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

12 In the Matter of the Accusation Against:
13 **FRONTAGE SMOG CHECK,**
DOUGLAS CORONA, OWNER
14 13718 Old 215 Frontage Road
Moreno Valley, CA 92553
15
16 Automotive Repair Dealer Registration No.
ARD 272194
17 Smog Check-Test Only Station License No.
TC 272194,
18 and
19 **DOUGLAS CORONA**
7055 Old 215 Frontage Road
20 Moreno Valley, CA 92553
21 Smog Check Inspector License No. EO 634358
22 Smog Check Repair Technician License No. EI
634358 (formerly Advanced Emission
23 Specialist Technician License No. EA 634358)
24 Respondent.

Case No. *79/16-128*
ACCUSATION
SMOG CHECK

25 Complainant alleges:

26 **PARTIES**

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

1 **Automotive Repair Dealer Registration No. ARD 272194**

2 2. On March 15, 2013, the Bureau issued Automotive Repair Dealer Registration
3 Number ARD 272194 to Douglas Corona (Respondent), owner of Frontage Smog Check. The
4 Automotive Repair Dealer Registration expired on March 31, 2016, and has not been renewed.

5 **Smog Check Test Only Station License No. TC 272194**

6 3. On April 11, 2013, the Bureau issued Smog Check-Test Only Station License
7 Number TC 272194 to Respondent. The Smog Check-Test Only Station License expired on
8 March 31, 2016, and has not been renewed.

9 **Smog Check Inspector License No. EO 634358**

10 4. On June 12, 2012, the Bureau issued Advanced Emission Specialist Technician
11 License Number EA 634358 to Respondent. The Advanced Emission Specialist Technician
12 License was due to expire on May 31, 2014, however, was cancelled on May 20, 2014. On May
13 20, 2014, the Bureau renewed Advanced Emission Specialist Technician License Number EA
14 634358 pursuant to Respondent Douglas's election as Smog Check Inspector License Number
15 EO 634358 (inspector license). The Smog Check Inspector License was in full force and effect at
16 all times relevant to the charges brought herein and will expire on May 31, 2016, unless
17 renewed.¹

18 **Smog Check Repair Technician License No. EI 630418**

19 5. On June 12, 2012, the Bureau issued Advanced Emission Specialist Technician
20 License Number EA 634358 to Respondent. The Advanced Emission Specialist Technician
21 License was due to expire on May 31, 2014, however, was cancelled on May 20, 2014. On May
22 20, 2014, the Bureau renewed Advanced Emission Specialist Technician License Number EA
23 634358 pursuant to Respondent Douglas's election as Smog Check Repair Technician License
24 Number EI 634358 (repair license). The Smog Check Repair Technician License was in full
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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
 Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 force and effect at all times relevant to the charges brought herein and will expire on May 31,
2 2016, unless renewed.

3 JURISDICTION

4 6. This Accusation is brought before the Director of Consumer Affairs (Director) for
5 the Bureau, under the authority of the following laws.

6 7. Business and Professions Code (Code) section 9884.7 provides that the Director
7 may revoke an automotive repair dealer registration.

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

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

15 10. H & S Code section 44072.2 of the states, in pertinent part:

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

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

21 ...

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

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

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27 11. H & S Code section 44072.4 states, in pertinent part:

28 The director may take disciplinary action against any licensee after a
hearing as provided in this article by any of the following:

(a) Imposing probation upon terms and conditions to be set forth by the
director.

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1 (b) Suspending the license.

2 (c) Revoking the license.

3 12. H & S Code section 44072.6 provides, in pertinent part, that the expiration or
4 suspension of a license by operation of law, or by order or decision of the Director of Consumer
5 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
6 of jurisdiction to proceed with disciplinary action.

7 13. H & S Code section 44072.8 states:

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

10 14. Title 16 of the California Code of Regulations (CCR), section 3340.28,
11 subdivision (e), states that “[u]pon renewal of an unexpired Basic Area Technician license or an
12 Advanced Emission Specialist Technician license issued prior to the effective date of this
13 regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair
14 Technician, or both.”

15 **STATUTORY PROVISIONS**

16 15. Code section 477 provides, in pertinent part, that “Board” includes “bureau,”
17 “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and
18 “agency.” “License” includes certificate, registration or other means to engage in a business or
19 profession regulated by the Code.

