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

In the Matter of the Accusation Against:

CALIFORNIA SMOG CERTIFICATION, INC.
JOHN PATRICK DEVIN, President
1655 Broadway, Suite 1
Chula Vista, CA 91911

Automotive Repair Dealer Reg. No. AD 221240
Smog Check, Test Only, Station License
No. TD 221240

KARL DUER ROBSON
P. O. Box 433192
San Diego, CA 92143

Advanced Emission Specialist Technician
License No. EA 085454

LOREN THOMAS WILSON
P. O. Box 86487
San Diego, CA 92138

Advanced Emission Specialist Technician
License No. EA 137341

JESSE SMOG STATION
JESUS BENITO ZUNIGA
aka JESUS B. ZUNIGA, Owner
2446 Main Street, #R
Chula Vista, CA 91911

Automotive Repair Dealer Reg. No. AE 160498
Smog Check Station License No. RE 160498

JESUS B. ZUNIGA
524 Center
Chula Vista, CA 91910

Advanced Emission Specialist Technician
License No. EA 304458

Case No. 79/08-23

OAH Case No. 2009110120

CALIFORNIA SMOG CERTIFICATION, INC.
JOHN PATRICK DEVIN, President
11 3rd Avenue, Suite A
Chula Vista, CA 91910

Automotive Repair Dealer Registration
No. AF 216533
Smog Check, Test Only, Station License
No. TF 216533

JEREMIAH EDGAR RIVERA
302 Island Avenue, #208
San Diego, CA 92101

Advanced Emission Specialist Technician
License No. EA 148756

JAIME GARCIA
517 Sacramento Avenue
Spring Valley, CA 91977

Advanced Emission Specialist Technician
License No. EA 143159

and

DIEGO SALVADO DELGADO
100 Woodlawn Avenue, Space 112
Chula Vista, CA 91910

Advanced Emission Specialist Technician
License No. EA 148105

Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order as to Respondent California Smog Certification, Inc., Only is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to Respondent California Smog Certification, Inc., John Patrick Devin,

President, Automotive Repair Dealer Registration No. AD 221240, Smog Check Station License No. TD 221240, Automotive Repair Dealer Registration No. AF 216533 and Smog Check Station License No. TF 216533.

This Decision shall become effective on 11/22/10.

DATED: October 13, 2010

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

EDMUND G. BROWN JR., Attorney General
of the State of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
RON ESPINOZA, State Bar No. 176908
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San Diego, CA 92186-5266
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Attorneys for Complainant

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CALIFORNIA SMOG CERTIFICATION, INC. JOHN PATRICK DEVIN, PRESIDENT 1655 Broadway, Suite 1 Chula Vista, CA 91911 Automotive Repair Dealer Registration No. AD 221240 Smog Check Station License No. TD 221240, KARL DUER ROBSON P.O. Box 433192 San Diego, CA 92143 Advanced Emission Specialist Technician License No. EA 085454, LOREN THOMAS WILSON P.O. Box 86487 San Diego, CA 92138 Advanced Emission Specialist Technician License No. EA 137341,	Case No. 79/08-23 OAH Case No. 2009110120 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER AS TO RESPONDENT CALIFORNIA SMOG CERTIFICATION, INC., ONLY** ARD Nos. AD 221240 & AF 216533 Smog Check Station License Nos. TD 221240 & TF 216533

JESSE SMOG STATION
JESUS BENITO ZUNIGA,
a.k.a. JESUS B. ZUNIGA, OWNER
2446 Main Street, #R
Chula Vista, CA 91911

Automotive Repair Dealer Registration No. AE 160498
Smog Check Station License No. RE 160498,

JESUS B. ZUNIGA
524 Center
Chula Vista, CA 91910

Advanced Emission Specialist Technician License No. EA 304458,

CALIFORNIA SMOG CERTIFICATION, INC.
JOHN PATRICK DEVIN, PRESIDENT
11 3rd Avenue, Suite A
Chula Vista, CA 91910

Automotive Repair Dealer Registration No. AF 216533
Smog Check Station License No. TF 216533, *et al.*

Respondents.

In the interest of a prompt and speedy settlement of the above matter, consistent with the public interest and the responsibilities of the Director of Consumer Affairs and the Bureau of Automotive Repair, the parties herein hereby agree to the following Stipulated Settlement and Disciplinary Order, which will be submitted to the Director for approval and adoption as the final disposition of the above-entitled Accusation with respect to Respondent California Smog Certification, Inc., only.

PARTIES

1. Complainant Sherry Mehl is the Chief of the Bureau of Automotive Repair. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Ron Espinoza and G. Michael German, Deputy Attorneys General.

2. Respondent California Smog Certification, Inc., is represented in this proceeding by attorney Gregory E. Flynn, Flynn & Flynn, Attorneys at Law, 2427 Third Avenue, San Diego,

California, 92101.

Automotive Repair Dealer Registration No. AD 221240

3. On or about April 26, 2002, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number AD 221240 to California Smog Certification, Inc. ("Respondent California Smog Certification"), with John Patrick Devin as president. Respondent California Smog Certification's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

Smog Check, Test Only, Station License No. TD 221240

4. On or about May 3, 2002, the Director issued Smog Check, Test Only, Station License Number TD 221240 to Respondent California Smog Certification. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

Automotive Repair Dealer Registration No. AF 216533

5. On or about June 29, 2001, the Director issued Automotive Repair Dealer Registration Number AF 216533 to Respondent California Smog Certification, with John Patrick Devin as president. Respondent California Smog Certification's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

Smog Check, Test Only, Station License No. TF 216533

6. On or about July 6, 2001, the Director issued Smog Check, Test Only, Station License Number TF 216533 to Respondent California Smog Certification. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

JURISDICTION

7. John Patrick Devin has been and is authorized to enter into this Stipulated Settlement on behalf of California Smog Certification, Inc., of which he is president.

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8. Accusation Case 79/08-23 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair, and is currently pending against Respondent. The Accusation in Case No. 79/08-23 and all other statutorily required documents were properly served on Respondent on November 16, 2007. Respondent timely filed its Notices of Defense contesting the Accusation. A copy of Accusation Case 79/08-23 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

9. John Patrick Devin has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation Case 79/08-23. John Patrick Devin has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

10. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in Accusation Case 79/08-23; the right to confront and cross-examine the witnesses against it; the right to present evidence and to offer testimony on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

11. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

12. Respondent admits the truth of each and every charge and allegation in Accusation Case 79/08-23.

13. Respondent agrees that its Automotive Repair Dealer Registration Nos. AD 221240 and AF 216533, and Smog Check Station License Nos. TD 221240 and TF 216533 are subject to discipline and it agrees to be bound by the Director's imposition of discipline as set forth in the Disciplinary Order below.

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COST RECOVERY

14. The parties understand and agree that the Bureau's costs of investigation and enforcement in Accusation Cases 79/08-23 and 79/08-18 total $95,136.25 as of January 6, 2010. The parties understand and agree that Respondent California Smog Certification shall pay to the Bureau a total of $40,000, jointly and severally with 4th & C Smog, Inc., d.b.a. California Smog Test Only, toward the Bureau's costs.

CONTINGENCY

15. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that it may not withdraw its agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

16. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

17. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

18. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following

Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration Nos. AD 221240 and AF 216533, and Smog Check Station License Nos. TD 221240 and TF 216533 issued to Respondent California Smog Certification, Inc., John Patrick Devin, president, are all revoked. However, the revocations are stayed, and Respondent's registrations and licenses are all placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension.** Automotive Repair Dealer Registration No. AD 221240 and Smog Check Station License No. TD 221240 issued to Respondent California Smog Certification, Inc., John Patrick Devin, president, are suspended for ten (10) days beginning on the effective date of the Director's Decision and Order.

Automotive Repair Dealer Registration No. AF 216533, and Smog Check Station License No. TF 216533 issued to Respondent California Smog Certification, Inc., John Patrick Devin, president, are suspended for ten (10) days beginning on the effective date of the Director's Decision and Order.

2. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspensions and indicating the reason(s) for the suspensions. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspensions.

3. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

4. **Reporting.** Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

5. **Report Financial Interest.** Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the Respondent facilities may have in any other business required to be registered pursuant to Section 9884.6 of the

Business and Professions Code.

