

**BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**BRAKE STOP SAN MARCOS, CORPORATION, dba BRAKE STOP AND AUTO  
REPAIR; OMAR TAPIA, PRESIDENT**

207 Via Vera Cruz

San Marcos, CA 92078

Automotive Repair Dealer Registration No. ARD 286092

Smog Check Station License No. RC 286092

and

**JUSTO ANTONIO GUTIERREZ**

4211 Tiberon Drive

Oceanside, CA 92056

Smog Check Inspector License No. EO 643383

and

**PHILIP NORMAN JOHNSON**

523 Smoke Tree Glen

Escondido, CA 92026

Smog Check Inspector License No. EO 127690

Smog Check Repair Technician No. EI 127690

Respondents.

Case No. 79/22-8245


OAH No. 2023070284

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on February 2, 2024.

IT IS SO ORDERED this 20 day of December, 2023.



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GRACE ARUPO RODRIGUEZ  
Assistant Deputy Director  
Legal Affairs Division  
Department of Consumer Affairs

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**and**

**JUSTO ANTONIO GUTIERREZ**

**(Smog Check Inspector License No. EO 643383)**

**and**

**PHILIP NORMAN JOHNSON**

**(Smog Check Inspector License No. EO 127690)**

**(Smog Check Repair Technician License No. EI 127690),**

**Respondents**

**Agency Case No. 79/22-8245**

**OAH No. 2023070284**

**PROPOSED DECISION**

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 19, 2023.

Lauro A. Paredes, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs, State of California.

Stephen F. Lopez, Attorney at Law, represented respondent Brake Stop San Marcos, Corp, dba Brake Stop and Auto Repair; Omar Tapia, President.

Respondent Justo Antonio Gutierrez represented himself.

Respondent Philip Norman Johnson failed to file a notice of defense.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 19, 2023.

## FACTUAL FINDINGS

### Background

1. On November 8, 2021, BAR issued Smog Check Inspector License No. EO 643383 to Justo Antonio Gutierrez. The Smog Check Inspector License will expire on December 31, 2023.

2. On February 29, 2017, BAR issued Automotive Repair Dealer Registration No. ARD 286092 to respondent Brake Stop San Marcos Corporation dba Brake Stop and Auto Repair, Omar Tapia, President/Secretary/Treasurer (Brake Stop). The registration will expire on February 29, 2024.

3. On March 1, 2017, BAR issued Smog Check Station License No. RC 286092 to respondent Brake Stop. The license will expire on February 29, 2024.

4. On March 17, 2017, BAR issued STAR station certification to Brake Stop. The certification will remain active until the ARD Registration and/or Smog Check Station License is revoked, cancelled, the licenses become delinquent, or the certification is suspended.

5. On May 9, 2023, complainant signed the accusation in this matter alleging 11 causes for discipline stemming from allegations that respondents issued fraudulent smog certificates for ten different vehicles. Complainant requested revocation of respondents' licenses and registration and recovery of investigation and prosecution costs.

6. Respondents Brake Stop and Mr. Gutierrez timely filed notices of defense, and this hearing followed. Respondent Philip Norman Johnson failed to file a

notice of defense and causes for discipline number six through eight directed to Mr. Johnson are not considered here.

### **California's Smog Check Program**

7. California's smog check program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. A smog check includes a visual inspection and a functional test. The visual inspection of the emission control components verifies the required emission control devices are present and properly connected. The functional tests performed in this case used BAR's On-Board Diagnostic Inspection System (BAR-OIS). Use of the BAR-OIS test has been required on most model-year 2000 and newer vehicles since March 9, 2015.

8. The BAR-OIS consists of a Data Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD is a BAR-OIS scan tool that retrieves diagnostic data from the vehicle's on-board computer system. The DAD connects to the vehicle's diagnostic link connector (DLC) to retrieve data directly from the vehicle and transmit the data to BAR's central Vehicle Information Database (VID) through an internet connection.

9. The VID contains data for all smog check stations and technicians throughout the state, including all inspections and certificates of compliance. It receives passing results immediately after each successful inspection and it transmits an electronic certificate of compliance to the Department of Motor Vehicles (DMV). The VID keeps track of registration data, emissions control system data, smog check history, vehicle profiling data, station and technician data, and certificate data.

10. If the vehicle is 2005 or newer, the vehicle has an eVIN which is programmed into the Powertrain Control Module (PCM). Vehicles prior to 2005, were

not required to have an eVIN, only the digital version of the VIN. The data retrieved and recorded during a BAR-OIS smog check includes the electronic vehicle identification number (eVIN), the communication protocol, and the number of parameter identifications (PIDs). The eVIN is electronically programmed into the PCM of vehicles 2005 or newer and matches the Vehicle Identification Number (VIN) that is physically present on all vehicles. The communication protocol is the specific language used by the vehicle. The communication protocol is programmed into each vehicle's on-board computer system and does not change. PIDs are data points reported by a vehicle's on-board computer system, such as engine speed, vehicle speed, and engine temperature. The PID count is the number of data points a vehicle's on-board system reports. The PIDs are programmed during manufacture, and the PID count for a specific vehicle does not change.

11. The BAR-OIS software makes the determination of whether the vehicle has passed the inspection based on the results of the OBD, visual and functional tests. Once a smog inspection is completed, the technician prints a Vehicle Inspection Report (VIR), which is the physical record of the test results that shows whether the vehicle passed the inspection, and if so, the certificate of compliance number issued to the passing vehicle.

12. BAR has become aware of several methods used by smog check stations and smog check technicians to issue improper/fraudulent smog certificates of compliance. One method is known as "clean plugging." Clean plugging involves using another vehicle's properly functioning OBD system, or another resource, to generate passing diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to vehicles that are not in smog compliance and/or are not present for testing.

