

1 ROB BONTA
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 M. TRAVIS PEERY
Deputy Attorney General
4 State Bar No. 261887
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6309
6 Facsimile: (916) 731-2126
E-mail: Travis.Peery@doj.ca.gov
7 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

Case No. 79/21-2989

14 **MARIO ZUBIETA-CABALLERO DBA**
15 **MZ SMOG TEST ONLY STATION**
16 **1010 Obispo Ave., Suite A**
Long Beach, CA 90804

ACCUSATION

17 **Mailing Address:**
18 **3980 Beechwood Ave.**
Lynwood, CA 90262

19 **Automotive Repair Dealer Registration No.**
20 **ARD 294221**
21 **Smog Check, Test Only Station License No.**
TC 294221,

22 **JESUS M. FLORES**
23 **3152 Los Flores Blvd.**
Lynwood, CA 90262

24 **Smog Check Inspector License No.**
25 **EO 642477**

26 **and**
27
28

LEOPOLDO I. DELGADO
1010 Obispo Ave., Unit A
Long Beach, CA 90804

Mailing Address:
3366 Martin Luther King Jr. Blvd., #D
Lynwood, CA 90262

Smog Check Inspector License No.
EO 642493,

Respondents.

PARTIES

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

Mario Zubieta-Caballero dba MZ Smog Test Only Station

2. On or about May 9, 2019, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 294221 to Mario Zubieta-Caballero dba MZ Smog Test Only Station (Respondent Zubieta-Caballero). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2022, unless renewed.

3. On or about June 27, 2019, the Bureau of Automotive Repair issued Smog Check Test Only Station License Number TC 294221 to Respondent Zubieta-Caballero. 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 May 31, 2022, unless renewed.

4. On or about February 10, 2020, MZ Smog Test Only station was certified as a STAR Station. This certification will remain unless the Automotive Repair Dealer Registration and/or Smog Check Station License is revoked, canceled, licenses become delinquent, or the certification is invalidated.

Jesus M. Flores

5. On or about February 4, 2020, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 642477 to Jesus M. Flores (Respondent Flores). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2023, unless renewed.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5

6

7
8
9
10

11

12
13

14
15
16
17

18
19

20
21
22
23

24

25

26

27

28

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.

STATUTORY PROVISIONS

14. Bus. & Prof. Code section 9884.7 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.

....

(4) Any other conduct that constitutes fraud.

....

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

....

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

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

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

...

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

16. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Bus. & Prof. Code.

17. Health & Saf. Code section 44012 provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

1 18. Health & Saf. Code section 44015, subdivision (b), provides that a certificate of
2 compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section
3 40012.

4 19. Health & Saf. Code section 44032 provides that qualified technicians shall perform
5 tests of emissions control devices and systems in accordance with Health & Saf. Code section
6 40012.

7 20. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

12

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

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

16 21. Health & Saf. Code section 44072.10 states, in pertinent part:

17

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

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

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

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

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

26 22. Health & Saf. Code section 44072.8 states that when a license has been revoked or
27 suspended following a hearing under this article, any additional license issued under this chapter
28 in the name of the licensee may be likewise revoked or suspended by the director.

REGULATORY PROVISIONS

23. California Code of Regulations (CCR), title 16, section 3340.24, subdivision (c), states:

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

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

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

26. CCR, title 16, section 3340.41 states, in pertinent part:

. . . .

(b) No person shall enter into the BAR-97 Emissions Inspection System or the OBD Inspection System any access or qualification number other than as authorized by the bureau, nor in any way tamper with the BAR-97 Emissions Inspection of the OBD Inspection System.

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

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

///

///

///

///

1 **COST RECOVERY**

2 28. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **CALIFORNIA AUTOMOTIVE REPAIR ACT AND SMOG CHECK PROGRAM**

7 29. California's Smog Check Program requires most vehicles in the State to undergo a
8 smog check inspection every two years or when the vehicle's title is transferred.

9 ***Inspection of Pre-2000 Model Year Vehicles***

10 30. A smog check inspection of a pre-2000 model year vehicle includes three parts:
11 visual, functional, and tailpipe. Technicians are required to perform the test in accordance with
12 the Smog Check Manual. Technicians are required to enter the results of the inspection into the
13 Emission Inspection System (EIS), which determines whether a vehicle passed the inspection
14 based on the results of the tailpipe, visual, and functional tests. A vehicle must pass all three
15 parts to pass the overall inspection and receive a Certificate of Compliance. The Certificate of
16 Compliance is then transmitted electronically to the Vehicle Information Database.

17 31. In the visual portion, the technician inspects the emission control components to
18 verify that the required emission control devices are present and properly connected.

19 32. The functional test includes checking the malfunction indicator light. On-Board
20 Diagnostics (OBD) is a term used to describe a vehicle's computer system that controls the
21 emission control, along with many other features. This system includes self-diagnostic and
22 reporting functions. OBD systems monitor the vehicle's emission control system performance
23 and notify the driver when defects that cause an increase in air pollution are identified.

