

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

In the Matter of the Second Amended
Accusation (On Remand) Against:

**LOS COMPADRES SMOG CHECK,
ALEXANDER SHAMOUN KOREL,
OWNER**

Automotive Repair Dealer Registration
No. ARD 274203
Smog Check Test Only Station License
No. TC 274203

CHRISTOPHER KOREL
Smog Check Inspector License No.
EO 636046

MANUEL ALLEN GOMEZ-CAMACHO
Smog Check Inspector License No.
EO 636771

Respondents.

Case No. 79/15-108

OAH No. 2015070349.1
(On Remand from)
OAH No. 2015070349


DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517, subdivision (c)(2)(C), technical or other minor changes in the Proposed Decision are made as follows:

1. Page 1, case caption: License number "EO 632837" is corrected to "EO 636771."

This Decision shall become effective September 1, 2017.

DATED: July 17, 2017


RYAN MARCROFT
Deputy Director
Division of Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION ON REMAND

Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California heard this matter on remand, April 14, 2017, at Los Angeles, California.

Patrick Dorais, Chief, Bureau of Automotive Repair (complainant or Bureau) was represented by Deputy Attorney General Kevin J. Rigley.

Los Compadres Smog Check, its owner, Alexander Shamoun Korel, and Christopher Korel, (collectively, respondents), were not present and were represented by William Ferreira, Attorney at Law, who appeared telephonically. William Allan Gomez-Camacho (Gomez-Camacho) was not represented and did not appear.

The underlying matter (OAH Case no. 2015070349) was heard on July 7, 2016, at Los Angeles, California, before ALJ Eileen Cohn. At the hearing, Deputy Attorney General Kevin J. Rigley also represented the complainant, and was accompanied by Alfred Denno, Program Representative II of the Bureau. William Ferreira, Attorney at Law, represented respondents, who were not present. Gomez-Camacho represented himself, and did not appear.

Prior to the hearing in the underlying matter on July 7, 2016, respondent Gomez-Camacho entered into a Stipulated Revocation of License and Order (Stipulated Revocation) with the Bureau. Respondent Gomez-Camacho waived his right to a hearing and agreed that the Director of the Department of Consumer Affairs (Director) could issue an order revoking his license as discipline. The Stipulated Revocation is subject to the approval of the Director or the Director's designee; however, until that time respondent Gomez-Camacho may not withdraw or rescind the Stipulated Revocation.

Evidence was presented by way of testimony and documents, the record was closed and the matter was submitted for decision on July 7, 2016. On July 25, 2016 the ALJ issued an order reopening the record for the complainant to submit the approval of the Stipulated Revocation by the Director or the Director's designee. Complainant never submitted the approval of the Director or the Director's designee. The record remained open until August 19, 2016, at which time the record was closed and the matter submitted for decision.

Remand

The Proposed Decision dated September 15, 2016, was issued on September 19, 2016. In the Proposed Decision the ALJ dismissed Gomez-Camacho without prejudice:

2. Complainant's second amended accusation against respondent Gomez-Camacho is dismissed without prejudice. On April 17, 2014, the Bureau issued Smog Check Inspector License Number EO 636771 to respondent Gomez-Camacho. The Smog Check Inspector License expired on January 31, 2016, and has not been renewed. Respondent executed the Stipulated Revocation on July 5, 2016, and based upon the Stipulated Revocation, did not appear or present a defense at the hearing (exhibit 10). The Stipulated Revocation is not final until the Director approves it, and as of the date of this decision, complainant has not provided OAH with the Director's signature. For this reason, to protect the respective rights of the parties, complainant's Second Amended Accusation against respondent Gomez-Camacho is dismissed without prejudice.

(Proposed Decision, factual finding 2.)

By letter and order dated December 7, 2016, the Director notified the OAH it rejected the Proposed Decision and was referring it back to ALJ Eileen Cohn, or another ALJ, to take additional evidence regarding the Director's September 13, 2016 Decision accepting and adopting the Stipulated Revocation of License of Gomez-Camacho (exhibits 12 and 16.)

Following remand, OAH issued a Notice of Remand and Order Thereon, set a telephonic trial setting conference, issued a trial setting conference order and set the date for hearing. (Exhibits 13-15). As instructed by OAH, the Bureau lodged exhibits, including the exhibits and exhibit list from the underlying hearing for inclusion in the record. In addition to Exhibits 1-11, admitted at the first hearing, Exhibits 12-18 were admitted. After the hearing, the record was reopened and closed again that day, and Exhibit 15A, the Notice of Hearing on Remand, was marked and admitted by the ALJ as a jurisdictional document. The hearing transcript of the first hearing was admitted as the last exhibit; it was erroneously admitted as Exhibit 19, but corrected and admitted as Exhibit 18.

The Bureau provided the necessary evidence establishing Gomez-Camacho's Stipulated Revocation of License and Order had been accepted and adopted as the Decision of the Director on September 13, 2016, and became effective on November 1, 2016 (exhibit B of exhibit 16 and exhibit 17).

With the exception of factual findings 1 and 2, the factual findings of the original proposed decision, which were established through testimony and documentary evidence at the July 7, 2015 hearing, remain unchanged. Factual finding 1 was amended to confirm that the jurisdictional requirements of the hearing on remand were satisfied. Factual finding 2, was changed to be consistent with the Decision of the Director with regard to Gomez-Camacho.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

Parties and Licenses Subject to Discipline

1(a). The Second Amended Accusation was brought by complainant Patrick Dorais in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs. All parties were properly served with all required documents and respondents timely filed their notices of defense contesting the Second Amended Accusation.

1(b). All jurisdictional requirements for the hearing on remand have been met. (Exhibits 12-17).

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2(a). Gomez-Camacho's licensing rights and discipline are subject to the Stipulated Revocation accepted and adopted as the Decision of the Director in the above-entitled matter (Exhibit 17).

2(b). On April 17, 2014, the Bureau issued Smog Check Inspector License Number EO 636771 to respondent Gomez-Camacho. The Smog Check Inspector License expired on January 31, 2016, had not been renewed, and was revoked, effective November 1, 2016, pursuant to the Stipulated Revocation.

2(c). The charges and allegations in the Second Amended Accusation, and discipline as to Gomez-Camacho are subject to the Stipulated Revocation. Pursuant to the Stipulated Revocation, Gomez-Camacho voluntarily and knowingly gave up his right to challenge the charges and allegations at the hearing, agreed the Bureau could establish a factual basis for the charges in the Second Amended Accusation, and that those charges were cause for discipline (exhibits 10 and 17, Stipulated Revocation, paras. 4-8). As such, Gomez-Camacho's licensing rights and discipline are not addressed in this proposed decision.

2(d). Gomez-Camacho executed the Stipulated Revocation on July 5, 2016, and based upon the Stipulated Revocation, did not appear or present a defense at the hearing (exhibit 10 and 17).

2(e). The Stipulated Revocation is subject to the approval of the Director or the Director's designee, who determines whether to accept and adopt the stipulation as the Decision for Gomez-Camacho only in the above-entitled matter (exhibit 17). On September 13, 2016, the Director's designee Doreathea Johnson, Deputy Director, Division of Legal Affairs, Department of Consumer Affairs, issued a Decision on behalf of the Director, accepting and adopting the Stipulated Revocation of License and Order as to Gomez-Camacho (*ibid*).

2(f). The Decision became effective on November 1, 2016 (exhibit 17) and provides for, among other things, the revocation of Gomez-Camacho's smog inspector license and payment to the Bureau of \$6,483.62, for costs of investigation and prosecution, upon reapplication.

3. Motion to Dismiss (or Strike) Second Amended Accusation, paragraphs 37 and 38, against respondent A. Korel is denied. At the hearing, respondent A. Korel moved to dismiss (or strike) paragraphs 37 and 38 of the Second Amended Accusation. These paragraphs are supported by court-filed documents (exhibits 7 and 11). Exhibit 7 contains the conviction record of A. Korel, and exhibit 11 is the search warrant for A. Korel, entitled Declaration in Support of Arrest Warrant (Declaration) and dated February 9, 2016, in the Superior Court of the State of California, County of Riverside, Case No. RIF1601459. The 2016 criminal action concerns respondent A. Korel's conduct as an employee of another smog check facility in April and May 2014. The Declaration explains the circumstances of A. Korel's conviction in Exhibit 7 and is admitted as administrative hearsay. A. Korel is the

sole owner of Los Compadres and his conduct is relevant to the licenses at issue in this case. His 2016 conviction is not only a separate ground for discipline against the Los Compadres respondents, as set forth in the Second Amended Accusation, paragraph 38, but is relevant as an aggravating factor in determining discipline against them in this action. Accordingly, the motion to dismiss (or strike) paragraphs 37 and 38 is denied.

4. Automotive Repair Dealer Registration and Smog Check Station issued to the Los Compadres respondents. On September 9, 2013, the Bureau issued Automotive Repair Dealer Registration Number ARD 274203 to A. Korel, owner, doing business as Los Compadres Smog Check. On September 24, 2013, the Bureau issued Smog Check Station License Number TC 274203 to A. Korel, doing business as, Los Compadres Smog Check. Los Compadres Smog Check is also certified as a STAR station. The certification was issued on November 1, 2013, and will remain active unless the ARD registration and/or the Smog Check Station license are revoked. The Los Compadres respondents' registrations were in full force and effect at all times relevant to the findings herein and expires on September 30, 2016.

5. Smog Check Inspector License issued to respondent C. Korel. On September 19, 2013, the Bureau issued Smog Check Inspector License Number EO 636046 (inspector license) to respondent C. Korel. At all times relevant to the findings herein, C. Korel's inspector license was in full force and effect and will expire on January 31, 2018. C. Korel is A. Korel's brother.

6. California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. It is also designed to comply with federal law, the Clean Air Act.¹ California's smog check program requires most motorists to submit their vehicles for inspection every two years at the time they renew their registration and whenever a vehicle title is transferred. Southern California, where respondents' operate, is an enhanced area, meaning it does not meet federal or state air quality standards for ozone levels. Inspections in enhanced areas consist of a three-part test, a visual inspection of the vehicle's emission control components, a functional test, which includes the parts of the vehicle that effect the emissions and the emissions sample test. The smog check inspection in enhanced areas includes an Acceleration Simulation Mode (ASM) test performed using an Emission inspection system (EIS), also known as a BAR 97. The computer checks the levels of five gasses, hydrocarbons (HC), carbon monoxide (CO) oxides of nitrogen (NOx), Carbon Dioxide (CO2) and Oxygen (Ox).

7. This dispute concerns all three parts of the smog check test. Alfred Denno of the Bureau, who testified at hearing, initiated the investigation after conducting video

¹ See Health & Saf. Code (Health Code) §§ 44000, 44000.5, & 44001.

surveillance of the Los Compadres respondents' facility and reviewing the Bureau's smog check test data. Mr. Denno also oversaw the investigation of the respondents. Mr. Denno's persuasive and credible testimony together with the Bureau's supporting exhibits, meticulous record-keeping and observations of its undercover operator, Marc Ortega (undercover operator), who also testified, and was the same operator in both disputed inspections, established the thoroughness and reliability of the Bureau's investigation and satisfied the Bureau's burden of proof. Respondent called the undercover operator as a witness. The undercover operator confirmed he did not meet A. Korel, or observe him doing any illegal acts; he only interacted with C. Korel and Camacho-Gomez and observed them conducting the illegal smog checks of April 22 and April 30, 2014. Nevertheless, discipline of the Los Compadres respondents is warranted based upon the persuasive evidence of illegal smog checks by employees of the Los Compadres respondents, and A. Korel's own conviction history.

The illegal smog checks

April 22, 2014

8. On April 4, 2014, the Bureau prepared a vehicle for use in an undercover investigation of smog check violations at Los Compadres Smog Check. The Bureau's vehicle, a 2002 Ford Mustang (2002 Ford) was documented by a representative from one of the Bureau's Forensic Documentation Laboratories. The Bureau's lab technician (Bureau's lab tech) determined the required emissions controls for the vehicle, and removed the 2002 Ford's existing catalytic converter and "H" pipe. The Bureau's lab tech installed an illegal, "off-road" "X" pipe that had no catalytic converters. The Bureau's lab tech also removed the 2002 Ford's existing air filter housing and inlet tube, and replaced them with a cold air inlet system that did not have an Executive Order (EO) sticker and is not a legal intake system in California. The Bureau's lab tech also installed an illegal open breather, modifying the 2002 Ford's positive crankcase ventilation (PCV) system. The Bureau's lab tech also installed a modification to prevent the 2002 Ford's malfunction indicator light (MIL) from illuminating with the missing catalytic converters. The components installed by the Bureau's lab tech caused the 2002 Ford, in its mechanical condition, to fail the smog test for Gross Polluter tailpipe emissions, and missing or modified components.

9. The Bureau followed appropriate procedures to ensure the 2002 Ford stayed in the same modified mechanical condition throughout the undercover operation. On April 9, 2014, the Bureau lab rep released custody of the 2002 Ford in the same modified mechanical condition to a Bureau Field Representative at an undisclosed location in the city of Riverside, California.

10. On April 22, 2014, the undercover operator took custody of the vehicle from the Bureau Field Representative on instructions to drive the modified 2002 Ford to Los Compadres and obtain a smog check.

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11. The undercover operator requested C. Korel conduct a smog check inspection. The undercover operator did not sign any documents, nor did he receive any paperwork prior to the smog test being performed.

12. C. Korel approached the undercover operator and asked for the 2002 Ford's keys. C. Korel then drove the 2002 Ford into the smog-testing bay of Los Compadres. After the undercover operator provided the DMV renewal notice to respondent Gomez-Camacho, the undercover operator informed C. Korel that he had been referred to respondent Los Compadres facility by an unnamed third party who had told the undercover operator that respondent Los Compadres would pass his vehicle for \$150.00. C. Korel asked the undercover operator for his personal identification. The undercover operator provided his identification, at which point C. Korel stated, "we usually charge \$200.00 to \$250.00 to make it pass." The undercover operator responded by asking C. Korel if it could be done for \$200.00, to which Respondent C. Korel replied, "Yes." The undercover operator then agreed to the \$200.00 amount. Thereafter, C. Korel stated that it would take about 15 minutes and for the undercover operator to sit and wait.

