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7

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

11 In the Matter of the Accusation Against:
12
13 **ANDREW W. LABIB dba AW SMOG**
CENTER
14 **849 East Avenue I**
Lancaster, CA 93535
15
16 **Mailing:**
3122 Solmira Place
Palmdale, CA 93551
17
18 **Automotive Repair Dealer Registration No.**
ARD 260432
19 **Smog Check, Test Only, Station License No.**
TC 260432,
20
21 Respondent.

Case No. **79/16-136**

ACCUSATION

22 **PARTIES**

- 23
- 24 1. Petitioner is duly appointed and serving as the Chief of the Bureau, and files this
25 Petition in his official capacity.
 - 26 2. On or about January 12, 2010, the Bureau of Automotive Repair issued Automotive
27 Repair Dealer Registration Number ARD 260432 to Andrew W. Labib, dba AW Smog Center.
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1 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
2 charges brought herein and will expire on December 31, 2016, unless renewed.

3 3. On or about February 16, 2010, the Bureau of Automotive Repair issued Smog
4 Check, Test Only, Station License Number TC 260432 to Andrew W. Labib, dba AW Smog
5 Center ("Respondent"). The Smog Check, Test Only, Station License was in full force and effect
6 at all times relevant to the charges brought herein and will expire on December 31, 2016, unless
7 renewed.

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9 **JURISDICTION**

10 4. Business and Professions Code ("BPC") section 9884.13 provides, in pertinent part,
11 that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed
12 with a disciplinary proceeding against an automotive repair dealer or to render a decision
13 temporarily or permanently invalidating (suspending or revoking) a registration.

14 5. Section 9889.1 of the BPC provides, in pertinent part, that the Director may suspend
15 or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
16 Automotive Repair Act.

17 6. Section 9889.7 of the BPC provides, in pertinent part, that the expiration or
18 suspension of a license by operation of law or by order or decision of the Director or a court of
19 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to
20 proceed with any disciplinary proceedings.

21 7. Health and Safety Code ("HSC") section 44002 provides, in pertinent part, that the
22 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
23 the Motor Vehicle Inspection Program.

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

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STATUTORY PROVISIONS

9. Section 9884.7 of the BPC states, in pertinent part:

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

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

(4) Any other conduct which constitutes fraud.

. . . .

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

10. Section 9889.9 of the BPC states that “[w]hen any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.”

11. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

12. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance shall be issued if a vehicle meets the requirements of HSC section 40012.

13. Section 44072.2 of the HSC states, in pertinent 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:

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DATA ANALYSIS OF CLEAN PLUGGING ACTIVITIES

1 19. On March 9, 2015, the Bureau implemented a policy change requiring the use of
2 an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas
3 powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer
4 diesel powered vehicles 14,000 GVW and under. The OIS Test Data provides the Bureau with a
5 wealth of electronic information about the vehicle that is connected to the system, making the
6 OIS a vital tool in the Bureau’s ongoing efforts to root out fraudulent conduct in the smog
7 inspection business. For example, among other things, the OIS Bureau Test Data reveals any
8 differences between the Vehicle Identification Numbers (VIN) entered into the emission
9 inspection system (i.e., “BAR 97”) by the smog technician at the time of the inspection and the
10 VIN electronically programmed into the vehicle by the manufacturer (“eVIN”). Such
11 discrepancies between the VIN manually entered by the smog technician and the eVIN
12 programmed into the vehicle by the manufacturer are indicative of illegal “clean plugging”.¹

13 20. In May 2015, Bureau program representative Jorge Echevarria conducted an
14 investigation in which he reviewed specific OIS Test Data for inspections performed at AW
15 Smog Center between April 1, 2015, and April 21, 2015. Representative Echevarria’s
16 investigation revealed fifty-one (51) instances in which the VIN numbers entered for the vehicles
17 at the time of their inspections by Respondent’s employee technician did not match the eVINS
18 that were transmitted electronically by the vehicles during the testing process. These documented
19 discrepancies between the VIN numbers entered by Respondent’s employee at the time of
20 inspection and the eVINS electronically transmitted from the vehicles during the inspections
21 confirm that the fifty-one (51) smog certificates issued by Respondent resulted from fraudulent
22 vehicle inspections involving the clean plugging method described above. Thereafter, Bureau
23 program representative Echevarria analyzed the OIS Test Data for several inspections performed
24 at AW Smog Center on May 5, 2015, which revealed two (2) additional instances of clean
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26 ¹ Clean plugging refers to the use of another vehicle’s properly functioning On Board
27 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
28 readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that
are not in smog compliance and/or not present for testing.

