

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

In the Matter of the First Amended Accusation  
Against:

**ISABEL RODRIGUEZ dba THE SMOG SHOP**

Automotive Repair Dealer Registration No.  
ARD 263727  
Smog Check-Test Only License No.  
TC 263727,

and

**JUAN RAMIREZ**

Smog Check Inspector License No. EO  
633011 (formerly Advanced Emission  
Specialist Technician License No. EA 633011)

Respondents.

Case No. 79/16-67

OAH No. 2016110146

**DECISION**

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

1. Page 7, paragraph 12: "February 26, 2017" is corrected to "February 26, 2015."
2. Page 8, paragraph 13: "February 27, 2017" is corrected to "February 27, 2015."
3. Page 18, paragraph 21: "California Code of Regulations, title 16, section 44012, subdivisions (a) and (f), and California Code of Regulations, title 16, section 44015, and California Code of Regulations, title 16, section 44072.10" is corrected to "Health and Safety Code section 44012, subdivisions (a) and (f), and Health and Safety Code section 44015, and Health and Safety Code section 44072.10."

4. Page 19, paragraph 25: "California Code of Regulations, title 16, section 44072.2, subdivision (d), and California Code of Regulations, title 16, section 44072.10" is corrected to "Health and Safety Code section 44072.2, subdivision (d), and Health and Safety Code section 44072.10."
5. Page 20, paragraph 29: "sections 44012, subdivisions (a), (b), and (f)" is corrected to "sections 44012, subdivisions (a) and (f)."
6. Page 20, paragraph 30: "sections 3340.24, subdivision (a)" is corrected to "sections 3340.24, subdivision (c)."
7. Page 20, paragraph 32: "California Code of Regulations, title 16, section 44072.2, subdivision (d), and California Code of Regulations, title 16, section 44072.10" is corrected to "Health and Safety Code section 44072.2, subdivision (d), and Health and Safety Code section 44072.10."
8. Page 20, paragraph 33: "44072.10" is corrected to "44072.2."

The technical or minor changes made above do not affect the factual or legal basis of the Proposed Decision.

This Decision shall become effective July 13, 2017.

DATED: June 6, 2017

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

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Case No. 79/16-67

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**PROPOSED DECISION**

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on February 22, 2017.

David E. Hausfeld, Deputy Attorney General, Department of Justice, State of California, represented complainant, Patrick Dorais, Chief, Bureau of Automotive Repair (the Bureau or BAR), Department of Consumer Affairs, State of California.

William D. Ferreira, Attorney at Law, appeared on behalf of respondents, Isabel Rodriguez, d.b.a. The Smog Shop, and Juan Ramirez. Neither Isabel Rodriguez, d.b.a. The Smog Shop, or Juan Ramirez were present at the hearing.

The matter was submitted on February 22, 2017.

## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. On February 26, 2016, complainant signed the Accusation in Case No. 79/16-67. That Accusation named Isabel Rodriguez d.b.a. The Smog Shop and Juan Ramirez (an employee) as respondents in this disciplinary action. The Accusation alleged 16 causes for discipline including 10 directed to Isabel Rodriguez d.b.a. The Smog Shop, and six directed to Juan Ramirez.

On December 19, 2016, complainant signed the First Amended Accusation in Case No. 70/16-67. The First Amended Accusation included 16 causes for discipline. The First Amended Accusation appears to have only been changed from the Accusation to correct typographical errors.

At the hearing on this matter the respondents entered into a stipulation with the Bureau of Automotive Repair with regard to certain portions of the First Amended Accusation. Specifically, both respondents admitted to the truth of the allegations contained in paragraphs 30, 31, 33, 34, 35, 36, 46, 47, 48, 49, 50, 51, and 52 of the First Amended Accusation.

### *License History*

2. On April 15, 2011, the Bureau issued Advanced Emission Specialist (EA) Technician License No. 633011 to Juan M. Ramirez. That license was cancelled on March 29, 2013. Under California Code of Regulations, title 16, Section 3340.28, subdivision (e), the cancelled license was replaced with, and renewed as, Smog Check Inspector (EO) License No. 633011, effective March 29, 2013. Unless revoked, the EO License expires on March 31, 2017.

3. On January 10, 2011, the Bureau issued Automotive Repair Dealer Registration number ARD 263727 to Isabel Rodriguez doing business as The Smog Shop at an address on Old 215 Frontage Road in Moreno Valley, California. Unless revoked, that registration expires on January 31, 2018. On February 1, 2011, the Bureau issued Smog Check, Test Only, Station License number TC 263727 to Isabel Rodriguez doing business as The Smog Shop at an address on Old 215 Frontage Road in Moreno Valley. Unless revoked, that license expires on January 31, 2018. On April 20, 2015, The Smog Shop at an address on Old 215 Frontage Road in Moreno Valley was certified as a STAR Station. The STAR Station certification will remain active unless revoked, cancelled, or invalidated, or licenses become delinquent.

On October 15, 2009, the Bureau issued Automotive Repair Dealer Registration number ARD 259696 to Isabel Rodriguez doing business as The Smog Shop at an address on Sunnymead Boulevard in Moreno Valley, California. Unless revoked, that registration expires on September 30, 2017. On October 28, 2009, the Bureau issued Smog Check, Test

Only, Station License number TC 259696 to Isabel Rodriguez doing business as The Smog Shop at an address on Sunnymead Boulevard in Moreno Valley. Unless revoked, that license expires on September 30, 2017. On November 3, 2015, The Smog Shop at an address on Sunnymead Boulevard in Moreno Valley was certified as a STAR Station. The STAR Station certification will remain active unless revoked, cancelled, or invalidated, or Ms. Rodriguez's licenses become delinquent.

On April 29, 2010, the Bureau issued Automotive Repair Dealer Registration number ARD 261790 to Isabel Rodriguez doing business as The Smog Shop at an address in Rialto, California. That registration was cancelled on November 20, 2013. On May 11, 2010, the Bureau issued Smog Check, Test Only, Station License number TC 261790 to Isabel Rodriguez doing business as The Smog Shop in Rialto, California. That license was cancelled on November 20, 2013. Pursuant to Business and Professions Code section 9884.5, ARD 261790 is eligible for reinstatement until April 30, 2017, at which point the license is ineligible for reinstatement. Pursuant to Business and Professions Code section 118, subdivision (b), the Bureau retains jurisdiction until April 30, 2017.

On May 26, 2010, the Bureau issued Automotive Repair Dealer Registration number ARD 262041 to Isabel Rodriguez doing business as The Smog Shop at an address in Temecula, California. That registration was cancelled on April 5, 2016. On June 8, 2010, the Bureau issued Smog Check, Test Only, Station License number TC 262041 to Isabel Rodriguez doing business as The Smog Shop in Temecula, California. That license was cancelled on April 5, 2016. Pursuant to Business and Professions Code section 9884.5, ARD 261790 is subject to reinstatement until April 30, 2019, at which point the license is ineligible for reinstatement. Pursuant to Business and Professions Code section 118, subdivision (b), the Bureau retains jurisdiction until April 30, 2019.

### *Factual Background*

4. California's smog check inspection program requires vehicle owners to present their vehicles for smog check inspections at various times as required by law. Licensed smog check technicians at licensed smog check stations conduct mandated smog check inspections.

A smog check inspection consists of a three-part test. The emission sample test analyzes tail pipe emissions obtained while the vehicle's engine is running; the visual inspection requires a smog check technician to verify the presence of required emission control systems and components; and the functional test requires a technician to physically test certain emission system components.

A computer-based analyzer – known as an Emissions Inspection System (EIS) – is used to conduct a smog check inspection. The EIS samples exhaust gasses during the emission sample test phase, and the EIS accepts data entered by the smog check technician to document the results of the visual inspection and functional testing. If a vehicle passes all three parts of the smog inspection, the EIS notifies the Department of Motor Vehicles of that

fact, and an electronic certificate of compliance is issued. Whether or not a vehicle passes the inspection, the EIS prints a Vehicle Inspection Report (VIR) concerning the results of the inspection. Data obtained during the inspection is stored on the EIS's hard drive and in a statewide Vehicle Identification Database (VID) that contains the dates and times of all smog check inspections, the identity of the vehicles tested (license plates and vehicle identification numbers), emissions readings, the identity of the technicians performing the testing, and the identifying numbers on the electronic certificate of compliance issued after a successful inspection. BAR employees have access to the VID and use the information stored there when conducting investigations.

5. The Bureau is aware of several methods used to circumvent a legitimate smog check inspection in order to obtain a certificate of compliance for a vehicle that might not have passed a properly conducted smog check inspection.

One method is known as "clean piping." Clean piping involves the use of an exhaust emission sample from a vehicle that is not the subject of the smog check inspection that will pass the exhaust emission phase of the emission testing instead of using an exhaust sample from the vehicle actually being tested. Clean piping involves fraud.

Another method is known as "clean gassing," which is a form of clean piping that occurs when a surrogate gas is introduced in place of some or all of the vehicle exhaust during a smog check inspection. With clean gassing the smog check gas analyzer measures the pollutants in the surrogate gas and issues a test result based upon these readings rather than the actual vehicle emissions. Clean gassing involves fraud.

6. STAR Certification is the Bureau's voluntary certification program that applies to a registered Automotive Repair Dealer that is also a licensed smog check test-and-repair station or a test-only station. To become STAR Certified, a licensee must apply for certification and meet inspection-based performance standards. (Health & Saf. Code, § 44014.2; Cal. Code Regs, tit. 16, § 3340.1.) When a smog station holds a STAR Certification, that station has the exclusive authority to inspect certain types of "directed" and "gross polluting" vehicles. (Health & Saf. Code, § 44014.2, subd. (a); Cal. Code Regs, tit. 16, § 3340.41, subd. (f); 3392.5.1, subd. (c).)

Eligibility for STAR Certification is dependent upon a number of inspection-based performance standards, including the STAR Follow-up Pass Rate (FPR) scores of Smog Check Inspectors and the station. If an EO licensee (Smog Check Inspector) has an FPR score that is too low, then the use of that licensee's license number to conduct inspections in the EIS at a station will impact the station's eligibility for STAR Certification.

*The Bureau's Investigation and Evidence*

THE UNDERCOVER OPERATION WITH THE 1992 MITSUBISHI

7. Raymond Gottenbos works as a Program Representative II for the Bureau in the Riverside field office. Mr. Gottenbos has worked for the Bureau for 21 years. His responsibilities include investigating consumer complaints, identifying fraudulent business practices, performing audits on stations, and preparing formal reports of his investigations.

In early 2014, Mr. Gottenbos, a Bureau investigator, initiated an investigation of The Smog Shop located on Old 215 Frontage Road in Moreno Valley based on an anonymous tip alleging fraudulent smog testing activities. At the conclusion of his investigation Mr. Gottenbos drafted a report summarizing his investigation.

8. Clayton Arnold Loy is a Program Representative I for the Bureau in its Forensic Documentation Laboratory located in Valencia, California. In the Bureau's documentation lab his responsibilities include inspection, testing, verifying and altering conditions, and documenting his work on undercover vehicles for use in undercover operations for the Bureau. On August 5, 2014, he began documentation of a 1992 Mitsubishi Eclipse for use in undercover operations and documented his observations and work on the vehicle in a declaration and with photographs. While testing and documenting the 1992 Mitsubishi Eclipse to determine if the vehicle would pass all inspections, Mr. Loy observed that the ignition timing on the vehicle was 5 degrees before top dead center (BTDC), and the specifications for the vehicle dictate that the proper ignition timing is 5 degrees BTDC. After observing that the ignition timing was set to specifications, Mr. Loy applied a tamper indicator, a glue substance, to the part where the ignition timing can be adjusted. If the glue tamper indicator is broken after the car is returned from an undercover operation, the broken glue would indicate that the ignition timing had been adjusted.

Mr. Loy further noted in his declaration that all emission related parts that have been modified on a vehicle must be approved by the California Air Resources Board (ARB) and have an Executive Order (EO) number attached to the part. These EO numbers for modified emission related parts must be verified during the visual portion of a proper smog inspection. Mr. Loy noted that a vehicle will fail a visual inspection during a smog check for any visible smoke from the tailpipe and/or positive crankcase ventilation (PCV) system, liquid fuel leaks, or missing, modified, disconnected or defective emission control components. Mr. Loy documented that during his inspection of the 1992 Mitsubishi Eclipse, the vehicle failed the visual inspection because it was missing a catalytic converter, had a modified fuel injection and a modified PCV system. He also noted that the vehicle failed the inspection for excessive tail pipe emissions. Mr. Loy documented all of his work on the 1992 Mitsubishi Eclipse, including documentation by photographs.

