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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ANTONYS SMOG CHECK** **JUAN GASTELUM, Partner** **SILVIANO MICHEL, Partner** 1287 N. Blackstone Avenue, #B Fresno, California 93703 **Automotive Repair Dealer Registration No. ARD 248940** **Smog Check Station License No. RC 248940** **Lamp Station License No. LS 248940** **Brake Station License No. BS 248940** **JUAN ANTONIO GASTELUM** 13324 S. Pear Caruthers, California 93609 and P.O. Box 358 Caruthers, California 93609 **Advanced Emission Specialist Technician License No. EA 151972** **Brake Adjuster License No. BA 151972** **Lamp Adjuster License No. LA 151972**	Case No. 77/11-01 **FIRST AMENDED** **A C C U S A T I O N**

SILVIANO MICHEL
4638 West Pine Avenue
Fresno, California 93722
and
13337 S. Marks Avenue
Caruthers, California 93609
Advanced Emission Specialist Technician License No. EA 150695
Brake Adjuster License No. BA 150695
Lamp Adjuster License No. LA 150695

Respondents.

John Wallauch ("Complainant") alleges:

PARTIES

1. Complainant brings this First Amended Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs. The First Amended Accusation supersedes and replaces nunc pro tunc the Accusation heretofore filed.

LICENSE INFORMATION

Antonys Smog Check

2. On or about January 16, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 248940 ("registration") to Juan Gastelum and Silviano Michel, Partners, doing business as Antonys Smog Check ("Respondent Antonys"). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2013, unless renewed.

3. On or about February 26, 2007, the Bureau issued Smog Check Station Number RC 248940 ("station license") to Respondent Antonys. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2013, unless renewed.

4. On or about March 5, 2007, the Bureau issued Lamp Station License Number LS 248940 to Respondent Antonys. The lamp station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2013, unless renewed.

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5. On or about March 5, 2007, the Bureau issued Brake Station License Number BS 248940 to Respondent Antonys. The brake station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

Silviano Michel

6. In or about 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 150695 ("technician license") to Silviano Michel ("Respondent Michel"). Respondent Michel's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

7. In or about 2005, the Bureau issued Brake Adjuster License Number BA 150695 to Respondent Michel. Respondent Michel's brake adjuster license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

8. In or about 2005, the Bureau issued Lamp Adjuster License Number LA 150695 to Respondent Michel. Respondent Michel's lamp adjuster license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

Juan Antonio Gastelum

9. In or about 2007, the Bureau issued Advanced Emission Specialist Technician License Number EA 151972 ("technician license") to Juan Antonio Gastelum ("Respondent Gastelum"). Respondent Gastelum's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

10. In or about 2007, the Bureau issued Brake Adjuster License Number BA 151972 to Respondent Gastelum. Respondent Gastelum's brake adjuster license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2014, unless renewed.

11. In or about 2007, the Bureau issued Lamp Adjuster License Number LA 151972 to Respondent Gastelum. Respondent Gastelum's lamp adjuster license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2014, unless renewed.

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STATUTORY PROVISIONS

12. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
>
> (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
>
> (4) Any other conduct which constitutes fraud.
>
> (5) Conduct constituting gross negligence.
>
> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
>
> (7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.
>
> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.
>
> (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.

13. Section 9889.3 of the Code states, in pertinent part:

> 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:
>
> (a) Violates any section of the Business and Professions Code that relates to his or her licensed activities.
>
> (c) Violates any of the regulations promulgated by the director pursuant to this chapter.

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

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

14. Section 9889.1 of the Code states:

Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

15. Section 9889.9 of the Code states:

When any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.

16. Section 9889.16 of the Code states:

Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station.

17. Section 9884.9 of the Code states:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

I acknowledge notice and oral approval of an increase in the original estimated price.

_____
(signature or initials)

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

18. Section 9889.7 of the Code states:

The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against such licensee, or to render a decision suspending or revoking such license.

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

20. 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.

21. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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:

(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.

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

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

22. Section 44072.6 of the Health and Safety Code 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.

23. Section 44072.8 of the Health and Safety Code states:

> 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 licensee may be likewise revoked or suspended by the director.

COST RECOVERY

24. Code section 125.3 provides, in pertinent part, that a Board 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.

BACKGROUND INFORMATION

25. On or about May 13, 2009, the Bureau reviewed Respondent Antonys smog check data and the brake and lamp certificate purchases between January 2009 and March 2009, which indicated that Respondent was performing very quick smog inspections with no failures, and consistently purchasing an average of seven brake certificate books and seven lamp certificate books per month. As a result, the Bureau initated an investigation into Respondent Antonys business practices.

