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7

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

11 In the Matter of the Accusation Against:

Case No. 79/22-10578

12 **JULIO OSUNA, JR.**
13 **DBA MIDDLEFIELD SMOG CHECK**
14 **2800 B Middlefield Rd.**
Redwood City, Ca 94063

ACCUSATION

15 **Automotive Repair Dealer No. ARD 263893**
16 **Smog Check Station No. TC 263893**

17 **JULIO OSUNA, JR.**
18 **DBA J & A SMOG AND SERVICE**
19 **975 Woodside Rd.**
Redwood City, Ca 94061

20 **Mailing Address**
21 **20531 Mission Blvd. Ste. B**
Hayward, Ca 94541

22 **Automotive Repair Dealer No. ARD 282539**
23 **Smog Check Station No. RC 282539**

24 **JULIO OSUNA JR**
25 **2800 Middlefield Rd.**
Redwood City, Ca 94063

26 **Smog Check Inspector License No. EO 632519**
27 **Smog Check Repair Technician License No. EI 632519**
28

JULIO J. OSUNA
302 Park Street
Redwood City, CA 94061

Smog Check Inspector License No. EO 642047

JULIO J. OSUNA
DBA OSUNA AUTO REPAIR
2802 Middlefield Rd.
Redwood City, Ca 94063

Automotive Repair Dealer No. ARD 231634

Respondents.

PARTIES

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

2. On or about January 26, 2011, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 263893 to Julio Osuna Jr. (Respondent Osuna Jr.) dba Middlefield Smog Check. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2023, unless renewed.

3. On or about April 8, 2011, the Bureau of Automotive Repair issued Smog Check, Test Only, Station License Number TC 263893 to Respondent Osuna Jr. dba Middlefield Smog Check. The Smog Check, Test Only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2023, unless renewed.

4. On or about April 20, 2016, the Bureau of Automotive Repair certified Smog Check, Test Only, Station License Number TC 263893 as a STAR Station.

5. On or about January 21, 2016, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 282539 to Respondent Osuna Jr. dba J & A Smog and Service. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2023, unless renewed.

1 6. On or about February 9, 2016, the Bureau of Automotive Repair issued Smog Check
2 Station License Number RC 282539 to Respondent Osuna Jr. dba J & A Smog and Service. The
3 Smog Station License was in full force and effect at all times relevant to the charges brought
4 herein and will expire on January 31, 2023, unless renewed.

5 7. On or about May 23, 2016, the Bureau of Automotive Repair certified Smog Check
6 Station License Number RC 282539 as a STAR Station.

7 8. On or about September 22, 2010, the Bureau issued Advanced Emission Specialist
8 Technician License Number EA 632519 to Respondent Osuna Jr. The Advanced Emission
9 Specialist Technician License was cancelled on December 17, 2013. Pursuant to California Code
10 of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
11 respondent's election, as Smog Check Inspector License Number EO 632519 and Smog Check
12 Repair Technician License No. 632519, effective December 17, 2013. The Smog Check
13 Inspector and Smog Check Repair Technician licenses were in full force and effect at all times
14 relevant to the charges brought herein and will expire on March 31, 2024, unless renewed.

15 9. On or about June 20, 2019, the Bureau issued Smog Check Inspector License Number
16 EO 642047 to Respondent Julio J. Osuna (Respondent Osuna). The Smog Check Inspector
17 license was in full force and effect at all times relevant to the charges brought herein and will
18 expire on January 31, 2023, unless renewed.

19 10. In 2004, the Bureau of Automotive Repair issued Automotive Repair Dealer
20 Registration Number ARD 231634 to Respondent Osuna dba Osuna Auto Repair. The
21 Automotive Repair Dealer Registration expired on January 31, 2020, and has not been renewed.

JURISDICTION

23 11. This Accusation is brought before the Director of the Department of Consumer
24 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

STATUTORY PROVISIONS

26 12. Section 118, subdivision (b), of the Business and Professions Code (Code) provides
27 that the suspension/expiration/surrender/cancellation of a license shall not deprive the
28

1 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
2 within which the license may be renewed, restored, reissued or reinstated.

3 13. Section 9884.7 of the Code states:

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

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

13 ...