9. On September 26, 2014, Mr. Gottenbos facilitated an undercover operation at The Smog Shop located on Old 215 Frontage Road in Moreno Valley with the assistance of an undercover operator and Bureau Program Representative II named Marc Ortega. On

September 26, 2014, Mr. Gottenbos received custody of a 1992 Mitsubishi Eclipse undercover vehicle prepared by Program Representative, Clayton Loy, for use in the undercover operation. On September 26, 2014, Mr. Gottenbos gave custody of the vehicle to Mr. Ortega for use in the undercover investigation and instructed him to take the vehicle to The Smog Shop located on Old 215 Frontage Road in Moreno Valley, California for a smog inspection. Mr. Gottenbos also showed Mr. Ortega photographs of all three smog technicians working at The Smog Shop, namely Jose Ramirez, Cesar Trujillo, and Juan Rodriguez.

10. On September 26, 2014, Ms. Ortega took possession of the 1992 Mitsubishi Eclipse from Mr. Gottenbos to perform the undercover operation at The Smog Shop. Mr. Ortega has worked for the Bureau as a Program Representative II and prior to that as a Program Representative I. He has been employed by the Bureau for over 12 years. His responsibilities include investigating consumer complaints, identifying fraudulent business practices, performing audits on stations, performing inspections on stations, and conducting undercover operations. As part of his regular duties, he sometimes acts as the undercover driver of the vehicle to be inspected on an undercover operation. He did so in this case.

On September 26, 2014, Mr. Ortega took the 1992 Mitsubishi Eclipse to The Smog Shop located on Old 215 Frontage Road in Moreno Valley to request a smog inspection on the vehicle. When he arrived he met Juan Ramirez, whom he recognized from the photograph shown to him from Mr. Gottenbos, at the station and asked how much it would cost to get a passing smog inspection on the Mitsubishi. Mr. Ramirez looked at the underside of the vehicle and told Mr. Ortega to get a catalytic converter installed on the vehicle and he would be able to help. Mr. Ortega then left the Smog Shop and returned the Mitsubishi to Mr. Gottenbos and informed him of the interaction with Mr. Ramirez.

On October 8, 2014, Mr. Gottenbos gave custody of the 1992 Mitsubishi Eclipse to Paul Stump, a Program Representative I at the Bureau's Documentation Laboratory in Valencia, California. On October 8, 2014, Mr. Stump provided custody of the 1992 Mitsubishi Eclipse to Mr. Loy at the Documentation Laboratory. On October 9, 2014, Mr. Loy performed a smog inspection on the vehicle and noted his results in his declaration and with photographs. Mr. Loy noted in his declaration that the vehicle failed to pass the visual portion of the smog inspection because it was missing a catalytic converter, had a modified fuel injection and modified PCV system. He also noted that the vehicle failed the smog inspection for excessive tailpipe emissions. After completing that smog inspection, Mr. Loy then modified the vehicle to place a hollowed-out catalytic converter on the vehicle in the location where a fully functional catalytic converter would normally be. The hollowed-out catalytic converter had all of its functional contents removed and was simply a non-functional shell. According to Mr. Loy the hollowed-out catalytic converter would pass a visual inspection, but would fail a functional inspection. Upon completion of this work, Mr. Loy documented his work and photographed the vehicle.

11. On February 12, 2015, Mr. Gottenbos took possession of the 1992 Mitsubishi from the Valencia Forensic Documentation Laboratory. On February 26, 2015, Mr.



Gottenbos gave custody of the 1992 Mitsubishi to Mr. Ortega and instructed him to again take the vehicle to The Smog Shop located on Old 215 Frontage Road in Moreno Valley and request a smog inspection. Mr. Gottenbos provided Mr. Ortega with a DMV registration and a vehicle moving permit for the vehicle. Mr. Gottenbos also showed Mr. Ortega photographs of the three smog technicians who worked at that location.

12. On February 26, 2017, Mr. Ortega took the 1992 Mitsubishi to The Smog Shop. When Mr. Ortega arrived at the shop he met Juan Ramirez and told Mr. Ramirez in Spanish that he brought the Mitsubishi back to him "for a passing smog inspection." Mr. Ramirez asked Mr. Ortega what was wrong with the vehicle, and Mr. Ortega informed him that he put a catalytic converter on the vehicle, as Mr. Ramirez advised him to do. Mr. Ramirez then took the 1992 Mitsubishi into the rear of the building to perform the inspection.

After inspecting the vehicle, Mr. Ramirez told Mr. Ortega that the tailpipe emissions for the vehicle exceeded the passing limits, and that the vehicle had a non-approved fuel pressure regulator causing it to have too much fuel entering into the engine. Mr. Ortega explained that because of these issues it would be difficult to get the vehicle to pass the smog inspection and that he would "do a two for one" inspection and was going to use a Chrysler Sebring to try and get the Mitsubishi to pass the smog inspection. Mr. Ramirez understood that doing a "two for one" meant that Mr. Ortega intended to use a substitute vehicle to perform the smog inspection for the 1992 Mitsubishi.

Mr. Ortega observed Mr. Ramirez take a Chrysler Sebring into the shop and set it up on the dynamometer to perform a smog test. After Mr. Ramirez completed the inspection of the Chrysler Sebring, Mr. Ortega observed Mr. Ramirez tell the owner of the Sebring that the vehicle failed the smog inspection. Mr. Ramirez then told Mr. Ortega that he would have to wait until another vehicle came into the shop for a smog inspection. Thereafter, another vehicle came into the shop for a smog inspection. Mr. Ramirez took the vehicle to the back of the shop and performed a smog inspection. Mr. Ortega overheard Mr. Ramirez tell the vehicle owner that the vehicle did not pass the smog inspection. After that customer left the premises, Mr. Ramirez asked Mr. Ortega if he had time to wait for another customer to arrive for a smog inspection. Mr. Ortega informed Mr. Ramirez that he did not have time to wait. Mr. Ramirez told Mr. Ortega that the 1992 Mitsubishi did not have to be present at the shop in order for him to obtain a passing smog inspection for that vehicle. Thereafter, Mr. Ramirez asked Mr. Ortega to fill out a work order from, which he did. After that work order was completed, Mr. Ramirez requested that Mr. Ortega give him \$200, which he did. Mr. Ramirez informed Mr. Ortega that the fuel pressure regulator was allowing too much fuel to get into the engine and that was the reason that the vehicle would not pass the smog inspection.

Mr. Ortega then drove the 1992 Mitsubishi from the The Smog Shop to a location to meet Mr. Gottenbos. Mr. Ortega informed Mr. Gottenbos of the events at The Smog Shop. Mr. Gottenbos instructed Mr. Ortega to drive the 1992 Mitsubishi to a location where he would transfer custody of the vehicle to Mr. Gottenbos.

13. On February 27, 2017, Mr. Ortega returned to The Smog Shop in a different vehicle. Mr. Ortega walked into the shop and was met by Mr. Ramirez. Mr. Ramirez informed Mr. Ortega that everything went okay and that he was able to issue a certificate of compliance for the 1992 Mitsubishi demonstrating that it passed the smog inspection. Mr. Ramirez handed the VIR showing that the 1992 Mitsubishi passed the smog inspection, along with the DMV documents that Mr. Ortega had provided Mr. Ramirez the day before. Mr. Ortega was not provided a copy of an invoice. Mr. Ortega left The Smog Shop, initialed the VIR provided to him by Mr. Ramirez, and delivered the documents to Mr. Gottenbos.

#### THE UNDERCOVER OPERATION WITH THE 1992 HONDA CIVIC.

14. Paul Stump is employed as a Program Representative I for the Bureau in its Forensic Documentation Laboratory located in Valencia, California. In the Bureau's documentation lab his responsibilities include inspection, testing, verifying and altering conditions, and documenting his work on undercover vehicles for use in undercover operations for the Bureau. On March 9, 2015, and on March 10, 2015, Mr. Stump inspected a 1992 Honda Civic and verified that all the necessary parts required to pass a smog inspection were present on the vehicle. After his initial inspection, he induced a malfunction in the vehicle by removing the original catalytic converter, manifold and "A" pipe on the vehicle and replacing those components with a straight exhaust manifold and pipe that did not include the required catalytic converter. With these malfunctions installed by Mr. Stump, the 1992 Honda Civic would fail both the visual and emissions portion of a properly performed smog inspection. Mr. Stump documented and photographed the condition of the 1992 Honda Civic prior to making changes on the vehicle, as well as after he made the changes. On March 12, 2017, Mr. Stump transported the 1992 Honda Civic to an offsite storage facility in Riverside, California.

15. On April 9, 2015, Mr. Gottenbos released custody of the 1992 Honda Civic from the storage facility in Riverside, California to Mr. Ortega. Mr. Gottenbos instructed Mr. Ortega to take the 1992 Honda Civic to The Smog Shop located on Old 215 Frontage Road in Moreno Valley and inform Mr. Rodriguez that he had another vehicle that needed to pass a smog inspection.

16. On April 9, 2015, Mr. Ortega drove the 1992 Honda Civic to The Smog Shop. After he arrived to that location, he was greeted by Mr. Rodriguez. Mr. Ortega told Mr. Rodriguez that he needed the Honda to pass smog inspection. Mr. Ramirez asked Mr. Ortega for the paperwork associated with the vehicle and the keys. Mr. Ortega provided those documents and the keys to Mr. Ramirez. Mr. Ramirez then took the 1992 Honda Civic into the testing area of the shop. Thereafter Mr. Ramirez informed Mr. Ortega that the 1992 Honda Civic was missing the catalytic converter and the vehicle needed the catalytic converter to pass a smog inspection. Mr. Ramirez told Mr. Ortega that he was unable to find a catalytic converter for that vehicle and asked if there was any other way to get the vehicle to pass a smog inspection. Mr. Ramirez told Mr. Ortega that he had a guy in Bloomington who could get the Honda to pass a smog inspection even though the car was missing a catalytic converter. Mr. Ramirez told Mr. Ortega that he would call this person to make sure

he could help. Mr. Ortega observed Mr. Ramirez speaking to someone on the telephone. During that telephone call, Mr. Ramirez told Mr. Ortega that the person in Bloomington could pass the Honda for a fee of \$250. Mr. Ramirez told Mr. Ortega that he would agree to that price, and Mr. Ramirez told the person on the phone that Mr. Ortega would be at the Bloomington location later that day. Mr. Ramirez then handed Mr. Ortega a business card for The Smog Shop with the name "Juan" written on it and a piece of paper with the following information written on it: "17763 West Valley Blvd. Bloomington, CA Ismael Fast N Go." Mr. Ramirez then drove the 1992 Honda Civic from The Smog Shop to an undisclosed location where Mr. Gottenbos was located.

After arriving to the location where Mr. Gottenbos was located, Mr. Ortega informed Mr. Gottenbos of the interaction with Mr. Rodriguez earlier that day. Mr. Gottenbos obtained a photograph of Ismael Rodriguez, the smog technician at the Fast N Go shop in Bloomington, and showed that photograph to Mr. Ortega. Mr. Gottenbos then instructed Mr. Ortega to take the 1992 Honda Civic to the Fast N Go smog shop located in Bloomington based on the information obtained from Mr. Rodriguez. Mr. Ortega proceeded to drive the 1992 Honda Civic to the Fast N Go shop in Bloomington.

