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

13
14 In the Matter of the Accusation Against:

Case No. 79/22-8245

15 **BRAKE STOP SAN MARCOS,**
16 **CORPORATION,**
17 **DBA BRAKE STOP AND AUTO REPAIR;**
18 **OMAR TAPIA, President**
19 **207 Via Vera Cruz**
20 **San Marcos, CA 92078**

ACCUSATION

21 **Automotive Repair Dealer Registration No.**
22 **ARD 286092**
23 **Smog Check Station License No. RC 286092**

24 **and**

25 **JUSTO ANTONIO GUTIERREZ**
26 **4211 Tiberon Drive**
27 **Oceanside, CA 92056**

28 **Smog Check Inspector License No.**
EO 643383

And

1 **PHILIP NORMAN JOHNSON**
2 **523 Smoke Tree Glen**
3 **Escondido, CA 92026**

4 **Smog Check Inspector License No.**
5 **EO 127690**
6 **Smog Check Repair Technician No.**
7 **EI 127690**

8 Respondents.

9 **INTRODUCTION**

10 Respondents issued smog certificates to 10 vehicles that were never properly inspected.
11 During the inspection, the 10 vehicles each transmitted the wrong electronic-VIN number and/or
12 other erroneous identifying information to the Bureau of Automotive Repair's computer system.
13 The only reasonable way this could happen is by the process known as "clean plugging," in which
14 Respondents intentionally tested the wrong vehicle in order to issue fraudulent smog certificates.

15 **PARTIES**

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

18 **Respondent Brake Stop:**

19 **Automotive Repair Dealer Registration No. ARD 286092**

20 2. On or about February 22, 2017, the Bureau issued Automotive Repair Dealer
21 Registration Number ARD 286092 to Brake Stop San Marcos Corporation, dba Brake Stop and
22 Auto Repair; Omar Tapia, President (Respondent Brake Stop). The Automotive Repair Dealer
23 Registration was in full force and effect at all times relevant to the charges brought herein, the
24 registration will expire on February 29, 2024, unless renewed.

25 **Smog Check Station License No. RC 286092**

26 3. On or about March 1, 2017, the Bureau issued Smog Check Station License Number
27 RC 286092 to Brake Stop San Marcos Corporation, dba Brake Stop and Auto Repair; Omar
28 Tapia, President. The smog check station license was in full force and effect at all times relevant
to the charges brought herein, the license will expire on February 29, 2024, unless renewed.

1 **Respondent Gutierrez:**

2 **Smog Check Inspector License No. EO 643383**

3 4. On or about November 8, 2021, the Bureau of Automotive Repair issued Smog
4 Check Inspector License Number EO 643383 to Respondent Justo Antonio Gutierrez
5 (Respondent Gutierrez). The Smog Check Inspector License was in full force and effect at all
6 times relevant to the charges brought herein and will expire on December 31, 2023, unless
7 renewed.

8 **Respondent Johnson:**

9 **Smog Check Inspector License No. EO 127690**

10 5. On or about January 7, 2013, the Bureau of Automotive Repair issued a Smog Check
11 Inspector license to Respondent Phillip Norman Johnson (Respondent Johnson). The Smog
12 Check Inspector License was in full force and effect at all times relevant to the charges brought
13 herein and will expire on April 30, 2023, unless renewed.

14 **Smog Check Repair Technician License No. EI 127690**

15 6. On or about January 7, 2013, the Bureau of Automotive Repair issued Smog Check
16 Repair Technician license No. EI 127690 to Respondent Johnson. Smog Check Repair License
17 No. EI 127690 was in full force and effect at all times relevant to the charges brought herein and
18 will expire on April 30, 2023, unless renewed.

19 **JURISDICTION**

20 7. This Accusation is brought before the Director of the Department of Consumer
21 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
22 All references are to the Business and Professions Code (Code) unless otherwise stated.

23 8. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
24 surrender or cancellation of a license shall not deprive the Director of jurisdiction to proceed with
25 a disciplinary action during the period within which the license may be renewed, restored,
26 reissued or reinstated.

27 9. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
28 "commission," "committee," "department," "division," "examining committee," "program," and

1 "agency." "License" includes certificate, registration or other means to engage in a business or
2 profession regulated by the Code.