20 16. Code section 9884.7 states, in pertinent part:

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

28 (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.

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(4) Any other conduct which constitutes fraud.

...

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] 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 refuse to validate, or shall only invalidate temporarily or permanently 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 refuse to validate, or may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

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

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs,

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18. Code section 9889.3 states, in pertinent part:

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

(a) Violates any section of the Business and Professions Code that relates to his or her licensed activities.

...

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

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

(e) Has misrepresented a material fact in obtaining a license.

...

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

....

19. H & S Code section 44012 states:

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

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

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

1 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
2 system and crankcase ventilation system are tested to reduce any nonexhaust
3 sources of volatile organic compound emissions, in accordance with procedures
prescribed by the department.

4 (c) For diesel-powered vehicles, a visual inspection is made of emission
5 control devices and the vehicle's exhaust emissions are tested in accordance with
6 procedures prescribed by the department, that may include, but are not limited to,
onboard diagnostic testing. The test may include testing of emissions of any or all
7 of the pollutants specified in subdivision (c) and, upon the adoption of applicable
standards, measurement of emissions of smoke or particulates, or both.

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

11 (g) A determination as to whether the motor vehicle complies with the
12 emission standards for that vehicle's class and model-year as prescribed by the
department.

13 (h) An analysis of pass and fail rates of vehicles subject to an onboard
14 diagnostic test and a tailpipe test to assess whether any vehicles passing their
onboard diagnostic test have, or would have, failed a tailpipe test, and whether
15 any vehicles failing their onboard diagnostic test have or would have passed a
tailpipe test.

16 (i) The test procedures may authorize smog check stations to refuse the
17 testing of a vehicle that would be unsafe to test, or that cannot physically be
inspected, as specified by the department by regulation. The refusal to test a
18 vehicle for those reasons shall not excuse or exempt the vehicle from compliance
with all applicable requirements of this chapter.

19 20. H & S Code section 44013 states, in pertinent part:

20 (a) (1) The department, in cooperation with the state board, shall
21 prescribe maximum emission standards to be applied in inspecting motor vehicles
under this chapter.

22 (2) In prescribing the standards, the department shall undertake
23 studies and experiments which are necessary and feasible, evaluate available data,
and confer with automotive engineers.

24 (3) The standards shall be set at a level reasonably achievable for
25 each class and model of motor vehicle when operating in a reasonably sound
mechanical condition, allowing for the effects of installed motor vehicle pollution
26 control devices and the motor vehicle's age and total mileage.

27 (4) The standards shall be designed so that motor vehicles failing
28 the test specified in Section 44012 will be operated, as soon as possible, with a
substantial reduction in emissions, and shall be revised from time to time as
experience justifies.

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(c) Notwithstanding any other provision of this chapter, the maximum emission standards and test procedures prescribed in subdivisions (a) and (b) for a motor vehicle class and model-year shall not be more stringent than the emission standards and test procedures under which that motor vehicle's class and model-year was certified. Emission standards and test procedures prescribed by the department shall ensure that not more than 5 percent of the vehicles or engines, which would otherwise meet the requirements of this part, will fail the inspection and maintenance test for that class of vehicle or engine.

....

21. H & S Code section 44015, subdivision (b) states:

If a vehicle meets the requirements of Section 44012, a Smog Check-Test Only Station Licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

22. H & S Code section 44032 states:

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

23. H & S Code section 44059 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

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

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

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

...

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

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

3 (e) Has misrepresented a material fact in obtaining a license.
4

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

8 26. H & S Code section 44072.10 states, in pertinent part:
9 . . .

10 (c) The department shall revoke the license of any smog check
11 technician or station licensee who fraudulently certifies vehicles or participates in
12 the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not
13 limited to, all of the following:
14 . . .

15 (4) Intentional or willful violation of this chapter or any regulation,
16 standard, or procedure of the department implementing this chapter .
17

18 REGULATORY PROVISIONS

19 27. California Code of Regulations (CCR), Title 16, section 3340.1 states:

20 "Acceleration Simulation Mode" or "ASM" means a type of vehicle
21 emissions test conducted with the test vehicle on a chassis dynamometer to
22 simulate on-road acceleration operating conditions.

