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

12 In the Matter of the Accusation Against:

Case No. **79/17-8954**

13 **ROGELIO GUTIERREZ-OWNER DBA**
14 **E Z SMOG AND AUTO REPAIR**
15 **1500 N. Gaffey Street**
16 **San Pedro, CA 90731**
17 **Automotive Repair Dealer Registration No.**
18 **ARD 231477**
19 **Smog Check Station License No. RC 231477**
20 **Lamp Station License No. LS 231477,**
21 **Class A**
22 **Brake Station License No. BS 231477,**
23 **Class C**

A C C U S A T I O N

24 and

25 **JOHN PAUL GUTIERREZ**
26 **2354 Lewis Ave.**
27 **Signal Hill, CA 90755**
28 **Smog Check Inspector License No. EO**
631599
Smog Check Repair Technician License
Number EI 631599 (formerly Advanced
Emission Specialist Technician License No.
EA 631599)

Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 **Rogelio Gutierrez-Owner dba E Z Smog and Auto Repair**

6 **Automotive Repair Dealer Registration**

7 2. In 2004, the Bureau issued Automotive Repair Dealer Registration Number ARD
8 231477 ("registration") to Rogelio Gutierrez-Owner dba E Z Smog and Auto Repair
9 ("Respondent E Z Smog"). The Automotive Repair Dealer Registration was in full force and
10 effect at all times relevant to the charges brought herein and will expire on January 31, 2019,
11 unless renewed.

12 **Smog Check Station License**

13 3. On or about January 26, 2004, the Bureau issued Smog Check Station License
14 Number RC 231477 ("station license") to Respondent E Z Smog. The Smog Check Station
15 License was in full force and effect at all times relevant to the charges brought herein and will
16 expire on January 31, 2019, unless renewed.

17 **Lamp Station License**

18 4. On or about January 31, 2009, the Bureau issued Official Lamp Station License
19 Number LS 231477, Class A ("lamp station license") to Respondent E Z Smog. Respondent E Z
20 Smog's lamp station license was in full force and effect at all times relevant to the charges
21 brought herein and will expire on January 31, 2019, unless renewed.

22 **Brake Station License**

23 5. On or about February 9, 2004, the Bureau issued Official Brake Station License
24 Number BS 231477, Class C ("brake station license") to Respondent E Z Smog. Respondent E Z
25 Smog's brake station license was in full force and effect at all times relevant to the charges
26 brought herein and will expire on January 31, 2019, unless renewed.

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1 **John Paul Gutierrez**

2 **Technician License/Inspector License**

3 **(formerly Advanced Emission Specialist Technician License Number EA 631599)**

4 6. On or about December 21, 2009, the Bureau issued Advanced Emission Specialist
5 Technician License Number EA 631599 to John Paul Gutierrez ("Respondent Gutierrez").
6 Respondent Gutierrez's Advanced Emission Specialist Technician License expired on September
7 30, 2013 and was cancelled on June 11, 2013. Pursuant to California Code of Regulations, title
8 16, section 3340.28, subdivision (e)¹, the license was renewed, pursuant to Respondent
9 Gutierrez's election, as Smog Check Inspector License Number EO 631599 ("inspector license")
10 and Smog Check Repair Technician License Number EI 631599 ("repair technician license"),
11 effective June 11, 2013. Respondent Gutierrez's inspector license and repair technician license
12 were in full force and effect at all times relevant to the charges brought herein and will expire on
13 September 30, 2019, unless renewed.

14 **JURISDICTION**

15 7. Business and Professions Code ("Code") section 9884.7 provides that the Director
16 may revoke an automotive repair dealer registration.

17 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
18 registration shall not deprive the director or chief 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 9. Health and Safety Code section 44002 provides, in pertinent part, that the Director
22 has all the powers and authority granted under the Automotive Repair Act for enforcing the
23 Motor Vehicle Inspection Program.

24 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
25 expiration or suspension of a license by operation of law, or by order or decision of the Director
26

27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
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.

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

3 **STATUTORY PROVISIONS**

4 11. Section 9884.7 of the Code states:

5 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
6 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
7 dealer for any of the following acts or omissions related to the conduct of the business of the
8 automotive repair dealer, which are done by the automotive repair dealer or any automotive
9 technician, employee, partner, officer, or member of the automotive repair dealer.

