

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

In the Matter of the Accusation Against:

**J&A SMOG CHECK**  
**ANDRES MARMOLEJO MARTINEZ**  
715 S. Witmer St.  
Los Angeles, CA 90017

Case No.: 79/17-15899

OAH No.: 2018050269

Automotive Repair Dealer Registration No.:  
ARD 287686  
Smog Check Test Only Station License No.:  
TC 287686

and

**MARCO AURELIO GONZALEZ RAMOS**  
4006 South Trinity  
Los Angeles, CA 90037

Smog Check Inspector License No.: EO  
638985

**DECISION AFTER REJECTION OF PROPOSED DECISION**

This matter was heard by Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, on May 31, 2018, in Los Angeles, California. Complainant (Bureau or BAR) was represented by Heather Vo, Deputy Attorney General. The owner of J&A Smog Check, Andres Martinez Marmolejo (Respondent Martinez), incorrectly named and referred to in the Accusation as Marmolejo Andres Martinez, was present and represented himself and J&A Smog Check. Respondent Marco Aurelio Gonzalez Ramos (Respondent Ramos) was not present at the hearing.<sup>1</sup>

At the hearing, the Accusation was amended on page 2, paragraphs 2 and 3, and page 15,

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<sup>1</sup> There was no appearance by or on behalf of Respondent Ramos. Respondent Ramos failed to file a Notice of Defense to request a hearing, and Complainant's counsel indicated at hearing that she planned to seek an agency default against him. Accordingly, this Proposed Decision does not address the Seventh, Eighth and Ninth Causes for Discipline alleged in the Accusation.

paragraphs 1, 2, 3, 4 and 7, to correct all references to Respondent Martinez's incorrect name. The changes were noted by interlineation in the Accusation in Exhibit 1.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on May 31, 2018.

On June 1, 2018, Respondent Martinez served and filed a packet of material entitled "Respondents Accusation Defenses," which was marked as Exhibit D. Exhibit D is comprised of a letter from Respondent Martinez and six attachments. Complainant's counsel confirmed that she received Exhibit D, and she objected to its admission into evidence. Complainant's objection is sustained. Exhibit D was submitted after the record was closed, and the relevance of the documents is unclear. In addition, many of the documents are incomprehensible and, to the extent that they bear on Respondent Ramos' licensure, are immaterial to the determination of discipline of Respondent Martinez's registration and licenses.

On June 20, 2018, ALJ Forman issued a Proposed Decision in this matter. On July 18, 2018, the Director (Director) of the Department of Consumer Affairs (Department) issued an Order of Rejection of Proposed Decision. On September 5, 2018, the Director issued an Order Fixing Date for Submission of Written Argument ordering the parties to submit written argument on or before October 12, 2018. Neither party submitted written argument. After review of the entire administrative record, including the transcript, the Director, pursuant to Government Code section 11517, hereby renders the final decision in this matter.

#### FACTUAL FINDINGS

1. On September 13, 2017, Complainant Patrick Dorais filed the Accusation while acting in his official capacity as Chief of the Bureau.

##### *License History*

2. BAR issued Automotive Repair Dealer (ARD) Registration Number ARD 287686 and Smog Check, Test Only, Station License Number TC 287686 on June 22, 2017, and July 14, 2017, respectively, to Respondent Martinez, as owner of and doing business as (dba) J&A Smog. The ARD Registration and Smog Check, Test Only, Station License were scheduled to expire on June 30, 2018, however, the Bureau suspended both licenses on April 24, 2018, pursuant to an Interim Suspension Order (ISO).

3. On November 1, 2017, after the Accusation was filed, BAR issued Smog Check Inspector (EO) License Number EO 640702 to Respondent Martinez. Respondent Martinez's Smog Check Inspector license is scheduled to expire on August 31, 2019, unless renewed or revoked. The Accusation therefore does not allege any specific causes of discipline against Respondent Martinez's Smog Check Inspector license, and the Bureau has not filed any amendment to the Accusation regarding this license.

4. On February 10, 2016, BAR issued Smog Check Inspector (EO) license number EO 638985 to Respondent Ramos. The Bureau suspended Respondent Ramos' license on April

24, 2018, pursuant to an ISO. J&A Smog employed Respondent Ramos as a smog check inspector from July 8, 2017 to October 31, 2017.

### *California's Smog Check Program*

5. California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. The smog check program requires owners to submit their vehicles to smog inspections and obtain certificates of compliance. Licensed smog check technicians at licensed smog check stations conduct these mandated smog check inspections and are the only persons authorized by the Bureau to perform official inspections. They are issued a license and a personal access code which are used to perform the smog check inspections.

6. The Bureau is responsible for the licensure and regulation of smog check stations and smog check inspectors. The Bureau plays a key role in maintaining air quality by verifying that licensees properly inspect motor vehicles. The purpose of a proper smog check inspection is to determine that all required emission control devices are installed and functioning properly and to detect and reduce tampering and emission control failures.

