

1 XAVIER BECERRA
Attorney General of California
2 CHAR A. SACHSON
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 355-5437
Facsimile: (415) 703-5480
6 *Attorneys for Complainant Bureau of Automotive Repair*

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

11 In the Matter of the Accusation Against:

Case Number: 79/19-12519

12 **HUGO HENRIQUEZ**
13 **dba SAVERS AUTO SERVICE**
14 **6750 Brentwood Blvd., Unit B**
15 **Brentwood, CA 94513-2120**

A C C U S A T I O N

16 **Automotive Repair Dealer No. ARD 193766**
17 **Smog Check Station License No TC 193766**

18 **HUGO R. HENRIQUEZ**
19 **5622 Arcadia Cir.**
20 **Discovery Bay, CA 94505**

21 **Smog Check Inspector (EO) License No. EO 641926**

22 **And**

23 **JOSE BENJAMIN HENRIQUEZ**
24 **1708 DAISY WAY**
25 **ANTIOCH, CA 94509-1422**

26 **Smog Check Inspector (EO) License No. EO 108998**
27 **Smog Check Repair Technician (EI) License EI 108998**

28 **And**

GABRIEL R. MARTINEZ
9806 Key West Way
Discovery Bay, CA 94505

Smog Check Inspector (EO) License No. EO 639787

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. In 1997, the Bureau issued Automotive Repair Dealer Registration Number ARD
7 193766 (Registration) to Hugo Henriquez (Respondent Henriquez) dba Savers Auto Service. The
8 Registration was in full force and effect at all times relevant to the charges brought herein and
9 will expire on March 31, 2021, unless renewed.

10 **Smog Check Test Only Station License**

11 3. In 1997, the Bureau issued Smog Check, Test Only, Station License Number TC
12 193766 (Smog Station License) to Respondent Henriquez. The Smog Station License was in full
13 force and effect at all times relevant to the charges brought herein and will expire on March 31,
14 2021, unless renewed. The Smog Station License was STAR certified on or about January 11,
15 2013.

16 **Smog Check Inspector Licenses**

17 4. On or about May 9, 2019, the Director issued Smog Check Inspector License Number
18 EO 641926 to Respondent Henriquez¹. Respondent Henriquez's Smog Check Inspector License
19 will expire on October 31, 2021, unless renewed.

20 5. In 1999, the Director issued Advanced Emission Specialist Technician License
21 Number EA 108998 to Respondent Jose Benjamin Henriquez (Respondent J. Henriquez).
22 Respondent J. Henriquez's advanced emission specialist technician license expired on November
23 30, 2013, and was cancelled on September 23, 2013. Pursuant to California Code of Regulations,
24 title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent J.
25 Henriquez's election, as Smog Check Inspector License EO 108998 and Smog Check Repair
26

27 _____
28 ¹ The Bureau issued the Smog Check inspector license to "Hugo R. Henriquez." The Bureau is informed and believes "Hugo Henriquez" is the same person as "Hugo R. Henriquez"

1 Technician License EI 108998.² Respondent J. Henriquez’s Smog Check Inspector License will
2 expire on November 30, 2021, unless renewed. Respondent J. Henriquez’s Smog Check Repair
3 Technician License expired on November 30, 2015 and has not been renewed.

4 6. On or about October 12, 2016, the Director issued Smog Check Inspector License
5 Number EO 639787 to Respondent Gabriel R. Martinez (Respondent Martinez). Respondent
6 Martinez's Smog Check Inspector License will expire on April 30, 2022, unless renewed.

7 **JURISDICTION**

8 7. This Accusation is brought before the Director of the Department of Consumer
9 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

10 **STATUTORY AND REGULATORY PROVISIONS**

11 8. Section **9884.7** of the Business and Professions Code (“Code”) states, in pertinent
12 part:

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

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

21 . . .

22 (4) Any other conduct that constitutes fraud.

23 . . .

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

26 ² Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

...

