

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

In the Matter of the Accusation and Petition
to Revoke Probation Against:

Case No. 79/13-68

**PATRICIA ANAYA MARTIN, OWNER
OF CHULA VISTA SMOG**

3031 Main Street, Suite D
Chula Vista, CA 91911
Automotive Repair Dealer Registration
No. ARD 244202
Smog Check-Test Only Station License
No. TC 244202

and

JESUS OLIVAS GASTELUM

2690 Cagayan Avenue
San Diego, CA 92154

Advanced Emission Specialist Technician
License No. EA 130707 (to be
designated upon renewal as EO
130707 and/or EI 130707)

Respondents.

DECISION

The attached Stipulated Revocation of Registration and Licenses and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

5/29/13

DATED: May 7, 2013


DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

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23 **130707)**

Respondents.

Case No. 79/13-68

11 **STIPULATED REVOCATION**
12 **OF REGISTRATION AND**
13 **LICENSES AND ORDER**

24 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
25 proceeding that the following matters are true:

26 PARTIES

27 1. Complainant John Wallauch brought this Accusation and Petition to Revoke
28 Probation (Accusation) solely in his official capacity as the Chief of the Bureau of Automotive

1 Repair (Bureau), Department of Consumer Affairs (Department), and is represented in this matter
2 by Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy
3 Attorney General.

4 **Chula Vista Smog ARD & Smog Station License**

5 2. In 2006, the Bureau issued Automotive Repair Dealer Registration Number ARD
6 244202 (hereinafter registration) to Patricia Anaya Martin, Owner, dba Chula Vista Smog.
7 Respondent Martin's registration was in full force and effect at all times relevant to the charges
8 brought herein and expired on March 31, 2013.

9 3. On May 22, 2006, the Bureau issued Smog Check, Test Only, Station License
10 Number TC 244202 (hereinafter smog station license) to Respondent Martin. Respondent's smog
11 check station license was in full force and effect at all times relevant to the charges brought herein
12 and expired on March 31, 2013.

13 **Jesus Gastelum's Advanced Emission Specialist Technician License**

14 4. In 1999, the Bureau issued Advanced Emission Specialist Technician License No. EA
15 130707 (hereinafter technician license) to Respondent Jesus Olivas Gastelum. Respondent
16 Gastelum's technician license was in full force and effect at all times relevant to the charges
17 brought herein and will expire on September 30, 2013, unless renewed. Upon timely renewal of
18 the license, the license will be redesignated as EO 130707 and/or EI 130707.¹

19 5. Each Respondent is representing her and himself in this proceeding and has chosen
20 not to exercise his and her right to be represented by counsel.

21 JURISDICTION

22 6. Accusation No. 79/13-68 was filed before the Director, for the Bureau and is
23 currently pending against Respondents. The Accusation and all other statutorily required
24 documents, were properly served on Respondents on April 15, 2013. Respondents timely filed
25
26

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

1 their Notices of Defense contesting the Accusation. A copy of Accusation No. 79/13-68 is
2 attached as Exhibit A and incorporated by reference.

3 ADVISEMENT AND WAIVERS

4 7. Respondents have carefully read, and understand the charges and allegations in
5 Accusation No. 79/13-68. Respondents also have carefully read, and understand the effects of
6 this Stipulated Revocation of Registration and Licenses and Order (Stipulation and Order).

7 8. Respondents are fully aware of their legal rights in this matter, including the right to a
8 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
9 their own expense; the right to confront and cross-examine the witnesses against them; the right
10 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
11 compel the attendance of witnesses and the production of documents; the right to reconsideration
12 and court review of an adverse decision; and all other rights accorded by the California
13 Administrative Procedure Act and other applicable laws.

14 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
15 every right set forth above.

16 CULPABILITY

17 10. Respondent Martin admits the truth of each and every charge and allegation in
18 Accusation No. 79/13-68, agrees that cause exists for discipline, and hereby stipulates that her
19 Automotive Repair Dealer Registration No. ARD 244202, and Smog Check-Test Only Station
20 License No. TC 244202 be revoked by the Director.

21 11. Respondent Gastelum admits the truth of each and every charge and allegation in
22 Accusation No. 79/13-68, agrees that cause exists for discipline, and hereby stipulates that his
23 Advanced Emission Specialist Technician License(s) currently designated as EA 130707 and as
24 redesignated upon timely renewal as EO 130707 and/or EI 130707 be revoked by the Director.

