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

12 In the Matter of the Accusation Against:
13 **JUAN M. GALLARDO, OWNER, DBA**
14 **D C SMOG CHECK**
491 Wildrose Ave. #M
15 Colton, CA 92324
Automotive Repair Dealer Registration No.
16 **ARD 276708**
Smog Check Station License No. **TC 276708**

Case No. *79/16-118*

17 **ACCUSATION**
smog check

18 and

19 **ANGEL FELIPE SANCHEZ ORTEGA**
979 N. Elmwood Ave.
20 Rialto, CA 92376
Smog Check Inspector License No.
21 **EO 636276**

Respondents.

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23 Complainant alleges:

24 **PARTIES**

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

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1 **Juan M. Gallardo, Owner, dba D C Smog Check**

2 **Automotive Repair Dealer Registration**

3 2. On or about May 27, 2014, the Bureau issued Automobile Repair Dealer Registration
4 Number ARD 276708 to Juan M. Gallardo, Owner, doing business as D C Smog Check,
5 (Respondent Smog Check). The Automobile Repair Dealer Registration was in full force and
6 effect at all times relevant to the charges brought herein and will expire on May 31, 2016, unless
7 renewed.

8 **Smog Check, Test Only, Station License**

9 3. On or about June 1, 2014, the Bureau issued Smog Check, Test Only, Station License
10 No. TC 276708 to Respondent Smog Check. The Smog Check, Test Only, Station License was in
11 full force and effect at all times relevant to the charges brought herein and will expire on May 31,
12 2016, unless renewed.

13 **STAR Station Certification**

14 4. On or about July 23, 2014, the Bureau certified D C Smog Check as a STAR Station.
15 The certification will remain active unless ARD 276708 and/or TC 276708 is revoked, canceled,
16 become delinquent, or the certification is invalidated.

17 **Angel Felipe Sanchez Ortega**

18 **Smog Check Inspector License**

19 5. On or about November 22, 2013, the Bureau issued Smog Check Inspector License
20 Number EO 636276 to Angel Felipe Sanchez Ortega ("Respondent Ortega"). The Smog Check
21 Inspector License was in full force and effect at all times relevant to the charges brought herein
22 and will expire on August 31, 2017, unless renewed.

23 **JURISDICTION**

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

26 7. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
27 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
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1 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

3 8. Health and Safety Code section 44002 provides, in pertinent part, that the Director
4 has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor
5 Vehicle Inspection Program.

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

10 **STATUTORY PROVISIONS**

11 10. Section 9884.7 of the Code states:

12 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
13 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
14 dealer for any of the following acts or omissions related to the conduct of the business of the
15 automotive repair dealer, which are done by the automotive repair dealer or any automotive
16 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 written
18 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable
19 care should be known, to be untrue or misleading.

20 ...

21 "(4) Any other conduct which constitutes fraud.

22 ...

23 "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
24 probation the registration for all places of business operated in this state by an automotive repair
25 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
26 and willful violations of this chapter, or regulations adopted pursuant to it."

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1 11. Section 44012 of the Health and Safety Code states:

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

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

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

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

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

26 “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices
27 and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
28 department, that may include, but are not limited to, onboard diagnostic testing. The test may

1 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
2 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

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

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

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

17 12. Section 44015 of the Health and Safety Code states:
18 ...

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

21 13. Section 44059 of the Health and Safety Code states:

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

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1 14. Section 44072.2 of the Health and Safety Code states:

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

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

8 ...

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

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

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

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

15 **REGULATORY PROVISIONS**

16 16. California Code of Regulations, title 16, section 3340.24, subdivision (c) states:

17 ...

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

21 17. California Code of Regulations, title 16, section 3340.30, subdivision (a) states:

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

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

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1 18. California Code of Regulations, title 16, section 3340.35, subdivision (e) states:

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

6 19. California Code of Regulations, title 16, section 3340.42, states:

7 "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
8 section 3340.45.

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

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

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

25 "(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-
26 year vehicles, except diesel-powered, registered in all program areas of the state, except in those
27 areas of the state where the enhanced program has been implemented. The two-speed idle mode
28 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and

1 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of
2 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall
3 be measured and compared to the emission standards set forth in this section and as shown in
4 TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are
5 less than or equal to the applicable emissions standards specified in Table III.