(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.

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

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

11. Section **44012** of the Health and Safety Code requires that tests at smog check stations be performed in accordance with procedures prescribed by the department.

12. Section **44059** of the Health and Safety Code states, in pertinent part:
“The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or 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.”

13. Section **44072.2** of the Health and Safety Code states, in pertinent 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.

...

(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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

...

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

14. Section **44072.6** of the Health and Safety 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 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

15. Section **44072.8** of the Health and Safety Code states:

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

16. Section **44072.10** of the Health and Safety Code states:

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

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

...

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

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

“... (c) 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. . . .”

18. California Code of Regulations, title 16, section **3340.30**, states, in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

1 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
2 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
3 article.

4 . . .

5 19. California Code of Regulations, title 16, section **3340.41(c)**, states:

6 “No person shall enter into the BAR-97 Emissions Inspection System or the OBD
7 Inspection System any vehicle identification information or emission control system
8 identification data for any vehicle other than the one being tested. Nor shall any person
9 knowingly enter into the BAR-97 Emissions Inspection System or the OBD Inspection System
10 any false information about the vehicle being tested.”

11 20. California Code of Regulations, title 16, section **3340.42**, states:

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

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

16 . . .

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

20 21. California Code of Regulations, title 16, section **3340.45**, states:

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

23 (1) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
24 manual became effective on or after January 1, 2013. This manual shall remain in effect until
25 subparagraph (2) is implemented.

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

28 ///

1 **COSTS**

2 22. Section 125.3 of the Code provides, in pertinent part, that a Board (including the
3 Bureau of Automotive Repair) may request the administrative law judge to direct a licentiate
4 found to have committed a violation or violations of the licensing act to pay a sum not to exceed
5 the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate
6 to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of
7 investigation and enforcement costs may be included in a stipulated settlement.

8 **SMOG PROGRAM AND CLEAN PLUGGING ALLEGATIONS**

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

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

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

1 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
2 cap.

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

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

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

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

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

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

7 32. One method is known as "clean plugging." "Clean plugging" is the act of using one
8 vehicle's properly functioning OBDII system, or another source, to generate passing data readings
9 or diagnostic information for the purpose of issuing a smog certificate of compliance to a vehicle
10 that is not in smog compliance and/or not being tested. The vehicle being certified is not the one
11 being tested. Clean plugging does not necessarily involve fraudulent intent and can happen when
12 smog inspector fails to ensure the vehicle being certified is the one that is actually tested.

13 33. The Bureau initiated an investigation of Respondent Henriquez's smog check station.
14 Respondents were found to have performed two smog inspections using clean-plugging methods.
15 Both smog inspections were performed at Respondent Henriquez's Smog Station. Respondent
16 Martinez personally performed one of the clean-plugs. Respondent J. Henriquez personally
17 performed one of the clean-plugs. Respondent Henriquez issued two certificates of compliance to
18 two vehicles that were not tested.

19 34. A Bureau representative reviewed data for the clean-plugged vehicles inspected by
20 Respondents. The data revealed that the two vehicles that were purportedly tested by Respondent
21 were not and could not have been connected to the DAD when they were being certified because
22 the OBD-II data purportedly transmitted by those vehicles could not have been transmitted by
23 those vehicles.

24 35. Respondents clean plugged and issued certificates of compliance to the following
25 vehicles:

26 a) Clean Plug# 1 - 2003 Cadillac Escalade EXT (Performed by Respondent Martinez)

27 ///

28 ///

| | | | |
|--|-------------------|-----------|--------------|
| Certificate # HX820508C | eVIN | Protocol | PID count |
| Fraudulent Inspection 11/26/2018 | 1GYUKEEJXAR160064 | ICAN11bt5 | 44 7 7 8 3 3 |
| Expected OBDII Value | 3GYEK63N93G261082 | JVPW | 22 |

b) Clean Plug #2 – 2003 Honda Accord LX (Performed by Respondent J. Henriquez)

| | | | |
|------------------------------------|-------------------|-----------|-----------|
| Certificate # QQ790203C | eVIN | Protocol | PID count |
| Fraudulent Inspection 4/8/19 | 5J6RE38379L024049 | ICAN29bt5 | 39 19 |
| Expected OBDII Value | Not Reported | I914 | 20 |

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Registration)

36. Respondent Henriquez has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading, as set forth above in paragraphs 33-35, above. Respondents purported to test two vehicles, and certified that the two vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using clean-plugging methods.