24 a. For vehicles pre-1996 model year, the technician must also check the
25 ignition timing and Exhaust Gas Recirculation system, conduct a low pressure test of the
26 evaporative emissions controls, conduct a visible smoke test, and conduct a pressure test of the
27 fuel cap.

28 ///

1 b. For vehicles that are 1996 model year or newer, the functional test is
2 performed using the vehicle's OBD II system. During an OBD II functional test, the technician is
3 required to connect a test cable from the BAR-97 analyzer to a Diagnostic Link Connector,
4 located in the passenger compartment, which outputs information from the vehicle's on-board
5 computer about the status of readiness indicators, trouble codes, and the malfunction indicator
6 light.

7 33. The tailpipe inspection requires different testing equipment based on the area
8 where the vehicle is registered: Enhanced Areas, Basic Areas, and Change of Ownership Areas.

9 a. Acceleration Simulation Mode Inspection: Pre-2000 model year vehicles
10 registered in Enhanced Areas require an Acceleration Simulation Mode (ASM) inspection, which
11 is performed using an EIS, also known as a BAR-97. The EIS is a computer based, five-gas
12 analyzer that measures Hydrocarbons (HC), Carbon Monoxide (CO), Nitrogen Oxide (NO_x),
13 Carbon Dioxide (CO₂) and Oxygen (O₂). The ASM inspection entails two loaded mode
14 sequences (i.e., "Mode 1" and "Mode 2") that measure the vehicle's tailpipe emissions on a
15 dynamometer. The vehicle's drive wheels are placed onto rollers, and the vehicle is driven at
16 speeds of 15 miles per hour during Mode 1 of the ASM and 25 miles per hour during Mode 2 of
17 the ASM. The purpose of the ASM inspection is to simulate driving conditions while the
18 emissions are sampled and measured by the EIS.

19 b. Two Speed Idle Inspection: Pre-2000 model year vehicles registered in
20 Basic Areas or Change Ownership Areas, and vehicles that are incompatible with the ASM
21 inspection¹, require a Two Speed Idle (TSI) inspection. Rather than applying a load to the
22 vehicle's drive wheels with a dynamometer, the EIS measures the emissions of HC, CO, O₂, and
23 CO₂ at two test sequences—2500 revolutions per minute and idle.

24 34. Carbon Dioxide (CO₂) is a byproduct of most combustion processes and any level
25 of emissions will not result in a failing smog check. The measurement is meant as a diagnostic
26 tool for inspectors. Oxygen (O₂) is necessary for engine combustion to occur. High levels of O₂

27 ¹ Vehicles that are incompatible with the ASM, such as all-wheel drive vehicles are vehicles with
28 traction control issues, must receive the Two Speed Idle (TSI) test.

1 in the exhaust indicate a problem with the catalytic converter, but any level of O₂ emissions will
2 not result in failing smog check. The measurement is meant as a diagnostic tool for inspectors.
3 Carbon Monoxide (CO) is a pollutant and is often the byproduct of an overly rich fuel mixture.
4 Unhealthy CO emissions will result in a vehicle failing smog check. Hydrocarbon (HC), a
5 pollutant, is unburned fuel. High levels of HC emissions indicate incomplete fuel combustion,
6 either as the result of a misfire or low engine compression, and result in a vehicle failing its smog
7 check. Nitrogen Oxide (NO_x) is a pollutant that results from excessive engine combustion
8 chamber temperature, which could be caused by a lean fuel mixture, advanced timing, carbon
9 buildup, malfunctioning EGR, or a malfunctioning engine cooling system. Unhealthy levels of
10 NO_x emissions result in a vehicle failing its smog inspection.

11 **DATA REVIEW: CLEAN TANKING**

12 35. The Bureau has become aware of certain methods that some Smog Check stations
13 and Smog Check inspectors use to fraudulently issue smog certificates to vehicles that may not or
14 will not pass a Smog Check test on their own, or in some instances, are not even present during
15 the time the test is performed. "Clean tanking" is one such method, during which the Low
16 Pressure Fuel Evaporative Test (LPFET) is performed using the LPFET equipment calibration
17 tank instead of connecting to the subject vehicle's fuel inlet to determine if there is a leak in the
18 system. The LPFET tests the functionality of the vehicle's Evaporative Emissions Control
19 (EVAP) system by introducing inert Nitrogen gas into the vehicle's fuel system, which includes
20 the fuel tank, until it reaches a predetermined pressure and then holds that pressure for a specified
21 period of time to confirm no leaks are present in the system. As part of this test, the LPFET
22 equipment measures the "headspace volume" based upon the volume of gas needed to achieve a
23 specified pressure as the Nitrogen gas is introduced into the vehicle's fuel tank, and records that
24 data to the Vehicle Information Database (VID). The "headspace volume" is the volume of the
25 vapor space in the fuel tank above the fuel level. This means a vehicle with a full tank of gas will
26 have a smaller headspace volume than a vehicle with less fuel in the tank. The LPFET equipment
27 must pass a calibration test every 3 days to verify its ability to properly measure the volume of
28 Nitrogen gas introduced during a test and the pressure readings. In order to pass the calibration

1 test, the amount of Nitrogen gas introduced to the calibration tank during the test must be within
2 the 1.5 to 2.5 gallon headspace volume range. If the LPFET equipment fails a calibration test, the
3 LPFET tester is locked and the station is not able to perform the LPFET test until the unit passes.