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

7 11. Section 9884.20 of the Code states:

8 All accusations against automotive repair dealers shall be filed within three
9 years after the performance of the act or omission alleged as the ground for
10 disciplinary action, except that with respect to an accusation alleging fraud or
11 misrepresentation as a ground for disciplinary action, the accusation may be filed
12 within two years after the discovery, by the bureau, of the alleged facts
13 constituting the fraud or misrepresentation.

14 12. Section 9884.22, subdivision (a), of the Code states, in pertinent part:

15 (a) Notwithstanding any other provision of law, the director may revoke,
16 suspend, or deny at any time any registration required by this article on any of the
17 grounds for disciplinary action provided in this article. The proceedings under this
18 article shall be conducted in accordance with Chapter 5 (commencing with Section
19 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director
20 shall have all the powers granted therein.

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

24 14. Section 44072.4 of the H & S Code states:

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

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

(b) Suspending the license.

(c) Revoking the license.

15. Section 44072.6 of the H & S Code provides, in pertinent part, that the expiration or
suspension of a license by operation of law, or by order or decision of the Director, or a court of

1 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
2 proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to
3 render a decision suspending or revoking the license.

4 16. Section 44072.7 of the H & S Code states:

5 All accusations against licensees shall be filed within three years after the act
6 or omission alleged as the ground for disciplinary action, except that with respect
7 to an accusation alleging a violation of subdivision (d) of Section 44072.2, the
8 accusation may be filed within two years after the discovery by the bureau of the
9 alleged facts constituting the fraud or misrepresentation prohibited by that section.

10 17. Section 44072.8 of the H & S Code states:

11 When a license has been revoked or suspended following a hearing under this article, any
12 additional license issued under this chapter in the name of the licensee may be likewise revoked
13 or suspended by the director.

14 **STATUTORY PROVISIONS**

15 18. Section 9884.7 of the Code states, in pertinent part:

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

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

26

27 (4) Any other conduct which constitutes fraud.

28

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

. . . .

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

1 19. Section 44012 of the H & S Code provides, in pertinent part, that the test at the smog
2 check stations shall be performed in accordance with procedures prescribed by the department,
3 pursuant to Section 44013.

4 20. Section 44015 of the H & S Code states, in pertinent part:

5 (a) A licensed smog check station shall not issue a certificate of
6 compliance, except as authorized by this chapter, to any vehicle that meets the
following criteria:

7 (1) A vehicle that has been tampered with.

8

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

11

12 21. Section 44032 of the H & S Code states:

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

17 22. Section 44059 of the H & S Code states:

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

21 23. Section 44072.2 of the H & S Code states, in pertinent part:

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

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

26 ...

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

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

3 ...

4 24. Section 44072.10 of the H & S Code states, in pertinent part:

5 ...

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

10 ...

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

13 **REGULATORY PROVISIONS**

14 25. California Code of Regulations, Title 16, (CCR) section 3340.24, sub-division (c),
15 states, “The bureau may suspend or revoke the license of or pursue other legal action against a
16 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
17 certificate of noncompliance.”

18 26. CCR section 3340.30, sub-division (a), states, in part:

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

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

24 ...

25 27. CCR section 3340.35, provides, in pertinent part, that a licensed station shall issue a
26 certificate of compliance . . . to the owner or operator of any vehicle that has been inspected in
27 accordance with the procedures specified in section 3340.42 of this article and has all the required
28 emission control equipment and devices installed and functioning correctly.

29 28. CCR section 3340.41, subdivision (c), states, “No person shall enter into the
30 emissions inspection system any vehicle identification information or emission control system
31 identification data for any vehicle other than the one being tested. Nor shall any person

1 knowingly enter into the emissions inspection system any false information about the vehicle
2 being tested.”

3 29. CCR section 3373, states:

4 No automotive repair dealer or individual in charge shall, in filling out an
5 estimate, invoice, or work order, or record required to be maintained by section
6 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
7 information which will cause any such document to be false or misleading, or
8 where the tendency or effect thereby would be to mislead or deceive customers,
9 prospective customers, or the public.

8 **COST RECOVERY**

9 30. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
13 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
14 included in a stipulated settlement.

15 **CLEAN PLUGGING**

16 31. The Bureau initiated an investigation of Respondent Brake Stop based on a review of
17 information from the Bureau’s Vehicle Information Database (VID) to determine if Respondent
18 Brake Stop or its employees had engaged in any fraudulent smog check inspections.