6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

7. **Jurisdiction.** If an accusation or petition to revoke probation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over these matters until the final decision on the accusation or petition to revoke probation, and the period of probation shall be extended until such decision.

8. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, temporarily or permanently invalidate its registrations and suspend or revoke its licenses.

9. **Restrictions.** During the period of probation, Respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until Respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to properly perform such work, and BAR has been given 10 days notice of the availability of the equipment for inspection by a BAR representative.

10. **Cost Recovery.** Respondent California Smog Certification, Inc. shall pay to the Bureau a portion of its costs of investigation and enforcement of this matter in the amount of $40,000, jointly and severally with 4th & C Smog, Inc., d.b.a. California Smog Test Only, by making an initial payment of $20,000 within 90 days of the effective date of the Director's Decision and Order, and by paying the $20,000 balance in 27 monthly payments of $715 each, commencing on the first of the month 90 days after the effective date, and a final payment of $695 to be paid not later than the first day of the sixth month prior to the end of probation, until the $20,000 balance is paid in full. Payment shall be in the form of a certified check, cashier's check or money order, payable to the Bureau of Automotive Repair and shall be mailed or delivered to the Bureau of Automotive Repair, 10240 Systems Parkway, Sacramento, California, 95827, Attention: Enforcement Planning & Oversight. Failure to complete payment of cost

recovery within this time frame shall constitute a violation of probation which may subject Respondent's Automotive Repair Dealer Registrations and Smog Check Station Licenses to outright revocation; however, the Director or the Director's Bureau of Automotive Repair designee may elect to continue probation until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gregory E. Flynn. I understand the stipulation and the effect it will have on the Automotive Repair Dealer Registrations and Smog Check Station Licenses issued to California Smog Certification, Inc. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 3-19-10

JOHN PATRICK DEVIN, as President and on behalf of California Smog Certification, Inc.
Respondent

I have read and fully discussed with John Patrick Devin the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3/19/10

GREGORY E. FLYNN
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

DATED: 3-20-10

EDMUND G. BROWN JR., Attorney General of the State of California

for RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

EDMUND G. BROWN JR., Attorney General
of the State of California
ALFREDO TERRAZAS
Senior Assistant Attorney General
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Attorneys for Complainant

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CALIFORNIA SMOG CERTIFICATION, INC. JOHN PATRICK DEVIN, PRESIDENT 1655 Broadway, Suite 1 Chula Vista, CA 91911 Automotive Repair Dealer Registration No. AD 221240 Smog Check, Test Only, Station License No. TD 221240, KARL DUER ROBSON P.O. Box 433192 San Diego, CA 92143 Advanced Emission Specialist Technician License No. EA 085454, LOREN THOMAS WILSON P.O. Box 86487 San Diego, CA 92138 Advanced Emission Specialist Technician License No. EA 137341, /// /// ///	Case No. 79/08-23 **ACCUSATION** (SMOG CHECK)

JESSE SMOG STATION
JESUS BENITO ZUNIGA,
a.k.a. JESUS B. ZUNIGA, OWNER
2446 Main Street, #R
Chula Vista, CA 91911

Automotive Repair Dealer Registration No. AE 160498
Smog Check Station License No. RE 160498,

JESUS B. ZUNIGA
524 Center
Chula Vista, CA 91910

Advanced Emission Specialist Technician License
No. EA 304458,

CALIFORNIA SMOG CERTIFICATION, INC.
JOHN PATRICK DEVIN, PRESIDENT
11 3rd Avenue, Suite A
Chula Vista, CA 91910

Automotive Repair Dealer Registration No. AF 216533
Smog Check, Test Only, Station License No. TF 216533,

JEREMIAH EDGAR RIVERA
302 Island Avenue, #208
San Diego, CA 92101

Advanced Emission Specialist Technician License
No. EA 148756,

JAIME GARCIA
517 Sacramento Avenue
Spring Valley, CA 91977

Advanced Emission Specialist Technician License
No. EA 143159,

and

DIEGO SALVADO DELGADO
100 Woodlawn Avenue, Space 112
Chula Vista, CA 91910

Advanced Emission Specialist Technician License No.
EA 148105

Respondents.

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Complainant alleges:

PARTIES

1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

Automotive Repair Dealer Registration No. AD 221240

2. On or about April 26, 2002, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number AD 221240 to California Smog Certification, Inc. ("Respondent California Smog Certification"), with John Patrick Devin as president. Respondent California Smog Certification's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2008, unless renewed.

Smog Check, Test Only, Station License No. TD 221240

3. On or about May 3, 2002, the Director issued Smog Check, Test Only[1/], Station License Number TD 221240 to Respondent California Smog Certification. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2008, unless renewed.

Advanced Emission Specialist Technician License No. EA 085454

4. In or about 1997, the Director issued Advanced Emission Specialist Technician License Number EA 085454 to Karl Duer Robson ("Respondent Robson"). Respondent's advanced emission specialist technician license was in full force and effect at all

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1. Test only facilities are licensed smog check stations, that by law, are only allowed to test vehicles; they cannot repair them. Any needed repairs must be performed at either a smog check station designated as a test-and-repair facility or a "gold shield" station. Test-and-repair stations are licensed by the state to provide smog check tests and repairs to most vehicles. Under current law, test-and-repair stations are prohibited from certifying repaired "gross polluters" or vehicles that have been directed to test-only stations for inspection. Only test-only stations and gold shield stations are able to certify repaired gross polluter vehicles.

Pursuant to Health and Safety Code section 39032.5, "gross polluter" means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen (NOX) emissions as established by the department in consultation with the state board.

times relevant to the charges brought herein and will expire on September 30, 2008, unless renewed.

Advanced Emission Specialist Technician License No. EA 137341

5. In or about 1997, the Director issued Advanced Emission Specialist Technician License Number EA 137341 to Loren Thomas Wilson ("Respondent Wilson"). Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2009, unless renewed.

Automotive Repair Dealer Registration No. AE 160498

6. On or about May 14, 1991, the Director issued Automotive Repair Dealer Registration Number AE 160498 to Jesus Benito Zuniga, also known as Jesus B. Zuniga ("Respondent Zuniga"), owner of Jesse Smog Station. Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2008, unless renewed.

Smog Check Station License No. RE 160498

7. On or about July 12, 1991, the Director issued Smog Check Station License Number RE 160498 to Respondent Zuniga.[2] Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2008, unless renewed.

Advanced Emission Specialist Technician License No. EA 304458

8. In or about 1996, the Director issued Advanced Emission Specialist Technician License Number EA 304458 to Respondent Zuniga. Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2009, unless renewed.

Automotive Repair Dealer Registration No. AF 216533

9. On or about June 29, 2001, the Director issued Automotive Repair Dealer Registration Number AF 216533 to Respondent California Smog Certification, with John Devin

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2. Respondent Zuniga's smog check station is a licensed test-and-repair facility.

as president. Respondent California Smog Certification's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2008, unless renewed.

Smog Check, Test Only, Station License No. TF 216533

10. On or about July 6, 2001, the Director issued Smog Check, Test Only, Station License Number TF 216533 to Respondent California Smog Certification. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2008, unless renewed.

Advanced Emission Specialist Technician License No. EA 148756

11. On or about June 7, 2004, the Director issued Advanced Emission Specialist Technician License Number EA 148756 to Jeremiah Edgar Rivera ("Respondent Rivera"). Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2008, unless renewed.

Advanced Emission Specialist Technician License No. EA 143159

12. On or about October 24, 2000, the Director issued Advanced Emission Specialist Technician License Number EA 143159 to Jaime Garcia ("Respondent Garcia"). Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2008, unless renewed.

Advanced Emission Specialist Technician License No. EA 148105

13. On or about December 12, 2003, the Director issued Advanced Emission Specialist Technician License Number EA 148105 to Diego Salvado Delgado ("Respondent Delgado"). Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2007, unless renewed.

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JURISDICTION

14. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that the Director may invalidate an automotive repair dealer registration.

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

16. Health and Safety Code ("Health & Saf. Code") section 44002 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.

17. Health & Saf. Code section 44072.6 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.

STATUTORY PROVISIONS

18. Bus. & Prof. Code section 9884.7 states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.
>
> . . . .
>
> (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
>
> (4) Any other conduct which constitutes fraud.
>
> . . . .

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

(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.

. . . .

(c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, 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.