SECOND CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

37. Respondent Henriquez has subjected his Station License, Smog Check Inspector and/or Smog Check Repair Technician licenses to discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations, through conduct described in paragraphs 33-35, as follows:

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

1 d. **Section 3340.41, subdivision (c):** Respondent Martinez entered vehicle
2 identification information for a vehicle other than the one being tested into the BAR-OIS.

3 e. **Section 3340.42:** Respondent Martinez failed to conduct the required smog tests and
4 inspections on certain vehicles in accordance with the Bureau's specifications.

5 f. **Section 3340.45** Respondent Martinez violated the procedures contained in the Smog
6 Check Manual by entering vehicle identification information for a vehicle that was not being
7 tested.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

10 39. Respondent J. Henriquez has subjected his Smog Check Inspector license to
11 discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c),
12 in that he violated sections of that Code and applicable regulations, through conduct described in
13 paragraphs 33-35, as follows:

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

16 b. **Section 3340.24, subdivision (c):** Respondent J. Henriquez falsely or fraudulently
17 issued electronic certificates of compliance to certain vehicles without performing bona fide
18 inspections of the emission control devices and systems on those vehicles.

19 c. **Section 3340.30, subdivision (a):** Respondent J. Henriquez failed to inspect the
20 vehicles in accordance with Health and Safety Code section 44012 and California code of
21 Regulations title 16, section 3340.42.

22 d. **Section 3340.41, subdivision (c):** Respondent J. Henriquez entered vehicle
23 identification information for a vehicle other than the one being tested into the BAR-OIS.

24 e. **Section 3340.42:** Respondent J. Henriquez failed to conduct the required smog tests
25 and inspections on certain vehicles in accordance with the Bureau's specifications.

26 f. **Section 3340.45** Respondent J. Henriquez violated the procedures contained in the
27 Smog Check Manual by entering vehicle identification information for a vehicle that was not
28 being tested.

1 **UNDERCOVER OPERATION**

2 40. In 2019, a Bureau Representative prepared a 2012 Honda (Honda) to fail a smog
3 inspection due to the removal of the Positive Crankcase Ventilation (PCV) valve and hose
4 assembly. The Bureau Representative installed a non-approved open breather element in place of
5 the PCV valve and large vacuum cap on the PCV valve intake manifold vacuum supply port. In
6 this condition the Honda would not pass a properly performed smog inspection. The Honda
7 would fail the visual portion of the smog inspection.

8 41. On or about August 6, 2019, an undercover operation was performed at Respondent
9 Henriquez's smog check station to confirm compliance with the Smog Check Program. An
10 operator drove the Honda to Savers Auto Service and requested a smog inspection.

11 42. The Honda passed the smog inspection. The operator was given two copies of an
12 invoice and a Vehicle Inspection Report (VIR). Smog Certificate of Compliance # IF924482C
13 was issued for the Honda by Respondent Henriquez. Respondent Henriquez personally
14 performed the inspection. Respondent Henriquez entered "Pass" into the OIS for the Visual
15 Inspection category "Crankcase Emission Controls," when in fact Respondent should have
16 entered "Tampered" because the Honda had been tampered with. The VIR stated "Pass" for the
17 Visual Inspection category "Crankcase Emission Controls." Respondent Henriquez signed the
18 VIR under penalty of perjury.