19 32. During a Bureau representative’s review of the smog check station’s certified test
20 results in the VID for inspections purportedly performed on the Smog Check On-Board
21 Diagnostic Inspection System (OIS)¹ between February 2022 and June 2022, Respondent Brake

22 ¹ The On-Board Diagnostic Inspection System (OIS) is a Smog Check testing system to
23 certify 2000 model year vehicles and newer. The OIS consists of a BAR certified Data
24 Acquisition Device (DAD) and other equipment including a computer, bar code scanner, and
25 printer. The OIS uses the California BAR-OIS software to communicate with the BAR's central
26 database through an Internet connection. The bar code scanner is used to input technician,
27 Vehicle Identification Number (VIN), and DMV renewal information. The printer provides a
28 Vehicle Inspection Report containing inspection results for motorists and a Smog Check
Certificate of Compliance number for passing vehicles. The Inspector is required to connect the
Data Acquisition Device to the vehicle to be certified. The Data Acquisition Device is an On
Board Diagnostic scan tool that, when requested by the California BAR-OIS software, retrieves
On Board Diagnostic data from the vehicle. The Data Acquisition Device connects to the
vehicle’s on-board computer through the vehicle's diagnostic link connector (DLC). The Data

1 Stop, along with Respondent Johnson and Respondent Gutierrez, inspected 10 vehicles, identified
2 below, and issued Certificates of Compliance by using the method known as “Clean Plugging”.²

3 This resulted in the issuance of fraudulent Certificates of Compliance for each of the 10 vehicles.

4 33. The VIN that is physically present on all vehicles is also required to be programmed
5 into the vehicle’s OBD-OIS on 2005 and newer vehicles, and on many occasions was
6 programmed into the OBD II system electronic control unit in earlier model-years. This
7 electronically programmed Vehicle Identification Number, also known as the “eVIN,” is captured
8 by the Bureau during a Smog Check, and should match the physical Vehicle Identification
9 Number on the vehicle.

10 34. The OBD II communication protocol describes the specified communication
11 “language” used by the OBD II system electronic control unit (ECU) to communicate to scan
12 tools and other devices such as the OBD-OIS. The communication protocol is programmed into
13 the OBD II system electronic control unit during manufacture and does not change.

14 35. Parameter Identifications (PIDs) are data points reported by the OBD II system ECU
15 to the scan tool or On-Board Diagnostic Inspection System. Examples of PIDs are engine speed
16 (rpm), vehicle speed, engine temperature, and other input and output values utilized by the OBD
17 II system electronic control unit. The PIDs count is the number of data points reported by the
18 OBD II system ECU, and are programmed during manufacture.

19 36. The 10 vehicles that are identified below had information stored in the VID that did
20 not apply to those vehicles. Therefore, 10 fraudulent Certificates of Compliance were issued as
21 follows:

22 a. **Clean Plug # 1**

23 OIS Test Detail indicates that on February 8, 2022, a 2006 Dodge Ram 1500 ST, VIN No.
24 1D7HU18256S623104, CA License No. 17491V2, passed an OIS inspection. Certificate of
25 Compliance SM493691C was issued under Respondent Brake Stop’s smog check station license,

26 Acquisition Device is the only BAR-certified component of the OIS.

27 ² To “clean plug” a vehicle, the smog technician uses another vehicle’s properly
28 functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate
passing diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance
to vehicles that are not in smog compliance or not present during the certified test.

1 and certified under Respondent Johnson's smog technician license. The OIS Test Data for the
2 2006 Dodge Ram 1500 ST shows that the eVIN was reported as JTEDS41A282013967, the
3 communication protocol was transmitted as ICAN11bt5, and the PID count was reported as 46.

4 Comparative OIS Test Data for 2006 Dodge Ram 1500 ST vehicles show that they report
5 an expected PID count of 44/8.

6 The PID value should match between the above-mentioned OIS Test, and the comparative
7 OIS test data. In addition, the transmitted eVIN of JTEDS41A282013967 is actually the VIN of a
8 Japanese made vehicle, a 2008 Toyota Highlander not a Dodge Ram 1500 ST. The discrepancies
9 in the OIS Test Data show that the OIS Data Acquisition Device (DAD) was not connected to the
10 2006 Dodge Ram 1500 ST being certified, causing the issuance of an illegal smog Certificate of
11 Compliance.

