's central database through the Internet connection. The bar
11 code scanner is used to input technician information, the vehicle's identification number (VIN),
12 and DMV renewal information. The printer provides a Vehicle Inspection Report (VIR)
13 containing inspection results for motorists and a Smog Check Certificate of Compliance number
14 for passing vehicles.

15 25. Data retrieved and recorded during an OIS smog check includes; the eVIN, which is
16 the digitally stored VIN programmed by the manufacturer into the vehicle's Powertrain Control
17 Module (PCM); the communication protocol, which is the manufacturer/vehicle specific language
18 the PCM uses to Relay or communicate information. The communication protocol is
19 programmed into the vehicle's on-board computer during manufacture and does not change.

20 26. Other data retrieved and recorded during an OIS smog check includes the number of
21 Parameter Identifications (PIDs), which refers to the number of specific data values that the
22 vehicle's PCM uses related to emissions controls. The specific data values associated with a
23 vehicle's PIDs are also retrieved and recorded during an OIS smog check inspection. That data
24 include things such as the vehicle's engine speed, throttle position, manifold absolute pressure
25 and the engine's mass air flow readings throughout an inspection. Accordingly, the following
26 types of data are recorded during an OIS smog check inspection:

- 27 • Engine speed in revolutions per minute (RPM)

- Throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full throttle.
- Manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at sea level.
- Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract. Measured in grams per second (gps).

27. BAR has become aware of methods that some Smog Check stations and Smog Check inspectors use to fraudulently issue smog certificates to vehicles that will not pass a Smog Check test, or in some instances, are not even present during the time that the test is performed. One such method, which is known as "clean plugging", involves using another vehicle's properly functioning OBD II system, or another source such as a defeat device/simulator, to generate passing data readings or diagnostic information for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance and/or are not present for testing.

28. Defeat devices attempt to simulate engine operation during a Smog Check inspection by transmitting OBD II data to the VID that has been modified or replaced entirely for the purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a defeat device/simulator during a Smog Check inspection constitutes clean plugging and is strictly prohibited. As described in more detail below, BAR is able to utilize the data retrieved and recorded during an OIS smog check to identify inspections in which a defeat device/simulator was used.

29. During an OIS Smog Check inspection, the vehicle is monitored and PID data readings are obtained while the engine is idling and also when the smog check inspector is prompted to increase the engine speed to a certain level and then maintain that speed for a period of time. In order for the engine speed to increase, the throttle must be opened to increase airflow

1 through the engine. An increase in the throttle position, increases the engine speed as measured
2 in RPM and results in a corresponding increase in the mass air flow rate (MAF) as well as a
3 change in the manifold absolute pressure (MAP).

4 30. Clean plugging is apparent in cases where the data recorded during an OIS smog
5 check shows that the engine speed as measured in RPM increases during the test, and the TPS,
6 MAP and/or MAF readings that are uncharacteristic and improbable for normal engine operation.
7 Because engine speed as measured in RPM cannot increase without corresponding increases in
8 the throttle position and MAF and changes in the MAP, test data in such cases shows that a defeat
9 device was used to simulate throttle position, MAF and MAP readings for a vehicle that was not
10 actually tested.

11 **FACTUAL ALLEGATIONS**

12 31. A Bureau program representative initiated an investigation in which he reviewed
13 specific OIS Test Data for inspections performed at The Spot Test Only over several months in
14 2024. The investigation revealed that the data related to certain vehicles certified by Respondents
15 contained a pattern of unmistakable discrepancies between the information transmitted during the
16 inspections and the recognized and scientifically established characteristics of internal
17 combustion engine operation.

18 32. Specifically, the Bureau program representative identified 10 instances in which the
19 steady idle and steady elevated engine RPMs with the improbable throttle positions, MAP, and
20 MAF readings are not characteristic or expected for normal engine operation. The throttle
21 position, MAP, and MAF readings are expected to be stable at idle and at the elevated engine
22 RPM. Additionally, during the improbable readings, the throttle position and MAF had a higher
23 data point at idle than the highest point at the elevated engine RPM range. Such conditions would
24 not have occurred if the DAD had been connected to the vehicles that were purportedly being
25 tested instead of a defeat device that simulated engine RPM.

26 33. These documented discrepancies confirm that, in performing the inspections at issue,
27 Respondents engaged in the illegal activity of clean plugging in order to issue fraudulent
28

certificates of compliance for the vehicles. The following chart ("Table 1") illustrates the documented clean plugging activities by Respondents during the period reviewed.

Table 1

Test Date	Vehicle Certified & License No./VIN	Certificate No.	Test Details
Vehicle #1 June 20, 2024	2004 Ford Expedition XLT VIN # 1FMRU15W74LA14363	IZ591625C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation.
Vehicle #2 June 26, 2024	2001 Honda Prelude VIN # JHMBB614X1C000903	IZ794471C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions and MAP readings are not characteristic or expected for normal engine operation.
Vehicle #3 July 13, 2024	2002 BMW 325I VIN # WBAET37492NG78131	UA365081C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation.
Vehicle #4 July 15, 2024	2001 Chevrolet Silverado C1500 VIN # 1GCEC14W21Z325084	UA365095C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions, MAP, and MAF readings are not characteristic or expected for normal engine operation.

