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

12
13 In the Matter of the Accusation Against:

Case No. 79/23-6468

14 **VICTOR MANUEL MURILLO DBA**
PRIMOS SMOG
15 **1447 Ranger Dr.**
Covina, CA 91722
16 **Automotive Repair Dealer Registration No.**
ARD 292140
17 **Smog Check, Test Only Station License No.**
TC 292140

ACCUSATION

18 **and**

19 **VINNIE HUYNH**
20 **13184 Concord Dr.**
Victorville, CA 92392
21 **Smog Check Inspector License No. EO**
643169

22 Respondents.
23

24
25 **PARTIES**

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

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1 **Victor Manuel Murillo dba Primos Smog**

2 **Automotive Repair Dealer Registration**

3 2. On or about September 26, 2018, the Bureau issued Automotive Repair Dealer
4 Registration Number ARD 292140 to Victor Manuel Murillo dba Primos Smog (“Respondent
5 Primos Smog”). The Automotive Repair Dealer Registration was in full force and effect at all
6 times relevant to the charges brought herein and will expire on September 30, 2024, unless
7 renewed.

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

9 3. On or about October 31, 2018, the Bureau issued Smog Check, Test Only Station
10 License Number TC 292140 to Respondent Primos Smog. The Smog Check, Test Only Station
11 License was in full force and effect at all times relevant to the charges brought herein and will
12 expire on September 30, 2024, unless renewed.

13 **STAR Station Certification**

14 4. On or about August 9, 2019, the Bureau certified Primos Smog as a STAR Station
15 and the certification was suspended on May 26, 2023. The STAR Station Certification is no
16 longer suspended. The STAR Station Certification was reinstated on September 14, 2023

17 **Vinnie Huynh**

18 **Smog Check Inspector License**

19 5. On or about July 2, 2021, the Bureau issued Smog Check Inspector License Number
20 EO 643169 to Vinnie Huynh (“Respondent Huynh”). The Smog Check Inspector License was in
21 full force and effect at all times relevant to the charges brought herein and will expire on February
22 28, 2025, unless renewed.

23 **OTHER LICENSES**

24 **Vicente Paul Guerrero dba Guerrero Smog**

25 **Automotive Repair Dealer Registration**

26 6. On or about June 30, 2014, the Bureau issued Automotive Repair Dealer Registration
27 Number ARD 277112 to Vicente Paul Guerrero dba Guerrero Auto (“Guerrero Auto”). The
28

1 Automotive Repair Dealer Registration expired on June 30, 2015, and was cancelled on May 18,
2 2023.

3 **Smog Check Station License**

4 7. On or about September 12, 2014, the Bureau issued Smog Check Station License
5 Number RC 277112 to Guerrero Auto. The Smog Check Station License expired on June 30,
6 2015, and was cancelled on May 22, 2023.

7 **JURISDICTION**

8 8. Business and Professions Code (“Code”) section 9884.7 provides that the Director
9 may revoke an automotive repair dealer registration.

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

14 10. Health and Safety Code section 44002 provides, in pertinent part, that the Director
15 has all the powers and authority granted under the Automotive Repair Act for enforcing the
16 Motor Vehicle Inspection Program.

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

21 12. Section 44072.8 of the Health and Safety Code states:

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

25 **STATUTORY PROVISIONS**

26 13. Section 9884.7 of the Code states:

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

conduct of 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.

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

....

(4) Any other conduct which constitutes fraud.

....

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

14. Section 44012 of the Health and Safety Code states:

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

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

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

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

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

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

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

7 (g) A determination as to whether the motor vehicle complies with the
8 emission standards 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
10 diagnostic test and a tailpipe test to assess whether any vehicles passing their onboard
11 diagnostic test have, or would have, failed a tailpipe test, and whether any vehicles
failing their onboard diagnostic test have or would have passed a tailpipe test.

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

15 15. Section 44015 of the Health and Safety Code states:

16

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

19 16. Section 44032 of the Health and Safety Code states:

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

23 17. Section 44059 of the Health and Safety Code states:

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

27 18. Section 44072.2 of the Health and Safety Code states:

28 The director may suspend, revoke, or take other disciplinary action against a

license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

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

....

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

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

19. Section 44072.10 of the Health and Safety Code, subdivision (c) states:

(c) The department shall revoke the license of any smog check 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:

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

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

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

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

REGULATORY PROVISIONS

20. California Code of Regulations, title 16, section 3340.24, states:

....

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

21. California Code of Regulations, title 16, section 3340.30, states:

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

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

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

(c) A licensed station shall issue a certificate of compliance or noncompliance

to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly.

23. California Code of Regulations, title 16, section 3340.41, states:

....

(c) No person shall enter into the BAR-97 Emissions Inspection System or the OBD Inspection System any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the BAR-97 Emissions Inspection System or the OBD Inspection System any false information about the vehicle being tested.

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

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

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

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

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

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

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

3340.42.2.

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

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

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

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

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

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

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

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

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

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

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

COST RECOVERY

25. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

CALIFORNIA'S SMOG CHECK PROGRAM

26. California's Smog Check Program requires most vehicles in the State to undergo a smog check inspection every two years or when the vehicle's title is transferred.

27. Beginning March 9, 2015, California's Smog Check Program was updated to require the use of an On-Board Diagnostic Inspection System ("BAR-OIS"). BAR-OIS is the smog check equipment required in all areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles. The system consists of a certified Data Acquisition Device ("DAD"), computer, bar code scanner, and printer. The DAD is an On-Board Diagnostics ("OBD") scan tool that, when requested by the BAR-OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the BAR-OIS software and will be retrieved. The DAD connects between the BAR-OIS computer and the vehicle's Diagnostic Link Connector ("DLC"). The bar code scanner is used to input inspector information, the vehicle identification number ("VIN"), and Department of Motor Vehicles renewal information. The printer provides a Vehicle Inspection Report ("VIR") containing inspection results for motorists and a Smog Check Certificate of Compliance number for passing vehicles.