1 plugging. The following chart ("Table 1") illustrates the documented clean plugging activities at
 2 Respondent's station between April 1, 2015. and April 21, 2015, and on May 5, 2015.

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 4 **Table 1**

5 Test Date and Time*	6 Vehicle Certified & License No.	7 Certificate No.	8 Details
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 4/1/2015 0931 - 0943 hours	2005 Chevrolet Silverado 7U05474	YP707037C	eVIN transmitted was for 2000 Ford Expedition not a 2005 Chevrolet Silverado, proving the vehicle was illegally clean plugged by Respondent's employee.
4/1/2015 0944 - 0947 hours	2007 Nissan 350Z 6KID059	YP707038C	eVIN transmitted was for 2000 Ford Expedition not a 2007 Nissan 350Z, proving the vehicle was illegally clean plugged by Respondent's employee.
4/1/2015 1608 - 1613 hours	2000 Mitsubishi Mirage 6JRK030	YP707042C	eVIN transmitted was for 2007 Toyota Camry, not a 2000 Mitsubishi Mirage, proving the vehicle was illegally clean plugged by Respondent's employee.
4/1/2015 1618 - 1622 hours	2008 Mitsubishi Lancer Evolution 6DJR369	YP707044C	eVIN transmitted was for 2007 Toyota Camry not a 2008 Mitsubishi Lancer Evolution, proving the vehicle was illegally clean plugged by Respondent's employee.

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4/2/2015 0959 - 1002 hours	2007 Chevrolet Trail Blazer 5YQD239	YP707047C	eVIN transmitted was for 2009 Chrysler Town & Country not a 2007 Chevrolet Trail Blazer, proving the vehicle was illegally clean plugged by Respondent's employee.
4/2/2015 1129 - 1134 hours	2006 Dodge Charger 5XGB190	YP707050C	eVIN transmitted was for 2002 Chevrolet Express not a 2006 Dodge Charger, proving the vehicle was illegally clean plugged by Respondent's employee.
4/2/2015 1624 - 1630 hours	2002 Nissan Altima VIN# 1N4AL11DX2C117885	YP846503C	eVIN transmitted was for 2003 Chevrolet Cavalier not a 2002 Nissan Altima, proving the vehicle was illegally clean plugged by Respondent's employee.
4/3/2015 1218 - 1222 hours	2007 Chevrolet Colorado 8H97818	YP846509C	eVIN transmitted was for 2005 Chevrolet Silverado not a 2007 Chevrolet Colorado, proving the vehicle was illegally clean plugged by Respondent's employee.
4/3/2015 1227 - 1230 hours	2003 Chevrolet Monte Carlo 5BAH219	YP846510C	eVIN transmitted was for 2003 Chevrolet Cavalier not a 2003 Chevrolet Monte Carlo, proving the vehicle was illegally clean plugged by Respondent's employee.

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4/3/2015 1231 - 1233 hours	2000 Mitsubishi Galant 4VOX754	YP846511C	eVIN transmitted was for 2003 Chevrolet Cavalier not a 2000 Mitsubishi Galant, proving the vehicle was illegally clean plugged by Respondent's employee.
4/3/2015 1606 - 1609 hours	2005 Dodge Neon SRT 7AMM789	YP846518C	eVIN transmitted was for 2002 Oldsmobile Silhouette not a 2005 Dodge Neon SRT, proving the vehicle was illegally clean plugged by Respondent's employee.
4/6/2015 1104 - 1109 hours	2004 Chevrolet Impala 6GWD181	YP846529C	eVIN transmitted was for 2001 Lincoln Navigator not a 2004 Chevrolet Impala, proving the vehicle was illegally clean plugged by Respondent's employee.
4/6/2015 1453 - 1457 hours	2001 Volkswagen Jetta GLS 6GJH992	YP846532C	eVIN transmitted was for 2004 Ford Expedition not a 2001 Volkswagen Jetta GLS, proving the vehicle was illegally clean plugged by Respondent's employee.
4/6/2015 1458 - 1502 hours	2005 Chevrolet Tahoe C1500 6SNU694	YP846533C	eVIN transmitted was for 2004 Ford Expedition not a 2005 Chevrolet Tahoe C1500, proving the vehicle was illegally clean plugged by Respondent's employee.

