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

12 In the Matter of the Accusation Against:
13 **MIGUEL'S SMOG CHECK AND AUTO REPAIR,**
MIGUEL MAGANA, OWNER
14 14415 Vista Del Sol Lane
Adelanto, CA 92301
15
16 Automotive Repair Dealer Registration No. ARD 267253
Smog Check Station License No. RC 267253,
17 and
18 **MIGUEL A. MAGANA**
14415 Vista Del Sol Lane
19 Adelanto, CA 92301
20 Smog Check Inspector License No. EO 151755
Smog Check Repair Technician License No. EI 151755
21 (formerly Advanced Emission Specialist Technician
License No. EA 151755),
22
23 Respondent.

Case No. 79/15-63
ACCUSATION
SMOG CHECK

24
25 Complainant alleges:

26 **PARTIES**

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

1 **Automotive Repair Dealer Registration**

2 2. On November 22, 2011, the Bureau of Automotive Repair issued Automotive
3 Repair Dealer Registration Number ARD 267253 to Miguel Magana (Respondent), owner of
4 Miguel's Smog Check and Auto Repair. Respondent has also been known as Miguel A. Magana.
5 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to
6 the charges brought herein and will expire on November 30, 2014, unless renewed.

7 **Smog Check Station License**

8 3. On March 11, 2013, the Bureau of Automotive Repair issued Smog Check Station
9 License Number RC 267253 to Respondent, owner Miguel's Smog Check and Auto Repair. The
10 Smog Check Station License was in full force and effect at all times relevant to the charges
11 brought herein and will expire on November 30, 2014, unless renewed.

12 **Advanced Emission Specialist Technician License**

13 4. In 2005, the Bureau of Automotive Repair issued Advanced Emission Specialist
14 Technician License Number EA 151755 to Respondent. The Advanced Emission Specialist
15 Technician License was due to expire on January 31, 2014, however, it was cancelled on October
16 14, 2013.¹

17 **Smog Check Inspector License**

18 5. On October 14, 2013, the Bureau of Automotive Repair issued Smog Check
19 Inspector License Number EO 151755 to Respondent. The Smog Check Inspector License was
20 in full force and effect at all times relevant to the charges brought herein and will expire on
21 January 31, 2016, unless renewed.

22 **Smog Check Repair Technician License**

23 6. On October 14, 2013, the Bureau of Automotive Repair issued Smog Check
24 Repair Technician License Number EI 151755 to Respondent. The Smog Check Repair
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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 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 Technician License was in full force and effect at all times relevant to the charges brought herein
2 and will expire on January 31, 2016, unless renewed.

3 JURISDICTION

4 7. This Accusation is brought before the Director of Consumer Affairs (Director) for
5 the Bureau, under the authority of the following laws.

6 8. Business and Professions Code (Code) section 477 provides, in pertinent part, that
7 "Board" includes "bureau," "commission," "committee," "department," "division," "examining
8 committee," "program," and "agency." "License" includes certificate, registration or other means
9 to engage in a business or profession regulated by the Code.

10 9. Code section 9884.5 provides in pertinent part that a registration that is not
11 renewed within three years following its expiration shall not be renewed, restored, or reinstated
12 thereafter, and the delinquent registration shall be canceled immediately upon expiration of the
13 three-year period.

14 10. Code section 9884.7 provides that the Director may revoke an automotive repair
15 dealer registration.

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

20 12. Health and Safety Code (H & S Code) section 44002 provides, in pertinent part,
21 that the Director has all the powers and authority granted under the Automotive Repair Act for
22 enforcing the Motor Vehicle Inspection Program.

23 13. H & S Code section 44072.4 states, in pertinent part:

24 The director may take disciplinary action against any licensee after a
25 hearing as provided in this article by any of the following:

26 (a) Imposing probation upon terms and conditions to be set forth by
the director.

27 (b) Suspending the license.

28 (c) Revoking the license.

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18. Code section 490 states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

19. Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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20. Code section 9884.7 states, in pertinent part:

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

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

....

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct that constitutes fraud.

....

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

....