28. During an OIS inspection, engine operating parameters ("PIDs") are retrieved from the vehicle's OBD II system and recorded to the Bureau's Vehicle Information Database ("VID"). This is accomplished during the functional portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- Engine speed in revolutions per minute ("RPM")
- Throttle position as measured by a throttle position sensor ("TPS") mounted onto the throttle shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full throttle.

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1 • Manifold absolute pressure (“MAP”) as measured by a MAP sensor connected to an
2 intake manifold source, measured in kilo pascals (“kpa”). Typical readings for a normally
3 aspirated vehicle as follows: 0 kpa being absolute vacuum, 25 to 45 kpa at idle, 101 kpa at full
4 throttle, same as atmospheric pressure at sea level.

5 • Mass air flow (“MAF”) as measured by a MAF sensor mounted in the engine’s air
6 intake tract. Measured in grams per second (“gps”).

7 29. During normal engine operation at idle, engine speed is relatively steady around its
8 target idle speed. With the engine idling, the throttle position is steady and at or near 0%. The
9 MAP and/or MAF readings are also steady. For the engine speed to increase, the throttle would
10 have to be opened in order to increase airflow through the engine. The engine’s management
11 systems supply fuel and spark timing appropriate to any changes in throttle position and engine
12 speed. An increase in throttle, measured by the TPS, which increases engine RPM, would result
13 in a corresponding increase in MAF as well as a change in MAP. Any movement in the throttle
14 from the idle position will result in an increase of airflow through the engine with corresponding
15 increases in RPM and MAF along with changes in MAP.

16 30. During an OIS Smog Check inspection, along with other visual and functional
17 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
18 with the engine idling and, when requested by the OIS analyzer, at an elevated or increased
19 engine speed. The increase in engine speed is performed by the inspector by stepping on the
20 throttle pedal or manually opening the throttle resulting in a corresponding increase in engine
21 RPMs by allowing an increase in airflow into the engine.

22 31. The Bureau has become aware of methods that some Smog Check stations and Smog
23 Check inspectors use to fraudulently issue smog certificates to vehicles that may not pass a smog
24 check test on their own, or in some instances, are not even present during the time the test is
25 performed. “Clean plugging” is one such method by which another vehicle’s OBD II system, or
26 another source such as a defeat device, are used to generate passing data readings or diagnostic
27 information for the purpose of fraudulently issuing smog certificates to vehicles that are not in
28 smog compliance, and or not present for testing. “Clean tanking” is a method by which the Low-

1 Pressure Fuel Evaporative Test (“LPFET”) is performed using the LPFET equipment calibration
2 tank or another surrogate tank instead of connecting to the actual vehicle’s fuel inlet to determine
3 if there is a leak in the system.

4 **FACTUAL ALLEGATIONS**

5 ***Proactive Conference***

6 32. On or about August 30, 2019, the Bureau conducted a Proactive Conference with
7 Victor Manuel Murillo, the owner of Primos Smog (“Murillo”). During the Proactive
8 Conference, the Bureau presented Murillo with its concerns about abnormalities generated at
9 Respondent Primos Smog’s facility and subsequently uploaded to the VID, failing to create an
10 estimate or invoice for thirty (30) Smog Check inspections performed between August 20, 2019,
11 and August 23, 2019, the invoices that were reviewed failed to provide a detailed description of
12 all Smog Check service work done, specifically describing the cost of the inspection separate of
13 the Certificate of Compliance, and three (3) months after the passing Smog Check station
14 initialization, Respondent Primos Smog did not have a Smog Check Inspection Manual,
15 Emissions Application Guides, and the BAR97 analyzer failed its leak check.

16 33. Murillo was informed that the conference was held to make Respondent Primos Smog
17 aware of the abnormalities and provide educational instruction for continued compliance.
18 Specifically, Murillo was admonished about the following points: an automotive repair dealer
19 shall not create any record that is false or misleading, Respondent Primos Smog shall perform all
20 Smog Inspections in accordance with the procedures prescribed by the Department, the Licensed
21 Technician shall inspect and test and repair vehicles in accordance with section 44012 of the
22 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42, title
23 16, of the California Code of Regulations, no person shall perform, for compensation, tests or
24 repairs of emission control devices or systems of motor vehicles unless the person performing the
25 test or repair is a qualified Smog Check technician and the test or repair is performed at a licensed
26 Smog Check Station as required by Health and Safety Code 44032, and Respondent Primos Smog
27 was cautioned a false statement or entry on a Certificate of Compliance is considered perjury
28 under Health and Safety Code section 44059.

34. Murillo was advised future violations of the Automotive Repair Act and/or Motor Vehicle Inspection Program may be incorporated into any future formal disciplinary action against the Automotive Repair Dealer registration and the Smog Check station license.

Station Inspections

35. On or about April 1, 2022, the Bureau conducted a follow-up station inspection at Primos Smog to release a BAR97 lockout and complete a quality assurance inspection. The Bureau informed Murillo any fraudulent Smog Check inspections such as clean pipe, clean plug, or clean gas would result in financial penalty and administrative and criminal prosecution.

36. On or about May 10, 2022, the Bureau conducted a station audit at Primos Smog. Murillo was admonished to perform complete and accurate Smog Check inspections in accordance with all laws, regulations, the Smog Check Inspection Manual and analyzer screen prompts.