23 "After repairs test" means a test performed on a vehicle after repairs have
24 been made to that vehicle as a result of failing an inspection at a smog check
25 station.

26 "Alternative fuel retrofit system" means an aftermarket system certified by
27 the California Air Resources Board to be installed on a vehicle to operate on an
28 alternate fuel, in lieu of the fuel type specified by the original vehicle
29 manufacturer.

30 "ARD-exempt heavy-duty station" means a smog check test-and-repair
31 station or a smog check test-only station that only tests and/or repairs commercial
32 vehicles which have a gross vehicle weight rating of 10,000 pounds or greater.

33 "Basic area" or "Basic vehicle inspection and maintenance program area"
34 means the smog check program conducted in any area of the state which is not
35 classified as an enhanced vehicle inspection and maintenance program area.

36 "BAR-97 Emissions Inspection System" or "EIS" means tamper-resistant
37 test equipment meeting the requirements of subsection (a) of section 3340.17 of

1 the California Code of Regulations and is certified by the bureau for use in the
2 Smog Check Program. The EIS collects and measures emissions data, and where
3 applicable OBD data, then transmits inspection results to the Vehicle Information
4 Database.

4 "Bureau" or "BAR" means the Bureau of Automotive Repair.

5 "Chassis dynamometer" is a treadmill-like device for a vehicle that is used
6 to simulate on-road acceleration operating conditions.

6 "Clean piping," for the purposes of Health and Safety Code section
7 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place
8 of the actual test vehicle's exhaust in order to cause the EIS to issue a certificate
9 of compliance for the test vehicle.

9 "Comparative Failure Rate" or "CFR" means that the station's failure rate,
10 under the Gold Shield Program, must be comparable to the test-only station
11 failure rate for all non-directed vehicles of the same model-year. The station's
12 failure rate, using initial tests, by model-year, of non-directed vehicles is applied
13 to an industry-wide failure rate for test-only stations, calculated quarterly by smog
14 check program area, using initial tests, by model-year, of non-directed vehicles
15 inspected, and includes an allowable deviation to compensate for the random
16 distribution of passing and failing vehicles based upon a 95 percent confidence
17 level. This paragraph shall remain in effect through December 31, 2012.

14 "Consumer Assistance Program" or "CAP" means a program of the
15 Bureau of Automotive Repair that provides eligible motor vehicle owners the
16 options of Repair Assistance and Vehicle Retirement.

16 "Dismantler" means an automobile dismantler, as defined in Section 220
17 of the Vehicle Code and licensed pursuant to Section 11500 of the Vehicle Code,
18 who has contracted with the Bureau to retire vehicles from operation.

18 "Engine change" means the installation of an engine in a vehicle that is
19 different from the vehicle manufacturer original configuration as certified by the
20 United States Environmental Protection Agency or California Air Resources
21 Board.

20 "Enhanced area" or "Enhanced vehicle inspection and maintenance
21 program area" means the smog check program conducted in any part of an
22 urbanized area of the state which is classified by the Environmental Protection
23 Agency as a serious, severe or extreme nonattainment area for ozone or a
24 moderate or serious nonattainment area for carbon monoxide with a design value
25 greater than 12.7 ppm.

24 "Excessive Test Deviation Rate" occurs under any of the following
25 circumstances in a calendar quarter:

26 (1) The rate for which the ignition timing test is not performed exceeds the
27 statewide average for similar vehicles where 90% of similar vehicles received the
28 test.

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1 (2) The rate for which the fuel cap test is not performed exceeds the
2 statewide average for similar vehicles where 90% of similar vehicles received the
3 test.

4 (3) The rate for which the low pressure fuel evaporative test is not
5 performed exceeds the statewide average for similar vehicles where 90% of
6 similar vehicles received the test.

7 (4) The rate for which the OBDII inspection is not performed exceeds the
8 statewide average for similar vehicles where 90% of similar vehicles received the
9 test.

10 (5) The rate for which inspections are aborted exceeds 125% of the
11 statewide average for similar vehicles on test equipment of the same
12 manufacturer.

13 (6) The rate for which inspections are restarted exceeds 125% of the
14 statewide average for similar vehicles.

15 (7) The rate for which vehicles are initially inspected with the maximum
16 allowable number of OBDII readiness monitors unset, as specified in Section
17 3340.42.2 (b), exceeds 125% of the statewide average for similar vehicles.

