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

12 In the Matter of the Accusation Against:

Case No. **179/14-17**

13 **ERNIES AUTO REPAIR & SMOG;**
14 **PEDRO MARQUEZ, OWNER**
1415 Broadway, Ste. 103/104
15 Chula Vista, CA 91911

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
ARD 268895

17 **Smog Check Station License No. RC 268895**

18 **Lamp Station License No. LS 268895, Class**
A

19 **Brake Station License No. BS 268895, Class**
A,

20 **and**

21 **LUIS A. ESPINOZA**
1121 4th Ave., # 506
22 Chula Vista, CA 91911

23 **Advanced Emission Specialist Technician**
License No. EA 149220 (to be redesignated
24 upon renewal as EO 149220 and/or EI
149220)

25 **Brake Adjuster License No. BA 149220,**
26 **Class C**

1 **Lamp Adjuster License No. LA 149220,**
2 **Class A**

3 Respondents.

4 Complainant alleges:

5 **PARTIES**

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

8 2. On or about April 27, 2012, the Bureau issued Automotive Repair Dealer Registration
9 No. ARD 268895 to Respondent Pedro Marquez, Owner of Ernies Auto Repair & Smog
10 (Marquez). The registration was in full force and effect at all times relevant to the charges
11 brought herein and will expire on April 30, 2014, unless renewed. Marquez is located at 1415
12 Broadway , Ste. 103/104, Chula Vista, CA 91911.

13 3. On or about May 9, 2012, the Bureau issued Smog Check Station License No. RC
14 268895 to Marquez. The license was in full force and effect at all times relevant to the charges
15 brought herein and will expire on April 30, 2014, unless renewed.

16 4. On or about November 16, 2012, the Bureau issued Lamp Station License No. LS
17 268895, Class A to Marquez. The lamp station license was in full force and effect at all times
18 relevant to the charges brought herein and will expire on April 30, 2014, unless renewed.

19 5. On or about November 16, 2012, the Bureau issued Brake Station License No. BS
20 268895, Class A to Marquez. The brake station license was in full force and effect at all times
21 relevant to the charges brought herein and will expire on April 30, 2014, unless renewed.

22 6. In 2004, the Bureau issued Advanced Emission Specialist Technician License No. EA
23 149220 to Espinoza. This license was in full force and effect at all times relevant to the charges
24 brought herein and will expire on January 31, 2014. Upon timely renewal of the license, it will be
25 redesignated as EO 149220 and/or EI 149220.¹

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 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
2 Code, and the director shall have all the powers granted therein.

3 “. . . .”

4 14. Section 9889.5 of the Code states:

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

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

8 “(b) Suspending the license.

9 “(c) Revoking the license.”

10 15. Section 9889.7 of the Code states:

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

15 16. Section 9889.8 of the Code states:

16 “All accusations against licensees shall be filed within three years after the act or omission
17 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a
18 violation of subdivision (d) of Section 9889.3, the accusation may be filed within two years after
19 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation
20 prohibited by that section.”

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

24 18. Section 44072.4 of the Health and Safety Code states:

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

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

28 “(b) Suspending the license.

1 (commencing with Section 473), is taken over by the department, that program shall be
2 designated as a "bureau."

3 24. Section 9884.7 of the Code states:

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

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

12 "...

13 "(4) Any other conduct that constitutes fraud.

14 "...

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

19 25. Section 9889.3 of the Code states:

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:

22 "(a) Violates any section of the Business and Professions Code that relates to his or her
23 licensed activities.

24 "...

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

26 "..."

27 ///

28 ///

1 26. Section 9889.9 of the Code states:

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

5 27. Section 44072.2 of the Health and Safety Code states:

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

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

12 “ . . .

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

14 “”

15 28. Section 44072.10 of the Health and Safety Code states:

16 “(a) Notwithstanding Sections 44072 and 44072.4, the director, or the director's designee,
17 pending a hearing conducted pursuant to subdivision (e), may temporarily suspend any smog
18 check station or technician's license issued under this chapter, for a period not to exceed 60 days,
19 if the department determines that the licensee's conduct would endanger the public health, safety,
20 or welfare before the matter could be heard pursuant to subdivision (e), based upon reasonable
21 evidence of any of the following:

22 “(1) Fraud.