12 In addition, the Vehicle Information Database reflects that on August 31, 2021,
13 approximately seven months before Respondents' test, the same 2006 Dodge Ram 1500 ST,
14 license number 17491V2, *failed* an inspection due to an illuminated MIL and numerous
15 diagnostic trouble codes. On August 31, 2021, the VIN number and PID count were consistent
16 with the expected OIS Test Data and Similar Vehicle OIS Test Data.

17 **b. Clean Plug # 2**

18 OIS Test Detail indicates that on February 12, 2022, a 2001 Chevrolet S Truck S10, VIN
19 1GCCS19W618139086, California license 7A16898, passed an OIS inspection. Certificate of
20 Compliance SM493700C was issued under Respondent Brake Stop's smog check station license,
21 and certified under Respondent Gutierrez's smog technician license. The OIS Test Data for the
22 2001 Chevrolet S Truck S10 shows that the eVIN was transmitted as 5TFJU4GN4FX064544, the
23 communication protocol was transmitted as ICAN11bt5, and the PID count was reported as 50.

24 Comparative OIS Test Data for 2001 Chevrolet S Truck S10 vehicles show that they report
25 the expected communication protocol JVPW, and report the expected PID count of 22. Both the
26 wrong VIN number, communication protocol, and PID count were reported in this case.

27 The communication protocol and PID value should match between the above-mentioned
28 OIS Test, and the comparative OIS test data. In addition, the transmitted eVIN of

1 5TFJU4GN4FX064544, is actually the VIN of a 2015 Toyota Tacoma not a 2001 Chevrolet S
2 Truck S10. The discrepancies in the OIS Test Data show that the OIS Data Acquisition Device
3 (DAD) was not connected to the 2001 Chevrolet S Truck S10 being certified, causing the
4 issuance of an illegal smog Certificate of Compliance.

5 In addition, the Vehicle Information Database reflects that on December 19, 2019, the same
6 2001 Chevrolet S Truck S10, license number 7A16898, *passed* a smog check inspection at
7 another station. On December 19, 2019, the VIN number, communications protocol and PID
8 count were consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data.

9 **c. Clean Plug # 3**

10 OIS Test Detail indicates that on March 1, 2022, a 2001 Chevrolet Silverado C1500, VIN
11 1GCEC19V41Z197916, California license 6N33544, passed an OIS inspection. Certificate of
12 Compliance SM903490C was issued under Respondent Brake Stop's smog check station license,
13 and certified under Respondent Gutierrez's smog technician license. The OIS Test Data for 2001
14 Chevrolet Silverado C1500 shows that the eVIN was transmitted as 3GYEK62N66G159504, the
15 communication protocol was transmitted as JVPW, and the PID count was reported as 22.

16 Comparative OIS Test Data for 2001 Chevrolet Silverado C1500 vehicles show that they
17 report the expected communication protocol JVPW, and report the expected PID count of 22 or
18 23. In this case the actual VIN number and eVin did not match but the communication protocols
19 and PID Count did match.

20 The transmitted eVIN of 3GYEK62N66G159504, is actually the VIN of a 2006 Cadillac
21 Escalade EXT not a 2001 Chevrolet Silverado C1500. However since both vehicles are part of
22 the General Motors Corporation, they have similar communication protocols and PID counts.
23 However, the discrepancy in the eVIN shows that the OIS Data Acquisition Device (DAD) was
24 not connected to the 2001 Chevrolet Silverado C1500 being certified, causing the issuance of an
25 illegal smog Certificate of Compliance.

26 In addition, the Vehicle Information Database reflects that on February 22, 2022, the same
27 2001 Chevrolet Silverado C1500, license number 6N33544 was tested at another location and did
28

1 have the correct the VIN number, communications protocol, and PID count, consistent with the
2 expected OIS Test Data and Similar Vehicle OIS Test Data.

3 **Clean Plug # 4**

4 OIS Test Detail indicates that on March 1, 2022, a 2014 Ram 1500 ST, VIN
5 3C6JR6AT9EG102929, California license plate 32986T1, passed an OIS inspection. Certificate
6 of Compliance SM903491C was issued under Respondent Brake Stop's smog check station
7 license, and certified under Respondent Gutierrez's smog technician license. The OIS Test Data
8 for the 2014 Ram 1500 ST shows that the eVIN was reported 3GYEK62N66G159504, the
9 communication protocol was transmitted as JVPW, and the PID count was reported as 22.