## **BAR's Investigation**

13. Ian Evans recently retired from his position with BAR as a Program Representative II Specialist on December 31, 2022. Since that date, he has worked as a consultant for BAR. Mr. Evans testified about his investigation of respondents and his preparation of an investigative report, which was received in evidence.

14. The VID can be searched to obtain data for vehicles of the same make, model, and year to establish the expected PID and communication protocol for all such vehicles. These expected data values can be compared to the data values actually transmitted during a smog test to determine if clean plugging was used for the testing.

15. Mr. Evans conducted a review of the VID data for smog check inspections performed at Brake Stop. The review showed a pattern of vehicles being certified with a different eVIN. The data for the majority of the vehicles certified also contains incorrect communication protocols and incorrect PID amounts. Mr. Evans's review confirmed ten smog check certificates of compliance were fraudulently issued to vehicles using the clean plugging method. In addition, two vehicles were used as substitutes for a total of five vehicles.

Mr. Evans found an identical fraudulent eVIN on tests for vehicles three and four, and an identical fraudulent eVIN on tests for vehicles eight, nine, and ten. He is familiar with swapping a PCM from one vehicle to another, however, the likelihood that the same PCM was in three different vehicles that all happened to be tested within a few days of each other would be extremely low.

16. On cross-examination, Mr. Evans agreed that if the engine, wiring, and PCM from one vehicle were placed in another model vehicle, that vehicle would show

a different VIN number. Mr. Evans stated the conduct here was "egregious," and ten fraudulent tests within a four-month period was significant.

### **VEHICLE NO. 1 – 2006 DODGE RAM 1500 ST**

17. On February 8, 2022, a 2006 Dodge Ram 1500 ST (Dodge Ram) was tested at Brake Stop, and smog certificate no. SM493691C was issued under Mr. Johnson's Smog Check Inspector License. OIS Test Data for the Dodge Ram showed the eVIN transmitted ending in 3967, the communication protocol was ICAN11bt5, and the PID count was 46.

Comparative OIS Test Data for the same year, make, and model vehicle show they transmitted the correct eVIN ending in 3104, the communication protocol was ICAN11bt5, and the PID count was 44/8. On August 31, 2021, a smog test was performed on this same Dodge Ram at another smog inspection station. At the time of the inspection, the eVIN transmitted as ending in 3104, the communication protocol was ICAN11bt5, and the PID count was 44/8, all consistent with the comparative test data. In that previous test, the vehicle failed inspection.

Additionally, the OIS Test Data shows that a 2008 Toyota Highlander (Highlander), VIN ending in 3967, was the vehicle used to generate the fraudulent smog certificate for the Dodge Ram. The Highlander was certified by Mr. Johnson at Brake Stop on July 29, 2020. The OIS Test Data transmitted for the Highlander matches the OIS Test Data for the fraudulent inspection of the Dodge Ram.

The actual expected data for the Dodge Ram matched the data transmitted in the 2021 smog check of this vehicle but did not match the data transmitted in 2022 by Brake Stop. The discrepancies in the OIS Test Data prove the OIS DAD was not

connected to the Dodge Ram being certified at Brake Stop, and that Brake Stop issued the certificate of compliance fraudulently utilizing clean plugging.

### **VEHICLE NO. 2 – 2001 CHEVROLET S TRUCK S10**

18. On February 12, 2022, a 2001 Chevrolet S Truck S10 (S10) was tested at Brake Stop, and smog certificate no. SM493700C was issued under Mr. Gutierrez's Smog Check Inspector License. OIS Test Data for the S10 showed the eVIN transmitted ending in 4544, the communication protocol was ICAN11bt5, and the PID count was 50.

Comparative OIS Test Data for the same year, make, and model vehicle show they transmitted the correct eVIN ending in 9086, the communication protocol is JVPASSWORD, and the PID count is 22. On December 19, 2019, a smog test was performed on this same S10 at another smog check station. At the time of the inspection, the eVIN transmitted ending in 9086, the communication protocol was JVPASSWORD, and the PID count was 22, all consistent with the comparative test data.

Additionally, the OIS Test Data shows that a 2015 Toyota Tacoma Double Cab PreRunner (Tacoma), VIN ending in 4544, was the vehicle used to generate the fraudulent smog certificate for the S10. The Tacoma was certified at a different smog check station on September 16, 2020. The OIS Test Data transmitted for the Tacoma matches the OIS Test Data for the fraudulent inspection of the S10 for the eVIN, communication protocol, and PID count.

The actual expected data for the S10 matched the data transmitted in the 2020 smog check of this vehicle but did not match the data transmitted in 2022 by Brake Stop. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to

the S10 being certified at Brake Stop, and that Brake Stop issued the certificate of compliance fraudulently utilizing clean plugging.

### **VEHICLE No. 3 – 2001 CHEVROLET SILVERADO C1500**

19. On March 1, 2022, a 2001 Chevrolet Silverado C1500 (Silverado) was tested at Brake Stop, and smog certificate no. SM903490C was issued under Mr. Gutierrez's Smog Check Inspector License. The OIS Test Data for the Silverado shows the eVIN transmitted ending in 9504, the communication protocol was JVPASSWORD, and the PID count was 22.

Comparative OIS Test Data for the same year, make, and model vehicle showed they transmitted the correct eVIN ending in 7916, the communication protocol of JVPASSWORD, and the PID count of 22 or 23. On February 22, 2022, a test was performed on this same Silverado at another smog check station. At the time of the inspection, the eVIN transmitted ending in 7916, the communication protocol was JVPASSWORD, and the PID count was 23, all consistent with the comparative test data.

Additionally, the OIS Test Data shows that a 2006 Cadillac Escalade EXT (Escalade), VIN ending in 9504, was the vehicle used to generate the fraudulent smog certificate for the Silverado. The Escalade was certified at Brake Stop by Mr. Johnson on January 29, 2021. The OIS Test Data transmitted for the Escalade matches the OIS Test Data for the fraudulent inspection of the Silverado.