19. Bus. & Prof. Code section 9884.8 states, in pertinent part:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each . . . One copy shall be given to the customer and one copy shall be retained by the automotive repair dealer.

20. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor . . .

21. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Bus. & Prof. Code.

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22. Health & Saf. Code section 44072.2 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 [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> . . . .
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

Cost Recovery

23. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

RESPONDENT CALIFORNIA SMOG

CERTIFICATION'S 1655 BROADWAY FACILITY

UNDERCOVER OPERATION #1: 1988 TOYOTA PICKUP TRUCK

24. On August 4, 2005, an undercover operator with the Bureau (hereinafter "the operator") took the Bureau's 1988 Toyota pickup truck to Respondent California Smog Certification's facility located at 1655 Broadway, Suite 1, Chula Vista, California (hereinafter "1655 Broadway facility"). A defective #2 vacuum switch had been installed in the Bureau-documented vehicle, causing the vehicle's exhaust tailpipe emissions to exceed the gross polluter limits. The operator met with Respondent's service writer, "Cynthia", and requested a smog inspection on the vehicle. The operator completed and signed a work order/invoice, but did not receive a copy of the document or a written estimate for the inspection.

25. After the inspection was completed, one of Respondent's technicians told the operator that the vehicle failed the inspection because the carburetor was passing too much fuel, that the engine could not burn all of the fuel, and that the emissions had high levels of "CO"

(carbon monoxide). Cynthia gave the operator a document titled "Station List May 20, 2005", a list of test and repair facilities in the area that could repair the emissions problem on the vehicle.[3] The operator paid Cynthia $49.95 in cash and received a final invoice, the station list, and a vehicle inspection report ("VIR"). The VIR indicated that the vehicle failed the smog inspection as a gross polluter. Before the operator left the facility, Cynthia approached him and suggested that he take the vehicle to shop number 18 on the station list, Jesse Smog Station.

26. At approximately 0950 hours that same day, the operator took the vehicle to Respondent Zuniga's (hereinafter "Zuniga") facility, Jesse Smog Station, and met with one of Zuniga's employees. The operator asked the employee if they could repair the smog check failure problem. The employee opened the hood of the vehicle and Zuniga looked into the engine compartment. The operator completed and signed a work order/invoice, but did not receive a copy of the document or a written estimate. The employee told the operator that the vehicle only needed an adjustment and that the repair work would cost $50, which the operator authorized. The operator observed Zuniga remove the air cleaner lid and air filter from the engine compartment, then observed Zuniga perform a smog inspection on the vehicle. After the inspection was completed, the employee told the operator that the vehicle was ready and that the operator should return to California Smog Certification. The operator paid the employee $50 in cash and received two copies of Invoice No. 64237 and a VIR dated August 4, 2005, for a pretest (unofficial) inspection on the vehicle. The employee told the operator that the air cleaner lid and air filter were inside the vehicle.

27. Later that same day, Bureau Representative John Nelson ("Nelson") inspected the vehicle and found that the defective #2 vacuum switch was still in place. Nelson performed an acceleration simulation mode (ASM) smog check inspection on the vehicle. The vehicle failed the inspection for the disconnected vacuum hose, excessive CO and HC

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3. Health & Saf. Code section 44014.5, subdivision (c), states, in pertinent part, that "[t]he department shall provide for the distribution to consumers by test-only facilities of a list, compiled by region, of smog check stations licensed to make repairs of vehicular emission control systems . . . "

(hydrocarbons) tailpipe emissions, a disconnected PCV (positive crankcase ventilation) system, and missing TAC (thermostatic air cleaner) unit.

28. On August 5, 2005, the operator returned the vehicle to the 1655 Broadway facility and met with Cynthia. The air cleaner lid and air filter, removed by Zuniga, were still lying on the seat of the vehicle. Cynthia informed the operator that he only needed a smog retest on the vehicle. The operator completed and signed a work order/invoice, but did not receive a copy of the document or a written estimate. After the smog inspection was completed, the operator paid Cynthia $8.25 in cash for the smog certificate and received copies of a final invoice and a VIR dated August 5, 2005, initialed or signed by Respondent Robson. That same day, electronic smog Certificate of Compliance #FW989927C was issued for the vehicle.

29. On August 11, 2005, Nelson reinspected the vehicle and found that the defective #2 vacuum switch was still in place. Nelson performed a smog check inspection on the vehicle. The vehicle failed the inspection for the disconnected vacuum hose, excessive CO and HC tailpipe emissions, a disconnected PCV system, and the missing TAC unit.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

30. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent California Smog Certification's technician, Respondent Robson, certified under penalty of perjury on the VIR dated August 5, 2005, that the Bureau's 1988 Toyota pickup truck had passed inspection and was in compliance with applicable laws and regulations. In fact, the #2 vacuum switch was defective, the CO and HC tailpipe emissions were excessive, the PCV system was disconnected, and the TAC unit was missing. As such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Document)

31. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that on or about August 4, 2005, and August 5, 2005, Respondent's service writer failed to give the undercover operator copies of the work orders/invoices, identified in paragraphs 24 and 28 above, as soon as the operator signed the documents.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

32. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act which constitutes fraud, as follows: Respondent issued an electronic smog certificate of compliance for the Bureau's 1988 Toyota pickup truck without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

33. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that on or about August 4, 2005, and August 5, 2005, Respondent failed to comply with section 9884.9, subdivision (a), of that Code. Respondent's service writer failed to provide the undercover operator with written estimates for parts and/or labor necessary for a specific job.

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FIFTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

34. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent California Smog Certification's technician, Respondent Robson, failed to perform the emission control tests on the Bureau's 1988 Toyota pickup truck in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent California Smog Certification issued an electronic smog certificate of compliance for the Bureau's 1988 Toyota pickup truck without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

c. **Section 44033, subdivision (c):** Respondent's employee/service writer failed to provide the undercover operator with written estimates for parts and/or labor necessary for a specific job.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

35. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent California Smog Certification falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1988 Toyota pickup truck.

b. **Section 3340.35, subdivision (c):** Respondent California Smog Certification issued an electronic smog certificate of compliance for the

Bureau's 1988 Toyota pickup truck even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

c. **3340.41, subdivision (c):** Respondent California Smog Certification's technician, Respondent Robson, knowingly entered into the emissions inspection system false information about the Bureau's 1988 Toyota pickup truck.

d. **Section 3340.42:** Respondent California Smog Certification's technician, Respondent Robson, failed to conduct the required smog tests on the Bureau's 1988 Toyota pickup truck in accordance with the Bureau's specifications.

SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

36. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1988 Toyota pickup truck without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

37. Respondent Robson's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with provisions of that Code as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1988 Toyota pickup truck in accordance with procedures prescribed by the department.

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b. **Section 44059:** Respondent willfully made false entries on the VIR dated August 5, 2005, as set forth in paragraph 30 above, resulting in the issuance of an electronic smog certificate of compliance for the Bureau's 1988 Toyota pickup truck.

NINTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

38. Respondent Robson's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1988 Toyota pickup truck.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1988 Toyota pickup truck in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau's 1988 Toyota pickup truck.

d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1988 Toyota pickup truck in accordance with the Bureau's specifications.

TENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

39. Respondent Robson's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in

that he committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1988 Toyota pickup truck without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

ELEVENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

40. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew, or in the exercise of reasonable care, should have known to be untrue or misleading, as follows:

a. Respondent certified under penalty of perjury on the VIR dated August 4, 2005, that the Bureau's 1988 Toyota pickup truck had passed the pretest inspection and was in compliance with applicable laws and regulations. In fact, the #2 vacuum switch on the vehicle was defective, the CO and HC exhaust tailpipe emissions were excessive, the PCV system was disconnected, and the TAC unit was missing.

b. Respondent represented on Invoice No. 64237 that the carburetor on the Bureau's 1988 Toyota pickup truck had been adjusted when, in fact, that repair was not performed on the vehicle.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Document)

41. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that on or about August 4, 2005, Respondent's employee failed to give the undercover operator a copy of the work order/invoice, identified in paragraph 26 above, as soon as the operator signed the document.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Fraud)

42. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which constitutes fraud. Respondent charged and obtained payment from the undercover operator for adjusting the carburetor on the Bureau's 1988 Toyota pickup truck when, in fact, that repair was not performed on the vehicle.