10 Comparative OIS Test Data for 2014 Ram 1500 ST vehicles show that the expected
11 communication protocol is ICAN11bt5 not JVPW, and the expected PID count is 43 or 43/12 not
12 the reported PID count of 22. The discrepancies in the OIS Test Data show that the OIS Data
13 Acquisition Device (DAD) was not connected to the 2014 Ram 1500 ST being certified, causing
14 the issuance of an illegal smog Certificate of Compliance.

15 The Vehicle Information Database reflects that on October 28, 2021, a previous OIS test
16 was performed at another smog check station on this same 2014 Ram 1500 ST, VIN
17 3C6JR6AT9EG102929. The PID count, VIN, and the communication protocol were consistent
18 with the expected OIS Test Data and Similar Vehicle OIS Test Data.

19 e. **Clean Plug # 5**

20 OIS Test Detail indicates that on April 6, 2022, a 2011 BMW 740 LI, VIN
21 WBAKB4C51BC392969, California license plate 8MSD983, passed an OIS inspection.
22 Certificate of Compliance SO878301C was issued under Respondent Brake Stop's smog check
23 station license, and certified under Respondent Gutierrez's smog technician license. The OIS
24 Test Data for the 2011 BMW 740 LI show that the reported eVIN was WBAVC53587FZ70863,
25 the communication protocol was transmitted as KWPF, and the PID count was reported as 22/8.

26 Comparative OIS Test Data for 2011 BMW 740 LI vehicles shows that the expected
27 communication protocol ICAN11bt5, not the reported KWPF and the expected PID count of
28 46/16 or 48/13 not the reported PID of 22/8.

1 The PID value and the Communication Protocol should match between the above-
2 mentioned OIS Test, and the comparative OIS test data. The discrepancies in the OIS Test Data
3 show that the OIS Data Acquisition Device (DAD) was not connected to the 2011 BMW 740 LI
4 being certified, causing the issuance of an illegal smog Certificate of Compliance.

5 The Vehicle Information Database reflects that on November 24, 2021, a previous OIS test
6 was performed at another smog check station on this same 2011 BMW 740 LI, VIN
7 WBAKB4C51BC392969. The November 24, 2021, test had the correct eVIN of
8 WBAKB4C51BC392969, the correct communications protocol ICAN11bt5, and the correct PID
9 count was 48/13, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data.

10 f. **Clean Plug # 6**

11 OIS Test Detail indicates that on April 26, 2022, a 2018 Dodge Durango GT, VIN
12 1C4RDHDGXJC149775, passed an OIS inspection. Certificate of Compliance SO878330C was
13 issued under Respondent Brake Stop's smog check station license, and certified under
14 Respondent Gutierrez's smog technician license. The OIS Test Data for the 2018 Dodge
15 Durango GT shows that the eVIN was reported as 1GCFG15X091146147, the communication
16 protocol was transmitted as ICAN11bt5, and the PID count was reported as 43/7.

17 Comparative OIS Test Data for 2018 Dodge Durango GT vehicles shows an expected PID
18 count of 47/12 or 49/12.

19 The PID value and eVIN should match between the above-mentioned OIS Test, and the
20 comparative OIS test data. The discrepancies in the OIS Test Data show that the OIS Data
21 Acquisition Device (DAD) was not connected to the 2018 Dodge Durango GT being certified,
22 causing the issuance of an illegal smog Certificate of Compliance.

23 The transmitted eVIN of 1GCFG15X091146147, is actually the VIN of a 2009 Chevrolet
24 Express G1500 not a 2018 Dodge Durango GT. The discrepancies in the eVIN and PID count
25 show that the OIS Data Acquisition Device (DAD) was not connected to 2018 Dodge Durango
26 GT being certified, causing the issuance of illegal smog Certificate of Compliance.

27 ///

28 ///

1 g. **Clean Plug # 7**

2 OIS Test Detail indicates that on May 7, 2022, 2005 Jeep Grand Cherokee Laredo, VIN
3 1J8HR48N65C539480, passed an OIS inspection. Certificate of Compliance SO878343C was
4 issued under Respondent Brake Stop’s smog check station license, and certified under
5 Respondent Gutierrez’s smog technician license. The OIS Test Data for 2005 Jeep Grand
6 Cherokee Laredo shows that the eVIN transmitted as 3FADP0L37AR355936, the communication
7 protocol was transmitted as ICAN11bt5, and the PID count was reported as 39/14/14.