21. Code section 9884.9 states, in pertinent part:

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

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

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

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5 22. H & S Code section 44012 states:

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

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

22

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

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29 23. H & S Code section 44015 states in pertinent part:

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

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35 24. H & S Code section 44032 states:

36 No person shall perform, for compensation, tests or repairs of emission
37 control devices or systems of motor vehicles required by this chapter unless the
38 person performing the test or repair is a qualified smog check technician and the
test or repair is performed at a licensed smog check station. Qualified technicians

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shall perform tests of emission control devices and systems in accordance with Section 44012.

25. H & S Code section 44059 states:

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

26. H & S Code section 44072.2 states, in pertinent part:

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

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (H & S 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.

....

27. H & S Code section 44072.8 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

28. California Code of Regulations, title 16 (CCR), section 3340.24 states in pertinent part:

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(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.

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29. CCR section 3340.30 states in pertinent part:

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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30. CCR section 3340.35 states in pertinent part:

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(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.

....

31. CCR section 3340.42 states:

With the exception of diesel-powered vehicles addressed in subsection (f) of this section, the following emissions test methods and standards apply to all vehicles:

(a) A loaded-mode test, except as otherwise specified, shall be the test method used to inspect vehicles 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 (b) 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 VLT Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle is 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.

1 (b) A two-speed idle mode test, unless a different test is otherwise
2 specified in this article, shall be the test method used to inspect vehicles registered
3 in all program areas of the state, except in those areas of the state where the
4 enhanced program has been implemented. The two-speed idle mode test shall
5 measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high
6 RPM and again at idle RPM, as contained in the bureau's specifications
7 referenced in subsection (b) of Section 3340.17 of this article. Exhaust emissions
8 from a vehicle subject to this inspection shall be measured and compared to the
9 emission standards set forth in this section and as shown in TABLE III. A vehicle
10 passes the two-speed idle mode test if all of its measured emissions are less than
11 or equal to the applicable emissions standards specified in Table III.

12 (c)(1) In the enhanced program areas, heavy-duty vehicles shall be tested
13 using the loaded-mode test as provided in subsection (a) of this section, unless:

14 (A) The vehicle has a drive axle weight that exceeds 5,000 pounds when
15 the vehicle is unloaded, or

16 (B) The vehicle is classified by the Department of Motor Vehicles as a
17 motorhome, or

18 (C) The vehicle has a body and/or chassis configuration or modification
19 made for business purposes that renders the vehicle incompatible with loaded-
20 mode testing, or

21 (D) The emission inspection system prompts the technician to perform the
22 two-speed idle test.

23 (2) For the purposes of this subsection, the term "unloaded" shall mean
24 that the vehicle is not currently transporting loads for delivery or is not carrying
25 items of a temporary nature, but excludes items that have been welded, bolted or
26 otherwise permanently affixed to the vehicle, and tools, supplies, parts, hardware,
27 equipment or devices of a similar nature that are routinely carried in or on the
28 vehicle in the performance of the work for which the vehicle is primarily used.

(3) For the purposes of this subsection, modifications that render a vehicle
incompatible with loaded-mode testing shall not include any tire, wheel, body or
chassis modifications made for other than business purposes.

(4) If it is determined that a heavy-duty vehicle cannot be subjected to a
loaded-mode test for any of the reasons set forth in subparagraphs (A) through
(D) of paragraph (1) of this subsection, the technician shall perform a two-speed
idle test. The technician shall also note on the final invoice the justification for the
performance of a two-speed idle test.

(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 subsections (a) and (b), as
applicable.

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

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

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

9 (e) In addition to the test methods prescribed in this section, the following
10 tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog
11 Check inspection:

11 (1) A visual inspection of the vehicle's emissions control systems. During
12 the visual inspection, the technician shall verify that the following emission
13 control devices, as applicable, are properly installed on the vehicle:

- 13 (A) air injection systems,
- 14 (B) computer(s) and related sensors and switches,
- 15 (C) crankcase emissions controls, including positive crankcase ventilation,
- 16 (D) exhaust gas after treatment systems, including catalytic converters,
- 17 (E) exhaust gas recirculation (EGR) systems,
- 18 (F) fuel evaporative emission controls,
- 19 (G) fuel metering systems, including carburetors and fuel injection,
- 20 (H) ignition spark controls, and

20 (I) any emissions control systems that are not otherwise prompted by the
21 Emissions Inspection System, but listed as a requirement by the vehicle
22 manufacturer.

22 (2) A functional inspection of the vehicle's emission control systems.
23 During the functional inspection, the technician shall conduct, as applicable, the
24 following tests and verifications of the vehicle:

- 23 (A) proper operation of the exhaust gas recirculation (EGR) system,
- 24 (B) a check of the gasoline filler cap's integrity,
- 25 (C) proper setting of ignition timing,
- 26 (D) a low pressure check of the fuel evaporative control system,
- 27 (E) proper operation of the malfunction indicator light (MIL) or "Check
28 Engine Light," and
- (F) an on-board diagnostics (OBD) system test.

1 (3) A liquid leak inspection of the vehicle's fuel storage and delivery
2 systems.

3 (4) An inspection of the vehicle's tailpipe and crankcase for the emissions
4 of smoke.

5 (f) On or after January 1, 2010, all 1998 model year and newer diesel-
6 powered vehicles, with a gross vehicle weight rating of 14,000 or less pounds, are
7 subject to the Smog Check Program. The following required inspections apply to
8 all diesel-powered vehicles:

9 (1) A visual inspection of the vehicle's emissions control systems. During
10 the visual inspection, the technician shall verify that the following emission
11 control devices, as applicable, are properly installed on the vehicle:

12 (A) computer(s) and related sensors and switches,

13 (B) crankcase emissions controls,

14 (C) exhaust gas after treatment systems, including catalytic converters and
15 particulate filters,

16 (D) exhaust gas recirculation (EGR) systems,

17 (E) fuel metering systems, including fuel injection, and

18 (F) any emissions control systems that are not otherwise prompted by the
19 Emissions Inspection System, but listed as a requirement by the vehicle
20 manufacturer.

21 (2) A functional inspection of the vehicle's emission control systems.
22 During the functional inspection, the technician shall conduct, as applicable, an
23 on-board diagnostics (OBD) system test.

24 (3) An inspection of the vehicle's tailpipe and crankcase for the emissions
25 of smoke.

26 32. CCR section 3353 states:

27 No work for compensation shall be commenced and no charges shall
28 accrue without specific authorization from the customer in accordance with the
following requirements:

(a) Estimate for Parts and Labor. Every dealer shall give to each customer
a written estimated price for parts and labor for a specific job.

....

COST RECOVERY

33. 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

1 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
2 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
3 may be included in a stipulated settlement.

4 **BACKGROUND**

5 34. Based on a report and a review of smog check data, on April 2, 2014, the Bureau
6 of Automotive Repair (BAR) investigated the smog check activities of Miguel's Smog Check
7 and Auto Repair and found two serious instances of fraud. As a smog check inspector,
8 Respondent is required to properly smog test a vehicle to ensure that it is in good operating
9 condition and meets emissions standards. During a single day of surveillance, Respondent was
10 video recorded on two separate occasions falsifying smog test results. Respondent entered the
11 information of a client's vehicle into the Emission Inspection System (EIS) or BAR 97, then
12 simply attached the testing instrument to a different clean vehicle he knew would pass smog.
13 Respondent reported to BAR that the client's vehicle had passed inspection, when in fact the
14 client's vehicle had not been tested and in one instance the vehicle was not even present at the
15 test facility.

16 **CLEAN PIPED VEHICLE #1**

17 **35. Undercover Surveillance – Inspection Number 1 on April 2, 2014**

18 On April 2, 2014, Respondent, registered owner of and licensed smog inspector
19 technician at Miguel's Smog Check and Auto Repair, issued a smog Certificate of Compliance
20 for a 2004 Subaru Impreza, VIN JF1GD29684G519919, CA License 5GRT130 (2004 Subaru).
21 According to the information provided to BAR by Respondent, the 2004 Subaru was smog tested
22 between 2:04 p.m. and 2:19 p.m., on April 2, 2014.