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

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

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

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

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

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

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

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

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

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

1 protocols¹ and incorrect Parameter Identification (PID) count, which confirms the vehicles
 2 receiving smog certificates were fraudulently tested during the smog inspection using the clean
 3 plugging method². The discrepancies in the OIS Test Detail showed that the OIS Data
 4 Acquisition Device (DAD) was not connected to the thirteen (13) vehicles. Table 1 illustrates the
 5 clean plugging activities at Respondent Smog Check between April 6, 2015, through October 28,
 6 2015. All of the following inspections were performed by Respondent Ortega.

7 **TABLE 1**

8 Test Date and Time*	Vehicle Certified & License No. and VIN No.	Certificate No.	Technician License No.	OIS Test Data Details	
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	4/06/2015 1842-1846 hours	2006 Honda S2000 7HFC015	PQ365982C	EO636276 (Respondent Ortega)	Comm. Protocol: JVPW1850 (expected ICAN29bt5) PID Count: 21 (expected 36) e-VIN-Missing
04/07/2015 1912-1917 hours	2005 Ford Explorer Eddie Bauer 6ZQX539	PQ365987C	EO636276 (Respondent Ortega)	Comm. Protocol: JVPW1850 (expected ICAN11bt5) PID Count: 21 (expected 47) e-VIN-Missing	
04/14/2015 1846-1852 hours	2007 Dodge Ram 3500 ST/SLT 94426R1	PQ788256C	EO636276 (Respondent Ortega)	Comm. Protocol: JVPW1850 (expected ICAN11bt5) PID Count: 21 (expected 34) e-VIN-Missing	

¹ Protocol is simply the language used to communicate with a vehicle's computer(s). Protocol is a communication interface. This automated determination of the communication interface, or protocol, is built into the Data Acquisition Device (DAD) unit. This automatic function identifies five (5) protocols used by vehicles manufactured and sold in the United States that are subject to the Smog Check program.

² Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

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04/20/2015 1915-1919 hours	2007 BMW 328I 6JLN614	PQ788275C	EO636276 (Respondent Ortega)	Comm. Protocol: JPWM1850 (expected KWPF) PID Count: 20 (expected 21) e-VIN-Missing
04/28/2015 1831-1833 hours	2006 Cadillac SRX 6VMS945	PQ788298C	EO636276 (Respondent Ortega)	Comm. Protocol: JVPW1850 (expected ICAN11bt5) PID Count: 21 (expected 42) e-VIN-Missing
10/2/2015 0754-0759 hours	2005 Dodge Ram 1500 Quad ST/SLT RYCHE1	PY039455C	EO636276 (Respondent Ortega)	Comm. Protocol: 19140808 (expected JVPW) PID Count: 16 (expected 23) e-VIN-Missing
10/04/2015 1323-1327 hours	2005 Cadillac C/T CTS HI Feature DP795CF	PY039472C	EO636276 (Respondent Ortega)	Comm. Protocol: 19140808 (expected ICAN11bt5) PID Count: 16 (expected 42) e-VIN-Missing
10/07/2015 0815-0819 hours	2010 Porsche 911 GT3 VIN No. WP0AC2A94AS783091	PY039480C	EO636276 (Respondent Ortega)	Comm. Protocol: 19140808 (expected ICAN11bt5) PID Count: 16 (expected 44) e-VIN-Missing

1	10/10/2015	2014 Ford Fusion Titanium	PY039493C	EO636276 (Respondent Ortega)	Comm. Protocol: 19140808 (expected ICAN11bt5)
2	0740-0750	VIN No.			PID Count: 20 (expected
3	hours	3FA6P0K9XER333028			38)
4					e-VIN-Missing
5					
6	10/18/2015	2008 Chevrolet Corvette	PY333832C	EO636276 (Respondent Ortega)	Comm. Protocol: 19140808 (expected ICAN11bt5)
7	1603-1607	6DXD960			PID Count: 16 (expected
8	hours				43)
9					e-VIN-Missing
10					
11	10/21/2015	2007 Mercedes Benz GL450 4 MATIC	PY333841C	EO636276 (Respondent Ortega)	Comm. Protocol: 19140808 (expected ICAN11bt5)
12	0812-0817	6AXJ802			PID Count: 16 (expected
13	hours				44)
14					e-VIN-Missing
15					
16	10/23/2015	2009 Nissan Maxima S/SV	PY333850C	EO636276 (Respondent Ortega)	Comm. Protocol: 19140808 (expected ICAN11bt5)
17	0816-0820	6FYG769			PID Count: 16 (expected
18	hours				43)
19					e-VIN-Missing
20					
21	10/28/2015	2006 GMC Savana G3500 Diesel	PY640520C	EO636276 (Respondent Ortega)	Comm. Protocol: 19140808 (expected ICAN11bt5)
22	1742-1749	8P32515			PID Count: 16 (expected
23	hours				28)
24					e-VIN-Missing
25					

* Test times are in military time.