The actual expected data for the Silverado matched the data transmitted in the February 2022 smog check of this vehicle but did not match the data transmitted in March 2022 by Brake Stop. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the Silverado being certified at Brake Stop, and that Brake Stop issued the certificate of compliance fraudulently utilizing clean plugging.

#### **VEHICLE No. 4 – 2014 RAM 1500 ST**

20. On March 1, 2022, a 2014 Ram 1500 ST (Ram 1500) was tested at Brake Stop, and smog certificate no. SM903491C was issued under Mr. Gutierrez's Smog Check Inspector License. The OIS Test Data for the Ram 1500 showed the eVIN transmitted ending in 9504, the communication protocol was JVPASSWORD, and the PID count was 23.

Comparative OIS Test Data for the same year, make, and model vehicle show they transmitted the correct eVIN ending in 2929, the communication protocol is ICAN11bt5, and the PID count is 43 or 43/12. On October 28, 2021, a smog test was performed on this same Ram 1500 at another smog check station. At the time of the inspection, the eVIN transmitted ending in 2929, the communication protocol was ICAN11bt5, and the PID count was 43, consistent with the comparative test data. In that previous test, the vehicle failed inspection.

Additionally, a 2006 Cadillac Escalade EXT (Escalade), VIN ending in 9504, was the vehicle used to generate the fraudulent smog certificate for the Ram 1500. The Escalade was certified at Brake Stop by Mr. Johnson on January 29, 2021. The OIS Test Data transmitted for the Escalade matches the OIS Test Data for the fraudulent inspection of the Ram 1500.

The actual expected data for the Ram 1500 matched the data transmitted in the 2021 smog check of this vehicle but did not match the data transmitted in 2022 by Brake Stop. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the Ram 1500 being certified at Brake Stop, and that Brake Stop issued the certificate of compliance fraudulently utilizing clean plugging.

## **VEHICLE No. 5 – 2011 BMW 740 LI**

21. On April 6, 2022, a 2011 BMW 740 LI (BMW 740) was tested at Brake Stop, and smog certificate no. SO878301C was issued under Mr. Gutierrez's Smog Check Inspector License. OIS Test Data for the BMW 740 shows that the eVIN transmitted ending in 0863, the communication protocol was KWPF, and the PID count was 22/8.

Comparative OIS Test Data for the same year, make, and model vehicle showed they transmitted the correct eVIN ending in 2929, the communication protocol of ICAN11bt5, and a PID count of 46/16 or 48/13. On November 24, 2021, a test was performed on this same BMW 740 at a different smog check station. At the time of the inspection, the eVIN transmitted ending in 2929, the communication protocol was ICAN11bt5, and the PID count was 48/13, all consistent with the comparative test data. In that previous test, the vehicle failed inspection.

Additionally, the OIS Test Data shows that a 2007 BMW 328i SULEV (BMW 328i), VIN ending in 0863, was the vehicle used to generate the fraudulent smog certificate for the BMW 740. The BMW 328i was certified by Mr. Johnson at Brake Stop on December 27, 2021. The OIS Test Data transmitted for the BMW 328i matches the OIS Test Data for the fraudulent inspection of the BMW 740.

The actual expected data for the BMW 740 matched the data transmitted in the April 2022 smog check of this vehicle but did not match the data transmitted in March 2022 by Brake Stop. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the BMW 740 being certified at Brake Stop, and that Brake Stop issued the certificate of compliance fraudulently utilizing clean plugging.

## **VEHICLE NO. 6 – 2018 DODGE DURANGO GT**

22. On April 26, 2022<sup>1</sup>, a 2018 Dodge Durango GT (Durango) was tested at Brake Stop, and smog certificate no. SO878330C was issued under Mr. Gutierrez's Smog Check License. The OIS Test Data for the Durango shows that the eVIN was transmitted ending in 6147, the communication protocol was ICAN11bt5, and the PID count was 43/7.

Comparative OIS Test Data for the same year, make, and model vehicle show they transmit the correct eVIN ending in 9775, the communication protocol is ICAN11bt5, and the PID count is 47/12 or 49/12.

OIS Test Data shows that a 2005 Chevrolet Express G1500 (Chevrolet Express), VIN ending in 6147, was the vehicle used to generate the fraudulent smog certificate for the Durango. The Chevrolet Express was certified at a different smog station on July 5, 2021. The OIS Test Data transmitted for the Chevrolet Express matches the OIS Test Data for the fraudulent inspection of the Durango.

The actual expected data for the Durango matched the data transmitted in the 2021 smog check of this vehicle but did not match the data transmitted by Mr. Gutierrez in 2022, and that Mr. Gutierrez issued the certificate of compliance fraudulently utilizing clean plugging.

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<sup>1</sup>The Accusation states this test was conducted on November 11, 2019, however, the VIR and OIS Test Detail for this inspection shows that the test was conducted and the certificate was issued on April 26, 2022.

## **VEHICLE No. 7 – 2005 JEEP GRAND CHEROKEE LAREDO**

23. On May 7, 2022,<sup>2</sup> a 2005 Jeep Grand Cherokee Laredo (Jeep Laredo) was tested at Brake Stop, and smog certificate no. SO878343C was issued under Mr. Gutierrez's Smog Check Inspector License. The OIS Test Data for the Jeep Laredo shows that the eVIN was reported as 5936, the communication protocol was ICAN11bt5, and the PID count was 39/14/14.

Comparative OIS Test Data for the same year, make, and model vehicle show they transmit the correct eVIN ending in 9480, the communication protocol of ICAN11bt5, and a PID count of 39/8. On November 3, 2021, a test was performed on this same Jeep Laredo at a different smog check facility, and the correct eVIN ending in 9480, the communication protocol of ICAN11bt5, and a PID count of 39/8 were transmitted, all consistent with the comparative test data.

