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

12 In the Matter of the Accusation Against:

Case No. **79/16-50**

13 **HAWK AUTO SALES, DUVAN**
14 **MARTINEZ, MAGDALENA MARTINEZ,**
15 **PARTNERS**

ACCUSATION

16 16429 Walnut St.
17 Hesperia, CA 92345

18 **Automotive Repair Dealer Registration**
19 **No. ARD 272426**
20 **Smog Check Station License No. RC 272426**
21 **STAR Station Certification,**

22 and

23 **EDWARD CARRILLO**
24 **16656 Sage St.**
25 **Hesperia, CA 92345**

26 **Smog Check Inspector License**
27 **No. EO 636381**

28 Respondents.

Complainant alleges:

PARTIES

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

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1 2. On or about April 4, 2013, the Bureau of Automotive Repair issued Automotive
2 Repair Dealer Registration Number ARD 272426 to Hawk Auto Sales, Duvan Martinez,
3 Magdalena Martinez, Partners (Respondents Hawk Auto Sales). The Automotive Repair Dealer
4 Registration was in full force and effect at all times relevant to the charges brought herein and
5 will expire on April 30, 2016, unless renewed.

6 3. On or about May 2, 2013, the Bureau of Automotive Repair issued Smog Check
7 Station License Number RC 272426 to Respondents Hawk Auto Sales. The Smog Check Station
8 License was in full force and effect at all times relevant to the charges brought herein and expired
9 on April 30, 2015, and has not been renewed.

10 4. On or about September 11, 2014, the Bureau of Automotive Repair issued STAR
11 Station Certification to Respondents Hawk Auto Sales. The STAR Station Certification was in
12 full force and effect at all times relevant to the charges brought herein and will expire on April 30,
13 2016.

14 5. On or about December 20, 2013, the Bureau of Automotive Repair issued Smog
15 Check Inspector License Number EO 636381 to Edward Carrillo (Respondent Carrillo). The
16 Smog Check Inspector License was in full force and effect at all times relevant to the charges
17 brought herein and will expire on July 31, 2017, unless renewed.

18 **JURISDICTION**

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

21 **STATUTORY PROVISIONS**

22 7. Section 9884.7 of the Business and Professions Code (Code) states, in pertinent part:

23 "(a) The director, where the automotive repair dealer cannot show there
24 was a bona fide error, may deny, suspend, revoke, or place on probation the
25 registration of an automotive repair dealer for any of the following acts or omissions
26 related to the conduct of the business of the automotive repair dealer, which are done
27 by the automotive repair dealer or any automotive technician, employee, partner,
28 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.

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(4) Any other conduct which constitutes fraud.

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

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

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

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

11. Section 44012 of the Health and Safety Code provides, in pertinent part:

The tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

....

(f) A visual or functional check is made of emission control devices specified by the department.

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

13. Section 44032 of the Health and Safety Code provides, in pertinent part, that "[q]ualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012."

14. Section 44072.2 of the Health and Safety Code states:

The director may suspend, revoke, or take other disciplinary action

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

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

6 "(b) Is convicted of any crime substantially related to the qualifications,
7 functions, and duties of the licenseholder in question.

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

10 "(d) Commits any act involving dishonesty, fraud, or deceit whereby."

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

15 16. Section 44072.8 of the Health and Safety Code states:

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

19 REGULATORY PROVISIONS

20 17. California Code of Regulations, title 16, section 3340.30, subdivision (a), states that a
21 licensed smog technician shall at all times "[i]nspect, test and repair vehicles, as applicable, in
22 accordance with section 44012 of the Health & Safety Code, section 44035 of the Health & Safety
23 Code, and section 3340.42 of this article."

24 18. California Code of Regulations, title 16, section 3340.35, subdivision (c), states that a
25 licensed smog check station "shall issue a certificate of compliance or noncompliance to the
26 owner or operator of any vehicle that has been inspected in accordance with the procedures
27 specified in section 3340.42 of this article and has all the required emission control equipment
28 and devices installed and functioning correctly."

