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

12 In the Matter of the Accusation Against:
13 **PRESTIGE INVESTORS, LLC DBA**
LOPEZ TEST ONLY, JOSE LUIS LOPEZ
14 **6326 S. Central Avenue**
Los Angeles, CA 90011
15 **Auto Repair Dealer Registration No. ARD**
16 **269282**
Smog Check, Test Only, Station License No.
17 **TC 269282,**
18 **JOSE LUIS LOPEZ**
19 **4625 S. Central Avenue**
Los Angeles, CA 90011
20 **Advanced Emission Specialist Technician**
21 **License No. EA 633968 (to be redesignated**
upon renewal as EO 633968 and/or E1
22 **633968),**
23 **EDWARD DE LA CRUZ**
24 **12059 161st**
Norwalk, CA 90650
25 **Advanced Emission Specialist Technician**
26 **License No. EA 631923 (to be redesignated**
upon renewal as EO 631923 and/or E1
27 **631923)**

Case No. *79/14-43*
ACCUSATION
smog check

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and
JOSHUA STEVE GUEVARA
3566 East 58th Street
Maywood, CA 90270
Smog Inspector (EO) License No. EO
635074
Respondents.

Complainant alleges:

PARTIES

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

2. On or about May 31, 2012, the Bureau of Automotive Repair issued Auto Repair Dealer Registration Number ARD 269282 to Prestige Investors, LLC dba Lopez Test Only, Jose Luis Lopez. The Auto Repair Dealer Registration expired on May 31, 2013, and has not been renewed.

3. On or about June 15, 2012, the Bureau of Automotive Repair issued Smog Check, Test Only, Station License Number TC 269282 to Prestige Investors, LLC dba Lopez Test Only, Jose Luis Lopez (respondent Prestige). The Smog Check, Test Only, Station License expired on May 31, 2013, and has not been renewed.

4. On or about January 23, 2012, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License Number EA 633968 to Jose Luis Lopez (respondent Lopez). The Advanced Emission Specialist Technician License expired on August 31, 2013, and has not been renewed. Upon renewal, Respondent's license will be redesignated as EO 633968 and/or 633968.¹

5. On or about April 1, 2010, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License Number EA 631923 to Edward De La Cruz (respondent

¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 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 (EJ) license.

1 De La Cruz). The Advanced Emission Specialist Technician License expired on September 30,
2 2013, and has not been renewed. Upon renewal, Respondent's license will be redesignated as EO
3 631923 and/or 631923.

4 6. On or about December 26, 2012, the Bureau of Automotive Repair issued Smog
5 Inspector (EO) License No. 635074 to Joshua Steve Guevara (respondent Guevara). The Smog
6 Inspector (EO) License was in full force and effect at all times relevant to the charges brought
7 herein and will expire on May 31, 2015, unless renewed.

8 JURISDICTION

9 7. Section 9884.13 of the Business and Professions Code ("BPC") provides, in pertinent
10 part, that "[t]he expiration of a valid registration shall not deprive the director or chief of
11 jurisdiction to proceed with . . . [a] disciplinary proceeding against an automotive repair dealer or
12 to render a decision invalidating a registration temporarily or permanently."

13 8. Section 44072.6 of the Health and Safety Code ("HSC") provides:

14 "The expiration or suspension of a license by operation of law or by order or decision of the
15 director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
16 the director of jurisdiction to proceed with any investigation of, or action or disciplinary
17 proceedings against, the licensee, or to render a decision suspending or revoking the license."

18 9. Section 44002 of the HSC provides, in pertinent part, that the Director has all the
19 powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle
20 Inspection Program.

21 STATUTORY PROVISIONS

22 10. Section 9884.7 of the BPC states, in pertinent part:

23 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
24 error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an
25 automotive repair dealer for any of the following acts or omissions related to the conduct of the
26 business of the automotive repair dealer, which are done by the automotive repair dealer or any
27 automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

4 (4) Any other conduct which constitutes fraud.

