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

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13  
14 In the Matter of the Accusation Against:

Case No. 77|11-01

15 **ANTONYS SMOG CHECK**  
**JUAN GASTELUM, Partner**  
16 **SILVIANO MICHEL, Partner**  
1287 N. Blackstone Avenue, #B  
17 Fresno, California 93703  
**Automotive Repair Dealer Registration No. ARD 248940**  
18 **Smog Check Station License No. RC 248940**  
19 **Lamp Station License No. LS 248940**  
**Brake Station License No. BS 248940**

**ACCUSATION**

20 **JUAN ANTONIO GASTELUM**  
21 13324 S. Pear  
Caruthers, California 93609  
22 and  
23 P.O. Box 358  
Caruthers, California 93609  
24 **Advanced Emission Specialist Technician License No. EA**  
**151972**  
25 **Brake Adjuster License No. BA 151972**  
**Lamp Adjuster License No. LA 151972**  
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1 **SILVIANO MICHEL**  
2 4638 West Pine Avenue  
3 Fresno, California 93722  
4 and  
5 13337 S. Marks Avenue  
6 Caruthers, California 93609  
7 **Advanced Emission Specialist Technician License No. EA**  
8 **150695** ♂  
9 **Brake Adjuster License No. BA 150695** ♀  
10 **Lamp Adjuster License No. LA 150695** ♂

Respondents.

11 Sherry Mehl ("Complainant") alleges:

12 **PARTIES**

13 1. Complainant brings this Accusation solely in her official capacity as the Chief of the  
14 Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

15 **LICENSE INFORMATION**

16 **Antonys Smog Check**

17 2. On or about January 16, 2007, the Bureau issued Automotive Repair Dealer  
18 Registration Number ARD 248940 ("registration") to Juan Gastelum and Silviano Michel,  
19 Partners, doing business as Antonys Smog Check ("Respondent Antonys"). The registration was  
20 in full force and effect at all times relevant to the charges brought herein and will expire on  
21 January 31, 2012, unless renewed.

22 3. On or about February 26, 2007, the Bureau issued Smog Check Station Number  
23 RC 248940 ("station license") to Respondent Antonys. The station license was in full force and  
24 effect at all times relevant to the charges brought herein and will expire on January 31, 2012,  
25 unless renewed.

26 4. On or about March 5, 2007, the Bureau issued Lamp Station License Number LS  
27 248940 to Respondent Antonys. The lamp station license was in full force and effect at all times  
28 relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

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1           5.       On or about March 5, 2007, the Bureau issued Brake Station License Number BS  
2 248940 to Respondent Antonys. The brake station license was in full force and effect at all times  
3 relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

4           **Silviano Michel**

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

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

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

15           **Juan Antonio Gastelum**

16           9.       In or about 2007, the Bureau issued Advanced Emission Specialist Technician  
17 License Number EA 151972 (“technician license”) to Juan Antonio Gastelum (“Respondent  
18 Gastelum”). Respondent Gastelum’s technician license was in full force and effect at all times  
19 relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

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

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

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

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

4 14. Section 9889.1 of the Code states:

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

11 15. Section 9889.9 of the Code states:

12 When any license has been revoked or suspended following a hearing  
13 under the provisions of this article, any additional license issued under Articles 5 and  
14 6 of this chapter in the name of the licensee may be likewise revoked or suspended by  
15 the director.

16 16. Section 9889.16 of the Code states:

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

25 17. Section 9884.9 of the Code states:

26 (a) The automotive repair dealer shall give to the customer a written  
27 estimated price for labor and parts necessary for a specific job. No work shall be done  
28 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.

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

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

6 \_\_\_\_\_  
7 (signature or initials)

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

11 18. Section 9889.7 of the Code states:

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

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

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

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

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

28 (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

1 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not  
2 deprive the Director of jurisdiction to proceed with disciplinary action.

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

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

#### 6 **COST RECOVERY**

7 24. Code section 125.3 provides, in pertinent part, that a Board may request the  
8 administrative law judge to direct a licensee found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

#### 11 **BACKGROUND INFORMATION**

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

#### 18 **UNDERCOVER OPERATION NO. 1: 1996 TOYOTA CAMRY**

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

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

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

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

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

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

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Regulations)**

20 30. Respondent Antonys' registration is subject to discipline pursuant to Code section  
21 9884.7(a)(6), in that on or about July 13, 2009, regarding the 1996 Toyota Camry, Respondent  
22 failed to comply with provisions of California Code of Regulations, title 16, in the following  
23 material respects:

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



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

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

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

- 17 a. The MIL light bulb was still missing.
- 18 b. The front headlamps had been adjusted to manufacturer's specifications.
- 19 c. The right and left rear brake drums remained beyond factory specifications for  
20 maximum diameter (oversized).
- 21 d. None of the four tire and wheel assemblies had been removed for inspection of the  
22 brake system.