18 "Follow-up Pass Rate" (FPR) means a performance measure that evaluates
19 whether vehicles previously certified by each station or technician are passing, in
20 their current cycle, at higher than expected rates. Expected rates are calculated by
21 averaging passing rates for similar vehicles, and then adjusting the rates to
22 account for an individual vehicle's odometer reading, the type of emissions
23 inspection (ASM or TSI) performed in the current inspection cycle on the vehicle,
24 the amount of time since the last certification for the vehicle, and the initial test
25 results in the previous inspection cycle. An FPR score is assigned to both licensed
26 smog check stations and technicians, and is based on the current inspection cycle
27 test results of vehicles that were previously certified by stations and technicians.
28 An FPR score ranges from zero to one, with zero representing the lowest possible
score and one representing the highest possible score. FPR data reports are
updated in January and July each year. Stations and technicians with insufficient
inspection histories from which to calculate an FPR score will not receive an FPR
score.

"Gaseous fuel" means fuel composed of propane, liquefied or compressed
natural gas.

"Gear Shift Incident" means an inspection where data from the VID
indicates the technician did not follow the gear selection procedure specified in
the Smog Check Manual that is incorporated by reference in Section 3340.45.

"Gold Shield station" means a registered Automotive Repair Dealer who
is also a smog check test-and-repair station which has been certified by the
department and meets all the requirements specified in Article 10 of these
regulations. This paragraph shall remain in effect through December 31, 2012.

"Heavy duty vehicle" means a vehicle with a manufacturer's gross vehicle
weight rating of 8501 pounds or more.

1 "Household" means a family of persons or any group of two or more
2 unrelated persons that reside together and share common living expenses.

3 "Implementation area" means a geographical area, in which a local district
4 has requested implementation of a biennial inspection program pursuant to section
5 44003 of the Health and Safety Code.

6 "Initial test" means the first Smog Check inspection of a vehicle done in
7 official test mode or pre-test mode and performed within one hundred eighty
8 (180) days prior to a registration renewal date or a change of ownership date for
9 that vehicle. An initial test does not include tests that are aborted before
10 completion or tests done in the training or manual modes of the EIS.

11 "Non-directed vehicle" means a vehicle that was not required to be
12 inspected at a station pursuant to Sections 44010.5 or 44014.7 of the Health and
13 Safety Code.

14 "OBV Inspection System" or "OIS" consists of an OBV Data Acquisition
15 Device or (DAD) working in conjunction with commercial off-the-shelf
16 computer, bar code scanner, data entry device, and printer. The DAD is the test
17 equipment that meets the requirements of subsection (b) of section 3340.17 of the
18 California Code of Regulations and is certified by the bureau for use in the Smog
19 Check Program. The DAD facilitates OBV data transfer between the inspected
20 vehicle and the OIS computer. The OIS computer relays inspection information to
21 and from the DAD to the Vehicle Information Database (VID).

22 "Repair Assistance" means a component of the Consumer Assistance
23 Program (CAP) that provides financial assistance for emissions-related repairs to
24 help eligible motor vehicle owners bring their vehicles into compliance with the
25 requirements of the Smog Check Program.

26 "Repair-Only station" means a station licensed by the bureau to diagnose
27 and repair vehicles in the smog check program.

28 "Revivable Junk Receipt" means a receipt showing proof that the vehicle
is recorded and titled as "junked" by the Department of Motor Vehicles.

"Similar Vehicle Failure Rate" or "SVFR" means a calendar quarter
comparison of the initial test failure rate of vehicles at an individual station to the
initial test failure rate for similar vehicles inspected statewide, taking into account
the vehicle odometer reading, time since passing the last inspection, and initial
test results in the previous cycle. Vehicles for which data is not available to
adequately establish an initial test failure rate will not be used in the SVFR
calculation. This paragraph shall become effective July 1, 2012.

"Similar vehicles" means vehicles with the same Vehicle Lookup Table
Row ID, or at a minimum, vehicles with the same model-year, make, and engine
displacement.

"Smog Check Inspector" or "Inspector" means an individual licensed by
the bureau to inspect, and certify the emissions control systems on vehicles
subject to the Smog Check Program in all areas of the state.