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4/6/2015 1533 - 1537 hours	2002 Mercury Mountaineer 4XEC994	YP846536C	eVIN transmitted was for 2005 Dodge Magnum not a 2002 Mercury Mountaineer, proving the vehicle was illegally clean plugged by Respondent's employee.
4/6/2015 1638 - 1643 hours	2003 Ford F150 8Z59373	YP846537C	eVIN transmitted was for 2011 Toyota not a 2003 Ford F150, proving the vehicle was illegally clean plugged by Respondent's employee.
4/7/2015 1627 - 1630 hours	2002 Toyota Camry 4YRV946	YP846542C	eVIN transmitted was for 2007 Kia Spectra not a 2002 Toyota Camry, proving the vehicle was illegally clean plugged by Respondent's employee.
4/8/2015 1308 - 1312 hours	2004 Mitsubishi Galant 6RAA160	YP846545C	eVIN transmitted was for 2001 GMC Sierra not a 2004 Mitsubishi Galant, proving the vehicle was illegally clean plugged by Respondent's employee.
4/10/2015 1123 - 1126 hours	2004 Nissan Titan VIN 1N6AA06A04N587551	YP936708C	eVIN transmitted was for 2007 Toyota Camry not a 2004 Nissan Titan, proving the vehicle was illegally clean plugged by Respondent's employee.

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4/10/2015 1553 - 1557 hours	2001 Chevrolet Camaro Z28 4RZP891	YP936711C	eVIN transmitted was for 2005 Ford Econoline not a 2001 Chevrolet Camaro Z28, proving the vehicle was illegally clean plugged by Respondent's employee.
4/10/2015 1558 - 1602 hours	2006 Mazda MazdaSpeed 6 5TFT568	YP936712C	eVIN transmitted was for 2005 Ford Econoline not a 2006 Mazda MazdaSpeed 6, proving the vehicle was illegally clean plugged by Respondent's employee.
4/11/2015 0835 - 0842 hours	2000 Chevrolet Silverado 6X88873	YP936716C	eVIN transmitted was for 2007 Chevrolet Colorado not a 2000 Chevrolet Silverado, proving the vehicle was illegally clean plugged by Respondent's employee.
4/11/2015 0937 - 0940 hours	2008 Mitsubishi Lancer AWDFISH	YP936718C	eVIN transmitted was for 2008 Chevrolet Cobalt not a 2008 Mitsubishi Lancer, proving the vehicle was illegally clean plugged by Respondent's employee.
4/11/2015 0940 - 0944 hours	2006 Acura 3.2TL VIN 19UUA66296A042603	YP936719C	eVIN transmitted was for 2008 Chevrolet Cobalt not a 2006 Acura 3.2TL, proving the vehicle was illegally clean plugged by Respondent's employee.

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4/11/2015 0944 - 0948 hours	2003 Lincoln Navigator 4XUG504	YP936720C	eVIN transmitted was for 2008 Chevrolet Cobalt not a 2003 Lincoln Navigator, proving the vehicle was illegally clean plugged by Respondent's employee.
4/11/2015 1536 - 1539 hours	2005 Ford F150 8E29943	YP936722C	eVIN transmitted was for 2006 Honda Accord not a 2005 Ford F150, proving the vehicle was illegally clean plugged by Respondent's employee.
4/11/2015 1540 - 1544 hours	2002 Jeep Wrangler Z985032	YP936723C	eVIN transmitted was for 2006 Honda Accord not a 2002 Jeep Wrangler, proving the vehicle was illegally clean plugged by Respondent's employee.
4/12/2015 1016 - 1023 hours	2001 Cadillac Deville 6HLW762	YP936726C	eVIN transmitted was for 2006 Honda Accord not a 2001 Cadillac Deville, proving the vehicle was illegally clean plugged by Respondent's employee.
4/13/2015 1111 - 1115 hours	2006 Mazda MazdaSpeed6 5TUV558	YP936728C	eVIN transmitted was for 2004 Dodge Durango not a 2006 Mazda MazdaSpeed6, proving the vehicle was illegally clean plugged by Respondent's employee.

