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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:

EL TORO SMOG STATION II
HUGO JORGE TORO, Owner
101 N. 8th Street
El Centro, CA 92243

Automotive Repair Dealer Reg. No. ARD 249210
Smog Check Station License No. RC 249210
Lamp Station License No. LS 249210
Brake Station License No. BS 249210

and

HUGO JORGE TORO
436 Southwind Drive
El Centro, CA 92243

Brake Adjuster License No. BA 149157
Smog Check Inspector License No. EO 149157
Smog Check Repair Tech. License No. EI 149157
(*Formerly Advanced Emission Specialist Technician License No. EA 149157*)

Respondents.

Case No. 79/16-117

ACCUSATION

(Smog Check)

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Complainant alleges:

PARTIES

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

El Toro Smog Station II

2. On or about January 31, 2007, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer (ARD) Registration Number ARD 249210 to El Toro Smog Station II with Hugo Jorge Toro, Owner (Respondent El Toro Smog). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2017, unless renewed.

3. On or about August 9, 2007, the Bureau issued Smog Check Station License Number RC 249210 to Respondent El Toro Smog. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2017, unless renewed.

4. On or about November 27, 2007, the Bureau issued Lamp Station License Number LS 249210, class A, to Respondent El Toro Smog. 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, 2017, unless renewed.

5. On or about November 27, 2007, the Bureau issued Brake Station License Number BS 249210, class C, to Respondent El Toro Smog. 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, 2017, unless renewed.

Hugo Jorge Toro

6. In or about 2004, the Bureau issued Advanced Emission Specialist Technician License Number EA 149157 to Hugo Jorge Toro (Respondent Toro). The Advanced Emission Specialist Technician License was due to expire on April 30, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), said license was renewed, pursuant to Respondent Toro's election, as Smog Check Inspector License Number EO 149157, and Smog

Check Repair Technician License Number EI 149157, effective March 10, 2014.[1] The Smog Check Inspector License and the Smog Check Repair Technician License will both expire on April 30, 2016, unless renewed.

7. On or about June 18, 2009, the Bureau issued Brake Adjuster License Number BA 149157, class C, to Respondent Toro. Respondent's brake adjuster license expired on April 30, 2013, and has not been renewed.

JURISDICTION

8. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All references are to the Business and Professions Code, unless otherwise specified.

9. Code section 9884.7 provides that the Director may revoke or suspend an automotive repair dealer registration.

10. Code section 9884.13 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 temporarily or permanently invalidating (revoking or suspending) a registration.

11. Code section 9889.9 provides that when any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with Code section 9889.1) of the Automotive Repair Act], 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.

12. Code section 9889.1 provides, in pertinent part, that the Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with Code section 9887.1) of the Automotive Repair Act.

13. Code section 9889.7 provides, in pertinent part, that 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

[1] Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any disciplinary proceedings.

14. Health and Safety Code ("Health & Saf. Code") section 44002 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.

15. Health & Saf. Code section 44072.6 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.

16. Health & Saf. Code section 44072.8 provides that 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.

17. California Code of Regulations, title 16, section 3340.28, subdivision (e), provides that "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

STATUTORY PROVISIONS

18. Section 9884.7 of the Code states:

"(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.

". . . .

"(4) Any other conduct which constitutes fraud.

". . . .

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

". . ."

19. Section 9889.3 of the Code states:

"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:

". . .

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

". . ."

20. Section 44072.2 of the Health and Safety Code states:

"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.

". . ."

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

"The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

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

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

"(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

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

"(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

"(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

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

"(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the

department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter."

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

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

"(1) A vehicle that has been tampered with.

"(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 44014.5.

"(3) A vehicle described in subdivision (c).

"(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

"(c)(1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity authorized to perform referee functions for a vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost limit specified in Section 44017.

"(2) An economic hardship extension shall be issued, upon request of a qualified low-income motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that has been properly tested but does not meet the applicable emission standards when it is

determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-income vehicle owner would suffer an economic hardship if the extension is not issued, and that all appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section 44017.1 have been performed.

"(d) No repair cost waiver or economic hardship extension shall be issued under any of the following circumstances:

"(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that owner. However, a repair cost waiver or economic hardship extension may be issued for a motor vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as determined by the department. For waivers or extensions issued in the program operative on or after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per owner.

"(2) Upon initial registration of all of the following:

"(A) A direct import motor vehicle.

"(B) A motor vehicle previously registered outside this state.

"(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

"(D) A motor vehicle that has had an engine change.

"(E) An alternate fuel vehicle.

"(F) A specially constructed vehicle.

"(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance shall be valid for 90 days.

"(f) Except as provided in Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle dealer shall be responsible for having a smog check inspection

performed on, and a certificate of compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle is sold and registered to a retail buyer, whichever occurs first.

"(g) A test may be made at any time within 90 days prior to the date otherwise required."

REGULATIONS

23. California Code of Regulations, title 16, section 3340.35, states:

"(a) A licensed station shall purchase certificates of compliance and noncompliance from the bureau or an authorized agent of the bureau only, and under the following terms and conditions:

"(1) A certificate of compliance or noncompliance shall be purchased by a licensed station for a fee determined pursuant to section 3340.35.1 of these regulations; and

"(2) Full payment is required at the time the certificates are ordered.