Additionally, OIS Test Data shows that a 2010 Ford Fusion Hybrid, VIN ending in 5936, which was certified at Brake Stop by Mr. Gutierrez on the same day, May 7, 2022, was the vehicle used to generate the fraudulent smog certificate for the Jeep Laredo. The OIS Test Data transmitted for the 2010 Ford Fusion Hybrid matches the OIS Test Data for the fraudulent inspection of the Jeep Laredo.

The actual expected data for the Jeep Laredo matched the data transmitted in the 2021, smog check of this vehicle but did not match the data transmitted in 2022 by Brake Stop. The discrepancies in the OIS Test Data prove the OIS DAD was not

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<sup>2</sup>The Accusation states this test was conducted on December 21, 2019, however, the VIR and OIS Test Detail for this inspection shows that the test was conducted and the certificate was issued on May 7, 2022.

connected to the Jeep Laredo being certified at Brake Stop, and that Brake Stop issued the certificate of compliance fraudulently utilizing clean plugging.

**VEHICLE NO. 8 – 2005 FORD F150 SUPERCREW**

24. On May 11, 2022, a 2005 Ford F150 Supercrew (2005 Ford Supercrew) was tested at Brake Stop, and smog certificate no. IP763304C was issued under Mr. Gutierrez's Smog Check Inspector License. The OIS Test Data for the 2005 Ford Supercrew shows that the eVIN was reported as 2467, the communication protocol was ICAN11bt5, and the PID count was 44.

Comparative OIS Test Data for the same year, make, and model vehicle show they transmit the correct eVIN ending in 1390, the communication protocol of ICAN11bt5, and a PID count of 44. On August 29, 2020, a test was performed on this same 2005 Ford Supercrew at a different smog check facility, and the correct eVIN ending in 1390, the communication protocol of ICAN11bt5, and a PID count of 44 were transmitted, all consistent with the comparative test data.

Additionally, OIS Test Data shows that a 2006 Ford F150, VIN ending in 2467, which was certified at Brake Stop by Mr. Gutierrez on February 10, 2022, was the vehicle used to generate the fraudulent smog certificate for the 2005 Ford Supercrew. The OIS Test Data transmitted for the 2006 Ford F150 matches the OIS Test Data for the fraudulent inspection of the 2005 Ford Supercrew.

The actual expected data for the 2005 Ford Supercrew matched the data transmitted in the February 2022 smog check of this vehicle but did not match the data transmitted in May 2022 by Brake Stop. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2005 Ford Supercrew being certified at

Brake Stop, and that Brake Stop issued the certificate of compliance fraudulently utilizing clean plugging.

**VEHICLE No. 9 – 2004 FORD F150 SUPERCREW**

25. On May 23, 2022,<sup>3</sup> a 2004 Ford F150 Supercrew (2004 Ford Supercrew) was tested at Brake Stop, and smog certificate no. 1P763325C was issued under Mr. Gutierrez's Smog Check Inspector License. The OIS Test Data for the 2004 Ford F150 shows the eVIN was transmitted as ending in 2467, the communication protocol was ICAN11bt5, and the PID count was 44.

Comparative OIS Test Data for the same year, make, and model vehicle show they transmit the correct eVIN ending in 3530, the communication protocol of ICAN11bt5, and a PID count of 27. On November 3, 2020, a test was performed on this same 2004 Ford Supercrew at a different smog check facility, and the correct eVIN ending in 3530, the communication protocol of ICAN11bt5, and a PID count of 44 were transmitted, all consistent with the comparative test data.

Additionally, OIS Test Data shows that a 2006 Ford F150, VIN ending in 2467, which was certified at Brake Stop by Mr. Gutierrez on February 10, 2022, was the vehicle used to generate the fraudulent smog certificate for the 2004 Ford Supercrew. The OIS Test Data transmitted for the 2006 Ford F150 matches the OIS Test Data for the fraudulent inspection of the 2004 Ford Supercrew.

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<sup>3</sup>The Accusation states this test was conducted on January 27, 2020, however, the VIR and OIS Test Detail for this inspection shows that the test was conducted and the certificate was issued on May 23, 2022.

The actual expected data for the 2004 Ford Supercrew matched the data transmitted in the 2020 smog check of this vehicle but did not match the data transmitted in May 2022 by Brake Stop. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2004 Ford Supercrew being certified at Brake Stop, and that Brake Stop issued the certificate of compliance fraudulently utilizing clean plugging.

### **VEHICLE NO. 10 – 2011 FORD F150 SUPER CAB**

26. On June 4, 2022, a 2011 Ford F150 Super Cab (2011 Ford F150) was tested at Brake Stop, and smog certificate no. 1P763345C was issued under Mr. Gutierrez's Smog Check Inspector License. The OIS Test Data for the 2011 Ford F150 shows the eVIN was transmitted as ending in 2467, the communication protocol was ICAN11bt5, and the PID count was 44.

Comparative OIS Test Data for the same year, make, and model vehicle show they transmit the correct eVIN ending in 6391, the communication protocol of ICAN11bt5, and a PID count of 44. On May 20, 2022, a test was performed on this same 2011 Ford F150 at a different smog check facility, and the correct eVIN ending in 6391, the communication protocol of ICAN11bt5, and a PID count of 44 were transmitted, all consistent with the comparative test data. The vehicle failed this previous smog test.

Additionally, OIS Test Data shows that a 2006 Ford F150, VIN ending in 2467, was the vehicle used to generate the fraudulent smog certificate for the 2011 Ford F150, which was certified at Brake Stop by Mr. Gutierrez on February 10, 2022. The OIS Test Data transmitted for the 2006 Ford F150 matches the OIS Test Data for the fraudulent inspection of the 2011 Ford F150.