37. On or about June 13, 2022, the Bureau conducted a station audit at Primos Smog. A Bureau Representative requested, received, and reviewed invoices from May 9, 2022, through May 27, 2022. The Bureau Representative noted on the Station Inspection Report that his invoice review observed similar exhaust gas readings for various years, makes, and models of vehicles. The Bureau Representative advised Murillo to review his paperwork in detail. Murillo was admonished to perform complete and accurate Smog Check inspections in accordance with all laws, regulations, the Smog Check Inspection Manual, and analyzer screen prompts.

38. On or about August 26, 2022, the Bureau conducted a station audit at Primos Smog. The Bureau Representative requested, received, and reviewed invoices from July 27, 2022 through August 6, 2022. The Bureau Representative noted on the Station Inspection Report that his invoice review observed similar exhaust gas readings for various years, makes, and models of vehicles.

Surveillance No. 1-April 13, 2023

39. On or about April 13, 2023, a Bureau Representative conducted a surveillance of the Smog Check activities at Respondent Primos Smog's facility. The Bureau Representative was accompanied by another Bureau Representative.

1 40. According to Bureau records, Respondent Huynh was one (1) of two (2) Smog Check
2 inspectors authorized to perform Smog Check inspections at Respondent Primos Smog's facility.

3 According to Bureau records, during the time of the surveillances, Respondent Huynh was
4 authorized to perform Smog Check inspections at Respondent Primos Smog's facility as follows:

- 5 • On or about November 17, 2022, through January 12, 2023;
- 6 • On or about January 13, 2023, through April 4, 2023; and
- 7 • On or about April 6, 2023, through at least August 17, 2023, the date of the Bureau's report.

8 41. The Bureau Representative obtained a photograph of Respondent Huynh for
9 identification purposes.

10 42. The Bureau Representative arrived at an undisclosed location near Respondent
11 Primos Smog's facility. The Bureau Representative confirmed the recording time stamp on
12 the camera matched the VID time. The Bureau Representative's view of Respondent Primos
13 Smog's facility allowed monitoring of the Smog Check inspection bay entrance at Respondent
14 Primos Smog's facility.

15 43. Respondent Primos Smog's facility has one (1) Smog Check inspection bay inside of
16 a building. The interior of the building is large enough to park two (2) vehicles end to end.
17 The vehicle entrance to the inspection bay is through the east-facing door. The dynamometer
18 entry ramps are located approximately ten (10) feet from the east-facing vehicle entrance.
19 Respondent Primos Smog's BAR97 analyzer and OIS analyzer are to the left or south of the
20 dynamometer rollers. The analyzers and the dynamometer rollers are approximately in the
21 middle of the inspection bay. The west wall was blocked. The north and south walls are painted
22 drywall. The north, south and west walls do not allow for a vehicle entry or exit. The only
23 vehicle entrance to Respondent Primos Smog's inspection bay is through the east-facing roll-up
24 door.

25 44. Respondent Primos Smog's facility has one (1) BAR97 World-Wide brand analyzer,
26 serial #WP393093.

27 45. The Bureau Representative downloaded a Smog Check test data summary for
28 Respondent Primos Smog for the surveillance on or about April 13, 2023. The information is

presented in the form of a summary which shows the analyzer ID number, Smog Check inspector license number of the inspector who purportedly conducted the test, date of the test, start and end times of the test, vehicle type and vehicles purportedly tested identified by vehicle year, vehicle make, test type, license number, vehicle identification number (VIN), test results, and certificate number if issued. The summary continued with the ASM 5015 / TSI high RPM emission readings and the ASM 2525/TSI low RPM emission readings if a BAR97 test was performed.

46. The Bureau Representative reviewed the test data and compared it to his direct observations, review of the photographs, and surveillance recording. The test data summary showed that between 1109 and 1139 hours, two (2) Smog Check inspections were performed resulting in two (2) passing inspections and two (2) electronic Smog Check Certificates of Compliance were issued.

Fraudulent Inspection Number 1-1985 Oldsmobile Cutlass Supreme

47. BAR97 Test Details indicated that on April 13, 2023, between 1109 and 1123 hours, a 1985 Oldsmobile Cutlass Supreme, VIN #1G3GM47YXFR414347, CA License #4EXY799, ("1985 Cutlass"), was tested and smog certificate #TG295391C was issued under Respondent Huynh's smog check inspector license. The VIR signed under penalty of perjury by Respondent Huynh indicated that he performed the inspection in accordance with all Bureau requirements and that the information listed on the vehicle inspection report is true and correct.

48. At 1113 hours, the surveillance recording started. The Smog Check inspection for the 1985 Cutlass was in process. A 2002 Honda Accord EX with no rear license plate and right-side body damage ("2002 Accord") was in the inspection bay. At 1114 hours a male who the Bureau Representative later identified as unlicensed smog check inspector Vicente Paul Guerrero ("Guerrero") was at the BAR97 analyzer. A 2007 GMC Yukon obstructed the view into the inspection bay. At 1115 hours Respondent Huynh exited the driver's seat of the 2002 Accord while Guerrero was walking to the rear of the 2002 Accord. At 1115 hours Guerrero removed the exhaust gas sample probe from the 2002 Accord while Respondent Huynh was at the BAR97 analyzer. At 1116 hours Guerrero entered and drove the 2002 Accord out of the inspection bay,

1 then walked back to the empty inspection bay. At 1123 hours the Smog Check inspection for the
2 1985 Cutlass was over and the inspection bay was empty.

3 49. The 1985 Cutlass was never in the inspection bay during the surveillance time.
4 Respondent Huynh in cooperation with Guerrero used the 2002 Accord to issue a fraudulent
5 Certificate of Compliance to the 1985 Cutlass using the clean pipe method.