8 Comparative OIS Test Data for 2005 Jeep Grand Cherokee Laredo vehicles show that they
9 transmit the correct eVIN, and report the expected PID count of 39/8.

10 The PID value and eVIN should match between the above-mentioned OIS Test, and the
11 comparative OIS test data. The discrepancies in the OIS Test Data show that the OIS Data
12 Acquisition Device (DAD) was not connected to 2005 Jeep Grand Cherokee Laredo being
13 certified, causing the issuance of an illegal smog Certificate of Compliance.

14 The Vehicle Information Database reflects that on November 3, 2021, a previous OIS test
15 was performed at another smog check station on this same 2005 Jeep Grand Cherokee Laredo,
16 VIN 1J8HR48N65C539480 and the vehicle passed that inspection. The eVIN, communications
17 protocol and PID count were all consistent with the expected OIS Test Data and Similar Vehicle
18 OIS Test Data.

19 h. **Clean Plug # 8**

20 OIS Test Detail indicates that on May 11, 2022, a 2005 Ford F150 Supercrew, VIN
21 1FTPW12505FA41390, California license plate 7U90779, passed an OIS inspection. Certificate
22 of Compliance IP763304C was issued under Respondent Brake Stop’s smog check station
23 license, and certified under Respondent Gutierrez’s smog technician license. The OIS Test Data
24 for the 2005 Ford F150 Supercrew shows that the eVIN was reported as 1FTPX14556NA12467,
25 the communication protocol was transmitted as ICAN11bt5, and the PID count was reported as
26 44.

27 The PID value and communication protocol matched in this case but the eVIN did not. The
28 transmitted eVIN of 1FTPX14556NA12467, is actually the VIN of a **2006** Ford F150, not a **2005**

1 Ford F150 Supercrew. However since both vehicles are Ford trucks they have similar
2 communication protocols and PID counts. The discrepancy in the eVIN shows that the OIS Data
3 Acquisition Device (DAD) was not connected to a 2005 Ford F150 Supercrew being certified,
4 causing the issuance of an illegal smog Certificate of Compliance.

5 The Vehicle Information Database reflects that on August 29, 2020, a previous OIS test was
6 performed at another smog check station on this same 2005 Ford F150 Supercrew, VIN
7 1FTPW12505FA41390. The eVIN was transmitted as 1FTPW12505FA41390, the PID count
8 and the communication protocol, were all consistent with the expected OIS Test Data and Similar
9 Vehicle OIS Test Data.

10 i. **Clean Plug # 9**

11 OIS Test Detail indicates that on May 23, 2022, a 2004 Ford F150 Supercrew, VIN
12 1FTPW12544KD83530, California license plate 30965M2, passed an OIS inspection. Certificate
13 of Compliance IP763325C was issued under Respondent Brake Stop's smog check station
14 license, and certified under Respondent Gutierrez's smog technician license. The OIS Test Data
15 for the 2004 Ford F150 Supercrew shows that the eVIN was reported as 1FTPX14556NA12467,
16 the communication protocol was transmitted as ICAN11bt5, and the PID count was reported as
17 44.

18 The communication protocol matched in this case but the PID value and the eVIN did not.
19 The transmitted eVIN of 1FTPX14556NA12467 is actually the vin of a **2006** Ford F150. This is
20 the same eVIN and vehicle used in paragraph h, above, to fraudulently represent a 2005 Ford
21 Supercrew. In this case, the **2006** Ford F150 was used to represent the **2004** Ford F150
22 Supercrew. Since both vehicles are Ford trucks they have similar communication protocols and
23 PID counts. The discrepancy in the eVIN shows that the OIS Data Acquisition Device (DAD)
24 was not connected to a 2004 Ford F150 Supercrew being certified, causing the issuance of an
25 illegal smog Certificate of Compliance.

26 The Vehicle Information Database reflects that on November 3, 2020, a previous OIS test
27 was performed at another smog check station on this same 2004 Ford F150 Supercrew, VIN
28 1FTPW12544KD83530. The eVIN was transmitted as 1FTPW12544KD83530, the certified PID

1 count of 27 and the communication protocol of ICAN11BT5 were all consistent with the
2 expected OIS Test Data and Similar Vehicle OIS Test Data.