13. C. Korel drove the 2002 Ford onto the dynamometer and exited the vehicle. C. Korel entered information into the Emissions Inspection System (EIS) machine. Shortly thereafter, he re-entered the 2002 Ford and raised the engine revolutions per minute (RPMs). Respondent Gomez-Camacho removed the EIS machine exhaust sample probe, which was located on the exterior portion of the facility's building, from the wall and inserted it into the 2002 Ford's tailpipe. Respondent Gomez-Camacho then handed the EIS machine's On-Board Diagnostics (OBDII) cable to respondent C. Korel, who ran the vehicle on the dynamometer, while giving instructions to respondent Gomez-Camacho and another smog check assistant by saying "hold it right there" (exhibit 3, p. 10).

14. Upon the completion of the emissions portion of the test, C. Korel moved the modified 2002 Ford from the smog test bay. Another individual removed the EIS machine exhaust sample probe from the 2002 Ford's exhaust tailpipe and returned it to its previous location on the exterior portion of the building. C. Korel handed the OBDII cable to respondent Gomez-Camacho and exited the vehicle. C. Korel continued the smog check inspection process by inputting information into the EIS machine. C. Korel did not fill out the Vehicle Inspection Report (VIR). Gomez-Camacho completed the paperwork for C. Korel, provided the undercover operator with two unsigned documents, an estimate and invoice which the undercover operator signed, signed and handed him the VIR on behalf of C. Korel, collected the \$200.00 from the undercover operator, and returned the DMV Renewal Notice to the undercover operator. The undercover operator was provided Certificate of Compliance Number [REDACTED] for the 2002 Ford. The VIR provided C. Korel performed the smog check and included a squiggle for his signature (exhibit 4, page 90.)

15. Respondent C. Korel knew the modified 2002 Ford was mechanically defective. He advised the undercover operator the vehicle was missing a catalytic converter. Before the undercover operator left the facility he asked C. Korel about returning with a "hot

rod" (exhibit 3, page 10.) C. Korel told him it would not be a problem, but he would have to look at it before quoting him a price (*ibid*).

16. After the smog test, the undercover operator returned the 2002 Ford to the Bureau, where it was inspected. The Bureau verified the respondents' illegal smog test by downloading BAR 97 Test Detail from the Bureau's Vehicle Information Database (VID) and comparing the respondent's inaccurate and passing report to the Bureau's failing report.

17. On April 29, 2014, the Bureau confirmed the issuance of Certificate of Compliance Number [REDACTED] for the modified 2002 Ford was illegal. The Bureau performed a smog check inspection on the 2002 Ford, which was still in the same mechanical condition, according to accepted testing protocols. The 2002 Ford failed the mechanical inspection due to its modified PCV system, missing catalytic converters and modified other emission-related components. In addition, the vehicle failed the tailpipe emissions portion of the Acceleration Simulation Mode (ASM) test due to high HC, CO and (NOx) at both 15 mph and 25 mph.

April 30, 2014

18. The Bureau's representative at its Forensic Documentation Laboratories modified a 1997 Acura Integra (1997 Acura) for its second undercover operation of respondents. On April 29, 2014, a Bureau representative inspected the 1997 Acura and found: a modified PVC system; missing catalytic converter; missing rear oxygen sensor; modified spark con- trol system (nonapproved external ignition coil); modified fuel injection system (adjustable fuel pressure regulator and non-approved fuel injectors); adjustable camshaft sprockets; nonapproved exhaust system (headers); failing functional checks of the malfunction indicator light (light on at all times); and ignition timing incompatible with manufacturer's specifications. The 1997 Acura also exceeded the gross polluter limits for exhaust emissions for NOx and exceeded the fail limits for CO and HC.

19. The Bureau followed appropriate procedures to ensure the 1997 Acura stayed in the same modified mechanical condition throughout the undercover operation. On April 30, 2014, a second Bureau representative inspected the 1997 Acura and confirmed all the mechanical defects and emissions issues in the car noted by the first Bureau investigator.

20. That same day, after the Bureau completed its second inspection, the undercover operator drove the 1997 Acura to the Los Compadres respondents to request a smog inspection. The undercover operator told C. Korel that he had returned with the other car they had previously discussed. C. Korel took the keys to the 1997 Acura and asked the undercover operator to wait. C. Korel drove the 1997 Acura onto the Smog Check testing bay. The undercover operator asked C. Korel the cost of the smog check. C. Korel wanted to know what he charged the undercover operator the last time and after he was told it was \$200.00, C. Korel took the DMV paperwork from the undercover operator and told him he had to check the history of the vehicle. After C. Korel checked the vehicle's history he informed the undercover operator the cost of the smog check would be the same, \$200.00.

21. C. Korel did not provide the undercover operator with any documents prior to his smog check.

22. The following sequence of events occurred during the smog test of the 1997 Acura: After C. Korel entered information into the smog check EIS, he entered the 1997 Acura and positioned it on the dynamometer. Gomez-Camacho removed the EIS's exhaust sample probe from the wall of the Los Compadres respondents' facility and inserted it into the 1997 Acura's exhaust tailpipe. Gomez-Camacho retrieved the OBDII cable from the EIS machine and handed it to C. Korel. Gomez-Camacho walked to the rear of the EIS machine. C. Korel remained seated in the 1997 Acura while it was positioned on the dynamometer with the engine running. C. Korel motioned with his left hand to Gomez-Camacho, who then proceeded to crouch down behind the EIS machine. After Gomez-Camacho nodded his head and stood up, C. Korel handed the OBDII cable to him, and an unidentified individual removed the emission probe from the 1997 Acura's tailpipe and hung it back on a hook on the wall of the Los Compadres respondents' facility. Gomez-Camacho entered information into the EIS machine, while C. Korel backed the 1997 Acura out of the smog bay and parked it.

23. C. Korel completed the paperwork and handed the undercover operator two documents, the estimate and the invoice, waited for the undercover operator to sign them and then took the documents from him. In response to C. Korel's question, the undercover operator assured him he did not work for the Bureau, confirmed the price for the smog check, and handed C. Korel \$200.00 in cash. C. Korel provided the undercover operator an unsigned estimate and invoice, along with a business card, a VIR, and the DMV renewal notice that the undercover operator had previously provided. C. Korel issued Certificate of Compliance Number [REDACTED] for the 1997 Acura.

24. The undercover operator drove the 1997 Acura directly from the Los Compadres respondents to a designated location to supply the Bureau with the documents he had received from C. Korel. The Bureau confirmed the 1997 Acura still had the same mechanical defects and emissions issues it had prior to the smog check. The Bureau downloaded the BAR 97 test detail from the Bureau's VID and confirmed that the Los Compadres respondents and C. Korel had illegally issued Certificate of Compliance Number [REDACTED] for the 1997 Acura.

25. The Bureau performed a BAR-97 ASM smog check on the 1997 Acura according to legal testing protocols for visual mechanical and emissions inspections. The 1997 Acura failed the smog check due to its previously noted and unabated mechanical defects which included: a modified PVC system, missing catalytic converter, missing rear oxygen sensor, modified spark control system (non-approved external ignition coil), modified fuel injection system (adjustable fuel pressure regulator and non-approved fuel injectors), non-approved exhaust system (headers), ignition timing outside of manufacturer specifications and malfunctioning engine light that was on all the time. The vehicle also failed due its unabated emissions issues; it exceeded the gross polluter limits for exhaust emissions for NOx and fail limits for CO and HC.

Conviction of substantially-related crimes

C. Korel

26. On January 11, 2016, in the Superior Court of the State of California, County of San Bernardino, Case No. FSB1405387, C. Korel was convicted, on his plea of guilty, of one count of violating Penal Code section 502, subdivision (c), [unauthorized computer access and fraud], a felony. At the time of his conviction, C. Korel was ordered to report to the probation office for the pre-sentence investigation and report. The terms of his sentencing are unknown. The circumstances are as follows: Following its undercover operation of respondent Los Compadres, the Bureau referred C. Korel to the District Attorney for prosecution. On February 17, 2015, the police arrested C. Korel. His arrest and conviction were based upon his above-described fraudulent inspection of the 2002 Ford on April 22, 2014.

A. Korel

27. On May 17, 2016, in the Superior Court of the State of California, County of Riverside, Case No. RIF1601459, A. Korel was convicted, on his plea of guilty, of one count of violating Vehicle Code section 4463, subdivision (a) (2) (attempting to pass as true, know it is false, an altered vehicle registration), a misdemeanor. The court ordered A. Korel to serve one day in custody with the Riverside County Sheriff, with credit for one day served, suspended his sentence, and ordered summary probation for a period of 36 months, and fines and fees, which A. Korel paid. The circumstances surrounding the conviction are that in March 2016, A. Korel was arrested for fraudulently issuing smog certificates of compliance in April and May 2014, as an employee of another smog check facility, not as an owner of Los Compadres.

Camacho-Gomez

28. On January 11, 2016, in the Superior Court of the State of California, County of Riverside, Case No. 4276524, Camacho-Gomez was convicted, on his plea of guilty of one count of violated Penal Code section 502, subdivision (c), unauthorized computer access and fraud, a misdemeanor. The court sentenced Camacho-Gomez to 120 days in county jail, suspended his sentence, and ordered summary probation for a period of 36 months, fines and fees. The circumstances surrounding the conviction are that in Camacho-Gomez was arrested for participating in the illegal smog inspection of the 2002 Ford on April 22, 2014.

Costs of Investigation

29. The Bureau seeks recovery of its reasonable costs of investigation and prosecution, all contained in Exhibit 9, summarized as follows:

A. William D. Thomas, Program Manager II of the BAR certified the Investigative Costs. Investigative services by BAR personnel, including travel, time, evidence, report writing, and clerical services, with breakdowns by hours and hourly rates by

Program Representative I are for fiscal year 2013-2014, 97.5 hours at a rate of 71.26 per hour for a total of \$6,947.85; and for fiscal year 2014-2015, 22.50 hours at a rate of 71.73 per hour for a total of \$1,613.93. The investigator costs for Program Representative II, for fiscal year 2013-2014 are 23.5 hours at a rate of 76.08 per hour, for a total of \$1787.88, and the costs of operator evidence fees was \$400.00. The total costs of investigation were \$10,749.66. The billing statement lacked any detail as to the tasks performed and did not identify the personnel.

B. Deputy Attorney General costs: Kevin J. Rigley, Deputy Attorney General, certified prosecution (or enforcement) costs through June 24, 2016. The prosecution costs do not include costs incurred after June 24, 2016. A total of 31.75 hours by Deputies Attorney General at hourly fees of \$170.00, and 4.25 hours of paralegal time at \$120 per hour. The total costs of prosecution are \$8,415.00. Mr. Rigley's declaration and the billing statements attached thereto included the minimal level of detail required.

30. The respondents did not testify or provide any direct evidence of their income. Nevertheless, based upon the evidence provided of their convictions, and the absence of any evidence of alternative sources of income, it is unclear whether the respondents will have any resources to pay the investigative and prosecution costs if their licenses are revoked. The total costs of investigation and prosecution are \$19,164.66. Respondent Gomez-Camacho agreed to pay a portion of the costs of investigation and prosecution prior to the issuance of a new or reinstated license in the amount of \$6,483.62. The remaining combined costs of investigation and prosecution are \$12,681.04. However, the investigation costs are discounted because they lack any detail. A. Korel, individually and on behalf of the Los Compadres respondents and C. Korel shall be responsible for paying the Bureau its prosecution costs only. A. Korel and C. Korel shall each be responsible for one-half the amount of the total prosecution costs of \$8,415.00, or \$4,207.50.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. The burden of proof is preponderance of the evidence. (*See Imports Performance v. Department of Consumer Affairs, BAR of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) The testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance*, (1986) 189 Cal.App.3d 1040, 1052. Based on the persuasive testimony of Mr. Denno and the supporting documentary evidence, the Bureau met its burden of proof as to the Los Com- padres respondents and C. Korel.

2. The Director of the Department of Consumer Affairs (Director) is authorized to suspend, revoke or otherwise discipline a licensee for all businesses or licenses registered in their name in the state and may pursue licensees regardless of whether the license is

active, voluntarily surrendered, or expired. (Bus. & Prof. Code § 9884.7 (Business Code), subd. (c), and Health Code §§44002, and 44072.8). The Los Compadres respondents' contend that, at minimum, the ARD registration should be exempt from discipline because the duties associated with this registration are separate from the obligations imposed by the smog check license. Pursuant to its statutory authority the Director is authorized to discipline all businesses associated with A. Korel and there is cause to do so. Where, as here, the name of the business is Los Compadres Smog Check, is synonymous with the respondents' smog check activities, the public can only be adequately protected by revoking all licenses and registrations associated with the Los Compadres respondents.

Cause to suspend or revoke as to C. Korel.

3. Cause exists to suspend or revoke the C. Korel's smog check inspector license (First and Second Causes for Discipline) due to his conviction of a crime substantially related to the qualifications, functions, or duties of a licensee of the Bureau, pursuant to Business Code sections 490 and 493 and Business Code section 9889.3, subdivision (b), due to his conviction for his illegal smog check of the 2002 Ford, as set forth in factual finding 26.

4. Cause exists to suspend or revoke the C. Korel's smog check inspector license and for acts constituting dishonesty, fraud or deceit (Second, Fourteenth and Twenty-Fifth Causes for Discipline), Health Code section 44072.2², subdivision (d), for committing acts with the intent to benefit himself or injure another in his illegal smog check of the 2002 Ford and 1997 Acura, as set forth in the factual findings.