10 "(1) Making or authorizing in any manner or by any means whatever any statement written
11 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable
12 care should be known, to be untrue or misleading.

13 . . .

14 "(4) Any other conduct which constitutes fraud.

15 . . .

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

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

22 12. Section 9889.3 of the Code states:

23 "The director may suspend, revoke, or take other disciplinary action against a license as
24 provided in this article [Article 7 (commencing with section 9889.1) of Chapter 20.3 of Division
25 3 of the Business and Professions Code] if the licensee or any partner, officer, or director thereof:

26

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

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1 13. Section 44012 of the Health and Safety Code states:

2 “The test at the smog check stations shall be performed in accordance with procedures
3 prescribed by the department and may require loaded mode dynamometer testing in enhanced
4 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other
5 appropriate test procedures as determined by the department in consultation with the state board.
6 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
7 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
8 no earlier than January 1, 2013. However, the department, in consultation with the state board,
9 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
10 idle testing for vehicles with onboard diagnostic systems that the department and the state board
11 determine exhibit operational problems. The department shall ensure, as appropriate to the test
12 method, the following:

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

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

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

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

26 “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices
27 and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
28 department, that may include, but are not limited to, onboard diagnostic testing. The test may

1 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
2 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

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

9 “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a
10 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
11 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
12 would have passed a tailpipe test.

13 “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle
14 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
15 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the
16 vehicle from compliance with all applicable requirements of this chapter.”

17 14. Section 44015 of the Health and Safety Code states:

18 ...

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

21 15. Section 44059 of the Health and Safety Code states:

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

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16. 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 Safety Code, section 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."

17. 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."

REGULATORY PROVISIONS

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

• • •

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

19. California Code of Regulations, title 16, section 3340.30, subdivision (a) states:

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

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

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1 20. California Code of Regulations, title 16, section 3340.35, subdivision (c) states:

2 “A licensed station shall issue a certificate of compliance or noncompliance to the owner or
3 operator of any vehicle that has been inspected in accordance with the procedures specified in
4 section 3340.42 of this article and has all the required emission control equipment and devices
5 installed and functioning correctly.”

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

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

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

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

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

25 “(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999
26 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in
27 those areas of the state where the enhanced program has been implemented. The two-speed idle
28 mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high

1 RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection
2 (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
3 shall be measured and compared to the emission standards set forth in this section and as shown
4 in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are
5 less than or equal to the applicable emissions standards specified in Table III.

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

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

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

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

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

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

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

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

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

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

1 “(2) Vehicles with emission levels exceeding the emission standards for gross polluters
2 during an initial inspection will be considered gross polluters and the provisions pertaining to
3 gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and
4 44081 of the Health and Safety Code.

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

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

11 **COST RECOVERY**

12 22. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
16 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
17 included in a stipulated settlement.

18 **FACTUAL BACKGROUND**

19 23. A Bureau Representative conducted a review of E Z Smog and Auto Repair BAR-
20 OIS smog check inspection records from the Vehicle Identification Database ("VID"). The
21 review showed numerous vehicle that have been certified at E Z Smog and Auto Repair with
22 incorrect vehicle communication protocol and incorrect Parameter Identification² (PID) count.
23 All of the following inspections were performed by Respondent Gutierrez. The data from the
24 certified vehicles were compared to the OIS test data of similar vehicles of the same year, make
25 and model that received passing Smog Check inspections and received smog certificates. The
26 data comparison showed multiple discrepancies with ten (10) vehicles that were all certified with

27 ² Parameter Identifications (PIDs) are data points reported by the OBD II computer to the scan tool or BAR
28 OIS.

incorrect vehicle communication protocols³ and incorrect PID count, which confirms the vehicles receiving smog certificates were fraudulently tested during the smog inspection using the clean plugging method⁴. The following chart illustrates the clean plugging activities of Respondents E Z Smog and Gutierrez between January 25, 2017 to May 10, 2017. All of the following inspections were performed by Respondent Gutierrez.