UNDERCOVER OPERATION NO. 1: 1996 TOYOTA CAMRY

26. On or about July 13, 2009, an undercover Bureau operator ("operator") drove a Bureau documented 1996 Toyota Camry to Respondent's facility and requested a brake and lamp inspection. The vehicle defect included an undersized right front brake rotor, an oversized left rear brake drum, and both front headlamps were out of adjustment. The left rear oversized brake drum was out of adjustment, causing the parking brake to be out of adjustment. When the operator arrived at Respondent's facility, she was greeted by an employee who told her that he could have the inspections completed by the end of the day. The operator completed and signed a repair order in the amount of $65 but was not provided with a copy.

27. Later that day, the operator contacted Respondent's facility and spoke with an employee who told her that the vehicle was ready. The employee told the operator that the

vehicle passed the inspections and the total charges were $61.50. On that same day, the operator returned to Respondent's facility to retrieve the vehicle. The operator was greeted by the same employee from earlier that day. The employee told the operator that the front rotors on the vehicle needed to be replaced before he could certify the brake system. The operator paid the employee $61.50 and received a copy of Service Order No. 013313. The operator was also provided with lamp adjustment certificate number LC874846.

28. On or about July 15, 2009, a Bureau representative re-inspected the vehicle and found that the headlamps were properly adjusted and within specifications. The undersized right front brake rotor and the oversized left rear brake drum remained in place.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

29. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that on or about July 13, 2009, Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, in that Respondent falsely represented to the operator on Service Order No. 013313 that both front rotors needed to be replaced when, in fact, the left front rotor was well above the minimum specifications and did not need to be replaced.

SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

30. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(6), in that on or about July 13, 2009, regarding the 1996 Toyota Camry, Respondent failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Section 3305(a):** Respondent failed to perform a proper brake inspection in accordance with the vehicle's manufacturer standards and/or current standards, specifications, recommended procedures, and/or directives issued by the Bureau, in that Respondent identified both front brake rotors as needing replacement when, in fact, the left front brake rotor was well above the minimum specification and not in need of replacement.

b. **Section 3321(c)(2):** Respondent failed to inspect the entire brake system in accordance with all Bureau regulations, in that Respondent identified both front brake rotors as needing replacement when, in fact, the left front brake rotor was well above the minimum specifications and not in need of replacement.

THIRD CAUSE FOR DISCIPLINE

(Failure to Provide a Copy of a Signed Document)

31. Respondent Antonys' registration is subject to discipline under Code section 9884.7(a)(3), in that on or about July 13, 2009, regarding the 1996 Toyota Camry, Respondent failed to provide the operator with a copy of Service Order No. 013313, as soon as the operator signed the document.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

32. Respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3(a), in that on or about July 13, 2009, regarding the 1996 Toyota Camry, Respondent violated sections of the Code, relating to its licensed activities, as more particularly set forth above in paragraph 29.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

33. Respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3(c), in that on or about July 13, 2009, regarding the 1996 Toyota Camry, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 30.

UNDERCOVER OPERATION NO. 2: 2001 FORD FOCUS

34. On or about February 8, 2010, an undercover Bureau operator ("operator") drove a Bureau documented 2001 Ford Focus to Respondent Antonys' facility and requested a brake, lamp, and smog inspection. The vehicle could not pass the inspections because the front headlamps were out of adjustment, the left and right rear brake drums were beyond factory specifications for maximum diameter (oversized), and the Malfunction Indicator Lamp ("MIL")

light bulb had been removed. The operator arrived at Respondent's facility and was greeted by Respondent Gastelum. The operator told Respondent Gastelum that he needed a brake and lamp inspection, and a smog check. Respondent Gastelum told the operator that he could perform the inspections and that the vehicle would be ready later that afternoon. The operator told Respondent Gastelum that his name was Dave and gave him his telephone number. The operator did not receive a written estimate or sign any documents.