23 “(2) Tampering.

24 “(3) Intentional or willful violation of this chapter or any regulation, standard, or procedure
25 of the department implementing this chapter.

26 “(4) A pattern or regular practice of violating this chapter or any regulation, standard, or
27 procedure of the department implementing this chapter.

28 “ . . .

1 of the video recording equipment was in synch with the Vehicle Information Database clock. He
2 began videotaping at 0611 hours after parking across the parking lot of Marquez's smog station
3 so that the camera had a direct view into the smog bay and would be able to identify makes and
4 models of vehicles being tested for the smog check inspection. He left the Bureau's vehicle in the
5 parking lot to record Marquez's smog check procedures. During the time the video vehicle was
6 parked by Marquez's smog station, he periodically checked on the vehicle to ensure there was no
7 tampering. At 1344 hours, he picked up the Bureau's vehicle and stopped recording at 1346
8 hours. Then, he created DVDs from the video surveillance conducted on April 10, 2013.

9 32. Clean Pipe 1 – Ford Mustang

10 The BAR97 Test Detail from the Vehicle Information Database shows that on April 10,
11 2013, from 0712 hours to 0743 hours, Marquez and Espinoza performed a smog check inspection
12 on a 1999 Ford Mustang, CA License #6ULF304, VIN #1FAFP4045XF134273 (hereafter
13 "Mustang"). The Mustang was issued Certificate of Compliance #XT222171C.

14 33. On the video surveillance of April 10, 2013, at 0643 hours the smog bay door opens.
15 The sign attached to the light pole was obstructing the camera's view of an open area next to the
16 smog bay; however, the view of the smog bay was unobstructed. At 0646 hours, a Ford Ranger
17 pulls out of the smog bay, followed by a Saturn S-series that is parked in front of the Ford Ranger
18 at 0647 hours. No other vehicles are in the smog bay of Marquez's smog station from 0647 hours
19 until 0738 hours, when Espinoza drives a red Dodge Caravan, CA License #4AST026 with a
20 large red Snap-on sticker on the rear windshield into the smog bay (hereafter "the Dodge
21 Caravan"). At 0740 hours, Espinoza installs the tailpipe probe of the Emissions Inspection
22 System into the tailpipe of the Dodge Caravan. The Dodge Caravan is then run on the
23 dynamometer and Espinoza removes the tailpipe probe at 0741 hours. At 0744 hours, the Dodge
24 Caravan is driven out of the smog bay of Marquez's smog station.

25 34. The Mustang is never observed in the smog bay of Marquez's smog station during the
26 recorded time of the smog check inspection and did not receive the required tailpipe emissions
27 inspection. Marquez and Espinoza clean piped the Mustang by using the exhaust sample of the
28 Dodge Caravan.

1 35. Clean Pipe 2 – Ford Explorer 2 door

2 The BAR97 Test Detail from the Vehicle Information Database shows that on April 10,
3 2013, from 0937 hours to 0941 hours, Marquez and Espinoza performed a smog check inspection
4 on a 2001 Ford Explorer 2 door, CA License #5TBD785, VIN #1FMYU60E91UB02411
5 (hereafter “Ford Explorer 2 door”). The Ford Explorer 2 door was issued Certificate of
6 Compliance #XT222175C.

7 36. On the video surveillance of April 10, 2013, at 0930 hours a dark colored Ford
8 Explorer 4 door with white stickers on the rear windshield drives into the smog bay. At 0938
9 hours, Espinoza takes the Emissions Inspection System tailpipe probe to the rear area of the dark
10 colored Ford Explorer 4 door where the tailpipe is and then walks to the driver’s door without the
11 tailpipe probe in his hand as he uses both hands to pull up his pants. At 0940 hours, Espinoza
12 returns to the rear area of the dark colored Ford Explorer 4 door where the tailpipe is located. He
13 leaves the rear area of the Ford Explorer 4 door with the Emissions Inspection System tailpipe
14 probe in his hand and then places it near the Emissions Inspection System machine. The license
15 plate number of the Ford Explorer 4 door was later identified as 4SEV942.