TABLE 1

Test No.	Test Date	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details
1.	01/25/2017	2002 Ford Explorer XLS 4ZGK553	ZN822169C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected JPWM) PID Count: 9 (expected 22) VIN No.: 1FMZU62K22 ZC54882 (Expected e-VIN-1FMZU62K22 ZC54882)
2.	03/23/2017	2001 Chevrolet Tahoe C1500 4PTP400	ZR282145C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected JVPW) PID Count: 10 (expected 22 or 23) VIN No.: 1GNEC13T91R 151884 (Expected e-VIN-1GNEC13T91R 151884)

³ Protocol is simply the language used to communicate with a vehicle's computer(s). Protocol is a communication interface. This automated determination of the communication interface, or protocol, is built into the Data Acquisition Device (DAD) unit. This automatic function identifies five (5) protocols used by vehicles manufactured and sold in the United States that are subject to the Smog Check program.

⁴ 'Clean Plugging' refers to the use of another vehicle's properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for testing.

3.	03/28/2017	2000 Chevrolet Suburban C1500 5NMC286	ZR765418C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected JVPW) PID Count: 10 (expected 22) VIN No.: 3GNEC16T7Y G142428 (Expected e-VIN- Not Expected)
4.	03/30/2017	2005 Chrysler 300 5FWZ940	ZR765424C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected ICAN11bt5) PID Count: 9 (expected 43/8) VIN No.: 2C3JA43R55H 138577 (Expected e-VIN- 2C3JA43R55H 138577)
5.	04/05/2017	2001 Mercedes-Benz S 430 6LXG874	ZT165901C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected KWPF) PID Count: 9 (expected 22) VIN No.: Not Reported (Expected e-VIN- Not Expected)
6.	04/07/2017	2002 Saturn LW200 4WXM130	ZT165916C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected JVPW) PID Count: 9 (expected 18 or

					19) VIN No.: Not Reported (Expected e-VIN-1G8JU84F442Y567123)
7.	04/12/2017	2000 Cadillac Deville DTS 4JJF504	ZT165926C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected JVPW) PID Count: 9 (expected 20 or 21) VIN No.: Not Reported (Expected e-VIN-1G6KF5793YU198105)
8.	04/14/2017	2005 Kia Sedona EX 6ZDU745	ZT165949C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected KWPF) PID Count: 9 (expected 20) VIN No.: KUDUP132756741931 (Expected e-VIN-KUDUP132756741931)
9.	04/14/2017	2001 Ford Winstar LX 4RYC504	ZT507001C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected JPWM) PID Count: 9 (expected 20 or 21) VIN No.: 2FMZA51451B B49258 (Expected

					e-VIN- 2FMZA51451B B49258)
10.	05/10/2017	2007 Acura TL Type S 5ZWB127	ZV183508C	EO 631599 (Respondent Gutierrez)	Comm. Protocol: I914 (expected ICAN29bt5) PID Count: 9 (expected 41 or 43) VIN No.: 19UUA76567A 038624 (Expected e-VIN- 19UUA76567A 038624)

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. Respondent E Z Smog's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that between January 25, 2017, through May 10, 2017, Respondent E Z Smog made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent E Z Smog certified that vehicles 1 through 10, set forth above in Table 1, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent E Z Smog conducted the inspections on the vehicles using the clean plugging method by substituting or using different vehicles or another source during the OBD II functional tests in order to issue smog certificates of compliance for the 10 vehicles, and did not test or inspect the 10 vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent E Z Smog's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that between January 25, 2017, through May 10, 2017, Respondent

1 E Z Smog committed acts which constitute fraud by issuing electronic smog certificates of
2 compliance for vehicles 1 through 10, set forth above in Table 1, without performing bona fide
3 inspections of the emission control devices and systems on those vehicles, thereby depriving the
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection
5 Program.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with the Motor Vehicle Inspection Program)**

8 26. Respondent E Z Smog's registration and smog check station license are subject to
9 discipline pursuant to Code section, subdivision 9884.7(a)(6) and Health and Safety Code section
10 44072.2, subdivision (a), in that between January 25, 2017, through May 10, 2017, regarding
11 vehicles 1 through 10, set forth above in Table 1, Respondent E Z Smog failed to comply with the
12 following sections of that Code:

13 a. **Section 44012:** Respondent E Z Smog failed to ensure that the emission control tests
14 were performed on vehicles 1 through 10, in accordance with procedures prescribed by the
15 department.

16 b. **Section 44015:** Respondent E Z Smog issued electronic smog certificates of
17 compliance for vehicles 1 through 10, without ensuring that the vehicles were properly tested and
18 inspected to determine if they were in compliance with Health and Safety Code section 44012.