4 36. On March 8, 2021, the Bureau conducted a review of MZ Smog Test Only
5 Station's BAR-97 Smog Check inspection records from the VID for vehicles that received an
6 LPFET test during the period of January 1, 2020 through March 7, 2021. The review showed a
7 total of 320 LPFET tests passed. Of those 320 LPFET tests, 98.13% had a calculated headspace
8 volume within the 1.5 to 2.5 gallon range, the same range the LPFET calibration tank is required
9 to maintain, resulting in 314 potentially fraudulent certifications issued by MZ Smog Test Only
10 Station. VID data show that of certified vehicles statewide that received an LPFET test during
11 the same period of time [511,122 inspections from 4,435 stations], just 13.64% reported a
12 calculated headspace volume within the 1.5 to 2.5 gallon range. After adjusting for the statewide
13 percentage of expected headspace volume results in this range, the data show that MZ Smog Test
14 Only Station issued approximately 270 fraudulent certifications utilizing the clean tanking
15 method.

16 37. Of the 320 vehicles certified by MZ Smog Test Only Station with passing LPFET
17 inspections between January 1, 2020 and March 7, 2021, Respondent Flores performed 10, with
18 100% reporting calculated headspace volumes within the 1.5 to 2.5 gallon range, resulting in 10
19 potentially fraudulent certifications. After adjusting for the statewide percentage of expected
20 headspace volume results in this range (13.64%), the data show that Respondent Flores issued
21 approximately 8 fraudulent certifications utilizing the clean tanking method.

22 38. Of the 320 vehicles certified by MZ Smog Test Only Center with passing LPFET
23 inspections between January 1, 2020 and March 7, 2021, Respondent Delgado performed 310,
24 with 98.06% reporting calculated headspace volumes within the 1.5 to 2.5 gallon range, resulting
25 in 304 potentially fraudulent certifications. After adjusting for the statewide percentage of
26 expected headspace volume results in this range (13.64%), the data show that Respondent
27 Delgado issued approximately 261 fraudulent certifications utilizing the clean tanking method.

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 39. Respondent Zubieta-Caballero's Automotive Repair Dealer Registration is subject to
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he
5 and/or his employees committed acts that constitute fraud by issuing electronic certificates of
6 compliance for approximately 270 vehicles, as described above in paragraph 36, without
7 performing bone fide inspections of the emission control devices and systems on those vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
10 allegations contained in paragraphs 35 through 38, above, as though set forth fully herein.

11 **SECOND CAUSE FOR DISCIPLINE**

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

13 40. Respondent Zubieta-Caballero's Automotive Repair Dealer Registration is subject to
14 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he
15 and/or his employees failed in a material respect to comply with the provisions of this chapter or
16 regulations adopted pursuant to it when he issued electronic certificates of compliance for
17 approximately 270 vehicles, as described above in paragraph 36, without performing bona fide
18 inspections of the emission control devices and systems on those vehicles, thereby depriving the
19 People of the State of California of the protection afforded by the Motor Vehicle Inspection
20 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
21 paragraphs 35 through 38, above, as though set forth fully herein.

22 **THIRD CAUSE FOR DISCIPLINE**

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

24 41. Respondent Zubieta-Caballero's Smog Check Test Only Station License is subject to
25 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he
26 failed to comply with the following sections of that Code:

27 ///

28 ///

1 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
2 performed on approximately 270 vehicles, as described in paragraph 36 above, in accordance
3 with procedures prescribed by the department.

4 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
5 compliance for approximately 270 vehicles, as described in paragraph 36 above, without ensuring
6 that the vehicles were properly tested and inspected to determine if they were in compliance with
7 Health & Saf. Code section 44012.

8 Complainant refers to, and by this reference incorporates, the allegations contained in
9 paragraphs 35 through 38, above, as though set forth fully herein.

10 **FOURTH CAUSE FOR DISCIPLINE**
11 **(Failure to Comply with Regulations Pursuant**
12 **to the Motor Vehicle Inspection Program)**

13 42. Respondent Zubieta-Caballero's Smog Check Test Only Station License is subject to
14 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he
15 failed to comply with provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic smog certificates of compliance for approximately 270 vehicles as described in
18 paragraph 36 above.

19 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
20 approximately 270 vehicles, as described in paragraph 36 above, in accordance with Health &
21 Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section
22 3340.42.

23 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
24 compliance for approximately 270 vehicles, as described in paragraph 36 above, even though
25 those vehicles had not been inspected in accordance with section 3340.42.

26 d. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
27 into the emissions inspection system for approximately 270 vehicles as described in paragraph 36
28 above.

1 e. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted
2 on approximately 270 vehicles, as described in paragraph 36 above, were done in accordance
3 with the Bureau's specifications.