25 12. Respondents understand that by signing this stipulation they enable the Director to
26 issue his order revoking their Automotive Repair Dealer registration, Smog Check-Test Only
27 Station license, and Advanced Emission Specialist Technicians license(s) without further process.
28

CONTINGENCY

1
2 13. This stipulation shall be subject to approval by the Director or the Director's designee.
3 Respondents understand and agree that counsel for Complainant and the staff of the Bureau may
4 communicate directly with the Director and staff regarding this stipulation and surrender, without
5 notice to or participation by either or both Respondents. By signing the stipulation, Respondents
6 understand and agree that they may not withdraw their agreement or seek to rescind the
7 stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt
8 this stipulation as the Decision and Order, the Stipulation and Order shall be of no force or effect,
9 except for this paragraph, it shall be inadmissible in any legal action between the parties, and the
10 Director shall not be disqualified from further action by having considered this matter.

11 14. The parties understand and agree that facsimile copies of this Stipulation and Order,
12 including facsimile signatures thereto, shall have the same force and effect as the originals.

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

19 16. In consideration of the foregoing admissions and stipulations, the parties agree that
20 the Director may, without further notice or formal proceeding, issue and enter the following
21 Order:

ORDER

22
23 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 244202
24 and Smog Check-Test Only Station License No. TC 244202 issued to Respondent Patricia Anaya
25 Martin, owner of Chula Vista Smog; and Advanced Emission Specialist Technician License(s)
26 currently designated as EA 130707, and as redesignated upon timely renewal as EO 130707
27 and/or EI 130707, issued to Respondent Jesus Olivas Gastelum, are revoked.
28

1 I have carefully read the Stipulated Revocation of Registration and License(s) and Order. I
2 understand the stipulation and the effect it will have on my Advanced Emission Specialist
3 Technician license(s). I enter into this Stipulated Revocation of Registration and License(s) and
4 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
5 of the Director of Consumer Affairs.

6
7 DATED: 4/19/2013

Jesus Olivas Gastelum
8 JESUS OLIVAS GASTELUM
9 Respondent

10 ENDORSEMENT

11 The foregoing Stipulated Revocation of Registration and License(s) and Order is hereby
12 respectfully submitted for consideration by the Director of Consumer Affairs.

13 Dated: 4-19-13

KAMALA D. HARRIS
14 Attorney General of California
LINDA K. SCHNEIDER
15 Supervising Deputy Attorney General

G. Michael German
16 G. MICHAEL GERMAN
17 Deputy Attorney General
18 *Attorneys for Complainant*

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23 **130707)**

Respondents.

Case No. 79/13-68

ACCUSATION AND PETITION
TO REVOKE PROBATION

(Smog check)

24 Complainant alleges:

25 **PARTIES**

26 I. Complainant John Wallauch brings this Accusation and Petition to Revoke Probation
27 solely in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau).
28 Department of Consumer Affairs.

1 **Chula Vista Smog ARD & Smog Station License**

2 2. In 2006, the BAR issued Automotive Repair Dealer Registration Number ARD
3 244202 (hereinafter registration) to Patricia Anaya Martin, Owner, dba Chula Vista Smog.
4 Respondent Martin's registration was in full force and effect at all times relevant to the charges
5 brought herein and expired on March 31, 2013.

6 3. On May 22, 2006, the BAR issued Smog Check, Test Only, Station License Number
7 TC 244202 (hereinafter smog station license) to Respondent Martin. Respondent's smog check
8 station license was in full force and effect at all times relevant to the charges brought herein and
9 expired on March 31, 2013.

10 **Jesus Gastelum's Advanced Emission Specialist Technician License**

11 4. In 1999, the BAR issued Advanced Emission Specialist Technician License No. EA
12 130707 (hereinafter technician license) to Respondent Jesus Olivas Gastelum. Respondent
13 Gastelum's technician license was in full force and effect at all times relevant to the charges
14 brought herein and will expire on September 30, 2013, unless renewed. Upon timely renewal of
15 the license, the license will be redesignated as EO 130707 and/or EI 130707.¹

16 **PRIOR DISCIPLINARY ACTION**

17 5. On February 1, 2012, Petitioner filed Accusation No. 79/12-71 against Respondent
18 Chula Vista Smog, Patricia Anaya Martin, Owner, before the Director of Consumer Affairs,
19 (Director), for the Bureau. The Accusation and all other statutorily required documents were
20 properly served on Respondent on February 14, 2012, who timely filed her Notice of Defense
21 contesting the Accusation. Pursuant to the Decision and Order in Accusation No. 79/12-71,
22 attached hereto as Exhibit A and incorporated herein by reference, the Director revoked
23 Respondent Martin's registration and smog station license, effective June 27, 2012. However, the
24 revocation of Respondent's registration and smog station license was stayed and she was placed
25 on probation for three years with certain terms and conditions including those set forth as follows:

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

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

4 (4) Any other conduct that constitutes fraud.
5

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

11 12. Code section 9884.8 states:

12 All work done by an automotive repair dealer, including all warranty work,
13 shall be recorded on an invoice and shall describe all service work done and parts
14 supplied. Service work and parts shall be listed separately on the invoice, which shall
15 also state separately the subtotal prices for service work and for parts, not including
16 sales tax, and shall state separately the sales tax, if any, applicable to each. If any
17 used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that
18 fact. If a part of a component system is composed of new and used, rebuilt or
19 reconditioned parts, that invoice shall clearly state that fact. The invoice shall include
20 a statement indicating whether any crash parts are original equipment manufacturer
21 crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
22 of the invoice shall be given to the customer and one copy shall be retained by the
23 automotive repair dealer.

