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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:

Case No. 79/17-11610

13 **EMISSION TEST CENTERS, INC.**
14 **(SPENCER GRAND BROD – PRESIDENT,**
15 **SECRETARY, TREASURER)**
16 **DBA ACCURATE SMOG**
17 1617 W. Sepulveda Blvd. #5
18 Torrance, CA 90501

ACCUSATION

16 Mailing Address:
17 3817 Shad Pl.
18 San Pedro, CA 90732

18 Automotive Repair Dealer Registration No.
19 ARD 282125
20 Smog Check, Test Only, Station License No.
21 TC 282125

and

21 **CARLOS C. TORRES**
22 247 S. Pacific Coast Hwy.
23 Redondo Beach, CA 90277

23 Smog Check Inspector License No. EO 146175
24 Smog Check Repair Technician License No.
25 EI 146175

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **Respondent Emission Test Centers - Automotive Repair Dealer Registration**

6 2. On or about December 1, 2015, the Bureau issued Automotive Repair Dealer
7 Registration Number ARD 282125 to Emission Test Centers, Inc. dba Accurate Smog. Spencer
8 Grand Brod is the president, secretary, and treasurer of Emission Test Centers, Inc. Spencer
9 Grand Brod and Emission Test Centers, Inc. dba Accurate Smog are collectively referred to
10 herein as "Respondent Emission Test Centers." The Automotive Repair Dealer Registration was
11 in full force and effect at all times relevant to the charges brought herein and will expire on
12 December 31, 2018, unless renewed.

13 **Respondent Emission Test Centers - Smog Check Station License**

14 3. On or about December 9, 2015, the Bureau issued Smog Check, Test Only Station
15 License Number TC 282125 to Respondent Emission Test Centers. The Smog Check, Test Only
16 Station License was in full force and effect at all times relevant to the charges brought herein and
17 will expire on December 31, 2018, unless renewed.

18 **Respondent Emission Test Centers - STAR Certification**

19 4. On or about January 21, 2016, the Bureau certified Respondent Emission Test
20 Centers as a STAR station. That certification was in full force and effect at all times relevant to
21 the charges brought herein and will remain active unless the Automotive Repair Dealer
22 Registration and/or Smog Check Station License issued to Respondent Emission Test Centers is
23 revoked, canceled, or the licenses become delinquent or certification is invalidated.

24 **Respondent Torres - Smog Check Inspector / Smog Check Repair Technician License**

25 5. In or about 2002, the Bureau issued Advanced Emission Specialist Technician
26 License Number EA 146175 was issued to Respondent Carlos C. Torres (Respondent Torres).
27 Advanced Emission Specialist Technician License Number EA 146175 expired on November
28 30, 2012 and was then cancelled on December 12, 2012. Pursuant to California Code of

1 Regulations, title 16 section 3340.28, subdivision (e), Advanced Emission Specialist Technician
2 License Number EA 146175 was renewed, pursuant to Respondent Torres' election, as Smog
3 Check Inspector License No. EO 146175 and Smog Check Repair Technician License No. EI
4 146175, effective December 12, 2012. The Smog Check Inspector License was in full force and
5 effect at all times relevant to the charges brought herein and will expire on November 30, 2018,
6 unless renewed. The Smog Check Repair Technician License was in full force and effect at
7 times relevant to the charges herein, expired on November 30, 2016, and has not been renewed.

8 JURISDICTION

9 6. This Accusation is brought before the Director of the Department of Consumer
10 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following
11 laws.

12 7. Business and Professions Code section 9884.7 provides that the Director may
13 revoke an Automotive Repair Dealer Registration.

14 8. Business and Professions Code section 9884.13 of the Code provides, in pertinent
15 part, that the expiration of a valid registration shall not deprive the Director or chief of
16 jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to
17 render a decision invalidating a registration temporarily or permanently.

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

21 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
22 expiration or suspension of a license by operation of law, or by order or decision of the Director
23 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
24 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
25 proceedings against the licensee, or to render a decision suspending or revoking the license.

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

27 ///

28 ///

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

5 STATUTORY PROVISIONS

6 12. Section 477 of the Business and Professions Code provides, in pertinent part, that
7 "Board" includes "bureau," "commission," "committee," "department," "division," "examining
8 committee," "program," and "agency." "License" includes certificate, registration or other
9 means to engage in a business or profession regulated by the Business and Professions Code.