After he arrived at the Fast N Go shop in Bloomington, Mr. Ortega was greeted by a man he recognized from the photograph as Ismael Rodriguez. Mr. Ortega informed Mr. Rodriguez that Juan Ramirez from The Smog Shop had sent him to get a passing smog inspection for the 1992 Honda Civic. Mr. Rodriguez replied that he needed a few minutes and Mr. Ortega should wait inside the office of the shop. After waiting for 30 minutes, Mr. Ortega asked another employee at the shop what was taking so long. The employee responded that Mr. Rodriguez was waiting for the thing to make the car pass. Approximately 40 minutes later Mr. Ortega observed a vehicle arrive at the Fast N Go shop and an individual he recognized from photographs at the Bureau as Cesar Gomez stepped out of the vehicle. Mr. Ortega observed Mr. Gomez have a conversation with Mr. Rodriguez and Mr. Gomez obtained a green bottle from the trunk of his vehicle and placed the green bottle near the EIS unit. Mr. Rodriguez then instructed Mr. Ortega to drive the 1992 Honda to the testing bay, which he did. Mr. Ortega then observed Mr. Gomez drive the 1992 Honda Civic onto the dynamometer and operate the vehicle on the dynamometer while Mr. Rodriguez was bent over adjusting a valve on the green bottle while the emission test was being performed. After the emissions test was completed, Mr. Ortega observed Mr. Gomez walk over to Mr. Rodriguez and told him "Did you see what I did there to get the car through?" and Mr. Rodriguez nodded in agreement. Mr. Gomez then drove away in his vehicle from the Fast N Go shop. Immediately after the emissions test was completed, Mr. Ortega observed the green bottle connected directly to a pressure regulator on the 1992 Honda Civic, and a hose from the pressure regulator connected to a filter located at the rear of the EIS unit. Mr. Rodriguez then told Mr. Ortega that the test was completed and shook hands with Mr. Ortega. Thereafter, Mr. Rodriguez asked Mr. Ortega for \$250 for the passing smog inspection, which Mr. Ortega gave to him. Mr. Rodriguez then handed Mr. Ortega the VIR showing that the 1992 Honda Civic passed the smog inspection.

### *Respondents' Argument*

17. Neither respondent provided any witness testimony or documentary evidence as a defense to the allegations set forth in the First Amended Accusation. Instead, counsel for respondents argued that the evidence demonstrated that Mr. Ramirez was entrapped to perform an illegal smog check on the 1992 Mitsubishi Eclipse by Mr. Ortega's offer of \$200 to Mr. Ramirez. However, the only evidence presented at the hearing was Mr. Ortega's testimony that Mr. Ramirez asked Mr. Ortega for \$200 after Mr. Ramirez told Mr. Ortega that the 1992 Mitsubishi Eclipse did not need to be present at the station for a passing smog test to be obtained on that vehicle. Accordingly, respondent's argument regarding inducement fails.

18. Additionally, counsel for respondents argued that Mr. Ramirez was the sole individual at The Smog Shop who interacted with Mr. Ortega and that Ms. Rodriguez was not involved in the smog checks of either the 1992 Mitsubishi Eclipse or the 1992 Honda Civic. Accordingly, counsel argued that each alleged cause for discipline against Ms. Rodriguez asserting that she committed fraud based upon the actions of Mr. Ramirez are without support because fraud requires knowledge, intent and participation by an actor and can't be imputed from one person to another. However, respondent's argument contradicts Business and Professions Code, section 9884.7, subdivision (a)(4), which explicitly states that the Bureau may suspend, revoke or place on probation the registration of an automobile repair dealer for any conduct that constitutes fraud related to the conduct of the business which is done by the automotive repair dealer **OR** any automotive technician, employee, partner, officer, or member of the automotive repair dealer. Accordingly, respondent's argument regarding fraud also fails.

19. Furthermore, counsel for respondents argued that only one fraudulent inspection was performed at The Smog Shop, namely the inspection of the 1992 Mitsubishi Eclipse. Counsel argued that the fraudulent inspection of the 1992 Honda Civic was performed at another licensed station not affiliated with Ms. Rodriguez. Accordingly, counsel asserted that there is only one incident of fraudulent activity arising from The Smog Shop and no prior disciplinary history. Therefore a probationary period would be the appropriate discipline for Ms. Rodriguez instead of revocation.

20. Moreover, counsel for respondents argued that with regard to the alleged causes for discipline related to the assertion that respondents conspired with another licensee to fraudulently issue a smog certificate of compliance for the 1992 Honda Civic, there was no evidence that any conspiracy took place. However, contrary to respondent's counsel's assertions, Mr. Ortega wrote in his declaration that he observed Mr. Ramirez communicating with a person on the telephone and during that telephone call Mr. Ramirez told Mr. Ortega that the person in Bloomington could pass the Honda for \$250. This evidence supports the conclusion that Mr. Ramirez conspired with the Fast N Go station to fraudulently issue a smog certificate of compliance for the 1992 Honda Civic.

21. Finally, counsel for respondents argued that the costs of enforcement and investigation in this matter should be reduced because the declaration provided by the Bureau related to the costs incurred during the investigation was insufficient to meet the requirements of California Code of Regulations, title 1, section 1042. Counsel also argued that the Bureau failed to meet its burden of proof on each of the causes of discipline alleged. Accordingly, he argued that the costs associated with enforcement and investigation should be reduced as a result.

### *Evaluation*

22. The Bureau's documentation concerning the undercover investigations of The Smog Shop's operations, documentation and testimony regarding the undercover investigations with the 1992 Mitsubishi Eclipse and the 1992 Honda Civic, and the testimony concerning the manner and techniques related to clean piping and clean gassing produced in this proceeding were comprehensive and reliable.

23. Through their counsel's stipulation at the hearing, respondents admitted in paragraph 35 of the Accusation that the smog inspection on the 1992 Mitsubishi Eclipse was conducted using clean piping methods resulting in the issuance of a fraudulent certificate of compliance. Additionally, the evidence presented at the hearing demonstrated that Mr. Ramirez, while working as an employee of Ms. Rodriguez, d.b.a. The Smog Shop, fraudulently issued a certificate of compliance for the 1992 Mitsubishi Eclipse.

24. Through their counsel's stipulation at the hearing, respondent's admitted in paragraph 47 of the Accusation that Mr. Ramirez told Mr. Ortega that he could refer him to the Fast N Go shop in Bloomington, California that would be able to pass the 1992 Honda Civic without a catalytic converter for a fee of \$250. Additionally, the evidence presented at the hearing demonstrated that Mr. Ramirez knowingly conspired with the Fast N Go smog shop to fraudulently issue a certificate of compliance for the 1992 Honda Civic.

25. Juan Ramirez's activities in clean piping the 1992 Mitsubishi Eclipse during a smog check inspection, in issuing a certification of compliance for the undercover vehicle that did not comply with required specifications, as well as conspiring with the Fast N Go smog station to issue a fraudulent certificate of compliance for the 1992 Honda Civic, violated the Motor Vehicle Inspection Program and many of the regulations enacted under that program, and his misconduct involved dishonesty and fraud that resulted in injury to residents of California. As the licensed owner of The Smog Shop, Isabel Rodriguez is responsible for the actions of Juan Ramirez and for his violations.

### *Disciplinary Considerations*

26. The Bureau enacted disciplinary guidelines that are found at California Code of Regulations, title 16, section 3395.4. These guidelines provide a range of recommended sanctions for various violations. The Bureau requests that administrative law judges consider factors in aggravation and mitigation when considering a final penalty.

27. In this matter, factors in aggravation included Mr. Ramirez's outright fraud on at least two occasions, namely with the 1992 Mitsubishi Eclipse and the 1992 Honda Civic. Isabel Rodriguez and Juan Ramirez provided no evidence of rehabilitation.

For the violations established in this matter, the disciplinary guidelines recommend a maximum sanction of revocation and a minimum sanction of a revocation, stayed, with an actual suspension and period of probation. The revocation of both Juan Ramirez's license and Isabel Rodriguez's ARD registration is the most appropriate measure of discipline.

#### *Costs of Investigation and Prosecution*

28. A certification of costs of investigation was signed by William D. Thomas, Program Manager II. The certification stated that Mr. Thomas reviewed Bureau records "which reflect that the attachments of costs and fees that have been incurred by the agency in connection with the investigation and prosecution of Accusation Number 79/16-67 as of February 13, 2017." The attachment stated that 53.5 hours of Program Representative II time was incurred in the investigation and was billed at rates ranging from \$75.30 to \$76.57 per hour. The attachment stated that there was \$200 in "operator fees." Costs of enforcement totaled \$4,254.90.

Neither the certification nor the attachment contained facts sufficient to support any finding regarding the Bureau's actual costs incurred or the reasonableness of investigative services. The certification Mr. Thomas signed did not describe the general tasks performed or the time spent on each task.

An award for investigative costs cannot be issued because inadequate evidence was provided to support an award.

29. A certification of prosecution costs was signed by the deputy attorney general who prosecuted this action. The declaration stated that the deputy requested a billing summary for the case that was maintained by the Department of Justice. That billing summary was produced, and it was attached to the deputy's declaration. In contrast to the attachment to Mr. Thomas's certification, the billing summary contained each date on which legal services were provided, the nature of the task performed that day, the time spent that day performing a particular task, and the billing rate of the persons providing legal services. The billing rate for attorney services was \$170 per hour. The billing rate for paralegal services was \$120 per hour. These are reasonable rates. The time spent in the prosecution of the matter was reasonable given the complexity of the case and the volume of documents that had to be reviewed. The billing summary documented enforcement costs of \$11,522.50. The declaration and attachment supported an award of enforcement costs of \$11,522.50.

30. The evidence supports an order directing respondents, Isabel Rodriguez, as the owner and operator of The Smog Shop, and Juan Ramirez, jointly and severally, to pay total costs of enforcement in the amount of \$11,522.50.

## LEGAL CONCLUSIONS

### *The Burden and Standards of Proof*

1. Absent a statute to the contrary, the burden of proof in a license disciplinary proceeding is on the party filing the accusation, which is ordinarily the agency. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

2. Although an applicant for an advanced emission specialist technician license must complete certain coursework (Cal. Code Regs., tit. 16, § 3340.28, subd. (b)(3)) and pass an examination (Cal. Code Regs., tit. 16, § 3340.29), such requirements are not similar to the extensive educational, training and testing requirements necessary to obtain a professional license. An advanced emission specialist technician license and an automotive repair dealership are nonprofessional or occupational licenses, and proceedings to revoke such licenses are governed by the preponderance of evidence standard of proof. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

### *Statutes and Regulations*

3. Health and Safety Code section 44015 provides in part:

(a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

[¶] . . . [¶]

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

[¶] . . . [¶]

4. Health and Safety Code section 44072.10 provides in part:

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

[¶] . . . [¶]

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

5. Business and Professions code section 9884.7, subdivision (a), states, in pertinent part:

The director, where the automotive repair dealer cannot show there was a 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 exercise of reasonable care should be known, to be untrue or misleading.

[¶] . . . [¶]

- (4) Any other conduct that constitutes fraud.

[¶] . . . [¶]

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

6. Business and Professions code section 9884.9 requires an automotive repair dealer to obtain the signature of a customer on a written estimated price for work to be done in the licensed facility.

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

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.



8. California Code of Regulations, title 16, section 3340.30, subdivision (a), requires a licensed smog technician to “[i]nspect, 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.”

9. California Code of Regulations, title 16, section 3340.41, subdivision (b), provides:

No person shall enter into the emissions inspection system any access or qualification number other than as authorized by the bureau, nor in any way tamper with the emissions inspection system.

10. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides:

No person shall enter into the emissions 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 emissions inspection system any false information about the vehicle being tested.

11. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions test methods and procedures that apply when conducting a smog check inspection in California.

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

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. The following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

13. California Code of Regulations, title 16, section 3373 states as follows:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

14. Health and Safety Code section 44012 provides in part:

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.

[¶] . . . [¶]

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the 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.

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

15. Health and Safety Code section 44032 provides:

No person shall perform, for compensation, tests or repairs of emission control 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 licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

16. Health and Safety Code section 44059 provides in part:

The willful making of any false statement or entry with regard to a material matter in any . . . certificate of compliance . . . or application form . . . constitutes perjury and is punishable as provided in the Penal Code.

17. Health and Safety Code section 44072.2 provides in part:

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.

(b) Is convicted of any crime substantially related to the qualifications, functions, or duties of the license holder in question.

(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 . . . .

*Cause Exists to Discipline Respondent Isabel Rodriguez's Licenses*

18. A preponderance of the evidence established cause to discipline respondent Isabel Rodriguez's licenses under Business and Professions Code section 9884.7, subdivision (a)(1). Ms. Rodriguez's employee, Juan Ramirez, failed to comply with the provisions of the Motor Vehicle Inspection Program and related regulations when he issued a certificate of

compliance for the 1992 Mitsubishi Eclipse when in fact the vehicle had a non-functional, hollowed-out catalytic converter, non-approved fuel pressure regulator, and tailpipe emissions exceeding the passing limits. (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192 [“If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct in the exercise of his license and he is responsible for the acts of his agents or employees done in the course of his business in the operation of the license.”].)

19. A preponderance of the evidence established cause to discipline respondent Isabel Rodriguez’s licenses under Business and Professions Code section 9884.7, subdivision (a)(4). Ms. Rodriguez’s employee, Juan Ramirez, committed acts constituting fraud when he knowingly issued a certificate of compliance for the undercover 1992 Mitsubishi Eclipse despite having a non-approved fuel pressure regulator and tailpipe emissions exceeding the passing limit.

