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

11 In the Matter of the Accusation Against:

Case No. Case No. 79/16-54

12 **JOSE O. SANCHEZ dba A SOLUTION**
13 **SMOG & AUTO**
405 N. Waterman
San Bernardino, CA 92410

ACCUSATION

14 Automotive Repair Dealer Registration No.
15 ARD 269994
16 Smog Check Station License No. RC 269994

17 **and**

18 **RAUL R. PEREZ**
2515 Sandra Dr.
Jurupa Valley, CA 92509

19 Smog Check Inspector License No. EO 637156

20 Respondents.
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22 Complainant alleges:
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24 **PARTIES**

25 1. Petitioner is duly appointed and serving as the Chief of the Bureau, and files this
26 Petition in his official capacity.

27 2. On or about August 20, 2012, the Bureau of Automotive Repair issued Automotive
28 Repair Dealer Registration Number ARD 269994 to Jose O. Sanchez, dba A Solution Smog &

1 Auto. The Automotive Repair Dealer Registration was in full force and effect at all times
2 relevant to the charges brought herein and will expire on August 31, 2016, unless renewed.

3 3. On or about April 13, 2015, the Bureau of Automotive Repair issued Smog Check
4 Station License Number RC 269994 to Jose O. Sanchez, dba A Solution Smog & Auto. The
5 Smog Check Station License was in full force and effect at all times relevant to the charges
6 brought herein and will expire on August 31, 2016, unless renewed.

7 4. On or about July 28, 2014, the Bureau of Automotive Repair issued Smog Check
8 Inspector's License Number EO 637156 to Raul R. Perez. On March 4, 2016, an Interim
9 Suspension Order was issued against Respondent's Smog Check Inspector's License pending a
10 decision and order in these proceedings. Respondent's Smog Check Inspector's will expire on
11 September 30, 2016, unless renewed.

12 JURISDICTION

13 5. Business and Professions Code ("BPC") section 9884.13 provides, in pertinent part,
14 that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed
15 with a disciplinary proceeding against an automotive repair dealer or to render a decision
16 temporarily or permanently invalidating (suspending or revoking) a registration.

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

20 7. Section 9889.7 of the BPC provides, in pertinent part, that the expiration or
21 suspension of a license by operation of law or by order or decision of the Director or a court of
22 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to
23 proceed with any disciplinary proceedings.

24 8. Health and Safety Code ("HSC") section 44002 provides, in pertinent part, that the
25 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
26 the Motor Vehicle Inspection Program.

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1 14. Section 44032 of the HSC states, in pertinent part, that: (1) no person may perform
2 tests or repairs of emission control devices or systems of motor vehicles required by the Motor
3 Vehicle Inspection Program unless the person performing the test or repair is a licensed qualified
4 smog check technician; and (2) all tests must be conducted in accordance with section 44012 (i.e.
5 Motor Vehicle Inspection Program Requirements).

6 15. Section 44059 of the HSC provides:

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

11 16. Section 44072.2 of the HSC states, in pertinent part:

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

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

18 “(c) Violates any of the regulations adopted by the director pursuant to this chapter.

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

21 “(e) Has misrepresented a material fact in obtaining a license.

22 “(f) Aids or abets unlicensed persons to evade the provisions of this chapter.”

23 17. Section 44072.8 of the HSC states that when a license has been revoked or suspended
24 following a hearing under this article, any additional license issued under this chapter in the name
25 of the licensee may be likewise revoked or suspended by the director.

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1 **REGULATORY PROVISIONS**

2 18. California Code of Regulations, title 16, section 3340.15, subdivision (b), states, in
3 pertinent part, that “[a] licensed inspector and/or repair technician shall be present during all
4 hours the station is open for the business.”

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

7 “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. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
11 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
12 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
13 this article and has all the required emission control equipment and devices installed and
14 functioning correctly.”