6 **Fraudulent Inspection Number 2-1999 Toyota 4Runner 4WD**

7 50. Test Details indicated on April 13, 2023, between 1125 and 1139 hours, a 1999
8 Toyota 4Runner 4WD, VIN #JT3HN87R0X0250327, CA License #4GSC651, ("1999 4Runner")
9 was tested and smog certificate #TG295392C was issued under Respondent Huynh's smog check
10 inspector license. The VIR signed under penalty of perjury by Respondent Huynh indicated that
11 he performed the inspection in accordance with all Bureau requirements and that the information
12 listed on the vehicle inspection report is true and correct.

13 51. At 1125 hours, the inspection time for the 1999 4Runner began and the inspection
14 bay was empty. At 1127 hours, outside of the inspection bay, Respondent Huynh opened the
15 engine compartment hood on a 2000 Honda Civic DX, VIN #2HGEJ6445YH108609, CA
16 License 4NET543 ("2000 Civic"). Guerrero assisted with a battery jump box and then he closed
17 the hood. Respondent Huynh drove the 2000 Civic into the inspection bay and up onto the
18 dynamometer.

19 52. At 1129 hours Guerrero inserted the exhaust gas sample probe into 2000 Civic. At
20 1131 hours Guerrero removed the exhaust gas sample probe from the 2000 Civic. Respondent
21 Huynh drove the 2000 Civic forward, past the dynamometer and deeper into the station. At 1132
22 hours the 1999 4Runner moved near the inspection bay entrance but not far enough into the
23 inspection bay to reach the dynamometer with its drive wheels which were on the rear axle. At
24 1139 hours the 1999 4Runner inspection was over and it backed away from its position near the
25 inspection bay. At this time, Guerrero drove the 2002 Accord into the inspection bay and closed
26 the vehicle entrance door, leaving both surrogate Honda vehicles inside.

27 53. The 2000 Civic used by Respondent Huynh and Guerrero to clean pipe the 1999
28 4Runner was registered to the same address as Guerrero, 803 Ardilla Avenue, La Puente, CA.

1 54. The 1999 4Runner was not in the inspection bay during its loaded mode testing and
2 exhaust gas sampling. Smog Check inspector Respondent Huynh in cooperation with Guerrero
3 used the 2000 Civic to issue a fraudulent Certificate of Compliance to the 1999 4Runner using the
4 clean pipe method.

5 ***Surveillance No. 2-April 14, 2023***

6 55. On or about April 14, 2023, a Bureau Representative conducted a surveillance of the
7 Smog Check activities at Respondent Primos Smog facility. The Bureau Representative was
8 accompanied by another Bureau Representative.

9 56. The Bureau Representative arrived at an undisclosed location near Respondent
10 Primos Smog facility. The Bureau Representative confirmed the recording time stamp on the
11 camera matched the VID time. The Bureau Representative's view of Primos Smog allowed
12 monitoring of the Smog Check inspection bay entrance at Respondent Primos Smog facility.

13 57. On or about April 14, 2023, the Bureau Representative downloaded a Smog Check
14 test data summary for Respondent Primos Smog for the surveillance. The information is
15 presented in the form of a summary which shows the analyzer ID number, Smog Check inspector
16 license number of the inspector who purportedly conducted the test, date of the test, start and end
17 times of the test, vehicle type and vehicles purportedly tested identified by vehicle year, vehicle
18 make, test type, license number, vehicle identification number (VIN), test results, and certificate
19 number if issued. The summary continued with the ASM 5015 / TSI high RPM emission
20 readings and the ASM 2525 / TSI low RPM emission readings if a BAR97 test was performed.

21 58. The Bureau Representative reviewed the test data and compared it to his direct
22 observations, review of the photographs, and surveillance recording. The test data summary
23 showed that between 1139 and 1311 hours, four (4) Smog Check inspections were performed
24 resulting in four (4) passing inspections and four (4) electronic Smog Check Certificates of
25 Compliance were issued.

26 **Fraudulent Inspection Number 3-1987 Toyota 4Runner**

27 59. On or about April 14, 2023, between 1139 and 1215 hours, the BAR97 Test Details
28 indicated that a 1987 Toyota 4Runner, VIN #JT4RN62S9H0148542, CA License #2FCP084,

1 (“1987 4Runner”), was tested and smog certificate #TG295396C was issued under Respondent
2 Huynh’s smog check inspector license. The VIR signed under penalty of perjury by Respondent
3 Huynh indicated that he performed the inspection in accordance with all Bureau requirements and
4 that the information listed on the vehicle inspection report is true and correct.

5 60. Between 1138 and 1141 hours the inspection bay was empty. At 1138 hours
6 Respondent Huynh was at the BAR97 analyzer. At 1139 hours the 1987 4Runner inspection
7 began. Between 1141 and 1143 hours Guerrero exited the inspection bay and walked north, to his
8 left, to retrieve the 2002 Accord and drove the 2002 Accord into the inspection bay. At 1143
9 hours Guerrero exited the 2002 Accord and Huynh entered it. At 1144 hours Guerrero set the
10 exhaust gas sample probe onto the trunk lid of the 2002 Accord. At 1144 hours Guerrero moved
11 the exhaust gas sample probe toward the tailpipe of the 2002 Accord. At 1145 hours Guerrero
12 was at the BAR97 analyzer while Respondent Huynh was operating the 2002 Accord on the
13 dynamometer. At 1147 hours Guerrero removed the exhaust gas sample probe from the 2002
14 Accord. At 1150 hours Guerrero positioned a black Dodge Durango in front of Respondent
15 Primos Smog’s inspection bay. At 1210 hours Guerrero connected a red LPFET hose to the 2000
16 Civic during the test time of the 1987 4Runner. At 1215 hours the inspection for the 1987
17 4Runner was over. At 1217 hours Guerrero disconnected the red LPFET hose from the 2000
18 Civic after the test time of the 1987 4Runnnner. A white Toyota Tacoma pickup had entered the
19 inspection bay, not a 1997 4Runner.