3 **j. Clean Plug # 10**

4 OIS Test Detail indicates that on June 4, 2022, a 2011 Ford F150 Supercab, VIN
5 1FTEX1EM5BFB96391, passed an OIS inspection. Certificate of Compliance IP763345C was
6 issued under Respondent Brake Stop's smog check station license, and certified under
7 Respondent Gutierrez's smog technician license. The OIS Test Data for the 2011 Ford F150
8 Supercab shows that the eVIN was reported as 1FTPX14556NA12467, the communication
9 protocol was transmitted as ICAN11bt5 and the PID count was reported as 44.

10 The communication protocol and PID value matched in this case but the eVIN did not. The
11 transmitted eVIN of 1FTPX14556NA12467, is actually the vin of a **2006** Ford F150. This is the
12 same eVIN and vehicle used in paragraphs h and i, above, to fraudulently represent a 2005 and
13 2004 Ford F150 Supercrew. In this case, a 2006 Ford F150 was used to represent a **2011** Ford
14 F150 Supercab. Since both vehicles are Ford trucks they have similar communication protocols
15 and PID counts. The discrepancy in the eVIN shows that the OIS Data Acquisition Device
16 (DAD) was not connected to the 2011 Ford F150 Supercab being certified, causing the issuance
17 of an illegal smog Certificate of Compliance.

18 The Vehicle Information Database reflects that on May 20, 2022, a previous OIS test was
19 performed at another smog check station on this same 2011 Ford F150 Supercab, VIN
20 1FTEX1EM5BFB96391. The eVIN was correctly transmitted as 1FTEX1EM5BFB96391, the
21 certified PID count 44, and the communication protocol ICAN11BT5 were all consistent with the
22 expected OIS Test Data and Similar Vehicle OIS Test Data.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 37. Complainant re-alleges and incorporates by reference the allegations set forth above
26 in paragraphs 31-36.

27 38. Respondent Brake Stop's automotive repair dealer registration is subject to
28 disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent Brake

1 Stop made, or authorized statements, which it knew, or in the exercise of reasonable care should
2 have known to be, untrue or misleading, by certifying that vehicles 1 through 10, identified in
3 paragraphs 31-36, above, had passed inspection and were in compliance with applicable laws and
4 regulations when in fact, Respondent conducted the inspections on the vehicles using clean-
5 plugging methods in order to issue smog certificates of compliance for the vehicles, and did not
6 actually test or inspect the vehicles as required by H & S Code section 44012.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 39. Complainant re-alleges and incorporates by reference the allegations set forth above
10 in paragraphs 31-36.

11 40. Respondent Brake Stop's automotive repair dealer registration is subject to
12 disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent Brake
13 Stop committed acts that constitute fraud by issuing electronic smog certificates of compliance
14 for vehicles 1 through 10, identified in paragraphs 31-36, above, without performing bona fide
15 inspections of the emission control devices and systems on the vehicles, thereby depriving the
16 People of the State of California of the protection afforded by the Motor Vehicle Inspection
17 Program.

18 **THIRD CAUSE FOR DISCIPLINE**

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

20 41. Complainant re-alleges and incorporates by reference the allegations set forth above
21 in paragraphs 31-36.

22 42. Respondent Brake Stop's smog check station license is subject to disciplinary action
23 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent Brake Stop failed to
24 comply with the following sections of that Code:

25 a. **Section 44012, subdivision (a):** Respondent Brake Stop failed to ensure that
26 all emission control devices and systems required by law for vehicles 1 through 10, identified in
27 paragraphs 31-36, above, were installed and functioning correctly in accordance with test
28 procedures.

1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 45. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in paragraphs 31-36.

5 46. Respondent Brake Stop’s smog check station license is subject to disciplinary action
6 pursuant to H & S Code section 44072.2, subdivision (d), in conjunction with H & S Code section
7 44072.10, subdivision 10(c), in that Respondent Brake Stop committed dishonest, fraudulent or
8 deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for
9 vehicles 1 through 10, identified in paragraphs 31-36, above, without performing bona fide
10 inspections of the emission control devices and systems on the vehicles, thereby depriving the
11 People of the State of California of the protection afforded by the Motor Vehicle Inspection
12 Program.

