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

11 In the Matter of the Accusation Against:

Case No. 79/16-17986

12  
13 **JORGE DAVID CANTRES dba**  
**CANTRES SMOG**  
14 38526 6<sup>th</sup> Street East  
15 Palmdale, CA 93550

OAH No.

**ACCUSATION**

16 Mailing Address:  
4535 Portland Avenue  
17 Palmdale, CA 93552

18 Automotive Repair Dealer Registration No.  
ARD 280252  
19 Smog Check Test Only Station License No.  
TC 280252

20 **and**

21 **JORGE DAVID CANTRES**  
4535 Portland Avenue  
22 Palmdale, CA 93552

23 Smog Check Inspector License No. EO 637920

24  
25 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about May 14, 2015, the Bureau issued Automotive Repair Dealer Registration  
6 No. ARD 280252 to Jorge David Cantres dba Cantres Smog ("Respondent"). The Automotive  
7 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought  
8 herein, and will expire on May 31, 2018, unless renewed.

9 3. On or about October 16, 2015, the Bureau issued Smog Check Test Only Station  
10 License No. TC 280252 to Respondent. The Smog Check Test Only Station License was in full  
11 force and effect at all times relevant to the charges brought herein, and will expire on May 31,  
12 2018, unless renewed.

13 4. On or about January 27, 2016, the Bureau certified Cantres Smog as a STAR station.  
14 That certification was in full force and effect at all times relevant to the charges brought herein,  
15 and will remain active unless the ARD registration and/or the Smog Station license issued to  
16 Respondent is revoked, cancelled, or the licenses become delinquent or certification is  
17 invalidated.

18 5. On or about March 4, 2015, the Bureau issued Smog Check Inspector License No.  
19 EO 637920 to Respondent. The Smog Check Inspector license was in full force and effect at all  
20 times relevant to the charges brought herein, and will expire on December 31, 2018, unless  
21 renewed.

22 **JURISDICTION**

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

25 7. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a  
26 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary  
27 proceeding against an automotive repair dealer or to render a decision temporarily or permanently  
28 invalidating (suspending or revoking) a registration.



1           12. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog  
2 check stations shall be performed in accordance with procedures prescribed by the department.

3           13. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate  
4 of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section  
5 40012.

6           14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

13                   ....

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

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

18           15. Health & Saf. Code section 44072.10 states, in pertinent part:

19                   ....

20                   (c) The department shall revoke the license of any smog check technician  
21 or station licensee who fraudulently certifies vehicles or participates in the fraudulent  
22 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of  
23 the following:

24                   ....

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

27           16. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
28 suspended following a hearing under this article, any additional license issued under this chapter  
in the name of the licensee may be likewise revoked or suspended by the director.

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1 **REGULATORY PROVISIONS**

2 17. CCR, title 16, section 3340.24, subdivision (c), states:

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

6 18. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician  
7 shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section  
8 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42  
9 of this article."

10 19. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check  
11 station "shall issue a certificate of compliance or noncompliance to the owner or operator of any  
12 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of  
13 this article and has all the required emission control equipment and devices installed and  
14 functioning correctly."

15 20. CCR, title 16, section 3340.41, subdivision (c), states that "[n]o person shall enter  
16 into the emissions inspection system any vehicle identification information or emission control  
17 system identification data for any vehicle other than the one being tested. Nor shall any person  
18 knowingly enter into the emissions inspection system any false information about the vehicle  
19 being tested."

20 21. CCR, title 16, section 3340.42, sets forth specific emissions test methods and  
21 procedures which apply to all vehicles inspected in the State of California.

22 **COST RECOVERY**

23 22. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
24 the administrative law judge to direct a licentiate found to have committed a violation or  
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
26 and enforcement of the case.

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VID DATA REVIEW

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2       23.       On March 9, 2015, the Bureau implemented a statewide regulatory change  
3 requiring the use of an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model  
4 year and newer gas powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under,  
5 and 1998 and newer diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data  
6 lists differences in Vehicle Identification Numbers (VIN) for vehicles that have received smog  
7 inspections, in addition to communication protocol (the language used to communicate) and  
8 Parameter ID (PID) differences with vehicles that have been certified correctly that are the same  
9 make and model vehicles.