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

8 11. Section 44012 of the HSC provides, in pertinent part, that tests at smog check
9 stations shall be performed in accordance with procedures prescribed by the department.

10 12. Section 44014, subdivision (a), of the HSC provides that the testing and repair portion
11 of the smog check program shall be conducted only by licensed smog check technicians.

12 13. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance
13 shall be issued if a vehicle meets the requirements of HSC section 40012.

14 14. Section 44032 of the Health and Safety Code states, in pertinent part, that: (1) no
15 person may perform tests or repairs of emission control devices or systems of motor vehicles
16 required by the Motor Vehicle Inspection Program unless the person performing the test or repair
17 is a licensed qualified smog check technician; and (2) all tests must be conducted in accordance
18 with section 44012 (i.e. Motor Vehicle Inspection Program Requirements).

19 15. Section 44072.2 of the HSC states, in pertinent part:

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

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

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

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

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

“(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection”

16. Section 44072.2 of the HSC provides”

“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.”

REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 3340.15, states in pertinent part”

“(b) A licensed inspector and/or repair technician shall be present during all hours the station is open for the business. Testing and/or repairing of vehicles pursuant to the Smog Check Program shall be performed by a licensed inspector and/or repair technician, consistent with their license classification.

...

“(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, and
- (3) Vehicle inspection reports generated either manually or by the emissions inspection

system.

1 The above listed station records shall be maintained in such a manner that the records for
2 each transaction are kept together, so as to facilitate access to those records by the bureau or its
3 representative. In this regard, the second copy of an issued certificate shall be attached to the final
4 invoice record.

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6 18. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c),
7 states:

8 "The bureau may suspend or revoke the license of or pursue other legal action against a
9 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
10 certificate of noncompliance."

11 19. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
12 station "shall issue a certificate of compliance or noncompliance to the owner or operator of any
13 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
14 this article and has all the required emission control equipment and devices installed and
15 functioning correctly."

16 20. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
17 procedures which apply to all vehicles inspected in the State of California.

18 **COST RECOVERY**

19 21. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board
20 "may request the administrative law judge to direct a licensee found to have committed a
21 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
22 investigation and enforcement of the case."

23 **STATION SURVEILLANCE: NOVEMBER 2012**

24 22. On November 14 and 15, 2012, Bureau program representatives Mario Salas and
25 Allen Steele performed video-taped surveillance of respondent Lopez Test Only's smog check
26 facility which revealed that the station was involved in extensive unlicensed activity and illegal

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1 “clean piping.”² Specifically, the surveillance operation and information obtained from the
2 Bureau’s VID revealed that between the hours of approximately 1158 and 1555 on November 14,
3 2012, respondent De La Cruz’s smog technician license number and access code were used by an
4 unlicensed person, Marco Gonzalez, to unlawfully certify a total of four (4) vehicles. In addition,
5 the Bureau program representatives observed, and the surveillance video confirms, that at least
6 three (3) of the four (4) unlawfully certified vehicles were fraudulently certified via the clean
7 piping method in that the tailpipe emissions of a 1998 Ford Ranger (CA License No. 49948C1)
8 owned by respondent Lopez were used in place of the tailpipe emissions of vehicles that were
9 purportedly being tested. No licensed technicians were present at the station during the time of
10 the Bureau’s surveillance.

11 Furthermore, the surveillance operation and information obtained from the Bureau’s VID
12 revealed that between the hours of approximately 1017 and 1438 on November 15, 2012,
13 respondent De La Cruz’s smog technician license number and access code were again used by
14 unlicensed person Marco Gonzalez to unlawfully certify a total of five (5) vehicles. The Bureau
15 program representatives observed, and the surveillance video confirms, that the five (5) vehicles
16 were fraudulently certified via the clean piping method in that the tailpipe emissions of a 1998
17 Ford Ranger (CA License No. 49948C1) owned by respondent Lopez were used in place of the
18 tailpipe emissions of vehicles that were purportedly being tested. No licensed technicians were
19 present at the station during the time of the Bureau’s surveillance.