"(b) A licensed station shall not sell or otherwise transfer unused certificates to another licensed station, to a new owner of the business, or to any person other than a customer whose vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this article.

"(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. The following conditions shall apply:

"(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

"(2) Sales tax shall not be assessed on the price of certificates.

"(d) No person shall sell, issue, cause or permit to be issued any certificate purported to be a valid certificate of compliance or noncompliance unless duly licensed to do so.

"(e) A repair cost waiver or an economic hardship extension shall be the same fee as a certificate of compliance or noncompliance."

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24. California Code of Regulations, title 16, section 3340.42, states:

"Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

"(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

"(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

"On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle are not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

"(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in those areas of the state where the enhanced program has been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emission standards set forth in this section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or equal to the applicable emissions standards specified in Table III.

"(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer. The OBD test failure criteria are specified in section 3340.42.2.

"(b) In addition to subsection (a), all vehicles subject to the smog check program shall receive the following:

"(1) A visual inspection of emission control components and systems to verify the vehicle's emission control systems are properly installed.

"(2) A functional inspection of emission control systems as specified in the Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper operation.

"(c) The bureau may require any combination of the inspection methods in sections (a) and (b) under any of the following circumstances:

"(1) Vehicles that the department randomly selects pursuant to Health and Safety Code section 44014.7 as a means of identifying potential operational problems with vehicle OBD systems.

"(2) Vehicles identified by the bureau as being operationally or physically incompatible with inspection equipment.

"(3) Vehicles with OBD systems that have demonstrated operational problems.

"(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

"(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables described in subsection (a), as applicable.

"(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

"(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

"(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code."

COST RECOVERY

25. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

26. In or about March 2015, the Bureau of Automotive Repair initiated an investigation of El Toro Smog Station II based on a review of its data from the Bureau's Vehicle Information Database (VID), which indicated that Respondent or its employees may be engaging in fraudulent smog check inspections. The VID provides pertinent information related to each smog inspection conducted at El Toro Smog Station II, including emission control system data, smog check history, vehicle profiling data, station and technician data, and smog certificate data.

27. On or about March 16, 2015, a representative of the Bureau conducted a detailed review of the VID data for all smog inspections performed at El Toro Smog Station II requiring a BAR-97 OBDII functional check[2], for the period of January 5, 2015, through March 13, 2015. The Bureau review of the VID data showed diagnostic trouble codes reported during the OBDII

[2] The BAR-97 smog check machine is a computer based five-gas analyzer that measures certain vehicle emissions during a smog check inspection. The On-Board Diagnostic, generation II (OBDII), functional test is an automated function of the BAR-97 emissions analyzer. During the OBDII functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBDII functional test, it will fail the overall smog inspection.

functional test on the five (5) vehicles identified below, that *did not apply* to the make and/or model of the vehicle being tested. Instead, the trouble code(s) belonged to a different make and/or model of vehicle. The VID data showed that Respondent Hugo Toro performed all the smog inspections on these vehicles. Respondent Toro conducted the inspections on the vehicles using a method known as "clean plugging",[3] resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Time of Smog Inspection	**Vehicle Certified and License No. or VIN No.**	**Unsupported Trouble Code(s)**	**Certificate No.**
1. 14:02-14:19 hours	2000 Mitsubishi Galant VIN# 4A3AA46G3YE107939	P1521	YN656752C
2. 08:42-08:49 hours	1996 Toyota Camry VIN# JT2BG12K9T0362916	P0140 P0742	YN656756C
3. 16:06-16:15 hours	1996 Ford Bronco VIN# 1FMEU15H8TLB04880	P1521	YN656776C
4. 13:33-13:40 hours	1998 Nissan Maxima VIN# JN1CA21A9WM803309	P1521	YN656788C
5. 12:01-12:10 hours	1998 Nissan Frontier VIN# 1N6DD21S2WC317851	P1521 P0441	YP132164C

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[3] Clean-plugging is the use of the OBDII readiness monitor status and stored fault code (trouble code) status of a passing vehicle, for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance, due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

28. Respondent El Toro Smog's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that 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: Respondent Hugo Toro certified that vehicles 1 through 5, identified in the chart above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Toro conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBDII functional tests in order to issue certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

29. Respondent El Toro Smog's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud, by issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in the chart above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

30. Respondent El Toro Smog's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to perform the emission control tests on vehicles 1 through 5, identified in the chart above, in accordance with procedures prescribed by the Department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 1 through 5, identified in the chart above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health & Saf. Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

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

31. Respondent El Toro Smog's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 through 5, identified in the chart above, even though the vehicles had not been inspected in accordance with section 3340.42.

b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were conducted on vehicles 1 through 5, identified in the chart above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

32. Respondent El Toro Smog's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts, whereby another is injured, by issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in the chart above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

33. Respondent Hugo Toro's smog check inspector and repair technician licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with section 44012 of that Code, in a material respect, as follows: Respondent Toro failed to perform the emission control tests on vehicles 1 through 5, identified in the chart above, in accordance with procedures prescribed by the Department.