19 c. **Section 44059:** Respondent E Z Smog willfully made false entries for the electronic
20 smog certificates of compliance by certifying that those vehicles had been inspected as required
21 when, in fact, they had not.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

25 27. Respondent E Z Smog's smog check station license is subject to discipline pursuant
26 to Health and Safety Code section 44072.2, subdivision (c), in that between January 25, 2017,
27 through May 10, 2017, regarding vehicles 1 through 10, set forth above in Table 1, Respondent E
28 Z Smog failed to comply with provisions of California Code of Regulations, title 16, as follows:

1 a. **Section 3340.24, subdivision (c):** Respondent E Z Smog falsely or fraudulently issued
2 electronic smog certificates of compliance for those vehicles without performing bona fide
3 inspections of the emission control devices and systems on the vehicles as required by Health and
4 Safety Code section 44012.

5 b. **Section 3340.35, subdivision (c):** Respondent E Z Smog issued electronic smog
6 certificates of compliance even though those vehicles had not been inspected in accordance with
7 section 3340.42 of that Code.

8 c. **Section 3340.42:** Respondent E Z Smog failed to conduct the required smog tests and
9 inspections on those vehicles in accordance with the Bureau's specifications.

10 **FIFTH CAUSE FOR DISCIPLINE**

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

12 28. Respondent E Z Smog's smog check station license is subject to discipline pursuant
13 to Health and Safety Code section 44072.2, subdivision (d), in that between January 25, 2017,
14 through May 10, 2017, regarding vehicles 1 through 10, set forth above in Table 1, Respondent E
15 Z Smog committed acts involving dishonesty, fraud or deceit whereby another was injured by
16 issuing electronic smog certificates of compliance for those vehicles without performing bona
17 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
18 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
19 Program.

20 **SIXTH CAUSE FOR DISCIPLINE**

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

22 29. Respondent E Z Smog's smog check station license and brake and lamp station
23 license are subject to discipline pursuant to Code section 9889.3, subdivision (d), in that between
24 January 25, 2017, through May 10, 2017, regarding vehicles 1 through 10, set forth above in
25 Table 1, Respondent E Z Smog's committed acts involving dishonesty, fraud, or deceit whereby
26 another was injured.

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1 **NINTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent Gutierrez's smog check inspector license and repair technician license
4 are subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in
5 that between January 25, 2017, through May 10, 2017, regarding vehicles 1 through 10, set forth
6 above in Table 1, he committed acts involving dishonesty, fraud or deceit whereby another was
7 injured by issuing electronic smog certificates of compliance without performing bona fide
8 inspections of the emission control devices and systems on those vehicles, thereby depriving the
9 People of the State of California of the protection afforded by the Motor Vehicle Inspection
10 Program.

11 **PRIOR CITATIONS**

12 **Rogelio Gutierrez-Owner dba E Z Smog and Auto Repair**

13 33. To determine the degree of discipline, if any, to be imposed on Respondent E Z
14 Smog, Complainant alleges that on or about August 2, 2012, in a prior action, the Bureau issued
15 Citation Number C2013-0132 and ordered E Z Smog to pay a citation fine of \$1,000.00. A
16 Citation Service conference was held on August 30, 2012. Payment was received on September
17 4, 2012.

18 34. To determine the degree of discipline, if any, to be imposed on Respondent E Z
19 Smog, Complainant alleges that Citation C2015-2016 was issued on August 27, 2015 with a
20 Notice of Abatement. Citation Service Conference was held October 1, 2015. The Decision
21 became effective October 31, 2015.

22 35. To determine the degree of discipline, if any, to be imposed on Respondent E Z
23 Smog, Complainant alleges that on or about November 7, 2016, in a prior action, the Bureau
24 issued Citation Number C2016-2028 and ordered E Z Smog to pay a citation fine of \$1,000.00.
25 A Citation Service conference was held on December 9, 2016. A request for informal appeal of
26 Citation C2016-2028 was received on December 19, 2016. On January 17, 2017, Citation
27 C2016-2028 was affirmed and reissued. Payment was received on January 24, 2017.