10 13. Business and Professions Code section 9884.7 states, in pertinent part:

11 (a) The director, where the automotive repair dealer cannot show
12 there was a bona fide error, may refuse to validate, or may invalidate
13 temporarily or permanently, the registration of an automotive repair
14 dealer for any of the following acts or omissions related to the
15 conduct of the business of the automotive repair dealer, which are
16 done by the automotive repair dealer or any automotive technician,
17 employee, partner, officer, or member of the automotive repair dealer.

18 (1) Making or authorizing in any manner or by any
19 means whatever any statement written or oral which is
20 untrue or misleading, and which is known, or which by
21 the exercise of reasonable care should be known, to be
22 untrue or misleading.

23

24 (4) Any other conduct that constitutes fraud.

25

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

. . . .

(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 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 44012 of the Health and Safety Code provides, in pertinent part, that tests
2 at smog check stations shall be performed in accordance with procedures prescribed by the
3 department.

4 15. Section 44015, subdivision (b), of the Health and Safety Code provides that a
5 certificate of compliance shall be issued if a vehicle meets the requirements of Health and Safety
6 Code section 44012.

7 16. Health and Safety Code section 44072.2 states, in pertinent part:

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

10 (a) Violates any section of this chapter [the Motor
11 Vehicle Inspection Program (Health and Safety Code §
12 44000, et seq.)] and the regulations adopted pursuant to
it, which related to the licensed activities.

13

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

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

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

18

19 (c) The department shall revoke the license of any smog check
20 technician 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 the following:

21 (1) Clean piping, as defined by the department

22 (2) Tampering with a vehicle emission control system
23 or test analyzer system.

24 (3) Tampering with a vehicle in a manner that would
25 cause the vehicle to falsely pass or falsely fail an
inspection.

26 (4) Intentional or willful violation of this chapter or
27 any regulation, standard, or procedure of the
28 department implementing this chapter

1 **REGULATORY PROVISIONS**

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

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

- 7 19. California Code of Regulations, title 16, section 3340.30, subdivision (a), states:

8 A smog check technician shall comply with the following
9 requirements at all times while licensed.

10 (a) A licensed technician shall inspect, test and repair
11 vehicles in accordance with section 44012 of the Health
12 and Safety Code, section 44035 of the Health and Safety
13 Code, and section 3340.42 of this article. . . .

- 14 20. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:

15

16 (c) A licensed station shall issue a certificate of compliance or
17 noncompliance to the owner or operator of any vehicle that has been
18 inspected in accordance with the procedures specified in section
19 3340.42 of this article and has all the required emission control
20 equipment and devices installed and functioning correctly. . . .

- 21 21. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

22 . . . [n]o person shall enter into the emissions inspection system
23 any vehicle identification information or emission control system
24 identification data for any vehicle other than the one being tested.
25 Nor shall any person knowingly enter into the emissions inspection
26 system any false information about the vehicle being tested.

- 27 22. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions
28 test methods and procedures which apply to all vehicles inspected in the State of California.

29 **COST RECOVERY**

- 30 23. Business and Professions Code section 125.3 provides, in pertinent part, that the
31 Board may request the administrative law judge to direct a licentiate found to have committed a
32 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
33 investigation and enforcement of the case, with failure of the licentiate to comply subjecting the

1 license to not being renewed or reinstated. If a case settles, recovery of investigation and
2 enforcement costs may be included in a stipulated settlement.

3 VID DATA REVIEW

4 24. Beginning March 9, 2015, California's Smog Check Program was updated to require
5 the use of an On-Board Diagnostic Inspection System ("BAR-OIS") during smog checks. OIS is
6 the Smog Check equipment required in all areas of the State when inspecting most model-year
7 2000 and newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The
8 system consists of a certified Data Acquisition Device (DAD), computer, bar code scanner, and
9 printer. The DAD is an On Board Diagnostic scan tool that, when requested by the California
10 BAR-OIS software, retrieves data from the vehicle. Data retrieved and recorded during an OIS
11 smog check includes:

- 12 • eVIN, which is the digitally stored VIN programmed into the vehicle's Powertrain
13 Control Module ("PCM").
- 14 • Communication Protocol, which is the manufacturer/vehicle specific language the
15 PCM uses to relay information; and
- 16 • Number of Parameter Identifications ("PIDs"), which is the number of specific data
17 points reported by the vehicle's on-board computer. PIDs are programmed during manufacture and
18 are related to emissions controls. Examples of PIDs are engine speed, vehicle speed, engine
19 temperature, and other input and output values utilized by the vehicle's on-board computer.