20 61. The 1987 4Runner was never seen at Respondent Primos Smog’s facility nor did it
21 enter the inspection bay. The 1987 4Runner was not at Respondent Primos Smog’s facility
22 during its test times. Respondent Huynh in cooperation with Guerrero used the 2002 Accord and
23 the 2000 Civic to issue a fraudulent Certificate of Compliance to the 1987 4Runner using the
24 clean pipe and clean tanking methods.

25 **Fraudulent Inspection Number 4-1979 Chevrolet C10 Pickup**

26 62. On or about April 14, 2023, between 1223 and 1245 hours, the BAR97 Test Details
27 indicated that a 1979 Chevrolet C10 pickup, VIN #CCD1492199326, CA License plate 7T18465,
28 (“1979 C10”), was tested and smog certificate #TG295397C was issued under Respondent

1 Huynh's Smog Technician Inspector's license. The VIR signed under penalty of perjury by
2 Respondent Huynh indicated that he performed the inspection in accordance with all Bureau
3 requirements and that the information listed on the vehicle inspection report is true and correct.

4 63. Between 1212 and 1227 hours the inspection bay was occupied by a white Tacoma
5 pickup. Between 1218 and 1226 hours and overlapping test time with the 1979 C10, a 2007
6 Toyota Tacoma, VIN # 5TENX22N87Z391771, CA license plate 85125Z1 ("2007 Tacoma") was
7 tested and certified under Respondent Huynh's Smog Technician Inspector's license. At 1227
8 hours the 2007 Tacoma exited the inspection bay. At this time Guerrero also exited the
9 inspection bay. At 1228 hours the Bureau Representative watched Guerrero drive the 2002
10 Accord into the inspection bay. At 1236 hours Guerrero drove the 2002 Accord out of the
11 inspection bay and left it in the parking lot, leaving the inspection bay empty. At 1238 hours
12 Guerrero connected the red LPFET hose to the 2000 Civic. At 1244 hours Guerrero disconnected
13 the red LPFET hose from the 2000 Civic. At 1245 hours the inspection bay is empty and the
14 inspection time for the 1979 C10 is over.

15 64. The 1979 C10 was never seen at Respondent Primos Smog's facility nor did it enter
16 the inspection bay. The 1979 C10 was not at Respondent Primos Smog's facility during its test
17 times. Respondent Huynh in cooperation with Guerrero used the 2002 Accord and the 2000
18 Civic to issue a fraudulent Certificate of Compliance to the 1979 C10 using the clean pipe and
19 clean tanking methods.

20 **Fraudulent Inspection Number 5-1995 Nissan 240SX**

21 65. On or about April 14, 2023, between 1253 and 1311 hours, the BAR97 Test Details
22 indicated, a 1995 Nissan 240SX, VIN #JN1AS44DXSW024182, CA License plate 3LML451,
23 ("1995 240SX"), was tested and smog certificate #TG295398C was issued under Respondent
24 Huynh's Smog Technician Inspector's license. A 1995 240SX is a 2-door sport compact car.
25 The VIR signed under penalty of perjury by Respondent Huynh indicated that he performed the
26 inspection in accordance with all Bureau requirements and that the information listed on the
27 vehicle inspection report is true and correct.

28 ///

1 66. At 1252 hours Guerrero drove the 2002 Accord into the inspection bay and then
2 exited the vehicle. At 1253 hours the inspection time began for the 1995 240SX and the 2002
3 Accord was in the inspection bay. At 1255 hours Guerrero moved the exhaust gas sample probe
4 to the rear of the 2002 Accord. At 1257 hours Guerrero moved the exhaust gas sample probe
5 from the rear of the 2002 Accord. At 1300 hours a 4-door car drove into the inspection bay. At
6 1306 hours Respondent Huynh connected the red LPFET hose to the 2000 Civic. At 1308 hours
7 the 4-door car drove out of the inspection bay, leaving the inspection bay empty. At 1310 hours
8 Respondent Huynh disconnected the red LPFET hose from the 2000 Civic. At 1311 hours the
9 inspection bay was empty and the inspection time for the 1995 240SX was over.

10 67. The 1995 240SX was never seen at Respondent Primos Smog's facility nor did it
11 enter the inspection bay. The 1995 240SX was not at Respondent Primos Smog's facility during
12 its test times. Respondent Huynh in cooperation with Guerrero used the 2002 Accord and the
13 2000 Civic to issue a fraudulent Certificate of Compliance to the 1995 240SX using the clean
14 pipe and clean tanking methods.

15 ***Surveillance No. 3-April 27, 2023***

16 68. On or about April 27, 2023, a Bureau Representative conducted a surveillance of the
17 Smog Check activities at Respondent Primos Smog's facility. The Bureau Representative was
18 accompanied by three other Bureau Representatives.

19 69. The Bureau Representative arrived at an undisclosed location near Respondent
20 Primos Smog's facility. The Bureau Representative confirmed the recording time stamp on the
21 cameras matched the VID time. The Bureau Representative's view of Primos Smog allowed
22 monitoring of the Smog Check inspection bay entrance at Respondent Primos Smog's facility.

23 70. The Bureau Representative downloaded a Smog Check test data summary for
24 Respondent Primos Smog for the surveillance on or about April 27, 2023. The information was
25 presented in the form of a summary which shows the analyzer ID number, Smog Check inspector
26 license number of the inspector who purportedly conducted the test, date of the test, start and end
27 times of the test, vehicle type and vehicles purportedly tested identified by vehicle year, vehicle
28 make, test type, license number, vehicle identification number ("VIN"), test results, and

1 certificate number if issued. The summary continued with the ASM 5015 / TSI high RPM
2 emission readings and the ASM 2525 / TSI low RPM emission readings if a BAR97 test was
3 performed.