19 19. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides:
20 "No person shall enter into the emissions inspection system any vehicle identification information
21 or emission control system identification data for any vehicle other than the one being tested. Nor
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1 shall any person knowingly enter into the emissions inspection system any false information about
2 the vehicle being tested.”

3 **COST RECOVERY**

4 20. Code section 125.3 provides, in pertinent part, that a Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 **BACKGROUND**

9 21. On or about April 22, 2015, Respondents Hawk Auto Sales through the actions of
10 Respondent Carrillo performed two (2) smog inspections that resulted in the issuance of
11 electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that
12 Respondents had tested and inspected those vehicles and that the vehicles were in compliance
13 with applicable laws and regulations.

14 22. In fact, Respondent Carrillo performed the smog inspections using the clean piping
15 method¹ by using the tail pipe emissions of vehicles other than the vehicles being certified in
16 order to issue the electronic certificates of compliance. The vehicles certified were not in the test
17 bay at the time of the smog inspections.

18 **Table 1**

19 Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
20 1 1009 - 1024	1996 Toyota Corolla, VIN No. 1NXBB02E2TZ421125	1999 Chrysler Town & Country minivan, License No. 5EXY919	YP638194C	Respondent Carrillo performed inspection.
22 2 1031 - 1040	1999 Dodge Ram 1500 VIN No. 2B7HB11Y2XK536447	1999 Chrysler Town & Country minivan, License No. 5EXY919	YP638195C	Respondent Carrillo performed the inspection.

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26 ¹ “Clean piping” is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 23. Respondents Hawk Auto Sales have subjected their registration to discipline under
4 Code section 9884.7, subdivision (a)(1), in that on or about April 22, 2015, they made statements
5 which they knew or which by exercise of reasonable care they should have known were untrue or
6 misleading when they issued electronic certificates of compliance for the vehicles set forth in
7 Table 1, above, certifying that those vehicles were in compliance with applicable laws and
8 regulations when, in fact, the vehicles had been clean piped.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 24. Respondents Hawk Auto Sales have subjected their registration to discipline under
12 Code section 9884.7, subdivision (a)(4), in that on or about April 22, 2015, they committed acts
13 which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in
14 Table 1, above, without performing bona fide inspections of the emission control devices and
15 systems on those vehicles, thereby depriving the People of the State of California of the protection
16 afforded by the Motor Vehicle Inspection Program.

17 **THIRD CAUSE FOR DISCIPLINE**

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

19 25. Respondents Hawk Auto Sales have subjected their Automotive Repair Dealer
20 Registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about April
21 22, 2015, they failed in a "material respect to comply with the provisions of this chapter or
22 regulations adopted pursuant to it" when they issued electronic certificates of compliance to the
23 vehicles listed above in Table 1, without performing bona fide inspections of the emission control
24 devices and systems on those vehicles, thereby depriving the People of the State of California of
25 the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by
26 this reference incorporates, the allegations contained in paragraphs 21-24, as though set forth fully
27 herein.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 26. Respondents Hawk Auto Sales have subjected their Smog Check Station License to
4 discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about
5 April 22, 2015, they violated sections of that Code, as follows:

6 a. **Section 44012:** Respondents Hawk Auto Sales failed to determine that all emission
7 control devices and systems required by law were installed and functioning correctly in
8 accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondents Hawk Auto Sales failed to perform
10 emission control tests on those vehicles in accordance with procedures prescribed by the
11 department.

12 c. **Section 44015, subdivision (b):** Respondents Hawk Auto Sales issued electronic
13 certificates of compliance without properly testing and inspecting the vehicles to determine if they
14 were in compliance with section 44012 of the Code.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 27. Respondents Hawk Auto Sales have subjected their Smog Check Station License to
18 discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about
19 April 22, 2015, they violated sections of the California Code of Regulations, title 16, as follows:

20 a. **Section 3340.35, subdivision (c):** Respondents Hawk Auto Sales issued electronic
21 certificates of compliance even though the vehicles had not been inspected in accordance with
22 section 3340.42 of the Health and Safety Code.