24 13. Code section 9884.11 states:

25 Each automotive repair dealer shall maintain any records that are required by
26 regulations adopted to carry out this chapter. Those records shall be open for
27 reasonable inspection by the chief or other law enforcement officials. All of those
28 records shall be maintained for at least three years.

14. H&S Code section 44012 states:

22 The test at the smog check stations shall be performed in accordance with
23 procedures prescribed by the department and may require loaded mode dynamometer
24 testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard
25 diagnostic system, or other appropriate test procedures as determined by the
26 department in consultation with the state board. The department shall implement
27 testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or
28 two-speed idle testing, on model year 2000 and newer vehicles only, beginning no
earlier than January 1, 2013. However, the department, in consultation with the state
board, may prescribe alternative test procedures that include loaded mode
dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems
that the department and the state board determine exhibit operational problems. The
department shall ensure, as appropriate to the test method, the following:

1 (a) Emission control systems required by state and federal law are reducing
2 excess emissions in accordance with the standards adopted pursuant to subdivisions
3 (a) and (c) of Section 44013.

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

7 (f) A visual or functional check is made of emission control devices
8 specified by the department, including the catalytic converter in those instances in
9 which the department determines it to be necessary to meet the findings of Section
10 44001. The visual or functional check shall be performed in accordance with
11 procedures prescribed by the department.

12
13 15. H&S Code section 44015 states in pertinent part:

14
15 (b) If a vehicle meets the requirements of Section 44012, a smog check
16 station licensed to issue certificates shall issue a certificate of compliance or a
17 certificate of noncompliance.

18
19 16. H&S Code section 44032 states:

20 No person shall perform, for compensation, tests or repairs of emission
21 control devices or systems of motor vehicles required by this chapter unless the
22 person performing the test or repair is a qualified smog check technician and the test
23 or repair is performed at a licensed smog check station. Qualified technicians shall
24 perform tests of emission control devices and systems in accordance with Section
25 44012.

26 17. H&S Code section 44072.2 states, in pertinent part:

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

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

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

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

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

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18. H&S Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

19. H&S Code section 44072.10 states, in pertinent part:

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

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

REGULATORY PROVISIONS

20. California Code of Regulations, title 16, (CCR), Section 3340.15 states in pertinent part:

A smog check station shall meet the following requirements for licensure and shall comply with these requirements at all times while licensed.

....
(e) The station shall make, keep secure, and have available for inspection on request of the bureau, or its representative, legible records showing the station's transactions as a licensee for a period of not less than three years after completion of any transaction to which the records refer. All records shall be open for reasonable inspection and/or reproduction by the bureau or its representative. Station records required to be maintained shall include copies of:

(1) All certificates of compliance and certificates of noncompliance in stock and/or issued.

(2) Repair orders relating to the inspection and repair activities. . . .

21. CCR Section 3340.30 states in pertinent part:

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

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

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22. CCR Section 3340.35 states in pertinent part:

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

....

23. CCR Section 3340.41 states in pertinent part:

....

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

....

24. CCR Section 3340.42 states:

With the exception of diesel-powered vehicles addressed in subsection (f) of this section, the following emissions test methods and standards apply to all vehicles:

(a) A loaded-mode test, except as otherwise specified, shall be the test method used to inspect vehicles registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (b) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the VLT Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle is not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

(b) A two-speed idle mode test, unless a different test is otherwise specified in this article, shall be the test method used to inspect vehicles registered in all program areas of the state, except in those areas of the state where the enhanced program has been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection (b) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emission standards set forth in this section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or equal to the applicable emissions standards specified in Table III.

....

1 (e) In addition to the test methods prescribed in this section, the following
2 tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog
3 Check inspection:

4 (1) A visual inspection of the vehicle's emissions control systems. During the
5 visual inspection, the technician shall verify that the following emission control
6 devices, as applicable, are properly installed on the vehicle:

7 (A) air injection systems.

8 (B) computer(s) and related sensors and switches.

9 (C) crankcase emissions controls, including positive crankcase ventilation.

10 (D) exhaust gas after treatment systems, including catalytic converters.