4 71. The Bureau Representative reviewed the test data and compared it to his direct
5 observations, review of the photographs, and surveillance recording. The test data summary
6 showed that between 1143 and 1333 hours, three (3) Smog Check inspections were performed
7 resulting in two (2) passing inspections and two (2) electronic Smog Check Certificates of
8 Compliance were issued. The test data summary showed an aborted Smog Check inspection
9 between 1413 and 1422 hours. The Bureau Representatives entered the inspection bay at
10 Respondent Primos Smog's facility during the aborted inspection test time.

11 **Fraudulent Inspection Number 6-1979 Nissan Pickup**

12 72. On or about April 27, 2023, between 1143 and 1205 hours, the BAR97 Test Details
13 indicated, a 1979 Nissan pickup, VIN #HLG620407700, CA License plate 88965A1, ("1979
14 Nissan pickup"), was tested under Respondent Huynh's smog check inspector license. According
15 to the signed VIR and Test Detail report, Respondent Huynh failed the 1979 Nissan pickup for a
16 modified positive crankcase ventilation ("PCV") system. The VIR signed under penalty of
17 perjury by Respondent Huynh indicated that he performed the inspection in accordance with all
18 Bureau requirements and that the information listed on the vehicle inspection report is true and
19 correct.

20 73. At 1142 hours Guerrero drove the 2002 Accord into the inspection bay. At 1147
21 hours the 2002 Accord was in the inspection bay and on the dynamometer. At 1150 hours
22 Guerrero exited the inspection bay while Respondent Huynh drove the 2002 Accord out of the
23 inspection bay. At 1200 hours Respondent Huynh walked toward the 2000 Civic and approached
24 the gas tank filler neck area. At 1204 hours Respondent Huynh exited the 2000 Civic and
25 approached the gas tank filler neck area.

26 74. The 1979 Nissan pickup was never seen at Respondent Primos Smog's facility nor
27 did it enter the inspection bay. The 1979 Nissan pickup was not at Respondent Primos Smog's
28 facility during its test times. Respondent Huynh in cooperation with Guerrero used the 2002

1 Accord and the 2000 Civic to enter false information into the VID, false failing the 1979 Nissan
2 pickup using the clean pipe method.

3 **Fraudulent Inspection Number 7-1986 Mazda B-Series Truck**

4 75. On or about April 27, 2023, between 1302 and 1333 hours, the BAR97 Test Details
5 indicated a 1986 Mazda B-Series truck, VIN #JM2UF3111G0665830, CA License plate
6 2U96829, (“1986 B truck”), was tested and smog certificate #IT689899C was issued under
7 Respondent Huynh’s smog check inspector license. The VIR signed under penalty of perjury by
8 Respondent Huynh indicated he performed the inspection in accordance with all Bureau
9 requirements, and that the information listed on the vehicle inspection report is true and correct.

10 76. At 1302 hours the inspection time for the 1986 B truck began and the inspection bay
11 was empty. At 1304 hours Guerrero exited the inspection bay, walked toward, and entered the
12 2002 Accord, then drove it into the inspection bay. At 1306 hours the 2002 Accord was driven
13 onto the dynamometer. At 1308 hours the 2002 Accord is driven out of the inspection bay. At
14 1321 hours Guerrero entered the 2007 GMC Yukon and moved it from blocking the view into the
15 inspection bay. At 1322 hours Respondent Huynh was sitting in the 2000 Civic, then exited it.
16 At 1325 hours, the inspection bay was still empty and Respondent Huynh was standing in front of
17 the BAR97 analyzer, referencing a book. At 1326 hours Guerrero returned the 2007 GMC Yukon
18 back to its blocking position. At 1334 hours the inspection time for the 1986 B truck was over
19 and the inspection bay was empty.

20 77. The 1986 B truck was never seen at Respondent Primos Smog’s facility nor did it
21 enter the inspection bay. The 1986 B truck was not at Respondent Primos Smog’s facility during
22 its test times. Respondent Huynh in cooperation with Guerrero used the 2002 Accord to enter
23 false information into the VID to issue a fraudulent Certificate of Compliance to the 1986 B truck
24 using the clean pipe method.

25 **Fraudulent Inspection Number 8-1995 Chevrolet C1500 Pickup**

26 78. On or about April 27, 2023, between 1413 and 1422 hours, the BAR97 Test Details
27 indicated, a 1995 Chevrolet C1500 pickup, VIN #1GCEC14H6SZ148445, CA License plate
28 12042Z2, (“1995 C1500”), an inspection was initiated under Respondent Huynh’s smog check

1 inspector license. According to the VIR and Test Detail report, the inspection was aborted after
2 the vehicle information was inputted to the VID but before any emission readings could be taken
3 or visual inspection results could be recorded. The VIR was not signed.

4 79. At 1412 hours Guerrero walked from the inspection bay and entered the 2002 Accord
5 prior to driving it into the inspection bay. At 1413 hours the Bureau Representative noted a Smog
6 Check inspection had been initiated at Respondent Primos Smog's facility by Respondent Huynh.
7 At 1414 hours and at the Bureau Representative's direction Bureau Representatives entered the
8 inspection bay. The Bureau Representatives found the 2002 Accord, CA license 6MCB092 in the
9 inspection bay. At this time Guerrero fled the inspection bay. Bureau Representatives
10 photographed the blocker 2007 GMC Yukon, CA license 5TJG759 and the 2000 Honda Civic CA
11 license 4NET543.

12 80. The Bureau Representative secured station invoices from April 10, 2023 through
13 April 27, 2023. The Bureau Representative spoke with Respondent Huynh and recorded
14 Respondent Huynh's answers on a Station Inspection Report. Respondent Huynh stated he
15 personally signed all the VIRs. Respondent Huynh stated he understood how clean piping
16 worked and understood that clean piping was a fraudulent inspection. Respondent Huynh stated
17 all vehicles and all customers were present at Respondent Primos Smog facility. Respondent
18 Huynh stated the customer signed the incomplete invoice for the 1995 Chevy C1500 that was in
19 progress on the BAR97.