The actual expected data for the 2011 Ford F150 matched the data transmitted in the May 2022 smog check of this vehicle but did not match the data transmitted in June 2022 by Brake Stop. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2011 Ford F150 being certified at Brake Stop, and that Brake Stop issued the certificate of compliance fraudulently utilizing clean plugging.

### **Testimony of Respondent Gutierrez**

27. Respondent Gutierrez was called as a witness for complainant. Mr. Gutierrez began working at Brake Stop's San Marcos location in September 2020. He did not have a smog license. When he was given the opportunity to obtain his license, he attended classes, and passed the exam in 2021. Brake Stop had facilities in San Marcos, Escondido and Poway. He worked primarily in the San Marcos location. There were two smog technicians. He was "the low guy" and there was also a master tech. "Norbert" is the shop manager. Mr. Gutierrez did more than ten smog inspections at the Poway location and he worked in Escondido "a handful of times."

Mr. Gutierrez learned in training that he could not share his password with anyone. At some point Norbert told him to leave his ID and password at the San Marcos location. He left them under the keyboard by the smog machine. He later said he may have only left his ID number. He did not leave his ID and password at any other Brake Stop facility, He "kind of felt obligated" to leave his ID and password when he was at the Escondido facility. He said he knew that giving his ID and password to another person was wrong but he did it.

Mr. Gutierrez quit his job at Brake Stop in August 2022. He did not like the management. He was treated with disrespect and he felt he was worth more. He left before he was served the Accusation. He had no idea there was a problem.

He understands what clean plugging is but he never did any and did not know it was happening on his account. He never did a smog check using anyone else's number. There were times that Norbert told him that he (Norbert) had done a smog check while Mr. Gutierrez was at lunch and Mr. Gutierrez would then sign that he had done the smog check. He understands that he was signing under penalty of perjury and that he lied and this was wrong. Later when he was asked if a signature on a VIR was his, he said, "I wouldn't sign off if I didn't do it." He was asked if he had in fact conducted the smog test for VIRs that contain his signature, and he responded, "I honestly don't know."

28. At the close of his testimony, Mr. Gutierrez said he wanted to leave the hearing. The undersigned told him that he had a right to testify on his own, to hear the testimony of other witnesses, and to cross examine other witnesses. He said he was going to leave and then left the hearing.

## **Respondent Brake Stop's Evidence**

### **TESTIMONY OF MARYANNE MIKUS**

29. Maryanne Mikus is the office manager at Brake Stop. Mr. Gutierrez joined Brake Stop in September 2020. He passed his smog inspector exam in early 2022. Mr. Johnson was working as a smog technician at that time; Alex S. worked as a smog tech from May 2022 through July 2022. Norberto (Norbert) Buenrostro was the shop manager. Mr. Gutierrez was occasionally sent to cover smog inspections at other Brake Shop facilities. Mr. Gutierrez came in late on a regular basis and took too long to do his work. On August 2, 2022, she met with him and discussed these issues. He quit four days later, on August 6, 2022.

Brake Shop uses a shop management software which contains records of all vehicles that have been worked on at their facility. The information include customer information, license plate numbers, VINs, services provided, and a written estimate or invoice given to the customer. Ms. Mikus reviewed these records and found no record of any of the ten subject vehicles and no record of any of the vehicles that were used to do the clean plugging. She does not keep track of the number of smog certificates issued versus the number of smog tests done. She is not aware if anyone at Brake Stop does this.

### **TESTIMONY OF RICHARD CARDONA**

30. Brake Stop San Marcos is owned by Brake Stop San Marcos, Corp. Brake Stop Escondido and Brake Stop Poway are not owned by the same entity.

Mr. Cardona joined Brake Stop in 2008 and is currently Chief Operations Officer. He has an Automotive Service Excellence (ASE) certification. He was a master tech from 1987 through 2002 but his license has since lapsed. In 2002 he became an executive officer. He oversees employees and ensures that employees are working to the best standards possible for the company. He occasionally supervises smog inspectors. He does not have a smog license and has never issued a smog certificate.

Between 1,800 and 3,000 smog checks are conducted at Brake Stop per year. There were no clean plugging allegations in 2021 or 2023, only 2022 when Mr. Gutierrez and Mr. Johnson were performing smog inspections. Norbert, the shop manager, left Brake Stop before Brake Stop was served with this Accusation. Mr. Johnson left Brake Stop between June and September 2022.

When the smog certificate count gets down to five certificates remaining, the smog machine automatically purchases additional certificates.

Mr. Cardona said it is not unusual for an engine to be swapped from one type of vehicle to another type of vehicle. He has swapped an engine from a vehicle of one manufacturer and placed it into an entirely different vehicle more than 10 times. The OBD system wiring harness must also be transferred. The process takes "from .3 hours to two hours to complete." He said this could explain how the same eVIN appeared on several different vehicle. He said this could also be caused by clean plugging.

31. On cross-examination, Mr. Cardona was asked how the same eVIN could have been in three different tests with vehicles nos. 8, 9, and 10. Mr. Cardona said there are multiple ways this could happen, such as the same car and the same computer were used for all three tests. Mr. Cardona was asked if he disagreed with Mr. Evans's opinion that there were three different vehicles used for the three tests, and Mr. Cardona stated that he does not disagree.

Brake Stop does not cross-reference the number of certificates purchased with the number of smog inspections conducted. Mr. Cardona does not check the certificates because he said there is no need to do so. He cannot confirm that the ten subject certificates were issued by Brake Stop because there is no way to print certificates after 90 days, and there is no information regarding these certificates in Brake Stop's database.

Mr. Cardona was asked if he had made any changes to his company as a result of this accusation. He stated that he is trying to hold each smog technician responsible for their actions. The mechanics are now overseeing the smog technicians. The shop will have more than one person looking at a vehicle while it is being smogged. Mr. Cardona said the shop manager supervises the smog technicians and he (Mr. Cardona) supervises the shop manager.