20. A preponderance of the evidence failed to establish cause to discipline respondent Isabel Rodriguez’s licenses under Business and Professions Code section 9884.7, subdivision (a)(6) based upon Ms. Rodriguez’s employee, Juan Ramirez, failing to provide a written estimated price for the smog inspection to Mr. Ortega when he was conducting the undercover operation. No evidence was presented regarding whether or not a written estimated price for the smog inspection was provided to Mr. Ortega.

21. A preponderance of the evidence established cause to discipline respondent Isabel Rodriguez’s licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (a). Ms. Rodriguez’s employee Juan Ramirez failed to perform the emission control test on the undercover 1992 Mitsubishi Eclipse in accordance with procedures prescribed by the Department in violation of California Code of Regulations, title 16, section 44012, subdivisions (a) and (f), and California Code of Regulations, title 16, section 44015, and California Code of Regulations, title 16, section 44072.10.

22. A preponderance of the evidence established cause to discipline respondent Isabel Rodriguez’s licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (c). Ms. Rodriguez’s employee Juan Ramirez failed to perform the emission control test on the undercover 1992 Mitsubishi Eclipse in accordance with procedures prescribed by the Department in violation of California Code of Regulations, title 16, section 3340.24, subdivision (c), California Code of Regulations, title 16, section 3340.35, subdivision (c), California Code of Regulations, title 16, section 3340.41, subdivision (c), and California Code of Regulations, title 16, section 3340.42.

23. A preponderance of the evidence established cause to discipline respondent Isabel Rodriguez’s licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (d). Ms. Rodriguez’s employee Juan Ramirez issued an electronic smog certificate of compliance for the 1992 Mitsubishi Eclipse

without performing a bona fide inspection of the emission control devices and systems on the vehicle thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

24. A preponderance of the evidence established cause to discipline respondent Isabel Rodriguez's licenses under Business and Professions Code section 9884.7, subdivision (a)(4). Ms. Rodriguez's employee Juan Ramirez committed acts constituting fraud by conspiring with the Fast N Go smog shop to fraudulently issue a certification of compliance for the 1992 Honda Civic when that vehicle was modified in a way that it would not otherwise legitimately pass a properly performed smog inspection.

25. A preponderance of the evidence established cause to discipline respondent Isabel Rodriguez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (a). Ms. Rodriguez's employee Juan Ramirez conspired with another licensee to fraudulently issue an electronic smog certificate of compliance for the 1992 Honda Civic, in violation of California Code of Regulations, title 16, section 44072.2, subdivision (d), and California Code of Regulations, title 16, section 44072.10.

26. A preponderance of the evidence established cause to discipline respondent Isabel Rodriguez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (c). Ms. Rodriguez's employee Juan Ramirez conspired with another licensee to fraudulently issue an electronic smog certificate of compliance for the 1992 Honda Civic in violation of California Code of Regulations, title 16, section 3340.24, subdivision (c).

27. A preponderance of the evidence failed to establish cause to discipline respondent Isabel Rodriguez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (c) based upon a violation of California Code of Regulations, title 16, section 3340.41, subdivision (c) because there was no evidence that Fast N Go smog shop entered any vehicle identification information or emission control system identification data into the EIS for a vehicle other than the one being tested with regard to the 1992 Honda Civic.

28. A preponderance of the evidence established cause to discipline respondent Isabel Rodriguez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (d). Ms. Rodriguez's employee Juan Ramirez conspired with another licensee to fraudulently issue an electronic smog certificate of compliance for the 1992 Honda Civic thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

*Cause Exists to Discipline Respondent Juan Ramirez's Licenses*

29. A preponderance of the evidence established cause to discipline respondent Juan Ramirez's licenses for violations of the Motor Vehicle Inspection Program under Health

and Safety Code section 44072.2, subdivision (a). Mr. Ramirez failed to perform the complete smog inspection pursuant to the procedures prescribed by the department for the 1992 Mitsubishi Eclipse, and willfully made false entries into the EIS in order to obtain a certificate of compliance for the 1992 Mitsubishi Eclipse in violation of Health and Safety Code, sections 44012, subdivisions (a), (b), and (f); Health and Safety Code section 44015, subdivision (b); Health and Safety Code section 44059; and Health and Safety Code section 44072.10.

30. A preponderance of the evidence established cause to discipline respondent Juan Ramirez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (c). Mr. Ramirez failed to properly inspect and test the 1992 Mitsubishi Eclipse, falsely entered information into the EIS for a vehicle other than the one being tested, and falsely or fraudulently issued a smog certificate of compliance for the 1992 Mitsubishi in violation of California Code of Regulations, title 16, sections 3340.24, subdivision (a); 3340.30, subdivision (a); 3340.41, subdivision (c); and 3340.42.

31. A preponderance of the evidence established cause to revoke respondent Juan Ramirez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (d). Mr. Ramirez committed dishonest and fraudulent acts by fraudulently issuing a smog certification of compliance for the 1992 Mitsubishi Eclipse thereby depriving the People of the State of California of the protection afforded to them by the Motor Vehicles Inspection Program.

32. A preponderance of the evidence established cause to discipline respondent Juan Ramirez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (a). Mr. Ramirez conspired with another licensee to fraudulently issue an electronic smog certificate of compliance for the 1992 Honda Civic, in violation of California Code of Regulations, title 16, section 44072.2, subdivision (d), and California Code of Regulations, title 16, section 44072.10.

33. A preponderance of the evidence established cause to discipline respondent Juan Ramirez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code sections 44072.10, subdivision (c). Mr. Ramirez conspired with another licensee to fraudulently issue an electronic smog certificate of compliance for the 1992 Honda Civic in violation of California Code of Regulations, title 16, section 3340.24, subdivision (c).

34. A preponderance of the evidence failed to establish cause to discipline respondent Juan Ramirez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (c) based upon a violation of California Code of Regulations, title 16, section 3340.41, subdivision (c) because there was no evidence that Fast N Go smog shop entered any vehicle identification information or emission control system identification data into the EIS for a vehicle other than the one being tested with regard to the 1992 Honda Civic.

35. A preponderance of the evidence established cause to discipline respondent Juan Ramirez's licenses for violations of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (d). Mr. Ramirez conspired with another licensee to fraudulently issue an electronic smog certificate of compliance for the 1992 Honda Civic thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

#### *Rehabilitation*

36. Respondent Juan Ramirez intentionally and fraudulently provided a certificate of compliance for the 1992 Mitsubishi Eclipse when he knew that it did not pass inspection, and he has also conspired with another licensee to obtain a fraudulent certificate of compliance for the 1992 Honda Civic, extremely serious misconduct. No evidence of rehabilitation was submitted by either Isabel Rodriguez or Juan Ramirez.

#### *The Appropriate Measure of Discipline*

37. The record in this matter supports the revocation of both respondents Isabel Rodriguez and Juan Ramirez's licenses. The disciplinary guidelines' maximum penalty of revocation is appropriate given the serious nature of the misconduct and the multiple violations of the Motor Vehicle Inspection Program.

#### *Costs of Investigation and Enforcement*

38. Business and Professions Code section 125.3 provides in part:

(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

39. A preponderance of the evidence established that the Bureau's reasonable costs of enforcement total \$11,522.50.

### ORDER

Advanced Emission Specialist (EA) Technician License No. 633011 issued to Juan Ramirez is revoked.

Smog Check Inspector (EO) License No. 633011 issued to Juan Ramirez is revoked.

Automotive Repair Dealer (ARD) Registration No. 263727 issued to Isabel Rodriguez, owner of The Smog Shop, is revoked.

Smog Check, Test Only License Number TC 263727 issued to Isabel Rodriguez, owner of The Smog Shop, is revoked.

Automotive Repair Dealer (ARD) Registration No. 259696 issued to Isabel Rodriguez, owner of The Smog Shop, is revoked.

Smog Check, Test Only License Number TC 259696 issued to Isabel Rodriguez, owner of The Smog Shop, is revoked.

Automotive Repair Dealer (ARD) Registration No. 261790 issued to Isabel Rodriguez, owner of The Smog Shop, is revoked.

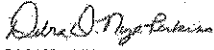
Smog Check, Test Only License Number TC 261790 issued to Isabel Rodriguez, owner of The Smog Shop, is revoked.

Automotive Repair Dealer (ARD) Registration No. 262041 issued to Isabel Rodriguez, owner of The Smog Shop, is revoked.

Smog Check, Test Only License Number TC 262041 issued to Isabel Rodriguez, owner of The Smog Shop, is revoked.

Respondents, Isabel Rodriguez and Juan Ramirez, shall pay, jointly and severally, complainant's costs of enforcement of \$11,522.50, which may be paid on such terms as may be determined by the Bureau of Automotive Repair.

DATED: March 24, 2017

DocuSigned by:  
  
73AD8C62D0DE42D...  
DEBRA D. NYE-PERKINS  
Administrative Law Judge  
Office of Administrative Hearings



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

12 In the Matter of the Accusation Against:

Case No. 79/16-67

13 **ISABEL RODRIGUEZ,**  
**DBA THE SMOG SHOP**  
14 **13978 Old 215 Frontage Rd., Unit C**  
**Moreno Valley, CA 92553**

**FIRST AMENDED ACCUSATION**

15 Automotive Repair Dealer Registration No.  
16 ARD263727  
17 Smog Check Test-Only Station License No.  
TC263727

18 and

19 **JUAN M. RAMIREZ**  
21590 Elmwood Street  
20 Perris, CA 92570

21 Smog Check Inspector License No. E0 633011  
(formerly Advanced Emission Specialist  
22 Technician License No. EA 633011)

23 Respondents.

24  
25 Complainant alleges:

26 **PARTIES**

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



1           6. Code section 477 provides, in pertinent part, that "Board" includes "bureau," . . .  
2 "License" includes certificate, registration or other means to engage in a business or profession  
3 regulated by the Code.

4           7. Code section 9884.7 provides, in pertinent part, that the Director may revoke an  
5 automotive repair dealer registration.

6           8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
7 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding  
8 against an automotive repair dealer or to render a decision invalidating a registration temporarily  
9 or permanently.

10          9. Code section 9889.1 provides, in pertinent part, that the Director may suspend or  
11 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the  
12 Automotive Repair Act.

13          10. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
14 license by operation of law or by order or decision of the Director or a court of law, or the  
15 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
16 disciplinary proceedings.

17          11. Health and Safety Code (H & S Code) section 44002 provides, in pertinent part, that  
18 the Director has all the powers and authority granted under the Automotive Repair Act for  
19 enforcing the Motor Vehicle Inspection Program.

20          12. H & S Code section 44072.6 provides, in pertinent part, that the expiration or  
21 suspension of a license by operation of law, or by order or decision of the Director, or a court of  
22 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to  
23 proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to  
24 render a decision suspending or revoking the license.

25          13. H & S Code section 44072.8 states:

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



1 the customer. The bureau may specify in regulation the procedures to be followed  
2 by an automotive repair dealer if an authorization or consent for an increase in the  
3 original estimated price is provided by electronic mail or facsimile transmission. If  
4 that consent is oral, the dealer shall make a notation on the work order of the date,  
time, name of person authorizing the additional repairs and telephone number  
called, if any, together with a specification of the additional parts and labor and the  
total additional cost,

.....

5 16. H & S Code section 44012 states, in pertinent part:

6 The test at the smog check stations shall be performed in accordance with  
7 procedures prescribed by the department, pursuant to Section 44013, shall require,  
8 at a minimum, loaded mode dynamometer testing in enhanced areas, and  
two-speed testing in all other program areas, and shall ensure all of the following:

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

.....

11 (f) A visual or functional check is made of emission control devices  
12 specified by the department, including the catalytic converter in those instances in  
13 which the department determines it to be necessary to meet the findings of Section  
14 44001. The visual or functional check shall be performed in accordance with  
procedures prescribed by the department.

.....

15 17. H & S Code section 44015 (b) states:

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

18 18. H & S Code section 44032 states:

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

23 19. H & S Code section 44072.2 states, in pertinent part:

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

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

.....

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

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

4 ....

5 20. H & S Code section 44072.10 states, in pertinent part:

6 ....

7 (c) The department shall revoke the license of any smog check technician or  
8 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  
9 the following:

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

11 ....

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

13 ....

