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7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
9 **STATE OF CALIFORNIA**

10  
11 In the Matter of the Accusation Against:

Case No. *79/16-125*

12 **NORMA CASTELLANOS DBA**  
**CASTELLANOS SMOG CHECK**  
13 2469 58<sup>th</sup> Street  
14 Huntington Park, CA 90255

**ACCUSATION**  
*smog check*

15 Mailing Address

2548 Indiana Ave.  
16 South Gate, CA 90280

17 Automotive Repair Dealer Registration  
No. ARD 276280  
18 Smog Check Test Only Station License  
No. TC 276280

19 **and**

20 **RENE JESUS PINEDA-DUENAS**  
3101 Louise St.  
21 Lynwood, CA 90262

22 Smog Check Inspector License No. EO 637252

23 Respondents.

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25 Complainant alleges:

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1 **PARTIES**

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

4 **Automotive Repair Dealer Registration**

5 2. On or about April 17, 2014, the Bureau issued Automotive Repair Dealer Registration  
6 Number ARD 276280 (“registration”) to Norma Castellanos (“Respondent Castellanos”) doing  
7 business as Castellanos Smog Check. The registration was in full force and effect at all times  
8 relevant to the charges brought herein, expired April 30, 2015, and is currently delinquent.

9 **Smog Check Test Only Station License**

10 3. On or about May 15, 2014, the Bureau issued Smog Check Test Only Station License  
11 Number TC 276280 (“station license”) to Respondent Castellanos. The station license was in full  
12 force and effect at all times relevant to the charges brought herein, expired April 30, 2015, and is  
13 currently delinquent.

14 **Smog Check Inspector License**

15 4. On or about August 29, 2014, the Bureau issued Smog Check Inspector License  
16 Number EO 637252 (“inspector license”) to Rene Jesus Pineda-Duenas (“Respondent Pineda-  
17 Duenas”). The inspector license was in full force and effect at all times relevant to the charges  
18 brought herein and will expire on December 31, 2016, unless renewed.

19 **STATUTORY PROVISIONS**

20 5. Section 9884.7 of the Business and Professions Code (“Code”) states, in pertinent  
21 part:

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

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

...

1 (4) Any other conduct which constitutes fraud.

2 ...

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

4 ...

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

9 (c) Notwithstanding subdivision (b), the director may invalidate  
temporarily or permanently, the registration for all places of business operated in this  
10 state by an automotive repair dealer upon a finding that the automotive repair dealer  
has, or is, engaged in a course of repeated and willful violations of this chapter, or  
11 regulations adopted pursuant to it.

12 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
13 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
14 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
15 temporarily or permanently.

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

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

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

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

1           11. Section 44032 of the Health and Safety Code provides, in pertinent part, that  
2 “[q]ualified technicians shall perform tests of emission control devices and systems in accordance  
3 with Section 44012.”

4           12. Section 44059 of the Health and Safety Code provides:  
5           “The willful making of any false statement or entry with regard to a material matter in any  
6 oath, affidavit, certificate of compliance or noncompliance, or application form which is required  
7 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business  
8 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

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

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

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

16                   ...

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

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

21                   ...

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

24           14. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
25 expiration or suspension of a license by operation of law, or by order or decision of the Director  
26 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
27 the Director of jurisdiction to proceed with disciplinary action.

28           15. Section 44072.8 of the Health and Safety Code states:

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

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**REGULATORY PROVISIONS**

1  
2       16. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),  
3 states:

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

7       17. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician  
8 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section  
9 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
10 3340.42 of this article.”

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

16       19. CCR, title 16, section 3340.41, subdivision (c), provides: “No person shall enter into  
17 the emissions inspection system any vehicle identification information or emission control system  
18 identification data for any vehicle other than the one being tested. Nor shall any person  
19 knowingly enter into the emissions inspection system any false information about the vehicle  
20 being tested.”

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

23       21. CCR, title 16, section 3340.45, states:

24           (a) All Smog Check inspections shall be performed in accordance with  
25 requirements and procedures prescribed in the following:

26           (1) Smog Check Inspection Procedures Manual, dated August 2009,  
27 which is hereby incorporated by reference. This manual shall be in effect until  
subparagraph (2) is implemented.

28           (2) Smog Check Manual, dated 2013, which is hereby incorporated by  
reference. This manual shall become effective on or after January 1, 2013.