## **Cost Recovery**

32. Complainant sought recovery of costs of investigation and prosecution in this matter.

33. BAR produced two declarations regarding investigative costs. The first declaration was signed by Mark Casillas, Program Representative III, supervisor, dated June 14, 2022, and included a two-page attachment listing the dates for hours of service, the hours spent on each date, and the activity performed for each date at a rate of \$107.14 per hour, for a total of \$803.55. The second declaration was signed by Ian Evans, Program Representative II Specialist, dated June 14, 2022, and included a one-page attachment listing the dates for hours of service, the hours spent on each date, and the activity performed for each date at a rate of \$89.37 per hour, for a total of \$1,787.40. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and the \$2,590.95 total investigative costs requested were reasonable.

34. The Deputy Attorney General who tried this matter submitted a declaration requesting prosecution costs of \$12,081.25 through October 16, 2023. Attached to the declaration was a document entitled "Master Time Activity by Professional Type" that identified the tasks performed, the time spent on each task, and the hourly rate of the persons performing the tasks. The declaration and the attachment seeking prosecution costs of \$12,081.25 complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(2), and those costs were reasonable.

35. The total reasonable costs of investigation and prosecution in this matter are \$14,672.20.

## LEGAL CONCLUSIONS

### Burden and Standard of Proof

1. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses, the preponderance of the evidence standard of proof applies. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) Although an applicant for smog check inspector and repair technician licenses must complete certain coursework (Cal. Code Regs., tit. 16, § 3340.28, subd. (b)(3)) and pass an examination (Cal. Code Regs., tit. 16, § 3340.29), such requirements are not similar to the extensive educational, training and testing requirements necessary to obtain a professional license. Smog check inspection licenses and an automotive repair dealer registration are nonprofessional or occupational licenses, and proceedings to revoke such licenses are governed by the preponderance of evidence standard of proof. (*Imports Performance, supra*, at pp. 916-917.)

### Applicable Code Sections

2. Under Health and Safety Code section 44072.2, subdivisions (a), (c) and (d), the licenses of a smog test station and a smog check inspector can be disciplined for violating any statutes or regulations related to the license, or for committing any act involving dishonesty, fraud, or deceit whereby another is injured.

3. Business and Professions Code section 9884.7 provides in part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend,

revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

[1] . . . [1]

(4) Any other conduct that constitutes fraud.

[1] . . . [1]

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

4. Health and Safety Code section 44012 requires that a smog vehicle inspection be performed in accordance with BAR's regulations.

5. Health and Safety Code section 44015, subdivision (b), provides that "if a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

6. Health and Safety Code section 44059 provides that the willful making of any false statement or entry with regard to a material matter in a certificate of compliance constitutes perjury.

7. Health and Safety Code section 44072.2 provides, in part:

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

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

[1] . . . [1]

(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. . . .

8. Health and Safety Codes section 44072.10, subdivision (c), provides in part:

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. . . .

[¶] . . . [¶]

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

### **Applicable Regulations**

9. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides:

The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

10. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides that a smog check inspector or repair technician must inspect and test vehicles in accordance with Health and Safety Code sections 44012 and 44035.

11. California Code of Regulations, title 16, section 3340.35, subdivision (c), requires a smog station to issue a certificate of compliance or non-compliance when a vehicle has been inspected according to California Code of Regulations, title 16, section 3340.42, and has all of the required emission control equipment and devices installed and functioning correctly.

12. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides:

No person shall enter any vehicle identification information or emission 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.

13. California Code of Regulations, title 16, section 3340.42 states in part:

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. . . .

14. 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 10 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.

### **Case Law Regarding Fraud**

15. "There is no absolute or fixed rule for determining what facts will constitute fraud; whether or not it is found depends upon the particular facts of the case under inquiry. Fraud may be proved by direct evidence or it may be inferred from all of the circumstances in the case." (*Ach v. Finkelstein* (1968) 264 Cal.App.2d 667, 674-675.)

In an appeal from an administrative proceeding regarding a private investigator's license, the appellate court explained "[f]raud embraces multifarious means whereby one person gains an advantage over another and means in effect bad faith, dishonesty or overreaching. . . . 'It is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get an advantage over another. No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling and unfair ways by which another is cheated.' [Citations.]" (*Wayne v. Bureau of Private Investigators and Adjusters, Department of Professional and Vocational Standards* (1962) 201 Cal.App2d 427, 437-438.)

### **Responsibility for Conduct of Employees**

16. The law is well established that licensees who elect to operate their businesses through employees are responsible to the licensing authority for the conduct of their employees. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal3d 347, 360.) This rule is consistent with the law governing principal-agent liability contained in Civil Code section 2330 that "[a]n agent represents his principal for all purposes within the scope of his actual or ostensible authority. . . ." It is also consistent with the doctrine of respondeat superior codified in Civil Code section 2338, which provides that "a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal."

## **Disciplinary Guidelines**

17. California Code of Regulations, title 16, section 3395.4, provides that in reaching a decision on a disciplinary action, BAR must consider the disciplinary guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Rev. March 2016].

The guidelines state that factors in aggravation include a history of citations and/or formal disciplinary action; the failure to comply with BAR's request for corrective action; and conduct which constitutes fraud or gross negligence. Factors in mitigation include: evidence that a licensed station has initiated steps to minimize recurrence; evidence of resolution of consumer complaints with a subsequent change in business practices; and evidence of implementing internal controls or audits designed to eliminate errors.

18. The guidelines contain recommendations for the minimum and maximum discipline for the following violations:

For violation of Business and Professions Code section 9884.7, subdivision (a)(4), or Health and Safety Code section 44072.2, subdivision (d), the recommended discipline ranges from revocation to revocation stayed with a period of five years' probation.