20 25. On or before July 20, 2017, Bureau representative Marc Ortega initiated an
21 investigation in which he reviewed OIS test data for Accurate Smog. The OIS Bureau Test Data
22 lists differences in Vehicle Identification Numbers (VIN) for vehicles that have received smog
23 inspections, in addition to communication protocol (the language used to communicate) and
24 Parameter ID (PID) differences with vehicles that have been certified correctly that are the same
25 make and model vehicles. Representative Ortega's investigation revealed that the data related to
26 certain vehicles certified by Accurate Smog contained discrepancies between the information
27 transmitted during the inspections and documented information known about the subject
28 vehicles. Specifically, representative Ortega compared the data received from the certified

vehicles to data from vehicles of the same year, make, and model and determined that the data from all five certified vehicles contained the following discrepancies: (1) incorrect vehicle communication protocols; and (2) incorrect PID counts. Three vehicles transmitted the incorrect VIN numbers. These documented discrepancies confirm that the vehicles receiving smog certificates from Accurate Smog were fraudulently tested during the smog inspection using the "clean plugging" method.¹ Table 1 illustrates the documented clean plugging activities of Respondents between September 18, 2016 and March 12, 2017. All vehicles were inspected by Respondent Torres.

Table 1

	Test Date	Vehicle & License No.	Certificate No.	Fraudulent Passing Inspection Data	Expected OBDII Value
1	9/18/16	2004 Kia Optima LX/EX GHD667	QE373157C	eVIN: JTNBK3EK2A3047654 (incorrect)	eVIN: not expected but KNAGD128545303776
				Comm. Protocol: ICAN11bt5	Comm. Protocol: KWPF
				PID Count: 47 17	PID Count: 21 1
2	11/20/16	2001 Chevrolet Silverado C1500 7R16695	QG978976C	eVIN: JTDKB20U787707763 (incorrect)	eVIN: 1GCEC19V81Z334971
				Comm. Protocol: ICAN11bt5	Comm. Protocol: JVPW
				PID Count: 38 21 17	PID Count: 22 or 23 or 24
3	3/7/2017	2002 Mazda MPV Wagon 6ZZM525	ZR057299C	eVIN: not transmitted	eVIN: not expected
				Comm. Protocol: JVPW	Comm. Protocol: I914
				PID Count: 20	PID Count: 22 6

¹ "Clean plugging" refers to the use of another vehicle's properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for testing.

	Test Date	Vehicle & License No.	Certificate No.	Fraudulent Passing Inspection Data	Expected OBDII Value
4	3/10/2017	2010 Chevrolet Malibu LS 7DXU277	ZR172431C	eVIN: 1G1PA5SG5E7178965 (incorrect)	eVIN: 1G1ZA5EB8AF311730
				Comm. Protocol: ICAN11bt5	Comm. Protocol: ICAN11bt5
				PID Count: 44 45	PID Count: 39 7
5	3/12/2017	2001 Volkswagen Jetta GLS 4TQH815	ZR363155C	eVIN: not transmitted	eVIN: not expected
				Comm. Protocol: JVPW	Comm. Protocol: I914
				PID Count: 17	PID Count: 16 or 16 5

Clean Plugged Vehicle No. 1 – September 18, 2016 – 2004 Kia Optima LX/EX

26. On September 18, 2016, Respondents performed a smog check inspection of and certified a 2004 Kia Optima LX/EX (VIN No. KNAGD128545303776, CA License No. GHD667). Smog Certificate of Compliance No. QE373157C was issued under Respondent Torres' Smog Check Technician License No. EO146175. The OIS Test Data for the 2004 Kia Optima LX/EX shows the eVIN was transmitted as JTNBK3EK2A3047654, the communication protocol was transmitted as ICAN11bt5, and the PID count was transmitted as 47|17. Similar Vehicle OIS Test Data for 2004 Kia Optima LX/EX vehicles show, however, that they do not transmit the eVIN, they transmit the expected communication protocol of KWPF, and they transmit a PID count of 21|1.

27. On September 13, 2016, just five days before the date of the fraudulent passing inspection, Respondents performed a smog check inspection on the same 2004 Kia Optima LX/EX (VIN No. KNAGD128545303776, CA License No. GHD667). The OIS Test Details for the September 13, 2016 inspection shows that the vehicle, as expected, did not transmit the eVIN, transmitted the expected communication protocol of KWPF, and transmitted the expected PID count of 21|1.