11 (E) exhaust gas recirculation (EGR) systems.

12 (F) fuel evaporative emission controls.

13 (G) fuel metering systems, including carburetors and fuel injection.

14 (H) ignition spark controls, and

15 (I) any emissions control systems that are not otherwise prompted by the
16 Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

17

18 25. CCR Section 3356 provides in pertinent part:(a) All invoices for service and repair
19 work performed, and parts supplied, as provided for in Section 9884.8 of the Business and
20 Professions Code, shall comply with the following:

21 (1) The invoice shall show the automotive repair dealer's registration number
22 and the corresponding business name and address as shown in the Bureau's records. If
23 the automotive repair dealer's telephone number is shown, it shall comply with the
24 requirements of subsection (b) of Section 3371 of this chapter.

25

26 **COST RECOVERY**

27 26. Code section 125.3 provides that a Board or Bureau may request the administrative
28 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.

29 **BACKGROUND**

30 27. From October 10, 2012, and continuing through October 26, 2012, Bureau Program
31 Representative David Winkowski reviewed the Vehicle Information Database (VID) data for all

1 smog check inspections requiring the OBD II functional test performed at Chula Vista Smog.
 2 That review, as well as Respondents' records, revealed that Chula Vista Smog, through
 3 Respondents Martin and Gastelum, issued eight fraudulent electronic certificates of compliance
 4 using clean-plugging methods. "Clean-plugging" means using the on-board computer from a
 5 vehicle known to be in compliance with California's smog testing standards or an outside source
 6 to substitute for the on-board computer of a vehicle known not to pass a California smog
 7 inspection. All eight smog check inspections were performed by Respondent Gastelum. None of
 8 the eight vehicles should have been issued certificates of compliance because seven of them had
 9 OBD II fault codes that did not apply to them, and one had an incomplete Monitor "K" – EGR
 10 System Monitoring, that did not apply to the vehicle, per the table below.

#	Time of Certification			Vehicle Certified					Certificate #
	Date	Start	End	Year	Make	Model	Vehicle Identification No.	Unsupported Code(s) / Monitor(s)	
1	07/18/2012	1257	1316	1997	Nissan	Maxima	JN1CA21D5VT839206	P0328	XJ407940C
2	07/23/2012	1704	1714	1996	Honda	Civic	1HGEJ6127TL047844	P0328	XJ529809C
3	07/29/2012	0848	0859	1996	Dodge	Caravan	2B4GP45R7TR579469	P1768	XJ590491C
4	09/22/2012	0955	1006	2004	Toyota	Sienna	5TDZA23C34S057043	P1381	XI.541294C
5	10/03/2012	1312	1324	2001	Volvo	S60	YV1RS61R212044311	P0505 & P1456	XI.881110C
6	10/26/2012	0834	0841	1996	Mercedes Benz	C280	WDBHA28E9TF462732	P0173, P1188, P1189 & P1250	XN447503C
7	10/26/2012	1539	1549	1998	Chevrolet	Metro LSI	2C1MR222XW6727449	P0116 & P0326	XN447519C
8	09/20/2012	1634	1644	2002	BMW	530i	WBADT63452CH96658	K	XI.541273C

20 28. After completing his review of the VID data, Mr. Winkowski went to Chula Vista
 21 Smog, met with Respondent Gastelum, and asked him to provide all invoices and Vehicle
 22 Inspection Reports from July 13, 2012 to November 19, 2012, the date of his visit. Winkowski
 23 returned to Chula Vista Smog on November 27, 2012, per Gastelum's telling him he would obtain
 24 and produce the records from his bookkeeper by that date. Though Winkowski located five of the
 25 eight fraudulent smog inspections, Gastelum advised him that he could not find the invoices and
 26 VIRs from July 2012, when the remaining three of the eight fraudulent smog tests were
 27 performed, and that he would not be able to locate them even if given more time. Gastelum

1 claimed he could not explain why the eight vehicles contained seven unsupported OBD II codes
2 and one unsupported monitor.