23 **SIXTH CAUSE FOR DISCIPLINE**

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

25 28. Respondents Hawk Auto Sales have subjected their Station License to discipline
26 under Health and Safety Code section 44072.2, subdivision (d), in that, on or about April 22,
27 2015, regarding the vehicles set forth in Table 1, above, they committed acts involving
28 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of

1 compliance for vehicles without performing bona fide inspections of the emission control devices
2 and systems on those vehicles, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 29. Respondent Carrillo has subjected his Smog Check Inspector License to discipline
7 under Health and Safety Code section 44072.2, subdivision (a), in that on or about April 22, 2015,
8 he violated sections of that Code, as follows:

9 a. **Section 44012, subdivision (a):** Respondent Carrillo failed to determine that all
10 emission control devices and systems required by law were installed and functioning correctly in
11 accordance with test procedures..

12 b. **Section 44012, subdivision (f):** Respondent Carrillo failed to perform emission
13 control tests on those vehicles in accordance with procedures prescribed by the department.

14 c. **Section 44032:** Respondent Carrillo failed to perform tests of the emission control
15 devices and systems on the vehicles in accordance with section 44012 of the Health and Safety
16 Code, in that the vehicles had been clean piped.

17 **EIGHTH CAUSE FOR DISCIPLINE**

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

19 30. Respondent Carrillo has subjected his Smog Check Inspector License to discipline
20 under Health and Safety Code section 44072.2, subdivision (c), in that on or about April 22, 2015,
21 he violated sections of the California Code of Regulations, title 16, as follows:

22 a. **Section 3340.30, subdivision (a):** Respondent Carrillo failed to inspect and test the
23 vehicles in accordance with Health and Safety Code section 44012.

24 b. **Section 3340.41, subdivision (c):** Respondent Carrillo entered false information into
25 the EIS for the electronic certificates of compliance by entering vehicle emission control
26 information for vehicles other than the vehicles being certified.

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1 **NINTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent Carrillo has subjected his Smog Check Inspector License to discipline
4 under Health and Safety Code section 44072.2, subdivision (d), in that on or about April 22, 2015
5 regarding the vehicles set forth in Table 1, he committed acts involving dishonesty, fraud or deceit
6 whereby another was injured by issuing electronic certificates of compliance for vehicles without
7 performing bona fide inspections of the emission control devices and systems on those vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **OTHER MATTERS**

11 32. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
12 or permanently or refuse to validate, the registrations for all places of business operated in this
13 state by Respondents Hawk Auto Sales, upon a finding that they have, or are, engaged in a course
14 of repeated and willful violations of the laws and regulations pertaining to an automotive repair
15 dealer.

16 33. Under Health and Safety Code section 44072.8, if Smog Check Station License
17 Number RC 272426, issued to Respondents Hawk Sales Auto Sales, is revoked or suspended, any
18 additional license issued under this chapter in the name of said licensee may be likewise revoked
19 or suspended by the director.

20 34. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
21 Number EO 636381, issued to Edward Carrillo, is revoked or suspended, any additional license
22 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
23 the director.

24 **PRAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 272426, issued to Hawk Auto Sales, Duvan Martinez, Magdalena Martinez, Partners

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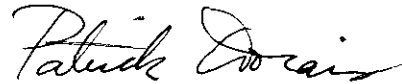
2. Revoking or suspending Smog Check Station License Number RC 272426, issued to Hawk Auto Sales, Duvan Martinez, Magdalena Martinez, Partners;

3. Revoking or suspending Smog Check Inspector License Number EO 636381, issued to Edward Carrillo

4. Ordering Duvan Martinez and Magdalena Martinez dba Hawk Auto Sales and Edward Carrillo to pay 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; and

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

DATED: January 4, 2016



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

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