19 **NINTH CAUSE FOR DISCIPLINE**

20 (False or misleading Statements)

21 43. Respondent Henriquez has subjected his Automotive Repair Dealer Registration to
22 disciplinary action under section 9884.7, subdivision(a)(1), in that Respondent Henriquez made
23 false or misleading statements that he knew or should have known were false or misleading as
24 follows:

25 a. Respondent Henriquez transmitted information to the Vehicle Information Database
26 stating the Honda had properly installed Crankcase Emission Controls.

27 b. Respondent Henriquez created a VIR that stated the Honda had properly installed
28 Crankcase Emission Controls.

1 c. Respondent Henriquez created a VIR that stated he performed the smog inspection in
2 accordance with all bureau requirements and the information on the VIR was true and accurate.

3 **TENTH CAUSE FOR DISCIPLINE**

4 (Violation of Laws and Regulations)

5 44. Respondent Henriquez has subjected his Automotive Repair Dealer Registration to
6 disciplinary action under section 9884.7, subdivision (a)(6), in that Respondent Henriquez
7 violated the following laws and regulations:

8 a. Respondent Henriquez violated Code section 9884.9(a) by failing to provide the
9 operator with a written estimate prior to performing the smog inspection.

10 b. Respondent Henriquez violated California Code of Regulations, Title 16, section
11 3340.24, subdivision (c), in that Respondent Henriquez falsely issued a certificate of compliance
12 to the Honda.

13 c. Respondent Henriquez violated California Code of Regulations, Title 16, section
14 3340.35, subdivision (c), in that Respondent Henriquez issued a certificate of compliance to a
15 vehicle that did not have all the required emission control equipment and devices installed and
16 functioning correctly.

17 d. Respondent Henriquez violated California Code of Regulations, Title 16, section
18 3340.42, subdivision (b) in that Respondent failed to provide a proper visual inspection of the
19 Honda.

20 e. Respondent Henriquez violated California Code of Regulations, Title 16, section
21 3340.42, in conjunction with California Code of Regulations, Title 16, section 3340.45,
22 subdivision (b), in that Respondent failed to provide a proper visual inspection on the Honda as
23 prescribed in the Smog Check Manual.

24 f. Respondent Henriquez violated California Code of Regulations, Title 16, section
25 3353, in that Respondent Henriquez failed to provide the operator with a written estimate.

26 g. Respondent Henriquez violated California Code of Regulations, Title 16, section
27 3371, in that Respondent Henriquez made untrue or misleading statements as described in
28 paragraph 43, above.

1 h. Respondent Henriquez violated California Code of Regulations, Title 16, section
2 3373, in that Respondent Henriquez made untrue or misleading statements on a Vehicle
3 Inspection Report. The Vehicle Inspection Report stated that the vehicle passed the Crankcase
4 Emission Controls visual inspection.

5 **THIRTEENTH CAUSE FOR DISCIPLINE**

6 (Dishonesty or Deceit)

7 45. Respondent Henriquez has subjected his Smog Check Station License to disciplinary
8 action under Health and Safety Code section 44072.2, subdivision (d), in that Respondent
9 Henriquez committed acts involving dishonesty or deceit whereby another was injured. The
10 circumstances are described in paragraphs 40-43, above.

11 **TWELFTH CAUSE FOR DISCIPLINE**

12 (Violation of Laws and Regulations)

13 46. Respondent Henriquez has subjected his Smog Check Station License to disciplinary
14 action under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or (g), in that
15 Respondent Henriquez violated the following laws and regulations:

16 a. Respondent Henriquez violated Health and Safety code section 44012, subdivision
17 (f), in the Respondent Henriquez failed to perform a smog check on the Honda according to the
18 procedures prescribed by the department. Respondent failed to perform a proper visual
19 inspection.

20 b. Respondent Henriquez violated Health and Safety code section 44015, subdivision
21 (a)(1), in that Respondent Henriquez issued a certificate of compliance to a vehicle that had been
22 tampered with.