4 Complainant refers to, and by this reference incorporates, the allegations contained in
5 paragraphs 35 through 38, above, as though set forth fully herein.

6 **FIFTH CAUSE FOR DISCIPLINE**

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

8 43. Respondent Zubieta-Caballero's Smog Check Test Only Station License is subject to
9 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
10 conjunction with Health & Saf. Code section 44072.10, subdivision (c), in that he committed
11 dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog
12 certificates of compliance for approximately 270 vehicles, as described in paragraph 36 above,
13 without performing bona fide inspections of the emission control devices and systems on the
14 vehicles, thereby depriving the People of the State of California of the protection afforded by the
15 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
16 allegations contained in paragraphs 35 through 38, above, as though set forth fully herein.

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 44. Respondent Flores's Smog Check Inspector License is subject to disciplinary action
20 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with
21 the following sections of that code:

22 a. **Section 44032:** Respondent failed to ensure that the emission control tests were
23 performed on approximately 8 vehicles, as described in paragraph 37 above, in accordance with
24 Health & Saf. Code section 44012.

25 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
26 compliance for approximately 8 vehicles, as described in paragraph 37 above, without ensuring
27 that the vehicles were properly tested and inspected to determine if they were in compliance with
28 Health & Saf. Code section 44012.

1 Complainant refers to, and by this reference incorporates, the allegations contained in
2 paragraphs 35 through 38, above, as though set forth fully herein.

3 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 45. Respondent Flores's Smog Check Inspector License is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with
8 provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
10 electronic smog certificates of compliance for approximately 8 vehicles as described in paragraph
11 37 above.

12 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
13 approximately 8 vehicles, as described in paragraph 37 above, in accordance with Health & Saf.
14 Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

15 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
16 into the emissions inspection system for approximately 8 vehicles as described in paragraph 37
17 above.

18 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted
19 on approximately 8 vehicles, as described in paragraph 37 above, were done in accordance with
20 the Bureau's specifications.

21 Complainant refers to, and by this reference incorporates, the allegations contained in
22 paragraphs 35 through 38, above, as though set forth fully herein.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 46. Respondent Flores's Smog Check Inspector License is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest,
5 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates
6 of compliance for approximately 8 vehicles, as described in paragraph 37 above, without
7 performing bona fide inspections of the emission control devices and systems on the vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
10 allegations contained in paragraphs 35 through 38, above, as though set forth fully herein.

11 **NINTH CAUSE FOR DISCIPLINE**

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

13 47. Respondent Delgado's Smog Check Inspector License is subject to disciplinary action
14 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with
15 the following sections of that code:

16 a. **Section 44032:** Respondent failed to ensure that the emission control tests were
17 performed on approximately 261 vehicles, as described in paragraph 38 above, in accordance
18 with Health & Saf. Code section 44012.

19 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
20 compliance for approximately 261 vehicles, as described in paragraph 38 above, without ensuring
21 that the vehicles were properly tested and inspected to determine if they were in compliance with
22 Health & Saf. Code section 44012.

23 Complainant refers to, and by this reference incorporates, the allegations contained in
24 paragraphs 35 through 38, above, as though set forth fully herein.

25 ///

26 ///

27 ///

28 ///

1 **TENTH CAUSE FOR DISCIPLINE**

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

4 48. Respondent Delgado's Smog Check Inspector License is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for approximately 261 vehicles as described in
9 paragraph 38 above.

10 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
11 approximately 261 vehicles, as described in paragraph 38 above, in accordance with Health &
12 Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section
13 3340.42.

14 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
15 into the emissions inspection system for approximately 261 vehicles as described in paragraph 38
16 above.

17 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted
18 on approximately 261 vehicles, as described in paragraph 38 above, were done in accordance
19 with the Bureau's specifications.

20 Complainant refers to, and by this reference incorporates, the allegations contained in
21 paragraphs 35 through 38, above, as though set forth fully herein.

22 **ELEVENTH CAUSE FOR DISCIPLINE**

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

24 49. Respondent Delgado's Smog Check Inspector License is subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in conjunction with Health &
26 Saf. Code section 44072.10, subdivision (c), in that he committed dishonest, fraudulent, or
27 deceitful acts whereby another was injured by issuing electronic smog certificates of compliance
28 for approximately 261 vehicles, as described in paragraph 38 above, without performing bona

1 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
2 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
3 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
4 paragraphs 35 through 38, above, as though set forth fully herein.

5 **DATA REVIEW: CLEAN GASSING**

6 50. “Clean gassing” refers to a fraudulent smog inspection practice in which a
7 surrogate gas is introduced into the Emission Inspection System (EIS) during an inspection in
8 order to skew pollutant emission readings. The surrogate gas alters the vehicle exhaust samples
9 and causes the EIS to issue a passing test result based on a reading of false/altered exhaust
10 emissions rather than a reading of the actual vehicle emissions. The Bureau is able to identify
11 fraudulent clean gassing activities by analyzing specific “second-by-second” emissions data that
12 is recorded by the EIS during a smog inspection. Second-by-second data refers to vehicle
13 emissions and speed data that is recorded on a second-by-second basis throughout the smog
14 check acceleration simulation mode (ASM) test. For example, dramatic simultaneous drops
15 and/or rises in the concentrations of NO_x, CO and/or HC during a smog inspection indicates that
16 a surrogate gas was introduced at specific times during the inspection in order to obtain passable
17 readings for those pollutants.