5. Cause exists to suspend or revoke the C. Korel's smog check inspector license and for acts constituting dishonesty, fraud or deceit, pursuant to Business Code section 9889.3, subdivision (b) and Health Code section 44072.2, subdivision (d), (Second and Twenty-Fifth Cause for Discipline), and Health Code section 44072.2, subdivision (d) (Twenty-Fifth Cause of Action), and for committing acts with the intent to benefit himself or injure another in his illegal smog check of the 2002 Ford and 1997 Acura, and for issuing a certificate of compliance for the 1997 Acura without performing a bona fide inspection of the emission control devices and systems, as set forth in the factual findings.

6. Cause exists to suspend or revoke C. Korel's smog check inspector license, (Twelfth and Twenty-Third Causes for Discipline), pursuant to Health Code section 44072.2, subdivision (a)) (failure to comply with Health Code section 44012), when he failed to perform emission control tests of the 2002 Ford and 1997 Acura in accordance with the procedures prescribed by the Bureau, as set forth in factual findings.

²The Second Cause of Discipline refers to Health Code section 44072.1, which applies to applicants, not licensees, but contains the identical provisions as section 44072.2, which is referenced in the Twenty-Fifth Cause for Discipline. This discrepancy in the Second Cause of Discipline was determined to be a clerical error because, other than the cars referenced, the Second and Twenty-Fifth Causes of Discipline are identical.

7. Cause also exists to suspend or revoke C. Korel's smog check inspector license (Thirteenth Cause for Discipline) pursuant to Regulations, section 3340.41, subdivision (c) (entering false information into the EIS by entering data for a vehicle other than the one being tested) in his illegal smog test of the 2002 Ford as set forth in the factual findings. Cause exists to suspend or revoke C. Korel's smog check inspector license, (Thirteenth and Twenty-Fourth Causes for Discipline), pursuant to Health Code section 44072, subdivision (c), (violation of any of the regulations adopted by the director). Cause also exists pursuant to Regulations 3340.30, subdivision (a), (failure to inspect the 2002 Ford and 1997 Acura), according to Health Code sections 44012 and 44035, and Regulations, 3340.42, subdivision 3340.42, (failure to conduct the required smog tests in accordance with the Bureau's specifications), as set forth in factual findings.

Cause to suspend or revoke the smog check station license and ARD registration of the Los Compadres respondents

8. Cause exists to suspend or revoke the smog check station license and ARD registration of the Los Compadres respondents for A. Korel's conviction of a crime substantially related to the qualifications, functions, or duties of a licensee of the Bureau (Fifth Cause for Discipline). Cause exists pursuant to, Business Code sections 490 and 493, and for acts constituting dishonesty, fraud or deceit (Sixth Cause for Discipline), pursuant to Business Code section 9889.3, subdivision (b) and Health Code section 44072.1, subdivision (d), as set forth in factual finding 27.

9. Cause exists to suspend or revoke the smog check station license and ARD registration of the Los Compadres respondents pursuant to Business Code section 9884.7, subdivisions (a)(1) and (a)(4) and Health Code section 44072.2, subdivision (d) (Seventh, Eighth, Eleventh, Eighteenth, Nineteenth and Twenty-Second Causes for Discipline), for authorizing untrue or misleading statements and the dishonesty, fraud and deceit of C. Korel, who issued VIR's and Certificates of Compliance for his illegal smog checks of the the 2002 Ford and the 1997 Acura vehicles as set forth in factual findings 8-25. Under the doctrine of respondeat superior, the Los Compadres respondents and A. Korel, are responsible for the acts of their employees and have a non-delegable duty for their employees' conduct when they act under their license or through their business. (*See Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 149 Cal.App.3d 793, 799 (citing *Ford Dealers Ass'n v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360-361); *Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.3d 140,144-145.) Further A. Korel's conviction establishes his knowledge of illegal smog checks, and his heightened duty to avoid illegal conduct within his control. The fact that Gomacho-Gomez was also convicted of illegal smog check of the 2002 Ford, as set forth in factual finding 28, demonstrates that employee misconduct was not limited to C. Korel, and that the Los Compadres respondents were unwilling or incapable of implementing legal smog check practices.

10. Cause exists to suspend or revoke the smog check station license and ARD registration of the Los Compadres respondents pursuant to Health Code section 44072.2, subdivision (a) (Ninth and Twentieth Causes for Discipline for Violations of the Motor

Vehicle Inspection Program) for violation of Health Code section 44012, subdivision (a) (emission control tests to be in accordance with proper procedures) and Health Code section 44015, subdivision (b) (issuance of certificates of compliance without proper testing and inspection of the vehicle in compliance with Health Code section 44012). As set forth in legal conclusion 9 and the factual findings, Los Compadres respondents' are subject to discipline based upon their failure to exercise their nondelegable duty to prevent C. Korel and other employees from conducting illegal smog tests and participating in the issuance of certificates of compliance of the 2002 Ford and the 1997 Acura.

11. Cause exists to suspend or revoke the smog check station license and automotive repair dealer registration of the Los Compadres respondents for violation of Health Code section 44072.2, subdivision (a) (Tenth and Twenty-First Causes for Discipline), for violation of regulations adopted by the Director, more specifically, Regulation section 3340.35, subdivision (c) (issuance of certificates of compliance even though the vehicles had not been inspected in accordance with Regulation section 3340.42); Regulation section 3340.41, subdivision (c) (entering false information into the EIS or emission control system identification data for a vehicle other than the one being tested); and Regulation section 3340.42, (failure to ensure smog tests were conducted in accordance with the Bureau's specifications) for the illegal smog checks of the 2002 Ford and 1997 Acura by C. Korel and other employees, as set forth in legal conclusion 9 and the factual findings.

12. In sum, based on the evidence, allowing the Los Compadres respondents to continue to engage in licensed smog check activity would endanger the public health, safety and welfare. The Los Compadres respondents, based upon the conviction of A. Korel, and the conduct of their employees, have demonstrated their disregard for the smog check laws. The public will only be adequately protected by revoking all licenses and the ARD associated with Los Compadres.

Reasonable Costs of Investigation and Prosecution

13. Under Business and Professions Code section 125.3, the Bureau may request the administrative law judge to direct licensees found to have committed a violation or violations of the licensing act in question to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. An estimate may be used when the actual costs are not available. Respondents' claim that the Bureau's investigative costs (exhibit 9) are insufficiently described to support reimbursement under Regulation section 1042 because the investigative costs do not specify the individual or the activity, but the total costs incurred by classification of investigator. At a minimum, absent confidentiality concerns, the individual and the activity should be at least generally described similar to the Attorney General's billing record, but no specificity was provided. As such, respondents' objection to the investigative fees is sustained.

14. The Bureau is entitled to recover its reasonable costs of prosecution of this matter, including fees of the Attorney General, under the provisions of Business and Professions Code section 125.3 and Regulation section 1042. However, in light of the


holding in *Zuckerman v. State Board of Chiropractors* (2002) 29 Cal.4th 32, 45, which requires the licensing agency to take into account respondents' ability to pay costs which in this action includes a consideration of the severity of the below order which strips respondents of their licenses and registration, Gomez-Camacho's agreement to pay a portion of the combined costs of investigation and prosecution, the inadequacy of the disclosure of investigative costs, respondents will only be required to pay one-half the prosecution costs, as set forth in factual finding 30. A. Korel and C. Korel shall each be required to pay \$4,207.50.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Smog Check Test Only Station License Number TC 274203 and Automotive Repair Dealer Registration Number ARD 274203 issued to Alexander Shamoun Korel doing business as Los Compadres Smog Check, together with all licensing rights appurtenant thereto, and any additional smog check licenses issued to Alexander Shamoun Korel, are revoked.
2. Smog Check Inspector License Number EO 636046 issued to Christopher Korel, together with all licensing rights appurtenant thereto, and any additional smogcheck licenses issued to Christopher Korel, are revoked.
3. Alexander Shamoun Korel shall be obligated to pay to the Bureau \$4,207.50, at such time and in such manner as the Bureau, in its discretion, may direct.
4. Christopher Korel shall be obligated to pay to the Bureau \$4,207.50, at such time and in such manner as the Bureau, in its discretion, may direct.

DATED: April 24, 2017

DocuSigned by:

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings

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

Received in BAR EPO

JAN 03 2017

In the Matter of the Second Amended
Accusation Against:

LOS COMPADRES SMOG CHECK,
ALEXANDER SHAMOUN KOREL
OWNER,
Automotive Repair Dealer Registration
No. ARD 274203,
Smog Check Test Only Station License
No. TC 274203,

and

CHRISTOPHER KOREL,
Smog Check Inspector License
No. EO 636046,

and

WILLIAM ALLEN GOMEZ-CAMACHO,
Smog Check Inspector License
No. EO 636771,

Respondents.

Case No. 79/15-108

OAH No. 2015070349.1

**NOTICE OF REMAND
AND ORDER THEREON**

NOTICE OF REMAND AND ORDER THEREON

On December 7, 2016, the Department of Consumer Affairs issued its Order of Rejection and Remand to Administrative Law Judge (Order). Pursuant to the Order, the above-captioned matter has been remanded to the administrative law judge for the taking of additional evidence regarding the Director's September 13, 2016 Decision, effective November 1, 2016, accepting and adopting the Stipulated Revocation of License of respondent, William Allan Gomez-Camacho. However, a complete transcript of the entire prior proceedings and evidence were not provided.

//

The following order is issued with respect to the remand in this case:

1. Pursuant to Government Code section 11517, subdivision (c)(2)(D), complainant shall lodge the transcript of the previous administrative hearing held on July 6, 2016 and all exhibits identified and received into evidence, with the Office of Administrative Hearings, 320 West 4th Street, Suite 630, Los Angeles, as promptly as possible, and by **no later than February 1, 2017.**
2. The agency must comply in all other respects with California Code of Regulations, title 1, section 1050, subdivision (a). If it has not already done so, the Department of Consumer Affairs shall promptly serve on respondent a copy of the remand package filed with this office, to apprise respondent of the purpose of the remand.
3. A telephonic trial setting conference will be scheduled in this case upon receipt of all documents necessary for the hearing on remand.
4. With the exception of the lodging of the transcript and the exhibits from the previous hearing, all documents shall be filed with OAH's Los Angeles office electronically at laxfilings@dgs.ca.gov. When filing a document electronically, please do not file a hard copy of the same document by any other means, such as personal delivery or mail. Before filing any document electronically, review OAH's electronic filing and naming guidelines on the OAH website at www.dgs.ca.gov/oah. To ensure that OAH will accept an electronic filing, the filing must comply with the guidelines.

Attention: This case has been returned to OAH for further action after a decision or proposed decision was issued. OAH has re-opened the original case but has assigned a new OAH number for handling of the further action. The new OAH case number is: 2015070349.1

All new filings in this matter must include the new case number.

IT IS SO ORDERED.

DATED: December 23, 2016

DocuSigned by:

Susan Formaker

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SUSAN L. FORMAKER

Presiding Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE

Case Name: Los Compadres Smog Check et al.(Remand)

OAH No.: 2015070349.1

I, Yolanda Parker, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 320 West Fourth Street, Suite 630, Los Angeles, CA 90013. On December 28, 2016, I served a copy of the following document(s) in the action entitled above:

NOTICE OF REMAND AND ORDER THEREON

to each of the person(s) named below at the addresses listed after each name by the following method(s):

Los Compadres Smog Check
Alexander Shamoun Korel - Owner
17410 Foothill Blvd., Unit D
Fontana, CA 92335
VIA US Mail

Kevin J. Rigley, Deputy Attorney General
Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
VIA FAX (213) 897-2804

Alexander Shamoun Korel
25412 Clovelly Court
Moreno Valley, CA 92553
VIA US Mail

William D. Ferreira, Attorney at Law
Automotive Defense Specialists
582 Market St., Suite 1608
San Francisco, CA 94104
VIA FAX (415) 366-8429

Christopher Korel
25412 Clovelly Ct.
Moreno Valley, CA 92553
VIA US Mail


Bill Thomas, Enforcement Planning and
Oversight, SMOG
10949 North Mather Blvd
Rancho Cordova, CA 95670
VIA US Mail

William Allan Gomez-Camacho
4448 Blue Ridge Drive
Riverside, CA 92505
VIA US Mail

☒ **United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package for collection and mailing, in accordance with the Office of Administrative Hearings' ordinary business practices, in Los Angeles, California. I am readily familiar with the Office of Administrative Hearings' practice for collecting and processing documents for mailing. Correspondences are deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid. [☐ by certified mail].

☒ **Email or Electronic Transmission.** Based on a court order or the agreement of the parties to accept service by Email or electronic transmission, I caused the document(s) to be sent to the person(s) at the Email address(es) listed above

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Los Angeles, California on December 28, 2016.

DocuSigned by:

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Yolanda Parker, Declarant

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

In the Matter of the Second Amended
Accusation Against:

LOS COMPADRES SMOG CHECK,
17410 Foothill Blvd. Unit D
Fontana, CA 92335
ALEXANDER SHAMOUN KOREL,
OWNER

Mailing Address:
25412 Clovelly Court
Moreno Valley, CA 92553
Automotive Repair Dealer Registration
No. ARD 274203
Smog Check Station License
No. TC 274203

and

CHRISTOPHER KOREL
25412 Clovelly Ct.
Moreno Valley, CA 92553
Smog Check Inspector License No.
EO 636046

and

WILLIAM ALLAN GOMEZ-CAMACHO
4448 Blue Ridge Dr.
Riverside, CA 92505
Smog Check Inspector License No.
EO 636771

Respondents.