For violation of Business and Professions Code section 9884.7, subdivision (a)(1), the recommended discipline ranges from revocation to revocation stayed with a period of three years' probation.

For a violation of Health and Safety Code section 44072.2, subdivisions (a) and (c), the recommended discipline ranges from revocation to revocation stayed with a period of two years' probation.

## **Evaluation**

19. California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. The state and the public rely upon smog check stations and technicians to honestly and properly conduct smog tests and repairs to ensure that vehicle emissions are reduced and air quality is improved. Additionally, consumers rely upon automotive repair dealers and their employees to act with honesty and integrity when diagnosing and making automotive repairs. Because the consuming public entrusts their vehicles to automotive repair dealers for repair, consumers are vulnerable to harm when automotive repair dealers and their employees are dishonest.

20. A preponderance of the evidence demonstrated that for the subject smog inspections performed by Mr. Gutierrez and Mr. Johnson on behalf of Brake Stop, there were significant differences between the OIS data reported to BAR and the inspection results obtained from samplings of the same make, model and year vehicle being tested, and between the OIS data reported to BAR in prior or subsequent inspections of the same vehicles. The results in the prior or subsequent inspections were consistent with the expected results, further demonstrating that fraudulent inspections occurred.

21. Brake Stop authorized untrue and misleading statements which they knew or should have known were misleading when they certified that the subject vehicles had been tested and were in compliance, when they had instead been clean

plugged. Because of these false or misleading statements, fraudulent electronic certifications were issued. A preponderance of the evidence established that the subject vehicles were clean plugged by Brake Stop's employees.

Mr. Evans credibly testified that his investigation revealed an identical fraudulent eVIN on tests for two vehicles and an identical fraudulent eVIN on tests for three other vehicles. Mr. Cardona said this could have been the result of the same car and the same computer being used for all three tests, but he did not disagree with Mr. Evans's opinion that different vehicles were used. The BAR's investigation confirmed ten smog check certificates of compliance were fraudulently issued to vehicles using the clean plugging method. Mr. Cardona acknowledged that this could be the result of clean plugging.

As the employer and owner of the ARD registration and smog station license, Brake Stop is responsible for the conduct of its employees. Rehabilitation begins with taking responsibility. Rather than accepting responsibility for Mr. Gutierrez and Mr. Johnson's actions, Mr. Cardona explained ways other than clean plugging that could have resulted in the same eVIN for more than one vehicle. As COO of Brake Stop, he is ultimately responsible for overseeing all employees, including the smog inspectors. The VIRs for the fraudulent smog inspections listed Brake Stop as the facility where the inspections were done and the certificates were issued. Mr. Cardona said he was not able to verify that these inspections were done at Brake Stop because more than 90 days had passed and he could not find these vehicles in the Brake Stop's database.

22. Mr. Gutierrez stated that he would never sign off on something that he had not done. A few minutes later, while reviewing a VIR that he acknowledged he had signed, he said he could not say for sure whether he had performed the inspection. He then admitted that he had that he had signed off on an inspection that he had not

performed, and that he left his ID and password for others to use. He said he knew this was wrong.

Mr. Gutierrez engaged in a pattern and practice of fraudulently clean plugging when he clean plugged at least nine vehicles over the course of four months. The conduct of Mr. Gutierrez and that of Brake Stop undermined the smog check program and displayed a disregard for the code sections and regulations governing smog inspections.

23 A preponderance of the evidence demonstrated that Mr. Gutierrez and Brake Stop violated the laws and regulations concerning the operation of the smog inspection program by clean plugging vehicles and issuing certificates that falsely certified the vehicles had passed a properly conducted smog inspection.

24. Regarding Mr. Gutierrez, due to the fraudulent nature of the conduct and the lack of any mitigating evidence, the only appropriate discipline under the circumstances is revocation of Mr. Gutierrez's license.

Regarding Brake Stop's ARD certification and smog station license, due to the fraudulent nature of the conduct, the lack of any mitigating evidence, and in light of the evidence presented, the appropriate discipline under the circumstances is revocation.

### **Cause Exists to Discipline the Licensees**

25. First Cause for Discipline. Cause exists to discipline Brake Stop's automotive repair dealer registration under Health and Safety Code section 9884.7, subdivision (a)(1), because Brake Stop made or authorized statements which it knew, or in the exercise of reasonable care should have known to be, untrue and misleading,

by certifying that the subject vehicles had passed inspection and were in compliance with applicable laws and regulations, when in fact Brake Stop conducted the inspections on the vehicles using clean-plugging methods in order to issue smog certificates for the vehicles, and did not actually test or inspect the vehicles.

26. Second Cause for Discipline. Cause exists to discipline Brake Stop's automotive repair dealer registration under Health and Safety Code section 9884.7, subdivision (a)(4), because Brake Stop committed fraud by issuing electronic smog certificates for the ten subject vehicles without bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

27. Third Cause for Discipline. Cause exists to discipline Brake Stop's smog check station license under Health and Safety Code section 44072.2, subdivision (a), because Brake Stop failed to comply with the following sections of the Health and Safety Code: section 44012, subdivision (a), by failing to ensure that the emission control tests for the subject vehicles were installed and functioning correctly in accordance with test procedures; section 44012, subdivision (f), by failing to ensure that the emission control tests for the subject vehicles were performed in compliance with procedures prescribed by BAR; section 44015, subdivision (b), by issuing electronic smog certificates for the subject vehicles without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012; and section 44059, by willfully making false entries for electronic certificates of compliance for the subject vehicles by certifying that the vehicles had been inspected as required when, in fact, they had not.

28. Fourth Cause for Discipline. Cause exists to discipline Brake Stop's smog check station license under Health and Safety Code section 44072.2, subdivision (c),

because Brake Stop failed to comply with provisions of California Code of Regulations, title 16, as follows: section 3340.35, subdivision (c), when Brake Stop issued smog certificates for the subject vehicles even though the vehicles had not been inspected in accordance with section 3340.42; section 3340.42 when Brake Stop failed to ensure that the required smog tests were conducted on the subject vehicles in accordance with BAR specifications; and section 3373 when Brake Stop created a false and misleading record by issuing documents that were false and misleading.