14 REGULATORY PROVISIONS

15 21. California Code of Regulations, Title 16, (CCR) section 3340.1, provides that the  
16 term "clean piping," for purposes of H & S section 44072.10, subdivision (c) (1), means the use  
17 of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to  
18 cause the EIS to issue a certificate of compliance for the test vehicle.

19 22. CCR section 3340.24 (c), states:

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

23 23. CCR, section 3340.28, subdivision (e), states:

24 "Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
25 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
26 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

27 ///

28 ///

1 24. CCR section 3340.30, states, in pertinent part:

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

4 (a) inspect, test and repair vehicles, as applicable, in accordance with section  
5 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code,  
6 and section 3340.42 of this article.

7 . . . .

8 25. CCR section 3340.35 (c), states:

9 (c) A licensed station shall issue a certificate of compliance or  
10 noncompliance to the owner or operator of any vehicle that has been inspected in  
11 accordance with the procedures specified in section 3340.42 of this article and has  
12 all the required emission control equipment and devices installed and functioning  
13 correctly. The following conditions shall apply:

14 (1) Customers shall be charged the same price for certificates as that paid by  
15 the licensed station; and

16 (2) Sales tax shall not be assessed on the price of certificates.

17 26. CCR section 3340.41 (c), states:

18 "(c) No person shall enter into the emissions inspection system any vehicle identification  
19 information or emission control system identification data for any vehicle other than the one  
20 being tested. Nor shall any person knowingly enter into the emissions inspection system any false  
21 information about the vehicle being tested."

22 27. CCR section 3340.42, states:

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

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

27 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999  
28 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

1 (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference.  
2 If the emissions standards for a specific vehicle are not included in this table then  
3 the exhaust emissions shall be compared to the emissions standards set forth in  
4 TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all  
5 of its measured emissions are less than or equal to the applicable emission  
6 standards specified in the applicable table.

7 (2) A two-speed idle mode test shall be the test method used to inspect 1976  
8 - 1999 model-year vehicles, except diesel-powered, registered in all program areas  
9 of the state, except in those areas of the state where the enhanced program has  
10 been implemented. The two-speed idle mode test shall measure hydrocarbon,  
11 carbon monoxide and carbon dioxide emissions at high RPM and again at idle  
12 RPM, as contained in the bureau's specifications referenced in subsection (a) of  
13 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this  
14 inspection shall be measured and compared to the emission standards set forth in  
15 this section and as shown in TABLE III. A vehicle passes the two-speed idle  
16 mode test if all of its measured emissions are less than or equal to the applicable  
17 emissions standards specified in Table III.

18 (3) An OBD-focused test, shall be the test method used to inspect gasoline-  
19 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998  
20 model-year and newer. The OBD test failure criteria are specified in section  
21 3340.42.2.

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

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

26 (2) A functional inspection of emission control systems as specified in the  
27 Smog Check Manual, referenced by section 3340.45, which may include an OBD  
28 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



1 provisions pertaining to gross polluting vehicles will apply, including, but not  
2 limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

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

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

11 28. CCR section 3373, states:

12 No automotive repair dealer or individual in charge shall, in filling out an  
13 estimate, invoice, or work order, or record required to be maintained by section  
14 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or  
15 information which will cause any such document to be false or misleading, or  
16 where the tendency or effect thereby would be to mislead or deceive customers,  
17 prospective customers, or the public.

#### 18 COST RECOVERY

19 29. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
20 administrative law judge to direct a licentiate found to have committed a violation or violations of  
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
22 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
24 included in a stipulated settlement.

#### 25 UNDERCOVER OPERATION: 1992 Mitsubishi

26 30. On September 26, 2014, the Bar conducted an undercover operation at Respondent  
27 Rodriguez's smog check station, The Smog Shop. The BAR's vehicle, a 1992 Mitsubishi, was  
28 modified to fail a proper smog inspection due to the removal of the catalytic converter, causing a  
tailpipe emissions failure. In addition, the vehicle had a modified fuel injection system, modified  
PCV system and a modified air intake system. All of the modifications of these systems were not  
approved for this vehicle, which would cause the vehicle to fail the visual and functional  
inspection.

31. A BAR undercover operator took the vehicle to Respondent Rodriguez's smog check  
station. The operator asked Respondent Ramirez how much it would cost for a passing inspection

1 of the Mitsubishi. Respondent Ramirez told the operator that he needed a catalytic converter.  
2 The operator left the shop and returned the vehicle to the BAR. The BAR lab technician installed  
3 a hollowed out catalytic converter on the vehicle. The Mitsubishi would still fail a proper smog  
4 inspection due to the modification of the catalytic converter, causing a tailpipe emissions failure.  
5 The modifications to the vehicle's fuel injection system, PCV system and air intake system  
6 remained the same, causing the vehicle to fail a visual and functional inspection.

7 32. On February 26, 2015 the undercover operator returned to the shop, and met with  
8 Respondent Ramirez. After the Mitsubishi was inspected by Respondent Ramirez, he told the  
9 operator that getting the vehicle to pass inspection was going to be more difficult than he thought.  
10 Respondent Ramirez told the operator that he would do a "2 for 1" inspection in which he would  
11 use a Chrysler Sebring to get the Mitsubishi to pass. However, the Chrysler would not pass  
12 inspection either. Respondent Ramirez told the operator that he would wait until the next vehicle  
13 came into the shop and use that vehicle to get the Mitsubishi to pass inspection. This second  
14 vehicle also failed the inspection and could not be used. Respondent Ramirez asked the operator  
15 if he could wait until someone else came to the shop. The operator told Respondent Ramirez that  
16 he could not wait and had to go. Respondent Ramirez told the operator that the Mitsubishi did  
17 not have to be at The Smog Shop to pass inspection. The operator filled out a work order and  
18 signed it, however he was not given a copy of the work order. Respondent Ramirez requested  
19 and received from the operator \$200.00 to perform the smog test. The operator then left the  
20 facility with the Mitsubishi.

21 33. On February 27, 2015, the operator returned to The Smog Shop in a different vehicle.  
22 The Mitsubishi was secured at a BAR facility. Respondent Ramirez told the operator that  
23 everything went OK and that he was able to issue a certificate of compliance. The operator  
24 received a copy of the Vehicle Inspection Report (VIR) and the DMV documents. The operator  
25 did not sign or receive a written estimate. Respondent Ramirez performed the smog inspections  
26 that resulted in an improperly issued certificate for the Smog Check inspection.

27 34. The investigator obtained information from the BAR's vehicle information database  
28 (VID) that revealed that the Mitsubishi was purportedly tested by Respondent Ramirez on

1 February 26, 2015. The test resulted in the issuance of electronic smog Certificate of Compliance  
2 No. [REDACTED] On February 26, 2015, the Mitsubishi was stored in a secured facility by the  
3 BAR and was not in the possession or control of Respondent Rodriguez or Respondent Ramirez.

4 35. The BAR determined that the smog inspection on the Mitsubishi was conducted using  
5 clean piping methods<sup>2</sup>, resulting in the issuance of a fraudulent certificate of compliance for the  
6 vehicle. Further, the smog inspections were conducted using Respondent Ramirez's confidential  
7 access code.

8 36. On March 6, 2015, BAR personnel re-inspected and retested the Mitsubishi after the  
9 smog test by Respondent Ramirez. The condition of the vehicle as modified before testing had  
10 not changed; the vehicle failed a visual inspection for modified fuel injection system, modified  
11 PCV system and a modified air intake system. In addition, the vehicle failed the functional  
12 inspection for excessive tail pipe emissions.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 37. Respondent Rodriguez's registration is subject to disciplinary action pursuant to Code  
16 section 9884.7, subdivision (a)(1), in that Respondent Rodriguez made or authorized statements  
17 which she knew or in the exercise of reasonable care should have known to be untrue or  
18 misleading, as set forth in paragraphs 30 through 36, above. Respondent Rodriguez certified that  
19 the Mitsubishi had passed inspection and was in compliance with applicable laws and regulations.  
20 In fact, Respondent Rodriguez used clean piping methods in order to issue a certificate for the  
21 vehicle and did not test or visually inspect the vehicle as required by H & S Code section 44012.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 38. Respondent Rodriguez's registration is subject to disciplinary action pursuant to Code  
25 section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitutes fraud as

26 <sup>2</sup> Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (1),  
27 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to  
28 cause the Emission Inspection System (EIS) to issue a certificate of compliance for another  
vehicle.

1 set forth in paragraphs 30 through 36. Respondent Rodriguez issued an electronic smog  
2 certificate of compliance for the Mitsubishi without performing a bona fide inspection of the  
3 emission control devices and systems on the vehicle, thereby depriving the People of the State of  
4 California of the protection afforded by the Motor Vehicle Inspection Program.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Failure to Provide a Written Estimate)**

7 39. Respondent Rodriguez's registration is subject to disciplinary action pursuant to Code  
8 section 9884.7, subdivision (a)(6), in that she failed to comply with Code section 9884.9,  
9 subdivision (a), by failing to provide the operator of the Mitsubishi with a written estimated price  
10 for the smog inspection.

11 **FOURTH CAUSE FOR DISCIPLINE**

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

13 40. Respondent Rodriguez's smog check station license is subject to disciplinary action  
14 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent Rodriguez failed to  
15 comply with provisions of the Code, as set forth in paragraphs 30 through 36, above.

16 a. Section 44012, subdivision (a): Respondent Rodriguez failed to ensure that all  
17 emission control devices and systems required by law for the Mitsubishi were installed and  
18 functioning correctly in accordance with procedures prescribed by the department.

19 b. Section 44012, subdivision (f): Respondent Rodriguez failed to ensure that the  
20 emission control tests were performed on the Mitsubishi, in accordance with procedures  
21 prescribed by the department.

22 c. Section 44015: Respondent Rodriguez issued an electronic smog certificate of  
23 compliance for the Mitsubishi without ensuring that the vehicle was properly tested and inspected  
24 to determine if it was in compliance with H & S Code section 44012.

25 d. Section 44072.10: Respondent Rodriguez used clean piping methods in order to  
26 issue a certificate for the Mitsubishi.

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1 FIFTH CAUSE FOR DISCIPLINE

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

3 41. Respondent Rodriguez's smog check station license is subject to disciplinary action  
4 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent Rodriguez failed to  
5 comply with provisions of California Code of Regulations, Title 16, as set forth in paragraphs 30  
6 through 36, above.

7 a. Section 3340.24, subdivision (c): Respondent Rodriguez falsely or fraudulently  
8 issued an electronic smog certificate of compliance for the Mitsubishi .

9 b. Section 3340.35, subdivision (c): Respondent Rodriguez failed to inspect and test  
10 the Mitsubishi in accordance with H & S Code sections 44012 and 44035, and CCR section  
11 3340.42.

12 c. Section 3340.41, subdivision (c): Respondent Rodriguez permitted false information  
13 to be entered into the EIS in that vehicle identification information or emission control system  
14 identification data for a vehicle other than the one being tested.

15 d. Section 3340.42: Respondent Rodriguez failed to conduct the required smog tests on  
16 the Mitsubishi in accordance with the Bureau's specifications.

17 SIXTH CAUSE FOR DISCIPLINE

18 (Dishonesty, Fraud or Deceit)

19 42. Respondent Rodriguez's smog check station license is subject to disciplinary action  
20 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent Rodriguez  
21 committed a dishonest, fraudulent or deceitful act whereby another is injured, as set forth in  
22 paragraphs 30 through 36, above. Respondent Rodriguez issued an electronic smog certificate of  
23 compliance for the Mitsubishi without performing a bona fide inspection of the emission control  
24 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
25 protection afforded by the Motor Vehicle Inspection Program.

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1 c. Section 3340.41, subdivision (c): Respondent Ramirez entered into the emissions  
2 inspection system vehicle identification information or emission control system identification  
3 data for a vehicle other than the one being tested.

4 d. Section 3340.42: Respondent Ramirez failed to conduct the required smog tests on  
5 the Mitsubishi in accordance with the Bureau's specifications.

6 **NINTH CAUSE FOR DISCIPLINE**

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

8 45. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to  
9 H & S Code section 44072.2, subdivision (d), in that Respondent Ramirez committed dishonest,  
10 fraudulent, or deceitful acts whereby another is injured, as set forth in paragraphs 30 through 36,  
11 above. Respondent Ramirez issued an electronic smog certificate of compliance for the  
12 Mitsubishi without performing bona fide inspections of the emission control devices and systems  
13 on the vehicle, thereby depriving the People of the State of California of the protection afforded  
14 by the Motor Vehicle Inspection Program.