FOURTEENTH CAUSE FOR DISCIPLINE

(Departure From Trade Standards)

43. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative, in the following material respects: Respondent failed to properly diagnose and repair the defect in the emissions control system on the Bureau's 1988 Toyota pickup truck. Respondent determined that the carburetor needed adjustment in order to reduce the emissions on the vehicle. In fact, the #2 vacuum switch was defective, causing excessive CO and HC tailpipe emissions. Further, the only repair needed for the vehicle to pass an ASM smog inspection was the replacement of the defective switch, which Respondent failed to perform.

FIFTEENTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

44. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that on or about August 4, 2005, Respondent failed to comply with section 9884.9, subdivision (a), of that Code. Respondent's employee failed to provide the undercover operator with a written estimate for parts and/or labor necessary for a specific job.

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SIXTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

45. Respondent Zuniga's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1988 Toyota pickup truck in accordance with procedures prescribed by the department.

b. **Section 44016:** Respondent failed to perform the repairs on the Bureau's 1988 Toyota pickup truck in accordance with established specifications and procedures.

c. **Section 44033, subdivision (c):** Respondent's employee failed to provide the undercover operator with a written estimate for parts and/or labor necessary for a specific job.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

46. Respondent Zuniga's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the following sections of California Code of Regulations, title 16:

a. **Section 3340.41, subdivision (d):** Respondent failed to perform the repairs on the Bureau's 1988 Toyota pickup truck in accordance with established specifications and procedures.

b. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau's 1988 Toyota pickup truck.

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c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1988 Toyota pickup truck in accordance with the Bureau's specifications.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

47. Respondent Zuniga's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by charging and obtaining payment from the undercover operator for adjusting the carburetor on the Bureau's 1988 Toyota pickup truck when, in fact, that repair was not performed on the vehicle.

NINETEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

48. Respondent Zuniga's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with provisions of that Code as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1988 Toyota pickup truck in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries on the VIR dated August 4, 2005, as set forth in subparagraph 40 (a) above.

TWENTIETH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

49. Respondent Zuniga's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in

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that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1988 Toyota pickup truck in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1988 Toyota pickup truck in accordance with the Bureau's specifications.

UNDERCOVER OPERATION #2: 1992 CHEVROLET S10 PICKUP TRUCK

50. On September 20, 2005, an undercover operator with the Bureau (hereinafter "the operator") took the Bureau's 1992 Chevrolet S10 pickup truck to Respondent California Smog Certification's 1655 Broadway facility. A defective coolant temperature sensor ("CTS") had been installed in the Bureau-documented vehicle, causing the vehicle's exhaust tailpipe emissions to exceed the gross polluter limits. The operator met with Respondent's service writer and requested a smog inspection. The operator completed and signed a work order/invoice, but did not receive a copy of the document or a written estimate for the inspection. After the smog inspection was completed, the service writer told the operator that the vehicle failed the inspection. The operator paid the service writer $49.75 in cash and received a final invoice, VIR, and station list.

51. At approximately 1335 hours that same day, the operator took the vehicle to Zuniga's facility, Jesse Smog Station. The operator told Zuniga that the vehicle needed smog repairs. Zuniga's employee, "Roberto", checked the vehicle and looked under the hood. Roberto told the operator to buy a coolant sensor and he would install it in the vehicle.

52. On September 21, 2005, Bureau Representative Paul Stump ("Stump") inspected the vehicle. Stump found that the defective CTS was still in place; however, the sensor had been disturbed and the top part of the sensor had been separated from the lower part. Stump installed a new CTS in the engine.

53. On September 26, 2005, the operator returned the vehicle to Jesse Smog Station and told Zuniga that her boyfriend replaced the CTS. Zuniga asked the operator if she needed him to check the vehicle so that it would pass a smog inspection. The operator authorized Zuniga to perform the smog inspection. The operator completed and signed a work order/invoice, but did not receive a copy of the document or a written estimate. Roberto told the operator that they needed to fix the timing (ignition timing), which would cost $80. The operator authorized the repair and while waiting at the facility, observed Zuniga perform a smog inspection on the vehicle. After the inspection was completed, the operator paid Roberto $80 in cash and received copies of two invoices numbered 64924 and a VIR dated September 26, 2005, for a pretest inspection. The VIR indicated that the vehicle passed the pretest inspection and that the ignition timing was checked and passed the inspection at 10 degrees before top dead center ("BTDC"). The operator asked Zuniga what he had done to the vehicle. Zuniga told the operator that he replaced a hose and "the smog went down." Roberto told the operator that she should return to California Smog Certification.

54. On September 27, 2005, Stump reinspected the vehicle and found that the ignition timing test had not been performed, or performed properly, the thermostatic air cleaner ("ACL") cover was incorrectly installed, allowing fresh air to enter the throttle body without going through the ACL snorkel, and the vacuum hose to the hot air door actuator had been notched (the notch was deep enough to allow a vacuum leak at the hose). Stump performed an ASM smog check inspection on the vehicle. The vehicle failed the visual portion of the inspection due to the modified ACL.

55. On October 4, 2005, the operator returned the vehicle to Respondent California Smog Certification's 1655 Broadway facility and requested a smog inspection. The catalytic converter on the vehicle had been gutted (all of the catalyst material had been removed from the emission control component), causing the vehicle's exhaust tailpipe emissions to exceed the gross polluter limits. The operator completed and signed a work order/invoice which was given to her by the service writer, but did not receive a copy of the document or a written estimate. After the smog inspection was completed, the service writer told the operator that the

vehicle failed the inspection. The operator did not receive an invoice or VIR for the smog inspection performed that day.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Document)

56. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that on or about September 20, 2005, and October 4, 2005, Respondent's service writer failed to give the undercover operator copies of the work orders/invoices, identified in paragraphs 50 and 55 above, as soon as the operator signed the documents.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

57. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 9884.8:** On or about October 4, 2005, Respondent failed to provide the undercover operator with an invoice listing all service work performed and/or parts supplied on the Bureau's 1992 Chevrolet S10 pickup truck.

b. **Section 9884.9, subdivision (a):** On or about September 20, 2005, and October 4, 2005, Respondent's service writer failed to provide the undercover operator with written estimates for parts and/or labor necessary for a specific job.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

58. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44033, subdivision (c), of that Code, as follows: On or about September 20, 2005, and October 4, 2005, Respondent's service writer failed to

provide the undercover operator with written estimates for parts and/or labor necessary for a specific job.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

59. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that on or about October 4, 2005, Respondent failed to comply with California Code of Regulations, title 16, section 3340.41, subdivision (a), by failing to provide the undercover operator with a copy of the VIR following the smog inspection on the Bureau's 1992 Chevrolet S10 pickup truck.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

60. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew, or in the exercise of reasonable care, should have known to be untrue or misleading, as follows:

a. Respondent certified under penalty of perjury on the VIR dated September 26, 2005, that he performed the pretest inspection on the Bureau's 1992 Chevrolet S10 pickup truck in accordance with all Bureau requirements. In fact, Respondent failed to perform, or properly perform, the functional ignition timing check on the vehicle in that he failed to disconnect the wire timing connector during the test.

b. Respondent certified under penalty of perjury on the VIR dated September 26, 2005, that the Bureau's 1992 Chevrolet S10 pickup truck had passed the visual portion of the smog inspection. In fact, the ACL cover was incorrectly installed, allowing fresh air to enter the throttle body without going through the ACL snorkel, and the vacuum hose to the hot air door actuator had been notched (the notch was deep enough to allow a vacuum leak at the hose).

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TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Document)

61. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that on or about September 26, 2005, Respondent failed to give the undercover operator a copy of the work order/invoice, identified in paragraph 53 above, as soon as the operator signed the document.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

62. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 9884.8:**

1. On or about September 20, 2005, Respondent failed to provide the undercover operator with an invoice listing all service work performed on the Bureau's 1992 Chevrolet S10 pickup truck, i.e., the diagnosis of the emissions failure on the vehicle.

2. Respondent failed to record on Invoice No. 64924 all service work performed and/or parts supplied on the Bureau's 1992 Chevrolet S10 pickup truck, including the adjustment of the ignition timing and the replacement of the vacuum hose.

b. **Section 9884.9, subdivision (a):** On or about September 20, 2005, and September 26, 2005, Respondent failed to provide the undercover operator with written estimates for parts and/or labor necessary for a specific job.