Case No. 79/15-108

OAH No. 2015070349

ORDER OF REJECTION AND REMAND TO ADMINISTRATIVE LAW JUDGE

In accordance with Government Code section 11517, subdivision (c)(2)(D), the Proposed Decision in this matter dated September 15, 2016 is hereby rejected and referred back to Administrative Law Judge (ALJ) Eileen Cohn if reasonably available, or to another administrative law judge, to take additional evidence regarding the Director's September 13,

In the Matter of the Second Amended Accusation Against: Los Compadres Smog Check, Alexander Shamoun Korel, Owner, and Christopher Korel, and William Allan Gomez-Camacho

2016 Decision, effective November 1, 2016, accepting and adopting the Stipulated Revocation of License of respondent, William Allan Gomez-Camacho (Respondent), executed by Respondent on July 5, 2016. (A true and correct copy of the September 15, 2016 Proposed Decision and September 13, 2016 Decision are attached hereto as Exhibits A and B, respectively.)

Contrary to the Director's Decision and the Stipulated Revocation of License (Stipulation), the Proposed Decision proposes to dismiss without prejudice the Second Amended Accusation against Respondent on the basis that, while Respondent executed the Stipulation on July 5, 2016, it was pending the Director's approval and was not submitted to the ALJ at the time the record closed. Since the Director approved the Stipulation on September 13, 2016, the Proposed Decision is rejected and referred back to the ALJ to take additional evidence regarding the Director's acceptance and adoption of the Stipulation.

IT IS SO ORDERED this 7th day of December, 2016.



RYAN MARCROFT
Assistant Chief Counsel
Division of Legal Affairs
Department of Consumer Affairs

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BAR OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Second Amended
Accusation Against:

**LOS COMPADRES SMOG CHECK,
ALEXANDER SHAMOUN KOREL,
OWNER**

Automotive Repair Dealer Registration
No. ARD 274203
Smog Check Test Only Station License
No. TC 274203

CHRISTOPHER KOREL

Smog Check Inspector License
No. EO 636046

MANUEL ALLEN GOMEZ-CAMACHO

Smog Check Inspector License
No. EO632837

Respondents.

Case No. 79/15-108

OAH No. 2015070349

PROPOSED DECISION

This matter came on regularly for hearing on July 7, 2016, at Los Angeles, California, before Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California.

Patrick Dorais, Chief, Bureau of Automotive Repair (complainant) was represented by Deputy Attorney General Kevin J. Rigley who was accompanied by Alfred Denno, Program Representative II of the Bureau of Automotive Repair (Bureau).

Los Compadres Smog Check (Los Compadres) and owner Alexander Shamoun Korel (A. Korel) (collectively, Los Compadres respondents), and Christopher Korel (C. Korel), (collectively, respondents), were represented by William Ferreira, Attorney at Law, and were not present.

Prior to hearing, respondent William Allan Gomez-Camacho (Gomez-Camacho), represented by William Ferreira, Attorney at Law, entered into a Stipulated Revocation of License and Order (Stipulated Revocation) with the Bureau. Respondent Gomez-Camacho waived his right to a hearing and agreed the Director of the Department of Consumer Affairs could issue an order revoking his license as discipline. The Stipulated Revocation is subject to the approval of the Director of Consumer Affairs or the Director's designee; however, until that time respondent Gomez-Camacho may not withdraw or rescind it.

Evidence was presented by way of testimony and documents, the record was closed and the matter was submitted for decision on July 7, 2016. On July 25, 2016 the ALJ issued an order reopening the record for the complainant to submit the approval of the Stipulated Revocation by the Director of Consumer Affairs (the Director) or the Director's designee. Complainant never submitted the approval of the Director or the Director's designee's. The record remained open until August 19, 2016, at which time the record was closed and the matter submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

Parties and Licenses Subject to Discipline

1. The Second Amended Accusation was brought by complainant Patrick Dorais in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs. All parties were properly served with all required documents and the respondents timely filed their notices of defense contesting the Second Amended Accusation.

2. Complainant's second amended accusation against respondent Gomez-Camacho is dismissed without prejudice. On April 17, 2014, the Bureau issued Smog Check Inspector License Number EO 636771 to respondent Gomez-Camacho. The Smog Check Inspector License expired on January 31, 2016, and has not been renewed. Respondent executed the Stipulated Revocation on July 5, 2016, and based upon the Stipulated Revocation, did not appear or present a defense at the hearing (exhibit 10). The Stipulated Revocation is not final until the Director approves it, and as of the date of this decision, complainant has not provided OAH with the Director's signature. For this reason, to protect the respective rights of the parties, complainant's Second Amended Accusation against respondent Gomez-Camacho is dismissed without prejudice.

3. Motion to Dismiss (or Strike) Second Amended Accusation, paragraphs 37 and 38, against respondent A. Korel is denied. At the hearing, respondent A. Korel moved to dismiss (or strike) paragraphs 37 and 38 of the Second Amended Accusation. These paragraphs are supported by court-filed documents (exhibits 7 and 11). Exhibit 7 contains the conviction record of A. Korel, and exhibit 11 is the search warrant for A. Korel, entitled Declaration in Support of Arrest Warrant (Declaration) and dated February 9, 2016, in the

Superior Court of the State of California, County of Riverside, Case No. RIF1601459. The 2016 criminal action concerns respondent A. Korel's conduct as an employee of another smog check facility in April and May 2014. The Declaration explains the circumstances of A. Korel's conviction in Exhibit 7 and is admitted as administrative hearsay. A. Korel is the sole owner of Los Compadres and his conduct is relevant to the licenses at issue in this case. His 2016 conviction is not only a separate ground for discipline against the Los Compadres respondents, as set forth in the Second Amended Accusation, paragraph 38, but is relevant as an aggravating factor in determining discipline against them in this action. Accordingly, the motion to dismiss (or strike) paragraphs 37 and 38 is denied.

4. Automotive Repair Dealer Registration and Smog Check Station issued to the Los Compadres respondents. On September 9, 2013, the Bureau issued Automotive Repair Dealer Registration Number ARD 274203 to A. Korel, owner, doing business as Los Compadres Smog Check. On September 24, 2013, the Bureau issued Smog Check Station License Number TC 274203 to A. Korel, doing business as, Los Compadres Smog Check. Los Compadres Smog Check is also certified as a STAR station. The certification was issued on November 1, 2013, and will remain active unless the ARD registration and/or the Smog Check Station license is revoked. The Los Compadres respondents' registrations were in full force and effect at all times relevant to the findings herein and expires on September 30, 2016.

5. Smog Check Inspector License issued to respondent C. Korel. On September 19, 2013, the Bureau issued Smog Check Inspector License Number EO 636046 (inspector license) to respondent C. Korel. At all times relevant to the findings herein, C. Korel's inspector license was in full force and effect and will expire on January 31, 2018. C. Korel is A. Korel's brother.

6. California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. It is also designed to comply with federal law, the Clean Air Act.¹ California's smog check program requires most motorists to submit their vehicles for inspection every two years at the time they renew their registration and whenever a vehicle title is transferred. Southern California, where respondents' operate, is an enhanced area, meaning it does not meet federal or state air quality standards for ozone levels. Inspections in enhanced areas consist of a three-part test, a visual inspection of the vehicle's emission control components, a functional test, which includes the parts of the vehicle that effect the emissions and the emissions sample test. The smog check inspection in enhanced areas includes an Acceleration Simulation Mode (ASM) test performed using an Emission inspection system (EIS), also known as a BAR 97. The computer checks the levels of five gasses, hydrocarbons (HC), carbon monoxide (CO) oxides of nitrogen (NOx), Carbon Dioxide (CO2) and Oxygen (Ox).

7. This dispute concerns all three parts of the smog check test. Alfred Denno of the Bureau, who testified at hearing, initiated the investigation after conducting video

¹ See Health & Saf. Code (Health Code) §§ 44000, 44000.5, & 44001.

surveillance of the Los Compadres respondents' facility and reviewing the Bureau's smog check test data. Mr. Denno also oversaw the investigation of the respondents. Mr. Denno's persuasive and credible testimony together with the Bureau's supporting exhibits, meticulous record-keeping and observations of its undercover operator, Marc Ortega (undercover operator), who also testified, and was the same operator in both disputed inspections, established the thoroughness and reliability of the Bureau's investigation and satisfied the Bureau's burden of proof. Respondent called the undercover operator as a witness. The undercover operator confirmed he did not meet A. Korel, or observe him doing any illegal acts; he only interacted with C. Korel and Mr. Comacho-Gomez and observed them conducting the illegal smog checks of April 22 and April 30, 2014. Nevertheless, discipline of the Los Compadres respondents is warranted based upon the persuasive evidence of illegal smog checks by employees of the Los Compadres respondents, and A. Korel's own conviction history.

The illegal smog checks

April 22, 2014

8. On April 4, 2014, the Bureau prepared a vehicle for use in an undercover investigation of smog check violations at Los Compadres Smog Check. The Bureau's vehicle, a 2002 Ford Mustang (2002 Ford) was documented by a representative from one of the Bureau's Forensic Documentation Laboratories. The Bureau's lab technician (Bureau's lab tech) determined the required emissions controls for the vehicle, and removed the 2002 Ford's existing catalytic converter and "H" pipe. The Bureau's lab tech installed an illegal, "off-road" "X" pipe that had no catalytic converters. The Bureau's lab tech also removed the 2002 Ford's existing air filter housing and inlet tube, and replaced them with a cold air inlet system that did not have an Executive Order (EO) sticker and is not a legal intake system in California. The Bureau's lab tech also installed an illegal open breather, modifying the 2002 Ford's positive crankcase ventilation (PCV) system. The Bureau's lab tech also installed a modification to prevent the 2002 Ford's malfunction indicator light (MIL) from illuminating with the missing catalytic converters. The components installed by the Bureau's lab tech caused the 2002 Ford, in its mechanical condition, to fail the smog test for Gross Polluter tailpipe emissions, and missing or modified components.

9. The Bureau followed appropriate procedures to ensure the 2002 Ford stayed in the same modified mechanical condition throughout the undercover operation. On April 9, 2014, the Bureau lab rep released custody of the 2002 Ford in the same modified mechanical condition to a Bureau Field Representative at an undisclosed location in the city of Riverside, California.

10. On April 22, 2014, the undercover operator took custody of the vehicle from the Bureau Field Representative on instructions to drive the modified 2002 Ford to Los Compadres and obtain a smog check.

11. The undercover operator requested C. Korel conduct a smog check inspection. The undercover operator did not sign any documents, nor did he receive any paperwork prior to the smog test being performed.

12. C. Korel approached the undercover operator and asked for the 2002 Ford's keys. C. Korel then drove the 2002 Ford into the smog-testing bay of Los Compadres. After the undercover operator provided the DMV renewal notice to respondent Gomez-Camacho, the undercover operator informed C. Korel that he had been referred to respondent Los Compadres facility by an unnamed third party who had told the undercover operator that respondent Los Compadres would pass his vehicle for \$150.00. C. Korel asked the undercover operator for his personal identification. The undercover operator provided his identification, at which point C. Korel stated, "we usually charge \$200.00 to \$250.00 to make it pass." The undercover operator responded by asking C. Korel if it could be done for \$200.00, to which Respondent C. Korel replied, "Yes." The undercover operator then agreed to the \$200.00 amount. Thereafter, C. Korel stated that it would take about 15 minutes and for the undercover operator to sit and wait.

13. C. Korel drove the 2002 Ford onto the dynamometer and exited the vehicle. C. Korel entered information into the Emissions Inspection System (EIS) machine. Shortly thereafter, he re-entered the 2002 Ford and raised the engine revolutions per minute (RPMs). Respondent Gomez-Camacho removed the EIS machine exhaust sample probe, which was located on the exterior portion of the facility's building, from the wall and inserted it into the 2002 Ford's tailpipe. Respondent Gomez-Camacho then handed the EIS machine's On-Board Diagnostics (OBDII) cable to respondent C. Korel, who ran the vehicle on the dynamometer, while giving instructions to respondent Gomez-Camacho and another smog check assistant by saying "hold it right there" (exhibit 3, p. 10).

14. Upon the completion of the emissions portion of the test, C. Korel moved the modified 2002 Ford from the smog test bay. Another individual removed the EIS machine exhaust sample probe from the 2002 Ford's exhaust tailpipe and returned it to its previous location on the exterior portion of the building. C. Korel handed the OBDII cable to respondent Gomez-Camacho and exited the vehicle. C. Korel continued the smog check inspection process by inputting information into the EIS machine. C. Korel did not fill out the Vehicle Inspection Report (VIR). Mr. Gomez-Camacho completed the paperwork for C. Korel, provided the undercover operator with two unsigned documents, an estimate and invoice which the undercover operator signed, signed and handed him the VIR on behalf of C. Korel, collected the \$200.00 from the undercover operator, and returned the DMV Renewal Notice to the undercover operator. The undercover operator was provided Certificate of Compliance Number [REDACTED] for the 2002 Ford. The VIR provided C. Korel performed the smog check and included a squiggle for his signature (exhibit 4, page 90.)

15. Respondent C. Korel knew the modified 2002 Ford was mechanically defective. He advised the undercover operator the vehicle was missing a catalytic converter. Before the undercover operator left the facility he asked C. Korel about returning with a "hot

rod" (exhibit 3, page 10.) C. Korel told him it would not be a problem, but he would have to look at it before quoting him a price (*ibid*).

16. After the smog test, the undercover operator returned the 2002 Ford to the Bureau, where it was inspected. The Bureau verified the respondents' illegal smog test by downloading BAR 97 Test Detail from the Bureau's Vehicle Information Database (VID) and comparing the respondent's inaccurate and passing report to the Bureau's failing report.

17. On April 29, 2014, the Bureau confirmed the issuance of Certificate of Compliance Number [REDACTED] for the modified 2002 Ford was illegal. The Bureau performed a smog check inspection on the 2002 Ford, which was still in the same mechanical condition, according to accepted testing protocols. The 2002 Ford failed the mechanical inspection due to its modified PCV system, missing catalytic converters and modified other emission-related components. In addition, the vehicle failed the tailpipe emissions portion of the Acceleration Simulation Mode (ASM) test due to high HC, CO and (NOx) at both 15 mph and 25 mph.