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1 "Smog check program" or "program" means the motor vehicles inspection
2 program conducted pursuant to section 44005 of the Health and Safety Code, and
3 as hereby described in this article.

4 "Smog Check Referee" or "Referee" means a facility under contract with
5 BAR to provide independent evaluations of vehicles and services to accommodate
6 vehicles with unusual inspection circumstances.

7 "Smog Check Repair Technician" or "Repair Technician" means an
8 individual licensed by the burcau to diagnose, adjust, and repair the emissions
9 control systems on vehicles subject to the Smog Check Program at smog check
10 stations in all areas of the state.

11 "Smog check station" or "station" means a smog check test-only station or
12 smog check test-and-repair station licensed by the bureau in the smog check
13 program.

14 "Smog check technician" or "technician" means an individual who holds a
15 smog check repair technician and/or inspector licenses pursuant to section
16 3340.28 of this article.

17 "Smog check test-and-repair station" or "test-and-repair station" means a
18 Smog Check-Test Only Station Licensed by the bureau to test, inspect, diagnose
19 and repair vehicles in the smog check program.

20 "Smog check test-only station" or "test-only station" means a Smog
21 Check-Test Only Station Licensed by the bureau to test and inspect vehicles in the
22 smog check program.

23 "STAR" means a voluntary certification program that applies to a
24 registered Automotive Repair Dealer that is also a licensed smog check test-and-
25 repair station or a test-only station that meets all requirements specified in Article
26 10 of these regulations.

27 "Technician Information Table" means the bureau's electronic list of
28 licensed technicians authorized to perform official Smog Check inspections at a
specific station.

"Test Deviation" occurs under any of the following conditions:

(1) The station fails to inspect ignition timing on a vehicle that should
receive this test.

(2) The station fails to perform the fuel cap test on a vehicle that should
receive this test.

(3) The station fails to perform the low pressure fuel evaporative test on a
vehicle that should receive this test.

(4) The station fails to perform an OBDII inspection on a vehicle that
should receive an OBDII inspection.

(5) The station aborts an inspection.

(6) The station restarts an inspection.

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2 (7) The station performs an initial inspection on a vehicle with the
3 maximum allowable number of OBDII readiness monitors unset, as specified in
4 Section 3340.42.2 (b).

5 "Two-Speed Idle" or "TSI" means a type of vehicle emissions test
6 conducted with the vehicle transmission in neutral or park while the engine is run
7 at two different engine speeds.

8 "Vehicle Information Database" or "VID" means a centralized computer
9 database and computer network, which is readily accessible by all licensed smog
10 check technicians on a real time basis.

11 "Vehicle Inspection Report" or "VIR" means an official smog check
12 inspection report that is printed from an OIS or EIS and given to the registered
13 vehicle owner(s) or their legal representative.

14 "Vehicle Retirement" means a component of the Consumer Assistance
15 Program (CAP) that provides payments to eligible motor vehicle owners who
16 choose to voluntarily retire their vehicles from operation rather than make
17 emissions-related repairs to bring the vehicles into compliance with the
18 requirements of the Smog Check Program.

19 "VLT Row ID" means the vehicle lookup table row identification number
20 that identifies a vehicle using information about its body type, model-year, make,
21 model, engine displacement, and transmission type.

22 28. CCR, section 3340.24, subdivision (c) provides that the bureau may suspend or
23 revoke the license of or pursue other legal action against a licensee, if the licensee falsely or
24 fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

25 29. CCR, section 3340.30 states, in pertinent part:

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

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

....

30. CCR, section 3340.35, subdivision (c) states:

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

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

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

4 31. CCR, section 3340.41, subdivision (c), states:

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

10 32. CCR, section 3340.42 states:

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

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

15 (1) A loaded-mode test shall be the test method used to inspect
16 1976 - 1999 model-year vehicle, except diesel-powered, registered in the
17 enhanced program areas of the state. The loaded-mode test shall measure
18 hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions,
19 as contained in the bureau's specifications referenced in subsection (a) of Section
20 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation
21 Mode (ASM) test equipment, including a chassis dynamometer, certified by the
22 bureau.