15 **UNDERCOVER OPERATION: 1992 Honda**

16 46. On April 9, 2015, the Bar conducted another undercover operation at Respondent  
17 Rodriguez's smog check station, The Smog Shop. The BAR's vehicle, a 1992 Honda, was  
18 modified to fail a proper smog inspection due to the removal of the catalytic converter, causing a  
19 tailpipe emissions failure. In addition, the vehicle would cause the vehicle to fail the visual  
20 inspection for the missing catalytic converter.

21 47. A BAR undercover operator took the vehicle to Respondent Rodriguez's smog check  
22 station. The operator was the same individual who conducted the undercover operation for the  
23 Mitsubishi, above. The operator met with and Respondent Ramirez and told him he needed to  
24 have the Honda pass a smog inspection. Respondent Ramirez examined the vehicle and told the  
25 operator that he needed a catalytic converter. The operator explained to Respondent Ramirez that  
26 he was not able to find a catalytic converter and asked what else could be done to get the Honda  
27 to pass. Respondent Ramirez told the operator that he could refer him to a shop in Bloomington,  
28 California that would be able to pass a vehicle without a catalytic converter for \$250.00. The

1 operator told Respondent Ramirez that he would be willing to pay that amount. Respondent  
2 Ramirez then referred him to another smog shop named Fast N Go Smog on West Valley  
3 Boulevard.

4 48. On that same day the undercover operator drove the Honda to Fast N Go Smog and  
5 met with the owner and technician, Ismael Rodriguez (Ismael). The operator told Ismael that he  
6 had been sent by Respondent Ramirez of The Smog Shop to get a passing smog inspection for the  
7 Honda. Ismael asked him to wait in the office. While waiting, the operator observed the arrival  
8 of another smog technician. The other smog technician delivered a green cylinder to Ismael. The  
9 two of them connected the cylinder to the EIS unit and ran a smog test.

10 49. Following the completion of the smog test Ismael received \$250.00 from the operator  
11 for the passing smog inspection and the issuance of a certificate of compliance. The operator  
12 received a copy of the VIR. The operator did not sign or receive a written estimate.

13 50. The BAR investigator obtained information from the BAR's VID that revealed that  
14 the Honda was purportedly tested by Ismael on April 9, 2015. The test resulted in the issuance of  
15 electronic smog Certificate of Compliance No. YP335738C.

16 51. The BAR determined that the smog inspection on the Honda was conducted using  
17 clean gassing methods<sup>3</sup>, resulting in the issuance of a fraudulent certificate of compliance for the  
18 vehicle.

19 52. On April 29, 2015, BAR personnel re-inspected and retested the Honda after the  
20 smog test by Ismael. The condition of the vehicle as modified before testing had not changed; the  
21 vehicle failed a visual inspection for the missing catalytic converter. In addition, the vehicle  
22 failed for excessive tail pipe emissions.

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26 <sup>3</sup> "Clean Gassing" is a form of "clean piping". Clean Gassing occurs when a surrogate gas  
27 is introduced in place of some or all of the vehicle exhaust during a smog check inspection. The  
28 smog check gas analyzer measures the pollutants in the surrogate gas and issues a test result  
based upon these readings rather than the actual vehicle emissions.



1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 53. Respondent Rodriguez's registration is subject to disciplinary action pursuant to Code  
4 section 9884.7, subdivision (a)(4), in that Respondent Rodriguez committed acts which  
5 constitutes fraud as set forth in paragraphs 46 through 52. Respondent Rodriguez conspired with  
6 another licensee to fraudulently issue an electronic smog certificate of compliance for the Honda  
7 without performing a bona fide inspection of the emission control devices and systems on the  
8 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
9 Motor Vehicle Inspection Program.

10 **ELEVENTH CAUSE FOR DISCIPLINE**

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

12 54. Respondent Rodriguez's smog check station license is subject to disciplinary action  
13 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent Rodriguez failed to  
14 comply with provisions of the Code, as set forth in paragraphs 46 through 52, above.

15 a. **Section 44072, subdivision (d):** Respondent Rodriguez conspired with another  
16 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

17 b. **Section 44072.10:** Respondent Rodriguez conspired with another licensee to  
18 fraudulently issue an electronic smog certificate of compliance for the Honda by using clean  
19 gassing methods.

20 **TWELFTH CAUSE FOR DISCIPLINE**

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

22 55. Respondent Rodriguez's smog check station license is subject to disciplinary action  
23 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent Rodriguez failed to  
24 comply with provisions of California Code of Regulations, Title 16, as set forth in paragraphs 46  
25 through 52, above.

26 a. **Section 3340.24, subdivision (c):** Respondent Rodriguez conspired with another  
27 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

1 c. Section 3340.41, subdivision (c): Respondent Rodriguez conspired with another  
2 licensee to enter false information into the EIS for a vehicle other than the one being tested.

3 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

5 56. Respondent Rodriguez's smog check station license is subject to disciplinary action  
6 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent Rodriguez  
7 conspired with another licensee to commit a dishonest, fraudulent or deceitful act whereby  
8 another is injured, as set forth in paragraphs 46 through 52, above.

9 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

11 57. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to  
12 H & S Code section 44072.2, subdivision (a), in that Respondent Ramirez failed to comply with  
13 the following sections of that Code, as set forth in paragraphs 46 through 52, above.

14 a. Section 44072, subdivision (d): Respondent Ramirez conspired with another  
15 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

16 b. Section 44072.10: Respondent Ramirez conspired with another licensee to  
17 fraudulently issue an electronic smog certificate of compliance for the Honda by using clean  
18 gassing methods.

19 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

21 58. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to  
22 H & S Code section 44072.2, subdivision (e), in that Respondent Ramirez failed to comply with  
23 provisions of California Code of Regulations, Title 16, as set forth in paragraphs 36 through 52,  
24 above.

25 a. Section 3340.24, subdivision (c): Respondent Ramirez conspired with another  
26 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

27 b. Section 3340.41, subdivision (c): Respondent Ramirez conspired with another  
28 licensee to enter false information into the EIS for a vehicle other than the one being tested.

1 SIXTEENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 59. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to H  
4 & S Code section 44072.2, subdivision (d), in that Respondent Ramirez conspired with another  
5 licensee to commit a dishonest, fraudulent or deceitful act whereby another is injured, as set forth  
6 in paragraphs 46 through 52, above.

7 OTHER MATTERS

8 60. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or  
9 place on probation the registration for all places of business operated in this state by Respondent  
10 Isabel Rodriguez, owner of The Smog Shop, upon a finding that Respondent Rodriguez has, or is,  
11 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an  
12 automotive repair dealer.

13 61. Pursuant to H & S Code section 44072.8, if Smog Check Test- Only Station License  
14 Number TC263727, issued to Respondent Isabel Rodriguez, owner of The Smog Shop, is revoked  
15 or suspended, any additional license issued under this chapter in the name of said licensee may be  
16 likewise revoked or suspended by the Director.

17 62. Pursuant to H & S Code section 44072.8, if Smog Check Inspector License No. E0  
18 633011, issued to Respondent Juan M. Ramirez, is revoked or suspended, any additional license  
19 issued under this chapter in the name of said licensee may be likewise revoked or suspended by  
20 the Director.

21  
22 PRAAYER

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

25 1. Revoking or suspending Automotive Repair Dealer Registration Number  
26 ARD263727, issued to Isabel Rodriguez, dba The Smog Shop;

27 2. Revoking or suspending any other automotive repair dealer registration issued to  
28 Isabel Rodriguez;

1           3.    Revoking or suspending Smog Check Test-Only Station License Number TC263727,  
2 issued to Isabel Rodriguez, dba The Smog Shop;

3           4.    Revoking or suspending any additional license issued under Articles 5 and 6 of  
4 Chapter 20.3 of the Code in the name of Isabel Rodriguez;

5           5.    Revoking or suspending Smog Check Inspector License Number E0 633011, issued  
6 to Juan M. Ramirez;

7           6.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
8 and Safety Code in the name of Juan M. Ramirez;

9           7.    Ordering Isabel Rodriguez and Juan M. Ramirez to pay, jointly and severally, 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;

12           8.    Taking such other and further action as deemed necessary and proper.

13  
14  
15  
16 DATED: December 19, 2016



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

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*Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **ISABEL RODRIGUEZ, DBA THE SMOG**  
14 **SHOP; JUAN M. RAMIREZ**

15 Respondents.

Case No. 79/16-67

OAH No. 2016110146

**SUPPLEMENTAL STATEMENT**  
**TO RESPONDENT**

[Gov. Code, §§ 11505, 11506, 11507]

16  
17  
18  
19 **TO RESPONDENTS AND THEIR ATTORNEY:**

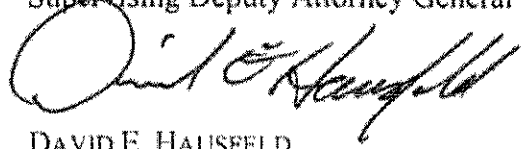
20 Enclosed is a copy of the First Amended Accusation that has been filed with the Director of  
21 Consumer Affairs, Bureau of Automotive Repair (Bureau), pursuant to section 11507 of the  
22 Government Code, and which is hereby served on you.

23 You previously filed a Notice of Defense with the Director of Consumer Affairs, pursuant  
24 to sections 11505 and 11506 of the Business and Professions Code, thereby requesting an  
25 administrative hearing to present your defense to the charges and allegations in the Accusation.  
26 Section 11507 of the Government Code states that you are not entitled to file a further pleading in  
27 response to the First Amended Accusation unless the agency in its discretion so orders. All new  
28

1 charges contained in the First Amended Accusation are deemed controverted, and any objections  
2 to the First Amended Accusation may be made orally and shall be noted in the record.

3 Dated: December 20, 2016

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JAMES M. LEDAKIS  
Supervising Deputy Attorney General



DAVID E. HAUSFELD  
Deputy Attorney General  
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8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
**STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. 79/16-67.

13 **ISABEL RODRIGUEZ, DBA THE SMOG**  
**SHOP; JUAN M. RAMIREZ**

**REQUEST FOR DISCOVERY**

14 Respondents.  
15

16  
17 TO RESPONDENT:

18 Under section 11507.6 of the Government Code of the State of California, parties to an  
19 administrative hearing, including the Complainant, are entitled to certain information concerning  
20 the opposing party's case. A copy of the provisions of section 11507.6 of the Government Code  
21 concerning such rights is included among the papers served.

22 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU ARE  
23 HEREBY REQUESTED TO:

- 24 1. Provide the names and addresses of witnesses to the extent known to the Respondent,  
25 including, but not limited to, those intended to be called to testify at the hearing, and  
26 2. Provide an opportunity for the Complainant to inspect and make a copy of any of the  
27 following in the possession or custody or under control of the Respondent:

28 ///

1 a. A statement of a person, other than the Respondent, named in the  
2 initial administrative pleading, or in any additional pleading, when it is claimed that  
3 the act or omission of the Respondent as to this person is the basis for the  
4 administrative proceeding;

5 b. A statement pertaining to the subject matter of the proceeding made  
6 by any party to another party or persons;

7 c. Statements of witnesses then proposed to be called by the  
8 Respondent and of other persons having personal knowledge of the acts, omissions or  
9 events which are the basis for the proceeding, not included in (a) or (b) above;

10 d. All writings, including but not limited to reports of mental, physical  
11 and blood examinations and things which the Respondent now proposes to offer in  
12 evidence;

13 e. Any other writing or thing which is relevant and which would be  
14 admissible in evidence, including but not limited to, any patient or hospital records  
15 pertaining to the persons named in the pleading;

16 f. Investigative reports made by or on behalf of the Respondent  
17 pertaining to the subject matter of the proceeding, to the extent that these reports (1)  
18 contain the names and addresses of witnesses or of persons having personal  
19 knowledge of the acts, omissions or events which are the basis for the proceeding, or  
20 (2) reflect matters perceived by the investigator in the course of his or her  
21 investigation, or (3) contain or include by attachment any statement or writing  
22 described in (a) to (e), inclusive, or summary thereof.

23 IN ADDITION, if cost recovery is requested in the pleading prayer, provide all writings  
24 which will support any objection which may be made by the Respondent, to Respondent's  
25 payment of investigation and enforcement costs to the Board.

26 For the purpose of this Request for Discovery, "statements" include written statements by  
27 the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical  
28



1 or other recordings, or transcripts thereof, of oral statements by the person, and written reports or  
2 summaries of these oral statements.