14 (4) Any other conduct that constitutes fraud.

15 ...

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

18 ...

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

24 ...

25 (e) For purposes of this section, "fraud" includes, but is not limited to,
26 violations of this chapter involving misrepresentations and all of the following:

27 (1) Any act or omission that is included within the definition of either "actual
28 fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573
of the Civil Code.

(2) A misrepresentation in any manner, whether intentionally false or due to
gross negligence, of a material fact.

(3) A promise or representation not made honestly and in good faith.

(4) An intentional failure to disclose a material fact.

(5) Any act in violation of Section 484 of the Penal Code.

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

5 15. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
6 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
7 the Motor Vehicle Inspection Program.

8 16. Section 44012 of the Health and Safety Code states:

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

13 ...

14 17. Section 44032 of the Health and Safety Code states:

15 No person shall perform, for compensation, tests or repairs of emission control
16 devices or systems of motor vehicles required by this chapter unless the person
17 performing the test or repair is a qualified smog check technician and the test or
18 repair is performed at a licensed smog check station. Qualified technicians shall
19 perform tests of emission control devices and systems in accordance with Section
20 44012.

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

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

27 19. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
28 expiration or suspension of a license by operation of law, or by order or decision of the Director
of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
proceedings against the licensee, or to render a decision suspending or revoking the license.

 20. Section 44072.8 of the Health and Safety Code states:

 When a license has been revoked or suspended following a hearing under this

article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

21. Section 44072.2 of the Health and Safety Code states:

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

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. 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.

...

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

22. Section 44072.10, subdivision (c), of the Health and Safety Code states:

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

REGULATORY PROVISIONS

23. California Code of Regulations, title 16, section 3340.24, states:

(a) Any disciplinary or reinstatement proceeding under this article involving licensed stations, licensed technicians, or fleet owners licensed pursuant to section 44020 of the Health and Safety Code shall be conducted in accordance with chapter 5 (commencing with section 11500) of division 3, Title 2 of the Government Code.

...

(c) The bureau may suspend or revoke the license of or pursue other legal

1 action against a licensee, if the licensee falsely or fraudulently issues or obtains a
2 certificate of compliance or a certificate of noncompliance.

3 ...

4 24. California Code of Regulations, title 16, section 3340.30, states:

5 A smog check technician shall comply with the following requirements at all
6 times while licensed.

7 (a) A licensed technician shall inspect, test and repair vehicles in accordance
8 with section 44012 of the Health and Safety Code, section 44035 of the Health and
9 Safety Code, and section 3340.42 of this article.

10 ...

11 25. California Code of Regulations, title 16, section 3340.35, states:

12 ...

13 (b) A licensed station shall not sell or otherwise transfer unused certificates to
14 another licensed station, to a new owner of the business, or to any person other than a
15 customer whose vehicle has been inspected in accordance with the procedures
16 specified in section 3340.42 of this article.

17 (c) A licensed station shall issue a certificate of compliance or noncompliance
18 to the owner or operator of any vehicle that has been inspected in accordance with the
19 procedures specified in section 3340.42 of this article and has all the required
20 emission control equipment and devices installed and functioning correctly. The
21 following conditions shall apply:

22 (1) Customers shall be charged the same price for certificates as that paid by
23 the licensed station; and

24 (2) Sales tax shall not be assessed on the price of certificates.

25 26. California Code of Regulations, title 16, section 3340.41, states:

26 ...

27 (c) No person shall enter any vehicle identification information or emission
28 control system identification data for any vehicle other than the one being tested into
the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information
about the vehicle being tested.

...

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

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

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

...

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

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

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

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

28. California Code of Regulations, title 16, section 3340.45¹, stated:

(a) All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the following:

...

(2) Smog Check Manual, dated November 2, 2017, which is hereby incorporated by reference. This manual shall become effective on August 2, 2018.

29. California Code of Regulations, title 16, section 3371, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:

...

30. California Code of Regulations, title 16, section 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COST RECOVERY

31. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

¹ This regulation and the Smog Check Manual have been updated. This was the version of the Regulation and applicable Smog Check Manual at the time of the alleged violations.