16 37. After the Ford Explorer 4 door was used to fraudulently certify the Ford Explorer 2
17 door, the Ford Explorer 4 door is driven forward, deeper into the smog bay. Two other vehicles
18 received smog check inspections behind the Ford Explorer 4 door. The Ford Explorer 4 door is
19 then reversed back into the smog bay and is observed in the smog bay of Marquez’s smog station
20 during the recorded time of its own smog check inspection.

21 38. However, the Ford Explorer 2 door was never observed in the smog bay during the
22 recorded time of the smog check inspection and did not receive the required tailpipe emissions
23 inspection. Marquez and Espinoza clean piped the Ford Explorer 2 door using the exhaust
24 sample of the dark colored Ford Explorer 4 door.

25 39. Clean Pipe 3 – Land Rover Discovery

26 The BAR97 Test Detail from the Vehicle Information Database shows that on April 10,
27 2013 from 1143 hours to 1149 hours, Marquez and Espinoza performed a smog check inspection
28 on a 1995 Land Rover Discovery, CA License #5PIC073, VIN #SALJN1246SA135193 (hereafter

1 “Land Rover Discovery”). The Land Rover Discovery was issued Certificate of Compliance
2 #XT222179C.

3 40. On the video surveillance of April 10, 2013, at 1125 hours a gray Toyota Pickup
4 (hereafter “Toyota P/U”) drives into the smog bay. At 1133 hours, Espinoza installs the
5 Emissions Inspection System tailpipe probe into the tailpipe of the Toyota P/U. At 1136 hours,
6 Espinoza takes the Low Pressure Fuel Evaporative Test hose from the passenger side of the
7 Toyota P/U to the left side of the smog bay and removes the Emissions Inspection System tailpipe
8 probe from the Toyota P/U. At 1139 hours, Espinoza installs the Emissions Inspection System
9 tailpipe probe back into the tailpipe of the Toyota P/U. At 1209 hours, Espinoza removes the
10 Emissions Inspection System tailpipe probe from the Toyota P/U. At 1211 hours, he drives the
11 Toyota P/U out of the smog bay. The Toyota P/U is in the smog bay during the fraudulent
12 inspection for the Land Rover Discovery, and during the recorded time of two other smog check
13 inspections for a 1992 Toyota with CA License #4M51061.

14 41. However, the Land Rover Discovery is never observed in the smog bay during the
15 recorded time of the smog check inspection and did not receive the required tailpipe emissions
16 inspection. Marquez and Espinoza clean piped the Land Rover Discovery using the exhaust
17 sample of the Toyota P/U.

18 42. The following chart is a summary of the clean piping performed by Marquez and
19 Espinoza on April 10, 2013, during the time of the surveillance:

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

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27 ///

28 ///

	Time of Certification as Recorded in Vehicle Information Database	Vehicle Certified	Vehicle Observed in Smog Bay During Time of Certification?
1	4/10/2013 from 0712 to 0743	1999 Ford Mustang CA License # 6ULF304 Certificate of Compliance #XT222171C	No-Dodge Caravan CA License #4AST026
2	4/10/2013 from 0937 to 0941	2001 Ford Explorer 2DR CA License #5TBD785 Certificate of Compliance #XT222175C	No-Ford Explorer 4DR CA License #4SEV942
3	4/10/2013 from 1143 to 1149	1995 Land Rover Discovery CA License #5PIC073 Certificate of Compliance #XT222179C	No-Toyota Pickup

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

43. Respondent Marquez's Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1), and the Lamp Station License and Brake Station License are subject to discipline under Code section 9889.3, subdivision (a), in that Marquez made or authorized statements which Marquez knew or in the exercise of reasonable care should have known to be untrue or misleading as follows: Marquez's smog check technician, Espinoza, certified that they inspected the cars described in paragraphs 31-42, when in fact those cars were not inspected.

SECOND CAUSE FOR DISCIPLINE

(Violations of Motor Vehicle Inspection Program)

44. Respondent Marquez's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that Marquez failed to comply with the following sections of that Code:

1 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
2 on the vehicles in paragraphs 31-42 in accordance with procedures prescribed by the Department.