1 present at the shop, a black Infiniti QX4 (California license plate number 4KYH378) was parked  
 2 on the dynamometer, and the Emissions Inspection System (“EIS”) was turned off via master  
 3 switch. Communication logs between the EIS and the VID indicated the VID received a “begin-  
 4 test call” from Castellanos Smog Check at 1309 hours on March 5, 2015 indicating a test was  
 5 being started by Respondent Pineda-Duenas on a vehicle bearing California license plate number  
 6 4KYH378. Respondent Pineda-Duenas was not present at Castellanos Smog Check at the time  
 7 this test was started and an unauthorized person, using Respondent Pineda-Duenas’s access code,  
 8 initiated the inspection.

9 **Table 1**

Date and Test Times	Vehicle Certified	Certificate Issued	Details
3/5/2015 0948 to 0958 hours	1984 Chevrolet S10 Pickup  License #5U92839	YP295850C	Surveillance video does not show the Chevrolet 5U92839 leaving the building at any time. Bureau representatives visited Castellanos Smog Check at 1310 hours and did not see this vehicle in the building.
3/5/2015 1211 to 1217 hours	2002 Pontiac Grand Am  License #5XBK715	YP338658C	Surveillance video does not show the Pontiac 5XBK715 driving in or out of the building. Bureau representatives visited Castellanos Smog Check at 1310 hours and did not see this vehicle in the building.
3/5/2015 1231 to 1236 hours	1996 Chevrolet C1500 Suburban  License #5BDX976	YP338660C	Surveillance video does not show the Chevrolet 5BDX976 driving in or out of the building. Bureau representatives visited Castellanos Smog Check at 1310 hours and did not see this vehicle in the building.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 25. Respondent Castellanos has subjected her registration to discipline under Code  
4 section 9884.7, subdivision (a)(1), in that on or about March 5, 2015, she made statements which  
5 she knew or which by exercise of reasonable care she should have known were untrue or  
6 misleading when she issued electronic certificates of compliance for the vehicles set forth in  
7 Table 1, above, certifying that those vehicles were in compliance with applicable laws and  
8 regulations when, in fact, the vehicles had been clean piped. Complainant refers to, and by this  
9 reference incorporates, the allegations contained in paragraph 24, as though set forth fully herein.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 26. Respondent Castellanos has subjected her registration to discipline under Code  
13 section 9884.7, subdivision (a)(4), in that on or about March 5, 2015, she committed acts which  
14 constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table  
15 1, above, without performing bona fide inspections of the emission control devices and systems  
16 on those vehicles, thereby depriving the People of the State of California of the protection  
17 afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference  
18 incorporates, the allegations contained in paragraph 24, as though set forth fully herein.

19 **THIRD CAUSE FOR DISCIPLINE**

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

21 27. Respondent Castellanos has subjected her Automotive Repair Dealer Registration to  
22 discipline under Code section 9884.7, subdivision (a)(6), in that on or about March 5, 2015 she  
23 failed in a material respect to comply with the provisions of this chapter or regulations adopted  
24 pursuant to it when she issued electronic certificates of compliance to the vehicles set forth in  
25 Table 1, above, without performing bona fide inspections of the emission control devices and  
26 systems on those vehicles, thereby depriving the People of the State of California of the  
27 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this  
28 reference incorporates, the allegations contained in paragraph 24, as though set forth fully herein.

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 28. Respondent Castellanos has subjected her station license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth in Table  
5 1, above, she violated sections of that Code, as follows:

6 a. **Section 44012:** Respondent Castellanos failed to ensure that the emission control  
7 tests were performed on the vehicles in accordance with procedures prescribed by the department.

8 b. **Section 44015, subdivision (b):** Respondent Castellanos issued electronic  
9 certificates of compliance without properly testing and inspecting the vehicles to determine if  
10 they were in compliance with section 44012 of that Code.

11 Complainant refers to, and by this reference incorporates, the allegations contained in  
12 paragraph 24, as though set forth fully herein.

13 **FIFTH CAUSE FOR DISCIPLINE**

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

15 29. Respondent Castellanos has subjected her station license to discipline under Health  
16 and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth in Table  
17 1, above, she violated sections of the California Code of Regulations, title 16, as follows:

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

22 b. **Section 3340.35, subdivision (c):** Respondent Castellanos issued electronic  
23 certificates of compliance even though those vehicles had not been inspected in accordance with  
24 section 3340.42.