1	4/13/2015 1115 - 1119 hours	2007 Chevrolet Silverado C1500 CKNURHM	YP936729C	eVIN transmitted was for 2004 Dodge Durango not a 2007 Chevrolet Silverado C1500, proving the vehicle was illegally clean plugged by Respondent's employee.
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6	4/13/2015 1145 - 1148 hours	2001 Ford Explorer 7B28457	YP936731C	eVIN transmitted was for 2003 Ford Ranger not a 2001 Ford Explorer, proving the vehicle was illegally clean plugged by Respondent's employee.
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10	4/14/2015 0859 - 0904 hours	2007 Cadillac C/T 6JLT753	YP936733C	eVIN transmitted was for 2007 Mitsubishi Galant not a 2007 Cadillac C/T, proving the vehicle was illegally clean plugged by Respondent's employee.
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15	4/14/2015 0937 - 0941 hours	2004 Chevrolet Venture 6N9W900	YP936736C	eVIN transmitted was for 2004 Ford Taurus not a 2004 Chevrolet Venture, proving the vehicle was illegally clean plugged by Respondent's employee.
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20	4/14/2015 0941 - 0945 hours	2003 Toyota RAV4 5BVC154	YP936737C	eVIN transmitted was for 2004 Ford Taurus not a 2003 Toyota RAV4, proving the vehicle was illegally clean plugged by Respondent's employee.
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24	4/14/2015 1121 - 1129 hours	2000 Oldsmobile Alero 4KGM034	YP936738C	eVIN transmitted was for 2006 Dodge Magnum not a 2000 Oldsmobile Alero, proving the vehicle was illegally clean plugged by Respondent's employee.
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4/14/2015 1130 - 1134 hours	2004 Ford F250 Super Duty VIN 1FTNW2IP34ED06761	YP936739C	eVIN transmitted was for 2006 Dodge Magnum not a 2004 Ford F250 Super Duty, proving the vehicle was illegally clean plugged by Respondent's employee.
4/14/2015 1134 - 1139 hours	2001 Mitsubishi Mirage 5AIR337	YP936740C	eVIN transmitted was for 2006 Dodge Magnum not a 2001 Mitsubishi Mirage, proving the vehicle was illegally clean plugged by Respondent's employee.
4/14/2015 1140 - 1144 hours	2002 Cadillac Escalade VIN 1GYEC63T22RI35110	YP936741C	eVIN transmitted was for 2006 Dodge Magnum not a 2002 Cadillac Escalade, proving the vehicle was illegally clean plugged by Respondent's employee.
4/14/2015 1316 - 1324 hours	2006 Pontiac G6 7CQE238	YP936744C	eVIN transmitted was for 2009 Chevrolet Tahoe not a 2006 Pontiac G6, proving the vehicle was illegally clean plugged by Respondent's employee.
4/14/2015 1701 - 1704 hours	2005 Ford F350 Super Duty 7U57026	YP936745C	eVIN transmitted was for 2005 Kia Sedona not a 2005 Ford F350 Super Duty, proving the vehicle was illegally clean plugged by Respondent's employee.

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4/16/2015 1151 - 1156 hours	2005 Infinity G35 7CHW868	YR058859C	eVIN transmitted was for 2007 GMC Acadia not a 2005 Infinity G35, proving the vehicle was illegally clean plugged by Respondent's employee.
4/16/2015 1421 - 1429 hours	2002 BMW 530i 7GZF662	YR058860C	eVIN transmitted was for 2010 Nissan not a 2002 BMW 530i, proving the vehicle was illegally clean plugged by Respondent's employee.
4/16/2015 1430 - 1434 hours	2002 Volkswagen Passat 4WDS179	YR058861C	eVIN transmitted was for 2010 Nissan not a 2002 Volkswagen Passat, proving the vehicle was illegally clean plugged by Respondent's employee.
4/18/2015 0858 - 0920 hours	2002 Honda Civic 6XZW356	YR058871C	eVIN transmitted was for 2012 Honda not a 2002 Honda Civic, proving the vehicle was illegally clean plugged by Respondent's employee.
4/18/2015 1111 - 1115 hours	2004 Nissan Maxima 5PVJ047	YR058875C	eVIN transmitted was for 2011 Toyota not a 2004 Nissan Maxima, proving the vehicle was illegally clean plugged by Respondent's employee.
4/20/2015 0925 - 0928 hours	2004 Dodge Neon 6NUM600	YR058880C	eVIN transmitted was for 2005 Ford F150 not a 2004 Dodge Neon, proving the vehicle was illegally clean plugged by Respondent's employee.