28. The OIS Test Data shows that on September 18, 2016, a different vehicle—a 2010 Toyota Camry—was used to generate the fraudulent Smog Certificate of Compliance for the 2004 Kia Optima. The 2010 Toyota Camry's VIN number is JTNBK3EK2A3047654, which was

1 the reported VIN number for the clean plugged 2004 Kia Optima LX/EX. The 2010 Toyota
2 Camry was certified under Carlos Torres at Accurate Smog on September 18, 2016, the same
3 day as the fraudulent inspection of the 2004 Kia Optima. The OIS Test Data transmitted for the
4 2010 Toyota Camry matches the OIS Test Data transmitted during the fraudulent inspection of
5 the 2004 Kia Optima, including the eVIN, protocol, and PID count.

6 29. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device
7 (DAD) was not connected to the 2004 Kia Optima LX/EX being certified, causing the issuance
8 of a fraudulent Smog Certificate of Compliance.

9 **Clean Plugged Vehicle No. 2 – November 20, 2016 – 2001 Chevrolet Silverado C1500**

10 30. On November 20, 2016, Respondents performed a smog check inspection of and
11 certified a 2001 Chevrolet Silverado C1500 (VIN No. 1GCEC19V81Z334971, CA License No.
12 7R16695). Smog Certificate of Compliance No. QG978976C was issued under Respondent
13 Torres' Smog Check Technician License No. EO146175. The OIS Test Data for the 2001
14 Chevrolet Silverado C1500 shows an incorrect eVIN of JTDKB20U787707763 was transmitted,
15 the communication protocol was transmitted as ICAN11bt5, and the PID count was transmitted as
16 38|21|17. Similar Vehicle OIS Test Data for 2001 Chevrolet Silverado C1500 vehicles show,
17 however, that they transmit the correct eVIN, they transmit the expected communication protocol
18 of JVPW, and they transmit a PID count of 22, 23, or 24.

19 31. On November 13, 2016, just seven days before the date of the purported passing
20 inspection, Respondents performed a smog check inspection on the same 2001 Chevrolet
21 Silverado C1500 (VIN No. 1GCEC19V81Z334971, CA License No. 7R16695). The OIS Test
22 Details for the November 13, 2016 inspection shows that the vehicle, as expected, transmitted
23 the correct eVIN, transmitted the expected communication protocol of JVPW, and transmitted a
24 PID count of 23.

25 32. The OIS Test Data shows that on November 20, 2016, a different vehicle—a 2008
26 Toyota Prius—was used to generate the fraudulent Smog Certificate of Compliance for the 2001
27 Chevrolet Silverado C1500. The 2008 Toyota Prius' VIN number is JTDKB20U787707763,
28 which was the reported VIN number for the clean plugged 2001 Chevrolet Silverado C1500. The

1 2008 Toyota Prius was certified under Carlos Torres at Accurate Smog on November 20, 2016, the
2 same day as the fraudulent inspection of the 2001 Chevrolet Silverado C1500. The OIS Test Data
3 transmitted for the 2008 Toyota Prius matches the OIS Test Data transmitted during the fraudulent
4 inspection of the 2001 Chevrolet Silverado C1500, including the eVIN, protocol, and PID count.

5 33. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device
6 (DAD) was not connected to the 2001 Chevrolet Silverado C1500 being certified, causing the
7 issuance of a fraudulent Smog Certificate of Compliance.

8 **Clean Plugged Vehicle No. 3 – March 7, 2017 – 2002 Mazda MPV Wagon**

9 34. On March 7, 2017, Respondents performed a smog check inspection of and certified
10 a 2002 Mazda MPV Wagon (VIN No. JM3LW28J020316738, CA License No. 6ZZM525).
11 Smog Certificate of Compliance No. ZR057299C was issued under Respondent Torres' Smog
12 Check Technician License No. EO146175. The OIS Test Data for the 2002 Mazda MPV Wagon
13 shows the eVIN was not transmitted, the communication protocol was transmitted as JVPW, and
14 the PID count was transmitted as 20. Similar Vehicle OIS Test Data for 2002 Mazda MPV
15 Wagon vehicles show, however, that they do not transmit the eVIN, they transmit the expected
16 communication protocol of I914, and they transmit a PID count of 22|6.