20 81. The Bureau Representative saw the 1995 C1500 was not in the inspection bay or on
21 the property, the Bureau Representative aborted the inspection. The 1995 C1500 was not at
22 Respondent Primos Smog facility during its test times. Respondent Huynh in cooperation with
23 Guerrero entered false information into the VID about the 1995 C1500 while the inspection bay
24 was occupied by the 2002 Accord.

25 82. The Bureau Representative disconnected the BAR97 analyzer from the VID pending
26 a conversation with Murillo.

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28 ///

1 ***Post Surveillance***

2 83. The Bureau Representative researched the ownership of the blocking 2007 GMC
3 Yukon (“Yukon”). Department of Motor Vehicles (“DMV”) records showed that the Yukon is
4 registered to Vicente P. Guerrero at 803 Ardilla Avenue in La Puente, CA. This is the same
5 address of record as the 2000 Civic.

6 84. The Bureau Representative requested and received from the DMV a certified
7 photograph of Yukon owner Vicente P. Guerrero. The Bureau Representative recognized
8 Guerrero in the certified DMV photograph as the same man he identified as unlicensed smog
9 check inspector Guerrero. The certified DMV photo records the same address as the registration
10 addresses for the 2000 Civic and the 2007 Yukon.

11 85. On or about May 17, 2023, Murillo visited the Bureau’s Southern Headquarters
12 office to discuss the events on or about April 27, 2023. Murillo made the following statements in
13 response to the Bureau Representative’s questions:

14 • Murillo pops into Primos Smog around three (3) times a week. He has a regular job
15 that occupied him six (6) days a week during the time of April 27, 2023.

16 • Murillo rarely provides supervision as he has a primary job. He checks in with
17 Huynh to see how the business is running.

18 • Murillo stated he hires the Smog Check inspectors, including Huynh.

19 • Murillo stated Huynh runs the day-to-day operations.

20 • Murillo relies on the Smog Check analyzer to automatically order certificates.

21 • Murillo stated both he and Huynh have access to the business bank account.

22 • Murillo stated the people authorized to have access to Primos Smog are himself,
23 Huynh, and Angeles, the janitor.

24 • Murillo stated Huynh and Arturo Basurto are his current Smog Check inspectors.

25 • Murillo stated Primos Smog’s normal business hours are 10:00 am to 3:30 pm,
26 Monday through Saturday.

27 • Murillo stated Huynh prepares estimates and provides a copy to the customer. When
28 finished, the customer receives an invoice with a vehicle inspection report.

- Murillo relies on Huynh to secure and file invoices in an orderly manner.
- Murillo reviews invoices when he is at the station after hours.
- Murillo stated his responsibilities include providing money for the bank account, providing gases for the analyzers. He stated he tries to run a tight ship. Primos Smog is an investment. Murillo stated he understands he is responsible for what happens in his shop.
- Murillo stated he intends to close the shop. Murillo stated he would contact me after he makes a final decision.

86. The Bureau Representative provided Murillo with a copy of the office visit which was recorded on a Station Inspection Report as well as his business card with his contact information. As of August 17, 2023, the Bureau Representative had not heard back from Murillo.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

87. Respondent Promos Smog's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that he made statements which were known to be untrue or misleading or, which by exercise of reasonable care should have been known to be untrue or misleading, by performing eight (8) fraudulent smog inspections which resulted in the issuance of six (6) fraudulent Smog Check Certificates of Compliance using the methods known as "Clean Piping" and "Clean Tanking", set forth above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had not been so inspected. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 39 through 82, above, as though set forth fully herein.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

88. Respondent Primos's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that he committed acts that constitute fraud by performing eight (8) fraudulent smog inspections which resulted in the issuance of six (6) fraudulent Smog Check Certificates of Compliance using the methods known

1 as “Clean Piping” and “Clean Tanking”, set forth above, without performing bone fide
2 inspections of the emission control devices and systems on those vehicles, thereby depriving the
3 People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
5 paragraphs 39 through 82, above, as though set forth fully herein.

6 **THIRD CAUSE FOR DISCIPLINE**

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

8 89. Respondent Primos’s Automotive Repair Dealer Registration is subject to
9 disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that he failed in a
10 material respect to comply with the provisions of this chapter or regulations adopted pursuant to it
11 by performing eight (8) fraudulent smog inspections which resulted in the issuance of six (6)
12 fraudulent Smog Check Certificates of Compliance using the methods known as “Clean Piping”
13 and “Clean Tanking”, set forth above, without performing bona fide inspections of the emission
14 control devices and systems on those vehicles, thereby depriving the People of the State of
15 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
16 refers to, and by this reference incorporates, the allegations contained in paragraphs 39 through
17 82, above, as though set forth fully herein.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 90. Respondent Primos Smog’s Smog Check Test Only Station License is subject to
21 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he
22 failed to comply with the following sections of that Code:

23 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
24 performed on the eight (8) vehicles identified in paragraphs 39-82, above, in accordance with
25 procedures prescribed by the department.

26 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
27 compliance on the six (6) vehicles identified in paragraphs 39-82, above, without properly testing
28

1 and inspecting those vehicles to determine if they were in compliance with Health and Safety
2 Code section 44012.

3 Complainant refers to, and by this reference incorporates, the allegations contained in
4 paragraphs 39 through 82, above, as though set forth fully herein.

5 **FIFTH CAUSE FOR DISCIPLINE**

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

8 91. Respondent Primos Smog's Smog Check Test Only Station License is subject to
9 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that he
10 failed to comply with provisions of California Code of Regulations, title 16, as follows:

11 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
12 electronic smog certificates of compliance for the six (6) vehicles identified in paragraphs 39-82,
13 above.