3 **I. ACCUSATION**

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 29. Respondent Martin's registration is subject to disciplinary action pursuant to Code
7 section 9884.7, subdivision (a)(1), in that she made or authorized statements which she knew or
8 in the exercise of reasonable care should have known to be untrue or misleading as follows:
9 Respondent Gastelum certified that vehicles 1 through 8, identified in the table above, had passed
10 inspection and were in compliance with applicable laws and regulations. In fact, Respondent
11 conducted the inspections on the vehicles using clean-plugging methods during the OBD II
12 functional tests in order to issue smog certificates of compliance for the vehicles, and the vehicles
13 were not tested or inspected, as required by Health and Safety Code section 44012, thereby
14 depriving the People of the State of California of the protection afforded by the Motor Vehicle
15 Inspection Program.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 30. Respondent Martin's registration is subject to disciplinary action pursuant to Code
19 section 9884.7, subdivision (a)(4), in that she committed acts that constitute fraud by issuing
20 electronic smog certificates of compliance for the vehicles 1 through 8, identified in the table
21 above, without performing bona fide inspections of the emission control devices and systems on
22 the vehicles, thereby depriving the People of the State of California of the protection afforded by
23 the Motor Vehicle Inspection Program.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Invoice Requirements)**

26 31. Respondent Martin's registration is subject to disciplinary action pursuant to Code
27 section 9884.8, in that she failed to show her correct ARD registration number on five of the
28 invoices for vehicles 1 through 8, identified in the table above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Recordkeeping Requirements)**

3 32 Respondent Martin's registration is subject to disciplinary action pursuant to Code
4 section 9884.11, in that she failed to maintain the invoices and VIRs for the issuance of electronic
5 smog certificates of compliance for the vehicles 1 through 3.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Motor Vehicle Inspection Program)**

8 33. Respondent Martin's smog check station license is subject to disciplinary action
9 pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent Martin failed to
10 comply with the following sections of that Code:

11 a. Section 44012, subdivision (a): Respondent Martin failed to ensure that all emission
12 control devices and systems required by law for vehicles 1 through 8, identified in the table
13 above, were performed in accordance with the procedures prescribed by the Department.

14 b. Section 44012, subdivision (f): Respondent Martin failed to ensure that a
15 visual/functional check of emission control devices were performed on vehicles 1 through 8,
16 identified in the table above, in accordance with procedures prescribed by the department.

17 c. Section 44015, subdivision (b): Respondent Martin issued electronic smog certificates
18 of compliance for vehicles 1 through 8, identified in the table above, without ensuring that the
19 vehicles were properly inspected in accordance with H&S Code section 44012.

20 **SIXTH CAUSE FOR DISCIPLINE**

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

22 34. Respondent Martin's smog check station license is subject to disciplinary action
23 pursuant to Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision
24 (c), in that Respondent failed to comply with the provisions of the CCR, as follows:

25 a. Section 3340.15, subdivision (f)(2): Respondent Martin failed to maintain repair orders
26 relating to inspections and repairs.

27 b. Section 3340.15, subdivision (f)(3): Respondent Martin failed to maintain VIRs.
28

1 c. Section 3340.35, subdivision (c): Respondent Martin issued electronic smog certificates
2 of compliance for vehicles 1 through 8, identified in the table above, even though the vehicles had
3 not been inspected in accordance with section 3340.42.

4 d. Section 3340.42: Respondent Martin failed to ensure that the required smog tests were
5 conducted on vehicles 1 through 8, identified in Table 1 above, in accordance with Bureau
6 specifications.

7 e. Section 3356, subdivision (a)(1): Respondent Martin failed to show her correct ARD
8 registration number on five of the invoices for vehicles 1 through 8, identified in the table above.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Motor Vehicle Inspection Program)**

11 35. Respondent Gastelum's technician license(s) is subject to disciplinary action pursuant
12 to H&S Code section 44072.2, subdivision (a), in that Respondent Gastelum failed to comply
13 with the following sections of that Code

14 a. Section 44012, subdivision (a): Respondent Gastelum failed to ensure that all emission
15 control devices and systems required by law for vehicles 1 through 8, identified in the table
16 above, were performed in accordance with the procedures prescribed by the Department.

17 b. Section 44012, subdivision (f): Respondent Gastelum failed to ensure that a
18 visual/functional check of emission control devices were performed on vehicles 1 through 8,
19 identified in the table above, in accordance with procedures prescribed by the department.

20 c. Section 44032: Respondent Gastelum failed to conduct tests for vehicles 1 through 8,
21 identified in the Table above, in accordance with H&S Code section 44013.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 36. Respondent Gastelum's technician license(s) is subject to disciplinary action pursuant
25 to Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in
26 that Respondent failed to comply with the provisions of the Regulations as follows:

27 a. Section 3340.30, subdivision (a): Respondent Gastelum failed to inspect and test
28 vehicles 1 through 8, identified in the table above, in accordance with H&S Code section 44012.

1 b. Section 3340.41, subdivision (c): Respondent Gastelum entered into the emissions
2 inspection system vehicle identification information or emission control system identification
3 data for vehicles other than the ones being tested, vehicles 1 through 8, identified in the table
4 above.

5 c. Section 3340.42: Respondent Gastelum failed to ensure that the required smog tests
6 were conducted on vehicles 1 through 8, identified in Table 1 above, in accordance with Bureau
7 specifications.

