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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. *79/16-63*

13 **MATTHEW PHILLIP HERMANN,**  
14 **PRESIDENT/SECRETARY/TREASURER**  
15 **OF ANYOTHERDAY INC., DBA**  
**REDWOOD CAR CARE**  
1331 El Camino Real  
Redwood City, CA 94063

ACCUSATION  
*smog check*

16 **Automotive Repair Dealer Registration No.**  
**ARD 248506**

17 **Smog Check Station License No. RC 248506**

18 **JONATHAN NUNEZ DIAS**  
19 **139 Rancho Drive, Apt. F**  
20 **San Jose, CA 95111**

21 **Smog Check Inspector License No. EO**  
**637827**

22 **JULIAN GARCIA ESPINOZA**  
23 **538 Earle Avenue**  
**San Jose, CA 95126**

24 **Smog Check Inspector License No. EO**  
**152902**

25 **Smog Check Repair Technician License No.**  
26 **EI 152902**

27 Respondents.  
28

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, Department of Consumer Affairs.

5 2. On or about December 28, 2006, the Bureau of Automotive Repair issued  
6 Automotive Repair Dealer Registration Number ARD 248506 to Matthew Phillip Hermann,  
7 President, Secretary, and Treasurer of Anyotherday, Inc., doing business as Redwood Car Care  
8 (“Respondent Redwood”). The Automotive Repair Dealer Registration was in full force and  
9 effect at all times relevant to the charges brought in this Accusation and will expire on December  
10 31, 2016, unless renewed.

11 3. On or about April 16, 2012, the Bureau of Automotive Repair issued Smog Check  
12 Station License Number RC 248506 to Matthew Phillip Hermann, President, Secretary, and  
13 Treasurer of Anyotherday, Inc., doing business as Redwood Car Care (“Respondent Redwood”).  
14 The Smog Check Station License was in full force and effect at all times relevant to the charges  
15 brought in this Accusation, and will expire on December 31, 2016, unless renewed.

16 4. On or about February 5, 2015, the Bureau of Automotive Repair issued Smog Check  
17 Inspector License No. EO 637827 to Jonathan Nunez Dias (“Respondent Dias”). The Smog  
18 Check Inspector License was in full force and effect at all times relevant to the charges brought in  
19 this Accusation and will expire on September 30, 2016, unless renewed.

20 5. In 2006, Advanced Emission Specialist Technician License No. EA 152902 was  
21 issued to Julian Garcia Espinoza (“Respondent Espinoza”). License No. EA 152902 was due to  
22 expire on May 31, 2014, however it was cancelled on April 24, 2014. Pursuant to California  
23 Code of Regulations, title 16, section 3340.28, subdivision (e), Respondent Espinoza’s license  
24 was renewed pursuant to his election as a Smog Check Inspector License No. EO 152902, and  
25 Smog Check Repair Technician License No. EI 152902, effective April 24, 2014. The Smog  
26 Check Inspector License and Smog Check Repair Technician License were in full force and effect  
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1 at all times relevant to the charges brought in this Accusation, and will expire on May 31, 2016,  
2 unless renewed.

### 3 JURISDICTION

4 6. This Accusation is brought before the Director of the Department of Consumer  
5 Affairs ("Director") for the Bureau of Automotive Repair, under the authority of the following  
6 laws.

7 7. Business and Professions Code ("Code") section 118, subdivision (b), provides that  
8 the suspension/expiration/surrender/cancellation of a license shall not deprive the  
9 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period  
10 within which the license may be renewed, restored, reissued or reinstated.

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

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

18 10. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
19 license by operation of law or by order or decision of the Director or a court of law, or the  
20 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
21 disciplinary proceedings.

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

25 12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
26 expiration or suspension of a license by operation of law, or by order or decision of the Director  
27 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
28 the Director of jurisdiction to proceed with disciplinary action.

1 13. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"  
2 "commission," "committee," "department," "division," "examining committee," "program," and  
3 "agency." "License" includes certificate, registration or other means to engage in a business or  
4 profession regulated by the code.

5 STATUTORY PROVISIONS

6 14. Section 9884.7 of the Code states:

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

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

15 ...

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

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

19 15. Health and Safety Code, section 44072.2, states, in pertinent part:

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

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

26 ...

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

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1           16. Health and Safety Code section 44032 states:

2           “No person shall perform, for compensation, tests or repairs of emission control devices or  
3 systems of motor vehicles required by this chapter unless the person performing the test or repair  
4 is a qualified smog check technician and the test or repair is performed at a licensed smog check  
5 station. Qualified technicians shall perform tests of emission control devices and systems in  
6 accordance with Section 44012.”