25 c. **Section 3340.42:** Respondent Castellanos failed to conduct the required smog tests  
26 and inspections on those vehicles in accordance with the Bureau's specifications.

27 Complainant refers to, and by this reference incorporates, the allegations contained in  
28 paragraph 24, as though set forth fully herein.

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 30. Respondent Castellanos has subjected her station license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (d), in that regarding the vehicles set forth in Table  
5 1, above, she committed acts involving dishonesty, fraud or deceit whereby another was injured  
6 by issuing electronic certificates of compliance for those vehicles without performing bona fide  
7 inspections of the emission control devices and system on those vehicles, thereby depriving the  
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
9 Program. Complainant refers to, and by this reference incorporates, the allegations contained in  
10 paragraph 24, as though set forth fully herein.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

13 31. Respondent Pineda-Duenas has subjected his inspector license to discipline under  
14 Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth in  
15 Table 1, above, he violated sections of that Code, as follows:

16 a. **Section 44012, subdivision (a):** Respondent Pineda-Duenas failed to ensure that the  
17 emission control tests were performed on the vehicles in accordance with procedures prescribed  
18 by the department.

19 b. **Section 44032:** Respondent Pineda-Duenas failed to perform tests of the emission  
20 control devices and systems on those vehicles in accordance with section 44012 of that Code, in  
21 that the vehicle had been clean piped.

22 c. **Section 44059:** Respondent Pineda-Duenas willfully made false entries for the  
23 electronic certificates of compliance by certifying that those vehicles had been inspected as  
24 required when, in fact, they had not.

25 Complainant refers to, and by this reference incorporates, the allegations contained in  
26 paragraph 24, as though set forth fully herein.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent Pineda-Duenas has subjected his inspector license to discipline under  
4 Health and Safety Code section 44072.2, subdivision (c), in that, regarding the vehicles set forth  
5 in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

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

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

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

17 e. **Section 3340.45:** Respondent Pineda-Duenas violated section 1.1.0 of the Smog  
18 Check Inspection Manual in that he failed to maintain the security of his technician's access code.

19 Complainant refers to, and by this reference incorporates, the allegations contained in  
20 paragraph 24, as though set forth fully herein.

21 **NINTH CAUSE FOR DISCIPLINE**

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

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

1 Complainant refers to, and by this reference incorporates, the allegations contained in paragraph  
2 24, as though set forth fully herein.

3 **OTHER MATTERS**

4 34. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,  
5 or may invalidate temporarily or permanently, the registrations for all places of business operated  
6 in this state by Respondent Castellanos, upon a finding that she has, or is, engaged in a course of  
7 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
8 dealer.

9 35. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station  
10 License Number TC 276280, issued to Respondent Castellanos, is revoked or suspended, any  
11 additional license issued under this chapter in the name of said licensee may be likewise revoked  
12 or suspended by the director.

13 36. Pursuant to Health & Safety Code section 44072.8, if Smog License Inspector  
14 License Number EO 637252, issued to Rene Jesus Pineda-Duenas, is revoked or suspended, any  
15 additional license issued under this chapter in the name of said licensee may be likewise revoked  
16 or suspended by the director.

17 **PRAYER**

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

20 1. Revoking, suspending, placing on probation, Automotive Repair Dealer Registration  
21 Number ARD 276280, issued to Norma Castellanos doing business as Castellanos Smog Check;

22 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
23 registration issued to Norma Castellanos;

24 3. Revoking or suspending Smog Check Test Only Station License Number TC 276280,  
25 issued to Norma Castellanos doing business as Castellanos Smog Check;

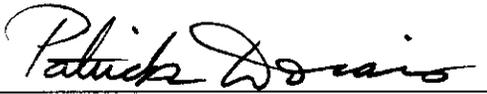
26 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
27 and Safety Code in the name of Norma Castellanos;

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- 5. Revoking or suspending Smog Check Inspector License Number EO 637252, issued to Rene Jesus Pineda-Duenas;
- 6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Rene Jesus Pineda-Duenas;
- 7. Ordering Norma Castellanos and Rene Jesus Pineda-Duenas to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 8. Taking such other and further action as deemed necessary and proper.

DATED: May 23, 2016

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

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