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **SMOG PROGRAM AND CLEAN PLUGGING ALLEGATIONS AT MIDDLEFIELD**

6 **SMOG CHECK**

7 32. California's Smog Check Program requires the owners of most motor vehicles in
8 California to take and pass a Smog Check inspection and receive a Certificate of Compliance
9 every two years when renewing their registration and also when the vehicle's title is transferred.
10 These inspections are performed by Smog Check inspectors at Smog Check Stations, both of
11 which are licensed by the Bureau of Automotive Repair (BAR).

12 33. The Smog Check inspection in certain Enhanced areas of the State is an Acceleration
13 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
14 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons, Carbon
15 Monoxide, Oxides of Nitrogen, Carbon Dioxide, and Oxygen. The inspection involves a test of
16 the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the State, or depending on a
17 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed
18 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a
19 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute
20 (RPM).

21 34. The inspector also performs visual and functional tests on the vehicle as outlined in
22 the Smog Check Manual. The visual inspection of the emission control components verifies the
23 required emission control devices are present and properly connected. Functional tests are also
24 performed which, depending on the vehicle, may include checking the ignition timing,
25 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test
26 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
27 cap.
28

1 35. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
2 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
3 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
4 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.
5 Gas powered vehicles with a gross vehicle weight rating over 14,000 pounds require an
6 inspection on the EIS.

7 36. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
8 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
9 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
10 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
11 vehicle. The bar code scanner is used to input technician information, the vehicle identification
12 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
13 Reports.

14 37. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
15 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
16 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
17 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
18 number of specific data values each PCM uses related to emissions controls.

19 38. As part of the BAR-OIS smog inspections, the technician also performs a visual and
20 functional test on the vehicle being inspected. The visual inspection of the emission control
21 components verifies the required emission control devices are present and properly connected and
22 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
23 makes the determination whether or not the vehicle passes the inspection based on the results of
24 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
25 compliance is issued. The information from the smog inspection is then transmitted to the
26 Vehicle Information Data (VID).

39. The Bureau can access the VID to view test data on smog check inspections performed at any Smog Check Station, or search for, retrieve, and print a test record for a particular vehicle which has been tested.

40. The Bureau has become aware of methods some Smog Check stations and Smog Check inspectors use to issue smog certificates to vehicles that will not pass a Smog Check test on their own, or in some instances, are not even present during the time the test is performed.

41. One method is known as "clean plugging." "Clean plugging" is the act of using one vehicle's properly functioning OBDII system, or another source, to generate passing data readings or diagnostic information for the purpose of issuing a smog certificate of compliance to a vehicle that is not in smog compliance and/or not being tested. The vehicle being certified is not the one being tested.

42. The Bureau initiated an investigation of Respondent Osuna Jr's smog check station Middlefield Smog Check. Respondent Osuna performed six smog inspections using clean-plugging methods. The smog inspections were personally performed by Respondent Osuna at Respondent Osuna Jr.'s Smog Station Middlefield Smog Check. Respondent Osuna and Respondent Osuna Jr issued six certificates of compliance to six vehicles that were not tested.

43. A Bureau representative reviewed data for the clean-plugged vehicles inspected by Respondents. The data revealed that the six vehicles that were purportedly tested by Respondents were not and could not have been connected to the DAD when they were being certified because the OBD-II data purportedly transmitted by those vehicles could not have been transmitted by those vehicles.

44. Respondents clean plugged and issued certificates of compliance to the following vehicles:

a) Clean Plug# 1 - 2000 Dodge Grand Caravan SE,

Certificate # SE787518C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (August 07, 2021)	Not reported	KWPF	22
Expected OBD II Value	Not expected	I914	15/3

b) Clean Plug #2 – 2006 Bentley Continental Flying Spur

Certificate # SG410863C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (August 29, 2021)	WVWFV7AJ5DW028567	ICAN11bt5	37/14
Expected OBD II Value	SCBBR53W768038530	KWPS	20/20/1

c) Clean Plug #3—2016 Lexus GS350 Base

Certificate # SI003314C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (September 19, 2021)	JTDKB20U863161950	ICAN11bt5	38/21/17
Expected OBD II Value	JTHBZ1BL5GA003247	ICAN11bt5	50/20