23 c. Respondent Henriquez violated California Code of Regulations, Title 16, section
24 3340.24, subdivision (c), in that Respondent Henriquez falsely issued a certificate of compliance
25 to the Honda.

26 d. Respondent Henriquez violated California Code of Regulations, Title 16, section
27 3340.35, subdivision (c), in that Respondent Henriquez issued a certificate of compliance to a
28

1 vehicle that did not have all the required emission control equipment and devices installed and
2 functioning correctly.

3 e. Respondent Henriquez violated California Code of Regulations, Title 16, section
4 3340.42, subdivision (b) in that Respondent Henriquez failed to perform a proper visual
5 inspection of the Honda.

6 f. Respondent Henriquez violated California Code of Regulations, Title 16,
7 section 3340.42 in conjunction with California Code of Regulations, Title 16, section 3340.45,
8 subdivision (b), in that Respondent Henriquez failed to perform a proper visual inspection on the
9 Honda as prescribed in the Smog Check Manual.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 (Dishonesty or Deceit)

12 47. Respondent Henriquez has subjected his Smog Check Inspector License to
13 disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that
14 Respondent Henriquez committed acts involving dishonesty or deceit whereby another was
15 injured. The circumstances are described in paragraphs 40-43, above.

16 **FOURTEENTH CAUSE FOR DISCIPLINE**

17 (Violation of Laws and Regulations)

18 48. Respondent Henriquez has subjected his Smog Check Inspector License to
19 disciplinary action under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or
20 (g), in that Respondent Henriquez violated the following laws and regulations:

21 a. Respondent Henriquez violated Health and Safety code section 44012, subdivision
22 (f), in that Respondent Henriquez failed to perform a smog check on the Honda according to the
23 procedures prescribed by the department. Respondent failed to perform a proper visual
24 inspection.

25 b. Respondent Henriquez violated Health and Safety code section 44015, subdivision
26 (a)(1), in that Respondent Henriquez issued a certificate of compliance to a vehicle that had been
27 tampered with.

28

1 c. Respondent Henriquez violated California Code of Regulations, Title 16, section
2 3340.24, subdivision (c), in that Respondent Henriquez falsely issued a certificate of compliance
3 to the Honda.

4 d. Respondent Henriquez violated California Code of Regulations, Title 16, section
5 3340.35, subdivision (c), in that he caused Respondent Henriquez to issue a certificate of
6 compliance to a vehicle that did not have all the required emission control equipment and devices
7 installed and functioning correctly.

8 e. Respondent Henriquez violated California Code of Regulations, Title 16, section
9 3340.42, subdivision (b) in that Respondent Henriquez failed to perform a proper visual
10 inspection of the Honda.

11 f. Respondent Henriquez violated California Code of Regulations, Title 16,
12 section 3340.42 in conjunction with California Code of Regulations, Title 16, section 3340.45,
13 subdivision (b), in that Respondent Henriquez failed to perform a proper visual inspection on the
14 Honda as prescribed in the Smog Check Manual.

15 **OTHER MATTERS**

16 49. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
17 or place on probation the registration for all places of business operated in this state by
18 Respondent Henriquez, upon a finding that Respondent has, or is, engaged in a course of repeated
19 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

20 50. Pursuant to Health & Safety Code section 44072.8, if Respondent Henriquez's
21 Station License is revoked or suspended, any additional license issued under Chapter 5 of Part 5
22 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise
23 revoked or suspended by the director.

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

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. Revoking or suspending any additional Smog Check Station Licenses issued to Jose Benjamin Henriquez;

9. Ordering Jose Benjamin Henriquez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

10. Revoking or suspending Smog Check Inspector License Number EO 639787 to Respondent Gabriel R. Martinez;

11. Revoking or suspending any additional Smog Check Station Licenses and or Smog Check Repair Technician License issued to Gabriel R. Martinez;

12. Ordering Gabriel R. Martinez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: January 28, 2021

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