April 30, 2014

18. The Bureau's representative at its Forensic Documentation Laboratories modified a 1997 Acura Integra (1997 Acura) for its second undercover operation of respondents. On April 29, 2014, a Bureau representative inspected the 1997 Acura and found: a modified PVC system; missing catalytic converter; missing rear oxygen sensor; modified spark control system (nonapproved external ignition coil); modified fuel injection system (adjustable fuel pressure regulator and non-approved fuel injectors); adjustable camshaft sprockets; nonapproved exhaust system (headers); failing functional checks of the malfunction indicator light (light on at all times); and ignition timing incompatible with manufacturer's specifications. The 1997 Acura also exceeded the gross polluter limits for exhaust emissions for NOx and exceeded the fail limits for CO and HC.

19. The Bureau followed appropriate procedures to ensure the 1997 Acura stayed in the same modified mechanical condition throughout the undercover operation. On April 30, 2014, a second Bureau representative inspected the 1997 Acura and confirmed all the mechanical defects and emissions issues in the car noted by the first Bureau investigator.

20. That same day, after the Bureau completed its second inspection, the undercover operator drove the 1997 Acura to the Los Compadres respondents to request a smog inspection. The undercover operator told C. Korel that he had returned with the other car they had previously discussed. C. Korel took the keys to the 1997 Acura and asked the undercover operator to wait. C. Korel drove the 1997 Acura onto the Smog Check testing bay. The undercover operator asked C. Korel the cost of the smog check. C. Korel wanted to know what he charged the undercover operator the last time and after he was told it was \$200.00, C. Korel took the DMV paperwork from the undercover operator and told him he had to check the history of the vehicle. After C. Korel checked the vehicle's history he informed the undercover operator the cost of the smog check would be the same, \$200.00.

21. C. Korel did not provide the undercover operator with any documents prior to his smog check.

22. The following sequence of events occurred during the smog test of the 1997 Acura: After C. Korel entered information into the smog check EIS, he entered the 1997 Acura and positioned it on the dynamometer. Mr. Gomez-Camacho removed the EIS's exhaust sample probe from the wall of the Los Compadres respondents' facility and inserted it into the 1997 Acura's exhaust tailpipe. Mr. Gomez-Camacho retrieved the OBDII cable from the EIS machine and handed it to C. Korel. Mr. Gomez-Camacho walked to the rear of the EIS machine. C. Korel remained seated in the 1997 Acura while it was positioned on the dynamometer with the engine running. C. Korel motioned with his left hand to Mr. Gomez-Camacho, who then proceeded to crouch down behind the EIS machine. After Mr. Gomez-Camacho nodded his head and stood up, C. Korel handed the OBDII cable to him, and an unidentified individual removed the emission probe from the 1997 Acura's tailpipe and hung it back on a hook on the wall of the Los Compadres respondents' facility. Mr. Gomez-Camacho entered information into the EIS machine, while C. Korel backed the 1997 Acura out of the smog bay and parked it.

23. C. Korel completed the paperwork and handed the undercover operator two documents, the estimate and the invoice, waited for the undercover operator to sign them and then took the documents from him. In response to C. Korel's question, the undercover operator assured him he did not work for the Bureau, confirmed the price for the smog check, and handed C. Korel \$200.00 in cash. C. Korel provided the undercover operator an unsigned estimate and invoice, along with a business card, a VIR, and the DMV renewal notice that the undercover operator had previously provided. C. Korel issued Certificate of Compliance Number [REDACTED] for the 1997 Acura.

24. The undercover operator drove the 1997 Acura directly from the Los Compadres respondents to a designated location to supply the Bureau with the documents he had received from C. Korel. The Bureau confirmed the 1997 Acura still had the same mechanical defects and emissions issues it had prior to the smog check. The Bureau downloaded the BAR 97 test detail from the Bureau's VID and confirmed that the Los Compadres respondents and C. Korel had illegally issued Certificate of Compliance Number [REDACTED] for the 1997 Acura.

25. The Bureau performed a BAR-97 ASM smog check on the 1997 Acura according to legal testing protocols for visual mechanical and emissions inspections. The 1997 Acura failed the smog check due to its previously noted and unabated mechanical defects which included: a modified PVC system, missing catalytic converter, missing rear oxygen sensor, modified spark control system (non-approved external ignition coil), modified fuel injection system (adjustable fuel pressure regulator and non-approved fuel injectors), non-approved exhaust system (headers), ignition timing outside of manufacturer specifications and malfunctioning engine light that was on all the time. The vehicle also failed due its unabated emissions issues; it exceeded the gross polluter limits for exhaust emissions for NOx and fail limits for CO and HC.

Conviction of substantially-related crimes

C. Korel

26. On January 11, 2016, in the Superior Court of the State of California, County of San Bernardino, Case No. FSB1405387, C. Korel was convicted, on his plea of guilty, of one count of violating Penal Code section 502, subdivision (c), [unauthorized computer access and fraud], a felony. At the time of his conviction, C. Korel was ordered to report to the probation office for the pre-sentence investigation and report. The terms of his sentencing are unknown. The circumstances are as follows: Following its undercover operation of respondent Los Compadres, the Bureau referred C. Korel to the District Attorney for prosecution. On February 17, 2015, the police arrested C. Korel. His arrest and conviction were based upon his above-described fraudulent inspection of the 2002 Ford on April 22, 2014.

A. Korel

27. On May 17, 2016, in the Superior Court of the State of California, County of Riverside, Case No. RIF1601459, A. Korel was convicted, on his plea of guilty, of one count of violating Vehicle Code section 4463, subdivision (a) (2) (attempting to pass as true, know it is false, an altered vehicle registration), a misdemeanor. The court ordered A. Korel to serve one day in custody with the Riverside County Sheriff, with credit for one day served, suspended his sentence, and ordered summary probation for a period of 36 months, and fines and fees, which A. Korel paid. The circumstances surrounding the conviction are that in March 2016, A. Korel was arrested for fraudulently issuing smog certificates of compliance in April and May 2014, as an employee of another smog check facility, not as an owner of Los Compadres.

Comacho-Gomez

28. On January 11, 2016, in the Superior Court of the State of California, County of Riverside, Case No. 4276524, Comacho-Gomez was convicted, on his plea of guilty of one count of violated Penal Code section 502, subdivision (c), unauthorized computer access and fraud, a misdemeanor. The court sentenced Comacho-Gomez to 120 days in county jail, suspended his sentence, and ordered summary probation for a period of 36 months, fines and fees. The circumstances surrounding the conviction are that in Comacho-Gomez was arrested for participating in the illegal smog inspection of the 2002 Ford on April 22, 2014.

Costs of Investigation

29. The Bureau seeks recovery of its reasonable costs of investigation and prosecution, all contained in Exhibit 9, summarized as follows:

A. William D. Thomas, Program Manager II of the BAR certified the Investigative Costs. Investigative services by BAR personnel, including travel, time, evidence, report writing, and clerical services, with breakdowns by hours and hourly rates by

Program Representative I are for fiscal year 2013-2014, 97.5 hours at a rate of 71.26 per hour for a total of \$6,947.85; and for fiscal year 2014-2015, 22.50 hours at a rate of 71.73 per hour for a total of \$1,613.93. The investigator costs for Program Representative II, for fiscal year 2013-2014 are 23.5 hours at a rate of 76.08 per hour, for a total of \$1787.88, and the costs of operator evidence fees was \$400.00. The total costs of investigation were \$10,749.66. The billing statement lacked any detail as to the tasks performed and did not identify the personnel.

B. Deputy Attorney General costs: Kevin J. Rigley, Deputy Attorney General, certified prosecution (or enforcement) costs through June 24, 2016. The prosecution costs do not include costs incurred after June 24, 2016. A total of 31.75 hours by Deputies Attorney General at hourly fees of \$170.00, and 4.25 hours of paralegal time at \$120 per hour. The total costs of prosecution are \$8,415.00. Mr. Rigley's declaration and the billing statements attached thereto included the minimal level of detail required.

30. The respondents did not testify or provide any direct evidence of their income. Nevertheless, based upon the evidence provided of their convictions, and the absence of any evidence of alternative sources of income, it is unclear whether the respondents will have any resources to pay the investigative and prosecution costs if their licenses are revoked. The total costs of investigation and prosecution are \$19,164.66. Respondent Gomez-Camacho agreed to pay a portion of the costs of investigation and prosecution prior to the issuance of a new or reinstated license in the amount of \$6,483.62. The remaining combined costs of investigation and prosecution are \$12,681.04. However, the investigation costs are discounted because they lack any detail. A. Korel, individually and on behalf of the Los Compadres respondents and C. Korel shall be responsible for paying the Bureau its prosecution costs only. A. Korel and C. Korel shall each be responsible for one-half the amount of the total prosecution costs of \$8,415.00, or \$4,207.50.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. The burden of proof is preponderance of the evidence. (*See Imports Performance v. Department of Consumer Affairs, BAR of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) The testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance*, (1986) 189 Cal.App.3d 1040, 1052. Based on the persuasive testimony of Mr. Denno and the supporting documentary evidence, the Bureau met its burden of proof as to the Los Compadres respondents and C. Korel.

2. The Director of the Department of Consumer Affairs (Director) is authorized to suspend, revoke or otherwise discipline a licensee for all businesses or licenses registered in their name in the state and may pursue licensees regardless of whether the license is

active, voluntarily surrendered, or expired. (Bus. & Prof. Code § 9884.7 (Business Code), subd. (c), and Health Code §§44002, and 44072.8). The Los Compadres respondents' contend that, at minimum, the ARD registration should be exempt from discipline because the duties associated with this registration are separate from the obligations imposed by the smog check license. Pursuant to its statutory authority the Director is authorized to discipline all businesses associated with A. Korel and there is cause to do so. Where, as here, the name of the business is Los Compadres Smog Check, is synonymous with the respondents' smog check activities, the public can only be adequately protected by revoking all licenses and registrations associated with the Los Compadres respondents.

Cause to suspend or revoke as to C. Korel.

3. Cause exists to suspend or revoke the C. Korel's smog check inspector license (First and Second Causes for Discipline) due to his conviction of a crime substantially related to the qualifications, functions, or duties of a licensee of the Bureau, pursuant to Business Code sections 490 and 493 and Business Code section 9889.3, subdivision (b) due to his conviction for his illegal smog check of the 2002 Ford as set forth in factual finding 26.

4. Cause exists to suspend or revoke the C. Korel's smog check inspector license and for acts constituting dishonesty, fraud or deceit (Second, Fourteenth and Twenty-Fifth Causes for Discipline), Health Code section 44072.2², subdivision (d) for committing acts with the intent to benefit himself or injure another in his illegal smog check of the 2002 Ford and 1997 Acura as set forth in the factual findings.

5. Cause exists to suspend or revoke the C. Korel's smog check inspector license and for acts constituting dishonesty, fraud or deceit, pursuant to Business Code section 9889.3, subdivision (b) and Health Code section 44072.2, subdivision (d) (Second and Twenty-Fifth Cause for Discipline), and Health Code section 44072.2, subdivision (d) (Twenty-Fifth Cause of Action) and for committing acts with the intent to benefit himself or injure another in his illegal smog check of the 2002 Ford and 1997 Acura, and for issuing a certificate of compliance for the 1997 Acura without performing a bona fide inspection of the emission control devices and systems as set forth in the factual findings.

6. Cause exists to suspend or revoke C. Korel's smog check inspector license (Twelfth and Twenty-Third Causes for Discipline) pursuant to Health Code section 44072.2, subdivision (a)) (failure to comply with Health Code section 44012) when he failed to perform emission control tests of the 2002 Ford and 1997 Acura in accordance with the procedures prescribed by the Bureau as set forth in factual findings.

² The Second Cause of Discipline refers to Health Code section 44072.1, which applies to applicants, not licensees, but contains the identical provisions as section 44072.2, which is referenced in the Twenty-Fifth Cause for Discipline. This discrepancy in the Second Cause of Discipline was determined to be a clerical error because, other than the cars referenced, the Second and Twenty-Fifth Causes of Discipline are identical.

7. Cause also exists to suspend or revoke C. Korel's smog check inspector license (Thirteenth Cause for Discipline) pursuant to Regulations, section 3340.41, subdivision (c) (entering false information into the EIS by entering data for a vehicle other than the one being tested) in his illegal smog test of the 2002 Ford as set forth in the factual findings. Cause exists to suspend or revoke C. Korel's smog check inspector license (Thirteenth and Twenty-Fourth Causes for Discipline) pursuant to Health Code section 44072, subdivision (c) (violation of any of the regulations adopted by the director) and Regulations 3340.30, subdivision (a) (failure to inspect the 2002 Ford and 1997 Acura according to Health Code sections 44012 and 44035, and Regulations, 3340.42); subdivision 3340.42 (failure to conduct the required smog tests in accordance with the Bureau's specifications) as set forth in factual findings.

Cause to suspend or revoke the smog check station license and ARD registration of the Los Compadres respondents

8. Cause exists to suspend or revoke the smog check station license and ARD registration of the Los Compadres respondents, for A. Korel's conviction of a crime substantially related to the qualifications, functions, or duties of a licensee of the Bureau (Fifth Cause for Discipline), pursuant to Business Code sections 490 and 493 and for acts constituting dishonesty, fraud or deceit (Sixth Cause for Discipline), pursuant to Business Code section 9889.3, subdivision (b) and Health Code section 44072.1, subdivision (d) as set forth in factual finding 27.