23 36. A BAR representative observed and recorded Respondent using the clean-piping
24 method to fraudulently certify the 2004 Subaru. Miguel's Smog Check and Auto Repair has only
25 one testing bay. The BAR representative videotaped the activities at Miguel's Smog Check and
26 Auto Repair during the time the 2004 Subaru was allegedly being tested. The BAR
27 representative observed and recorded that between 2:03 p.m. and 2:11 p.m. a Mitsubishi sedan
28 was the only vehicle in Respondent's test bay. The BAR representative also observed and

1 recorded that between 2:16 p.m. and 2:19 p.m. a Chevrolet SUV was the only vehicle in
2 Respondent's test bay. Respondent represented to BAR that he was testing the 2004 Subaru from
3 2:04 p.m. to 2:19 p.m., when in actuality he was testing either the Mitsubishi sedan or the
4 Chevrolet SUV. Respondent used the "clean" exhaust from the Chevrolet SUV to certify the
5 exhaust of the 2004 Subaru. In actuality the 2004 Subaru was not even present at Miguel's Smog
6 Check and Auto Repair during the smog test. Respondent certified to BAR that he had smog
7 tested the 2004 Subaru and issued passing smog Certificate of Compliance No. YD766378C for
8 the 2004 Subaru Impreza, VIN JF1GD29684G519919, CA License 5GRT130.

9 **CLEAN PIPED VEHICLE #2**

10 **37. Undercover Surveillance – Inspection Number 2 on April 2, 2014**

11 On April 2, 2014, Respondent, registered owner of and licensed smog inspector
12 technician at Miguel's Smog Check and Auto Repair, issued a smog Certificate of Compliance
13 for a 2008 Dodge Avenger, VIN 1B3LC46K08N657076, CA License 5YYB462 (2008 Dodge).
14 According to the information provided to BAR by Respondent, the 2008 Dodge was smog tested
15 between 4:24 p.m. and 4:49 p.m., on April 2, 2014.

16 38. A BAR representative observed and recorded Respondent again using the clean-
17 piping method to fraudulently certify the 2008 Dodge. Miguel's Smog Check and Auto Repair's
18 station has only one testing bay. The BAR representative videotaped the activities at Miguel's
19 Smog Check and Auto Repair during the time the 2008 Dodge was allegedly being tested. The
20 BAR representative observed and recorded that at 4:03 p.m. the 2008 Dodge was the only
21 vehicle in Respondent's test bay but was driven away at 4:08 p.m. The 2008 Dodge returned at
22 4:22 p.m. At 4:24 p.m., Respondent entered the 2008 Dodge with a black handheld device. At
23 4:25 p.m., Respondent entered data into the EIS device. At 4:31 p.m., Respondent drove the
24 2008 Dodge onto the dynamometer. At 4:33 p.m., Respondent inserted the EIS machine's
25 exhaust sample probe into the 2008 Dodge's tailpipe and started a drive cycle. At 4:34 p.m.,
26 Respondent stopped the test. At 4:37 p.m., another drive cycle was performed. At 4:38 p.m.,
27 Respondent stopped the test and removed the EIS machine's exhaust sample probe from the
28 2008 Dodge's tailpipe. At 4:41, another person backed the 2008 Dodge out of the smog check

1 testing bay. At 4:42, a Porsche was driven into Miguel's Smog Check and Auto Repair's smog
 2 check testing bay. At 4:43 p.m., Respondent inserted the EIS machine's exhaust sample probe
 3 into the Porsche's tailpipe. At 4:47 p.m., Respondent began a drive cycle on the dynamometer
 4 using the Porsche. At 4:48 p.m., Respondent removed the EIS machine's exhaust sample probe
 5 from the Porsche. At 4:49 p.m., Respondent backed the Porsche out of the testing bay. At 4:50,
 6 another person returned the 2008 Dodge to the testing bay. At 4:51, Respondent handed some
 7 paperwork to the driver of the 2008 Dodge, which was driven away at 4:53 p.m. Respondent
 8 represented to BAR that he was testing the 2008 Dodge from 4:24 p.m. to 4:49 p.m., when in
 9 reality he was testing the Porsche. Respondent used the "clean" exhaust from the Porsche to
 10 certify the exhaust of the 2008 Dodge. In reality, the 2008 Dodge was not even present at
 11 Miguel's Smog Check and Auto Repair's testing bay during the smog test on record. Respondent
 12 certified to BAR that he had smog tested the 2008 Dodge and issued smog Certificate of
 13 Compliance No. YD766380C for the 2008 Dodge Avenger, VIN 1B3LC46K08N657076, CA
 14 License 5YYB462.