d) Clean Plug #4—2001 Toyota RAV4

Certificate # SO461024C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (March 22, 2022)	JTHBK262075034961	ICAN11bt5	48/17
Expected OBD II Value	Not expected	I914	21

e) Clean Plug #5—2007 Pontiac G6 Base

Certificate # SQ861467C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (May 19, 2022)	1GTEC19V06Z250599	JVPW	22
Expected OBD II Value	1G2ZG58N674112440	ICAN11bt5	43/7

f) Clean Plug #6—2002 Chevrolet Tahoe K1500

Certificate # SS075505C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (May 27, 2022)	1HGCR3F89EA026634	ICAN29bt5	45
Expected OBD II Value	1GNEK13T12J256311	JVPW	22

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements - Registration)**

3 45. Respondent Osuna Jr. has subjected his Automotive Repair Dealer registration No.
4 ARD 263893 to discipline under Code section 9884.7, subdivision (a)(1), in that Respondent
5 Osuna Jr. made statements which he knew or which by exercise of reasonable care should have
6 known were untrue or misleading, as set forth above in paragraphs 42-44, above. Respondent
7 purported to test vehicles, and certified that the vehicles passed inspection and were in
8 compliance with applicable laws and regulations. In fact, Respondent conducted the inspections
9 on those vehicles using clean-plugging methods.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud - Registration)**

12 46. Respondent Osuna Jr. has subjected his Automotive Repair Dealer registration No.
13 ARD 263893 to discipline under Code section 9884.7, subdivision (a)(4), in that he committed
14 acts which constitute fraud, as set forth above in paragraph 42-44, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud or Deceit – Smog Station License)**

17 47. Respondent Osuna Jr. has subjected his Smog Check Station license No. TC 263893
18 to discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in
19 that he committed acts involving dishonesty, fraud or deceit, whereby another was injured by
20 issuing electronic certificates of compliance for vehicles without performing bona fide
21 inspections of the emission control devices and systems on the vehicles, thereby depriving the
22 People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program, as set forth above in paragraphs 42-44, above.

24 **FOURTH CAUSE FOR DISCIPLINE**

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

26 48. Respondent Osuna Jr. has subjected his Smog Check Station license No. TC 263893
27 to discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and
28

1 (c), in that he violated sections of that Code and applicable regulations, through conduct
2 described in paragraphs 42-44, as follows:

3 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
4 on vehicles in accordance with procedures prescribed by the department.

5 b. **Section 44059:** Respondent willfully made false statements in issuing the Smog
6 Certificates of compliance and on the Vehicle Inspection Reports

7 c. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
8 electronic certificates of compliance to certain vehicles without performing bona fide inspections
9 of the emission control devices and systems on those vehicles.

10 d. **Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in
11 accordance with Health and Safety Code section 44012 and California code of Regulations title
12 16, section 3340.42.

13 e. **Section 3340.41, subdivision (c):** Respondent entered vehicle identification
14 information for a vehicle other than the one being tested into the BAR-OIS.

15 f. **Section 3340.42:** Respondent failed to conduct the required smog tests and
16 inspections on certain vehicles in accordance with the Bureau's specifications.

17 g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check
18 Manual by entering vehicle identification information for a vehicle that was not being tested.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Dishonesty, Fraud or Deceit – Smog Inspector License)**

21 49. Respondent Osuna has subjected his Smog Check Inspector License to discipline
22 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he
23 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing
24 electronic certificates of compliance for vehicles without performing bona fide inspections of the
25 emission control devices and systems on the vehicles, thereby depriving the People of the State of
26 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
27 in paragraphs 42-44, above.
28

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 50. Respondent Osuna has subjected his Inspector License to discipline under Health and
4 Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he violated sections
5 of that Code and applicable regulations, through conduct described in paragraphs 42-44, as
6 follows:

7 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
8 on vehicles in accordance with procedures prescribed by the department.

9 b. **Section 44059:** Respondent willfully made false statements in issuing the Smog
10 Certificates of compliance and on the Vehicle Inspection Reports

11 c. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
12 electronic certificates of compliance to certain vehicles without performing bona fide inspections
13 of the emission control devices and systems on those vehicles.