8 **II. PETITION TO REVOKE PROBATION**

9 **CAUSE TO REVOKE PROBATION**

10 **(Failure To Obey All Laws)**

11 37. At all times after the effective date of Respondent Martin's probation, Probation
12 Term No. 1 required Respondent to comply with all statutes, regulations and rules governing
13 automotive inspections, estimates and repairs.

14 38. Respondent's probation is subject to revocation because she failed to comply with
15 Probation Term No. 1 in that she has failed to obey all laws since June 27, 2012, as more fully set
16 forth in paragraphs 26 through 35, above.

17 **MATTERS IN AGGRAVATION**

18 39. Respondent Martin had been cited for violations of the smog check laws and
19 regulations prior to the Director's June 7, 2012 Decision and Order as follows:

20 a. On April 12, 2007, the Bureau issued Citation No. C07-0737 to Respondent Martin
21 for violations of H&S Code section 44012, subdivision (f) (failure to perform a visual/functional
22 check of emission control devices according to procedures prescribed by the department); and
23 CCR, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was
24 improperly tested). On March 29, 2007, while employed at Chula Vista Smog, Respondent
25 Gastelum issued a certificate of compliance to a Bureau undercover vehicle with a missing EGR
26 valve. The Bureau assessed civil penalties totaling \$500 against Respondent Martin for the
27 violations. Respondent Martin was accompanied at the May 8, 2007 Citation Conference at the
28 Bureau's Oceanside office by Respondent Gastelum, putting him on notice that the Bureau was

1 aware of his violations and of the importance of following proper smog check procedures.

2 Respondent paid the fine on June 8, 2007.

3 b. On October 31, 2008, the Bureau issued Citation No. C09-0531 to Respondent Martin
4 for violating CCR, section 3340.16, subdivision (d) (a smog check test-only station shall not
5 engage in any automotive repair work). On October 17, 2008, Respondent performed an ignition
6 timing adjustment on a Bureau undercover vehicle and issued Certificate of Compliance

7 # [REDACTED]. The Bureau assessed a civil penalty of \$500 against Respondent for the violation.
8 Respondent was again accompanied at the November 24, 2008 Citation Conference at Bureau's
9 Oceanside office by Respondent Gastelum. Respondent paid the fine on December 3, 2008.

10 c. On May 19, 2009, the Bureau issued Citation No. C09-1333 to Respondent Martin for
11 violations of H&S Code section 44012, subdivision (f) (failure to determine that emission control
12 devices and systems required by State and Federal law are installed and functioning correctly in
13 accordance with test procedures); and CCR, section 3340.35, subdivision (c) (issuing a certificate
14 of compliance to a vehicle that was improperly tested). On May 7, 2009, Respondent issued a
15 certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
16 specifications. The Bureau assessed civil penalties totaling \$1,000 against Respondent Martin for
17 the violations. Respondent paid the fine on June 29, 2009.

18 d. On August 28, 2009, the Bureau issued Citation No. C2010-0155 to Respondent
19 Martin for violations of H&S Code section 44012, subdivision (f) (failure to perform a
20 visual/functional check of emission control devices according to procedures prescribed by the
21 department); and CCR, section 3340.35, subdivision (c) (issuing a certificate of compliance to a
22 vehicle that was improperly tested). On August 6, 2009, Respondent Martin issued a certificate
23 of compliance to a Bureau undercover vehicle with a missing PCV system. The Bureau assessed
24 civil penalties totaling \$2,000 against Respondent for the violations. Respondent Martin was
25 again accompanied at the September 28, 2009 Citation Conference at the Bureau's San Diego
26 office by Respondent Gastelum. Respondent paid the fine on October 13, 2009.

27 40. Respondent Gastelum had been cited for violations of the smog check laws and
28 regulations prior to the Director's June 27, 2012 Decision and Order as follows:

1 a. On April 12, 2007, the Bureau issued Citation No. M07-0738 to Respondent
2 Gastelum for violations of H&S Code section 44032 (qualified technicians shall perform tests of
3 emission control systems and devices in accordance with H&S Code section 44012; and
4 Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles
5 in accordance with H&S Code sections 44012 and 44035, and CCR, section 3340.42). The
6 Bureau ordered Respondent Gastelum to complete smog testing training for the violations.
7 Respondent completed training on June 5, 2007.

8 OTHER MATTERS

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

13 42. Pursuant to H&S Code section 44072.8, if Respondent Martin's Smog Check, Test
14 Only, Station License Number TC 244202, is revoked or suspended, any additional license issued
15 under the same chapter in the name of said licensee may be likewise revoked or suspended by the
16 Director.