17 35. On February 19, 2017, just sixteen days before the date of the purported passing
18 inspection, Respondents performed a smog check inspection on the same 2002 Mazda MPV
19 Wagon (VIN No. JM3LW28J020316738, CA License No. 6ZZM525). The OIS Test Details for
20 the February 19, 2017 inspection shows that the vehicle, as expected, did not transmit the eVIN,
21 transmitted the expected communication protocol of I914, and transmitted a PID count of 22|6.
22 The 2002 Mazda MPV Wagon failed the February 19, 2017 Smog Check inspection.

23 36. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device
24 (DAD) was not connected to the 2002 Mazda MPV Wagon being certified, causing the issuance
25 of a fraudulent Smog Certificate of Compliance.

26 **Clean Plugged Vehicle No. 4 – March 10, 2017 – 2010 Chevrolet Malibu LS**

27 37. On March 10, 2017, Respondents performed a smog check inspection of and
28 certified a 2010 Chevrolet Malibu LS (VIN No. 1G1ZA5EB8AF311730, CA License No.

1 7DXU277). Smog Certificate of Compliance No. ZR172431C was issued under Respondent
2 Torres' Smog Check Technician License No. EO146175. The OIS Test Data for the 2010
3 Chevrolet Malibu LS shows that an incorrect eVIN of 1G1PA5SG5E7178965 was transmitted,
4 the communication protocol was transmitted as ICAN11bt5, and the PID count was transmitted
5 as 44|4|5. Similar Vehicle OIS Test Data for 2010 Chevrolet Malibu LS vehicles show, however,
6 that they transmit the correct eVIN, they transmit the expected communication protocol of
7 ICAN11bt5, and they transmit a PID count of 39|7.

8 38. Furthermore, information provided by the Vehicle Information Database indicates
9 that the VIN number, 1G1PA5SG5E7178965, corresponds to a 2014 Chevrolet Cruze LS.

10 39. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device
11 (DAD) was not connected to the 2010 Chevrolet Malibu LS being certified, causing the issuance
12 of a fraudulent Smog Certificate of Compliance.

13 **Clean Plugged Vehicle No. 5 – March 12, 2017 – 2001 Volkswagen Jetta GLS**

14 40. On March 12, 2017, Respondents performed a smog check inspection of and
15 certified a 2001 Volkswagen Jetta GLS (VIN No. 3VWSG69M71M178772, CA License No.
16 4TQH815). Smog Certificate of Compliance No. ZR363155C was issued under Respondent
17 Torres' Smog Check Technician License No. EO146175. The OIS Test Data for the 2001
18 Volkswagen Jetta GLS shows that the eVIN was not transmitted, the communication protocol
19 was transmitted as JVPW, and the PID count was transmitted as 17. Similar Vehicle OIS Test
20 Data for 2001 Volkswagen Jetta GLS vehicles show, however, that they do not transmit the
21 eVIN, they transmit the expected communication protocol of I914, and they transmit a PID count
22 of 16 or 16|5.

23 41. On May 1, 2015, another licensed Smog Check facility performed a Smog Check
24 inspection on the same 2001 Volkswagen Jetta GLS (VIN No. 3VWSG69M71M178772, CA
25 License No. 4TQH815). According to the May 1, 2015 OIS Test Details, the 2001 Volkswagen
26 Jetta GLS, as expected, did not transmit the eVIN, transmitted the expected communication
27 protocol of I914, and transmitted a PID count of 16.

42. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected to the 2001 Volkswagen Jetta GLS being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

43. The data analysis conducted on Accurate Smog between September 18, 2016 to March 12, 2017 shows that Respondents participated in a scheme to perform at least five fraudulent Smog Check inspections resulting in the issuance of five electronic Smog Check Certificates of Compliance.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements –

Automotive Repair Dealer Registration – Respondent Emission Test Centers)

44. Respondent Emission Test Centers' Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that between September 18, 2016 to March 12, 2017, Respondent Emission Test Centers made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Emission Test Centers certified that the vehicles set forth above in Table 1 had passed smog check inspections and were in compliance with applicable laws and regulations. In fact, Respondent Emission Test Centers used the clean plugging method in order to issue smog certificates of compliance and did not test or inspect the vehicles as required by Health and Safety Code section 44012. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 25 through 44, inclusive, as though set forth fully herein.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Automotive Repair Dealer Registration – Respondent Emission Test Centers)