3 b. **Section 44015**: issued a certificate of compliance for the vehicles in paragraphs 31-42
4 without properly testing and inspecting them to determine if they were in compliance with Health
5 & Safety Code section 44012.

6 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
7 equipment, performance, or conduct by failing to properly perform a smog inspection on the
8 vehicles in paragraphs 31-42 or certifying that such tests had been performed, when in fact they
9 were never performed.

10 **THIRD CAUSE FOR DISCIPLINE**

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

12 45. Respondent Marquez's Smog Check Station License is subject to disciplinary action
13 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
14 subdivision (a), in that Marquez failed to comply with the following sections of Title 16,
15 California Code of Regulations:

16 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles in paragraphs
17 31-42 in accordance with the procedures specified in section 3340.42 of the Regulations and
18 failed to ensure that these vehicles had all the required emission control equipment and devices
19 installed and functioning correctly.

20 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
21 System false information about the vehicles in paragraphs 31-42, providing results for smog
22 inspections which were not actually performed.

23 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicles in
24 paragraphs 31-42 in accordance with the Bureau's specifications.

25 **FOURTH CAUSE FOR DISCIPLINE**

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

27 46. Respondent Marquez's Registration is subject to disciplinary action under Code
28 section 9884.7, subdivision (a)(4), Marquez's Smog Check Station License is subject to

1 disciplinary action under Health and Safety Code sections 44072.10, subdivision (a) and (c) and
2 44072.2, subdivision (d), and the Lamp Station License and Brake Station License are subject to
3 disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that Marquez
4 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog
5 certificates of compliance for the vehicles in paragraphs 31-42 without performing bona fide
6 inspections of the emission control devices and systems on them, thereby depriving the People of
7 the State of California of the protection afforded by the Motor Vehicle Inspection Program.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Clean Piping)**

10 47. Respondent Pedro Marquez's Smog Check Station license is subject to disciplinary
11 action for clean piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in
12 title 16, California Code of Regulations, section 3340.1, and the Lamp Station License and Brake
13 Station License are subject to disciplinary action under Code section 9889.3, subdivision (d), in
14 that Marquez used a substitute exhaust emission sample of one vehicle in place of another
15 vehicle's exhaust emission sample in order to cause the Emissions Inspection System to issue a
16 certificate of compliance for the inspections described in paragraphs 31-42.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Violation of Motor Vehicle Inspection Program)**

19 48. Respondent Espinoza's smog technician license(s) is/are subject to disciplinary action
20 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
21 subdivision (a), in that Espinoza failed to comply with the following sections of that Code:

22 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
23 on the vehicles in paragraphs 31-42 in accordance with procedures prescribed by the Department.

24 b. **Section 44015**: issued a certificate of compliance for the vehicles in paragraphs 31-42
25 without properly testing and inspecting them to determine if they were in compliance with Health
26 & Safety Code section 44012.

27 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
28 equipment, performance, or conduct by failing to properly perform a smog inspection on the

1 vehicles in paragraphs 31-42 or certifying that such tests had been performed, when in fact they
2 were never performed.

3 **SEVENTH CAUSE FOR DISCIPLINE**

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

5 49. Respondent Espinoza's smog technician license(s) is/are subject to disciplinary action
6 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
7 subdivision (a) in that Espinoza failed to comply with the following sections of Title 16,
8 California Code of Regulations:

9 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles in paragraphs
10 31-42 in accordance with the procedures specified in section 3340.42 of the Regulations and
11 failed to ensure that these vehicles had all the required emission control equipment and devices
12 installed and functioning correctly.

13 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
14 System false information about the vehicles in paragraphs 31-42, providing results for smog
15 inspections which were not actually performed.

16 c. **Section 3340.42**: failed to conduct the required smog tests on all the vehicles in
17 paragraphs 31-42 in accordance with the Bureau's specifications.