14 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the eight (8)
15 vehicles identified in paragraphs 39-82 in accordance with Health and Safety Code sections
16 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

17 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
18 compliance for the six (6) vehicles identified in paragraphs 39-82, above, even though those
19 vehicles had not been inspected in accordance with section 3340.42.

20 d. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
21 into the emissions inspection system for the eight (8) vehicles identified in paragraphs 39-82,
22 above.

23 e. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted
24 on the eight (8) vehicles identified in paragraphs 39-82, above, were done in accordance with the
25 Bureau's specifications.

26 Complainant refers to, and by this reference incorporates, the allegations contained in
27 paragraphs 39 through 82, above, as though set forth fully herein.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 92. Respondent Primos Smog's Smog Check Test Only Station License is subject to
4 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in
5 conjunction with Health and Safety Code section 44072.10, subdivision (c), in that he committed
6 dishonest, fraudulent, or deceitful acts whereby another was injured by performing eight (8)
7 fraudulent smog inspections which resulted in the issuance of six (6) fraudulent Smog Check
8 Certificates of Compliance using the methods known as "Clean Piping" and "Clean Tanking", set
9 forth above, without performing bona fide inspections of the emission control devices and
10 systems on those vehicles, thereby depriving the People of the State of California of the
11 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
12 reference incorporates, the allegations contained in paragraphs 39 through 82, above, as though
13 set forth fully herein.

14 **SEVENTH CAUSE FOR DISCIPLINE**

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

16 93. Respondent Huynh's Smog Check Inspector License is subject to disciplinary action
17 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he failed to comply
18 with the following sections of that code:

19 a. **Section 44032:** Respondent failed to perform tests of emission control devices and
20 systems of the eight (8) vehicles identified in paragraphs 39-82, above, in accordance with Health
21 and Safety Code section 44012.

22 b. **Section 44015, subdivision (b):** Respondent caused electronic smog certificates of
23 compliance to be issued for the six (6) vehicles identified in paragraphs 39-82, above, without
24 ensuring that they were properly tested and inspected to determine if they were in compliance
25 with Health and Safety Code section 44012.

26 Complainant refers to, and by this reference incorporates, the allegations contained in
27 paragraphs 39 through 82, above, as though set forth fully herein.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

4 94. Respondent Huynh's Smog Check Inspector License is subject to disciplinary action
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that he failed to comply
6 with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for the six (6) vehicles identified in paragraphs 39-82,
9 above.

10 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the eight (8)
11 vehicles identified in paragraphs 39-82, above, in accordance with Health and Safety Code
12 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
14 into the emissions inspection system for the eight (8) vehicles identified in paragraphs 39-82,
15 above.

16 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted
17 on the eight (8) vehicles identified in paragraphs 39-82, above, were done in accordance with the
18 Bureau's specifications.

19 Complainant refers to, and by this reference incorporates, the allegations contained in
20 paragraphs 39 through 82, above, as though set forth fully herein.

21 **NINTH CAUSE FOR DISCIPLINE**

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

23 95. Respondent Huynh's Smog Check Inspector License is subject to disciplinary action
24 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
25 and Safety Code section 44072.10, subdivision (c), in that he committed dishonest, fraudulent, or
26 deceitful acts whereby another was injured by performing eight (8) fraudulent smog inspections
27 which resulted in the issuance of six (6) fraudulent Smog Check Certificates of Compliance using
28 the methods known as "Clean Piping" and "Clean Tanking", set forth above, without performing

1 bona fide inspections of the emission control devices and systems on those vehicles, thereby
2 depriving the People of the State of California of the protection afforded by the Motor Vehicle
3 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations
4 contained in paragraphs 39 through 82, above, as though set forth fully herein.

5 **OTHER MATTERS**

6 96. Pursuant to Code section 9884.7, subdivision (c), the director may suspend revoke, or
7 place on probation the registrations for all places of business operated in this state by Victor
8 Manuel Murillo dba Primos Smog, upon a finding that said Respondent has, or is, engaged in a
9 course of repeated and willful violations of the laws and regulations pertaining to an automotive
10 repair dealer.

11 97. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,
12 Station License Number TC 292140 issued to Victor Manuel Murillo dba Primos Smog, is
13 revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Div. 26 of the
14 Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the
15 director.

16 98. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
17 License No. EO 643169, issued to Vinnie Huynh, is revoked or suspended, any additional license
18 issued under Chapter 5 of Part 5 of Div. 26 of the Health and Safety Code in the name of said
19 licensee may be likewise revoked or suspended by the director.

20 **PRAYER**

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

24 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
25 292140, issued to Victor Manuel Murillo dba Primos Smog;

26 2. Revoking, suspending, or placing on probation any other automotive repair dealer
27 registration issued to Victor Manuel Murillo;

28 ///

- 1 3. Revoking or suspending Smog Check, Test Only Station License Number TC
2 292140, issued to Victor Manuel Murillo dba Primos Smog;
- 3 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
4 Division 26 of the Health and Safety Code in the name of Primos Smog;
- 5 5. Revoking or suspending Smog Check Inspector License Number EO 643169, issued
6 to Vinnie Huynh;
- 7 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
8 Division 26 of the Health and Safety Code in the name of Vinnie Huynh;
- 9 7. Ordering Victor Manuel Murillo dba Primos Smog and Vinnie Huynh to pay the
10 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
11 case, pursuant to Business and Professions Code section 125.3; and
- 12 8. Taking such other and further action as deemed necessary and proper.

13
14
15 DATED: As of digital signature date

16 PATRICK DORAIS
17 Chief
18 Bureau of Automotive Repair
19 Department of Consumer Affairs
20 State of California
21 *Complainant*

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