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

In the Matter of the Accusation Against:

Case No. 79/12-67

**JP SMOG TEST ONLY; JEAN PIERRE
BENDEZU
1465 East Philadelphia Street
Ontario, CA 91761
Automotive Repair Dealer Registration No.
ARD 255003
Smog Check, Test Only, Station License No.
TC 255003,**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

**JEAN PIERRE BENDEZU
15432 Temple Avenue
La Puente, CA 91744
Advanced Emission Specialist Technician
License No. EA 632636,**

and

**VICTOR ANTONIO RECENDEZ
1052 E. 6th Street, #8
Ontario, CA 91764
Advanced Emission Specialist Technician
License No. EA 632834**

Respondents.

FINDINGS OF FACT

1. On or about February 17, 2012, Complainant John Wallauch, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed

1 Accusation No. 79/12-67 against JP Smog Test Only, Jean Pierre Bendezu, owner; Jean Pierre
2 Bendezu, Advanced Emission Specialist Technician; and Victor Antonio Recendez, Advanced
3 Emission Specialist Technician (collectively, "Respondents") before the Director of Consumer
4 Affairs. (Accusation attached as Exhibit A.)

5 **Automotive Repair Dealer Registration**

6 2. On or about May 29, 2008, the Bureau of Automotive Repair issued Automotive
7 Repair Dealer Registration Number ARD 255003 to JP Smog Test Only; Jean Pierre Bendezu.
8 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
9 charges brought herein and will expire on March 31, 2012, unless renewed.

10 **Smog Check Test Only Station License**

11 3. On or about May 30, 2008, the Bureau of Automotive Repair issued Smog Check,
12 Test Only, Station License Number TC 255003 to JP Smog Test Only; Jean Pierre Bendezu. The
13 Smog Check, Test Only, Station License was in full force and effect at all times relevant to the
14 charges brought herein and will expire on March 31, 2012, unless renewed.

15 **Advanced Emission Specialist Technician Licenses**

16 4. On or about November 1, 2010, the Bureau of Automotive Repair issued Advanced
17 Emission Specialist Technician License Number EA 632636 to Jean Pierre Bendezu. The
18 Advanced Emission Specialist Technician License was in full force and effect at all times
19 relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

20 5. On or about February 7, 2011, the Bureau of Automotive Repair issued Advanced
21 Emission Specialist Technician License Number EA 632834 to Victor Antonio Recendez. The
22 Advanced Emission Specialist Technician License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.

24 6. Pursuant to Business and Professions Code section 118(b), any lapse in the respective
25 licensure of the Respondents prior to the time a final decision and order are issued does not
26 deprive the Bureau of its authority to institute or continue this proceeding.

27 7. On or about February 21, 2012, Respondents were served by Certified Mail copies of
28 the Accusation No. 79/12-67, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
2 their respective addresses of record which, pursuant to Business and Professions Code section
3 136, are required to be reported and maintained with the Bureau, which were and are:

- 4 • JP Smog Test Only; Jean Pierre Bendezu, 1465 East Philadelphia Street,
5 Ontario, CA 91761
- 6 • Jean Pierre Bendezu, 15432 Temple Avenue, La Puente, CA 91744
- 7 • Victor Antonio Recendez, 1052 E. 6th Street, #8, Ontario, CA 91764

8 8. Service of the Accusation on Respondents was effective as a matter of law under the
9 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions
10 Code section 124.

11 9. On or about February 24, 2012, the aforementioned documents mailed to JP Smog
12 Test Only; Jean Pierre Bendezu at 1465 East Philadelphia Street, Ontario, CA 91761 were
13 returned by the U.S. Postal Service marked "Insufficient Address." The address on the
14 documents was the same as the address on file with the Bureau. Respondent failed to maintain an
15 updated address with the Bureau and the Bureau has made attempts to serve the Respondent at the
16 address on file. Respondent has not made himself available for service and therefore, has not
17 availed himself of his right to file a notice of defense and appear at hearing.

18 10. On or about February 24, 2012, the Office of the Attorney General received a signed
19 Certified Mail Receipt for the aforementioned documents that were mailed to Jean Pierre
20 Bendezu at 15432 Temple Avenue, La Puente, CA 91744.

21 11. On or about February 27, 2012, the aforementioned documents mailed to Victor
22 Antonio Recendez at 1052 E. 6th Street, #8, Ontario, CA 91764 were returned by the U.S. Postal
23 Service marked "Attempted - Not Known." The address on the documents was the same as the
24 address on file with the Bureau. Respondent failed to maintain an updated address with the
25 Bureau and the Bureau has made attempts to serve the Respondent at the address on file.
26 Respondent has not made himself available for service and therefore, has not availed himself of
27 his right to file a notice of defense and appear at hearing.

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1 12. Government Code section 11506 states, in pertinent part:

2 (c) The respondent shall be entitled to a hearing on the merits if the respondent
3 files a notice of defense, and the notice shall be deemed a specific denial of all parts
4 of the accusation not expressly admitted. Failure to file a notice of defense shall
5 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
6 may nevertheless grant a hearing.

7 13. None of the Respondents filed a Notice of Defense within 15 days after service upon
8 them of the Accusation and, therefore, they have waived their respective rights to a hearing on the
9 merits of Accusation No. 79/12-67.

10 14. California Government Code section 11520 states, in pertinent part:

11 (a) If the respondent either fails to file a notice of defense or to appear at the
12 hearing, the agency may take action based upon the respondent's express admissions
13 or upon other evidence and affidavits may be used as evidence without any notice to
14 respondent.

15 15. Pursuant to its authority under Government Code section 11520, the Director, after
16 having reviewed the proof of service dated February 21, 2012, signed by Corinia Talaro, the
17 returned Certified Mail envelopes and the Certified Mail Receipt of respondent Jean Pierre
18 Bendezu, finds that Respondents are in default. The Director will take action without further
19 hearing and, based on Accusation, No. 79/12-67, proof of service and on the Affidavit of Bureau
20 Representative Ronald Norman (attached hereto as Exhibit "B"), finds that the allegations in
21 Accusation are true.

22 16. Taking official notice of its own internal records, pursuant to Business and
23 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
24 and Enforcement is \$5,572.50 as of March 27, 2012.

25 **DETERMINATION OF ISSUES**

26 1. Based on the foregoing findings of fact: Respondent JP Smog Test Only; Jean Pierre
27 Bendezu has subjected his Automotive Repair Dealer Registration No. ARD 255003 and his
28 Smog Check, Test Only, Station License Number TC 255003 to discipline; Respondent Jean
Pierre Bendezu has subjected his Advanced Emission Specialist Technician License Number EA
632636 to discipline; and Respondent Victor Antonio Recendez has subjected his Advanced
Emission Specialist Technician License Number EA 632834 to discipline.

- 1 2. The agency has jurisdiction to adjudicate this case by default.
- 2 3. The Director of Consumer Affairs is authorized to revoke Respondent JP Smog Test
3 Only; Jean Pierre Bendezu's Automotive Repair Dealer Registration based upon the following
4 violations alleged in the Accusation which are supported by the evidence contained in the
5 affidavit of Bureau Representative Ronald Norman (Exhibit "B") in this case:
- 6 a. Business and Professions Code section 9884.7, subdivision (a)(1) -- Misleading
7 Statements;
- 8 b. Business and Professions Code section 9884.7, subdivision (a)(4) -- Fraud.
- 9 4. The Director of Consumer Affairs is authorized to revoke Respondent JP Smog Test
10 Only; Jean Pierre Bendezu's Smog Check, Test Only, Station License and Respondent Jean Pierre
11 Bendezu's Advanced Emission Specialist Technician License based upon the following violations
12 alleged in the Accusation which are supported by the evidence contained in the affidavit of
13 Bureau Representative Ronald Norman (Exhibit "B") in this case:
- 14 a. Health and Safety Code section 44072.2, subdivision (a) -- Violation of the Motor
15 Vehicle Inspection Program, as follows:
- 16 i. Health and Safety Code section 44012;
- 17 ii. Health and Safety Code section 44015, subdivision (b);
- 18 iii. Health and Safety Code section 44032;
- 19 iv. Health and Safety Code section 44059.
- 20 b. Health and Safety Code section 44072.2, subdivision (c) -- Violation of Regulations
21 Pursuant to the Motor Vehicle Inspection Program, as follows:
- 22 i. California Code of Regulations, title 16, section 3340.24, subdivision (c);
- 23 ii. California Code of Regulations, title 16, section 3340.30, subdivision (a);
- 24 iii. California Code of Regulations, title 16, section 3340.35, subdivision (c);
- 25 iv. California Code of Regulations, title 16, section 3340.41, subdivision (c);
- 26 v. California Code of Regulations, title 16, section 3340.42.
- 27 5. The Director of Consumer Affairs is authorized to revoke Respondent Victor Antonio
28 Recendez's Advanced Emission Specialist Technician License based upon the following

1 violations alleged in the Accusation which are supported by the evidence contained in the
2 affidavit of Bureau Representative Ronald Norman (Exhibit "B") in this case:

3 a. Health and Safety Code section 44072.2, subdivision (a) -- Violation of the Motor
4 Vehicle Inspection Program, as follows:

- 5 i. Health and Safety Code section 44012;
- 6 ii. Health and Safety Code section 44015, subdivision (b);
- 7 iii. Health and Safety Code section 44032;
- 8 iv. Health and Safety Code section 44059.

9 b. Health and Safety Code section 44072.2, subdivision (c) -- Violation of Regulations
10 Pursuant to the Motor Vehicle Inspection Program, as follows:

- 11 i. California Code of Regulations, title 16, section 3340.24, subdivision (c);
- 12 ii. California Code of Regulations, title 16, section 3340.30, subdivision (a);
- 13 iii. California Code of Regulations, title 16, section 3340.35, subdivision (c);
- 14 iv. California Code of Regulations, title 16, section 3340.41, subdivision (c);
- 15 v. California Code of Regulations, title 16, section 3340.42.

16 **ORDER**

17 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 255003 and
18 Smog Check, Test Only, Station License Number TC 255003, heretofore issued to Respondent JP
19 Smog Test Only; Jean Pierre Bendezu, are revoked; the Advanced Emission Specialist Technician
20 License Number EA 632636, heretofore issued to Respondent Jean Pierre Bendezu, is revoked;
21 and the Advanced Emission Specialist Technician License Number EA 632834, heretofore issued
22 to Respondent Victor Antonio Recendez, is revoked.

23 Pursuant to Government Code section 11520, subdivision (c), any or all of the Respondents
24 may serve a written motion requesting that the Decision be vacated and stating the grounds relied
25 on within seven (7) days after service of the Decision on Respondents. Any such motion should
26 be sent to the Bureau of Automotive Repair, ATTN: Tim Corcoran, 10235 Systems Parkway,

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1 Sacramento, CA 95827. The agency in its discretion may vacate the Decision and grant a
2 hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on 6/29/12.

4 It is so ORDERED June 11, 2012

5
6 
7 DOREATHEA JOHNSON
8 Deputy Director, Legal Affairs
9 Department of Consumer Affairs

10 DOJ Matter ID:LA2011505924
11 51088444.doc

12 Attachment:
13 Exhibit A: Accusation
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EXHIBIT A

CASE NUMBER 79/12-67

ACCUSATION and PROOF OF SERVICE

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
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300 So. Spring Street, Suite 1702
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Attorneys for Complainant.
7

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

79/12-67

12 In the Matter of the Accusation Against:

Case No.

13 **JP SMOG TEST ONLY; JEAN PIERRE**
BENDEZU
14 **1465 East Philadelphia Street**
Ontario, CA 91761
15 **Automotive Repair Dealer Registration No.**
ARD 255003
16 **Smog Check, Test Only, Station License No.**
TC 255003;

OAH No. 2012010522

ACCUSATION

SMOG CHECK

17 **JEAN PIERRE BENDEZU**
18 **15432 Temple Avenue**
La Puente, CA 91744
19 **Advanced Emission Specialist Technician**
License No. EA 632636,

20 and

21 **VICTOR ANTONIO RECENDEZ**
22 **1052 E. 6th Street, #8**
Ontario, CA 91764
23 **Advanced Emission Specialist Technician**
License No. EA 632834

24 Respondents.

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1 Complainant alleges:

2 PARTIES

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

5 **Automotive Repair Dealer Registration**

6 2. On or about May 29, 2008, the Bureau of Automotive Repair issued Automotive
7 Repair Dealer Registration Number ARD 255003 to JP Smog Test Only; Jean Pierre Bendezu.
8 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
9 charges brought herein and will expire on March 31, 2012, unless renewed.

10 **Smog Check Test Only Station License**

11 3. On or about May 30, 2008, the Bureau of Automotive Repair issued Smog Check,
12 Test Only, Station License Number TC 255003 to JP Smog Test Only; Jean Pierre Bendezu. The
13 Smog Check, Test Only, Station License was in full force and effect at all times relevant to the
14 charges brought herein and will expire on March 31, 2012, unless renewed.

15 **Advanced Emission Specialist Technician Licenses**

16 4. On or about November 1, 2010, the Bureau of Automotive Repair issued Advanced
17 Emission Specialist Technician License Number EA 632636 to Jean Pierre Bendezu. The
18 Advanced Emission Specialist Technician License was in full force and effect at all times
19 relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

20 5. On or about February 7, 2011, the Bureau of Automotive Repair issued Advanced
21 Emission Specialist Technician License Number EA 632834 to Victor Antonio Recendez. The
22 Advanced Emission Specialist Technician License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.

24 STATUTORY PROVISIONS

25 6. Business and Professions Code section 9884.13 provides, in pertinent part, that the
26 expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed
27 with a disciplinary proceeding against an automotive repair dealer or to render a decision
28 invalidating a registration temporarily or permanently.

1 7. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
2 part:

3 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
4 error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an
5 automotive repair dealer for any of the following acts or omissions related to the conduct of the
6 business of the automotive repair dealer, which are done by the automotive repair dealer or any
7 automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

11 “(4) Any other conduct which constitutes fraud

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

15 9. Section 44012 of the Health and Safety Code provides, in pertinent part, that tests at
16 smog check stations shall be performed in accordance with procedures prescribed by the
17 department.

18 10. Section 44015, subdivision (b), of the Health and Safety Code provides that a
19 certificate of compliance shall be issued if a vehicle meets the requirements of Health and Safety
20 code section 40012.

21 11. Section 44032 of the Health and Safety Code provides, in pertinent part, that qualified
22 technicians shall perform tests of emission control devices and systems in accordance with
23 Section 44012.

24 12. Section 44059 of the Health and Safety Code provides:

25 “The willful making of any false statement or entry with regard to a material matter in
26 any oath, affidavit, certificate of compliance or noncompliance, or application form which is
27 required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the
28

1 Business and Professions Code, constitutes perjury and is punishable as provided in the Penal
2 Code.”

3 13. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

13 14. Section 44072.8 of the Health and Safety Code states:

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

17 **REGULATORY PROVISIONS**

18 15. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

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

22 16. California Code of Regulations, title 16, section 3340.30, subdivision (a), states that a
23 licensed smog technician shall at all times “[i]nspect, test and repair vehicles, as applicable, in
24 accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and
25 Safety Code, and section 3340.42 of this article.”

26 17. California Code of Regulations, title 16, section 3340.35, subdivision (c), states that a
27 licensed smog check station “shall issue a certificate of compliance or noncompliance to the
28 owner or operator of any vehicle that has been inspected in accordance with the procedures

1 specified in section 3340.42 of this article and has all the required emission control equipment
2 and devices installed and functioning correctly.”

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

4 “No person shall enter into the emissions inspection system any vehicle identification
5 information or emission control system identification data for any vehicle other than the one
6 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
7 information about the vehicle being tested.”

8 19. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions
9 test methods and procedures which apply to all vehicles inspected in the State of California.

10 COST RECOVERY

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

15 CLEAN PIPING ACTIVITIES

16 On or about June 16, 2011, Bureau program representatives Ronald A. Norman and
17 Andrew Nyborg performed a video-taped surveillance of respondent the JP Test Only smog check
18 facility. The surveillance operation and information obtained from the Bureau's VID revealed
19 that between approximately 0919 hours and 0930 hours, respondent Bendezu performed a smog
20 inspection that resulted in the issuance of electronic Certificate of Compliance No. WV824906C
21 for a 1997 BMW Z3, certifying that he had tested and inspected that vehicle and that the vehicle
22 was in compliance with applicable laws and regulations. In fact, respondent Bendezu performed
23 the smog inspection using the clean piping method¹ by using the tail pipe emissions of a vehicle
24 other than the vehicle being certified in order to issue the electronic certificate of compliance.

25
26 ¹ “Clean piping” is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

1 The surveillance operation and information obtained from the Bureau's VID further revealed that
 2 between approximately 1451 hours and 1516 hours, respondent Recendez performed two smog
 3 inspections that resulted in the issuance of electronic Certificate of Compliance No. WV824913C
 4 for a 2001 Honda Accord and electronic Certificate of Compliance No. WV824914C for a 1991
 5 Honda Accord, certifying that he had tested and inspected those vehicles and that the vehicles
 6 were in compliance with applicable laws and regulations. In fact, respondent Recendez
 7 performed the smog inspections using the clean piping method as previously described.

8 On or about July 14, 2011, Bureau program representatives Ronald A. Norman
 9 Andrew Nyborg performed a second video-taped surveillance of respondent the JP Test Only
 10 smog check facility. The surveillance operation and information obtained from the Bureau's VID
 11 revealed that between approximately 0942 hours and 0949 hours, respondent Recendez
 12 performed a smog inspection that resulted in the issuance of electronic Certificate of Compliance
 13 No. WX087687C for a 1990 Toyota pickup truck, certifying that he had tested and inspected that
 14 vehicle and that the vehicle was in compliance with applicable laws and regulations. In fact,
 15 respondent Recendez performed the smog inspections using the clean piping method as
 16 previously described.

17 The following chart ("Table 1") illustrates the clean piping activities of respondents
 18 Bendezu and Recendez (collectively, "Respondents") on June 16, 2011 and July 14, 2011.

19 **Table 1**

20 Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
21 6/16/2011 22 0919-0930 23 hours	1997 BMW Z3 4KYR431	1992 Lexus 6ASE745	WV824906C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Bendezu.
25 6/16/2011 26 1451-1458 27 hours	2001 Honda Accord 4RKS999	1999 Honda Accord 4HDD331	WV824913C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Recendez.

1 2 3	6/16/2011 1510-1516 hours	1991 Honda Accord 2XDW078	1999 Honda Accord 4HDD331	WV824914C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Recendez.
4 5 6 7	7/14/2011 0942-0949 hours	1990 Toyota 4P97801	1992 Lexus 6ASE745	WX087687C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Recendez.

8
9 **FIRST CAUSE FOR DISCIPLINE**

10 (Misleading Statements)

11 21. Respondent Bendezu has subjected his registration to discipline under Code section
12 9884.7, subdivision (a)(1), in that on or about June 16, 2011, and July 14, 2011, he made
13 statements which he knew or which by exercise of reasonable care should have known were
14 untrue or misleading when he issued electronic certificates of compliance for the vehicles set
15 forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws
16 and regulations when, in fact, those vehicles had not been inspected.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Fraud)

19 22. Respondent Bendezu has subjected his registration to discipline under Code section
20 9884.7, subdivision (a)(4), in that on or about June 16, 2011, and July 14, 2011, he committed
21 acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set
22 forth in Table 1, above, without performing bona fide inspections of the emission control devices
23 and systems on those vehicles, thereby depriving the People of the State of California of the
24 protection afforded by the Motor Vehicle Inspection Program.

25 **THIRD CAUSE FOR DISCIPLINE**

26 (Violation of the Motor Vehicle Inspection Program)

27 23. Respondent Bendezu has subjected his station license and his technician license to
28 discipline under Health and Safety Code section 44072.2, subdivision (a), in that, with respect to

1 the vehicles set forth in Table 1, above, on or about June 16, 2011, and July 14, 2011, Respondent
2 violated the following sections of the Health and Safety Code:

3 a. **Section 44012:** Respondent Bendezu failed to ensure that the emission control tests
4 were performed on those vehicles in accordance with procedures prescribed by the department.

5 b. **Section 44015, subdivision (b):** Respondent Bendezu issued electronic certificates
6 of compliance without properly testing and inspecting the vehicles to determine if they were in
7 compliance with section 44012 of the Health and Safety Code.

8 c. **Section 44032:** Respondent Bendezu failed to perform tests of the emission control
9 devices and systems on those vehicles in accordance with section 44012 of the Health and Safety
10 Code.

11 d. **Section 44059:** Respondent Bendezu willfully made false entries for the electronic
12 certificates of compliance by certifying that those vehicles had been inspected as required when,
13 in fact, they had not.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

16 24. Respondent Bendezu has subjected his station license and his technician license to
17 discipline under Health and Safety Code section 44072.2, subdivision (c), in that, with respect to
18 the vehicles set forth in Table 1, above, on or about June 16, 2011, and July 14, 2011, Respondent
19 violated the following sections of title 16 of the California Code of Regulations:

20 a. **Section 3340.24, subdivision (c):** Respondent Bendezu falsely or fraudulently issued
21 electronic certificates of compliance without performing bona fide inspections of the emission
22 control devices and systems on those vehicles as required by Health and Safety Code section
23 44012.

24 b. **Section 3340.30, subdivision (a):** Respondent Bendezu failed to inspect and test
25 those vehicles in accordance with Health and Safety Code section 44012.

26 c. **Section 3340.35, subdivision (c):** Respondent Bendezu issued electronic certificates
27 of compliance even though those vehicles had not been inspected in accordance with section
28 3340.42 of the Health and Safety Code.

1 d. **Section 3340.41, subdivision (c):** Respondent Bendezu entered false information
2 into the Emission Inspection System ("EIS") for the electronic certificates of compliance by
3 entering vehicle emission control information for vehicles other than the vehicles being certified.

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

6 **FIFTH CAUSE FOR DISCIPLINE**

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

8 25. Respondent Bendezu has subjected his station license and his technician license to
9 discipline under Health and Safety Code section 44072.2, subdivision (d), in that, with respect to
10 the vehicles set forth in Table 1, above, on or about June 16, 2011, and July 14, 2011, he
11 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
12 electronic certificates of compliance for those vehicles without performing bona fide inspections
13 of the emission control devices and system on those vehicles, thereby depriving the People of the
14 State of California of the protection afforded by the Motor Vehicle Inspection Program.

15 **SIXTH CAUSE FOR DISCIPLINE**

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

17 26. Respondent Recendez has subjected his technician license to discipline under Health
18 and Safety Code section 44072.2, subdivision (a), in that on or about June 16, 2011, and July 14,
19 2011, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as
20 follows:

21 a. **Section 44012:** Respondent Recendez failed to ensure that the emission control tests
22 were performed on those vehicles in accordance with procedures prescribed by the department.

23 b. **Section 44032:** Respondent Recendez failed to perform tests of the emission control
24 devices and systems on those vehicles in accordance with section 44012 of that Code, in that the
25 vehicles had been clean piped.

26 c. **Section 44059:** Respondent Recendez willfully made false entries for the electronic
27 certificates of compliance by certifying that those vehicles had been inspected as required when,
28 in fact, they had not.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 27. Respondent Recendez has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (c), in that on or about June 16, 2011, and July 14,
5 2011, regarding the vehicles set forth in Table 1, above, he violated sections of the California
6 Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent Recendez falsely or fraudulently
8 issued electronic certificates of compliance without performing bona fide inspections of the
9 emission control devices and systems on those vehicles as required by Health and Safety Code
10 section 44012.

11 b. **Section 3340.30, subdivision (a):** Respondent Recendez failed to inspect and test
12 those vehicles in accordance with Health and Safety Code section 44012.

13 c. **Section 3340.41, subdivision (c):** Respondent Recendez entered false information
14 into the Emission Inspection System ("EIS") for the electronic certificates of compliance by
15 entering vehicle emission control information for vehicles other than the vehicles being certified.

16 d. **Section 3340.42:** Respondent Recendez failed to conduct the required smog tests and
17 inspections on those vehicles in accordance with the Bureau's specifications.

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 28. Respondent Recendez has subjected his technician license to discipline under Health
21 and Safety Code section 44072.2, subdivision (d), in that on or about June 16, 2011, and July 14,
22 2011, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
23 issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without
24 performing bona fide inspections of the emission control devices and systems on those vehicles,
25 thereby depriving the People of the State of California of the protection afforded by the Motor
26 Vehicle Inspection Program.

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1 CLEAN PLUGGING ACTIVITIES

2 In late August 2011, Bureau representative Ronald A. Norman downloaded test data
3 information from the vehicle information database (VID) for all smog tests conducted by
4 respondent JP Smog Test Only for the period August 22, 2011 through August 24, 2011. The
5 VID data revealed that a certain diagnostic trouble code was stored in the memory of the power
6 train control module ("PCM") on twelve (12) different vehicles that were certified by respondent
7 JP Smog Test Only during that time period. After researching the original equipment
8 manufacturer ("OEM") service information for these vehicles, and after consulting Mitchell On-
9 Demand and Alldata Information Systems, Bureau representative Norman determined that the
10 specific code at issue was not applicable to ten (10) of these twelve (12) vehicles, meaning that
11 other vehicles were used in place of these ten (10) vehicles during their respective OBD II
12 functional tests. This fraudulent conduct constitutes clean plugging.²

13 In December 2011, Bureau representative Ronald A. Norman downloaded and reviewed
14 test data information from the vehicle information database (VID) for all smog tests conducted by
15 respondent JP Smog Test Only on October 24, 2011. The VID data revealed that a certain
16 diagnostic trouble code was stored in the memory of the power train control module ("PCM") on
17 three (3) different vehicles that were certified by respondent JP Smog Test Only on October 24,
18 2011. After researching the original equipment manufacturer ("OEM") service information for
19 these vehicles, and after consulting Mitchell On-Demand and Alldata Information Systems,
20 Bureau representative Norman determined that the specific code at issue was not applicable these
21 three (3) vehicles. As such, other vehicles were used in place of these three (3) vehicles during
22 the OBD II functional test to fraudulently certify the vehicles, which constitutes clean plugging as
23 previously described.

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26 ² Clean plugging is the use of the OBD II readiness monitor status and stored fault code
27 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
28 another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

The following chart ("Table 2") illustrates the clean plugging activities of respondents Bendezu and Recendez between August 22, 2011 and August 24, 2011, and on October 24, 2011.

Table 2

Test Date and Time	Vehicle Certified & License No.	Certificate No.	Details
8/22/2011 1307-1318 hours	1996 Ford Windstar 6LQS276	WX866190C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Bendezu.
8/22/2011 1323-1331 hours	1997 Nissan Pickup 8J79985	WX866191C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Bendezu
8/23/2011 1515-1523 hours	1996 Chevy C1500 5J85258	WX943955C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Bendezu
8/23/2011 1608-1626 hours	1998 Toyota RAV4 4CYL340	WX943958C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Bendezu
8/23/2011 1621-1630 hours	1999 Nissan Sentra 4GPL578	WX943959C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Bendezu
8/24/2011 1025-1038 hours	1997 Chevy Blazer 5PSA900	WX943962C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Bendezu
8/24/2011 1121-1133 hours	1998 Chevy C1500 7X38405	WX943965C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Bendezu
8/24/2011 1229-1246 hours	1997 Nissan Altima 3VSF497	WX943967C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Bendezu
8/24/2011 1253-1300 hours	1996 Buick Regal 4XTY258	WX943968C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Bendezu

1	8/24/2011	1997 Toyota Camry 3WQN783	WX943969C	Inapplicable trouble code P1739 detected; vehicle certified by respondent Recendez
2	1515-1527 hours			
3	10/24/2011	1998 GMC Jimmy 4UMA116	WZ893124C	Inapplicable trouble code P1456 detected; vehicle certified by respondent Bendezu.
4	1132-1215 hours			
5	10/24/2011	1997 Chevy C3500 5S36709	WZ893127C	Inapplicable trouble code P1456 detected; vehicle certified by respondent Bendezu
6	1503-1511 hours			
7	10/24/2011	1996 Nissan Sentra 4TGH439	WZ893133C	Inapplicable trouble code P1456 detected; vehicle certified by respondent Bendezu
8	1731-1746 hours			

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12 **NINTH CAUSE FOR DISCIPLINE**

13 **(Misleading Statements)**

14 29. Respondent Bendezu has subjected his registration to discipline under Code section
15 9884.7, subdivision (a)(1), in that between August 22, 2011 and August 24, 2011, and on October
16 24, 2011, he made statements which he knew or which by exercise of reasonable care should have
17 known were untrue or misleading when he issued electronic certificates of compliance for the
18 vehicles set forth in Table 2, above, certifying that those vehicles were in compliance with
19 applicable laws and regulations when, in fact, those vehicles had been clean plugged.

20 **TENTH CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 30. Respondent Bendezu has subjected his registration to discipline under Code section
23 9884.7, subdivision (a)(4), in that between August 22, 2011 and August 24, 2011, and on October
24 24, 2011, he committed acts which constitute fraud by issuing electronic certificates of
25 compliance for the vehicles set forth in Table 2, above, without performing bona fide inspections
26 and functional testing of the emission control devices and systems on those vehicles, thereby
27 depriving the People of the State of California of the protection afforded by the Motor Vehicle
28 Inspection Program.

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Violation of the Motor Vehicle Inspection Program)**

3 31. Respondent Bendezu has subjected his station license and his technician license to
4 discipline under Health and Safety Code section 44072.2, subdivision (a), in that, with respect to
5 the vehicles set forth in Table 2, above, between August 22, 2011 and August 24, 2011, and on
6 October 24, 2011, Respondent violated the following sections of the Health and Safety Code:

7 a. **Section 44012:** Respondent Bendezu failed to ensure that the onboard diagnostic
8 system tests were performed on those vehicles in accordance with procedures prescribed by the
9 department.

10 b. **Section 44015, subdivision (b):** Respondent Bendezu issued electronic certificates
11 of compliance without properly testing and inspecting the vehicles to determine if they were in
12 compliance with section 44012 of the Health and Safety Code.

13 c. **Section 44032:** Respondent Bendezu failed to perform tests of the onboard
14 diagnostic systems on those vehicles in accordance with section 44012 of the Health and Safety
15 Coded.

16 d. **Section 44059:** Respondent Bendezu willfully made false entries for the electronic
17 certificates of compliance by certifying that those vehicles had been inspected as required when,
18 in fact, they had not.

19 **TWELFTH CAUSE FOR DISCIPLINE**

20 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

21 32. Respondent Bendezu has subjected his station license and his technician license to
22 discipline under Health and Safety Code section 44072.2, subdivision (c), in that, with respect to
23 the vehicles set forth in Table 2, above, between August 22, 2011 and August 24, 2011, and on
24 October 24, 2011, Respondent violated the following sections of title 16 of the California Code of
25 Regulations:

26 a. **Section 3340.24, subdivision (c):** Respondent Bendezu falsely or fraudulently issued
27 electronic certificates of compliance without performing bona fide inspections and functional

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1 testing of the emission control devices and systems on those vehicles as required by Health and
2 Safety Code section 44012.

3 b. **Section 3340.30, subdivision (a):** Respondent Bendezu failed to inspect and test
4 those vehicles in accordance with Health and Safety Code section 44012.

5 c. **Section 3340.35, subdivision (c):** Respondent Bendezu issued electronic certificates
6 of compliance even though those vehicles had not been inspected in accordance with section
7 3340.42 of the Health and Safety Code.

8 d. **Section 3340.41, subdivision (c):** Respondent Bendezu knowingly entered false
9 information into the Emission Inspection System ("EIS") about the vehicles being tested.

10 e. **Section 3340.42:** Respondent Bendezu failed to conduct the required smog tests and
11 inspections on those vehicles in accordance with the Bureau's specifications.

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

14 33. Respondent Bendezu has subjected his station license and his technician license to
15 discipline under Health and Safety Code section 44072.2, subdivision (d), in that, with respect to
16 the vehicles set forth in Table 2, above, between August 22, 2011 and August 24, 2011, and on
17 October 24, 2011, he committed acts involving dishonesty, fraud or deceit whereby another was
18 injured by issuing electronic certificates of compliance for those vehicles without performing
19 bona fide inspections and functional testing of the emission control devices and systems on those
20 vehicles, thereby depriving the People of the State of California of the protection afforded by the
21 Motor Vehicle Inspection Program.

22 **FOURTEENTH CAUSE FOR DISCIPLINE**

23 **(Violation of the Motor Vehicle Inspection Program)**

24 34. Respondent Recendez has subjected his technician license to discipline under Health
25 and Safety Code section 44072.2, subdivision (a), in that, with respect to the vehicles set forth in
26 Table 2, above, between August 22, 2011 and August 24, 2011, and on October 24, 2011,
27 Respondent violated the following sections of the Health and Safety Code:

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1 a. **Section 44012:** Respondent Bendezu failed to ensure that the onboard diagnostic
2 system tests were performed on those vehicles in accordance with procedures prescribed by the
3 department.

4 b. **Section 44015, subdivision (b):** Respondent Recendez issued electronic certificates
5 of compliance without properly testing and inspecting the vehicles to determine if they were in
6 compliance with section 44012 of the Health and Safety Code.

7 c. **Section 44032:** Respondent Recendez failed to perform tests of the onboard
8 diagnostic systems on those vehicles in accordance with section 44012 of the Health and Safety
9 Coded.

10 d. **Section 44059:** Respondent Recendez willfully made false entries for the electronic
11 certificates of compliance by certifying that those vehicles had been inspected as required when,
12 in fact, they had not.

13 **FIFTEENTH CAUSE FOR DISCIPLINE**

14 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

15 35. Respondent Recendez has subjected his technician license to discipline under Health
16 and Safety Code section 44072.2, subdivision (c), in that, with respect to the vehicles set forth in
17 Table 2, above, between August 22, 2011 and August 24, 2011, and on October 24, 2011,
18 Respondent violated the following sections of title 16 of the California Code of Regulations:

19 a. **Section 3340.24, subdivision (c):** Respondent Recendez falsely or fraudulently
20 issued electronic certificates of compliance without performing bona fide inspections and
21 functional testing of the emission control devices and systems on those vehicles as required by
22 Health and Safety Code section 44012.

23 b. **Section 3340.30, subdivision (a):** Respondent Recendez failed to inspect and test
24 those vehicles in accordance with Health and Safety Code section 44012.

25 c. **Section 3340.35, subdivision (c):** Respondent Recendez issued electronic
26 certificates of compliance even though those vehicles had not been inspected in accordance with
27 section 3340.42 of the Health and Safety Code.

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1 d. Section 3340.41, subdivision (c): Respondent Recendez knowingly entered false
2 information into the Emission Inspection System ("EIS") about the vehicles being tested.

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

5 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

7 36. Respondent Recendez has subjected his technician license to discipline under Health
8 and Safety Code section 44072.2, subdivision (d), in that, with respect to the vehicles set forth in
9 Table 2, above, between August 22, 2011 and August 24, 2011, and on October 24, 2011, he
10 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
11 electronic certificates of compliance for those vehicles without performing bona fide inspections
12 and functional testing of the emission control devices and systems on those vehicles, thereby
13 depriving the People of the State of California of the protection afforded by the Motor Vehicle
14 Inspection Program.

15 **PRAYER**

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

18 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
19 255003, issued to JP Smog Test Only; Jean Pierre Bendezu

20 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
21 255003, issued to JP Smog Test Only; Jean Pierre Bendezu;

22 3. Revoking or suspending Advanced Emission Specialist Technician License Number
23 EA 632636, issued to Jean Pierre Bendezu;

24 4. Revoking or suspending Advanced Emission Specialist Technician License Number
25 EA 632834, issued to Victor Antonio Recendez;

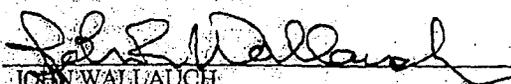
26 5. Revoking or suspending any and all other licenses issued to Jean Pierre Bendezu and
27 Victor Antonio Recendez by the Bureau of Automotive Repair pursuant to Health and Safety
28 Code section 44072.8;

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6. Ordering Jean Pierre Bendezu and Victor Antonio Recendez 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;

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

DATED: 2/17/12



JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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