15 39. Both fraudulent inspections set forth below were performed under Respondent's
 16 smog check inspector license number.

Date & Time of Inspection	Vehicle Certified and License Number	Certificate No.
1. 4/2/2014 2:04 – 2:19 p.m.	2004 Subaru Impreza, VIN JF1GD29684G519919, CA License 5GRT130	YD766378C
2. 4/2/2014 4:24 – 4:49 p.m.	2008 Dodge Avenger, VIN 1B3LC46K08N657076, CA License 5YYB462	YD766380C

21 **FIRST CAUSE FOR DISCIPLINE**
 22 **Automotive Repair Dealer Registration**
 23 **(Untrue or Misleading Statements)**

24 40. Respondent's Automotive Repair Dealer Registration is subject to disciplinary
 25 action under Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
 26 statement which he knew or in the exercise of reasonable care should have known to be untrue or
 27 misleading, by certifying that the vehicles as set fourth under paragraphs 34-39, above, had
 28 passed inspection and were in compliance with applicable laws and regulations. Respondent

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1 used the "clean-piping" method in order to issue smog certificates of compliance for vehicles
2 that had not been tested or inspected as required by H & S Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**
4 **Automotive Repair Dealer Registration**
5 **(Fraud)**

6 41. Respondent's Automotive Repair Dealer Registration is subject to disciplinary
7 action under Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which
8 constitutes fraud by issuing an electronic smog certificate of compliance for the two vehicles
9 referenced in paragraphs 34-39, above, without performing a bona fide inspection of the
10 emission control devices and systems on the vehicle, thereby depriving the People of the State of
11 California of the protection afforded by the Motor Vehicle Inspection Program (H & S Code
12 section 44000, et seq.).

13 **THIRD CAUSE FOR DISCIPLINE**
14 **Automotive Repair Dealer Registration**
15 **(Violations of the Motor Vehicle Inspection Program)**

16 42. Respondent's Automotive Repair Dealer Registration is subject to disciplinary
17 action under H & S Code section 44072.2, subdivision (a), in that as set forth in paragraphs 34-
18 39, above, Respondent failed to materially comply with the following provisions of California
19 Code of Regulations, Title 16:

20 a. **Section 3371:** Respondent made untrue or misleading statements with
21 respect to the vehicles as set forth under paragraphs 34-39, above, by certifying that those
22 vehicles had passed inspection and were then in compliance with applicable state and federal
23 laws. In fact, those vehicles had not been tested or inspected as required by H & S Code section
24 44012.

25 b. **Section 3373:** Respondent made false or misleading records with respect
26 to the vehicles as set forth under paragraphs 34-39, above, by issuing smog certificates of
27 compliance without performing bona fide inspections of the emission control devices and
28 systems on those vehicles, thereby depriving the People of the State of California of the
protections afforded under the Motor Vehicle Inspection Program (H & S Code section 44000, et
seq.).

1 c. **Section 3340.41, subdivision (c):** Respondent permitted false information
2 to be entered into the Emission Inspection System (“EIS”) in that vehicle identification
3 information or emission control system identification data was entered for vehicles other than the
4 ones being tested, as referenced in paragraph 39, above.

5 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
6 the two vehicles referenced in paragraph 39, above, in accordance with the Bureau’s
7 specifications.

8 **SIXTH CAUSE FOR DISCIPLINE**
9 **Smog Check Station License**
10 **(Dishonesty, Fraud or Deceit)**

11 45. Respondent’s Smog Check Station License is subject to disciplinary action under
12 H & S Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
13 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
14 compliance for the two vehicles referenced in paragraph 39, above, without performing a bona
15 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
16 People of the State of California of the protection afforded by the Motor Vehicle Inspection
17 Program.

18 **SEVENTH CAUSE FOR DISCIPLINE**
19 **Smog Check Inspector License**
20 **(Failure to Comply with Regulations)**

21 46. Respondent’s smog check inspector license is subject to disciplinary action under
22 H & S Code section 44072.2, subdivision (c), in that Respondent failed to comply with
23 California Code of Regulations, Title 16, section 3340.41, subdivision (c), entering false vehicle
24 identification information or emissions control system identification: Respondent entered false
25 information into the EIS on the two vehicles referenced in paragraphs 34-39.