35. Later that same day, Respondent Gastelum contacted the operator and stated that the vehicle was ready to be picked up and that the vehicle had passed all the inspections. The operator returned to Respondents facility to retrieve the vehicle. The operator paid $100 and received a copy of Service Order No. 017074. The service order had been signed by someone named "Dave" (not the operator). The operator also received Brake Certificate Number BC980477 (issued by Respondent Michel), Lamp Certificate Number LC966978 (issued by Respondent Michel), and Smog Check Vehicle Inspection Report (VIR) referencing Smog Check Certificate Number NQ652868 (issued by Respondent Gastelum).

36. On or about February 9, 2010, a Bureau representative reinspected the vehicle and found the following:

a. The MIL light bulb was still missing.

b. The front headlamps had been adjusted to manufacturer's specifications.

c. The right and left rear brake drums remained beyond factory specifications for maximum diameter (oversized).

d. None of the four tire and wheel assemblies had been removed for inspection of the brake system.

SIXTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

37. Respondent Antonys' registration is subject to discipline under Code section 9884.7(a)(1), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent issued electronic Certificate of Compliance No. NQ652868, certifying that the vehicle was in compliance with applicable laws and regulations, when in fact, it could not have passed the smog inspection because the vehicle's MIL light bulb was missing.

b. Respondent certified under penalty of perjury on Brake Certificate Number BC980477 that the applicable inspection was performed on the brake system when, in fact, Respondent's technician, Respondent Michel, failed to inspect the brake system on the vehicle, as evidenced by his failure to remove any of the four wheels.

c. Respondent certified under penalty of perjury on Brake Certificate Number BC980477 that the left and right rear brake drums were in satisfactory condition when, in fact, the rear brake drums were beyond factory specifications for maximum diameter (oversized).

SEVENTH CAUSE FOR DISCIPLINE

(Fraud)

38. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(4), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent committed acts that constitute fraud, as follows:

a. Respondent issued electronic Certificate of Compliance No. NQ652868 without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

b. Respondent obtained payment from the operator for performing the applicable inspections on the vehicle's brake system as specified by the Bureau and in accordance with the Vehicle Code, when in fact, Respondent failed to perform the necessary inspections, as more particularly set forth above in paragraph 36 (c) and (d).

EIGHTH CAUSE FOR DISCIPLINE

(Gross Negligence)

39. Respondent Antonys' registration is subject to discipline under Code section 9884.7(a)(5), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent committed acts constituting gross negligence, in that Respondent's technician, Respondent

Michel, failed to properly inspect the brake system and issued Brake Certificate BC 980477, indicating that the vehicle's brakes were in satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

NINTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

40. Respondent Antonys' registration is subject to discipline under Code section 9884.7(a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows:

a. Respondent's technician, Respondent Michel, failed to properly inspect the vehicle's brake system and issued Brake Certificate BC 980477, indicating that the vehicle's brakes were in satisfactory condition and in accordance with the Vehicle Code when, in fact, they were not.

b. Respondent's technician, Respondent Gastelum, failed to perform the smog inspection properly and issued Smog Certificate Number NQ652868. The vehicle's MIL was missing, rendering the vehicle incapable of passing the functional portion of the smog inspection.

TENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

41. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(6), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent failed to comply with provisions of that Code in the following material respects:

a. **Section 9884.9(a):** Respondent failed to provide the operator with a written estimated price for parts and labor for a specific job.

b. **Section 9889.16:** Respondent issued Brake Certificate Number BC980477 for the vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of the Vehicle Code, in that the left and right rear brake drums were oversized.

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ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

42. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(6), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Section 3305(a):** Respondent failed to perform a brake inspection in accordance with the vehicle's manufacturer standards and/or current standards, specifications, recommended procedures, and/or directives issued by the Bureau.

b. **Section 3321(c)(2):** Respondent issued Brake Certificate Number BC980477, certifying that the vehicle's brakes had been inspected and were in satisfactory condition, when in fact, they were not.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

43. Respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3(a), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent violated sections of the Code, relating to its licensed activities, as more particularly set forth above in paragraphs 37 and 41.

THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

44. Respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3(c), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 42.

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FOURTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

45. Respondent Antonys' brake and lamp station licenses are subject to discipline pursuant to Code section 9889.3(d), in that Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in paragraph 38.

FIFTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

46. Respondent Michel's brake adjuster license is subject to discipline under Code section 9889.3(a), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent violated sections of the Code, relating to his licensed activities, as more particularly set forth above in paragraph 41(b).

SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

47. Respondent Michel's brake adjuster license is subject to discipline under Code section 9889.3(c), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 42.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit - Adjuster Licenses)

48. Respondent Michel's brake adjuster license is subject to discipline under Code section 9889.3(d), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number BC 980477, certifying that the brake system was in satisfactory condition and in accordance with the Vehicle Code, when, in fact, it was not.

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EIGHTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

49. Respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that regarding the 2001 Ford Focus, Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog Certificate of Compliance Number NQ652868 for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

NINETEENTH CAUSE FOR DISCIPLINE

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

50. Respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24(c):** Respondent falsely or fraudulently issued electronic smog Certificate of Compliance Number NQ652868, in that the vehicle could not have passed the smog inspection because the vehicle's MIL light bulb was missing.

b. **Section 3340.35(c):** Respondent issued electronic smog Certificate of Compliance Number NQ652868 for the vehicle even though the vehicle had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

TWENTIETH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

51. Respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about February 8, 2010, Respondent

committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number NQ652868 for the 2001 Ford Focus without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

52. Respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent Gastelum failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent Gastelum failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.

b. **Section 44032:** Respondent Gastelum failed to perform a test of the emission control devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

53. Respondent Gastelum's technician license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about February 8, 2010, regarding the 2001 Ford Focus, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24(c):** Respondent Gastelum falsely or fraudulently issued electronic smog Certificate of Compliance Number NQ652868, in that the vehicle could not have passed the smog inspection because the vehicle's MIL light bulb was missing.

b. **Section 3340.30(a):** Respondent Gastelum failed to inspect and test the vehicle in accordance with Health and Safety Code section 44012.

c. **Section 3340.42:** Respondent Gastelum failed to conduct the required smog tests and inspections on the vehicle in accordance with the Bureau's specifications.

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TWENTY-THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

54. Respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about February 8, 2010, Respondent Gastelum committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number NQ652868 for the 2001 Ford Focus without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION NO. 3: 2005 FORD FOCUS

55. On or about May 17, 2010, an undercover Bureau operator ("operator") drove a Bureau documented 2005 Ford Focus to Respondent Antony's facility and requested a brake, lamp, and smog inspection. The vehicle could not have passed the inspections because the front headlamps were out of adjustment, the left and right rear brake drums were beyond factory specifications for maximum diameter (oversized), and the MIL was inoperative. The operator arrived at Respondent's facility and was greeted by Respondent Gastelum. The operator told Respondent Gastelum that he needed a brake and lamp inspection, and a smog check. Respondent Gastelum told an employee, Paco, to scan the vehicle's computer system. Paco scanned the vehicle's computer system and told the operator that he could perform the inspections. The operator and Paco entered the repair facility. Paco asked for the operator's name. The operator told Paco his name was Dave Garcia, which Paco wrote on Service Order No. 019140. The operator did not receive a written estimate or sign any documents. A short time later, the vehicle was ready. The operator paid $90 and received a copy of Service Order No. 019140. The operator also received Brake Certificate Number BC1035642 (issued by Respondent Michel), Lamp Certificate Number LC1021341 (issued by Respondent Michel), and Smog Check Vehicle Inspection Report (VIR) referencing Smog Check Certificate Number NU018494 (issued by Respondent Gastelum).

56. On or about May 25, 2010, a Bureau representative reinspected the vehicle and found the following:

a. The MIL was still inoperative.

b. The front headlamps had been adjusted but not to manufacturer's specifications.

c. The right and left rear brake drums remained beyond factory specifications for maximum diameter (oversized).

d. None of the four tire and wheel assemblies had been removed for inspection of the brake system.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

57. Respondent Antonys' registration is subject to discipline under Code section 9884.7(a)(1), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent issued electronic Certificate of Compliance No. NU018494, certifying that the vehicle was in compliance with applicable laws and regulations, when in fact, it could not have passed the functional portion of the smog inspection because the vehicle's MIL was inoperative.

b. Respondent certified under penalty of perjury on Brake Certificate Number BC1035642 that the applicable inspection was performed on the brake system, when in fact, Respondents technician, Respondent Michel, failed to inspect the brake system on the vehicle.

c. Respondent certified under penalty of perjury on Brake Certificate Number BC1035642 that the left and right rear brake drums were in satisfactory condition, when in fact, the rear brake drums were beyond factory specifications for maximum diameter (oversized).

d. Respondent certified under penalty of perjury on Lamp Certificate Number LC1021341 that the applicable adjustments had been performed on the lamp system when, in fact, both headlamps were out of adjustment.