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 50. Respondent Espinoza's smog technician license(s) is/are subject to disciplinary action
21 under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2,
22 subdivision (d), and his Lamp Adjuster License and Brake Adjuster License are subject to
23 disciplinary action under Code section 9889.3, subdivision (d), in that Espinoza committed
24 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of
25 compliance for the vehicles in paragraphs 31-42 without performing bona fide inspections of the
26 emission control devices and systems on them, thereby depriving the People of the State of
27 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Clean Piping)**

3 51. Respondent Luis A. Espinoza's smog technician license(s) is/are subject to
4 disciplinary action for clean piping under Health & Safety Code, § 44072.10, subdivision (c)(1),
5 as defined in title 16, California Code of Regulations, section 3340.1, and his Lamp Adjuster
6 License and Brake Adjuster License are subject to disciplinary action under Code section 9889.3,
7 subdivision (d), in that Marquez used a substitute exhaust emission sample of one vehicle in place
8 of another vehicle's exhaust emission sample in order to cause the Emissions Inspection System
9 to issue a certificate of compliance for the inspections described in paragraphs 31-42.

10 **CLEAN PLUGGING**

11 52. On or about January 23, 2013, the Bureau initiated an investigation of Respondent
12 Marquez's smog check station based on a review of information from the Bureau's Vehicle
13 Information Database to determine if Respondent Marquez or his employees had engaged in
14 fraudulent smog check inspections.

15 53. During a Bureau representative's review of Marquez's Vehicle Information Database
16 data from March 2013 to April 2013, three vehicles identified below had Diagnostic Trouble
17 Codes stored in the Powertrain Control Module that did not apply to those vehicles for the OBD
18 II test.² The Vehicle Information Database data showed that Respondent Espinoza, Respondent
19 Marquez's smog technician working at the smog station, performed the inspections on these

20 ² The On Board Diagnostics, generation II (OBD II) is a functional test and is performed
21 on most 1996 and newer vehicles. The technician is required to connect a test cable from the
22 BAR-97 analyzer to a diagnostic link connector, which is located in the vehicle's passenger
23 compartment. Through the diagnostic link connector, the BAR-97 analyzer retrieves information
24 from the vehicle's on-board computer about the status of the readiness indicators, trouble codes,
25 and the malfunction indicator light. The readiness indicators tell whether or not the OBD II
26 system has run its self-tests on the vehicle's emission and engine control systems to completion.
27 If a readiness monitor is not set, it means that particular system has not been tested. A trouble
28 code results when the vehicle fails one of these self-tests and identifies the system and/or
component which failed. If the trouble code is persistent, the on-board computer will command
the malfunction indicator light to turn on. The vehicle will fail the OBD II functional test if more
than the allowable number of readiness monitors have not been set, a trouble code has been set, or
the malfunction indicator light has been commanded on. It will also fail if the on-board computer
will not communicate with the BAR 97 through the diagnostic link connector. If the vehicle fails
any of the applicable visual or functional tests, it will fail the overall inspection.

1 vehicles using a method known as “clean plugging.”³ This resulted in the issuance of fraudulent
2 certificates of compliance for the vehicles as follows:

3 a. Clean Plug 1 - Nissan Pathfinder

4 The BAR97 Test Detail from the Vehicle Information Database shows that on March 5,
5 2013, from 1044 hours to 1054 hours, Marquez and Espinoza performed a smog check inspection
6 on a 2001 Nissan Pathfinder, CA License #4LTG219, VIN #JN8DR07X71W504140 (hereafter
7 “Pathfinder”). The Pathfinder was issued Certificate of Compliance #XR581553C. The BAR97
8 Test Detail shows that Diagnostic Trouble Code P1800 was stored in the Powertrain Control
9 Module memory of the Pathfinder during the time of certification. However, code P1800 does
10 not apply to the Pathfinder.

11 b. Clean Plug 2 - Nissan Quest

12 The BAR97 Test Detail from the Vehicle Information Database shows that on March 12,
13 2013, from 0937 hours to 0948 hours, Marquez and Espinoza performed a smog check inspection
14 on a 1999 Nissan Quest, CA License #5HEU534, VIN #4N2XN11T3XD822533 (hereafter
15 “Quest”). The Quest was issued Certificate of Compliance #XR691216C. The BAR97 Test
16 Detail shows that Diagnostic Trouble Code P1800 was stored in the Powertrain Control Module
17 memory of the Quest during the time of certification. However, code P1800 does not apply to the
18 Quest.