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TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

63. Respondent Zuniga's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1992 Chevrolet S10 pickup truck in accordance with procedures prescribed by the department.

b. **Section 44033, subdivision (c):** On or about September 20, 2005, and September 26, 2005, Respondent failed to provide the undercover operator with written estimates for parts and/or labor necessary for a specific job.

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

64. Respondent Zuniga's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the following sections of California Code of Regulations, title 16:

a. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau's 1992 Chevrolet S10 pickup truck.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1992 Chevrolet S10 pickup truck in accordance with the Bureau's specifications.

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THIRTIETH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

65. Respondent Zuniga's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with provisions of that Code as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1992 Chevrolet S10 pickup truck in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries on the VIR dated September 26, 2005, as set forth in paragraph 60 above.

THIRTY-FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

66. Respondent Zuniga's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1992 Chevrolet S10 pickup truck in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1992 Chevrolet S10 pickup truck in accordance with the Bureau's specifications.

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UNDERCOVER OPERATION #3: 1988 CHEVROLET CAPRICE

67. On March 22, 2006, an undercover operator with the Bureau (hereinafter "the operator") took the Bureau's 1988 Chevrolet Caprice to Respondent California Smog Certification's 1655 Broadway facility. The throttle positioning sensor ("TPS") ground circuit wire at the engine control module (on-board computer) of the Bureau-documented vehicle had been disconnected, causing the vehicle's exhaust tailpipe emissions to exceed the gross polluter limits. Further, a defective bulb had been installed in the "service engine soon" light (Malfunction Indicator Lamp or "MIL"), preventing the MIL from operating. The operator met with Respondent's service writer, "Cynthia", and completed and signed a work order/invoice for a smog inspection on the vehicle. Cynthia did not provide the operator with a copy of the work order/invoice or a written estimate.

68. After the inspection was completed, one of Respondent's employees told the operator that the vehicle failed the inspection and that some work needed to be performed on the vehicle so that it would pass the smog inspection. The operator paid $49.75 in cash and was given copies of a final invoice and a VIR.

69. At approximately 0935 hours that same day, the operator took the vehicle to Respondent Zuniga's facility, Jesse Smog Station, and requested smog repairs on the vehicle. A facility employee checked the vehicle and told the operator that there were problems with the carburetor. The employee stated that he could get the vehicle to pass the smog inspection and that he would only charge the operator $80. The operator authorized the repairs on the vehicle, but did not receive a work order or estimate for the repairs. After the repairs were completed, the operator signed and received a copy of Invoice No. 67224 and paid the facility employee $100 in cash. The operator also received a copy of a VIR dated March 22, 2006, for a pretest inspection on the vehicle. The VIR indicated that Respondent Zuniga performed the pretest inspection.

70. On March 23, 2006, Bureau Representative John Nelson ("Nelson") inspected the vehicle. Nelson found that the defective bulb in the MIL had been replaced, but that the TPS ground circuit wire to the computer was still disconnected. Nelson also found that the hot air tube to the thermostatic air cleaner ("TAC") was disconnected, that a jumper wire with

a test light had been connected to the mixture control solenoid ("M/C") dwell connector, with the other end connected to a ground, and that the vacuum hose to the early fuel evaporation valve ("EFE") was disconnected. Nelson performed an ASM smog check inspection on the vehicle. The vehicle passed the emission test, but failed the visual inspection portion of the smog test due to the disconnected vacuum hose, modified sensor wiring, and disconnected TAC. The vehicle also failed the functional portion of the test because the MIL remained illuminated during the test.

71. On March 24, 2006, the operator returned the vehicle to Respondent California Smog Certification's 1655 Broadway facility. The operator met with Respondent's employee, Virgil Wayne White ("White"), and requested a smog inspection. White provided the operator with a work order/invoice, which the operator completed and signed. White did not give the operator a copy of the work order/invoice or a written estimate for the inspection. After the inspection was completed, the operator paid Cynthia $8.25 in cash for the smog certificate and received copies of an invoice and a VIR dated March 24, 2006, signed or initialed by Respondent Wilson. That same day, electronic smog Certificate of Compliance #GC553940C was issued for the vehicle.

72. On March 30, 2006, Nelson reinspected the vehicle and found that the TPS ground circuit wire to the computer, the TAC hose, and the vacuum hose to the EFE valve were still disconnected and that the jumper wire with the test light was still connected to the M/C and grounded. Nelson also found that the vacuum hose to the exhaust gas recirculation ("EGR") valve, the electric solenoid to the EGR valve, and the evaporative hose to the carburetor float bowl vent were disconnected. Nelson performed an ASM smog check inspection on the vehicle. The vehicle failed the test for excessive exhaust emissions, the disconnected EGR valve, TAC, vacuum hoses, and carburetor float bowl vent, and the modified wiring to the sensors.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

73. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7,

subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent California Smog Certification's technician, Respondent Wilson, certified under penalty of perjury on the VIR dated March 24, 2006, that the Bureau's 1988 Chevrolet Caprice had passed inspection and was in compliance with applicable laws and regulations. In fact, the TPS ground circuit wire to the computer, the hot air tube to the TAC, the vacuum hose to the EFE, the vacuum hose to the EGR valve, the electric solenoid to the EGR valve, and the evaporative hose to the carburetor float bowl vent were disconnected. Further, a jumper wire with a test light had been connected to the M/C dwell connector and grounded. As such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

THIRTY-THIRD CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Document)

74. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that on or about March 22, 2006, and March 24, 2006, Respondent's employees failed to give the undercover operator copies of the work orders/invoices, identified in paragraphs 67 and 71 above, as soon as the operator signed the documents.

THIRTY-FOURTH CAUSE FOR DISCIPLINE

(Fraud)

75. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act which constitutes fraud, as follows: Respondent issued an electronic smog certificate of compliance for the Bureau's 1988 Chevrolet Caprice without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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THIRTY-FIFTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

76. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that on or about March 22, 2006, and March 24, 2006, Respondent failed to comply with section 9884.9, subdivision (a), of that Code. Respondent's employees failed to provide the undercover operator with written estimates for parts and/or labor necessary for a specific job.

THIRTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

77. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent California Smog Certification's technician, Respondent Wilson, failed to perform the emission control tests on the Bureau's 1988 Chevrolet Caprice in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent California Smog Certification issued an electronic smog certificate of compliance for the Bureau's 1988 Chevrolet Caprice without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

c. **Section 44033, subdivision (c):** On or about March 22, 2006, and March 24, 2006, Respondent's employees failed to provide the undercover operator with written estimates for parts and/or labor necessary for a specific job.

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THIRTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

78. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent California Smog Certification falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1988 Chevrolet Caprice.

b. **Section 3340.35, subdivision (c):** Respondent California Smog Certification issued an electronic smog certificate of compliance for the Bureau's 1988 Chevrolet Caprice even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

c. **3340.41, subdivision (c):** Respondent California Smog Certification's technician, Respondent Wilson, knowingly entered into the emissions inspection system false information about the Bureau's 1988 Chevrolet Caprice.

d. **Section 3340.42:** Respondent California Smog Certification's technician, Respondent Wilson, failed to conduct the required smog tests on the Bureau's 1988 Chevrolet Caprice in accordance with the Bureau's specifications.

THIRTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

79. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1988 Chevrolet Caprice

without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRTY-NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

80. Respondent Wilson's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with provisions of that Code as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1988 Chevrolet Caprice in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries on the VIR dated March 24, 2006, as set forth in paragraph 73 above, resulting in the issuance of an electronic smog certificate of compliance for the Bureau's 1988 Chevrolet Caprice.

FORTIETH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

81. Respondent Wilson's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1988 Chevrolet Caprice.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1988 Chevrolet Caprice in accordance with Health & Saf.

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Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau's 1988 Chevrolet Caprice.

d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1988 Chevrolet Caprice in accordance with the Bureau's specifications.

FORTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

82. Respondent Wilson's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in in that he committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1988 Chevrolet Caprice without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FORTY-SECOND CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

83. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew, or in the exercise of reasonable care, should have known to be untrue or misleading, as follows: Respondent certified under penalty of perjury on the VIR dated March 22, 2006, that the Bureau's 1988 Chevrolet Caprice had passed the pretest inspection and was in compliance with applicable laws and regulations. In fact, the TPS ground circuit wire to the computer, the hot air tube to the TAC, and the vacuum hose to the EFE were disconnected. Further, a jumper wire with a test light had been connected to the M/C dwell connector and grounded.