9. Cause exists to suspend or revoke the smog check station license and ARD registration of the Los Compadres respondents pursuant to Business Code section 9884.7, subdivisions (a)(1) and (a)(4) and Health Code section 44072.2, subdivision (d) (Seventh, Eighth, Eleventh, Eighteenth, Nineteenth and Twenty-Second Causes for Discipline), for authorizing untrue or misleading statements and the dishonesty, fraud and deceit of C. Korel, who issued VIR's and Certificates of Compliance for his illegal smog checks of the the 2002 Ford and the 1997 Acura vehicles as set forth in factual findings 8-25. Under the doctrine of respondeat superior, the Los Compadres respondents and A. Korel, are responsible for the acts of their employees and have a non-delegable duty for their employees' conduct when they act under their license or through their business. (*See Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 149 Cal.App.3d 793, 799 (citing *Ford Dealers Ass'n v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360-361); *Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.3d 140,144-145.) Further A. Korel's conviction establishes his knowledge of illegal smog checks, and his heightened duty to avoid illegal conduct within his control. The fact that Gomacho-Gomez was also convicted of illegal smog check of the 2002 Ford, as set forth in factual finding 28, demonstrates that employee misconduct was not limited to C. Korel, and that the Los Compadres respondents were unwilling or incapable of implementing legal smog check practices.

10. Cause exists to suspend or revoke the smog check station license and ARD registration of the Los Compadres respondents pursuant to Health Code section 44072.2, subdivision (a) (Ninth and Twentieth Causes for Discipline for Violations of the Motor

Vehicle Inspection Program) for violation of Health Code section 44012, subdivision (a) (emission control tests to be in accordance with proper procedures) and Health Code section 44015, subdivision (b) (issuance of certificates of compliance without proper testing and inspection of the vehicle in compliance with Health Code section 44012). As set forth in legal conclusion 9 and the factual findings, Los Compadres respondents' are subject to discipline based upon their failure to exercise their nondelegable duty to prevent C. Korel and other employees from conducting illegal smog tests and participating in the issuance of certificates of compliance of the 2002 Ford and the 1997 Acura.

11. Cause exists to suspend or revoke the smog check station license and automotive repair dealer registration of the Los Compadres respondents for violation of Health Code section 44072.2, subdivision (a) (Tenth and Twenty-First Causes for Discipline), for violation of regulations adopted by the Director, more specifically, Regulation section 3340.35, subdivision (c) (issuance of certificates of compliance even though the vehicles had not been inspected in accordance with Regulation section 3340.42); Regulation section 3340.41, subdivision (c) (entering false information into the EIS or emission control system identification data for a vehicle other than the one being tested); and Regulation section 3340.42, (failure to ensure smog tests were conducted in accordance with the Bureau's specifications) for the illegal smog checks of the 2002 Ford and 1997 Acura by C. Korel and other employees, as set forth in legal conclusion 9 and the factual findings.

12. In sum, based on the evidence, allowing the Los Compadres respondents to continue to engage in licensed smog check activity would endanger the public health, safety and welfare. The Los Compadres respondents, based upon the conviction of A. Korel, and the conduct of their employees, have demonstrated their disregard for the smog check laws. The public will only be adequately protected by revoking all licenses and the ARD associated with Los Compadres

Reasonable Costs of Investigation and Prosecution

13. Under Business and Professions Code section 125.3, the Bureau may request the administrative law judge to direct licensees found to have committed a violation or violations of the licensing act in question to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. An estimate may be used when the actual costs are not available. Respondents claim that the Bureau's investigative costs (exhibit 9) are insufficiently described to support reimbursement under Regulation section 1042 because the investigative costs do not specify the individual or the activity, but the total costs incurred by classification of investigator. At a minimum, absent confidentiality concerns, the individual and the activity should be at least generally described similar to the Attorney General's billing record, but no specificity was provided. As such, respondents' objection to the investigative fees is sustained.

14. The Bureau is entitled to recover its reasonable costs of prosecution of this matter, including fees of the Attorney General, under the provisions of Business and Professions Code section 125.3 and Regulation section 1042. However, in light of the

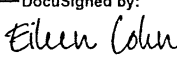
holding in *Zuckerman v. State Board of Chiropractors* (2002) 29 Cal.4th 32, 45, which requires the licensing agency to take into account respondents' ability to pay costs which in this action includes a consideration of the severity of the below order which strips respondents of their licenses and registration, Gomez-Camacho's agreement to pay a portion of the combined costs of investigation and prosecution, the inadequacy of the disclosure of investigative costs, respondents will only be required to pay one-half the prosecution costs, as set forth in factual finding 30. A. Korel and C. Korel shall each be required to pay \$4,207.50.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Smog Check Test Only Station License Number TC 274203 and Automotive Repair Dealer Registration Number ARD 274203 issued to Alexander Shamoun Korel doing business as Los Compadres Smog Check, together with all licensing rights appurtenant thereto, and any additional smog check licenses issued to Alexander Shamoun Korel, are revoked.
2. Smog Check Inspector License Number EO 636046 issued to Christopher Korel, together with all licensing rights appurtenant thereto, and any additional smog check licenses issued to Christopher Korel, are revoked.
3. Alexander Shamoun Korel shall be obligated to pay to the Bureau \$4,207.50, at such time and in such manner as the Bureau, in its discretion, may direct.
4. Christopher Korel shall be obligated to pay to the Bureau \$4,207.50, at such time and in such manner as the Bureau, in its discretion, may direct.

DATED: September 15, 2016

DocuSigned by:

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EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant
7

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

11 In the Matter of the Second Amended Accusation
Against:

Case No. 79/15-108

OAH No. 2015070349

12 **LOS COMPADRES SMOG CHECK**

17410 Foothill Blvd. Unit D

13 Fontana, CA 92335

14 **ALEXANDER SHAMOUN KOREL - OWNER**

Mailing Address:

25412 Clovelly Court

15 Moreno Valley, CA 92553

**SECOND AMENDED
ACCUSATION**

16 Automotive Repair Dealer Registration No.

ARD 274203

17 Smog Check Station License No.

18 TC 274203

SMOG CHECK

19 and

20 **CHRISTOPHER KOREL**

25412 Clovelly Ct.

21 Moreno Valley, CA 92553

22 Smog Check Inspector License No.

EO 636046

23 and

24 **WILLIAM ALLAN GOMEZ-CAMACHO**

4448 Blue Ridge Dr.

25 Riverside, CA 92505

26 Smog Check Inspector License No.

27 EO 636771

28 Respondents.

1 Complainant alleges:

2 PARTIES

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

6 **Automotive Repair Dealer Registration**

7 2. On or about September 9, 2013, the Bureau of Automotive Repair issued Automotive
8 Repair Dealer Registration Number ARD 274203 to Los Compadres Smog Check; Alexander
9 Shamoun Korel - Owner (Respondent Los Compadres; Alexander Korel). The Automotive
10 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought
11 herein and will expire on September 30, 2016, unless renewed.

12 **Smog Check Station**

13 3. On or about September 24, 2013, the Bureau of Automotive Repair issued Smog
14 Check Station License Number TC 274203 to Respondent Los Compadres; Alexander Korel.
15 The Smog Check Station License was in full force and effect at all times relevant to the charges
16 brought herein and will expire on September 30, 2016, unless renewed.

17 **Smog Check Inspector License**

18 4. On or about September 19, 2013, the Bureau of Automotive Repair issued Smog
19 Check Inspector License Number EO 636046 to Christopher Joseph Korel (Respondent
20 Christopher Korel). The Smog Check Inspector License was in full force and effect at all times
21 relevant to the charges brought herein and will expire on January 31, 2018, unless renewed.

22 **Smog Check Inspector License**

23 5. On or about April 17, 2014, the Bureau of Automotive Repair issued Smog Check
24 Inspector License Number EO 636771 to William Allan Gomez-Camacho (Respondent Gomez-
25 Camacho). The Smog Check Inspector License, which was in full force and effect at all times
26 relevant to the charges brought herein, expired on January 31, 2016, and has not been renewed.

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1 12. Code section 493 states:

2 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or revoke a
4 license or otherwise take disciplinary action against a person who holds a license, upon the
5 ground that the applicant or the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in
9 order to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question." As used in this section, 'license'
11 includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

12 13. Section 9884.7 of the Code states, in pertinent part:

13 "(a) The director, where the automotive repair dealer cannot show there was a bona
14 fide error, may deny, suspend, revoke, or place on probation the registration of an
15 automotive repair dealer for any of the following acts or omissions related to the conduct of
16 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.

17 (1) Making or authorizing in any manner or by any means whatever any statement
18 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.

19 ...

20 (4) Any other conduct that constitutes fraud.

21 ...

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

23 "(b) Except as provided for in subdivision (c), if an automotive repair dealer operates
24 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
25 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
26 his or her other places of business.

27 "(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
28 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."

1 14. Section 9884.8 of the Code states:

2 "All work done by an automotive repair dealer, including all warranty work, shall be
3 recorded on an invoice and shall describe all service work done and parts supplied. Service work
4 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
5 prices for service work and for parts, not including sales tax, and shall state separately the sales
6 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice
7 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
8 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
9 statement indicating whether any crash parts are original equipment manufacturer crash parts or
10 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
11 given to the customer and one copy shall be retained by the automotive repair dealer."

12 15. Section 9889.3 of the Code states, in pertinent part:

13 "The director may suspend, revoke, or take other disciplinary action against a license as
14 provided in this article [Article 7 (commencing with section 9889.1) of Chapter 20.3 of Division
15 3 of the Business and Professions Code] if the licensee or any partner, officer, or director thereof:

16 ...

17 "(b) Is convicted of any crime substantially related to the qualifications, functions and
18 duties of the licenseholder in question.

19 ...

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

21 16. Business and Professions Code section 22, subdivision (a), states:

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

26 17. Business and Professions Code section 477, subdivision (b), states, in pertinent part,
27 that a "license" includes "registration" and "certificate."
28

1 18. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

6

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

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

10 19. Health and Safety Code section 44072.10 states, in pertinent part:

11

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

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

16 20. Health and Safety Code section 44072.8 states that when a license has been revoked
17 or suspended following a hearing under this article, any additional license issued under this
18 chapter in the name of the licensee may be likewise revoked or suspended by the director.

19 21. California Code of Regulations, title 16, section 3340.1 states, in pertinent:

20

21 "Clean piping," for the purposes of Health and Safety Code section
22 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of
the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of
23 compliance for the test vehicle . . .

24 COST RECOVERY

25 22. Business and Professions Code section 125.3 provides, in pertinent part, that a Board
26 may request the administrative law judge to direct a licensee found to have committed a
27 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
28 investigation and enforcement of the case.

UNDERCOVER OPERATION #1: APRIL 22, 2014

23. On April 4, 2014, the Bureau conducted an undercover vehicle operation at Los Compadres Smog Check. The Bureau's vehicle, a 2002 Ford was documented by a representative from one of the Bureau's Forensic Documentation Laboratories. This Bureau representative (BAR lab rep) determined the required emissions controls for the vehicle, and removed the 2002 Ford's existing catalytic converter and "H" pipe. The BAR lab rep then installed an illegal, "off-road" "X" pipe that had no catalytic converters. The BAR lab rep also removed the 2002 Ford's existing air filter housing and inlet tube, and replaced them with a non approved cold air inlet system that did not have an Executive Order (EO) sticker and is not a legal intake system in California. The BAR lab rep also installed an illegal open breather, modifying the 2002 Ford's positive crankcase ventilation (PCV) system. The BAR lab rep also installed a modification to prevent the 2002 Ford's MIL from illuminating with the missing catalytic converters. The components installed by the BAR lab rep caused the 2002 Ford, in its mechanical condition, to fail the smog test for Gross Polluter tailpipe emissions, and missing or modified components.

24. On April 9, 2014, the BAR lab rep released custody of the 2002 Ford in the same mechanical condition to a Bureau Field Representative (BAR field rep) at an undisclosed location in the city of Riverside, California.

25. On April 22, 2014, a Bureau undercover operator (undercover operator) was instructed to drive the 2002 Ford, which was still in the same mechanical condition, to a prearranged location in the city of Fontana, California. The undercover operator was then instructed to drive the vehicle to Los Compadres Smog Check (Respondent Los Compadres; Alexander Korel' facility), located at 17410 Foothill Blvd. Unit D, Fontana, CA, and request a Smog Check inspection. The undercover operator drove to Respondent's facility, parked in their parking lot and walked towards the facility, at which point he was met by an individual later identified as Respondent Christopher Korel. The undercover operator also saw two other individuals at the facility at that time; one of them was later identified as Respondent Gomez-Camacho, the other was an unidentified male.

1 26. Respondent Christopher Korel informed the undercover operator that there was one
2 vehicle ahead of him and for him to take a seat. Shortly thereafter, Respondent Christopher Korel
3 approached the undercover operator and asked for the 2002 Ford's keys. Respondent Christopher
4 Korel then drove the 2002 Ford into the smog-testing bay of Respondent Los Compadres;
5 Alexander Korel's facility. At this point, Respondent Gomez-Camacho asked for and received
6 the undercover operator's DMV Renewal Notice. The vehicle was in the smog test bay when the
7 undercover operator then approached Respondent Christopher Korel and informed him that he
8 had been referred to Respondent Los Compadres; Alexander Korel's facility by an unnamed third
9 party who had also told the undercover operator that Respondent Los Compadres; Alexander
10 Korel Smog Check would pass his vehicle for \$150.00. Respondent Christopher Korel then
11 asked the undercover operator for his personal identification. The undercover operator provided
12 his identification, at which point Respondent Korel stated, "we usually charge \$200.00 to
13 \$250.00 to make it pass". The undercover operator responded by asking Respondent Christopher
14 Korel if it could be done for \$200.00, to which Respondent Christopher Korel replied, "Yes".
15 The undercover operator then agreed to the \$200.00 amount. Thereafter, Respondent Christopher
16 Korel stated that it would take about 15 minutes and for the undercover operator to sit and wait.

17 27. The undercover operator sat in a chair and positioned himself near the front office and
18 smog bay testing area so that he had an unobstructed view of the 2002 Ford being tested. The
19 undercover operator did not sign any documents, nor did he receive any paperwork prior to the
20 smog test being performed.