15 21. CCR, title 16, section 3340.41, subdivision (b), provides: “No person shall enter into
16 the emissions inspection system any access or qualification number other than as authorized by
17 the bureau, nor in any way tamper with the emissions inspection system.”

18 22. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
19 procedures which apply to all vehicles inspected in the State of California

20 **COST RECOVERY**

21 23. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board
22 “may request the administrative law judge to direct a licentiate found to have committed a
23 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
24 investigation and enforcement of the case

25 **DATA ANALYSIS OF CLEAN PLUGGING ACTIVITIES**

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27 24. On March 9, 2015, the Bureau implemented a policy change requiring the use of
28 an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas

1 powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer
2 diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data lists differences in
3 Vehicle Identification Numbers (VIN) for vehicles that have received smog inspections, in
4 addition to communication Protocol and Parameter ID (PID) differences with vehicles that have
5 been certified correctly that are the same make and model vehicles.

6 25. On or about September 28, 2015, Bureau representative Alfred Denno initiated an
7 investigation in which he reviewed specific OIS Test Data for A Solution Smog & Auto.
8 Representative Denno's investigation revealed that the data related to certain vehicles certified by
9 A Solution Smog & Auto contained a pattern of unmistakable discrepancies between the
10 information transmitted during the inspections and documented information known about the
11 subject vehicles. Specifically, representative Denno compared the data received from the certified
12 vehicles to data from vehicles of the same year, make, and model and determined that the data
13 from at least twelve (12) of the certified vehicles contained the following unmistakable
14 discrepancies: (1) all of the vehicles were missing eVINs; (2) all of the vehicles transmitted the
15 same incorrect vehicle communication protocol of I9140808; and (3) all of the vehicles
16 transmitted incorrect PID counts. These documented discrepancies confirm that the vehicles
17 receiving smog certificates from A Solution Smog & Auto were fraudulently tested during the
18 smog inspection using the clean plugging method.¹ The following chart (i.e., Table 1) illustrates
19 the documented clean plugging activities of Respondents between August 24, 2015, and October
20 5, 2015.

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26 ¹ Clean plugging refers to the use of another vehicle's properly functioning On Board
27 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
28 readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that
are not in smog compliance and/or not present for testing.

Table 1

Test Date and Time*	Vehicle Certified & License No.	Certificate No.	Details
08/24/2015 1347-1355 hours	2006 Chevrolet Malibu 6VJX043	YT843771C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
08/25/2015 1142-1207 hours	2007 Chevrolet Silverado K3500 (No plate registered.)	YT843775C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
08/31/2015 0941-0947 hours	2006 Dodge Magnum SE 7FNE059	YT843796C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
08/31/2015 1207-1216 hours	2008 Ford Fusion SE (No plate registered.)	YT843798C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.

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8/31/2015 1334-1341 hours	2007 Jaguar XK 6UBC774	PW095201C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
09/02/2015 1322-1330 hours	2007 Chrysler PT Cruiser 5UQZ701	PW095212C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
09/04/2015 1030-1038 hours	2005 Chevrolet Impala 5RRK696	PW095220C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
09/04/2015 1314-1318 hours	2009 Dodge Journey SE 6HFS191	PW095222C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
09/09/2015 1412-1422 hours	2006 Mitsubishi Eclipse SE 5WFB200	PW095231C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.

1	09/11/2015	2007 Ford F150	PW095237C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
2	0929-0939 hours	30244A1		
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7	09/11/2015	2006 Toyota Tacoma	PW095238C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
8	1027-1035 hours	8M22292		
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13	10/05/2015	2005 Mercedes Benz C230K	PW966077C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
14	1427-1447 hours	5LVA639		
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* Test times are in military time.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