26 a. **Section 44012, subdivision (a):** Respondent failed to determine that all
27 emission control devices and systems required by law were installed and functioning correctly in
28 accordance with test procedures, as referenced in paragraphs 34-39.

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1 **NINTH CAUSE FOR DISCIPLINE**
2 **Smog Check Inspector License**
3 **(Untrue or Misleading Statements)**

4 47. Respondent's Smog Check Inspector License is subject to disciplinary action
5 under H & S Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
6 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
7 compliance for the two vehicles referenced in paragraphs 34-39, above, without performing a
8 bona fide inspection of the emission control devices and systems on the vehicles, thereby
9 depriving the People of the State of California of the protection afforded by the Motor Vehicle
10 Inspection Program.

11 **MATTERS IN AGGRAVATION**

12 48. To determine the degree of discipline, if any, to be imposed on Respondent,
13 Complainant alleges as follows:

14 a. On May 18, 2011, the Bureau issued Citation No. M2011-1272 to
15 Respondent, for violation of H & S Code section 44032, failure to perform tests of emission
16 control systems and devices in accordance with procedures prescribed by the department under
17 H & S Code section 44012, in that on April 13, 2011, Respondent issued Certificate of
18 Compliance number [REDACTED] to an undercover vehicle with the ignition adjusted beyond
19 specifications. On June 7, 2011, a citation conference was held. The Bureau ordered Respondent
20 to enroll in and complete an 8-hour training course for the violation. Respondent completed the
21 training on June 8, 2011.

22 b. On January 24, 2013, the Bureau issued Citation No. M2013-0521 and an
23 Order of Abatement to Respondent, for violation of H & S Code section 44032, failure to
24 perform tests of emission control systems and devices in accordance with procedures prescribed
25 by the department under H & S Code section 44012, in that on November 29, 2012, Respondent
26 issued Certificate of Compliance number [REDACTED] to an undercover vehicle with a missing
27 pulse air injection system. On February 19, 2013, a citation conference was held. The Bureau
28 required Respondent to complete a 28-hour training course and pay an administrative fine of

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1 \$500.00. Respondent completed the remedial training prescribed by the citation on February 28,
2 2013, and paid the administrative fine on March 12, 2013.

3 c. On January 24, 2013, the Bureau issued Citation No. C2013-0520 against
4 Respondent, for violation of H & S Code section 44012, subdivision (f), failure to determine that
5 emission control devices and systems required by state and federal law are installed and
6 functioning correctly in accordance with test procedures in that on November 29, 2012,
7 Respondent issued Certificate of Compliance number [REDACTED] to an undercover vehicle with
8 a missing pulse air injection system. On February 19, 2013, a citation conference was held. The
9 Bureau assessed civil penalties totaling \$1,000.00 against Respondent for the violation.
10 Respondent paid the fine on March 12, 2013.

11 **OTHER MATTERS**

12 49. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
13 Number EO 151755 and Smog Check Station License Number RC 267253, issued to Miguel
14 Magana, owner of Miguel's Smog Check and Auto Repair, are revoked or suspended, Smog
15 Check Repair Technician License Number EI 151755, and any additional license issued under
16 this chapter in the name of said licensee may be likewise revoked or suspended by the director.

17 **PRAYER**

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

- 20 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
21 267253, issued to Miguel Magana, owner of Miguel's Smog Check and Auto Repair;
- 22 2. Revoking or suspending Smog Check Station License Number RC 267253, issued
23 to Miguel Magana, owner of Miguel's Smog Check and Auto Repair;
- 24 3. Revoking or suspending Smog Check Inspector License Number EO 151755,
25 issued to Miguel A. Magana;
- 26 4. Revoking or suspending Smog Check Repair Technician License Number EI
27 151755, issued to Miguel A. Magana;

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5. Ordering Miguel Magana, also known as Miguel A. Magana, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, under Business and Professions Code section 125.3;

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

DATED: *October 29, 2014*

Patrick Dorais

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

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