45. Respondent Emission Test Centers' Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that between September 18, 2016 to March 12, 2017, Respondent Emission Test Centers committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth above in Table 1 without performing bona fide inspections

1 of the emission control devices and systems on those vehicles, thereby depriving the People of
2 the State of California of the protection afforded by the Motor Vehicle Inspection Program.
3 Complainant refers to, and by this reference incorporates, the allegations set forth above in
4 paragraphs 25 through 44, inclusive, as though set forth fully herein.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Material Violation of Automotive Repair Act -**

7 **Automotive Repair Dealer Registration – Respondent Emission Test Centers)**

8 46. Respondent Emission Test Centers' Automotive Repair Dealer Registration is
9 subject to disciplinary action pursuant to Business and Professions Code section 9884.7,
10 subdivision (a)(6), in that between September 18, 2016 to March 12, 2017, Respondent Emission
11 Test Centers failed in a material respect to comply with the provisions of this chapter or
12 regulations adopted pursuant to it when he issued electronic certificates of compliance for the
13 five vehicles identified in Table 1 above without performing bona fide inspections of their
14 emission control devices and systems, thereby depriving the People of the State of California of
15 the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by
16 this reference incorporates, the allegations contained in paragraphs 25 through 44, above, as
17 though set forth fully herein.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Violations of the Motor Vehicle Inspection Program -**

20 **Smog Check Test Station License – Respondent Emission Test Centers)**

21 47. Respondent Emission Test Centers' Smog Check Test Only Station License is
22 subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision
23 (a), in that between September 18, 2016 to March 12, 2017, regarding the vehicles set forth
24 above in Table 1, Respondent Emission Test Centers failed to comply with the following
25 sections of the Health and Safety Code:

26 a. **Section 44012:** Respondent Emission Test Centers failed to ensure that the
27 emission control tests were performed on the vehicles in accordance with procedures prescribed
28 by the department; and

b. **Section 44015:** Respondent Emission Test Centers issued electronic certificates of compliance for the vehicles, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 25 through 44, inclusive, as though set forth fully herein.

FIFTH CAUSE FOR DISCIPLINE

**(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program -
Smog Check Test Station License – Respondent Emission Test Centers)**

48. Respondent Emission Test Centers' Smog Check Test Only Station License is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between September 18, 2016 to March 12, 2017, regarding the vehicles set forth above in Table 1, Respondent Emission Test Centers failed to comply with the following provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Emission Test Centers falsely or fraudulently issued electronic smog certificates of compliance for the five vehicles identified in Table 1 above;

b. **Section 3340.35, subdivision (c):** Respondent Emission Test Centers issued electronic smog certificates of compliance for the five vehicles identified in Table 1 above, even though the vehicles had not been inspected in accordance with section 3340.42;

c. **Section 3340.41, subdivision (c):** Respondent Emission Test Centers knowingly entered false information into the emissions inspection system for the five vehicles identified in Table 1 above; and

d. **Section 3340.42:** Respondent Emission Test Centers failed to ensure that the required smog tests were conducted on the five vehicles identified in Table 1 above, in accordance with the Bureau's specifications.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 25 through 44, inclusive, as though set forth fully herein.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit –**

3 **Smog Check Test Station License – Respondent Emission Test Centers)**

4 49. Respondent Emission Test Centers' Smog Check Test Only Station License is
5 subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision
6 (d), in that from September 18, 2016 to March 12, 2017, regarding the vehicles set forth above in
7 Table 1, Respondent Emission Test Centers committed acts involving dishonesty, fraud or deceit
8 whereby another was injured by issuing electronic certificates of compliance for those vehicles
9 without performing bona fide inspections of their emission control devices and systems, thereby
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle
11 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set
12 forth above in paragraphs 25 through 44, inclusive, as though set forth fully herein.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Violations of the Motor Vehicle Inspection Program –**

15 **Smog Check Inspector License – Respondent Torres)**

16 50. Respondent Torres' Smog Check Inspector License is subject to discipline pursuant
17 to Health and Safety Code section 44072.2, subdivision (a), in that between September 18, 2016
18 to March 12, 2017, regarding the vehicles set forth above in Table 1, Respondent Torres failed to
19 comply with section 44012 of the Health and Safety Code in a material respect, as follows:
20 Respondent Torres failed to perform the emission control tests on those vehicles in accordance
21 with procedures prescribed by the department. Complainant refers to, and by this reference
22 incorporates, the allegations set forth above in paragraphs 25 through 44, inclusive, as though set
23 forth fully herein.