19 c. Clean Plug 3 - 2002 Kia Sedona

20 The BAR97 Test Detail from the Vehicle Information Database shows that on April 17,
21 2013, from 1133 hours to 1138 hours, Marquez and Espinoza performed a smog check inspection
22 on a 2002 Kia Sedona, CA License #4XNA366, VIN #KNDUP131726254263 (hereafter

23 ³ Clean plugging is the use of the OBD II readiness monitor status and stored code status
24 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that
25 is not in compliance due to the noncompliant vehicle’s failure to complete the minimum number
26 of self tests, known as monitors, or due to the presence of a stored code that indicates an emission
27 control system or component failure. Clean plugging occurs during the inspection of a vehicle
28 that has an OBD II system. To “clean plug” a vehicle, the smog technician enters information
into the Emissions Inspection System for the vehicle the technician wishes to certify and then
plugs the OBD II system connection from the Emissions Inspection System into another vehicle
that has a properly functioning OBD II system, rather than plugging the connection into the
vehicle that was originally identified for testing.

1 “Sedona”). The Sedona was issued Certificate of Compliance #XT382860C. The BAR97 Test
 2 Detail shows that Diagnostic Trouble Code P0551 was stored in the Powertrain Control Module
 3 memory of the Sedona during the time of certification. However, code P0551 does not apply to
 4 the Sedona.

5 The following chart is a summary of the fraudulent Certificates of Compliance issued by
 6 Marquez and Espinoza by clean plugging:

	Time of Certification as Recorded in Vehicle Information Database	Vehicle Certified	Unsupported Diagnostic Trouble Code
10 1	3/5/13 from 1044 to 1054	2001 Nissan Pathfinder CA License #4LTG219 Certificate of Compliance #XR581553C	P1800
14 2	3/12/13 from 0937 to 0948	1999 Nissan Quest CA License #5HEU534 Certificate of Compliance #XR691216C	P1800
18 3	4/17/13 from 1133 to 1138	2002 Kia Sedona CA License #4XNA366 Certificate of Compliance #XT382860C	P0551

22 **TENTH CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

24 54. Respondent Marquez’s Registration is subject to disciplinary action under section
 25 9884.7, subdivision (a)(1), and the Lamp Station License and Brake Station License are subject to
 26 discipline under Code section 9889.3, subdivision (a), in that Marquez made or authorized
 27 statements which Marquez knew or in the exercise of reasonable care should have known to be
 28 untrue or misleading as follows: Marquez’s smog check technician, Espinoza, certified that they

1 inspected the vehicles described in paragraphs 52-53, when in fact those vehicles were not
2 inspected.

3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 **(Violations of Motor Vehicle Inspection Program)**

5 55. Respondent Marquez's Smog Check Station License is subject to disciplinary action
6 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
7 subdivision (a), in that Marquez failed to comply with the following sections of that Code:

8 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
9 on the vehicles in paragraphs 52-53 in accordance with procedures prescribed by the Department.

10 b. **Section 44015**: issued a certificate of compliance for the vehicles in paragraphs 52-53
11 without properly testing and inspecting them to determine if they were in compliance with Health
12 & Safety Code section 44012.

13 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
14 equipment, performance, or conduct by failing to properly perform a smog inspection on the
15 vehicles in paragraphs 52-53 or certifying that such tests had been performed, when in fact they
16 were never performed.

17 **TWELFTH CAUSE FOR DISCIPLINE**

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

19 56. Respondent Marquez's Smog Check Station License is subject to disciplinary action
20 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
21 subdivision (a), in that Marquez failed to comply with the following sections of Title 16,
22 California Code of Regulations:

23 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles in paragraphs
24 52-53 in accordance with the procedures specified in section 3340.42 of the Regulations and
25 failed to ensure that these vehicles had all the required emission control equipment and devices
26 installed and functioning correctly.

1 vehicles in paragraphs 52-53 or certifying that such tests had been performed, when in fact they
2 were never performed.

3 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

5 59. Respondent Espinoza's smog technician license(s) is/are subject to disciplinary action
6 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
7 subdivision (a) in that Espinoza failed to comply with the following sections of Title 16,
8 California Code of Regulations:

9 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles in paragraphs
10 52-53 in accordance with the procedures specified in section 3340.42 of the Regulations and
11 failed to ensure that these vehicles had all the required emission control equipment and devices
12 installed and functioning correctly.