### 23 **SIXTH CAUSE FOR DISCIPLINE**

#### 24 **(Untrue or Misleading Statements)**

25 37. Respondent Antonys' registration is subject to discipline under Code section  
26 9884.7(a)(1), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent  
27 made or authorized statements which it knew or in the exercise of reasonable care should have  
28 known to be untrue or misleading, as follows:

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

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

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

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 38. Respondent Antonys' registration is subject to discipline pursuant to Code section  
14 9884.7(a)(4), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent  
15 committed acts that constitute fraud, as follows:

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

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

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 **(Gross Negligence)**

26 39. Respondent Antonys' registration is subject to discipline under Code section  
27 9884.7(a)(5), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent  
28 committed acts constituting gross negligence, in that Respondent's technician, Respondent

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

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Departure from Trade Standards)**

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

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

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

16 **TENTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Code)**

18 41. Respondent Antonys' registration is subject to discipline pursuant to Code section  
19 9884.7(a)(6), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent  
20 failed to comply with provisions of that Code in the following material respects:

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

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

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 42. Respondent Antonys' registration is subject to discipline pursuant to Code section  
4 9884.7(a)(6), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent  
5 failed to comply with provisions of California Code of Regulations, title 16, in the following  
6 material respects:

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

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

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with the Code)**

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

19 **THIRTEENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations)**

21 44. Respondent Antonys' brake and lamp station licenses are subject to discipline  
22 under Code section 9889.3(c), in that on or about February 8, 2010, regarding the 2001 Ford  
23 Focus, Respondent failed to comply with provisions of California Code of Regulations, title 16,  
24 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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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

11 **NINETEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

25 **TWENTIETH CAUSE FOR DISCIPLINE**

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

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

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

6 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

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

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

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

15 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations)**

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

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

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

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

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1 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

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

10 **UNDERCOVER OPERATION NO. 3: 2005 FORD FOCUS**

11 55. On or about May 17, 2010, an undercover Bureau operator ("operator") drove a  
12 Bureau documented 2005 Ford Focus to Respondent Antony's facility and requested a brake,  
13 lamp, and smog inspection. The vehicle could not have passed the inspections because the front  
14 headlamps were out of adjustment, the left and right rear brake drums were beyond factory  
15 specifications for maximum diameter (oversized), and the MIL was inoperative. The operator  
16 arrived at Respondent's facility and was greeted by Respondent Gastelum. The operator told  
17 Respondent Gastelum that he needed a brake and lamp inspection, and a smog check.  
18 Respondent Gastelum told an employee, Paco, to scan the vehicle's computer system. Paco  
19 scanned the vehicle's computer system and told the operator that he could perform the  
20 inspections. The operator and Paco entered the repair facility. Paco asked for the operator's  
21 name. The operator told Paco his name was Dave Garcia, which Paco wrote on Service Order  
22 No. 019140. The operator did not receive a written estimate or sign any documents. A short time  
23 later, the vehicle was ready. The operator paid \$90 and received a copy of Service Order No.  
24 019140. The operator also received Brake Certificate Number BC1035642 (issued by  
25 Respondent Michel), Lamp Certificate Number LC1021341 (issued by Respondent Michel), and  
26 Smog Check Vehicle Inspection Report (VIR) referencing Smog Check Certificate Number  
27 NU018494 (issued by Respondent Gastelum).



1 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

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

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

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

14 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

15 **(Gross Negligence)**

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

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

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

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1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 60. Respondent Antonys' registration is subject to discipline under Code section  
4 9884.7(a)(7), in that Respondent willfully departed from or disregarded accepted trade standards  
5 for good and workmanlike repair without the consent of the owner or the owner's duly authorized  
6 representative in a material respect, as follows:

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

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

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

17 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with the Code)**

19 61. Respondent Antonys' registration is subject to discipline pursuant to Code section  
20 9884.7(a)(6), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed  
21 to comply with provisions of that Code in the following material respects:

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

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

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

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

1 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 62. Respondent Antonys' registration is subject to discipline pursuant to Code section  
4 9884.7(a)(6), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed  
5 to comply with provisions of California Code of Regulations, title 16, in the following material  
6 respects:

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

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

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

16 **THIRTIETH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Code)**

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

22 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations)**

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

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1 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

3 65. Respondent Antonys' brake and lamp station licenses are subject to discipline  
4 pursuant to Code section 9889.3(d), in that Respondent committed acts involving dishonesty,  
5 fraud, or deceit whereby another was injured, as more particularly set forth above in paragraph  
6 58.

7 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Code)**

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

13 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations)**

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

19 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

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

21 68. Respondent Michel's brake and lamp adjuster licenses are subject to discipline under  
22 Code section 9889.3(d), in that on or about May 17, 2010, regarding the 2005 Ford Focus, he  
23 committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number BC  
24 1035642 and Lamp Certificate Number LC 1021341, certifying that the brake and lamp systems  
25 were in satisfactory condition and were in accordance with the Vehicle Code, when, in fact, they  
26 were not.

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1 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

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

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

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

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

11 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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1 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

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

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

10 **THIRTY-NINTH CAUSE FOR DISCIPLINE**

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

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

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

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

19 **FORTIETH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations)**

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

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

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

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

3 **FORTY-FIRST CAUSE FOR DISCIPLINE**

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

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

12 **FORTY-SECOND CAUSE FOR DISCIPLINE**

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

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

18 **OTHER MATTERS**

19 76. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on  
20 probation the registrations for all places of business operated in this state by Juan Gastelum and  
21 Silvano Michel, doing business as Antonys Smog Check, upon a finding that it has, or is,  
22 engaged in a course of repeated and willful violation of the laws and regulations pertaining to an  
23 automotive repair dealer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

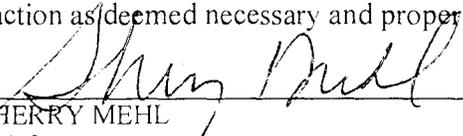
22          17.    Revoking or suspending any additional license issued under Articles 5 and 6 of  
23 Chapter 20.3 of the Business and Professions Code in the name of Juan Antonio Gastelum;

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

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

5 DATED: 7/12/11



6 SHERRY MEHL  
7 Chief  
8 Bureau of Automotive Repair  
9 Department of Consumer Affairs  
10 State of California  
11 *Complainant*

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