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TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Fraud)

58. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(4), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent committed acts that constitute fraud, as follows:

a. Respondent issued electronic Certificate of Compliance No. NU018494 without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

b. Respondent obtained payment from the operator for performing the applicable inspections on the vehicle's brake system as specified by the Bureau and in accordance with the Vehicle Code when, in fact, Respondent failed to perform the necessary inspections, as more particularly set forth above in paragraph 56, subsections (c) and (d).

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Gross Negligence)

59. Respondent Antonys' registration is subject to discipline under Code section 9884.7(a)(5), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent committed acts constituting gross negligence, in the following respects:

a. Respondent's technician, Respondent Michel, failed to properly inspect the brake system and issued Brake Certificate BC 1035642, indicating that the vehicle's brakes were in satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

b. Respondent's technician, Respondent Michel, failed to properly inspect the lamp system and issued Lamp Certificate LC 1021341, indicating that the vehicle's lamps were in satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

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TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

60. Respondent Antonys' registration is subject to discipline under Code section 9884.7(a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows:

a. Respondent's technician, Respondent Michel, failed to properly inspect the vehicle's brake system and issued Brake Certificate BC 1035642, indicating that the vehicle's brakes were in satisfactory condition and in accordance with the Vehicle Code when, in fact, they were not.

b. Respondent's technician, Respondent Michel, failed to properly inspect and adjust the lamp system on the vehicle and issued Lamp Certificate LC 1021341, indicating that the vehicle's lamp system was in satisfactory condition and in accordance with the Vehicle Code when, in fact, they were not.

c. Respondent's technician, Respondent Gastelum, failed to perform the smog inspection properly and issued Smog Certificate Number NU018494. The vehicle's MIL was inoperative, rendering the vehicle incapable of passing the functional portion of the smog inspection.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

61. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(6), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed to comply with provisions of that Code in the following material respects:

a. **Section 9884.9(a):**

i. Respondent failed to provide the operator with a written estimated price for parts and labor for a specific job.

ii. Respondent failed to obtain the operator's authorization to perform work.

b. **Section 9889.16:** Respondent issued Brake Certificate Number BC1035642 and Lamp Certificate Number LC1021341 for the vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of the Vehicle Code.

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

62. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(6), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Section 3305(a):** Respondent failed to perform a brake and lamp inspection in accordance with the vehicle's manufacturer standards and/or current standards, specifications, recommended procedures, and/or directives issued by the Bureau.

b. **Section 3316(d)(2):** Respondent issued Lamp Certificate Number LC1021341, certifying that the vehicle's lamps had been inspected and were in satisfactory condition when, in fact, they were not.

c. **Section 3321(c)(2):** Respondent issued Brake Certificate Number BC1035642, certifying that the vehicle's brakes had been inspected and were in satisfactory condition when, in fact, they were not.

THIRTIETH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

63. Respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3(a), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent violated sections of the Code, relating to its licensed activities, as more particularly set forth above in paragraphs 57, 58, and 61.

THIRTY-FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

64. Respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3(c), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 62.

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THIRTY-SECOND CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

65. Respondent Antonys' brake and lamp station licenses are subject to discipline pursuant to Code section 9889.3(d), in that Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in paragraph 58.

THIRTY-THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

66. Respondent Michel's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(a), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent violated sections of the Code, relating to its licensed activities, as more particularly set forth above in paragraph 61(b).

THIRTY-FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

67. Respondent Michel's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(c), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 62.

THIRTY-FIFTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit - Adjuster Licenses)

68. Respondent Michel's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(d), in that on or about May 17, 2010, regarding the 2005 Ford Focus, he committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number BC 1035642 and Lamp Certificate Number LC 1021341, certifying that the brake and lamp systems were in satisfactory condition and were in accordance with the Vehicle Code, when, in fact, they were not.