21 28. Respondent Christopher Korel drove the 2002 Ford onto the dynamometer and exited
22 the vehicle. Respondent Christopher Korel then entered information into the Emissions
23 Inspection System (EIS) machine. Shortly thereafter, he re-entered the 2002 Ford and raised the
24 engine revolutions per minute (RPMs). As this was occurring, Respondent Gomez-Camacho
25 removed the EIS machine exhaust sample probe, which was located on the exterior portion of the
26 facility's building, from the wall and inserted it into the 2002 Ford's tailpipe. Respondent Gomez-
27 Camacho then handed the EIS machine's On-Board Diagnostics (OBDII) cable to Respondent
28 Christopher Korel, who ran the vehicle on the dynamometer, while giving instructions to

1 Respondent Gomez-Camacho and the other unidentified male who was assisting, by saying "hold
2 it right there".

3 29. Upon the completion of the emissions portion of the test, the unidentified male
4 removed the EIS machine exhaust sample probe from the 2002 Ford's exhaust tailpipe and
5 returned it to its previous location on the exterior portion of the building. Respondent
6 Christopher Korel then handed the OBDII cable to Respondent Gomez-Camacho, exited the
7 vehicle, and continued the smog check inspection process by inputting information into the EIS
8 machine. At this point, the unidentified male backed the 2002 Ford out of the smog check-testing
9 bay and parked it in the driveway near the building.

10 30. Respondent Gomez-Camacho removed the Vehicle Inspection Report (VIR) from the
11 EIS machine's printer and walked over to the desk located within the front office area. The
12 undercover operator then stood up walked over to the counter of the front office. While standing
13 there, the undercover operator observed Respondent Gomez-Camacho sign the VIR. Respondent
14 Gomez-Camacho then handed the undercover operator two (2) documents; an estimate and an
15 invoice, and asked the undercover operator to sign both documents, which he did. The
16 undercover operator then asked if the amount was \$200.00, to which Respondent Gomez-
17 Camacho responded, "Yes". After the undercover operator paid Respondent Gomez-Camacho
18 the \$200.00, Respondent Gomez-Camacho provided him with an unsigned estimate and an
19 unsigned invoice with a business card attached, the VIR that the undercover operator had
20 previously watched Respondent Gomez-Camacho sign; the DMV Renewal Notice the undercover
21 operator had previously given him. Respondent Gomez-Camacho then commented to the
22 undercover operator that the 2002 Ford had no "cats". The undercover operator then asked
23 Respondent Gomez-Camacho if he could bring another vehicle to them to be tested, and asked if
24 the price would be the same. Respondent Gomez-Camacho said that he was pretty sure he could
25 do so, but that he would need to look at the vehicle first. Just prior to leaving, the undercover
26 operator also asked Respondent Christopher Korel about returning to the facility with a "hot rod"
27 vehicle to be tested. Respondent Christopher Korel said "no problem, but I have to look at it first
28 to give you a price". At such time, Respondent Christopher Korel also mentioned to the

1 undercover operator that the 2002 Ford did not have any catalytic converters. The undercover
2 operator then left the Respondent's facility to meet with the Bureau field representative assigned
3 to the case.

4 31. A Bureau field representative subsequently downloaded the BAR 97 Test Detail from
5 the Bureau's Vehicle Information Database (VID) and confirmed that Respondent Los
6 Compadres; Alexander Korel had fraudulently issued Certificate of Compliance #YF193619 with
7 regard to the 2002 Ford.

8 32. On April 29, 2014, a Bureau representative performed a smog check inspection on the
9 2002 Ford, which was still in the same mechanical condition. The Bureau representative noted
10 that the 2002 Ford had an aftermarket cold air intake system, an open PCV breather element, no
11 catalytic converters, and that an aftermarket "X" pipe had been installed without catalytic
12 converters. The 2002 Ford failed the inspection due to the following reasons: "Modified PCV,
13 Missing Catalytic Converters and Modified Other Emission Related Components". In addition,
14 the vehicle failed the tailpipe emissions portion of the Acceleration Simulation Mode (ASM) test
15 due to high Hydrocarbons (HC), Carbon Monoxide (CO) and Oxides of Nitrogen (NO) at both 15
16 mph and 25 mph.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Conviction of a Substantially Related Crime)**

19 33. Respondent Christopher Korel's smog check inspector license is subject to discipline
20 pursuant to Code sections 490 and 493, in that Respondent Christopher Korel was convicted of a
21 crime substantially related to the qualifications, functions or duties of a smog check inspector.
22 On or about January 11, 2016, Respondent Christopher Korel was convicted of one felony count
23 of violating Penal Code section 502, subdivision (c), [unauthorized computer access and fraud] in
24 the criminal proceeding entitled The People of the State of California vs. Christopher Joseph
25 Korel (Super. Ct. San Bernardino County, 2015, Case No. FSB1405387). In regard to the
26 circumstances surrounding the conviction, Complainant refers to, and by this reference
27 incorporates, the allegations set forth above in paragraphs 23 through 32, and below in paragraphs
28 50 through 59, as though set forth fully.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Conviction of a Substantially Related Crime)

3 37. Respondent Los Compadres; Alexander Korel's registration and station license are
4 subject to discipline pursuant to Code sections 490 and 493, in that Respondent Alexander Korel
5 was convicted of a crime substantially related to the qualifications, functions or duties of a ARD
6 registration owner and station license owner. On or about May 17, 2016, Respondent Alexander
7 Korel was convicted of one misdemeanor count of violating Vehicle Code section 4463,
8 subdivision (a) (1) [forging, counterfeiting, or falsifying a certificate of ownership, registration
9 card, certificate, license, license plate device], in the criminal proceeding entitled The People of
10 the State of California vs. Alexander Shamoun Korel (Super. Ct. Riverside County, 2016, Case
11 No. RIF1601459). The circumstances surrounding the conviction are that on or about April 30,
12 2014, Respondent Alexander Korel committed acts which ultimately resulted in the above-
13 referenced conviction.

14 SIXTH CAUSE FOR DISCIPLINE

15 (Acts Constituting Dishonesty, Fraud or Deceit)

16 38. Respondent Alexander Korel's registration and station license are subject to
17 discipline pursuant to Code section 9889.3, subdivision (b), and Health and Safety Code section
18 44072.1, subdivision (d), in that Respondent Alexander Korel committed acts involving
19 dishonesty, fraud or deceit, with the intent to substantially benefit himself, or substantially injure
20 another. Complainant refers to, and by this reference incorporates, the allegations set forth above
21 in paragraph 37, as though set forth fully.

22 SEVENTH CAUSE FOR DISCIPLINE

23 (Untrue or Misleading Statements)

24 39. Respondent Los Compadres; Alexander Korel's registration is subject to disciplinary
25 action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that
26 Respondent Los Compadres; Alexander Korel made or authorized statements which he knew or
27 in the exercise of reasonable care should have known to be untrue or misleading, as follows:
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a. Respondent Los Compadres; Alexander Korel allowed its employee, Respondent Christopher Korel, to certify under penalty of perjury on the VIR that he performed the smog inspection on the Bureau's 2002 Ford in accordance with all Bureau requirements and that the vehicle had passed the inspection and was in compliance with applicable laws and regulations. In fact, Respondent Christopher Korel used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health and Safety Code section 44012.

EIGHTH CAUSE FOR DISCIPLINE

(Fraud)

40. Respondent Los Compadres; Alexander Korel's registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Respondent Los Compadres; Alexander Korel committed an act that constitutes fraud, as follows: Respondent Los Compadres; Alexander Korel allowed its employee, i.e. Respondent Christopher Korel to issue an electronic smog certificate of compliance for the Bureau's 2002 Ford without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

41. Respondent Los Compadres; Alexander Korel's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent Los Compadres; Alexander Korel failed to comply with the following sections of that Code:

a. Section 44012: Respondent Los Compadres; Alexander Korel failed to ensure that the emission control tests were performed on the Bureau's 2002 Ford in accordance with procedures prescribed by the department.

b. Section 44015: Respondent Los Compadres; Alexander Korel allowed its employee, i.e., Respondent Christopher Korel to issue an electronic smog certificate of compliance for the

1 Bureau's 2002 Ford without ensuring that the vehicle was properly tested and inspected to
2 determine if it was in compliance with Health and Safety. Code section 44012.

3 **TENTH CAUSE FOR DISCIPLINE**

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

6 42. Respondent Los Compadres; Alexander Korel's smog check station license is subject
7 to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
8 Respondent Los Compadres; Alexander Korel failed to comply with the provisions of California
9 Code of Regulations, title 16, as follows:

10 a. **Section 3340.35, subdivision (c):** Respondent Los Compadres; Alexander Korel
11 allowed its employee Respondent Christopher Korel to issue an electronic smog certificate of
12 compliance for the Bureau's 2002 Ford even though the vehicle had not been inspected in
13 accordance with Health and Safety Code section 3340.42.

14 b. **Section 3340.41, subdivision (c):** Respondent Los Compadres; Alexander Korel
15 allowed its employee, i.e., Respondent Christopher Korel to enter false information into the EIS
16 by entering vehicle identification information or emission control system identification data for a
17 vehicle other than the one being tested.

18 c. **Section 3340.42:** Respondent Los Compadres; Alexander Korel failed to ensure that
19 the required smog tests were conducted on the Bureau's 2002 Ford in accordance with the
20 Bureau's specifications.

21 **ELEVENTH CAUSE FOR DISCIPLINE**

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

23 43. Respondent Los Compadres; Alexander Korel's smog check station license is subject
24 to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that
25 Respondent Los Compadres; Alexander Korel committed a dishonest, fraudulent or deceitful act
26 whereby another is injured by allowing its employee Respondent Christopher Korel to issue an
27 electronic smog certificate of compliance for the Bureau's 2002 Ford without ensuring that a
28 bona fide inspection was performed of the emission control devices and systems on the vehicle,

1 thereby depriving the People of the State of California of the protection afforded by the Motor
2 Vehicle Inspection Program.

3 **TWELFTH CAUSE FOR DISCIPLINE**

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

5 44. Respondent Christopher Korel's technician license is subject to disciplinary action
6 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent
7 Christopher Korel failed to comply with section 44012 of that Code in a material respect, as
8 follows: Respondent Christopher Korel failed to perform the emission control tests on the
9 Bureau's 2002 Ford in accordance with procedures prescribed by the department.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

13 45. Respondent Christopher Korel's technician license is subject to disciplinary action
14 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent
15 Christopher Korel failed to comply with provisions of California Code of Regulations, title 16, as
16 follows:

17 a. **Section 3340.30, subdivision (a)**: Respondent Christopher Korel failed to inspect
18 and test the Bureau's 2002 Ford in accordance with Health and Safety Code sections 44012 and
19 44035, and California Code of Regulations, title 16, section 3340.42.

20 b. **Section 3340.41, subdivision (c)**: Respondent Christopher Korel entered false
21 information into the EIS by entering vehicle identification information or emission control system
22 identification data for a vehicle other than the one being tested.

23 c. **Section 3340.42**: Respondent Christopher Korel failed to conduct the required smog
24 tests on the Bureau's 2002 Ford in accordance with the Bureau's specifications.

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1 FOURTEENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 46. Respondent Christopher Korel's technician license is subject to disciplinary action
4 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent
5 Christopher Korel committed a dishonest, fraudulent or deceitful act whereby another is injured
6 by issuing an electronic smog certificate of compliance for the Bureau's 2002 Ford without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 FIFTEENTH CAUSE FOR DISCIPLINE

11 (Violations of the Motor Vehicle Inspection Program)

12 47. Respondent Gomez-Camacho's technician license is subject to disciplinary action
13 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent Gomez-
14 Camacho failed to comply with section 44012 of that Code in a material respect, as follows:
15 Respondent Gomez-Camacho failed to perform the emission control tests on the Bureau's 2002
16 Ford in accordance with procedures prescribed by the department.

17 SIXTEENTH CAUSE FOR DISCIPLINE

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

20 48. Respondent Gomez-Camacho's technician license is subject to disciplinary action
21 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent Gomez-
22 Camacho failed to comply with provisions of California Code of Regulations, title 16, as follows:

23 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the Bureau's
24 2002 Ford in accordance with Health and Safety Code sections 44012 and 44035, and California
25 Code of Regulations, title 16, section 3340.42.

26 b. Section 3340.42: Respondent Gomez-Camacho failed to conduct the required smog
27 tests on the Bureau's 2002 Ford in accordance with the Bureau's specifications.

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1 SEVENTEENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 49. Respondent Gomez-Camacho's technician license is subject to disciplinary action
4 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent Gomez-
5 Camacho committed a dishonest, fraudulent or deceitful act whereby another is injured by
6 actively participating in the issuance of an electronic smog certificate of compliance for the
7 Bureau's 2002 Ford without performing a bona fide inspection of the emission control devices
8 and systems on the vehicle, thereby depriving the People of the State of California of the
9 protection afforded by the Motor Vehicle Inspection Program.

10 UNDERCOVER OPERATION #2: APRIL 30, 2014

11 50. The Bureau's vehicle, a 1997 Acura was documented by a representative from one of
12 the Bureau's Forensic Documentation Laboratories. On April 29, 2014, a Bureau representative
13 inspected the 1997 Acura and found a modified PVC system, missing catalytic converter, missing
14 rear oxygen sensor, modified spark control system (non approved external ignition coil), modified
15 fuel injection system (adjustable fuel pressure regulator and non-approved fuel injectors),
16 adjustable camshaft sprockets and non-approved exhaust system (headers) and also failing
17 functional checks of the malfunction indicator light (light on at all times) and the ignition timing
18 for out of manufacturer's specification. The 1997 Acura also exceeded the gross polluter limits
19 for exhaust emissions for oxides of nitrogen (NOX) and exceeded the fail limits for carbon
20 monoxide (CO) and hydrocarbons (HC).