18 51. Based on a review of confidential smog check data collected and maintained by
19 the Bureau, Bureau Program Representative Ian Evans initiated an investigation of the smog
20 check activities at MZ Smog Test Only Station. During his investigation, Program
21 Representative Evans conducted a detailed review of second-by-second emissions data for smog
22 inspections performed at MZ Smog Test Only Station. That second-by-second data revealed that
23 Respondent Delgado has been engaged in the fraudulent smog inspection practice of clean
24 gassing described above. Specifically, the investigation identified the following ten (10) separate
25 instances of clean gassing by Respondent Delgado at the MZ Smog Test Only Station:

26 **a. Vehicle 1: 1997 Toyota Camry**

27 On June 23, 2021 at 4:07:18 p.m., a 1997 Toyota Corolla (CA License #4RGR225;
28 VIN 4T1BG22K7VU793260) was inspected under Respondent Delgado’s Smog Check Inspector

1 License No. EO642493. The vehicle passed the inspection and was issued Certificate of
2 Compliance No. SC863325C.

3 Second-by-second data shows the emission readings are inconsistent with a legitimate
4 smog check inspection. Bureau Representative Ian Evans identified two or more sharp,
5 simultaneous drops and at least one sharp, simultaneous rise in the concentrations of nitrogen
6 oxides (NO_x), carbon monoxide (CO), and/or hydrocarbons (HC):

- 7 • At 29 seconds, during a period of continued steady-state vehicle speed, levels
8 of NO_x, CO, and HC began to drop.
- 9 • At 55 seconds, levels of NO_x, CO, and HC began to simultaneously rise
10 toward prior levels.
- 11 • At 76 seconds, levels of NO_x, CO, and HC began to drop sharply again, and
12 remained low through the end of the test at 92 seconds.

13 Bureau Representative Evans found that the same vehicle was tested at a different Smog
14 Check Station just nine days prior on June 14, 2021 at 11:06:32 a.m. under a different Smog
15 Check Inspector License. This vehicle failed the previous inspection.

16 **b. Vehicle 2: 1991 Ford Mustang**

17 On June 28, 2021 at 12:34:01 p.m., a 1991 Ford Mustang (CA License # 5VGZ565;
18 VIN 1FACP45E6MF196507) was inspected under Respondent Delgado's Smog Check Inspector
19 License No. EO642493. The vehicle passed the inspection and was issued Certificate of
20 Compliance No. IL721002C.

21 Second-by-second data shows the emission readings are inconsistent with a legitimate
22 smog check inspection. Bureau Representative Ian Evans identified two or more sharp,
23 simultaneous drops and at least one sharp, simultaneous rise in the concentrations of nitrogen
24 oxides (NO_x), carbon monoxide (CO), and/or hydrocarbons (HC):

- 25 • At 28 seconds, during a period of continued steady-state vehicle speed, levels
26 of NO_x, CO, and HC began to drop.
- 27 • At 55 seconds, levels of NO_x, CO, and HC began to simultaneously rise
28 toward prior levels.
- At 82 seconds, levels of NO_x, CO, and HC began to drop sharply again, and
remained low through the end of the test at 102 seconds.

Bureau Representative Evans found that the same vehicle was tested at MZ Smog Test Only Station just four days prior on June 24, 2021 at 2:35:34 p.m. under Respondent Delgado's Smog Check Inspector License No. EO642493. This vehicle failed the previous inspection.

c. Vehicle 3: 1989 Chevrolet Caprice

On June 28, 2021 at 4:48:10 p.m., a 1989 Chevrolet Caprice (CA License # 5KYF777; VIN 1G1BU51E0KA135330) was inspected under Respondent Delgado's Smog Check Inspector License No. EO642493. The vehicle passed the inspection and was issued Certificate of Compliance No. IL721007C.

Second-by-second data shows the emission readings are inconsistent with a legitimate smog check inspection. Bureau Representative Ian Evans identified two or more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of nitrogen oxides (NO_x), carbon monoxide (CO), and/or hydrocarbons (HC):

- At 18 seconds, during a period of continued steady-state vehicle speed, levels of NO_x, CO, and HC began to drop.
- At 45 seconds, levels of NO_x, CO, and HC began to simultaneously rise toward prior levels.
- At 62 seconds, levels of NO_x, CO, and HC began to drop sharply again, and remained low through the end of the test at 82 seconds.