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1 **Rogelio Gutierrez**

2 36. To determine the degree of discipline, if any, to be imposed on Rogelio Gutierrez,
3 Complainant alleges that Citation M2015-2019 was issued on August 27, 2015 with a Notice of
4 Abatement. Citation Service Conference was held October 1, 2015. The Decision became
5 effective October 31, 2015.

6 **John Paul Gutierrez**

7 37. To determine the degree of discipline, if any, to be imposed on Respondent Gutierrez,
8 Complainant alleges that Citation M2013-0133 was issued on August 2, 2012 and Respondent
9 Gutierrez was directed to complete an 8-HOUR TRAINING COURSE. Citation Service
10 Conference was held August 30, 2012. That Decision became effective on September 30, 2012.
11 Training was completed on October 2, 2012.

12 38. To determine the degree of discipline, if any, to be imposed on Respondent Gutierrez,
13 Complainant alleges that Citation M2016-2029 was issued on November 7, 2016 with a Notice of
14 Abatement. Citation Service Conference was held December 9, 2016. The Decision became
15 effective January 9, 2017.

16 **OTHER MATTERS**

17 39. Pursuant to Code section 9884.7, subdivision (c), the director may suspend revoke,
18 or place on probation the registrations for all places of business operated in this state by Rogelio
19 Gutierrez-Owner doing business as E Z Smog and Auto Repair, upon a finding that he has, or is,
20 engaged in a course of repeated and willful violation of the laws and regulations pertaining to an
21 automotive repair dealer.

22 40. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
23 License Number RC 231477 issued to Rogelio Gutierrez-Owner doing business as E Z Smog and
24 Auto Repair, is revoked or suspended, any additional license issued under this Chapter 5 of Part 5
25 of Div 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or
26 suspended by the director.

27 41. Pursuant to Code section 9889.9, if Lamp Station License Number LS 231477,
28 Class A, issued to Rogelio Gutierrez-Owner doing business as E Z Smog and Auto Repair, is

1 revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the
2 Business and Professions Code in the name of said licensees may be likewise revoked or
3 suspended by the director.

4 42. Pursuant to Code section 9889.9, if Brake Station License Number BS 231477, Class
5 C, issued to Rogelio Gutierrez-Owner doing business as E Z Smog and Auto Repair, is revoked
6 or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business
7 and Professions Code in the name of said licensees may be likewise revoked or suspended by the
8 director.

9 43. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
10 License No. EO 631599 and Smog Check Repair Technician License Number EI 631599
11 (formerly Advanced Emission Specialist Technician License Number EA 631599), issued to John
12 Paul Gutierrez, is revoked or suspended, any additional license issued under this Chapter 5 of Part
13 5 of Div 26 of the Health and Safety Code in the name of said licensee may be likewise revoked
14 or suspended by the director.

15 PRAYER

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

18 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
19 231477, issued to Rogelio Gutierrez-Owner doing business as E Z Smog and Auto Repair;

20 2. Revoking, suspending, or placing on probation any other automotive repair dealer
21 registration issued to Rogelio Gutierrez;

22 3. Revoking or suspending Smog Check Station License Number RC 231477, issued to
23 Rogelio Gutierrez-Owner doing business as E Z Smog and Auto Repair;

24 4. Revoking or suspending Lamp Station License Number LS 231477, Class A, issued
25 to Rogelio Gutierrez-Owner doing business as E Z Smog and Auto Repair;

26 5. Revoking or suspending Brake Station License Number BS 231477, Class C, issued
27 to Rogelio Gutierrez-Owner doing business as E Z Smog and Auto Repair;

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1 6. 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 Rogelio Gutierrez;

3 7. Revoking or suspending Smog Check Inspector License Number EO 631599, issued
4 to John Paul Gutierrez;

5 8. Revoking or suspending Smog Check Repair Technician License Number EI 631599,
6 issued to John Paul Gutierrez;

7 9. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
8 Division 26 of the Health and Safety Code in the name of Rogelio Gutierrez;

9 10. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
10 Division 26 of the Health and Safety Code in the name of John Paul Gutierrez;

11 11. Ordering Rogelio Gutierrez-Owner doing business as E Z Smog and Auto Repair and
12 John Paul Gutierrez to pay the Bureau of Automotive Repair the reasonable costs of the
13 investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3; and

15 12. Taking such other and further action as deemed necessary and proper.
16

17
18 DATED: March 16, 2018


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

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