Vehicle #5 July 19, 2024	2004 Honda Civic EX VIN # 1HGEM22914L072784	UA534674C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions and MAP readings are not characteristic or expected for normal engine operation.
Vehicle #6 July 29, 2024	2002 Mazda Protégé DX VIN # JM1BJ225420631797	UA715998C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation.
Vehicle #7 August 1, 2024	2001 Toyota Corolla CE VIN # 1NXBR12E21Z531445	UA917613C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation.
Vehicle #8 August 3, 2024	2001 Dodge Ram 1500 VIN # 3B7HC13Y01M572542	UA917633C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions and MAP readings are not characteristic or expected for normal engine operation.
Vehicle #9 August 13, 2024	2004 GMC New Sierra C1500 VIN # 1GTEC14V94Z172358	UC285804C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions, MAF, and MAP readings are not characteristic or expected for normal engine operation.

Vehicle #10 August 28, 2024	2002 Toyota 4Runner SR5 VIN # JT3GN86R620234445	IZ974931C	Inspection performed by Respondent Marmolejo. The steady idle and steady elevated engine RPMs with the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation.
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FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

34. Respondent The Spot Test Only has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(1), in that he made statements which were known to be untrue or misleading or, which by exercise of reasonable care should have been known to be untrue or misleading, when issuing electronic smog certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had not been so inspected. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 31 through 33, inclusive, as though set forth fully herein.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

35. Respondent The Spot Test Only has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud by issuing electronic smog certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 31 through 33, inclusive, as though set forth fully herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 36. Respondent The Spot Test Only has subjected his registration to discipline under BPC
4 section 9884.7, subdivision (a)(6), in that he failed in a “material respect to comply with the
5 provisions of this chapter or regulations adopted pursuant to it” when issuing electronic smog
6 certificates of compliance for the vehicles set forth in Table 1, above, without performing bona
7 fide inspections of the emission control devices and systems on those vehicles, thereby depriving
8 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
10 paragraphs 31 through 33, inclusive, as though set forth fully herein.

11 **FOURTH CAUSE FOR DISCIPLINE**

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

13 37. Respondent The Spot Test Only has subjected his station license to discipline under
14 HSC section 44072.2, subdivision (a), in that, with respect to the vehicles set forth in Table 1,
15 above, Respondent The Spot Test Only violated the following sections of the HSC:

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

19 b. **Section 44015, subdivision (b):** Respondent The Spot Test Only issued electronic
20 smog certificates of compliance without properly testing and inspecting the vehicles to determine
21 if they were in compliance with section 44012 of the HSC.

22 Complainant refers to, and by this reference incorporates, the allegations contained in
23 paragraphs 31 through 33, inclusive, as though set forth fully herein.

24 **FIFTH CAUSE FOR DISCIPLINE**

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

26 38. Respondent The Spot Test Only has subjected his station license to discipline under
27 HSC section 44072.2, subdivision (c), in that, with respect to the vehicles set forth in Table 1,
28 above, Respondent The Spot Test Only violated the following sections of title 16 of the CCR:

a. **Section 3340.24, subdivision (c):** Respondent The Spot Test Only falsely or fraudulently issued electronic smog certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles as required by HSC section 44012.

b. **Section 3340.35, subdivision (c):** Respondent The Spot Test Only issued electronic smog certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42 of the HSC.

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

Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 31 through 33, inclusive, as though set forth fully herein.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud and/or Deceit)

39. Respondent The Spot Test Only has subjected his station license to discipline under HSC section 44072.2, subdivision (d), in that, with respect to the vehicles set forth in Table 1, above, Respondent The Spot Test Only committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing electronic smog certificates of compliance for those vehicles without performing bona fide inspections and functional testing of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 31 through 33, inclusive, as though set forth fully herein.

SEVENTH CAUSE FOR DISCIPLINE

(Fraudulent Inspection/Certification)

40. Respondent The Spot Test Only has subjected his station license to discipline under HSC section 44072.10, subdivision (c), in that, with respect to the vehicles set forth in Table 1, above, Respondent The Spot Test Only fraudulently certified vehicles and/or participated in the

1 fraudulent inspection of vehicles. Complainant refers to, and by this reference incorporates, the
2 allegations contained in paragraphs 31 through 33, inclusive, as though set forth fully herein.

3 **EIGHTH CAUSE FOR DISCIPLINE**

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

5 41. Respondent Marmolejo has subjected his smog check inspector license to discipline
6 under HSC section 44072.2, subdivision (a), in that, with respect to the vehicles set forth in Table
7 1, above, Respondent Marmolejo violated the following sections of the HSC:

8 a. **Section 44012:** Respondent Marmolejo failed to ensure that the onboard diagnostic
9 system tests were performed on those vehicles in accordance with procedures prescribed by the
10 department.

11 b. **Section 44015, subdivision (b):** Respondent Marmolejo issued electronic smog
12 certificates of compliance without properly testing and inspecting the vehicles to determine if
13 they were in compliance with section 44012 of the HSC.