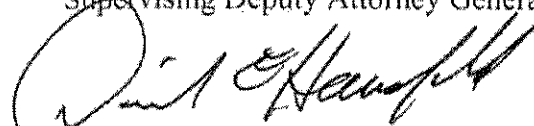
3 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery  
4 should be deemed to authorize the inspection or copying of any writing or thing which is  
5 privileged from disclosure by law or otherwise made confidential or protected as attorney's work  
6 product.

7 Your response to this Request for Discovery should be directed to the undersigned attorney  
8 for the Complainant at the address on the first page of this Request for Discovery within 15 days  
9 after service of the Amended Accusation.

10 Failure without substantial justification to comply with this Request for Discovery may  
11 subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the  
12 Government Code.

13 Dated: December 20, 2016

KAMALA D. HARRIS  
Attorney General of California  
JAMES M. LEDAKIS  
Supervising Deputy Attorney General



DAVID E. HAUSFELD  
Deputy Attorney General  
*Attorneys for Complainant*

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**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7  
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

**SECTION 11507.5: Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

**SECTION 11507.6: Request for discovery**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

## **SECTION 11507.7: Petition to compel discovery; Order; Sanctions**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

\*\*\*\*\*

**DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL**

(Separate Mailings)

Case Name: **In the Matter of the First Amended Accusation Against Isabel Rodriguez,  
dba The Smog Shop; Juan M. Ramirez**

Case No.: 79/16-67

OAH No.: 2016110146

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 20, 2016, I served the attached:

**SUPPLEMENTAL STATEMENT TO RESPONDENT, FIRST AMENDED ACCUSATION, REQUEST FOR DISCOVERY, and COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 and 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the:

**SUPPLEMENTAL STATEMENT TO RESPONDENT, FIRST AMENDED ACCUSATION, REQUEST FOR DISCOVERY, and COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 and 11507.7** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

*(Via U.S. Mail, only)*

William Dean Ferreira, Esq.  
Automotive Defense Specialists  
555 California Street, Suite 4925  
San Francisco, CA 94104  
*(Attorney for Respondents)*

Isabel Rodriguez  
dba The Smog Shop  
13978 Old 215 Frontage Rd., Unit C  
Moreno Valley, CA 92553

**Certified Article Number**

9414 7266 9904 2084 8103 58

**SENDERS RECORD**

Juan M. Ramirez  
21590 Elmwood Street  
Perris, CA 92570

**Certified Article Number**

9414 7266 9904 2084 8103 72

**SENDERS RECORD**

Isabel Rodriguez  
26648 Saffron Circle  
Moreno Valley, CA 92555

**Certified Article Number**

9414 7266 9904 2084 8103 65

**SENDERS RECORD**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2016, at San Diego, California.

C. F. Krystoff  
Declarant



Signature

**DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL**

(Separate Mailings)

Case Name: **In the Matter of the First Amended Accusation Against Isabel Rodriguez,  
dba The Smog Shop; Juan M. Ramirez**

Case No.: 79/16-67  
OAH No.: 2016110146

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

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*(Via U.S. Mail, only)*  
William Dean Ferreira, Esq.  
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*(Attorney for Respondents)*

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dba The Smog Shop  
13978 Old 215 Frontage Rd., Unit C  
Moreno Valley, CA 92553

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9914 7266 9904 2084 8103 58

**SENDERS RECORD**

Juan M. Ramirez  
21590 Elmwood Street  
Perris, CA 92570

**Certified Article Number**

9414 7266 9904 2084 8103 72

**SENDERS RECORD**

Isabel Rodriguez  
26648 Saffron Circle  
Moreno Valley, CA 92555

**Certified Article Number:**

9414 7266 9904 2084 8103 65

**SENDERS RECORD**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2016, at San Diego, California.

C. F. Krystoff  
Declarant



Signature

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DAVID E. HAUSFELD  
Deputy Attorney General  
4 State Bar No. 110639  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2025  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation Against:

Case No. **79/16-67**

13 **ISABEL RODRIGUEZ,**  
**DBA THE SMOG SHOP**  
14 **13978 Old 215 Frontage Rd., Unit C**  
**Moreno Valley, CA 92553**

**ACCUSATION**

15 **Automotive Repair Dealer Registration No.**  
16 **ARD263727**  
17 **Smog Check Test-Only Station License No.**  
**TC263727**

18 and

19 **JUAN M. RAMIREZ**  
20 **21590 Elmwood Street**  
**Perris, CA 92570**

21 **Smog Check Inspector License No. E0 633011**  
22 **(formerly Advanced Emission Specialist**  
**Technician License No. EA 633011)**

23 Respondents.

24  
25 Complainant alleges:

26 **PARTIES**

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





1           6.    Code section 477 provides, in pertinent part, that "Board" includes "bureau," . . .  
2 "License" includes certificate, registration or other means to engage in a business or profession  
3 regulated by the Code.

4           7.    Code section 9884.7 provides, in pertinent part, that the Director may revoke an  
5 automotive repair dealer registration.

6           8.    Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
7 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary  
8 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
9 temporarily or permanently.

10          9.    Code section 9889.1 provides, in pertinent part, that the Director may suspend or  
11 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the  
12 Automotive Repair Act.

13          10.   Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
14 license by operation of law or by order or decision of the Director or a court of law, or the  
15 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
16 disciplinary proceedings.

17          11.   Health and Safety Code (H & S Code) section 44002 provides, in pertinent part, that  
18 the Director has all the powers and authority granted under the Automotive Repair Act for  
19 enforcing the Motor Vehicle Inspection Program.

20          12.   H & S Code section 44072.6 provides, in pertinent part, that the expiration or  
21 suspension of a license by operation of law, or by order or decision of the Director, or a court of  
22 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to  
23 proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to  
24 render a decision suspending or revoking the license.

25          13.   H & S Code section 44072.8 states:

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



1 the customer. The bureau may specify in regulation the procedures to be followed  
2 by an automotive repair dealer if an authorization or consent for an increase in the  
3 original estimated price is provided by electronic mail or facsimile transmission. If  
4 that consent is oral, the dealer shall make a notation on the work order of the date,  
5 time, name of person authorizing the additional repairs and telephone number  
6 called, if any, together with a specification of the additional parts and labor and the  
7 total additional cost,  
8

....

16. H & S Code section 44012 states, in pertinent part:

6 The test at the smog check stations shall be performed in accordance with  
7 procedures prescribed by the department, pursuant to Section 44013, shall require,  
8 at a minimum, loaded mode dynamometer testing in enhanced areas, and  
9 two-speed testing in all other program areas, and shall ensure all of the following:

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

....

13 (f) A visual or functional check is made of emission control devices  
14 specified by the department, including the catalytic converter in those instances in  
15 which the department determines it to be necessary to meet the findings of Section  
16 44001. The visual or functional check shall be performed in accordance with  
17 procedures prescribed by the department.

....

17. H & S Code section 44015 (b) states:

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

18. H & S Code section 44032 states:

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

19. H & S Code section 44072.2 states, in pertinent part:

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

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

....

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

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

4 ....

5 20. H & S Code section 44072.10 states, in pertinent part:

6 ....

7 (c) The department shall revoke the license of any smog check technician or  
8 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  
9 the following:

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

11 ....

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

13 ....

14 **REGULATORY PROVISIONS**

15 21. California Code of Regulations, Title 16, (CCR) section 3340.1, provides that the  
16 term "clean piping," for purposes of H & S section 44072.10, subdivision (c) (1), means the use  
17 of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to  
18 cause the EIS to issue a certificate of compliance for the test vehicle.

19 22. CCR section 3340.24 (c), states:

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

23 23. CCR, section 3340.28, subdivision (c), states:

24 "Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
25 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
26 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

27 ///

28 ///

1 24. CCR section 3340.30, states, in pertinent part:

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

4 (a) inspect, test and repair vehicles, as applicable, in accordance with section  
5 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code,  
6 and section 3340.42 of this article.

7 . . . .

8 25. CCR section 3340.35 (c), states:

9 (c) A licensed station shall issue a certificate of compliance or  
10 noncompliance to the owner or operator of any vehicle that has been inspected in  
11 accordance with the procedures specified in section 3340.42 of this article and has  
12 all the required emission control equipment and devices installed and functioning  
13 correctly. The following conditions shall apply:

14 (1) Customers shall be charged the same price for certificates as that paid by  
15 the licensed station; and

16 (2) Sales tax shall not be assessed on the price of certificates.

17 26. CCR section 3340.41 (c), states:

18 "(c) No person shall enter into the emissions inspection system any vehicle identification  
19 information or emission control system identification data for any vehicle other than the one  
20 being tested. Nor shall any person knowingly enter into the emissions inspection system any false  
21 information about the vehicle being tested."

22 27. CCR section 3340.42, states:

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

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

27 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999  
28 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

1 (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference.  
2 If the emissions standards for a specific vehicle are not included in this table then  
3 the exhaust emissions shall be compared to the emissions standards set forth in  
4 TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all  
5 of its measured emissions are less than or equal to the applicable emission  
6 standards specified in the applicable table.

7 (2) A two-speed idle mode test shall be the test method used to inspect 1976  
8 - 1999 model-year vehicles, except diesel-powered, registered in all program areas  
9 of the state, except in those areas of the state where the enhanced program has  
10 been implemented. The two-speed idle mode test shall measure hydrocarbon,  
11 carbon monoxide and carbon dioxide emissions at high RPM and again at idle  
12 RPM, as contained in the bureau's specifications referenced in subsection (a) of  
13 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this  
14 inspection shall be measured and compared to the emission standards set forth in  
15 this section and as shown in TABLE III. A vehicle passes the two-speed idle  
16 mode test if all of its measured emissions are less than or equal to the applicable  
17 emissions standards specified in Table III.

18 (3) An OBD-focused test, shall be the test method used to inspect gasoline-  
19 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998  
20 model-year and newer. The OBD test failure criteria are specified in section  
21 3340.42.2.

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

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

26 (2) A functional inspection of emission control systems as specified in the  
27 Smog Check Manual, referenced by section 3340.45, which may include an OBD  
28 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

1 provisions pertaining to gross polluting vehicles will apply, including, but not  
2 limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

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

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

11 28. CCR section 3373, states:

12 No automotive repair dealer or individual in charge shall, in filling out an  
13 estimate, invoice, or work order, or record required to be maintained by section  
14 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or  
15 information which will cause any such document to be false or misleading, or  
16 where the tendency or effect thereby would be to mislead or deceive customers,  
17 prospective customers, or the public.

#### 18 COST RECOVERY

19 29. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
20 administrative law judge to direct a licentiate found to have committed a violation or violations of  
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
22 enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
23 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
24 may be included in a stipulated settlement.

#### 25 UNDERCOVER OPERATION: 1991 Mitsubishi

26 30. On September 26, 2014, the Bar conducted an undercover operation at Respondent  
27 Rodriguez's smog check station, The Smog Shop. The BAR's vehicle, a 1992 Mitsubishi, was  
28 modified to fail a proper smog inspection due to the removal of the catalytic converter, causing a  
tailpipe emissions failure. In addition, the vehicle had a modified fuel injection system, modified  
PCV system and a modified air intake system. All of the modifications of these systems were not  
approved for this vehicle, which would cause the vehicle to fail the visual and functional  
inspection.

31. A BAR undercover operator took the vehicle to Respondent Rodriguez's smog check  
station. The operator asked Respondent Ramirez how much it would cost for a passing



1 inspection of the Mitsubishi. Respondent Ramirez told the operator that he needed a catalytic  
2 converter. The operator left the shop and returned the vehicle to the BAR. The BAR lab  
3 technician installed a hollowed out catalytic converter on the vehicle. The Mitsubishi would still  
4 fail a proper smog inspection due to the modification of the catalytic converter, causing a tailpipe  
5 emissions failure. The modifications to the vehicle's fuel injection system, PCV system and air  
6 intake system remained the same, causing the vehicle to fail a visual and functional inspection.

7 32. On February 26, 2015 the undercover operator returned to the shop, and met with  
8 Respondent Ramirez. After the Mitsubishi was inspected by Respondent Ramirez, he told the  
9 operator that getting the vehicle to pass inspection was going to be more difficult than he thought.  
10 Respondent Ramirez told the operator that he would do a "2 for 1" inspection in which he would  
11 use a Chrysler Sebring to get the Mitsubishi to pass. However, the Chrysler would not pass  
12 inspection either. Respondent Ramirez told the operator that he would wait until the next vehicle  
13 came into the shop and use that vehicle to get the Mitsubishi to pass inspection. This second  
14 vehicle also failed the inspection and could not be used. Respondent Ramirez asked the operator  
15 if he could wait until someone else came to the shop. The operator told Respondent Ramirez that  
16 he could not wait and had to go. Respondent Ramirez told the operator that the Mitsubishi did  
17 not have to be at The Smog Shop to pass inspection. The operator filled out a work order and  
18 signed it, however he was not given a copy of the work order. Respondent Ramirez requested  
19 and received from the operator \$200.00 to perform the smog test. The operator then left the  
20 facility with the Mitsubishi.