Bureau Representative Evans found that the same vehicle was tested at MZ Smog Test Only Station just five days prior on June 23, 2021 at 3:18:51 p.m. under Respondent Delgado's Smog Check Inspector License No. EO642493. This vehicle failed the previous inspection. Second-by-second data from the previous inspection shows that levels of NO_x and HC exceeded their respective cutpoints during the first loaded mode sequence of the ASM test, and levels of NO_x, CO, and HC exceeded their respective cutpoints during the second loaded mode sequence of the ASM test.

d. Vehicle 4: 1991 Ford Mustang

On July 10, 2021 at 11:53:23 a.m., a 1991 Ford Mustang (CA License # 8MDR563; VIN 1FACP44E4MF145704) was inspected under Respondent Delgado's Smog Check Inspector

1 License No. EO642493. The vehicle passed the inspection and was issued Certificate of
2 Compliance No. IL934122C.

3 Second-by-second data shows the emission readings are inconsistent with a legitimate smog
4 check inspection. Bureau Representative Ian Evans identified two or more sharp, simultaneous
5 drops and at least one sharp, simultaneous rise in the concentrations of nitrogen oxides (NO_x),
6 carbon monoxide (CO), and/or hydrocarbons (HC):

- 7 • At 21 seconds, during a period of continued steady-state vehicle speed, levels
8 of NO_x, CO, and HC began to drop.
- 9 • At 47 seconds, levels of NO_x, CO, and HC began to simultaneously rise
10 toward prior levels.
- 11 • At 66 seconds, levels of NO_x, CO, and HC began to drop sharply again, and
12 remained low through the end of the test at 87 seconds.

12 **e. Vehicle 5: 1999 Honda Civic**

13 On July 12, 2021 at 2:42:11 p.m., a 1991 Honda Civic (CA License # 501XUY; VIN
14 2HGEJ8547XH542510) was inspected under Respondent Delgado's Smog Check Inspector
15 License No. EO642493. The vehicle passed the inspection and was issued Certificate of
16 Compliance No. IL934130C.

17 Second-by-second data shows the emission readings are inconsistent with a legitimate
18 smog check inspection. Bureau Representative Ian Evans identified two or more sharp,
19 simultaneous drops and at least one sharp, simultaneous rise in the concentrations of nitrogen
20 oxides (NO_x), carbon monoxide (CO), and/or hydrocarbons (HC):

- 21 • At 26 seconds, during a period of continued steady-state vehicle speed, levels
22 of NO_x, CO, and HC began to drop.
- 23 • At 54 seconds, levels of NO_x, CO, and HC began to simultaneously rise
24 toward prior levels.
- 25 • At 69 seconds, levels of NO_x, CO, and HC began to drop sharply again, and
26 remained low through the end of the test at 86 seconds.

26 **f. Vehicle 6: 1986 Chevrolet K10 Pickup**

27 On July 13, 2021 at 10:32:55 a.m., a 1986 Chevrolet K10 Pickup (CA License #
28 2V32958; VIN 1GCEK14L6GJ179840) was inspected under Respondent Delgado's Smog Check

Inspector License No. EO642493. The vehicle passed the inspection and was issued Certificate of Compliance No. IL934133C.

Second-by-second data shows the emission readings are inconsistent with a legitimate smog check inspection. Bureau Representative Ian Evans identified two or more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of nitrogen oxides (NO_x), carbon monoxide (CO), and/or hydrocarbons (HC):

- At 18 seconds, during a period of continued steady-state vehicle speed, levels of NO_x, CO, and HC began to drop.
- At 44 seconds, levels of NO_x, CO, and HC began to simultaneously rise toward prior levels.
- At 56 seconds, levels of NO_x, CO, and HC began to drop sharply again, and remained low through the end of the test at 76 seconds.

g. Vehicle 7: 1997 Honda Prelude

On July 13, 2021 at 11:16:54 a.m., a 1997 Honda Prelude (CA License # 6HHX049; VIN JHMBB6154VC012074) was inspected under Respondent Delgado's Smog Check Inspector License No. EO642493. The vehicle passed the inspection and was issued Certificate of Compliance No. IL934134C.

Second-by-second data shows the emission readings are inconsistent with a legitimate smog check inspection. Bureau Representative Ian Evans identified two or more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of nitrogen oxides (NO_x), carbon monoxide (CO), and/or hydrocarbons (HC):

- At 25 seconds, during a period of continued steady-state vehicle speed, levels of NO_x, CO, and HC began to drop.
- At 47 seconds, levels of NO_x, CO, and HC began to simultaneously rise toward prior levels.
- At 61 seconds, levels of NO_x, CO, and HC began to drop sharply again, and remained low through the end of the test at 78 seconds.

h. Vehicle 8: 1997 GMC C1500

On July 13, 2021 at 11:53:59 a.m., a 1997 GMC C1500 (CA License # 7ELT396; VIN 1GCFG25W7V1034758) was inspected under Respondent Delgado's Smog Check Inspector

1 License No. EO642493. The vehicle passed the inspection and was issued Certificate of
2 Compliance No. IL934135C.

3 Second-by-second data shows the emission readings are inconsistent with a legitimate
4 smog check inspection. Bureau Representative Ian Evans identified two or more sharp,
5 simultaneous drops and at least one sharp, simultaneous rise in the concentrations of nitrogen
6 oxides (NO_x), carbon monoxide (CO), and/or hydrocarbons (HC):

- 7 • At 19 seconds, during a period of continued steady-state vehicle speed, levels
8 of NO_x, CO, and HC began to drop.
- 9 • At 49 seconds, levels of NO_x, CO, and HC began to simultaneously rise
10 toward prior levels.
- 11 • At 64 seconds, levels of NO_x, CO, and HC began to drop sharply again, and
12 remained low through the end of the test at 87 seconds.