10       24.       On October 20, 2016, Bureau representative Jon Yamashita initiated an  
11 investigation in which he reviewed OIS test data for Cantres Smog. Representative Yamashita's  
12 investigation revealed that the data related to certain vehicles certified by Cantres Smog contained  
13 a pattern of unmistakable discrepancies between the information transmitted during the  
14 inspections and documented information known about the subject vehicles. Specifically,  
15 representative Yamashita compared the data received from the certified vehicles to data from  
16 vehicles of the same year, make, and model and determined that the data from at least ten (10) of  
17 the certified vehicles contained the following unmistakable discrepancies: (1) incorrect vehicle  
18 communication protocols; and (2) incorrect PID counts. These documented discrepancies  
19 confirm that the vehicles receiving smog certificates from were fraudulently tested during the  
20 smog inspection using the "clean plugging" method.<sup>1</sup> The following chart illustrates the  
21 documented clean plugging activities of Respondent between May 25, 2016 and November 26,  
22 2016.

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

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Test Date	Vehicle Certified & VIN	Certificate No.	Techician License No.	OIS Test Data Details
5/25/16	2004 Ford Escape XLT 1FMYU03114KA70818	ZD801919C	EO637920 (Respondent)	Comm. Protocol: I914 (expected: JPWM)  PID Count: 11 (expected: 22)
5/27/16	2004 Mazda Mazda6S 1YVHP80D245N45698	ZD801933C	EO637920 (Respondent)	Comm. Protocol: I914 (expected: ICAN11bt5)  PID Count: 11 (expected: 39 or 39/8)
6/1/16	2001 Chevrolet C1500 Suburban 3GNEC16T01G226693	ZD801947C	EO637920 (Respondent)	Comm. Protocol: I914 (expected: JVPW)  PID Count: 11 (expected: 22)
6/1/16	2009 Toyota Scion TC JTKDE167890302252	ZD801948C	EO637920 (Respondent)	Comm. Protocol: I914 (expected: ICAN11bt5)  PID Count: 11 (expected: 39)
7/5/16	2007 Chevrolet Malibu LS 1G1ZS58F27F212681	QC844740C	EO637920 (Respondent)	Comm. Protocol: I914 (expected: ICAN11bt5)  PID Count: 11 (expected: 38/7)
7/29/16	2004 Chevrolet Astro Van 1GCDM19X14B116944	ZH552407C	EO637920 (Respondent)	Comm. Protocol: I914 (expected: JVPW)  PID Count: 11 (expected: 21)





1 fact, Respondent conducted the inspections of the 10 vehicles identified in paragraph 24 above  
2 using clean-plugging methods in that he substituted or used a different vehicle(s), or another  
3 source, during the OBD II functional tests in order to issue smog certificates of compliance for  
4 the vehicles. Respondent did not test or inspect any of the 10 vehicles as required by Health &  
5 Saf. Code section 44012. Complainant refers to, and by this reference incorporates, the  
6 allegations contained in paragraphs 23 through 25, above, as though set forth fully herein.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 27. Respondent's Automotive Repair Dealer Registration is subject to disciplinary action  
10 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he committed acts that  
11 constitute fraud by issuing electronic smog certificates of compliance for the 10 vehicles  
12 identified in paragraph 24 above, without performing bona fide inspections of the emission  
13 control devices and systems on the vehicles, thereby depriving the People of the State of  
14 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant  
15 refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through  
16 25, above, as though set forth fully herein.

17 **THIRD CAUSE FOR DISCIPLINE**

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

19 28. Respondent's Automotive Repair Dealer Registration is subject to disciplinary action  
20 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed in a material  
21 respect to comply with the provisions of this chapter or regulations adopted pursuant to it when  
22 he issued electronic certificates of compliance for the 10 vehicles identified in paragraph 24  
23 above, without performing bona fide inspections of the emission control devices and systems on  
24 those vehicles, thereby depriving the People of the State of California of the protection afforded  
25 by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference  
26 incorporates, the allegations contained in paragraphs 23 through 25, above, as though set forth  
27 fully herein.