17 43. Pursuant to H&S Code section 44072.8, if Respondent Gastelum's Advanced
18 Emissions Specialist Technician License(s), currently designated as EA 130707 and as
19 redesignated upon timely renewal as EO 130707 and/or EI 130707, is/are revoked or suspended,
20 any additional license(s) under this chapter in the name of said licensee may be likewise revoked
21 or suspended by the director.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
24 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of
25 Consumer Affairs issue a decision:

26 I. Revoking or suspending Automotive Repair Dealer Registration Number ARD
27 244202, issued to Respondent Patricia Anaya Martin, Owner, dba Chula Vista Smog;
28

1 2. Revoking or suspending any other automotive repair dealer registration issued to
2 Respondent Martin;

3 3. Revoking or suspending Smog Check Station License Number TC 244202, issued to
4 Respondent Martin;

5 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Respondent Martin;

7 5. Revoking or suspending Respondent Jesus Olivas Gastelum's Advanced Emission
8 Specialist Technician License(s), currently designated as EA 130707 and as redesignated upon
9 timely renewal as EO 130707 and/or EI 130707;

10 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
11 and Safety Code in the name of Respondent Gastelum;

12 7. Vacating the stay and reimposing the order of revocation of ARD registration number
13 ARD 244202 and Smog Check, Test Only, Station License number TC 244202, issued to
14 Respondent Martin;

15 8. Ordering Respondents Martin and Gastelum to pay the Bureau of Automotive Repair
16 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
17 Professions Code section 125.3; and

18 9. Taking such other and further action as deemed necessary and proper.

19
20 DATED: 4/15/13

John Wallauch by Durg Balani
JOHN WALLAUCH

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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

In the Matter of the Accusation Against:

**CHULA VISTA SMOG
PATRICIA ANAYA MARTIN, Owner
3031 Main Street, Suite D
Chula Vista, CA 91911**

Automotive Repair Dealer Registration
No. ARD 244202
Smog Check, Test Only, Station License
No. TC 244202

Respondent.

Case No. 79/12-71

OAH No. 2012030078

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

The suspension of Automotive Repair Dealer Registration No. ARD 244202 and Smog Check, Test Only, Station License No. TC 244202 shall commence on the effective date of this decision.

This Decision shall become effective 6/27/12.

DATED: June 7, 2012


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **CHULA VISTA SMOG; PATRICIA**
13 **ANAYA MARTIN, OWNER;**
14 **3031 Main Street, Suite D**
Chula Vista, CA 91911

15 **Automotive Repair Dealer License No. ARD**
244202
16 **Smog Check Technician License No. EA**
302292

17 Respondent.

Case No. 79/12-71

OAH No. 2012030078

STIPULATED SETTLEMENT

AND DISCIPLINARY ORDER

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Complainant John Wallauch is the Chief of the Bureau of Automotive Repair
22 (Bureau). He brought this action solely in his official capacity and is represented in this matter by
23 Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy
24 Attorney General.

25 2. Respondent Patricia Anaya Martin, Owner, dba Chula Vista Smog, is representing
26 herself in this proceeding and has chosen not to exercise its right to be represented by counsel.
27
28

1 CULPABILITY

2 10. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 79/12-71.

4 11. Respondent agrees that her ARD registration and smog station license are subject to
5 discipline and she agrees to be bound by the Director's probationary terms as set forth in the
6 Disciplinary Order below.

7 CONTINGENCY

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

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

21 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
26 writing executed by an authorized representative of each of the parties.
27
28

1 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of
2 Consumer Affairs.

3
4 DATED: 4-16-12 Patricia Martin
5 CHULA VISTA SMOG; PATRICIA ANAYA
6 MARTIN, OWNER; CASTELLANOS
7 Respondent

8 ENDORSEMENT

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

11 Dated: *April 17, 2012*

12 Respectfully submitted,
13 KAMALA D. HARRIS
14 Attorney General of California
15 LINDA K. SCHNEIDER
16 Supervising Deputy Attorney General

17 *G. Michael German*
18 G. MICHAEL GERMAN
19 Deputy Attorney General
20 *Attorneys for Complainant*

21 SD2011801433
22 Stipulation.rtf
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Exhibit A

Accusation No. 79/12-71

1 KAMALA D. HARRIS
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2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
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Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

Case No. 79/12-71

13 **CHULA VISTA SMOG**
14 **PATRICIA ANAYA MARTIN, OWNER**
3031 Main Street, Suite D
15 Chula Vista, CA 91911
Automotive Repair Dealer Reg. No. ARD 244202
16 Smog Check, Test Only, Station License No.
TC 244202

A C C U S A T I O N
(Smog Check)

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

23 2. In or about 2006, the Director of Consumer Affairs ("Director") issued Automotive
24 Repair Dealer Registration Number ARD 244202 ("registration") to Patricia Anaya Martin
25 ("Respondent"), owner of Chula Vista Smog. Respondent's registration was in full force and
26 effect at all times relevant to the charges brought herein and will expire on March 31, 2012,
27 unless renewed.