FORTY-THIRD CAUSE FOR DISCIPLINE

(Departure From Trade Standards)

84. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative, in the following material respects:

a. Respondent failed to diagnose, or properly diagnose the defect in the emissions control system on the Bureau's 1988 Chevrolet Caprice in that Respondent failed to determine that the TPS ground circuit wire at the engine control module was disconnected. Further, Respondent failed to repair the defect in the emissions control system by reestablishing ground for the TPS circuit at the engine control module.

b. Respondent illegally modified the emissions control system on the Bureau's 1988 Chevrolet Caprice by disconnecting the hot air tube to the TAC and the vacuum hose to the EFE. Further, Respondent connected a jumper wire with a test light to the M/C dwell connector and grounded the wire.

FORTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

85. Respondent Zuniga's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 9884.8:** Respondent failed to record on Invoice No. 67224 all service work performed and/or parts supplied on the Bureau's 1988 Chevrolet Caprice.

b. **Section 9884.9, subdivision (a):** Respondent failed to provide the undercover operator with a written estimate for parts and/or labor necessary for a specific job.

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FORTY-FIFTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

86. Respondent Zuniga's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1988 Chevrolet Caprice in accordance with procedures prescribed by the department.

b. **Section 44016:** Respondent failed to perform the repairs on the Bureau's 1988 Chevrolet Caprice in accordance with established specifications and procedures.

c. **Section 44033, subdivision (c):** Respondent's employee failed to provide the undercover operator with a written estimate for parts and/or labor necessary for a specific job.

FORTY-SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

87. Respondent Zuniga's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the following sections of California Code of Regulations, title 16:

a. **Section 3340.41, subdivision (d):** Respondent failed to perform the repairs on the Bureau's 1988 Chevrolet Caprice in accordance with established specifications and procedures.

b. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau's 1988 Chevrolet Caprice.

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c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1988 Chevrolet Caprice in accordance with the Bureau's specifications.

FORTY-SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

88. Respondent Zuniga's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with provisions of that Code as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1988 Chevrolet Caprice in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries on the VIR dated March 22, 2006, as set forth in paragraph 83 above.

FORTY-EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

89. Respondent Zuniga's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1988 Chevrolet Caprice in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1988 Chevrolet Caprice in accordance with the Bureau's specifications.

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RESPONDENT CALIFORNIA SMOG

CERTIFICATION'S 11 3RD AVENUE FACILITY

UNDERCOVER OPERATION #1: 1986 CHEVROLET MONTE CARLO

90. On August 8, 2005, an undercover operator with the Bureau, using the alias "Nancy Cruz" (hereinafter "the operator"), took the Bureau's 1986 Chevrolet Monte Carlo to Respondent California Smog Certification's facility located at 11 3rd Avenue, Suite A, Chula Vista, California (hereinafter "11 3rd Avenue facility"). A defective emissions coolant temperature sensor had been installed in the Bureau-documented vehicle, causing the vehicle's exhaust tailpipe emissions to exceed the gross polluter limits. Further, a faulty bulb had been installed in the MIL socket in the dash panel, preventing the MIL from functioning. The operator requested a smog inspection on the vehicle and signed and received a copy of a written estimate. After the inspection was completed, the operator was informed that the vehicle failed the inspection. The operator paid $49.75 in cash for the inspection and received copies of an invoice and a VIR dated August 8, 2005, signed or initialed by Respondent Rivera.

91. On August 16, 2005, Bureau Representative Daniel Woods ("Woods") inspected the vehicle and found that the gas (fuel) cap had not been tested, the ignition timing had not been tested, or properly tested, and the MIL still was not functioning.

92. On August 22, 2005, the operator took the vehicle to Highland Mobil Service Station ("Highland Mobil"), a test and repair facility located at 2945 Highland Avenue, National City, California. That same day, Highland Mobile's employee, Ricardo, told the operator that the vehicle needed a new coolant temperature sensor, which the operator authorized. The operator paid Highland Mobil $133.99 in cash for the repairs and received an invoice and a VIR. The VIR indicated that the vehicle passed a pre-test smog inspection.

93. On September 13, 2005, Woods inspected the vehicle and found that the defective coolant temperature sensor had been replaced, which corrected the vehicle's emissions failure.

94. On September 29, 2005, another undercover operator with the Bureau, using the alias "Brenda Cruz" (hereinafter "the operator"), took the vehicle to Respondent

California Smog Certification's 11 3rd Avenue facility. A defective emissions coolant temperature sensor had been installed in the vehicle, causing the exhaust tailpipe emissions to exceed the gross polluter limits. Further, a faulty bulb had been installed in the MIL socket in the dash panel, preventing the MIL from functioning. The operator told a female service writer that she was there for her sister and that the vehicle had failed a smog test, but had been repaired. The operator requested a smog re-test on the vehicle and signed and received a copy of a written estimate. After the smog inspection was completed, the operator was informed that the vehicle passed the inspection. The operator paid $8.25 in cash for the smog certificate and received copies of an invoice and a VIR dated September 29, 2005, signed or initialed by Respondent Garcia. That same day, electronic smog Certificate of Compliance #FY422301C was issued for the vehicle.

95. On October 31, 2005, Woods performed an ASM smog check inspection on the vehicle. The vehicle failed the emissions test as a gross polluter. Woods inspected the vehicle and found that the MIL still was not functioning, the defective coolant temperature sensor was still in place, and the fuel cap had not been tested.

FORTY-NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

96. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent California Smog Certification's technician, Respondent Rivera, certified under penalty of perjury on the VIR dated August 8, 2005, that he performed the smog inspection on the Bureau's 1986 Chevrolet Monte Carlo in accordance with all Bureau requirements. In fact, Respondent Rivera failed to perform the functional fuel cap integrity test and failed to perform, or properly perform, the functional ignition timing test on the vehicle.

b. Respondent California Smog Certification's technician, Respondent Rivera, certified under penalty of perjury on the VIR dated August 8, 2005, that the information

listed on the VIR was true and correct and that the Bureau's 1986 Chevrolet Monte Carlo had passed the functional check portion of the smog inspection. In fact, the MIL was not functioning at the time the vehicle was taken to the 11rd Avenue facility on the above date and as such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

c. Respondent California Smog Certification's technician, Respondent Garcia, certified under penalty of perjury on the VIR dated September 29, 2005, that the Bureau's 1986 Chevrolet Monte Carlo had passed inspection and was in compliance with applicable laws and regulations. In fact, the MIL was not functioning, the emissions coolant temperature sensor was defective, and the exhaust tailpipe emissions were in excess of the gross polluter limits at the time the vehicle was taken to the 11rd Avenue facility on the above date. As such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

d. Respondent California Smog Certification's technician, Respondent Garcia, certified under penalty of perjury on the VIR dated September 29, 2005, that he performed the smog inspection on the Bureau's 1986 Chevrolet Monte Carlo in accordance with all Bureau requirements. In fact, Respondent Garcia failed to perform the functional fuel cap integrity test on the vehicle.

FIFTIETH CAUSE FOR DISCIPLINE

(Fraud)

97. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act which constitutes fraud, as follows: Respondent issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Monte Carlo without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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FIFTY-FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

98. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent California Smog Certification's technicians, Respondents Rivera and Garcia, failed to perform the emission control tests on the Bureau's 1986 Chevrolet Monte Carlo in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent California Smog Certification issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Monte Carlo without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

FIFTY-SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

99. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent California Smog Certification falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Monte Carlo.

b. **Section 3340.35, subdivision (c):** Respondent California Smog Certification issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Monte Carlo even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

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c. **3340.41, subdivision (c):** Respondent California Smog Certification's technicians, Respondents Rivera and Garcia, knowingly entered into the emissions inspection system false information about the Bureau's 1986 Chevrolet Monte Carlo.

FIFTY-THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

100. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Monte Carlo without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FIFTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

101. Respondent Rivera's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that on or about August 8, 2005, he failed to comply with provisions of that Code as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1986 Chevrolet Monte Carlo in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries on the VIR dated dated August 8, 2005, as set forth in subparagraphs 96 (a) and (b) above.