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1 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were  
2 conducted on the 10 vehicles identified in paragraph 24 above, in accordance with the Bureau's  
3 specifications.

4 Complainant refers to, and by this reference incorporates, the allegations contained in  
5 paragraphs 23 through 25, above, as though set forth fully herein.

6 **SIXTH CAUSE FOR DISCIPLINE**

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

8 31. Respondent's Smog Check Test Only Station License is subject to disciplinary action  
9 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest,  
10 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates  
11 of compliance for the 10 vehicles identified in paragraph 24 above, without performing bona fide  
12 inspections of the emission control devices and systems on the vehicles, thereby depriving the  
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
14 Program. Complainant refers to, and by this reference incorporates, the allegations contained in  
15 paragraphs 23 through 25, above, as though set forth fully herein.

16 **SEVENTH CAUSE FOR DISCIPLINE**

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

18 32. Respondent's Smog Check Inspector License is subject to disciplinary action  
19 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with  
20 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the  
21 emission control tests on the 10 vehicles identified in paragraph 24 above, in accordance with  
22 procedures prescribed by the department. Complainant refers to, and by this reference  
23 incorporates, the allegations contained in paragraphs 23 through 25, above, as though set forth  
24 fully herein.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued  
8 electronic smog certificates of compliance for the 10 vehicles identified in paragraph 24 above.

9 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the 10  
10 vehicles identified in paragraph 24 above, in accordance with Health & Saf. Code sections 44012  
11 and 44035, and California Code of Regulations, title 16, section 3340.42.

12 c. **Section 3340.41, subdivision (c)**: Respondent knowingly entered false information  
13 into the emissions inspection system for the 10 vehicles identified in paragraph 24 above.

14 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on the 10  
15 vehicles identified in paragraph 24 above, in accordance with the Bureau's specifications.

16 Complainant refers to, and by this reference incorporates, the allegations contained in  
17 paragraphs 23 through 25, above, as though set forth fully herein.

18 **NINTH CAUSE FOR DISCIPLINE**

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

20 34. Respondent's Smog Check Inspector License is subject to disciplinary action  
21 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest,  
22 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates  
23 of compliance for the 10 vehicles identified in paragraph 24 above, without performing bona fide  
24 inspections of the emission control devices and systems on the vehicles, thereby depriving the  
25 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
26 Program. Complainant refers to, and by this reference incorporates, the allegations contained in  
27 paragraphs 23 through 25, above, as though set forth fully herein.

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1 OTHER MATTERS

2 35. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
3 suspend, revoke, or place on probation the registration for all places of business operated in this  
4 state by Respondent, upon a finding that he has, or is, engaged in a course of repeated and willful  
5 violations of the laws and regulations pertaining to an automotive repair dealer.

6 36. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station  
7 License No. TC 280252, issued to Respondent, is revoked or suspended, any additional license  
8 issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said  
9 licensee may be likewise revoked or suspended by the director.

10 37. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
11 No. EO 637920, issued to Respondent, is revoked or suspended, any additional license issued  
12 under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said  
13 licensee may be likewise revoked or suspended by the director.

14 PRAYER

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

17 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 280252,  
18 issued to Jorge David Cantres dba Cantres Smog;

19 2. Revoking or suspending any other automotive repair dealer registration issued to  
20 Jorge David Cantres;

21 3. Revoking or suspending Smog Check Test Only Station License No. TC 280252,  
22 issued to Jorge David Cantres dba Cantres Smog;

23 4. Revoking or suspending Smog Check Inspector License No. EO 637920, issued to  
24 Jorge David Cantres;

25 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
26 Division 26 of the Health and Safety Code in the name of Jorge David Cantres;

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1           6.    Ordering Respondent to pay the Director of Consumer Affairs the reasonable costs of  
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
3 125.3; and

4           7.    Taking such other and further action as deemed necessary and proper.  
5

6  
7    DATED: October 4, 2017           Patrick Dorais

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

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