20 The following chart (“Table 1”) illustrates the clean piping activities observed during the
21 Bureau’s surveillance of respondent Lopez Test Only’s station on November 14, 2012, and
22 November 15, 2012.

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27 ² “Clean piping” is sampling the (clean) tailpipe emissions and/or the RPM readings of
28 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
compliance or are not present in the smog check area during the time of the certification.

Table 1

Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
11/14/2012 1158 to 1224 hours	1989 Honda Civic CRX 2RGF715	1998 Ford Ranger 49948C1	XN734107C	Ford Ranger in test bay at time of certification. Test performed by Gonzalez (unlicensed).
11/14/2012 1301 to 1319 hours	2002 Mitsubishi Eclipse 5VWC140	1998 Ford Ranger 49948C1	XN734108C	Ford Ranger in test bay at time of certification. Test performed by Gonzalez (unlicensed).
11/14/2012 1417 to 1446 hours	1999 Ford Econoline Van 6R96092	1998 Ford Ranger 49948C1	XN734109C	Ford Ranger in test bay at time of certification. Test performed by Gonzalez (unlicensed).
11/14/2012 1512 to 1555 hours	2002 Mazda 626 No License Plate	1998 Ford Ranger 49948C1	XN734110C	Ford Ranger in test bay at time of certification. Test performed by Gonzalez (unlicensed).
11/15/2012 1017 to 1039 hours	1986 Chevrolet S10 Pickup 8S76960	1998 Ford Ranger 49948C1	XN734114C	Ford Ranger in test bay at time of certification. Test performed by Gonzalez (unlicensed).
11/15/2012 1056 to 1122 hours	1990 Bentley Turbo R DP90080	1998 Ford Ranger 49948C1	XN734115C	Ford Ranger in test bay at time of certification. Test performed by Gonzalez (unlicensed).
11/15/2012 1137 to 1206 hours	1992 Chevrolet S10 Pickup 32476A1	1998 Ford Ranger 49948C1	XN734116C	Ford Ranger in test bay at time of certification. Test performed by Gonzalez (unlicensed).
11/15/2012 1227 to 1249 hours	1985 Toyota Corolla 3MCN935	1998 Ford Ranger 49948C1	XN734117C	Ford Ranger in test bay at time of certification. Test performed by Gonzalez (unlicensed).

11/15/2012 1420 to 1438 hours	2000 Lexus GS 300 6LQZ708	1998 Ford Ranger 49948C1	XN734118C	Ford Ranger in test bay at time of certification. Test performed by Gonzalez (unlicensed).
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STATION SURVEILLANCE: JANUARY 14, 2013

23. On January 14, 2013, Bureau program representatives Mario Salas and Allen Steele performed another video-taped surveillance of respondent Lopez Test Only's smog check facility which revealed that the station was again involved in unlawful unlicensed activity and illegal "clean piping." Specifically, the surveillance operation and information obtained from the Bureau's VID revealed that between the hours of approximately 1043 to 1409, respondent De La Cruz's smog technician license number and access code were used by an unidentified person to unlawfully certify a total of two vehicles via the clean piping method by using the tailpipe emissions of the 1998 Ford Ranger (CA License No. 49948C1) owned by respondent Lopez in place of the tailpipe emissions of vehicles that were purportedly being tested. No licensed technicians were present at the station during the time of the Bureau's surveillance.

The following chart ("Table 2") illustrates the clean piping activities observed during the Bureau's surveillance of respondent Lopez Test Only's station on January 14, 2013.