FIFTY-FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

102. Respondent Rivera's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in

that on or about August 8, 2005, Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1986 Chevrolet Monte Carlo in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau's 1986 Chevrolet Monte Carlo.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1986 Chevrolet Monte Carlo in accordance with the Bureau's specifications.

FIFTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

103. Respondent Garcia's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that on or about September 29, 2005, he failed to comply with provisions of that Code as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1986 Chevrolet Monte Carlo in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries on the VIR dated September 29, 2005, as set forth in subparagraphs 96 (c) and (d) above, resulting in the issuance of an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Monte Carlo.

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FIFTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

104. Respondent Garcia's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that on or about September 29, 2005, Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Monte Carlo.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1986 Chevrolet Monte Carlo in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau's 1986 Chevrolet Monte Carlo.

d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1986 Chevrolet Monte Carlo in accordance with the Bureau's specifications.

FIFTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

105. Respondent Garcia's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that on or about September 29, 2005, he committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Monte Carlo without performing a bona fide inspection of the emission

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control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION #2: 1984 BUICK REGAL

106. On December 28, 2005, an undercover operator with the Bureau, using the alias "Heather Rios" (hereinafter "the operator"), took the Bureau's 1984 Buick Regal to Respondent California Smog Certification's 11 3rd Avenue facility. The fuel control wire from the engine control module ("ECM") to the mixture control solenoid in the carburetor on the Bureau-documented vehicle had been damaged, causing the vehicle's exhaust tailpipe emissions to exceed the gross polluter limits and the MIL to remain illuminated, indicating a problem with the emission control systems. The operator signed and received a copy of a written estimate for a smog inspection on the vehicle, which had been given to her by Respondent's service writer. After the inspection was completed, the service writer told the operator that the vehicle failed the inspection and that the check engine light had a blown fuse and needed replacement. The operator paid $49.75 in cash and received a copy of an invoice and VIR.

107. On February 15, 2006, another undercover operator with the Bureau, using the alias "Felix Rios" (hereinafter "the operator"), took the vehicle to Highland Mobil. The operator told one of the technicians that the vehicle had failed a smog inspection and that he needed to have the vehicle checked. The operator signed and received a copy of a written estimate, totaling $78, to diagnose the cause of the emissions failure. At approximately 1203 hours that same day, the operator received a telephone call from the technician. The technician told the operator that there were problems with the computer and carburetor on the vehicle and gave the operator a verbal estimate of $152 to replace the computer, which the operator authorized. After the repairs were completed, the operator paid $222.16 in cash and received copies of an invoice and VIR for a pretest inspection on the vehicle. The VIR indicated that the vehicle passed the pretest inspection.

108. On February 17, 2006, Bureau Representative Daniell Rogers inspected the vehicle and found that the damaged fuel control wire from the ECM to the mixture control solenoid had been repaired and the MIL bulb had been replaced.

109. On March 27, 2006, a third undercover operator, using the alias "Maria Rios" (hereinafter "operator"), took the vehicle to Respondent California Smog Certification's 11 3rd Avenue facility. The mixture control ("M/C") solenoid on the vehicle had been damaged, causing the vehicle's exhaust tailpipe emissions to exceed the gross polluter limits and the MIL to remain illuminated, indicating a problem with the emission control systems. The operator met with Respondent's service writer and requested a smog re-test on the vehicle. The operator did not receive an estimate for the re-test inspection. A short while later, the service writer told the operator that the vehicle had passed the inspection. The operator signed a work order for the inspection, but was not provided with a copy of the document. The operator paid $8.25 for the smog certificate and received copies of an invoice and a VIR dated March 27, 2006, signed or initialed by Respondent Delgado. That same day, electronic smog Certificate of Compliance #GC644240C was issued for the vehicle.

110. On March 27, 2006, Rogers performed an ASM smog check inspection on the vehicle. The vehicle failed the emissions test as a gross polluter, failed the functional MIL test (the MIL was illuminated during the test), and failed the visual portion of the inspection due to a missing gas (fuel) cap.

FIFTY-NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

111. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent California Smog Certification's technician, Respondent Delgado, certified under penalty of perjury on the VIR dated March 27, 2006, that the Bureau's 1984 Buick Regal had passed inspection and was in compliance with applicable laws and regulations. In fact, the M/C solenoid in the carburetor was defective, the exhaust tailpipe emissions were in excess of the gross polluter limits, the MIL was still illuminated on the vehicle, and the fuel cap was

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missing. As such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

SIXTIETH CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Document)

112. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that on or about March 27, 2006, Respondent's service writer failed to give the undercover operator a copy of the work order, identified in paragraph 109 above, as soon as the operator signed the document.

SIXTY-FIRST CAUSE FOR DISCIPLINE

(Fraud)

113. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act which constitutes fraud, as follows: Respondent issued an electronic smog certificate of compliance for the Bureau's 1984 Buick Regal without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

114. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that on or about March 27, 2006, Respondent failed to comply with section 9884.9, subdivision (a), of that Code. Respondent's service writer failed to provide the undercover operator with a written estimate for parts and/or labor necessary for a specific job.

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SIXTY-THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

115. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent California Smog Certification's technician, Respondent Delgado, failed to perform the emission control tests on the Bureau's 1984 Buick Regal in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent California Smog Certification issued an electronic smog certificate of compliance for the Bureau's 1984 Buick Regal without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

SIXTY-FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

116. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent California Smog Certification falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1984 Buick Regal.

b. **Section 3340.35, subdivision (c):** Respondent California Smog Certification issued an electronic smog certificate of compliance for the Bureau's 1984 Buick Regal even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

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c. **3340.41, subdivision (c):** Respondent California Smog Certification's technician, Respondent Delgado, knowingly entered into the emissions inspection system false information about the Bureau's 1984 Buick Regal .

SIXTY-FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

117. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1984 Buick Regal without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

118. Respondent Delgado's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1984 Buick Regal in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries on the VIR dated dated March 27, 2006, as set forth in paragraph 111 above, resulting in the issuance of a fraudulent certificate of compliance for the vehicle.

SIXTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

119. Respondent Delgado's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in

that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1984 Buick Regal.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1984 Buick Regal in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau's 1984 Buick Regal.

d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1984 Buick Regal in accordance with the Bureau's specifications.

SIXTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

120. Respondent Delgado's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1984 Buick Regal without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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UNDERCOVER OPERATION #3: 1992 TOYOTA COROLLA

121. On April 27, 2006, an undercover operator with the Bureau (hereinafter "operator"), took the Bureau's 1992 Toyota Corolla to Respondent California Smog Certification's 11 3rd Avenue facility. The signal hose to the VSV plug, a solenoid vacuum valve used by the electronic control unit to control the EGR system, was routed to the wrong port on the Bureau-documented vehicle, preventing the EGR valve from functioning. Further, the oxygen sensor ground was switched with the oxygen sensor signal wire in the wire harness connector. Both defects caused the vehicle's exhaust tailpipe emissions to exceed the gross polluter limits. There were no other problems with the emission control systems on the vehicle and the ignition timing was set to manufacturer's specifications (10 degrees before top dead center). The operator requested a smog inspection on the vehicle. Respondent's service writer had the operator complete and sign a work order for the inspection, but did not provide the operator with a copy of the work order or a written estimate. After a while, the service writer told the operator that the smog test would take more time because they needed to "reheat" the vehicle.

122. After the inspection was completed, the operator paid $58 in cash and received copies of Invoice No. 343821 and a VIR signed or initialed by Respondent Delgado. That same day, electronic smog Certificate of Compliance #GD440987C was issued for the vehicle.

123. On April 27, 2006, Bureau Representative Robert Badham ("Badham") reviewed the invoice and VIR. Badham noticed that the VIR indicated that the engine size on the Bureau's vehicle was 2.2 liters when, in fact, the vehicle is equipped with a 1.6 liter engine. Further, both the invoice and VIR referred to the vehicle as a "Camry" rather than a "Corolla".[4] Badham also noticed that the engine RPM readings on the VIR were 2501 and 2384, indicating that the vehicle was tested in first and second gears instead of "drive".