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4/20/2015 1547 - 1556 hours	2001 Chevrolet Cavalier 4WPP775	YR058883C	eVIN transmitted was for 2011 Toyota not a 2001 Chevrolet Cavalier, proving the vehicle was illegally clean plugged by Respondent's employee.
4/20/2015 1557 - 1602 hours	2001 Ford F150 7D62179	YR058884C	eVIN transmitted was for 2011 Toyota not a 2001 Ford F150, proving the vehicle was illegally clean plugged by Respondent's employee.
4/21/2015 1055 - 1100 hours	2005 BMW 545I 6GJS378	YR058886C	eVIN transmitted was for 2006 Chrysler PT Cruiser not a 2005 BMW 545I, proving the vehicle was illegally clean plugged by Respondent's employee.
4/21/2015 1103 - 1107 hours	2006 Subaru Imprensa WRX 5VFJ610	YR058887C	eVIN transmitted was for 2006 Chrysler PT Cruiser not a 2006 Subaru Imprensa WRX, proving the vehicle was illegally clean plugged by Respondent's employee.
4/21/2015 1108 - 1112 hours	2002 Honda Civic 4XEW115	YR058888C	eVIN transmitted was for 2006 Chrysler PT Cruiser not a 2002 Honda Civic, proving the vehicle was illegally clean plugged by Respondent's employee.
05/05/2015 1524-1530 hours	2000 Toyota Avalon 4KXE654	PS037685C	eVIN transmitted was for 2007 Volvo S40 not a 2000 Toyota Avalon, proving the vehicle was illegally clean plugged by Respondent's employee.

1 provisions of this chapter or regulations adopted pursuant to it” by issuing electronic certificates
2 of compliance for the vehicles set forth in Table 1, above, without performing bona fide
3 inspections of the emission control devices and systems on those vehicles, thereby depriving the
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection
5 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
6 paragraphs 19 and 20, inclusive, as though set forth fully herein.

7 **FOURTH CAUSE FOR DISCIPLINE**

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

9 24. Respondent has subjected his station license to discipline under HSC section 44072.2,
10 subdivision (a), in that, with respect to the vehicles set forth in Table 1, above, Respondent
11 violated the following sections of the HSC:

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

14 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
15 compliance without properly testing and inspecting the vehicles to determine if they were in
16 compliance with section 44012 of the HSC.

17 **FIFTH CAUSE FOR DISCIPLINE**

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

19 25. Respondent has subjected his station license to discipline under HSC section 44072.2,
20 subdivision (c), in that, with respect to the vehicles set forth in Table 1, above, Respondent
21 violated the following sections of title 16 of the CCR:

22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
23 electronic certificates of compliance without performing bona fide inspections of the emission
24 control devices and systems on those vehicles as required by HSC section 44012.

25 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
26 compliance even though those vehicles had not been inspected in accordance with section
27 3340.42 of the HSC.

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

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 26. Respondent has subjected his station license to discipline under HSC section 44072.2,
6 subdivision (d), in that, with respect to the vehicles set forth in Table 1, above, Respondent
7 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
8 electronic certificates of compliance for those vehicles without performing bona fide inspections
9 of the emission control devices and systems on those vehicles, thereby depriving the People of the
10 State of California of the protection afforded by the Motor Vehicle Inspection Program.

11 **PRAYER**

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 260432 to Andrew W. Labib, dba AW Smog Center;

16 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
17 260432 to Andrew W. Labib, dba AW Smog Center;

18 3. Revoking or suspending any and all licenses issued under Articles 5 and 6 of the
19 Automotive Repair Act in the name of Andrew W. Labib pursuant to section 9889.9 of the
20 Business and Professions Code;

21 4. Revoking or suspending any and all licenses issued under the Motor Vehicle
22 Inspection Program in the name of Andrew W. Labib pursuant to section 44072.8 of the Health
23 and Safety Code;

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1 5. Ordering Andrew W. Labib to pay the Bureau of Automotive Repair the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3;

4 6. Taking such other and further action as deemed necessary and proper.

5
6 DATED: June 6, 2016

Patrick Dorais

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

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