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....

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

9. Bus. & Prof. Code section 22, subdivision (a), states:

“Board” as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

10. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

11. 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 . . .

12. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

COST RECOVERY

13. 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.

///

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

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program)**

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

8 a. **Section 44012, subdivision (f)**: Respondent failed to ensure that the visual
9 inspection of the emission control systems and devices on the Bureau's 2001 Honda Prelude was
10 performed in accordance with procedures prescribed by the department.

11 b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for
12 the Bureau's 2001 Honda Prelude without ensuring that the vehicle was properly tested and
13 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

14 **FOURTH CAUSE FOR DISCIPLINE**

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

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

20 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
21 of compliance for the Bureau's 2001 Honda Prelude even though the vehicle had not been
22 inspected in accordance with section 3340.42.

23 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
24 conducted on the Bureau's 2001 Honda Prelude in accordance with the Bureau's specifications.

25 **FIFTH CAUSE FOR DISCIPLINE**

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

27 20. Respondent's smog check station license is subject to disciplinary action pursuant to
28 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,

1 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an
2 electronic smog certificate of compliance for the Bureau's 2001 Honda Prelude without ensuring
3 that a bona fide inspection was performed of the emission control devices and systems on the
4 vehicle, thereby depriving the People of the State of California of the protection afforded by the
5 Motor Vehicle Inspection Program.

6 **MATTERS IN AGGRAVATION**

7 21. To determine the degree of discipline, if any, to be imposed on Respondent,
8 Complainant alleges as follows:

9 a. On or about April 12, 2007, the Bureau issued Citation No. C07-0737 against
10 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
11 perform a visual/functional check of emission control devices according to procedures prescribed
12 by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35,
13 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On
14 or about March 29, 2007, Respondent issued a certificate of compliance to a Bureau undercover
15 vehicle with a missing EGR valve. The Bureau assessed civil penalties totaling \$500 against
16 Respondent for the violations. Respondent paid the fine on June 8, 2007.

17 b. On or about October 31, 2008, the Bureau issued Citation No. C09-0531 against
18 Respondent for violating Regulation 3340.16, subdivision (d) (a smog check test-only station
19 shall not engage in any automotive repair work. On or about October 17, 2008, Respondent
20 performed an ignition timing adjustment on a Bureau undercover vehicle and issued Certificate of
21 Compliance # [REDACTED]. The Bureau assessed a civil penalty of \$500 against Respondent for the
22 violation. Respondent paid the fine on December 3, 2008.

23 c. On or about May 19, 2009, the Bureau issued Citation No. C09-1333 against
24 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
25 determine that emission control devices and systems required by State and Federal law are
26 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,
27 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On
28 or about May 7, 2009, Respondent issued a certificate of compliance to a Bureau undercover

1 vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil
2 penalties totaling \$1,000 against Respondent for the violations. Respondent paid the fine on June
3 29, 2009.

4 d. On or about August 28, 2009, the Bureau issued Citation No. C2010-0155 against
5 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
6 perform a visual/functional check of emission control devices according to procedures prescribed
7 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
8 to a vehicle that was improperly tested). On or about August 6, 2009, Respondent issued a
9 certificate of compliance to a Bureau undercover vehicle with a missing PCV system. The
10 Bureau assessed civil penalties totaling \$2,000 against Respondent for the violations. Respondent
11 paid the fine on October 13, 2009.

12 OTHER MATTERS

13 22. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
14 suspend, revoke, or place on probation the registration for all places of business operated in this
15 state by Respondent Patricia Anaya Martin, owner of Chula Vista Smog, upon a finding that
16 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
17 regulations pertaining to an automotive repair dealer.

18 23. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
19 License Number TC 244202, issued to Respondent Patricia Anaya Martin, owner of Chula Vista
20 Smog, is revoked or suspended, any additional license issued under this chapter in the name of
21 said licensee may be likewise revoked or suspended by the director.

22 PRAYER

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

25 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
26 244202, issued to Patricia Anaya Martin, owner of Chula Vista Smog;

27 2. Revoking or suspending any other automotive repair dealer registration issued to
28 Patricia Anaya Martin;

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- 3. Revoking or suspending Smog Check, Test Only, Station License Number TC 244202, issued to Patricia Anaya Martin, owner of Chula Vista Smog.
- 4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Patricia Anaya Martin;
- 5. Ordering Patricia Anaya Martin, owner of Chula Vista Smog, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 6. Taking such other and further action as deemed necessary and proper.

DATED: 2/1/12


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

SD2011801433