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

(2) A two-speed idle mode test shall be the test method used to
inspect 1976 - 1999 model-year vehicles, except diesel-powered, registered in all
program areas of the state, except in those areas of the state where the enhanced
program has been implemented. The two-speed idle mode test shall measure
hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
again at idle RPM, as contained in the bureau's specifications referenced in
subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle
subject to this inspection shall be measured and compared to the emission
standards set forth in this section and as shown in TABLE III. A vehicle passes
///

1 the two-speed idle mode test if all of its measured emissions are less than or equal
2 to the applicable emissions standards specified in Table III.

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

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

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

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

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

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

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

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

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

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

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

(3) A gross polluting vehicle shall not be passed or issued a
certificate of compliance until the vehicle's emissions are reduced to or below the
applicable 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.

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

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33. CCR, section 3353 states, in pertinent part:

No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:

(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written estimated price for parts and labor for a specific job.

....

34. CCR, section 3373 states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or 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.

COST RECOVERY

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

BACKGROUND

17. On September 10, 2015, the Bureau initiated an investigation of Frontage Smog Check, owned by Respondent, based on a review of information from the Bureau's vehicle information database (VID), which indicated that Respondent's smog check-test only station may be engaging in fraudulent smog check inspections.

18. Beginning September 2015, a representative of the Bureau conducted a detailed review of VID data for all smog inspections performed at Respondent's automotive repair dealership. The data revealed anomalies consistent with fraudulent smog check activities. The data also revealed that for the purpose of fraudulently issuing smog check certificates to vehicles that are not in smog compliance or not present for functional tests, Respondent used either a

1 surrogate vehicle's functioning On Board Diagnostic, Generation II (OBD II)² system, or other
2 source to generate passing diagnostic readings. The representative found evidence of
3 approximately 130 vehicles that were certified by Respondent between July 23, 2015 and
4 October 5, 2015, with one or more discrepancies between the VIN on the certified vehicle and
5 the electronic vehicle identification number (eVIN)³, incorrect vehicle communication
6 protocols⁴, and incorrect Parameter Identification (PID)⁵ counts. The Bureau representative
7 selected the following 11 vehicles as specific examples of the fraudulent smog check activity
8 occurring at Frontage Smog Check by Respondent. The data from the specific certified vehicles
9 was compared to data of similar vehicles of the same year, make, and model. The data
10 comparison showed that all 11 vehicles were certified with a missing stored eVIN. The vehicles
11 also had incorrect vehicle communication protocols, and incorrect PID counts. This confirms that

12
13 ² The On Board Diagnostic, Generation II ("OBD II"), functional test is an automated
14 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a
15 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
16 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
17 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
18 Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically
19 retrieves information from the vehicle's on-board computer about the status of the readiness
20 indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
21 II functional test, it will fail the overall inspection.

18 ³ The VIN that is physically present on all vehicles is required to be programmed into the
19 vehicle's OBD II on 2005 and newer vehicles, and on many occasions was programmed into the
20 OBD II computer in earlier model-years. This electronically programmed VIN is referred to as
21 the "eVIN", is captured by

20 ⁴ Protocol is the language used to communicate with a vehicle's computers. It is a
21 communication interface. This automated determination of the communication interface, or
22 protocol, is built into the data acquisition device (DAD) unit and does not change. This automatic
23 function identifies five protocols used by vehicles manufactured and sold in the United States that
24 are subject to the smog check program. Electronic control units (ECU) and transmission control
25 units (TCU, along with other control units on modern vehicles, can communicate only using the
26 protocol for which they were designed. For this reason, the specific protocol used to access a
27 vehicle's computer can be used to profile the vehicle itself.

25 ⁵ PIDs are data points reported by the OBD II computer to the scan tool or OIS. Examples
26 of PIDs are engine speed in revolutions per minute (RPM), vehicle speed, engine temperature,
27 and other input and output values utilized by the OBD II computer. The PID count is the number
28 of data points reported by the OBD II computer, is programmed during manufacture, and does not
change. Each make and model of vehicle reports a specific number of PID counts and this does
not vary within that make and model of vehicle.

1 the vehicles receiving smog certificates were fraudulently tested during the smog check
 2 inspection, which constitutes clean plugging⁶.