Table 2

Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
1/14/2013 1043 to 1059 hours	1993 Jeep Wrangler No License Plate	1998 Ford Ranger 49948C1	XP531834C	Ford Ranger in test bay at time of certification. Test performed by unidentified unlicensed person.
1/14/2013 1354 to 1409 hours	1988 Honda Accord 2HLV607	1998 Ford Ranger 49948C1	XP531835C	Ford Ranger in test bay at time of certification. Test performed by unidentified unlicensed person.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 25. Respondent Prestige has subjected its automotive repair dealer registration to
4 discipline under BPC section 9884.7, subdivision (a)(1), in that, with respect to the vehicles
5 identified above in paragraphs 22 through 24 (including Tables 1 and 2), its employee(s) and/or
6 partner(s) made statements which they knew or which by exercise of reasonable care should have
7 known were untrue or misleading by issuing electronic certificates of compliance for those
8 vehicles, certifying that they vehicles were in compliance with applicable laws and regulations
9 when, in fact, those vehicles had not actually been inspected and/or had not been inspected by a
10 licensed technician.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 26. Respondent Prestige has subjected its automotive repair dealer registration to
14 discipline under BPC section 9884.7, subdivision (a)(4), in that, with respect to the vehicles
15 identified above in paragraphs 22 through 24 (including Tables 1 and 2), its employee(s) and/or
16 partner(s) committed acts which constitute fraud by issuing electronic certificates of compliance
17 for those vehicles without performing bona fide inspections by a licensed technician of the
18 emission control devices and systems on those vehicles, thereby depriving the People of the State
19 of California of the protection afforded by the Motor Vehicle Inspection Program.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Material Violation of Automotive Repair Act)**

22 27. Respondent Prestige has subjected its automotive repair dealer registration to
23 discipline under BPC section 9884.7, subdivision (a)(6), in that, with respect to the vehicles
24 identified above in paragraphs 22 through 24 (including Tables 1 and 2), its employee(s) and/or
25 partner(s) failed in a material respect to comply with the provisions of the Automotive Repair Act
26 and regulations enacted pursuant thereto by issuing electronic certificates of compliance for those
27 vehicles without performing bona fide inspections by a licensed technician of the emission
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1 control devices and systems on those vehicles, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 28. Respondent Prestige has subjected its station license to discipline under HSC section
6 44072.2, subdivision (a), in that Respondent violated the following sections of the HSC with
7 respect to the vehicles identified above in paragraphs 22 through 24 (including Tables 1 and 2):

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

10 b. **Section 44014:** Respondent Prestige allowed unlicensed person Marco Gonzalez and
11 another unidentified unlicensed person to perform emission control tests on those vehicles in
12 violation of procedures prescribed by the department.

13 c. **Section 44015, subdivision (b):** Respondent Prestige issued electronic certificates of
14 compliance without properly testing and inspecting the vehicles to determine if they were in
15 compliance with section 44012 of the HSC.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 29. Respondent Prestige has subjected its station license to discipline under HSC section
19 44072.2, subdivision (c), in that Respondent violated the following sections of the HSC with
20 respect to the vehicles identified above in paragraphs 22 through 24 (including Tables 1 and 2):

21 a. **Section 3340.15, subdivision (b):** Respondent Prestige failed to ensure that a
22 licensed inspector and/or repair technician was present during all hours that the station was open
23 for business.

24 b. **Section 3340.24, subdivision (c):** Respondent Prestige falsely or fraudulently issued
25 electronic certificates of compliance without performing bona fide inspections by a licensed
26 technician of the emission control devices and systems on those vehicles as required by HSC
27 section 44012.

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1 c. **Section 3340.35, subdivision (c):** Respondent Prestige issued electronic certificates
2 of compliance even though those vehicles had not been inspected in accordance with section
3 3340.42 of the HSC.