13 **SIXTH CAUSE FOR DISCIPLINE**

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

15 47. Complainant re-alleges and incorporates by reference the allegations set forth above
16 in paragraphs 31-36.

17 48. Respondent Johnson’s smog inspector and smog repair technician licenses are subject
18 to disciplinary action pursuant to H & S Code section 44072.2, subdivision (a), in that
19 Respondent Johnson failed to comply with the following sections of that Code:

20 a. **Section 44012, subdivision (a):** Respondent Johnson failed to ensure that all
21 emission control devices and systems required by law for vehicle 1, identified in paragraph 36
22 above, were installed and functioning correctly in accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondent Johnson failed to perform the
24 emission control tests on vehicle 1, identified in paragraph 36 above, in accordance with
25 procedures prescribed by the department.

26 c. **Section 44015, subdivision (b):** Respondent Johnson issued an electronic
27 smog certificate of compliance for vehicle 1, identified in paragraph 36 above, without properly
28

1 testing and inspecting the vehicle to determine if it was in compliance with H & S Code section
2 44012.

3 d. **Section 44059:** Respondent Johnson willfully made false entries for an
4 electronic certificate of compliance for vehicle 1, identified in paragraph 36, above, by certifying
5 that the vehicle had been inspected as required when, in fact, they had not.

6 **SEVENTH CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Regulations)**

8 49. Complainant re-alleges and incorporates by reference the allegations set forth above
9 in paragraphs 31-36.

10 50. Respondent Johnson's smog inspector and smog repair technician licenses are subject
11 to disciplinary action pursuant to H & S Code section 44072.2, subdivision (c), in that
12 Respondent Johnson failed to comply with provisions of California Code of Regulations, Title 16,
13 as follows:

14 a. **Section 3340.24, subdivision (c):** Respondent Johnson falsely or fraudulently
15 issued an electronic smog certificate of compliance for vehicles 1, identified in paragraph 36,
16 above.

17 b. **Section 3340.30, subdivision (a):** Respondent Johnson failed to inspect and
18 test vehicle 1, identified in paragraph 36 above, in accordance with H & S Code sections 44012
19 and 44035, and CCR section 3340.42.

20 c. **Section 3340.41, subdivision (c):** Respondent Johnson entered into the
21 emissions inspection system vehicle identification information or emission control system
22 identification data for a vehicle other than the one being tested for vehicle 1, identified in
23 paragraph 36 above.

24 d. **Section 3340.42:** Respondent Johnson failed to conduct the required smog
25 tests on vehicle 1, identified in paragraph 36 above, in accordance with the Bureau's
26 specifications.

27 **EIGHTH CAUSE FOR DISCIPLINE**

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

1 Division 26 of the Health and Safety Code, in the name of Respondent Johnson may likewise be
2 revoked or suspended by the Director.

3 63. Under H & S Code section 44072.8, if Respondent Justo Antonio Gutierrez's Smog
4 Check Inspector License Number EO 643383 is revoked or suspended, any additional license
5 issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, in the name of
6 Respondent Gutierrez, may likewise be revoked or suspended by the Director.

7 **PRAYER**

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

11 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
12 286092, issued to Brake Stop San Marcos Corporation, dba Brake Stop and Auto Repair; Omar
13 Tapia, President;

14 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
15 Respondent Brake Stop San Marcos Corporation, dba Brake Stop and Auto Repair; Omar Tapia,
16 President;

17 3. Revoking or suspending Smog Check Station License Number RC 286092, issued to
18 Brake Stop San Marcos Corporation, dba Brake Stop and Auto Repair; Omar Tapia, President;

19 4. Revoking or suspending any other license issued pursuant to Health and Safety Code,
20 Chapter 5, of Part 5 of Division 26 issued to Brake Stop San Marcos Corporation, dba Brake Stop
21 and Auto Repair; Omar Tapia, President;

22 5. Revoking or suspending Smog Check Inspector License Number EO 643383, issued
23 to Justo Antonio Gutierrez;

24 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
25 Division 26 of the Health and Safety Code in the name of Justo Antonio Gutierrez;

26 7. Revoking or suspending Smog Check Inspector License Number EO 127690, issued
27 to Philip Norman Johnson;

28