14 d. **Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in
15 accordance with Health and Safety Code section 44012 and California code of Regulations title
16 16, section 3340.42.

17 e. **Section 3340.41, subdivision (c):** Respondent entered vehicle identification
18 information for a vehicle other than the one being tested into the BAR-OIS.

19 f. **Section 3340.42:** Respondent failed to conduct the required smog tests and
20 inspections on certain vehicles in accordance with the Bureau's specifications.

21 g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check
22 Manual by entering vehicle identification information for a vehicle that was not being tested.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Fraud - Registration)**

25 51. Respondent Osuna has subjected his Automotive Repair Dealer Registration No.
26 ARD 231634 to discipline under Code section 9884.7, subdivision (a)(4), in that he committed
27 acts which constitute fraud, as set forth above in paragraph 42-44, above.
28

1 **DISCIPLINARY CONSIDERATIONS**

2 52. To determine the degree of discipline, if any, to be imposed on Respondent Osuna Jr.,
3 Complainant alleges that on or about July 15, 2011, in a prior action, the Bureau of Automotive
4 Repair issued Citation Number M2012-41 to Respondent. That Citation is now final.

5 **OTHER MATTERS**

6 47. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
7 or place on probation the registration for all places of business operated in this state by
8 Respondent Osuna Jr., upon a finding that Respondent Osuna Jr. has, or is, engaged in a course of
9 repeated and willful violations of the laws and regulations pertaining to an automotive repair
10 dealer.

11 47. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
12 or place on probation the registration for all places of business operated in this state by
13 Respondent Osuna upon a finding that Respondent Osuna has, or is, engaged in a course of
14 repeated and willful violations of the laws and regulations pertaining to an automotive repair
15 dealer.

16 48. Pursuant to Health & Safety Code section 44072.8, if any of Respondent Osuna Jr.'s
17 Station Licenses, Smog Check Inspector license, or Smog Check Repair Technician license is
18 revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of
19 the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by
20 the director.

21 48. Pursuant to Health & Safety Code section 44072.8, if any of Respondent Osuna's
22 Smog Check Inspector license is revoked or suspended, any additional license issued under
23 Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may
24 be likewise revoked or suspended by the director.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of the Department of Consumer Affairs issue a
28 decision:

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 263893, issued to Julio Osuna Jr. dba Middlefield Smog Check;
- 3 2. Revoking or suspending Smog Check Station License Number TC 263893, issued to
4 Julio Osuna Jr. dba Middlefield Smog Check;
- 5 3. Revoking or suspending Automotive Repair Dealer Registration Number ARD
6 282539, issued to Julio Osuna Jr. dba J & A Smog And Service;
- 7 4. Revoking or suspending Smog Check Station License Number RC 282539, issued to
8 Julio Osuna Jr. dba J & A Smog And Service;
- 9 5. Revoking or suspending Smog Check Inspector License Number EO 632519 issued
10 to Julio Osuna Jr.;
- 11 6. Revoking or suspending Smog Check Repair Technician License Number EI 632519
12 issued to Julio Osuna Jr.;
- 13 7. Revoking or suspending Smog Check Inspector License Number EO 642047, issued
14 to Julio Osuna;
- 15 8. Revoking or suspending Automotive Repair Dealer Registration Number ARD
16 231634, issued to Julio Osuna dba Osuna Auto Service;
- 17 9. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
18 Division 26 of the Health and Safety Code to Julio J. Osuna;
- 19 10. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
20 Division 26 of the Health and Safety Code to Julio Osuna Jr.;
- 21 11. Revoking or suspending any additional Automotive Repair Dealer Registration(s)
22 issued to Julio Osuna Jr.;
- 23 12. Revoking or suspending any additional Automotive Repair Dealer Registration(s)
24 issued to Julio J. Osuna;
- 25 13. Ordering Julio J. Osuna to pay the Bureau of Automotive Repair the reasonable costs
26 of the investigation and enforcement of this case, pursuant to Business and Professions Code
27 section 125.3; and,
28

1 14. Ordering Julio Osuna, Jr., to pay the Bureau of Automotive Repair the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3; and,

4 15. Taking such other and further action as deemed necessary and proper.
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8 DATED: As of Digital Signature Date_

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

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