7           17. Health and Safety Code section 44012 states:

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

12           ...

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

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

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

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

22           ...

23           “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered  
24 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.  
25 The OBD test failure criteria are specified in section 3340.42.

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

28           ///

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

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

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

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

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

11 “(c) A licensed station shall issue a certificate of compliance or noncompliance to the  
12 owner or operator of any vehicle that has been inspected in accordance with the procedures  
13 specified in section 3340.42 of this article and has all the required emission control equipment  
14 and devices installed and functioning correctly.”

15 21. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

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

20 22. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

21 “A smog check technician shall comply with the following requirements at all times while  
22 licensed.

23 “(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
24 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
25 3340.42 of this article.”

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1 COST RECOVERY

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

6 FACTUAL ALLEGATIONS

7 24. On March 9, 2015, the Bureau implemented a statewide regulatory change  
8 requiring the use of the On Board Diagnostic Inspection System (“BAR-OIS”) instead of the  
9 Emission Inspection System (“EIS”) for most model year 2000 and newer gasoline and hybrid  
10 vehicles, and most 1998 and newer diesel vehicles. The BAR-OIS consists of a BAR-certified  
11 Data Acquisition Device (“DAD”), computer, bar code scanner, and printer. The DAD serves as  
12 an on-board diagnostic (“OBD”) scan tool. The DAD is an interface box that connects the  
13 computer containing the BAR-OIS software to the diagnostic link connector (“DLC”) of the  
14 vehicle being inspected. When requested by the BAR-OIS software, the DAD retrieves data from  
15 the vehicle’s on-board computer system (“OBD II”).

16 25. The VIN that is physically present on all vehicles is also required to be programmed  
17 into the vehicle’s OBD II computer on 2005 and newer vehicles, and on many occasions was  
18 programmed into the OBD II computer in earlier model-years. This electronically programmed  
19 VIN is referred to as the “eVIN” and is captured during a Smog Check. The eVIN must match the  
20 physical VIN on the vehicle.

21 26. The OBD II communication protocol describes the specified communication  
22 “language” used by the OBD II computer to communicate with the scan tools and other devices  
23 such as the BAR-OIS. The communication protocol is programmed into the OBD II computer  
24 during manufacture of the vehicle and does not change.

25 27. Parameter Identifications (“PIDs”) are data points reported by a vehicle’s OBD II  
26 system. Each make and model of vehicle reports a specific number of PIDs when it is being  
27 tested by the BAR-OIS. The PIDs Count is the number of data points reported by the OBD II  
28

1 system. The PIDs and PIDs Count are programmed during the manufacture of a vehicle and does  
2 not change.

3 28. The eVIN, the communication protocol, and PIDs Count are examples of the data  
4 collected by the BAR-OIS during a smog inspection. This information is transmitted to the  
5 vehicle information database (“VID”) during a smog inspection. The information obtained by the  
6 BAR-OIS software during a smog inspection is organized in a detailed inspection report for each  
7 vehicle inspected and is known as a BAR-OIS Test Detail. The BAR-OIS Test Detail contains  
8 information segregated into eight different blocks titled as follows: Station, Vehicle, Test Status,  
9 Visual Details, Functional Details, OBDII Details, OBDII Readiness Monitor Status, and OBDII  
10 DTC Details.

11 29. On May 15, 2015, the Bureau initiated an investigation of Respondent Redwood. A  
12 Bureau representative reviewed data in the VID for Respondent Redwood, and compared  
13 abnormalities in that data to similar vehicles tested statewide. The Bureau’s investigation  
14 revealed three instances in which Redwood issued fraudulent smog check Certificates of  
15 Compliance using the clean plugging method. Clean plugging is the practice of using another  
16 vehicle’s properly functioning OBDII system or an electronic OBDII simulator to generate  
17 passing diagnostic readings for the purpose of fraudulently issuing smog certificates to vehicles  
18 that are not in smog compliance or are not present for testing, or both. Respondent Dias was the  
19 inspector during two of the clean plugs at Redwood, and Respondent Espinoza was the inspector  
20 during one of the clean plugs at Redwood. The details regarding these three instances of clean  
21 plugging at Respondent Redwood’s shop are as follows:

22 30. Clean Plug #1

23 a. The Bureau’s review of the OIS Test Data for Respondent Redwood indicated that on  
24 March 14, 2015, from approximately 10:18 a.m. to 10:21 a.m., a 2007 Chevrolet Avalanche,  
25 DMV VIN #3GNEC12J57G321232, was tested by Respondent Dias and a smog Certificate of  
26 Compliance was issued. The OIS Test Data for this 2007 Avalanche lists the eVIN as  
27 WMWRC33413TC45858, which does not match the physical VIN, the communication protocol  
28 as I9140808, which is not as expected, and the PID count as 18, which is not as expected.