29. Fifth Cause for Discipline. Cause exists to discipline Brake Stop's smog check station license under Health and Safety Code section 44072.2, subdivision (d), because Brake Stop committed dishonest, fraudulent or deceitful acts whereby another was injured by issuing electronic certificates of compliance for the subject vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

30. Ninth Cause for Discipline. Cause exists to discipline Mr. Gutierrez's smog inspector license under Health and Safety Code section 44072.2, subdivision (a), because Mr. Gutierrez failed to comply with the following sections of that Code: section 44012, subdivision (a), when Mr. Gutierrez failed to ensure that all emission control devices and systems required by law for subject vehicles two through ten were installed and functioning correctly in accordance with test procedures; section 44012, subdivision (f), when Mr. Gutierrez failed to perform the emission control tests on subject vehicles two through ten without properly testing and inspecting the vehicles to determine if it was in compliance with Health and Safety Code section 44012; and section 44059, when Mr. Gutierrez made false entries for electronic smog certificates

for subject vehicles two through ten by certifying that the vehicle had been inspected as required when, in fact, they had not.

31. Tenth Cause for Discipline. Cause exists to discipline Mr. Gutierrez's smog inspector license under Health and Safety Code section 44072.2, subdivision (c), because Mr. Gutierrez failed to comply with provisions of California Code of Regulations, title 16, as follows: section 3340.24, subdivision (c), when he falsely or fraudulently issued an electronic smog certificate of compliance for subject vehicles two through ten; section 3340.30, subdivision (a), when he failed to inspect and test subject vehicles two through ten in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42; section 3340.41, subdivision (c), when he entered into the emissions inspections systems vehicle identification information or emissions control system identification data for a vehicle other than the one being tested for subject vehicles two through ten; and section 3340.42, when he failed to conduct the required smog tests on subject vehicles two through ten in accordance with BAR's specifications.

32. Eleventh Cause for Discipline. Cause exists to discipline Mr. Gutierrez's smog inspector license under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), because Mr. Gutierrez committed dishonest, fraudulent or deceitful acts whereby another was injured by issuing certificates of compliance for five subject vehicles without performing bona fide inspections on those vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## **Costs of Investigation and Prosecution**

33. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct. The scope of the investigation was appropriate to the allegations. The charges were sustained, and no evidence was presented regarding respondents' ability to pay costs.

34. Total costs of investigation and enforcement are \$14,672.20. Respondents Brake Shop and Justo Antonio Gutierrez are jointly and severally liable for costs in this matter.

## **ORDER**

1. Smog Check Inspector License No. EO 643383 issued to respondent Justo Antonio Gutierrez is revoked.

2. Smog Check Station License No. RC 286092 issued to respondent Brake Stop San Marcos Corporation dba Brake Stop and Auto Repair is revoked.

3. Automotive Repair Dealer Registration No. ARD 286092 issued to respondent Brake Stop San Marcos Corporation dba Brake Stop and Auto Repair is

revoked. However, the revocation is stayed, and Automotive Repair Dealer Registration No. ARD 286092 is placed on probation for five years on the terms and conditions set forth below.

1. Obey All Laws

During the period of probation, Bar Stop shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by Bar Stop.

2. Quarterly Reporting

During the period of probation, Brake Stop shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Report Financial Interests

Brake Stop shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR during the period of probation, report any financial interest which any respondent or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records

Brake Stop shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and

including the point of completion. Brake Stop shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

#### 5. Tolling of Probation

If, during probation, Brake Stop leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Brake Stop shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirement, restitution requirements, training requirements, and that Brake Stop obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Brake Stop is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that Brake Stop obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Brake Stop is not residing or engaging in business within the jurisdiction of California.

All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which Brake Stop is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work

relevant to the probationary license or registration is conducted or performed during the tolling period.

#### 6. Violation of Probation

If Brake Stop violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once Brake Stop is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

#### 7. Maintain Valid License

Brake Stop shall, at all times while on probation, maintain a current and active registration and/or license(s) with BAR, including any period during which suspension or probation is tolled. If Brake Stop's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by Brake Stop within 30 days of that date. If Brake Stop's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal Brake Stop's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

#### 8. Cost Recovery

Respondent Brake Stop and respondent Justo Antonio Gutierrez shall pay, jointly and severally, to the BAR the sum of \$14,672.20 for the reasonable costs of the investigation and enforcement of case no. 79/22-8245. Respondents shall make such

payment as follows: A payment plan or terms to be determined by the BAR. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondents shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case no. 79/22-8245. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

#### 9. Completion of Probation

Upon successful completion of probation, Brake Stop's affected registration and/or license will be fully restored or issued without restriction, if Brake Stop meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

#### 10. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if Brake Stop ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, Brake Stop may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision. Brake Stop

may not petition the Director for reinstatement of the surrendered registration and/or license or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If Brake Stop applies to BAR for a registration or license at any time after that date, it must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

11. Notification to Employer

When performing services that fall within the scope of its license, Brake Stop shall provide each of its current or future employers a copy of the decision and the underlying Accusation before commencing employment. Notification to Brake Stop's current employer shall occur no later than the effective date of the decision. Brake Stop shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

12. Restriction on Inspecting Vehicles Requiring Smog Check Certification at a STAR Station

Brake Stop shall not be permitted to issue certificates of compliance for any vehicles requiring Smog Check certification at a STAR station for its biennial Smog Check pursuant to Section 44010.5 or 44014.7 under the Health and Safety Code.

DATE: November 21, 2023

*Marion Vomhof*

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings