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

11
12 In the Matter of the Accusation Against:

Case No. **79/16-67**

13 **ISABEL RODRIGUEZ,**
DBA THE SMOG SHOP
14 **13978 Old 215 Frontage Rd., Unit C**
Moreno Valley, CA 92553

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
16 **ARD263727**
17 **Smog Check Test-Only Station License No.**
TC263727

18 **and**

19 **JUAN M. RAMIREZ**
21590 Elmwood Street
20 **Perris, CA 92570**

21 **Smog Check Inspector License No. E0 633011**
(formerly Advanced Emission Specialist
22 **Technician License No. EA 633011)**

23 Respondents.

24
25 Complainant alleges:

26 **PARTIES**

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

1 6. Code section 477 provides, in pertinent part, that "Board" includes "bureau," . . .
2 "License" includes certificate, registration or other means to engage in a business or profession
3 regulated by the Code.

4 7. Code section 9884.7 provides, in pertinent part, that the Director may revoke an
5 automotive repair dealer registration.

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

10 9. Code section 9889.1 provides, in pertinent part, that the Director may suspend or
11 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
12 Automotive Repair Act.

13 10. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a
14 license by operation of law or by order or decision of the Director or a court of law, or the
15 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any
16 disciplinary proceedings.

17 11. Health and Safety Code (H & S Code) section 44002 provides, in pertinent part, that
18 the Director has all the powers and authority granted under the Automotive Repair Act for
19 enforcing the Motor Vehicle Inspection Program.

20 12. H & S Code section 44072.6 provides, in pertinent part, that the expiration or
21 suspension of a license by operation of law, or by order or decision of the Director, or a court of
22 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
23 proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to
24 render a decision suspending or revoking the license.

25 13. H & S Code section 44072.8 states:

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

STATUTORY PROVISIONS

14. Code section 9884.7 states, in pertinent part:

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

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

....

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct which constitutes fraud.

....

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

....

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(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.

15. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from

1 the customer. The bureau may specify in regulation the procedures to be followed
2 by an automotive repair dealer if an authorization or consent for an increase in the
3 original estimated price is provided by electronic mail or facsimile transmission. If
4 that consent is oral, the dealer shall make a notation on the work order of the date,
5 time, name of person authorizing the additional repairs and telephone number
6 called, if any, together with a specification of the additional parts and labor and the
7 total additional cost,
8

....

16. H & S Code section 44012 states, in pertinent part:

6 The test at the smog check stations shall be performed in accordance with
7 procedures prescribed by the department, pursuant to Section 44013, shall require,
8 at a minimum, loaded mode dynamometer testing in enhanced areas, and
9 two-speed testing in all other program areas, and shall ensure all of the following:

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

....

13 (f) A visual or functional check is made of emission control devices
14 specified by the department, including the catalytic converter in those instances in
15 which the department determines it to be necessary to meet the findings of Section
16 44001. The visual or functional check shall be performed in accordance with
17 procedures prescribed by the department.

....

17. H & S Code section 44015 (b) states:

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

18. H & S Code section 44032 states:

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

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

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

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

....

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

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

4

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

6

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

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

11

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

13

14 **REGULATORY PROVISIONS**

15 21. California Code of Regulations, Title 16, (CCR) section 3340.1, provides that the
16 term "clean piping," for purposes of H & S section 44072.10, subdivision (c) (1), means the use
17 of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to
18 cause the EIS to issue a certificate of compliance for the test vehicle.

19 22. CCR section 3340.24 (c), states:

20 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a
21 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
22 certificate of noncompliance.

23 23. CCR, section 3340.28, subdivision (e), states:

24 "Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission
25 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
26 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

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28 ///

1 24. CCR section 3340.30, states, in pertinent part:

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

4 (a) inspect, test and repair vehicles, as applicable, in accordance with section
5 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code,
6 and section 3340.42 of this article.

7

8 25. CCR section 3340.35 (c), states:

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

14 (1) Customers shall be charged the same price for certificates as that paid by
15 the licensed station; and

16 (2) Sales tax shall not be assessed on the price of certificates.

17 26. CCR section 3340.41 (c), states:

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

22 27. CCR section 3340.42, states:

23 Smog check inspection methods are prescribed in the Smog Check Manual,
24 referenced by section 3340.45.

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

27 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999
28 model-year vehicle, except diesel-powered, 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 (a) 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 Vehicle Look-up Table (VLT) Row Specific Emissions Standards

1 (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference.
2 If the emissions standards for a specific vehicle are not included in this table then
3 the exhaust emissions shall be compared to the emissions standards set forth in
4 TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all
5 of its measured emissions are less than or equal to the applicable emission
6 standards specified in the applicable table.

7 (2) A two-speed idle mode test shall be the test method used to inspect 1976
8 - 1999 model-year vehicles, except diesel-powered, registered in all program areas
9 of the state, except in those areas of the state where the enhanced program has
10 been implemented. The two-speed idle mode test shall measure hydrocarbon,
11 carbon monoxide and carbon dioxide emissions at high RPM and again at idle
12 RPM, as contained in the bureau's specifications referenced in subsection (a) of
13 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this
14 inspection shall be measured and compared to the emission standards set forth in
15 this section and as shown in TABLE III. A vehicle passes the two-speed idle
16 mode test if all of its measured emissions are less than or equal to the applicable
17 emissions standards specified in Table III.

18 (3) An OBD-focused test, shall be the test method used to inspect gasoline-
19 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998
20 model-year and newer. The OBD test failure criteria are specified in section
21 3340.42.2.

22 (b) In addition to subsection (a), all vehicles subject to the smog check
23 program shall receive the following:

24 (1) A visual inspection of emission control components and systems to
25 verify the vehicle's emission control systems are properly installed.

26 (2) A functional inspection of emission control systems as specified in the
27 Smog Check Manual, referenced by section 3340.45, which may include an OBD
28 test, to verify their proper operation.

(c) The bureau may require any combination of the inspection methods in
sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and
Safety Code section 44014.7 as a means of identifying potential operational
problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically
incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational
problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter
standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon
monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions
standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross
polluters during an initial inspection will be considered gross polluters and the

1 provisions pertaining to gross polluting vehicles will apply, including, but not
limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

2 (3) A gross polluting vehicle shall not be passed or issued a certificate of
3 compliance until the vehicle's emissions are reduced to or below the applicable
4 emissions standards for the vehicle included in the tables described in subsection
(a), as applicable. However, the provisions described in section 44017 of the
Health and Safety Code may apply.

5 (4) This subsection applies in all program areas statewide to vehicles
6 requiring inspection pursuant to sections 44005 and 44011 of the Health and
Safety Code.

7 28. CCR section 3373, states:

8 No automotive repair dealer or individual in charge shall, in filling out an
9 estimate, invoice, or work order, or record required to be maintained by section
10 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
11 information which will cause any such document to be false or misleading, or
where the tendency or effect thereby would be to mislead or deceive customers,
prospective customers, or the public.

12 COST RECOVERY

13 29. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
17 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
18 may be included in a stipulated settlement.

19 UNDERCOVER OPERATION: 1991 Mitsubishi

20 30. On September 26, 2014, the Bar conducted an undercover operation at Respondent
21 Rodriguez's smog check station, The Smog Shop. The BAR's vehicle, a 1992 Mitsubishi, was
22 modified to fail a proper smog inspection due to the removal of the catalytic converter, causing a
23 tailpipe emissions failure. In addition, the vehicle had a modified fuel injection system, modified
24 PCV system and a modified air intake system. All of the modifications of these systems were not
25 approved for this vehicle, which would cause the vehicle to fail the visual and functional
26 inspection.

27 31. A BAR undercover operator took the vehicle to Respondent Rodriguez's smog check
28 station. The operator asked Respondent Ramirez how much it would cost for a passing

1 inspection of the Mitsubishi. Respondent Ramirez told the operator that he needed a catalytic
2 converter. The operator left the shop and returned the vehicle to the BAR. The BAR lab
3 technician installed a hollowed out catalytic converter on the vehicle. The Mitsubishi would still
4 fail a proper smog inspection due to the modification of the catalytic converter, causing a tailpipe
5 emissions failure. The modifications to the vehicle's fuel injection system, PCV system and air
6 intake system remained the same, causing the vehicle to fail a visual and functional inspection.

7 32. On February 26, 2015 the undercover operator returned to the shop, and met with
8 Respondent Ramirez. After the Mitsubishi was inspected by Respondent Ramirez, he told the
9 operator that getting the vehicle to pass inspection was going to be more difficult than he thought.
10 Respondent Ramirez told the operator that he would do a "2 for 1" inspection in which he would
11 use a Chrysler Sebring to get the Mitsubishi to pass. However, the Chrysler would not pass
12 inspection either. Respondent Ramirez told the operator that he would wait until the next vehicle
13 came into the shop and use that vehicle to get the Mitsubishi to pass inspection. This second
14 vehicle also failed the inspection and could not be used. Respondent Ramirez asked the operator
15 if he could wait until someone else came to the shop. The operator told Respondent Ramirez that
16 he could not wait and had to go. Respondent Ramirez told the operator that the Mitsubishi did
17 not have to be at The Smog Shop to pass inspection. The operator filled out a work order and
18 signed it, however he was not given a copy of the work order. Respondent Ramirez requested
19 and received from the operator \$200.00 to perform the smog test. The operator then left the
20 facility with the Mitsubishi.

21 33. On February 27, 2015, the operator returned to The Smog Shop in a different vehicle.
22 The Mitsubishi was secured at a BAR facility. Respondent Ramirez told the operator that
23 everything went OK and that he was able to issue a certificate of compliance. The operator
24 received a copy of the Vehicle Inspection Report (VIR) and the DMV documents. The operator
25 did not sign or receive a written estimate. Respondent Ramirez performed the smog inspections
26 that resulted in an improperly issued certificate for the Smog Check inspection.

27 34. The investigator obtained information from the BAR's vehicle information database
28 (VID) that revealed that the Mitsubishi was purportedly tested by Respondent Ramirez on

1 February 26, 2015. The test resulted in the issuance of electronic smog Certificate of Compliance
2 No. [REDACTED]. On February 26, 2015, the Mitsubishi was stored in a secured facility by the
3 BAR and was not in the possession or control of Respondent Rodriguez or Respondent Ramirez.

4 35. The BAR determined that the smog inspection on the Mitsubishi was conducted using
5 clean piping methods², resulting in the issuance of a fraudulent certificate of compliance for the
6 vehicle. Further, the smog inspections were conducted using Respondent Ramirez's confidential
7 access code.

8 36. On March 6, 2015, BAR personnel re-inspected and retested the Mitsubishi after the
9 smog test by Respondent Ramirez. The condition of the vehicle as modified before testing had
10 not changed; the vehicle failed a visual inspection for modified fuel injection system, modified
11 PCV system and a modified air intake system. In addition, the vehicle failed the functional
12 inspection for excessive tail pipe emissions.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 37. Respondent Rodriguez's registration is subject to disciplinary action pursuant to
16 Code section 9884.7, subdivision (a)(1), in that Respondent Rodriguez made or authorized
17 statements which she knew or in the exercise of reasonable care should have known to be untrue
18 or misleading, as set forth in paragraphs 30 through 36, above. Respondent Rodriguez certified
19 that the Mitsubishi had passed inspection and was in compliance with applicable laws and
20 regulations. In fact, Respondent Rodriguez used clean piping methods in order to issue a
21 certificate for the vehicle and did not test or visually inspect the vehicle as required by H & S
22 Code section 44012.

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26 ² Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),
27 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to
28 cause the Emission Inspection System (EIS) to issue a certificate of compliance for another
vehicle.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 38. Respondent Rodriguez's registration is subject to disciplinary action pursuant to
4 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitutes
5 fraud as set forth in paragraphs 30 through 36. Respondent Rodriguez issued an electronic smog
6 certificate of compliance for the Mitsubishi without performing a bona fide inspection of the
7 emission control devices and systems on the vehicle, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Provide a Written Estimate)**

11 39. Respondent Rodriguez's registration is subject to disciplinary action pursuant to
12 Code section 9884.7, subdivision (a)(6), in that she failed to comply with Code section 9884.9,
13 subdivision (a), by failing to provide the operator of the Mitsubishi with a written estimated price
14 for the smog inspection.

15 **FOURTH CAUSE FOR DISCIPLINE**

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

17 40. Respondent Rodriguez's smog check station license is subject to disciplinary action
18 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent Rodriguez failed to
19 comply with provisions of the Code, as set forth in paragraphs 30 through 36, above.

20 a. **Section 44012, subdivision (a):** Respondent Rodriguez failed to ensure that all
21 emission control devices and systems required by law for the Mitsubishi were installed and
22 functioning correctly in accordance with procedures prescribed by the department.

23 b. **Section 44012, subdivision (f):** Respondent Rodriguez failed to ensure that the
24 emission control tests were performed on the Mitsubishi, in accordance with procedures
25 prescribed by the department.

26 c. **Section 44015:** Respondent Rodriguez issued an electronic smog certificate of
27 compliance for the Mitsubishi without ensuring that the vehicle was properly tested and inspected
28 to determine if it was in compliance with H & S Code section 44012.

1 d. **Section 44072.10:** Respondent Rodriguez used clean piping methods in order to
2 issue a certificate for the Mitsubishi.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 41. Respondent Rodriguez's smog check station license is subject to disciplinary action
6 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent Rodriguez failed to
7 comply with provisions of California Code of Regulations, Title 16, as set forth in paragraphs 30
8 through 36, above.

9 a. **Section 3340.24, subdivision (c):** Respondent Rodriguez falsely or fraudulently
10 issued an electronic smog certificate of compliance for the Mitsubishi .

11 b. **Section 3340.35, subdivision (c):** Respondent Rodriguez failed to inspect and test
12 the Mitsubishi in accordance with H & S Code sections 44012 and 44035, and CCR section
13 3340.42.

14 c. **Section 3340.41, subdivision (e):** Respondent Rodriguez permitted false information
15 to be entered into the EIS in that vehicle identification information or emission control system
16 identification data for a vehicle other than the one being tested.

17 d. **Section 3340.42:** Respondent Rodriguez failed to conduct the required smog tests on
18 the Mitsubishi in accordance with the Bureau's specifications.

19 **SIXTH CAUSE FOR DISCIPLINE**

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

21 42. Respondent Rodriguez's smog check station license is subject to disciplinary action
22 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent Rodriguez
23 committed a dishonest, fraudulent or deceitful act whereby another is injured, as set forth in
24 paragraphs 30 through 36, above. Respondent Rodriguez issued an electronic smog certificate of
25 compliance for the Mitsubishi without performing a bona fide inspection of the emission control
26 devices and systems on the vehicle, thereby depriving the People of the State of California of the
27 protection afforded by the Motor Vehicle Inspection Program.

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 43. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to
4 H & S Code section 44072.2, subdivision (a), in that Respondent Ramirez failed to comply with
5 the following sections of that Code, as set forth in paragraphs 30 through 36, above.

6 a. **Section 44012, subdivision (a):** Respondent Ramirez failed to ensure that all
7 emission control devices and systems required by law for the Mitsubishi were installed and
8 functioning correctly in accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent Ramirez failed to perform the emission
10 control tests on the Mitsubishi in accordance with procedures prescribed by the department.

11 c. **Section 44015, subdivision (b):** Respondent Ramirez issued an electronic smog
12 certificate of compliance for the Mitsubishi without properly testing and inspecting the vehicle to
13 determine if it was in compliance with H & S Code section 44012.

14 d. **Section 44059:** Respondent Ramirez willfully made false entries for an electronic
15 certificate of compliance for the Mitsubishi by certifying that the vehicle had been inspected as
16 required when, in fact, it had not.

17 e. **Section 44072.10:** Respondent Ramirez used clean piping methods in order to issue
18 a certificate for the Mitsubishi.

19 EIGHTH CAUSE FOR DISCIPLINE

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

21 44. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to
22 H & S Code section 44072.2, subdivision (c), in that Respondent Ramirez failed to comply with
23 provisions of California Code of Regulations, Title 16, as set forth in paragraphs 30 through 36,
24 above.

25 a. **Section 3340.24, subdivision (c):** Respondent Ramirez falsely or fraudulently issued
26 an electronic smog certificate of compliance for the Mitsubishi.

27 b. **Section 3340.30, subdivision (a):** Respondent Ramirez failed to inspect and test the
28 Mitsubishi in accordance with H & S Code sections 44012 and 44035, and CCR section 3340.42.

1 c. **Section 3340.41, subdivision (c):** Respondent Ramirez entered into the emissions
2 inspection system vehicle identification information or emission control system identification
3 data for a vehicle other than the one being tested.

4 d. **Section 3340.42:** Respondent Ramirez failed to conduct the required smog tests on
5 the Mitsubishi in accordance with the Bureau's specifications.

6 **NINTH CAUSE FOR DISCIPLINE**

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

8 45. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to
9 H & S Code section 44072.2, subdivision (d), in that Respondent Ramirez committed dishonest,
10 fraudulent, or deceitful acts whereby another is injured, as set forth in paragraphs 30 through 36,
11 above. Respondent Ramirez issued an electronic smog certificate of compliance for the
12 Mitsubishi without performing bona fide inspections of the emission control devices and systems
13 on the vehicle, thereby depriving the People of the State of California of the protection afforded
14 by the Motor Vehicle Inspection Program.

15 **UNDERCOVER OPERATION: 1992 Honda**

16 46. On April 9, 2015, the Bar conducted another undercover operation at Respondent
17 Rodriguez's smog check station, The Smog Shop. The BAR's vehicle, a 1992 Honda, was
18 modified to fail a proper smog inspection due to the removal of the catalytic converter, causing a
19 tailpipe emissions failure. In addition, the vehicle would cause the vehicle to fail the visual
20 inspection for the missing catalytic converter.

21 47. A BAR undercover operator took the vehicle to Respondent Rodriguez's smog check
22 station. The operator was the same individual who conducted the undercover operation for the
23 Mitsubishi, above. The operator met with and Respondent Ramirez and told him he needed to
24 have the Honda pass a smog inspection. Respondent Ramirez examined the vehicle and told the
25 operator that he needed a catalytic converter. The operator explained to Respondent Ramirez that
26 he was not able to find a catalytic converter and asked what else could be done to get the Honda
27 to pass. Respondent Ramirez told the operator that he could refer him to a shop in Bloomington,
28 California that would be able to pass a vehicle without a catalytic converter for \$250.00. The

1 operator told Respondent Ramirez that he would be willing to pay that amount. Respondent
2 Ramirez then referred him to another smog shop named Fast N Go Smog on West Valley
3 Boulevard.

4 48. On that same day the undercover operator drove the Honda to Fast N Go Smog and
5 met with the owner and technician, Ismael Rodriguez (Ismael). The operator told Ismael that he
6 had been sent by Respondent Ramirez of The Smog Shop to get a passing smog inspection for the
7 Honda. Ismael asked him to wait in the office. While waiting, the operator observed the arrival
8 of another smog technician named Cesar Gomez (Gomez). Gomez delivered a green cylinder to
9 Ismael. The two of them connected the cylinder to the EIS unit and ran a smog test.

10 49. Following the completion of the smog test Ismael received \$250.00 from the operator
11 for the passing smog inspection and the issuance of a certificate of compliance. The operator
12 received a copy of the VIR. The operator did not sign or receive a written estimate.

13 50. The BAR investigator obtained information from the BAR's VID that revealed that
14 the Honda was purportedly tested by Ismael on April 9, 2015. The test resulted in the issuance of
15 electronic smog Certificate of Compliance No. [REDACTED].

16 51. The BAR determined that the smog inspection on the Honda was conducted using
17 clean gassing methods³, resulting in the issuance of a fraudulent certificate of compliance for the
18 vehicle.

19 52. On April 29, 2015, BAR personnel re-inspected and retested the Honda after the
20 smog test by Ismael. The condition of the vehicle as modified before testing had not changed; the
21 vehicle failed a visual inspection for the missing catalytic converter. In addition, the vehicle
22 failed for excessive tail pipe emissions.

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25 ///

26 ³ "Clean Gassing" is a form of "clean piping". Clean Gassing occurs when a surrogate
27 gas is introduced in place of some or all of the vehicle exhaust during a smog check inspection.
28 The smog check gas analyzer measures the pollutants in the surrogate gas and issues a test result
based upon these readings rather than the actual vehicle emissions.

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 53. Respondent Rodriguez's registration is subject to disciplinary action pursuant to
4 Code section 9884.7, subdivision (a)(4), in that Respondent Rodriguez committed acts which
5 constitutes fraud as set forth in paragraphs 46 through 52. Respondent Rodriguez conspired with
6 another licensee to fraudulently issue an electronic smog certificate of compliance for the Honda
7 without performing a bona fide inspection of the emission control devices and systems on the
8 vehicle, thereby depriving the People of the State of California of the protection afforded by the
9 Motor Vehicle Inspection Program.

10 **ELEVENTH CAUSE FOR DISCIPLINE**

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

12 54. Respondent Rodriguez's smog check station license is subject to disciplinary action
13 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent Rodriguez failed to
14 comply with provisions of the Code, as set forth in paragraphs 46 through 52, above.

15 a. **Section 44072, subdivision (d):** Respondent Rodriguez conspired with another
16 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

17 b. **Section 44072.10:** Respondent Rodriguez conspired with another licensee to
18 fraudulently issue an electronic smog certificate of compliance for the Honda by using clean
19 gassing methods.

20 **TWELFTH CAUSE FOR DISCIPLINE**

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

22 55. Respondent Rodriguez's smog check station license is subject to disciplinary action
23 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent Rodriguez failed to
24 comply with provisions of California Code of Regulations, Title 16, as set forth in paragraphs 46
25 through 52, above.

26 a. **Section 3340.24, subdivision (c):** Respondent Rodriguez conspired with another
27 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

1 c. **Section 3340.41, subdivision (c):** Respondent Rodriguez conspired with another
2 licensee to enter false information into the EIS for a vehicle other than the one being tested.

3 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

5 56. Respondent Rodriguez's smog check station license is subject to disciplinary action
6 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent Rodriguez
7 conspired with another licensee to commit a dishonest, fraudulent or deceitful act whereby
8 another is injured, as set forth in paragraphs 46 through 52, above.

9 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

11 57. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to
12 H & S Code section 44072.2, subdivision (a), in that Respondent Ramirez failed to comply with
13 the following sections of that Code, as set forth in paragraphs 46 through 52, above.

14 a. **Section 44072, subdivision (d):** Respondent Ramirez conspired with another
15 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

16 b. **Section 44072.10:** Respondent Ramirez conspired with another licensee to
17 fraudulently issue an electronic smog certificate of compliance for the Honda by using clean
18 gassing methods.

19 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

21 58. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to
22 H & S Code section 44072.2, subdivision (c), in that Respondent Ramirez failed to comply with
23 provisions of California Code of Regulations, Title 16, as set forth in paragraphs 36 through 52,
24 above.

25 a. **Section 3340.24, subdivision (c):** Respondent Ramirez conspired with another
26 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

27 b. **Section 3340.41, subdivision (c):** Respondent Ramirez conspired with another
28 licensee to enter false information into the EIS for a vehicle other than the one being tested.

1 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

3 59. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to H
4 & S Code section 44072.2, subdivision (d), in that Respondent Ramirez conspired with another
5 licensee to commit a dishonest, fraudulent or deceitful act whereby another is injured, as set forth
6 in paragraphs 46 through 52, above.

7 **OTHER MATTERS**

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

13 61. Pursuant to H & S Code section 44072.8, if Smog Check Test- Only Station License
14 Number TC263727, issued to Respondent Isabel Rodriguez, owner of The Smog Shop, is revoked
15 or suspended, any additional license issued under this chapter in the name of said licensee may be
16 likewise revoked or suspended by the Director.

17 62. Pursuant to H & S Code section 44072.8, if Smog Check Inspector License No. E0
18 633011, issued to Respondent Juan M. Ramirez, is revoked or suspended, any additional license
19 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
20 the Director.

21
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
26 ARD263727, issued to Isabel Rodriguez, dba The Smog Shop;

27 2. Revoking or suspending any other automotive repair dealer registration issued to
28 Isabel Rodriguez;

- 1 3. Revoking or suspending Smog Check Test-Only Station License Number TC263727,
- 2 issued to Isabel Rodriguez, dba The Smog Shop;
- 3 4. Revoking or suspending any additional license issued under Articles 5 and 6 of
- 4 Chapter 20.3 of the Code in the name of Isabel Rodriguez;
- 5 5. Revoking or suspending Smog Check Inspector License Number E0 633011, issued
- 6 to Juan M. Ramirez;
- 7 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 8 and Safety Code in the name of Juan M. Ramirez;
- 9 7. Ordering Isabel Rodriguez and Juan M. Ramirez to pay, jointly and severally, the
- 10 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
- 11 case, pursuant to Business and Professions Code section 125.3;
- 12 8. Taking such other and further action as deemed necessary and proper.

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16 DATED: February 26, 2016 Patrick Dorais

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

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