13 **i. Vehicle 9: 1996 Geo Tracker**

14 On July 13, 2021 at 3:06:31 p.m., a 1996 Geo Tracker (CA License # 6MZT281; VIN
15 2CNBE1368T6908333) was inspected under Respondent Delgado's Smog Check Inspector
16 License No. EO642493. The vehicle passed the inspection and was issued Certificate of
17 Compliance No. IL934138C.

18 Second-by-second data shows the emission readings are inconsistent with a legitimate
19 smog check inspection. Bureau Representative Ian Evans identified two or more sharp,
20 simultaneous drops and at least one sharp, simultaneous rise in the concentrations of nitrogen
21 oxides (NO_x), carbon monoxide (CO), and/or hydrocarbons (HC):

- 22 • At 20 seconds, during a period of continued steady-state vehicle speed, levels
23 of NO_x, CO, and HC began to drop.
- 24 • At 45 seconds, levels of NO_x, CO, and HC began to simultaneously rise
25 toward prior levels.
- 26 • At 66 seconds, levels of NO_x, CO, and HC began to drop sharply again, and
27 remained low through the end of the test at 76 seconds.

28 **j. Vehicle 10: 1999 Toyota Tacoma 2WD**

On July 14, 2021 at 11:17:28 a.m., a 1999 Toyota Tacoma 2WD (CA License #
8H73420; VIN 4TANL42N3XZ400116) was inspected under Respondent Delgado's Smog

1 Check Inspector License No. EO642493. The vehicle passed the inspection and was issued
2 Certificate of Compliance No. IL934142C.

3 Second-by-second data shows the emission readings are inconsistent with a legitimate
4 smog check inspection. Bureau Representative Ian Evans identified two or more sharp,
5 simultaneous drops and at least one sharp, simultaneous rise in the concentrations of nitrogen
6 oxides (NO_x), carbon monoxide (CO), and/or hydrocarbons (HC):

- 7 • At 28 seconds, during a period of continued steady-state vehicle speed, levels
8 of NO_x, CO, and HC began to drop.
- 9 • At 52 seconds, levels of NO_x, CO, and HC began to simultaneously rise
10 toward prior levels.
- 11 • At 72 seconds, levels of NO_x, CO, and HC began to drop sharply again, and
12 remained low through the end of the test at 82 seconds.

13 52. The illegal smog inspections set forth above subject Respondents to discipline
14 pursuant to Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4),
15 Business and Professions Code section 9889.3, subdivision (a), Health and Safety Code section
16 44072.2, subdivisions (a), (c), and (d), and Health and Safety Code section 44072.10, subdivision
17 (c).

18 **TWELFTH CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 53. Respondent Zubieta-Caballero's Automotive Repair Dealer Registration is subject to
21 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he
22 and/or his employee made statements which were known to be untrue or misleading or, which by
23 exercise of reasonable care should have been known to be untrue or misleading, when issuing
24 electronic smog certificates of compliance for the vehicles set forth in paragraph 51,
25 subparagraphs a - j, above, certifying that those vehicles were in compliance with applicable laws
26 and regulations when, in fact, those vehicles had not been so inspected. Complainant refers to,
27 and by this reference incorporates, the allegations contained in paragraphs 50 through 52,
28 inclusive, as though set forth fully herein.

///

1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 54. Respondent Zubieta-Caballero's Automotive Repair Dealer Registration is subject to
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he
5 and/or his employee committed acts which constitute fraud by issuing electronic smog certificates
6 of compliance for the vehicles set forth in paragraph 51, subparagraphs a - j, above, without
7 performing bona fide inspections of the emission control devices and systems on those vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
10 allegations contained in paragraphs 50 through 52, inclusive, as though set forth fully herein.

11 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

13 55. Respondent Zubieta-Caballero's Automotive Repair Dealer Registration is subject to
14 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he
15 and/or his employee failed in a "material respect to comply with the provisions of this chapter or
16 regulations adopted pursuant to it" when issuing electronic smog certificates of compliance for
17 the vehicles set forth in paragraph 51, subparagraphs a - j, above, without performing bona fide
18 inspections of the emission control devices and systems on those vehicles, thereby depriving the
19 People of the State of California of the protection afforded by the Motor Vehicle Inspection
20 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
21 paragraphs 50 through 52, inclusive, as though set forth fully herein.

22 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

24 56. Respondent Zubieta-Caballero's Smog Check Test Only Station License is subject to
25 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that, with
26 respect to the vehicles set forth in paragraph 51, subparagraphs a - j, above, Respondent violated
27 the following sections of the Health & Saf. Code:

28 ///

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

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

Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 50 through 52, inclusive, as though set forth fully herein.