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

6 **SIXTH CAUSE FOR DISCIPLINE**

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

8 30. Respondent Prestige has subjected its station license to discipline under HSC section
9 44072.2, subdivision (d), in that, with respect to the vehicles identified above in paragraphs 22
10 through 24 (including Tables 1 and 2), Respondent committed acts involving dishonesty, fraud or
11 deceit whereby another was injured by issuing electronic certificates of compliance for those
12 vehicles without performing bona fide inspections by a licensed technician of the emission
13 control devices and systems on those vehicles, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program.

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 **(Aid and Abet Unlicensed Activity)**

17 31. Respondent Prestige has subjected its station license to discipline under HSC section
18 44072.2, subdivision (f), in that, with respect to the allegations above in paragraphs 22 through 24
19 (including Tables 1 and 2), Respondent has aided and/or abetted an unlicensed person to evade
20 the provisions of the Motor Vehicle Inspection Program. Complainant refers to, and by this
21 reference incorporates, the allegations set forth above in paragraphs 22 through 24, including
22 Tables 1 and 2, inclusive, as though set forth fully herein.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Fail to Maintain/Make Available Records)**

25 32. Respondent Prestige has subjected its station license to discipline under HSC section
26 44072.2, subdivisions (a) and (g), in conjunction California Code of Regulations, title 16, section
27 3340.15, subdivision (e), in that, with respect to the vehicles identified above in paragraphs 22

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1 through 24 (including Tables 1 and 2), Respondent failed to maintain and/or make available for
2 inspection the invoices and VIRs related to those inspections.

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 33. Respondents Lopez, De La Cruz and Guevara have subjected their technician licenses
6 to discipline under HSC section 44072.2, subdivision (d), in that respondents Lopez, De La Cruz
7 and Guevara have engaged in acts involving dishonesty, fraud or deceit causing injury by
8 engaging in a scheme to deceive the Bureau of Automotive Repair for the purpose of
9 circumventing the Motor Vehicle Inspection Program. Complainant refers to, and by this
10 reference incorporates, the allegations set forth above in paragraphs 22 through 24, including
11 Tables 1 and 2, inclusive, as though set forth fully herein.

12 **TENTH CAUSE FOR DISCIPLINE**

13 **(Aid and Abet Unlicensed Activity)**

14 34. Respondents Lopez, De La Cruz and Guevara have subjected their technician licenses
15 to discipline under HSC section 44072.2, subdivision (f), in that respondents Lopez, De La Cruz
16 and Guevara have aided and/or abetted an unlicensed person to evade the provisions of the Motor
17 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
18 allegations set forth above in paragraphs 22 through 24, including Tables 1 and 2, inclusive, as
19 though set forth fully herein.

20 **PRAYER**

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

23 1. Revoking or suspending Auto Repair Dealer Registration Number ARD 269282,
24 issued to Prestige Investors, LLC dba Lopez Test Only, Jose Luis Lopez;

25 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
26 269282, issued to Prestige Investors LLC dba Lopez Test Only, Jose Luis Lopez;

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1 3. Revoking or suspending Jose Luis Lopez's smog technician license, currently
2 designated as EA 633968 and as redesignated upon his timely renewal as EO 633968 and/or EI
3 633968;

4 Revoking or suspending Edward De La Cruz's smog technician license, currently
5 designated as EA 631923 and as redesignated upon his timely renewal as EO 631923 and/or EI
6 631923;

7 4. Revoking or suspending Smog Inspector (EO) License No. 635074, issued to Joshua
8 Steve Guevara;

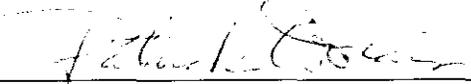
9 6. Revoking or suspending any additional licenses issued to the respondents under the
10 Motor Vehicle Inspection Program pursuant section 44072.2 of the HSC;

11 7. Ordering Lopez Test Only, Jose Luis Lopez, Edward De La Cruz and Joshua Steve
12 Guevara to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
13 enforcement of this case, pursuant to Business and Professions Code section 125.3;

14 8. Taking such other and further action as deemed necessary and proper.

15

16 DATED: October 28, 2013



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

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