1           b.     Comparative OIS Test Data for 2007 Chevrolet Avalanche vehicles shows that they  
2 report the correct eVIN, they have the same, expected communication protocol of ICAN11bt5,  
3 and they have the same, expected PID count of 7/43.

4           c.     VID data from Respondent Redwood also shows that on March 14, 2015, from 10:12  
5 a.m. to 10:17 a.m., a 2003 Mini Cooper, DMV VIN # WMWRC33413TC45858, was tested at  
6 Respondent Redwood's shop. The data collected during this inspection, including the eVIN,  
7 communication protocol, and PID count were identical to the test results reported for the above  
8 2007 Chevrolet Avalanche as set forth subparagraph 30a, above.

9           d.     The above discrepancies in the OIS Test Data demonstrate that the OIS Data  
10 Acquisition Device ("DAD") was not connected to the 2007 Chevrolet Avalanche that was issued  
11 a Certificate of Compliance by Respondent Redwood on March 14, 2015. This resulted in the  
12 issuance of a fraudulent Certificate of Compliance for that vehicle.

13           31.    Clean Plug #2

14           a.     The Bureau's review of the OIS Data for Respondent Redwood indicated that on  
15 March 16, 2015, from 2:34 p.m. to 2:40 p.m., a 2008 Chevrolet Avalanche, DMV VIN  
16 #3GNEC12J48G177898, was tested by Respondent Dias, and a smog Certification of Compliance  
17 was issued. The OIS Test Data for this 2008 Chevrolet Avalanche shows an eVIN of  
18 1GCRCPE02DZ310085, which does not match the physical VIN, a communication protocol of  
19 ICAN11bt500, which is not as expected, and a PID count of 46, which is not as expected.

20           b.     Comparative OIS Test Data for 2008 Chevrolet Avalanche vehicles shows that they  
21 report the correct eVIN, they report the same, expected communication protocol of ICAN11bt5,  
22 and they have the same, expected PID count of 8/7/44.

23           c.     VID Data from Respondent Redwood also shows that on March 16, 2015, from  
24 approximately 2:41 p.m. to 2:46 p.m., a 2013 Chevrolet Silverado, DMV VIN  
25 #1GCRCPE02DZ310085, was tested at Respondent Redwood's shop. During this inspection, the  
26 eVIN, communication protocol, and PID count results were identical to the test results for the  
27 above 2008 Chevrolet Avalanche as set forth in subparagraph 31a, above.

1 d. The above discrepancies in the OIS Test Data demonstrate that the OIS DAD was not  
2 connected to the 2008 Chevrolet Avalanche that was issued a Certificate of Compliance by  
3 Respondent Redwood on March 16, 2015. This resulted in the issuance of a fraudulent Certificate  
4 of Compliance for that vehicle.

5 32. Clean plug #3

6 a. The Bureau's review of OIS Test Data for Respondent Redwood indicated that on  
7 March 24, 2015, from 1:14 p.m. to 1:27 p.m., a 2005 Honda Civic, DMV VIN  
8 #1HGEM22115L045550, was tested by Respondent Espinoza, and a smog Certificate of  
9 Compliance was issued. The OIS Test Data for the 2005 Honda Civic lists that no eVIN was  
10 transmitted, shows the communication protocol as I19140808, which is not as expected, and the  
11 PID count as 20, which is not as expected.

12 b. Comparative OIS Test Data for 2005 Honda Civic vehicles show that they report their  
13 eVIN, they transmit the same, expected communication protocol of 1914, and they transmit the  
14 same, expected PID count of 17.

15 c. The above discrepancies in the OIS Test Data demonstrate that the OIS DAD was not  
16 connected to the 2005 Honda Civic when it was issued a certificate of compliance by Respondent  
17 Redwood on March 24, 2015. This resulted in the issuance of a fraudulent Certificate of  
18 Compliance for that vehicle.