SIXTEENTH CAUSE FOR DISCIPLINE

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

57. Respondent Zubieta-Caballero's Smog Check Test Only Station License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that, with respect to the vehicles set forth in paragraph 51, subparagraphs a - j, above, Respondent violated the following sections of title 16 of the CCR:

a. **Section 3340.24, subdivision (c):** Respondent 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 Health & Saf. Code section 44012.

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

c. **Section 3340.42:** Respondent 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 50 through 52, inclusive, as though set forth fully herein.

///

///

///

///

1 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

3 58. Respondent Zubieta-Caballero's Smog Check Test Only Station License is subject to
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
5 conjunction with Health & Saf. Code section 44072.10, subdivision (c), in that, with respect to
6 the vehicles set forth in paragraph 51, subparagraphs a - j, above, Respondent committed acts
7 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic smog
8 certificates of compliance for those vehicles without performing bona fide inspections and
9 functional testing of the emission control devices and systems on those vehicles, thereby
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle
11 Inspection Program. Complainant refers to, and by this reference incorporates the allegations
12 contained in paragraphs 50 through 52, inclusive, as though set forth fully herein.

13 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

15 59. Respondent Delgado's Smog Check Inspector License is subject to disciplinary action
16 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that, with respect to
17 the vehicles set forth in paragraph 51, subparagraphs a - j, above, Respondent violated the
18 following sections of the Health & Saf. Code:

19 a. **Section 44012:** Respondent failed to ensure that the ASM tests were performed on
20 those vehicles in accordance with procedures prescribed by the department.

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

24 c. **Section 44032:** Respondent failed to perform ASM tests on those vehicles in
25 accordance with section 44012 of the Health & Saf. Code.

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

1 Complainant refers to, and by this reference incorporates, the allegations contained in
2 paragraphs 50 through 52, inclusive, as though set forth fully herein.

3 **NINETEENTH CAUSE FOR DISCIPLINE**

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

5 60. Respondent Delgado's Smog Check Inspector License is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that, with respect to the
7 vehicles set forth in paragraph 51, subparagraphs a - j, above, Respondent violated the following
8 sections of title 16 of the CCR:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
10 electronic smog certificates of compliance without performing bona fide inspections
11 of the emission control systems on those vehicles as required by Health & Saf. Code section
12 44012.

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

15 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
16 compliance even though those vehicles had not been inspected in accordance with section
17 3340.42 of the Health & Saf. Code.

18 d. **Section 3340.41, subdivision (b):** Respondent tampered with the EIS system by
19 introducing a surrogate gas during inspections.

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

22 Complainant refers to, and by this reference incorporates, the allegations contained in
23 paragraphs 50 through 52, inclusive, as though set forth fully herein.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **TWENTIETH CAUSE FOR DISCIPLINE**

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

3 61. Respondent Delgado's Smog Check Inspector License is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in conjunction with Health &
5 Saf. Code section 44072.10, subdivision (c), in that, with respect to the vehicles set forth in
6 paragraph 51, subparagraphs a - j, above, Respondent committed acts involving dishonesty, fraud
7 or deceit whereby another was injured by issuing electronic smog certificates of compliance for
8 those vehicles without performing bona fide inspections of the emission control systems on those
9 vehicles, thereby depriving the People of the State of California of the protection afforded by the
10 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates the
11 allegations contained in in paragraphs 50 through 52, inclusive, as though set forth fully herein.

12 **OTHER MATTERS**

13 62. 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 Respondent Zubieta-Caballero, upon a finding that he has, or is, engaged in a course of
16 repeated and willful violations of the laws and regulations pertaining to an automotive repair
17 dealer.

18 63. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
19 License No. TC 294221, issued to Respondent Zubieta-Caballero, is revoked or suspended, any
20 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in
21 the name of said licensee may be likewise revoked or suspended by the director.

22 64. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
23 No. EO 642477, issued to Respondent Flores, is revoked or suspended, any additional license
24 issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said
25 licensee may be likewise revoked or suspended by the director.

26 ///

27 ///

28 ///

65. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License No. EO 642493, issued to Respondent Delgado, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 294221, issued to Mario Zubieta-Caballero dba MZ Smog Test Only Station;
2. Revoking or suspending any other automotive repair dealer registration issued to Mario Zubieta-Caballero;
3. Revoking or suspending Smog Check Test Only Station License Number TC 294221, issued to Mario Zubieta-Caballero dba MZ Smog Test Only Station;
4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of Mario Zubieta-Caballero;
5. Revoking or suspending Smog Check Inspector License Number EO 642477, issued to Jesus M. Flores;
6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of Jesus M. Flores;
7. Revoking or suspending Smog Check Inspector License Number EO 642493, issued to Leopoldo I. Delgado;
8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of Leopold I. Delgado;
9. Ordering Mario Zubieta-Caballero, Jesus M. Flores, and Leopoldo I. Delgado 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,

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. Taking such other and further action as deemed necessary and proper.

DATED: As of Digital Signature Date

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

LA2021602193
64326216.docx