3 OBDII Clean Plug Table

4 Vehicle Certified								
5 #	Test Date Start-End	Year & Make	Model & License #	Reported PID Count	Correct PID Count	Reported Communication Protocol	Correct Communication Protocol	Certificate #
6 1	09/25/2015 1404-1411	2007 Chevrolet	Avalanche 96436K1	21	7/43	KWPF8FE9	ICAN11bt500	PW453474C
7 2	09/19/2015 0945-0954	2005 Honda	Civic 5RNV918	21	7/18/4	KWPF8FE9	I9140808	PW453456C
8 3	09/19/2015 0843-0851	2006 Toyota	Scion 5PKF923	21	34	KWPF8FE9	ICAN11bt500	PW453454C
9 4	09/11/2015 1637-1647	2005 Dodge	Dakota 8J80056	21	8/37	KWPF8FE9	ICAN11bt500	YV148439C
10 5	09/09/2015 1136-1143	2006 Ford	F250 8D10788	21	0/13/25	KWPF8FE9	ICAN11bt500	YV148426C
11 6	08/25/2015 1607-1616	2007 Honda	Ridgeline 93196B1	21	24	KWPF8FE9	I9140808	PU703189C
12 7	08/25/2015 1013-1024	2007 Ford	Expedition 6BDY334	21	16/43	KWPF8FE9	ICAN11bt500	PU703184C
13 8	08/22/2015 1225-1233	2005 Buick	Terraza 6WQD893	21	40	KWPF8FE9	JVPW1850	PU703181C
14 9	08/21/2015 1427-1437	2007 Dodge	Charger 5WKK433	21	43	KWPF8FE9	ICAN11bt500	PU703179C
15 10	08/21/2015 1029-1037	2007 Chrysler	Sebring 6BFF823	21	10/36	KWPF8FE9	ICAN11bt500	PU703177C
16 11	08/21/2015 0937-0946	2007 Saturn	Ion 5VMA085	21	7/39	KWPF8FE9	ICAN11bt500	PU703176C

19 FIRST CAUSE FOR DISCIPLINE

20 (Untrue or Misleading Statements)

21 20. Respondent's Automotive Repair Dealer Registration is subject to disciplinary
 22 action under Code section 9884.7, subdivision (a)(1), in that he made or authorized statements which

23 ⁶ Clean-plugging is the use of the OBD II readiness monitor status and stored code status
 24 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that
 25 is not in compliance due to the noncompliant vehicle's failure to complete the minimum number
 26 of self tests, known as monitors, or due to the presence of a stored fault code that indicates an
 27 emission control system or component failure. Clean plugging occurs during the inspection of a
 28 vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters
 information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD
 II system connector from the EIS into another vehicle that has a properly functioning OBD II
 system for the purpose of obtaining a "Passing" OBD II functional test result.

1 he knew or in the exercise of reasonable care should have known to be untrue or misleading as
2 follows: Respondent certified that vehicles 1 through 11, identified in the table above, had passed
3 inspection and were in compliance with applicable laws and regulations. In fact, Respondent
4 conducted the inspections on the vehicles using clean-plugging methods substituting a different
5 vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the
6 vehicles, and the vehicles were not tested or inspected, as required by Health and Safety Code section
7 44012.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 21. Respondent's Automotive Repair Dealer Registration is subject to disciplinary
11 action under Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that
12 constitute fraud by issuing electronic smog certificates of compliance for the vehicles 1 through
13 11, identified in the table above, without performing bona fide inspections of the emission
14 control devices and systems on the vehicles, thereby depriving the People of the State of
15 California of the protection afforded by the Motor Vehicle Inspection Program.

16 **THIRD CAUSE FOR DISCIPLINE**

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

18 22. Respondent's Smog Check-Test Only Station License is subject to disciplinary
19 action under H & S Code section 44072.2, subdivision (a), in that Respondent failed to comply
20 with the following sections of that Code:

21 **a. Section 44012:** Respondent failed to ensure that all emission control devices
22 and systems required by law for vehicles 1 through 11, identified in the table above, were
23 installed and functioning correctly in accordance with test procedures.

24 **b. Section 44012, subdivision (f):** Respondent failed to ensure that the emission
25 control tests were performed on vehicles 1 through 11, identified in the table above, in
26 accordance with procedures prescribed by the department.