19 **RESPONDENT REDWOOD:**

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Bus. & Prof Code, § 9884.7, subd. (a)(1))  
22 (Making or Authorizing Untrue or Misleading Statements)

23 33. Respondent Redwood has subjected its Automotive Repair Dealer Registration to  
24 disciplinary action in that Respondent Redwood made untrue statements when it issued three  
25 fraudulent certificates of compliance as set forth in paragraphs 24 through 32, above.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Health & Saf. Code, § 44072.2, subd. (d))  
3 (Dishonesty, Fraud, or Deceit)

4 36. Respondent Redwood has subjected its Smog Station License to discipline in that it  
5 committed acts involving dishonesty, fraud or deceit, whereby another was injured, by issuing  
6 three fraudulent certificates of compliance as set forth in paragraphs 24 through 32, above.  
7 (Health & Saf. Code, § 44072.2, subd. (d).)

8 RESPONDENT DIAS:

9 FIRST CAUSE FOR DISCIPLINE

10 (Health & Saf. Code, § 44072.2, subds. (a), (c))  
11 (Violation of Motor Vehicle Inspection Program)

12 37. Respondent Dias has subjected his smog inspector's license to discipline in that he  
13 violated sections of the Code and applicable regulations when he failed to connect two vehicles to  
14 the BAR-OIS when they were being certified, as set forth in paragraphs 24 through 31, above.  
15 (Health & Safe Code, § 44072.2, subds. (a), (c).) The circumstances are as follows:

16 a. **Health & Saf. Code, § 44012, subd. (f):** Respondent Dias failed to follow test  
17 procedures in accordance with the OIS specifications and failed to perform a functional inspection  
18 of required equipment.

19 b. **Health & Saf. Code, § 44032:** Respondent Dias failed to ensure that the emission  
20 control tests were performed in accordance with the procedures prescribed by the department.

21 c. **Cal. Code Regs., tit. 16, § 3340.24, subd. (c):** Respondent Dias falsely or  
22 fraudulently caused certificates of compliance to be issued to vehicles without performing bona  
23 fide inspections of the emission control devices and systems on the vehicles as required by Health  
24 and Safety Code section 44012.

25 d. **Cal. Code Regs., tit. 16, § 3340.30, subd. (a):** Respondent Dias failed to inspect and  
26 test two vehicles in accordance with Health & Safety Code sections 44012 and 44035, and  
27 California Code of Regulations, title 16, section 3340.42.

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1 e. **Cal. Code Regs., tit. 16, § 3340.35, subd. (c):** Respondent Dias caused certificates  
2 of compliance to be issued to vehicles that were not properly inspected in accordance with  
3 California Code of Regulations, title 16, section 3340.42.

4 f. **Cal. Code Regs., tit. 16, § 3340.41, subd. (c):** Respondent Dias entered into the  
5 BAR-OIS vehicle identification information or emission inspection information for a vehicle  
6 other than the vehicle being inspected, and also entered false information for the vehicle being  
7 inspected.

8 g. **Cal. Code Regs., tit. 16, § 3340.42, subd. (b)(2):** Respondent Dias failed to conduct  
9 the functional inspection in accordance with the smog check manual referenced in California  
10 Code of Regulations, title 16, section 3340.45

11 SECOND CAUSE FOR DISCIPLINE

12 (Health & Saf. Code, § 44072.2, subd. (d))

13 (Violation of Motor Vehicle Inspection Program)

14 38. Respondent Dias has subjected his smog inspector's license to discipline in that he  
15 committed acts involving dishonesty, fraud, or deceit, whereby another was injured, when he  
16 caused two fraudulent certificates of compliance to be issued as set forth in 24 through 31, above.  
(Health & Saf. Code, § 44072.2, subd. (d).)

17 RESPONDENT ESPINOZA:

18 FIRST CAUSE FOR DISCIPLINE

19 (Health & Saf. Code, § 44072.2, subs. (a), (c))

20 (Violation of Motor Vehicle Inspection Program)

21 39. Respondent Espinoza has subjected his smog inspector's license and his smog check  
22 repair technician's license to discipline in that he violated sections of the Code and applicable  
23 regulations when he failed to connect one vehicle to the BAR-OIS when it was being certified, as  
24 set forth in paragraphs 24 through 29 and 32, above. (Health & Safe Code, § 44072.2, subs. (a),  
(c).) The circumstances are as follows:

25 a. **Health & Saf. Code, § 44012, subd. (f):** Respondent Espinoza failed to follow test  
26 procedures in accordance with the OIS specifications and failed to perform a functional inspection  
27 of required equipment.





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- 4. Revoking or suspending Smog Inspector License No. EO 152902, issued to Julian Garcia Espinoza;
- 5. Revoking or suspending Smog Technician Repair License No. EI 152902, issued to Julian Garcia Espinoza;
- 6. Ordering Respondents 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
- 7. Taking such other and further action as deemed necessary and proper.

DATED: February 24, 2016 

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

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