24 **EIGHTH CAUSE FOR DISCIPLINE**

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

26 **Smog Check Inspector License – Respondent Torres)**

27 51. Respondent Torres' Smog Check Inspector License is subject to discipline pursuant
28 to Health and Safety Code section 44072.2, subdivision (c), in that between September 18, 2016

1 to March 12, 2017, regarding the vehicles set forth above in Table 1, Respondent Torres failed to
2 comply with provisions of California Code of Regulations, title 16, as follows:

3 a. **Section 3340.24, subdivision (c):** Respondent Torres falsely or fraudulently
4 issued electronic smog certificates of compliance for the five vehicles identified in Table 1 above;

5 b. **Section 3340.30, subdivision (a):** Respondent Torres failed to inspect and test
6 the five vehicles identified in Table 1 above, in accordance with Health and Safety Code sections
7 44012 and 44035, and California Code of Regulations, title 16, section 3340.42;

8 c. **Section 3340.41, subdivision (c):** Respondent Torres knowingly entered false
9 information into the emissions inspection system for the five vehicles identified in Table 1
10 above; and

11 d. **Section 3340.42:** Respondent Torres failed to conduct the required smog tests
12 on the five vehicles identified in Table 1 above, in accordance with the Bureau's specifications.

13 Complainant refers to, and by this reference incorporates, the allegations contained in
14 paragraphs 25 through 44, above, as though set forth fully herein.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud or Deceit - Smog Check Inspector License – Respondent Torres)**

17 52. Respondent Torres' Smog Check Inspector License is subject to disciplinary action
18 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that September 18, 2016
19 to March 12, 2017, Respondent Torres committed dishonest, fraudulent, or deceitful acts
20 whereby another was injured by the issuance of electronic smog certificates of compliance for
21 the five vehicles identified in Table 1 above, without performing bona fide inspections of their
22 emission control devices and systems, thereby depriving the People of the State of California of
23 the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by
24 this reference incorporates, the allegations contained in paragraphs 25 through 44, above, as
25 though set forth fully herein.

26 **OTHER MATTERS**

27 53. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the
28 Director may suspend, revoke, or place on probation the registration for all places of business

1 operated in this state by Respondent Emission Test Centers, upon a finding that it has, or is,
2 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
3 automotive repair dealer.

4 54. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
5 Station License No. TC 282125, issued to Respondent Emission Test Centers, is revoked or
6 suspended following a hearing, any additional license issued under Chapter 5 of Part 5 of
7 Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked
8 or suspended by the Director.

9 55. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
10 License No. EO 146175 and/or Smog Check Repair Technician License Number EI 146175,
11 issued to Respondent Torres, is revoked or suspended following a hearing, any additional license
12 issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of
13 said licensee may be likewise revoked or suspended by the Director.

14 **PRAYER**

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

17 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 282125,
18 issued to Respondent Emission Test Centers, Inc. (of which Spencer Grant Brod is the president,
19 secretary, and treasurer) dba Accurate Smog;

20 2. Revoking or suspending any other automotive repair dealer registration issued to
21 Respondent Emission Test Centers, Inc. (of which Spencer Grant Brod is the president,
22 secretary, and treasurer) dba Accurate Smog;

23 3. Revoking or suspending Smog Check Test Only Station No. TC 282125, issued to
24 Respondent Emission Test Centers, Inc. (of which Spencer Grant Brod is the president,
25 secretary, and treasurer) dba Accurate Smog;

26 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
27 Division 26 of the Health and Safety Code in the name of Respondent Emission Test Centers, Inc.;

1 5. Revoking or suspending Smog Check Inspector License No. EO 146175, issued to
2 Respondent Carlos C. Torres;

3 6. Revoking or suspending Smog Check Repair Technician License No. EI 146175,
4 issued to Respondent Carlos C. Torres;

5 7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
6 Division 26 of the Health and Safety Code in the name of Respondent Carlos C. Torres;

7 8. Ordering Respondent Emission Test Centers, Inc. and Respondent Carlos C. Torres
8 to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
9 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

10 9. Taking such other and further action as deemed necessary and proper.
11
12

13
14 DATED:

January 10, 2018

Patrick Doraïs

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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