14 c. **Section 44032:** Respondent Marmolejo failed to perform tests of the onboard
15 diagnostic systems on those vehicles in accordance with section 44012 of the HSC.

16 d. **Section 44059:** Respondent Marmolejo willfully made false entries for the electronic
17 smog certificates of compliance by certifying that those vehicles had been inspected as required
18 when, in fact, they had not.

19 Complainant refers to, and by this reference incorporates, the allegations contained in
20 paragraphs 31 through 33, inclusive, as though set forth fully herein.

21 **NINTH CAUSE FOR DISCIPLINE**

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

23 42. Respondent Marmolejo has subjected his smog check inspector license to discipline
24 under HSC section 44072.2, subdivision (c), in that, with respect to the vehicles set forth in Table
25 1, above, Respondent Marmolejo violated the following sections of title 16 of the CCR:

26 a. **Section 3340.24, subdivision (c):** Respondent Marmolejo falsely or fraudulently
27 issued electronic smog certificates of compliance without performing bona fide inspections and
28

functional testing of the emission control devices and systems on those vehicles as required by HSC section 44012.

b. **Section 3340.30, subdivision (a):** Respondent Marmolejo failed to inspect and test those vehicles in accordance with HSC section 44012.

c. **Section 3340.35, subdivision (c):** Respondent Marmolejo issued electronic smog certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42 of the HSC.

d. **Section 3340.41, subdivision (c):** Respondent Marmolejo knowingly entered false information into the OIS about the vehicles being tested.

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

Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 31 through 33, inclusive, as though set forth fully herein.

TENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

43. Respondent Marmolejo has subjected his smog check inspector license to discipline under HSC section 44072.2, subdivision (d), in that, with respect to the vehicles set forth in Table 1, above, Respondent Marmolejo committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of compliance for those vehicles without performing bona fide inspections and functional testing of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 31 through 33, inclusive, as though set forth fully herein.

ELEVENTH CAUSE FOR DISCIPLINE

(Fraudulent Inspection/Certification)

44. Respondent Marmolejo has subjected his smog check inspector license to discipline under HSC section 44072.10, subdivision (c), in that, with respect to the vehicles set forth in

1 Table 1, above, Respondent Marmolejo fraudulently certified vehicles and/or participated in the
2 fraudulent inspection of vehicles. Complainant refers to, and by this reference incorporates, the
3 allegations contained in paragraphs 31 through 33, inclusive, as though set forth fully herein.

4 **DISCIPLINARY CONSIDERATIONS**

5 45. In determining the degree of discipline to be imposed, the Bureau further alleges that
6 pursuant to the Decision and Order in Case No.: 79/17-15899, effective on December 27, 2018,
7 Automotive Repair Dealer registration ARD 287686, Smog Check Station license TC 287686,
8 and Smog Check Inspector license EO 640702, all issued to Respondent Marmolejo were
9 revoked, stayed, and placed on a 3-year probation subject to terms and conditions. The facts and
10 circumstances underlying the discipline are that Respondent Marmolejo performed fraudulent
11 Smog Check Inspections utilizing the clean plugging method.

12 **OTHER MATTERS**

13 46. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
14 suspend, revoke, or place on probation the registration for all places of business operated in this
15 state by Jesus Rodolfo Lopez, upon a finding that he has, or is, engaged in a course of repeated
16 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

17 47. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
18 License No. TC 300311, issued to Jesus Rodolfo Lopez, is revoked or suspended, any additional
19 license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of
20 said licensee may be likewise revoked or suspended by the director.

21 48. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
22 No. EO 640702, issued to Respondent Marmolejo, is revoked or suspended, any additional
23 license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of
24 said licensee may be likewise revoked or suspended by the director.

25 **PRAYER**

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

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 300311, issued to Jesus Rodolfo Lopez, dba The Spot Test Only;
- 3 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
4 300311, issued to Jesus Rodolfo Lopez, dba The Spot Test Only;
- 5 3. Revoking or suspending any and all additional Automotive Repair Dealer
6 Registrations issued in the name of Jesus Rodolfo Lopez, pursuant to section 9884.7, subdivision
7 (c), of the Business and Professions Code;
- 8 4. Revoking or suspending any and all licenses issued under the Motor Vehicle
9 Inspection Program (Health & Saf. Code Sec. 44000, et seq.) in the name of Jesus Rodolfo Lopez,
10 pursuant to section 44072.8 of the Health and Safety Code;
- 11 5. Revoking or suspending Smog Check Inspector License Number EO 640702, issued
12 to Andres Martinez Marmolejo;
- 13 6. Revoking or suspending any and all licenses issued under the Motor Vehicle
14 Inspection Program (Health & Saf. Code Sec. 44000, et seq.) in the name of Andres Martinez
15 Marmolejo, pursuant to section 44072.8 of the Health and Safety Code;
- 16 7. Ordering Jesus Rodolfo Lopez, dba The Spot Test Only, and Andres Martinez
17 Marmolejo to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
18 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 19 8. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: As of Digital Signature Date

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

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