21 51. On April 30, 2014, another Bureau representative independently inspected the 1997
22 Acura and confirmed it had a modified PVC system, missing catalytic converter, missing rear
23 oxygen sensor, modified spark control system (non-approved external ignition coil), modified
24 fuel injection system (adjustable fuel pressure regulator and non-approved fuel injectors), non-
25 approved exhaust system (headers), and the malfunction indicator light (MIL) was on at all times.
26 Later that same day, a Bureau undercover operator (undercover operator) drove the 1997 Acura
27 to Respondent Los Compadres; Alexander Korel' facility to request a smog inspection on the
28 vehicle. Upon arrival, the undercover operator told Respondent Christopher Korel that he had

1 returned with the other car they had previously discussed. Respondent Christopher Korel then
2 took the keys to the 1997 Acura and asked the undercover operator to wait. Respondent
3 Christopher Korel then walked out to the 1997 Acura and drove it into the Smog Check testing
4 bay.

5 52. The undercover operator then approached the 1997 Acura and asked Respondent
6 Christopher Korel for the price of the Smog Check inspection. Respondent Christopher Korel
7 responded by asking "What did I charge you last time?" To which the Bureau's undercover
8 operator responded "\$200.00 "

9 Respondent Christopher Korel then asked the undercover operator for his DMV paperwork
10 (which was provided) and stated "let me check the history on the vehicle" and walked over to a
11 computer on a nearby desk. Respondent Christopher Korel then returned and stated that the price
12 would be the same. The undercover operator asked "\$200.00?", to which Respondent
13 Christopher Korel replied, "Yes".

14 53. The undercover operator then positioned himself near the smog bay testing area so
15 that he had an unobstructed view of the vehicle being tested. At this point, the undercover
16 operator had not received any documents of any type from Respondent Christopher Korel.

17 54. Respondent Christopher Korel then entered information into the Smog Check EIS
18 machine. Shortly thereafter, Respondent Christopher Korel entered the 1997 Acura and
19 positioned it on the dynamometer. Respondent Gomez-Camacho then removed the EIS machine's
20 exhaust sample probe from the wall of the Respondent-facility's building and inserted it into the
21 1997 Acura's exhaust tailpipe.

22 55. Respondent Gomez-Camacho then retrieved the OBDII cable from the EIS machine
23 and handed it to Respondent Christopher Korel. Respondent Gomez-Camacho then walked to the
24 rear of the EIS machine while Respondent Christopher Korel remained seated in the 1997 Acura
25 while it was positioned on the dynamometer with the engine running. Respondent Christopher
26 Korel then motioned with his left hand to Respondent Gomez-Camacho, who then proceeded to
27 crouch down behind the EIS machine. Respondent Gomez-Camacho then gestured to Respondent
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1 Christopher Korel by nodding his head, and stood up. Respondent Christopher Korel thereafter
2 proceeded with the Smog Check inspection by handing the
3 OBDII cable to Respondent Gomez-Camacho. At this point, another unidentified Hispanic male
4 arrived and removed the emission probe from the 1997 Acura's tailpipe and hung it back on a
5 hook on the building wall.

6 56. Respondent Gomez-Camacho then entered information into the EIS machine, while
7 Respondent Christopher Korel backed the 1997 Acura out of the smog bay and parked it.
8 Respondent Christopher Korel then completed the paperwork and handed the undercover operator
9 two (2) documents - an estimate and an invoice - and had the undercover operator sign them and
10 give them back to (Respondent Christopher Korel): At such time, Respondent Christopher Korel
11 asked the undercover operator if he worked for the Bureau, to which the undercover operator
12 replied "No". The undercover operator then confirmed that the price for the services rendered
13 was \$200.00 and handed Respondent Christopher Korel that amount in cash. Respondent
14 Christopher Korel then gave the undercover operator an unsigned estimate and invoice, which
15 included a business card attached, a VIR, and the DMV Renewal Notice that the undercover
16 operator had previously provided.

17 57. Immediately thereafter, the undercover operator drove the 1997 Acura to a designated
18 location and met with another Bureau representative. The undercover operator provided the
19 Bureau representative with the documents he had received from Respondent Christopher Korel.
20 The representative then confirmed that the Bureau's Acura still had a modified PVC system,
21 missing catalytic converter, missing rear oxygen sensor, modified spark control system (non-
22 approved external ignition coil), modified fuel injection system (adjustable fuel pressure regulator
23 and non-approved fuel injectors), non-approved exhaust system (headers), and the check engine
24 light was still on.

25 58. A Bureau field representative subsequently downloaded the BAR 97 Test Detail from
26 the Bureau's Vehicle Information Database (VID) and confirmed that Respondent Los
27 Compadres; Alexander Korel had fraudulently issued Certificate of Compliance #YF297688C
28 with regard to the 1997 Acura.

59. On April 30, 2014, a Bureau representative performed a California Smog Check Vehicle Inspection, BAR-97 ASM Test on the 1997 Acura, which failed the inspection due to a modified PVC system, missing catalytic converter, missing rear oxygen sensor, modified spark control system (non-approved external ignition coil), modified fuel injection system (adjustable fuel pressure regulator and non-approved fuel injectors), non-approved exhaust system (headers), and because the check engine light was still on.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

60. Respondent Los Compadres; Alexander Korel's registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that Respondent Los Compadres; Alexander Korel made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Los Compadres; Alexander Korel allowed its employee, Respondent Christopher Korel, to certify under penalty of perjury on the VIR that he performed the smog inspection on the Bureau's 1997 Acura in accordance with all Bureau requirements and that the vehicle had passed the inspection and was in compliance with applicable laws and regulations. In fact, Respondent Christopher Korel used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health and Safety Code section 44012.

NINETEENTH CAUSE FOR DISCIPLINE

(Fraud)

61. Respondent Los Compadres; Alexander Korel's registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Respondent Los Compadres; Alexander Korel committed an act that constitutes fraud, as follows: Respondent Los Compadres; Alexander Korel allowed its employee, i.e. Respondent Christopher Korel to issue an electronic smog certificate of compliance for the Bureau's 1997 Acura without ensuring that a bona fide inspection was performed of the emission control devices and systems

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

3 **TWENTIETH CAUSE FOR DISCIPLINE**

4 (Violations of the Motor Vehicle Inspection Program)

5 62. Respondent Los Compadres; Alexander Korel's smog check station license is subject
6 to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
7 Respondent Los Compadres; Alexander Korel failed to comply with the following sections of that
8 Code:

9 a. **Section 44012:** Respondent Los Compadres; Alexander Korel failed to ensure that
10 the emission control tests were performed on the Bureau's 1997 Acura in accordance with
11 procedures prescribed by the department.

12 b. **Section 44015:** Respondent Los Compadres; Alexander Korel allowed its employee,
13 i.e., Respondent Christopher Korel to issue an electronic smog certificate of compliance for the
14 Bureau's 1997 Acura without ensuring that the vehicle was properly tested and inspected to
15 determine if it was in compliance with Health and Safety Code section 44012.

16 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

19 63. Respondent Los Compadres; Alexander Korel's smog check station license is subject
20 to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
21 Respondent Los Compadres; Alexander Korel failed to comply with the provisions of California
22 Code of Regulations, title 16, as follows:

23 a. **Section 3340.35, subdivision (c):** Respondent Los Compadres; Alexander Korel
24 allowed its employee Respondent Christopher Korel to issue an electronic smog certificate of
25 compliance for the Bureau's 1997 Acura even though the vehicle had not been inspected in
26 accordance with Health and Safety Code section 3340.42.

27 b. **Section 3340.41, subdivision (c):** Respondent Los Compadres; Alexander Korel
28 allowed its employee, i.e., Respondent Gomez-Camacho to enter false information into the EIS

1 by entering vehicle identification information or emission control system identification data for a
2 vehicle other than the one being tested.

3 c. Section 3340.42: Respondent Los Compadres; Alexander Korel failed to ensure that
4 the required smog tests were conducted on the Bureau's 1997 Acura in accordance with the
5 Bureau's specifications.

6 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

8 64. Respondent Los Compadres; Alexander Korel's smog check station license is subject
9 to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that
10 Respondent Los Compadres; Alexander Korel committed a dishonest, fraudulent or deceitful act
11 whereby another is injured by allowing its employee Respondent Christopher Korel to issue an
12 electronic smog certificate of compliance for the Bureau's 1997 Acura without ensuring that a
13 bona fide inspection was performed of the emission control devices and systems on the vehicle,
14 thereby depriving the People of the State of California of the protection afforded by the Motor
15 Vehicle Inspection Program.

16 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

18 65. Respondent Christopher Korel's technician license is subject to disciplinary action
19 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent
20 Christopher Korel failed to comply with section 44012 of that Code in a material respect, as
21 follows: Respondent Christopher Korel failed to perform the emission control tests on the
22 Bureau's 1997 Acura in accordance with procedures prescribed by the department.

23 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

26 66. Respondent Christopher Korel's technician license is subject to disciplinary action
27 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent
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1 Christopher Korel failed to comply with provisions of California Code of Regulations, title 16, as
2 follows:

3 a. Section 3340.30, subdivision (a): Respondent Christopher Korel failed to inspect
4 and test the Bureau's 1997 Acura in accordance with Health and Safety Code sections 44012 and
5 44035, and California Code of Regulations, title 16, section 3340.42.

6 b. Section 3340.42: Respondent Christopher Korel failed to conduct the required smog
7 tests on the Bureau's 1997 Acura in accordance with the Bureau's specifications.

8 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

10 67. Respondent Christopher Korel's technician license is subject to disciplinary action
11 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent
12 Christopher Korel committed a dishonest, fraudulent or deceitful act whereby another is injured
13 by issuing an electronic smog certificate of compliance for the Bureau's 1997 Acura without
14 performing a bona fide inspection of the emission control devices and systems on the vehicle,
15 thereby depriving the People of the State of California of the protection afforded by the Motor
16 Vehicle Inspection Program.

17 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

19 68. Respondent Gomez-Camacho's technician license is subject to disciplinary action
20 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent Gomez-
21 Camacho failed to comply with section 44012 of that Code in a material respect, as follows:
22 Respondent Gomez-Camacho failed to perform the emission control tests on the Bureau's 1997
23 Acura in accordance with procedures prescribed by the department.

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1 TWENTY-SEVENTH CAUSE FOR DISCIPLINE

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

4 69. Respondent Gomez-Camacho's technician license is subject to disciplinary action
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent Gomez-
6 Camacho failed to comply with provisions of California Code of Regulations, title 16, as follows:

7 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the Bureau's
8 1997 Acura in accordance with Health and Safety Code sections 44012 and 44035, and California
9 Code of Regulations, title 16, section 3340.42.

10 b. Section 3340.41, subdivision (c): Respondent Gomez-Camacho entered false
11 information into the EIS by entering vehicle identification information or emission control system
12 identification data for a vehicle other than the one being tested.

13 c. Section 3340.42: Respondent Gomez-Camacho failed to conduct the required smog
14 tests on the Bureau's 1997 Acura in accordance with the Bureau's specifications.

15 TWENTY-EIGHTH CAUSE FOR DISCIPLINE

16 (Dishonesty, Fraud or Deceit)

17 70. Respondent Gomez-Camacho's technician license is subject to disciplinary action
18 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent Gomez-
19 Camacho committed a dishonest, fraudulent or deceitful act whereby another is injured by
20 actively participating in the issuance of an electronic smog certificate of compliance for the
21 Bureau's 1997 Acura without performing a bona fide inspection of the emission control devices
22 and systems on the vehicle, thereby depriving the People of the State of California of the
23 protection afforded by the Motor Vehicle Inspection Program.

24 OTHER MATTERS

25 71. Pursuant to Code section 9884.7, subdivision (c), the Bureau may refuse to validate,
26 or may invalidate temporarily or permanently, the registrations for all places of business operated
27 in this state by Alexander Shamoun Korel upon a finding that he has, or is, engaged in a course of
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1 repeated and willful violations of the laws and regulations pertaining to an automotive repair
2 dealer.

3 72. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
4 Number TC 274203, issued to Alexander Shamoun Korel, doing business as Los Compadres
5 Smog Check, is revoked or suspended, any additional license issued under this chapter in the
6 name of said licensee may be likewise revoked or suspended by the director.

7 73. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
8 No. EO 636046 issued to Christopher Korel is revoked or suspended, any additional license
9 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
10 the director.

11 74. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
12 No. EO 636771 issued to William Allan Gomez-Camacho is revoked or suspended, any
13 additional license issued under this chapter in the name of said licensee may be likewise revoked
14 or suspended by the director.

15 PRAYER

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

18 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
19 Number ARD 274203 issued to Alexander Shamoun Korel, doing business as Los Compadres
20 Smog Check;

21 2. Revoking, suspending or placing on probation any other automotive repair dealer
22 registration issued in the name Alexander Shamoun Korel;

23 3. Revoking or suspending Smog Check Station License Number TC 274203, issued to
24 Alexander Shamoun Korel, doing business as Los Compadres Smog Check;

25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
26 and Safety Code in the name of Alexander Shamoun Korel;

27 5. Revoking or suspending Smog Check Inspector License No. EO 636046, issued to
28 Christopher Korel;

1 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Christopher Korel;

3 7. Revoking or suspending Smog Check Inspector License No. EO 636771 issued to
4 William Allan Gomez-Camacho;

5 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of William Allan Gomez-Camacho;

7 9. Ordering Alexander Shamoun Korel, Christopher Korel, and William Allan Gomez-
8 Camacho to jointly and severally pay the Bureau of Automotive Repair the reasonable costs of
9 the investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3; and,

11 10. Taking such other and further action as deemed necessary and proper.

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13 DATED: 6/22/16

PATRICK DORAIS by [Signature]
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Doug BALATZ

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