SEVENTH CAUSE FOR DISCIPLINE

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

34. Respondent Hugo Toro's smog check inspector and repair technician licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 through 5, identified in the chart above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 5, identified in the chart above, in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

35. Respondent Hugo Toro's smog check inspector and repair technician licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest, fraudulent, or deceitful acts, whereby another is injured, by issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in the chart above, without performing bona fide inspections of the emission control devices and systems on the vehicles.

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NINETH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

36. Respondent El Toro Smog's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (d), in that Respondent committed acts involving dishonesty, fraud, or deceit, whereby another is injured, by issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in the chart above, without performing bona fide inspections of the emission control devices and systems on the vehicles.

TENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

37. Respondent Hugo Toro's brake adjuster license is subject to disciplinary action pursuant to Code section 9889.3, subdivision (d), in that he committed acts involving dishonesty, fraud, or deceit, whereby another is injured, by issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in the chart above, without performing bona fide inspections of the emission control devices and systems on the vehicles.

MATTERS IN AGGRAVATION

38. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges as follows:

a. On or about November 2, 2007, the Bureau of Automotive Repair issued Citation Number C08-0447 to Respondent El Toro Smog for violations of Health & Saf. Code section 44012, subdivision (f) (failure to determine that emission control devices and systems required by State and Federal law were installed and functioning correctly in accordance with test procedures), and California Code of Regulations, title 16, section (Regulation) 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond specifications. The citation assessed civil penalties totaling $500.00 against Respondent for the violations, and Respondent paid the fine on January 24, 2008. That Citation is now final and is incorporated by reference as if fully set forth.

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b. On or about November 2, 2007, the Bureau concomitantly issued Citation Number M08-448 to Respondent Hugo Jorge Toro for violations of Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent had improperly inspected the Bureau undercover vehicle mentioned above with the ignition timing adjusted beyond specifications. Respondent was directed to complete an 8 hour training course and to submit proof of completion to the Bureau within 30 days from receipt of the citation. Respondent complied with the citation and completed the required training on January 17, 2008. That Citation is now final and is incorporated by reference as if fully set forth.

c. On or about April 12, 2010, the Bureau of Automotive Repair issued Citation Number C2010-1069 to Respondent El Toro Smog for violations of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section (Regulation) 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing Positive Crankcase Ventilation. The citation assessed civil penalties totaling $500.00 against Respondent for the violations, and Respondent paid the fine on June 14, 2010. That Citation is now final and is incorporated by reference as if fully set forth.

d. On or about April 12, 2010, the Bureau concomitantly issued Citation Number M2010-1070 to Respondent Hugo Jorge Toro for violations of Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent had improperly inspected the Bureau undercover vehicle mentioned above with the missing Positive Crankcase Ventilation. Respondent was directed to complete an 8 hour training course and to submit proof of completion to the

Bureau within 30 days from receipt of the citation. Respondent complied with the citation and completed the required training on June 11, 2010. That Citation is now final and is incorporated by reference as if fully set forth.

OTHER MATTERS

39. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the registration for all places of business operated in this state by Respondent Hugo Jorge Toro, owner of El Toro Smog Station II, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

40. Under Health & Saf. Code section 44072.8, if Smog Check Station License Number RC 249210 issued to Respondent El Toro Smog Station II, Hugo Jorge Toro owner, is revoked or suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the Director.

41. Under Health and Saf. Code section 44072.8, if Smog Check Inspector License Number EO 149157 or Smog Check Repair Technician License Number EI 149157 issued to Respondent Hugo Jorge Toro is revoked or suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the Director.

42. Pursuant to Code section 9889.9, if Lamp Station License Number LS 249210 or Brake Station License Number BS 249210 issued to Respondent El Toro Smog Station II, Hugo Jorge Toro owner, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise revoked or suspended by the Director.

43. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 149157, issued to Respondent Hugo Jorge Toro is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the 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 or suspending Automotive Repair Dealer Registration Number ARD 249210 issued to El Toro Smog Station II with Hugo Jorge Toro, owner;

2. Revoking or suspending any other automotive repair dealer registration issued to Hugo Jorge Toro;

3. Revoking or suspending Smog Check Station License Number RC 249210 issued to El Toro Smog Station II with Hugo Jorge Toro, owner;

4. Revoking or suspending Smog Check Inspector License Number EO 149157 issued to Hugo Jorge Toro;

5. Revoking or suspending Smog Check Repair Technician License Number EI 149157 issued to Hugo Jorge Toro;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Hugo Jorge Toro;

7. Revoking or suspending Lamp Station License Number LS 249210 issued to El Toro Smog Station II with Hugo Jorge Toro, owner;

8. Revoking or suspending Brake Station License Number BS 249210 issued to El Toro Smog Station II with Hugo Jorge Toro, owner;

9. Revoking or suspending Brake Adjuster License Number BA 149157 issued to Hugo Jorge Toro;

10. 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 Hugo Jorge Toro;

11. Ordering Hugo Jorge Toro to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: May 11, 2016

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

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