26. Respondent Jose O. Sanchez, dba A Solution Smog & Auto ("Respondent Sanchez"), has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had not been so inspected. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 24 and 25, inclusive, as though set forth fully herein.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 27. Respondent Sanchez has subjected his registration to discipline under BPC section
4 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud by issuing electronic
5 certificates of compliance for the vehicles set forth in Tables 1, above, without performing bona
6 fide inspections of the emission control devices and systems on those vehicles, thereby depriving
7 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
8 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
9 paragraphs 24 and 25, inclusive, as though set forth fully herein.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Material Violation of Automotive Repair Act)**

12 28. Respondent Sanchez has subjected his registration to discipline under BPC section
13 9884.7, subdivision (a)(6), in that he failed in a "material respect to comply with the provisions of
14 this chapter or regulations adopted pursuant to it" when he issued electronic certificates of
15 compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections
16 of the emission control devices and systems on those vehicles, thereby depriving the People of the
17 State of California of the protection afforded by the Motor Vehicle Inspection Program.
18 Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs
19 24 and 25, inclusive, as though set forth fully herein.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Violation of the Motor Vehicle Inspection Program)**

22 29. Respondent Sanchez has subjected his station license to discipline under HSC section
23 44072.2, subdivision (a), in that, with respect to the vehicles set forth in Table 1, above,
24 Respondent violated the following sections of the HSC:

25 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
26 performed on those vehicles in accordance with procedures prescribed by the department.

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 32. Respondent Raul R. Perez ("Respondent Perez") has subjected his smog check
4 inspector license to discipline under HSC section 44072.2, subdivision (a), in that he violated the
5 following sections of the HSC with respect to the vehicles set forth in Table, 1 above:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on those vehicles in accordance with procedures prescribed by the department.

8 b. **Section 44032:** Respondent failed to perform tests of the emission control devices
9 and systems on those vehicles in accordance with section 44012 of the HSC, in that the vehicles
10 had been clean plugged.

11 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates
12 of compliance by certifying that those vehicles had been inspected as required when, in fact, they
13 had not.

14 EIGHTH CAUSE FOR DISCIPLINE

15 (Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

16 33. Respondent Perez has subjected his smog check inspector license to discipline under
17 HSC section 44072.2, subdivision (c), in that he violated the following sections of the CCR, title
18 16, with respect to the vehicles set forth in Table 1, above:

19 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
20 electronic certificates of compliance without performing bona fide inspections of the emission
21 control devices and systems on those vehicles as required by HSC section 44012.

22 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those
23 vehicles in accordance with HSC section 44012.

24 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
25 for the electronic certificates of compliance by entering vehicle emission control information for
26 vehicles other than the vehicles being certified.

27 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and
28 inspections on those vehicles in accordance with the Bureau's specifications.

1 **NINTH CAUSE FOR DISCIPLINE**

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

3 34. Respondent Perez has subjected his smog check inspector license to discipline under
4 HSC section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or
5 deceit whereby another was injured by issuing electronic certificates of compliance for the
6 vehicles set forth in Table 1, above, without performing bona fide inspections of the emission
7 control devices and systems on those vehicles, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 **PRAYER**

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

- 12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
13 269994, issued to Jose O. Sanchez, dba A Solution Smog & Auto;
- 14 2. Revoking or suspending Smog Check Station License Number RC 269994, issued to
15 Jose O. Sanchez, dba A Solution Smog & Auto;
- 16 3. Revoking or suspending Smog Check Inspector License No. EO 637156, issued to
17 Raul R. Perez;
- 18 4. Revoking or suspending any and all licenses issued under Articles 5 and 6 of the
19 Automotive Repair Act in the name of Jose O. Sanchez or Raul R. Perez pursuant to section
20 9889.9 of the Business and Professions Code;
- 21 5. Revoking or suspending any and all licenses issued under the Motor Vehicle
22 Inspection Program in the name of Jose O. Sanchez or Raul R. Perez pursuant to section 44072.8
23 of the Health and Safety Code;

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6. Ordering that Jose O. Sanchez and Raul R. Perez are jointly and severally responsible for paying 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;

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

DATED: 3-11-16

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

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