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1 a. **Section 44012:** Respondent Smog Check failed to ensure that the emission control tests
2 were performed on vehicles 1 through 13, in accordance with procedures prescribed by the
3 department.

4 b. **Section 44015:** Respondent Smog Check issued electronic certificates of compliance
5 for vehicles 1 through 13, without ensuring that the vehicles were properly tested and inspected to
6 determine if they were in compliance with Health and Safety Code section 44012.

7 c. **Section 44059:** Respondent Smog Check willfully made false entries for the electronic
8 certificates of compliance by certifying that those vehicles had been inspected as required when,
9 in fact, they had not.

10 **FOURTH CAUSE FOR DISCIPLINE**

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

13 25. Respondent Smog Check's station license is subject to discipline pursuant to Health
14 and Safety Code section 44072.2, subdivision (c), in that between April 6, 2015, through October
15 28, 2015, regarding vehicles 1 through 13, set forth above in Table 1, Respondent failed to
16 comply with provisions of California Code of Regulations, title 16, as follows:

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

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

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

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 26. Respondent Smog Check's station license is subject to discipline pursuant to Health
4 and Safety Code section 44072.2, subdivision (d), in that between April 6, 2015, through October
5 28, 2015, regarding vehicles 1 through 13, set forth above in Table 1, Respondent Smog Check
6 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
7 electronic certificates of compliance for those vehicles without performing bona fide inspections
8 of the emission control devices and systems on the vehicles, thereby depriving the People of the
9 State of California of the protection afforded by the Motor Vehicle Inspection Program.

10 **SIXTH CAUSE FOR DISCIPLINE**

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

12 27. Respondent Ortega's technician license is subject to discipline pursuant to Health
13 and Safety Code section 44072.2, subdivision (a), in that between April 6, 2015, through October
14 28, 2015, regarding vehicles 1 through 13, set forth above in Table 1, he failed to comply with
15 section 44012 of that Code in a material respect, as follows: Respondent Ortega failed to perform
16 the emission control tests on those vehicles in accordance with procedures prescribed by the
17 department.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 28. Respondent Ortega's technician license is subject to discipline pursuant to Health
22 and Safety Code section 44072.2, subdivision (c), in that between April 6, 2015, through October
23 28, 2015, regarding vehicles 1 through 13, set forth above in Table 1, he failed to comply with
24 provisions of California Code of Regulations, title 16, as follows:

25 a. **Section 3340.24, subdivision (c)**: Respondent Ortega falsely or fraudulently issued
26 electronic certificates of compliance without performing bona fide inspections of the emission
27 control devices and systems on those vehicles as required by Health and Safety Code section
28 44012.

1 DISCIPLINE CONSIDERATIONS

2 33. To determine the degree of discipline, if any, to be imposed on Respondent Smog
3 Check, Complainant alleges that on or about March 4, 2015, in a prior action, the Bureau of
4 Automotive Repair issued Citation Number C2015-0146 and ordered Respondent Smog Check to
5 pay a citation fine of \$1,000.00. That Citation is now final and is incorporated by reference as if
6 fully set forth.

7 34. To determine the degree of discipline, if any, to be imposed on Respondent Ortega,
8 Complainant alleges that on or about March 4, 2015, in a prior action, the Bureau of Automotive
9 Repair issued Citation Number M2015-0147 and ordered Respondent Ortega to complete an 8
10 hour training class. That Citation is now final and is incorporated by reference as if fully set
11 forth.

12 PRAYER

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

- 15 1. Revoking or suspending Automobile Repair Dealer Registration Number ARD
16 276708, issued to Juan M. Gallardo, Owner, doing business as D C Smog Check;
- 17 2. Revoking, suspending, or placing on probation any other automotive repair dealer
18 registration issued to Juan M. Gallardo, Owner, doing business as D C Smog Check;
- 19 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
20 276708, issued to Juan M. Gallardo, Owner, doing business as D C Smog Check;
- 21 4. Revoking or suspending Smog Check Inspector License Number EO 626276, issued
22 to Angel Felipe Sanchez Ortega;
- 23 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
24 and Safety Code in the name of Angel Felipe Sanchez Ortega;
- 25 6. Ordering Juan M. Gallardo, Owner, doing business as D C Smog Check and Angel
26 Felipe Sanchez Ortega to pay the Bureau of Automotive Repair the reasonable costs of the
27 investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and

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

DATED: May 13, 2016

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

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