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THIRTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

69. Respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that regarding the 2005 Ford Focus, Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog Certificate of Compliance Number NU018494 for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

THIRTY-SEVENTH CAUSE FOR DISCIPLINE

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

70. Respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24(c):** Respondent falsely or fraudulently issued electronic smog Certificate of Compliance Number NU018494, in that the vehicle could not have passed the functional portion of the smog inspection because the vehicle's MIL was inoperative.

b. **Section 3340.35(c):** Respondent issued electronic smog Certificate of Compliance Number NU018494 for the vehicle even though the vehicle had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

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THIRTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

71. Respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about May 17, 2010, Respondent committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number NU018494 for the 2005 Ford Focus without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRTY-NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

72. Respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent Gastelum failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent Gastelum failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.

b. **Section 44032:** Respondent Gastelum failed to perform a test of the emission control devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

FORTIETH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

73. Respondent Gastelum's technician license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about May 17, 2010, regarding the 2005 Ford Focus, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24(c):** Respondent Gastelum falsely or fraudulently issued electronic smog Certificate of Compliance Number NU018494, in that the vehicle could not have passed the functional portion of the smog inspection because the vehicle's MIL was inoperative.

b. **Section 3340.30(a):** Respondent Gastelum failed to inspect and test the vehicle in accordance with Health and Safety Code section 44012.

c. **Section 3340.42:** Respondent Gastelum failed to conduct the required smog tests and inspections on the vehicle in accordance with the Bureau's specifications.

FORTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

74. Respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about May 17, 2010, Respondent Gastelum committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number NU018494 for the 2005 Ford Focus without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FORTY-SECOND CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

75. Respondent Michel's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about May 17, 2010, Respondent Michel committed dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth above in paragraphs 48 and 68.

BACKGROUNDINFORMATION

76. On February 28, 2011, the Fresno County Superior Court issued an injunction against Respondent Antony's facility which permanently enjoined them from performing improper brake, lamp, and smog repairs, inspections, and certifications. However, Respondents continued to perform improper brake, lamp, and smog repairs, inspections and certifications, as set forth below in paragraph 78.

UNDERCOVER OPERATION NO. 4: 2000 PONTIAC TRANS-AM

77. On or about August 26, 2011, an undercover Bureau operator ("operator") drove a Bureau documented 2000 Pontiac Trans-Am to Respondent Antony's facility and requested a brake, lamp, and smog inspection. The vehicle could not have passed the smog inspection because the vehicle's AIR injection system was missing compenents. In addition, the vehicle

could not have passed the brake inspection because both right side disc brake rotors were undersized. Furthermore, the vehicle could not have passed the lamp inspection because both front headlamps were out of adjustment. The operator arrived at Respondent's facility and was greeted by Respondent Gastelum. The operator told Respondent Gastelum that she needed a brake, lamp, and smog inspection. Respondent Gastelum prepared a repair order, but did not provide the operator with a copy or have her sign it. A short time later, the vehicle was ready. The operator paid $90 and received a copy of Service Order No. 027607, Lamp Adjustment Certificate No. LC1302937 (issued by Respondent Michel), and Vehicle Inspection Report, referencing Smog Check Certificate Number WX943612 (issued by Respodnent Gastelum).

78. On or about August 29, 2011, a Bureau representative reinspected the vehicle using Service Order No. 027607, Lamp Adjustment Certficiate No. LC1302937, and Smog Check Vehicle Inspection Report, as a reference. The inspection revealed the following:

a. Both right side disc brake rotors remained undersized.

b. The vehicle's AIR system components were missing.

FORTY-THIRD CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

79. Respondent Antonys' registration is subject to discipline under Code section 9884.7(a)(1), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am, Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, in that Respondent issued electronic smog Certificate of Compliance No. WX943612, certifying that the vehicle was in compliance with applicable laws and regulations, when in fact, it could not have passed the visual portion of the smog inspection because the vehicle's AIR injection system was missing components.

FORTY-FOURTH CAUSE FOR DISCIPLINE

(Fraud)

80. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(4), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am, Respondent committed acts that constitute fraud by issuing electronic smog Certificate of

Compliance No. WX943612 without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FORTY-FIFTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

81. Respondent Antonys' registration is subject to discipline under Code section 9884.7(a)(7), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am, Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, in that Respondent's technician, Respondent Gastelum, failed to perform the smog inspection properly and issued electronic smog Certficate of Compliance No. WX943612. The vehicle's AIR injection system was missing components, rendering the vehicle incapable of passing the visual portion of the smog inspection.

FORTY-SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

82. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(6), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am, Respondent failed to comply with provisions of that Code in the following material respects:

a. **Section 9884.9(a):**

i. Respondent failed to provide the operator with a written estimated price for parts and labor for a specific job.

ii. Respondent failed to obtain the operator's authorization to perform work.

FORTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

83. Respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3(a), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am, Respondent violated sections of the Code, relating to its licensed activities, as more particularly set forth above in paragraphs 79, 80, and 82.

FORTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

84. Respondent Antonys' brake and lamp station licenses are subject to discipline pursuant to Code section 9889.3(d), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am, Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in paragraph 80.

FORTY-NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

85. Respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am, Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog Certificate of Compliance No. WX943612 for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

FIFTEITH CAUSE FOR DISCIPLINE

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

86. Respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24(c):** Respondent falsely or fraudulently issued electronic smog Certificate of Compliance No. WX943612, in that the vehicle could not have passed the visual portion of the smog inspection because the vehicle's AIR injection system was missing components.

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b. **Section 3340.35(c):** Respondent issued electronic smog Certificate of Compliance No. WX943612 for the vehicle even though the vehicle had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

FIFTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

87. Respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about August 26, 2011, Respondent committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance No. WX943612 for the 2000 Pontiac Trans-Am without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FIFTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

88. Respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am, Respondent Gastelum failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent Gastelum failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.

b. **Section 44032:** Respondent Gastelum failed to perform a test of the emission control devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

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FIFTY-THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

89. Respondent Gastelum's technician license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24(c):** Respondent Gastelum falsely or fraudulently issued electronic smog Certificate of Compliance Number WX943612, in that the vehicle could not have passed the visual portion of the smog inspection because the vehicle's AIR injection system was missing components.

b. **Section 3340.30(a):** Respondent Gastelum failed to inspect and test the vehicle in accordance with Health and Safety Code section 44012.

c. **Section 3340.42:** Respondent Gastelum failed to conduct the required smog tests and inspections on the vehicle in accordance with the Bureau's specifications.

FIFTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

90. Respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about August 26, 2011, Respondent Gastelum committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number WX943612 for the 2000 Pontiac Trans-Am without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

91. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check, upon a finding that it has, or is,

engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer.

92. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License Number RC 248940, issued to Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check, is revoked or suspended, any additional license issued under this chapter in the name of said licensees may be likewise revoked or suspended by the director.

93. Pursuant to Code section 9889.9, if Lamp Station License Number LS 248940, issued to Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensees may be likewise revoked or suspended by the director.

94. Pursuant to Code section 9889.9, if Brake Station License Number BS 248940, issued to Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensees may be likewise revoked or suspended by the director.

95. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 150695, issued to Silviano Michel, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

96. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 150695, issued to Silviano Michel, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

97. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 150695, issued to Silviano Michel, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

98. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 151972, issued to Juan Antonio Gastelum, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

99. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 151972, issued to Juan Antonio Gastelum, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

100. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 151972, issued to Juan Antonio Gastelum, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions 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 Consumer Affairs issue a decision:

1. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration No. ARD 248940, issued to Juan Gastelum and Silviano Michel, Partners, doing business as Antonys Smog Check;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Juan Gastelum and Silviano Michel;

3. Revoking or suspending Smog Check Station License Number RC 248940, issued to Juan Gastelum and Silviano Michel, Partners, doing business as Antonys Smog Check;

4. Revoking or suspending any additional license issued under chapter 5, of the Health and Safety Code in the name of Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check;

5. Revoking or suspending Lamp Station License Number LS 248940, issued to Juan Gastelum and Silviano Michel, Partners, doing business as Antonys Smog Check;

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6. Revoking or suspending Brake Station License Number BS 248940, issued to Juan Gastelum and Silviano Michel, Partners, doing business as Antonys Smog Check;

7. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check;

8. Revoking or suspending Advanced Emission Specialist Technician License Number EA 150695, issued to Silviano Michel;

9. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Silviano Michel;

10. Revoking or suspending Brake Adjuster License Number BA 150695, issued to Silviano Michel;

11. Revoking or suspending Lamp Adjuster License Number LA 150695, issued to Silviano Michel;

12. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Silviano Michel;

13. Revoking or suspending Advanced Emission Specialist Technician License Number EA 151972, issued to Juan Antonio Gastelum;

14. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Juan Antonio Gastelum;

15. Revoking or suspending Brake Adjuster License Number BA 151972, issued to Juan Antonio Gastelum;

16. Revoking or suspending Lamp Adjuster License Number LA 151972, issued to Juan Antonio Gastelum;

17. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Juan Antonio Gastelum;

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18. Ordering Juan Gastelum and Silviano Michel, Partners, doing business as Antonys Smog Check, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: May 23 2012

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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