27 **c. Section 44015, subdivision (b):** Respondent issued electronic smog certificates
28 of compliance for vehicles 1 through 11, identified in the table above, without ensuring that the

1 vehicles were properly tested and inspected to determine if they were in compliance with H & S
2 Code section 44012.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 23. Respondent's Smog Check-Test Only Station License is subject to disciplinary
6 action under Code section 9884.7, subdivision (a)(6) and H & S Code section 44072.2,
7 subdivision (c), in that Respondent failed to comply with provisions of California Code of
8 Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
10 electronic smog certificates of compliance for vehicles 1 through 11, identified in the table
11 above.

12 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog
13 certificates of compliance for vehicles 1 through 11, identified in the table above, even though
14 the vehicles had not been inspected in accordance with section 3340.42.

15 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
16 conducted on vehicles 1 through 11, identified in the table above, in accordance with the BAR's
17 specifications.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 24. Respondent's Smog Check-Test Only Station License is subject to disciplinary
21 action under H & S Code section 44072.2, subdivision (d), in that Respondent committed
22 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
23 certificates of compliance for the vehicles 1 through 11, identified in the table above, without
24 performing bona fide inspections of the emission control devices and systems on the 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 SIXTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 25. Respondent's Smog Check Inspector License is subject to disciplinary action
4 under H & S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
5 following sections of that Code:

6 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission
7 control devices and systems required by law for vehicles 1 through 11, identified in the table
8 above, were installed and functioning correctly in accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent failed to perform the emission
10 control tests on vehicles 1 through 11, identified in the table above, in accordance with
11 procedures prescribed by the department.

12 c. **Section 44059:** Respondent willfully made false entries for electronic
13 certificates of compliance for vehicles 1 through 11, identified in the table above, by certifying
14 that the vehicles had been inspected as required when, in fact, they had not.

15 SEVENTH CAUSE FOR DISCIPLINE

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

17 26. Respondent's Smog Check Inspector License is subject to disciplinary action
18 under Code section 9884.7, subdivision (a)(6) and H & S Code section 44072.2, subdivision (c),
19 in that Respondent failed to comply with the provisions of the Regulations as follows:

20 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
21 electronic smog certificates of compliance for vehicles 1 through 11, identified in the table above.

22 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles
23 1 through 11, identified in the table above, in accordance with H & S Code sections 44012 and
24 44035, and Regulations, section 3340.42.

25 c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions
26 inspection system vehicle identification information or emission control system identification
27 data for a vehicle other than the one being tested for vehicles 1 through 11, identified in the table
28 above.

1 **d. Section 3340.42:** Respondent failed to conduct the required smog tests on
2 vehicles 1 through 11, identified in the table above, in accordance with the Bureau's
3 specifications.

4 **EIGHTH CAUSE FOR DISCIPLINE**

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

6 27. Respondent's Smog Check Inspector License is subject to disciplinary action
7 under H & S Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
8 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
9 compliance for the vehicles 1 through 11, identified in the table above, without performing bona
10 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
11 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
12 Program.

13 **OTHER MATTERS**

14 28. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend,
15 revoke or place on probation the registration for all places of business operated in this state by
16 Douglas Corona, owner of Frontage Smog Check, upon a finding that Respondent has, or is,
17 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
18 automotive repair dealer.

19 29. Pursuant to H & S Code section 44072.8, if Smog Check-Test Only Station
20 License Number TC 272194, issued to Douglas Corona, owner of Frontage Smog Check, is
21 revoked or suspended, any additional license issued under the same chapter in the name of said
22 licensee may be likewise revoked or suspended by the Director.

23 30. Pursuant to H & S Code section 44072.8, if Smog Check Inspector License
24 Number EO 634358, issued to Douglas Corona is revoked or suspended, any additional license
25 issued under the same chapter in the name of said licensee may be likewise revoked or
26 suspended by the Director.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 272194 issued to Douglas Corona, owner of Frontage Smog Check;

2. Revoking or suspending any other automotive repair dealer registration issued to Douglas Corona;

3. Revoking or suspending Smog Check-Test Only Station License Number TC 272194 issued to Douglas Corona, owner of Frontage Smog Check;

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

5. Revoking or suspending Smog Check Inspector License Number EO 634358 issued to Douglas Corona;

6. Revoking or suspending Smog Check Repair Technician License Number EI 634358 and any additional license issued under Chapter 5 of the Health and Safety Code in the name of Douglas Corona;

7. Ordering Douglas Corona 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; and

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

DATED: May 24, 2016

Patrick Dorais

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

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