21 33. On February 27, 2015, the operator returned to The Smog Shop in a different vehicle.  
22 The Mitsubishi was secured at a BAR facility. Respondent Ramirez told the operator that  
23 everything went OK and that he was able to issue a certificate of compliance. The operator  
24 received a copy of the Vehicle Inspection Report (VIR) and the DMV documents. The operator  
25 did not sign or receive a written estimate. Respondent Ramirez performed the smog inspections  
26 that resulted in an improperly issued certificate for the Smog Check inspection.

27 34. The investigator obtained information from the BAR's vehicle information database  
28 (VID) that revealed that the Mitsubishi was purportedly tested by Respondent Ramirez on

1 February 26, 2015. The test resulted in the issuance of electronic smog Certificate of Compliance  
2 No. [REDACTED]. On February 26, 2015, the Mitsubishi was stored in a secured facility by the  
3 BAR and was not in the possession or control of Respondent Rodriguez or Respondent Ramirez.

4 35. The BAR determined that the smog inspection on the Mitsubishi was conducted using  
5 clean piping methods<sup>2</sup>, resulting in the issuance of a fraudulent certificate of compliance for the  
6 vehicle. Further, the smog inspections were conducted using Respondent Ramirez's confidential  
7 access code.

8 36. On March 6, 2015, BAR personnel re-inspected and retested the Mitsubishi after the  
9 smog test by Respondent Ramirez. The condition of the vehicle as modified before testing had  
10 not changed; the vehicle failed a visual inspection for modified fuel injection system, modified  
11 PCV system and a modified air intake system. In addition, the vehicle failed the functional  
12 inspection for excessive tail pipe emissions.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 37. Respondent Rodriguez's registration is subject to disciplinary action pursuant to  
16 Code section 9884.7, subdivision (a)(1), in that Respondent Rodriguez made or authorized  
17 statements which she knew or in the exercise of reasonable care should have known to be untrue  
18 or misleading, as set forth in paragraphs 30 through 36, above. Respondent Rodriguez certified  
19 that the Mitsubishi had passed inspection and was in compliance with applicable laws and  
20 regulations. In fact, Respondent Rodriguez used clean piping methods in order to issue a  
21 certificate for the vehicle and did not test or visually inspect the vehicle as required by H & S  
22 Code section 44012.

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26 <sup>2</sup> Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),  
27 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to  
28 cause the Emission Inspection System (EIS) to issue a certificate of compliance for another  
vehicle.



1 d. **Section 44072.10:** Respondent Rodriguez used clean piping methods in order to  
2 issue a certificate for the Mitsubishi.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 41. Respondent Rodriguez's smog check station license is subject to disciplinary action  
6 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent Rodriguez failed to  
7 comply with provisions of California Code of Regulations, Title 16, as set forth in paragraphs 30  
8 through 36, above.

9 a. **Section 3340.24, subdivision (c):** Respondent Rodriguez falsely or fraudulently  
10 issued an electronic smog certificate of compliance for the Mitsubishi .

11 b. **Section 3340.35, subdivision (c):** Respondent Rodriguez failed to inspect and test  
12 the Mitsubishi in accordance with H & S Code sections 44012 and 44035, and CCR section  
13 3340.42.

14 c. **Section 3340.41, subdivision (c):** Respondent Rodriguez permitted false information  
15 to be entered into the EIS in that vehicle identification information or emission control system  
16 identification data for a vehicle other than the one being tested.

17 d. **Section 3340.42:** Respondent Rodriguez failed to conduct the required smog tests on  
18 the Mitsubishi in accordance with the Bureau's specifications.

19 **SIXTH CAUSE FOR DISCIPLINE**

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

21 42. Respondent Rodriguez's smog check station license is subject to disciplinary action  
22 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent Rodriguez  
23 committed a dishonest, fraudulent or deceitful act whereby another is injured, as set forth in  
24 paragraphs 30 through 36, above. Respondent Rodriguez issued an electronic smog certificate of  
25 compliance for the Mitsubishi without performing a bona fide inspection of the emission control  
26 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
27 protection afforded by the Motor Vehicle Inspection Program.

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 43. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to  
4 H & S Code section 44072.2, subdivision (a), in that Respondent Ramirez failed to comply with  
5 the following sections of that Code, as set forth in paragraphs 30 through 36, above.

6 a. Section 44012, subdivision (a): Respondent Ramirez failed to ensure that all  
7 emission control devices and systems required by law for the Mitsubishi were installed and  
8 functioning correctly in accordance with test procedures.

9 b. Section 44012, subdivision (f): Respondent Ramirez failed to perform the emission  
10 control tests on the Mitsubishi in accordance with procedures prescribed by the department.

11 c. Section 44015, subdivision (b): Respondent Ramirez issued an electronic smog  
12 certificate of compliance for the Mitsubishi without properly testing and inspecting the vehicle to  
13 determine if it was in compliance with H & S Code section 44012.

14 d. Section 44059: Respondent Ramirez willfully made false entries for an electronic  
15 certificate of compliance for the Mitsubishi by certifying that the vehicle had been inspected as  
16 required when, in fact, it had not.

17 e. Section 44072.10: Respondent Ramirez used clean piping methods in order to issue  
18 a certificate for the Mitsubishi.

19 EIGHTH CAUSE FOR DISCIPLINE

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

21 44. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to  
22 H & S Code section 44072.2, subdivision (c), in that Respondent Ramirez failed to comply with  
23 provisions of California Code of Regulations, Title 16, as set forth in paragraphs 30 through 36,  
24 above.

25 a. Section 3340.24, subdivision (c): Respondent Ramirez falsely or fraudulently issued  
26 an electronic smog certificate of compliance for the Mitsubishi.

27 b. Section 3340.30, subdivision (a): Respondent Ramirez failed to inspect and test the  
28 Mitsubishi in accordance with H & S Code sections 44012 and 44035, and CCR section 3340.42.

1 c. Section 3340.41, subdivision (c): Respondent Ramirez entered into the emissions  
2 inspection system vehicle identification information or emission control system identification  
3 data for a vehicle other than the one being tested.

4 d. Section 3340.42: Respondent Ramirez failed to conduct the required smog tests on  
5 the Mitsubishi in accordance with the Bureau's specifications.

6 **NINTH CAUSE FOR DISCIPLINE**

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

8 45. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to  
9 H & S Code section 44072.2, subdivision (d), in that Respondent Ramirez committed dishonest,  
10 fraudulent, or deceitful acts whereby another is injured, as set forth in paragraphs 30 through 36,  
11 above. Respondent Ramirez issued an electronic smog certificate of compliance for the  
12 Mitsubishi without performing bona fide inspections of the emission control devices and systems  
13 on the vehicle, thereby depriving the People of the State of California of the protection afforded  
14 by the Motor Vehicle Inspection Program.

15 **UNDERCOVER OPERATION: 1992 Honda**

16 46. On April 9, 2015, the Bar conducted another undercover operation at Respondent  
17 Rodriguez's smog check station, The Smog Shop. The BAR's vehicle, a 1992 Honda, was  
18 modified to fail a proper smog inspection due to the removal of the catalytic converter, causing a  
19 tailpipe emissions failure. In addition, the vehicle would cause the vehicle to fail the visual  
20 inspection for the missing catalytic converter.

21 47. A BAR undercover operator took the vehicle to Respondent Rodriguez's smog check  
22 station. The operator was the same individual who conducted the undercover operation for the  
23 Mitsubishi, above. The operator met with and Respondent Ramirez and told him he needed to  
24 have the Honda pass a smog inspection. Respondent Ramirez examined the vehicle and told the  
25 operator that he needed a catalytic converter. The operator explained to Respondent Ramirez that  
26 he was not able to find a catalytic converter and asked what else could be done to get the Honda  
27 to pass. Respondent Ramirez told the operator that he could refer him to a shop in Bloomington,  
28 California that would be able to pass a vehicle without a catalytic converter for \$250.00. The

1 operator told Respondent Ramirez that he would be willing to pay that amount. Respondent  
2 Ramirez then referred him to another smog shop named Fast N Go Smog on West Valley  
3 Boulevard.

4 48. On that same day the undercover operator drove the Honda to Fast N Go Smog and  
5 met with the owner and technician, Ismael Rodriguez (Ismael). The operator told Ismael that he  
6 had been sent by Respondent Ramirez of The Smog Shop to get a passing smog inspection for the  
7 Honda. Ismael asked him to wait in the office. While waiting, the operator observed the arrival  
8 of another smog technician named Cesar Gomez (Gomez). Gomez delivered a green cylinder to  
9 Ismael. The two of them connected the cylinder to the EIS unit and ran a smog test.

10 49. Following the completion of the smog test Ismael received \$250.00 from the operator  
11 for the passing smog inspection and the issuance of a certificate of compliance. The operator  
12 received a copy of the VIR. The operator did not sign or receive a written estimate.

13 50. The BAR investigator obtained information from the BAR's VID that revealed that  
14 the Honda was purportedly tested by Ismael on April 9, 2015. The test resulted in the issuance of  
15 electronic smog Certificate of Compliance No. [REDACTED].

16 51. The BAR determined that the smog inspection on the Honda was conducted using  
17 clean gassing methods<sup>3</sup>, resulting in the issuance of a fraudulent certificate of compliance for the  
18 vehicle.

19 52. On April 29, 2015, BAR personnel re-inspected and retested the Honda after the  
20 smog test by Ismael. The condition of the vehicle as modified before testing had not changed; the  
21 vehicle failed a visual inspection for the missing catalytic converter. In addition, the vehicle  
22 failed for excessive tail pipe emissions.

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26 <sup>3</sup> "Clean Gassing" is a form of "clean piping". Clean Gassing occurs when a surrogate  
27 gas is introduced in place of some or all of the vehicle exhaust during a smog check inspection.  
28 The smog check gas analyzer measures the pollutants in the surrogate gas and issues a test result  
based upon these readings rather than the actual vehicle emissions.





1 c. Section 3340.41, subdivision (c): Respondent Rodriguez conspired with another  
2 licensee to enter false information into the EIS for a vehicle other than the one being tested.

3 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

5 56. Respondent Rodriguez's smog check station license is subject to disciplinary action  
6 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent Rodriguez  
7 conspired with another licensee to commit a dishonest, fraudulent or deceitful act whereby  
8 another is injured, as set forth in paragraphs 46 through 52, above.

9 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

11 57. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to  
12 H & S Code section 44072.2, subdivision (a), in that Respondent Ramirez failed to comply with  
13 the following sections of that Code, as set forth in paragraphs 46 through 52, above.

14 a. Section 44072, subdivision (d): Respondent Ramirez conspired with another  
15 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

16 b. Section 44072.10: Respondent Ramirez conspired with another licensee to  
17 fraudulently issue an electronic smog certificate of compliance for the Honda by using clean  
18 gassing methods.

19 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

21 58. Respondent Ramirez's inspector license is subject to disciplinary action pursuant to  
22 H & S Code section 44072.2, subdivision (c), in that Respondent Ramirez failed to comply with  
23 provisions of California Code of Regulations, Title 16, as set forth in paragraphs 36 through 52,  
24 above.

25 a. Section 3340.24, subdivision (c): Respondent Ramirez conspired with another  
26 licensee to fraudulently issue an electronic smog certificate of compliance for the Honda.

27 b. Section 3340.41, subdivision (c): Respondent Ramirez conspired with another  
28 licensee to enter false information into the EIS for a vehicle other than the one being tested.



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- 3. Revoking or suspending Smog Check Test-Only Station License Number TC263727, issued to Isabel Rodriguez, dba The Smog Shop;
- 4. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of Isabel Rodriguez;
- 5. Revoking or suspending Smog Check Inspector License Number E0 633011, issued to Juan M. Ramirez;
- 6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Juan M. Ramirez;
- 7. Ordering Isabel Rodriguez and Juan M. Ramirez to pay, jointly and severally, the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 8. Taking such other and further action as deemed necessary and proper.

DATED: February 26, 2016 Patrick Dorais

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

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