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4. The fact that the engine size was entered into the emission inspection system as 2.2 liter rather, than 1.6 liter as indicated on the under-hood label, may have lowered the maximum allowable limit for NOX by approximately 35 PPM (parts per million).

124. On April 28, 2006, Badham performed a smog check inspection on the vehicle. The vehicle failed the functional MIL test, the functional ignition timing test, and the emissions test due to high NOX. Badham found that Respondent California Smog Certification had adjusted the ignition timing on the vehicle[5] and that the ignition timing had not been adjusted to manufacturer's specifications.

SIXTY-NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

125. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent California Smog Certification's technician, Respondent Delgado, certified under penalty of perjury on the VIR that the Bureau's 1992 Toyota Corolla had passed inspection and was in compliance with applicable laws and regulations. In fact, the ignition timing on the vehicle was not adjusted to manufacturer's specifications. The ignition timing had been adjusted or set to 5 degrees BTDC when the manufacturer's specifications are 10 degrees BDTC. Further, the MIL was illuminated, indicating a problem with the vehicle's emissions system, and the NOX tailpipe emissions were in excess of the maximum allowable limit. As such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

b. Respondent California Smog Certification's technician, Respondent Delgado, certified under penalty of perjury on the VIR that the ignition timing on the Bureau's

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5. Health & Saf. Code section 44014.5, subdivision (b), states: "The repair of vehicles at test-only facilities shall be prohibited, except that the minor repair of components damaged by station personnel during inspection at the station, any minor repair that is necessary for the safe operation of a vehicle while at a station, or other minor repairs, such as the reconnection of hoses or vacuum lines, may be undertaken at no charge to the vehicle owner or operator if authorized in advance in writing by the department."

California Code of Regulations, title 16, section 3340.16, subdivision (d), states: "A smog check test-only station shall not engage in any automotive repair work".

1992 Toyota Corolla was 10 degrees BTDC when, in fact, the ignition timing had been set to 5 degrees BTDC, as set forth in subparagraph (a) above.

c. Respondent California Smog Certification's technician, Respondent Delgado, certified under penalty of perjury on the VIR that he performed the smog inspection on the Bureau's 1992 Toyota Corolla in accordance with all Bureau requirements. In fact, Delgado failed to start the inspection with the automatic transmission in drive (or overdrive if the RPM exceeds 3000 RPM).

d. Respondent California Smog Certification's technician, Respondent Delgado, certified under penalty of perjury on the VIR that the information listed on the VIR was true and correct and that the Bureau's vehicle was a 1992 Toyota Camry with a 2.2 liter engine. In fact, the vehicle was a 1992 Toyota *Corolla* with a *1.6* liter engine.

SEVENTIETH CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Document)

126. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent's service writer failed to give the undercover operator a copy of the work order as soon as the operator signed the document.

SEVENTY-FIRST CAUSE FOR DISCIPLINE

(Fraud)

127. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act which constitutes fraud, as follows: Respondent issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota Corolla without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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SEVENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

128. Respondent California Smog Certification's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code. Respondent's service writer failed to provide the undercover operator with a written estimate for parts and/or labor necessary for a specific job.

SEVENTY-THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

129. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent California Smog Certification's technician, Respondent Delgado, failed to perform the emission control tests on the Bureau's 1992 Toyota Corolla in accordance with procedures prescribed by the department.

b. **44014.5, subdivision (b):** Respondent California Smog Certification repaired the Bureau's 1992 Toyota Corolla by adjusting the ignition timing on the vehicle, as set forth in paragraph 124 above, when, in fact, Respondent was not legally authorized to repair the vehicle as it is licensed as a test only facility.

c. **Section 44015:** Respondent California Smog Certification issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota Corolla without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

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SEVENTY-FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

130. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.16, subdivision (d):** Respondent California Smog Certification engaged in automotive repair work by adjusting the ignition timing on the Bureau's 1992 Toyota Corolla, as set forth in paragraph 124 above, when, in fact, Respondent was not legally authorized to repair the vehicle as it is licensed as a test only facility.

b. **Section 3340.24, subdivision (c):** Respondent California Smog Certification falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota Corolla.

c. **Section 3340.35, subdivision (c):** Respondent California Smog Certification issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota Corolla even though the vehicle had not been inspected in accordance with Health & Saf. Code section 3340.42.

d. **3340.41, subdivision (c):** Respondent California Smog Certification's technician, Respondent Delgado, knowingly entered into the emissions inspection system false information about the Bureau's 1992 Toyota Corolla.

SEVENTY-FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

131. Respondent California Smog Certification's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by

issuing an electronic smog certificate of compliance for the Bureau's 1992 Toyota Corolla without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SEVENTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

132. Respondent Delgado's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1992 Toyota Corolla in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries on the VIR, as set forth in paragraph 125 above, resulting in the issuance of a fraudulent certificate of compliance for the vehicle.

SEVENTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

133. Respondent Delgado's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota Corolla.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1992 Toyota Corolla in accordance with Health & Saf. Code

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sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau's 1992 Toyota Corolla.

d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1992 Toyota Corolla in accordance with the Bureau's specifications.

SEVENTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

134. Respondent Delgado's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1992 Toyota Corolla without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

135. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Respondent California Smog Certification, Inc. upon a finding that said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

136. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TD 221240, issued to Respondent California Smog Certification Inc., is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

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137. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 085454, issued to Karl Duer Robson, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

138. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 137341, issued to Loren Thomas Wilson, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

139. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Respondent Jesus Benito Zuniga, also known as Jesus B. Zuniga, owner of Jesse Smog Station, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

140. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number RE 160498, issued to Respondent Jesus Benito Zuniga, also known as Jesus B. Zuniga, owner of Jesse Smog Station, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

141. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 304458, issued to Jesus Benito Zuniga, also known as Jesus B. Zuniga, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

142. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TF 216533, issued to Respondent California Smog Certification, Inc., is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

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143. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 148756, issued to Jeremiah Edgar Rivera, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

144. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 143159, issued to Jaime Garcia, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

145. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 148105, issued to Diego Salvado Delgado, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AD 221240, issued to California Smog Certification, Inc.;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued in the name of California Smog Certification, Inc., including, but not limited to, Automotive Repair Dealer Registration Number AF 216533;

3. Revoking or suspending Smog Check, Test Only, Station License Number TD 221240, issued to California Smog Certification, Inc.;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of California Smog Certification, Inc., including, but not limited to, Smog Check, Test Only, Station License Number TF 216533;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 085454, issued to Karl Duer Robson;

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6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Karl Duer Robson;

7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 137341, issued to Loren Thomas Wilson;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Loren Thomas Wilson;

9. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AE 160498, issued to Jesus Benito Zuniga, also known as Jesus B. Zuniga, owner of Jesse Smog Station;

10. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Jesus Benito Zuniga, also known as Jesus B. Zuniga;

11. Revoking or suspending Smog Check Station License Number RE 160498, issued to Jesus Benito Zuniga, also known as Jesus B. Zuniga, owner of Jesse Smog Station;

12. Revoking or suspending Advanced Emission Specialist Technician License Number EA 304458, issued to Jesus Benito Zuniga, also known as Jesus B. Zuniga;

13. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jesus Benito Zuniga, also known as Jesus B. Zuniga;

14. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AF 216533, issued to California Smog Certification, Inc.;

15. Temporarily or permanently invalidating any other automotive repair dealer registration issued in the name of California Smog Certification, Inc., including, but not limited to, Automotive Repair Dealer Registration Number AD 221240;

16. Revoking or suspending Advanced Emission Specialist Technician License Number EA 148756, issued to Jeremiah Edgar Rivera;

17. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jeremiah Edgar Rivera;

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18. Revoking or suspending Advanced Emission Specialist Technician License Number EA 143159, issued to Jaime Garcia;

19. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jaime Garcia;

20. Revoking or suspending Advanced Emission Specialist Technician License Number EA 148105, issued to Diego Salvado Delgado;

21. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Diego Salvado Delgado;

22. Ordering Respondents California Smog Certification, Inc., Karl Duer Robson, Loren Thomas Wilson, Jesus Benito Zuniga, also known as Jesus B. Zuniga, individually, and as owner of Jesse Smog Station, Jeremiah Edgar Rivera, Jaime Garcia, and/or Diego Salvado Delgado, 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;

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

DATED: 9-26-07

SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California

Complainant