13 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
14 System false information about the vehicles in paragraphs 52-53, providing results for smog
15 inspections which were not actually performed.

16 c. **Section 3340.42**: failed to conduct the required smog tests on all the vehicles in
17 paragraphs 52-53 in accordance with the Bureau's specifications.

18 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

20 60. Respondent Espinoza's smog technician license(s) is/are subject to disciplinary action
21 under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2,
22 subdivision (d), and his Lamp Adjuster License and Brake Adjuster License are subject to
23 disciplinary action under Code section 9889.3, subdivision (d), in that Espinoza committed
24 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of
25 compliance for the vehicles in paragraphs 52-53 without performing bona fide inspections of the
26 emission control devices and systems on them, thereby depriving the People of the State of
27 California of the protection afforded by the Motor Vehicle Inspection Program.

28 ///

1 **OTHER MATTERS**

2 61. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or
3 place on probation the registration for all places of business operated in this state by Marquez
4 upon a finding that Marquez has, or is, engaged in a course of repeated and willful violations of
5 the laws and regulations pertaining to an automotive repair dealer.

6 62. Pursuant to Code section 9889.9, if a license is revoked or suspended following a
7 hearing under Article 7 of the Automotive Repair Act, any additional license issued under
8 Articles 5 and 6 of Chapter 20.3 in the name of Marquez may be likewise revoked or suspended.

9 63. Pursuant to Code section 9889.9, if a license is revoked or suspended following a
10 hearing under Article 7 of the Automotive Repair Act, any additional license issued under
11 Articles 5 and 6 of Chapter 20.3 in the name of Espinoza may be likewise revoked or suspended.

12 64. Pursuant to Health & Safety Code section 44072.8, if Marquez's Smog Check Station
13 License is revoked or suspended, the Director may likewise revoke or suspend any additional
14 license issued under Chapter 5 of the Health and Safety Code in the name of Marquez.

15 65. Pursuant to Health and Safety Code section 44072.8, if Espinoza's technician
16 license(s), currently designated as Advanced Emission Specialist Technician License No. EA
17 149220 and as redesignated upon timely renewal as EO 149220 and/or EI 149220, is/are revoked
18 or suspended, any additional license issued under this chapter in the name of Espinoza may be
19 likewise revoked or suspended by the Director.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 268895, issued to Pedro Marquez, Owner of Ernies Auto Repair & Smog;

25 2. Revoking or suspending Smog Check Station License Number RC 268895, issued to
26 Pedro Marquez, Owner of Ernies Auto Repair & Smog;

27 3. Revoking or suspending Brake Station License Number BS 268895, issued to Pedro
28 Marquez, Owner of Ernies Auto Repair & Smog;

- 1 4. Revoking or suspending Lamp Station License No. LS 268895, issued to Pedro
- 2 Marquez, Owner of Ernies Auto Repair & Smog;
- 3 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 4 and Safety Code in the name of Pedro Marquez;
- 5 6. Revoking or suspending the registration for all places of business operated in this
- 6 state in the name of Pedro Marquez;
- 7 7. Revoking or suspending Luis A. Espinoza's smog technician license(s), currently
- 8 designated as Advanced Emission Specialist Technician License Number EA 149220 and as
- 9 redesignated upon his timely renewal as EO 149220 and/or EI 149220;
- 10 8. Revoking or suspending Brake Adjuster License Number BA 149220, Class C, issued
- 11 to Luis A. Espinoza;
- 12 9. Revoking or suspending Lamp Adjuster License Number LA 149220, Class A, issued
- 13 to Luis A. Espinoza;
- 14 10. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 15 and Safety Code in the name of Luis A. Espinoza;
- 16 11. Ordering Pedro Marquez and Luis A. Espinoza to pay the Bureau of Automotive
- 17 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to
- 18 Business and Professions Code section 125.3; and
- 19 12. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: 8/19/13

23 PAT DORAIS by Doug Balatti
PATRICK DORAIS
Acting Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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