7. Smog check inspections are performed using one of two Emission Inspection Systems (EIS); specifically, the BAR97 test for gas-powered vehicles model years 1976 through 1999, or the On-Board Diagnostic (OBD or OBDII) Inspection System (OIS) test for gas-powered vehicles model year 2000 and newer<sup>2</sup>, hybrid vehicles model year 2000 and newer, and diesel-powered vehicles model year 1998 and newer. Both testing platforms require a licensed smog check technician to perform a visual inspection of the vehicle's emission components to verify that they are properly installed, and a functional inspection to verify their proper operation.

8. For model-year 2005 and newer vehicles and on some earlier model-years, the VIN is programed into the vehicle's OBDII system electronic control unit (ECU). The electronically programed VIN (eVIN) is captured by the BAR-OIS during a smog inspection and under normal circumstances matches the physical VIN on the vehicle.

9. The communication protocol is a specific combination of letters and numbers used by each vehicle's on-board computer to relay information to scan tools and other computers such as the BAR-OIS. The communication protocol is programmed into the vehicle's on-board computer during manufacture and does not change.

10. Parameter Identifications (PIDs) are data points reported by the vehicle's OBDII system ECU to the DAD and the BAR-OIS. Examples of PIDs are engine speed/rpm, vehicle speed, engine temperature and other input/output values utilized by the OBDII system ECU. The PID count is the number of data points reported by the OBDII system. This is programed during

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<sup>2</sup> Gas-powered vehicles with a gross vehicle weight rating (GVWR) over 14,000, those without OBDII systems, and/or those identified by BAR with problematic OBDII systems are exempt. (2013 and 2017 Smog Check Manuals, p. 2.)

manufacture and does not change. Each vehicle reports a specific PID count with slight variations based on whether the vehicle is equipped with an automatic or manual transmission and in rare occurrences on vehicle trim variations.

11. When a smog check inspection is completed, the testing program generates a written report, known as a vehicle inspection report (VIR), that contains a description of the vehicle that was tested and the results of the inspection. If the vehicle passes the smog check inspection, an electronic certificate of compliance, with a unique control number, is issued and transmitted automatically to the Vehicle Information Database (VID) maintained by Bureau and the California Department of Motor Vehicles (DMV). A vehicle must pass a properly conducted smog check inspection applicable to the vehicle being tested before a certificate of compliance verifying that the vehicle passed the smog inspection may be issued.

12. The VID contains the dates and times of all smog inspections, the identity of the vehicles tested (license plates and VINs), all data obtained during the smog check inspections, and the identities of the technicians and stations performing the inspections. Bureau employees have access to the VID and use the information stored there when conducting investigations.

13. "Clean plugging" is a method used by some smog check stations and smog check inspectors to issue fraudulent smog check certificates of compliance. "Clean plugging" involves using another vehicle's properly-functioning OBDII system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent certificates of compliance to vehicles which are not in smog compliance or not present for testing. This is done by plugging the connector of the DAD into a vehicle other than that which is being certified or into an OBDII simulator which generates its own data to obtain certification.

### *The Bureau's Investigation*

14. In September of 2017, Ian Evans (PR Evans), Program Representative II with the Bureau, conducted an investigation in which he reviewed BAR-OIS test data for inspections performed at J&A Smog between September 23, 2017 and September 28, 2017. The inspected vehicles' OIS test data showed a pattern of inconsistencies, particularly regarding incorrect communication protocols, incorrect PID counts and inconsistent eVIN numbers, versus what would be expected for similar vehicles of the same year, make, and model.

15. Specifically, J&A Smog issued certificates of compliance to 10 vehicles of various model-years (2002 through 2014), makes (Toyota, Nissan, BMW, Honda, Buick, and Dodge), and models. PR Evans compared the OIS test data from the 10 vehicles tested by J&A Smog to OIS test data of similar vehicles of the same year, make, and model that received passing smog check inspections and received smog certificates. PR Evans found multiple discrepancies in the data comparisons of the 10 vehicles certified by J&A Smog, including that six vehicles had the same incorrect communication protocol of I914 (when the expected communication protocol was either ICAN11bt5, JVPW, or JPWM); all 10 vehicles transmitted the same incorrect PID count of 9 (when the expected PID counts were 17; 38/21; 17 or 18; 39, 39/15 or 39/16; 46 or 46/11; 4/17; 19; 48; 47/18, and 22); and, five of the 10 vehicles transmitted an eVIN number when none was expected due to the age of the vehicle.

16. For eight of the 10 vehicles certified by J&A Smog, prior smog inspections conducted on those same vehicles at other smog check stations resulted in OIS test data reported to the Bureau which were consistent with the expected communication protocol, the PID count and eVIN numbers, indicating that the reported test data from J&A Smog was falsified.

17. The discrepancies in the OIS test detail establish that the DAD was not connected to the 10 vehicles and that J&A Smog falsified 10 inspections through clean plugging in order to issue 10 fraudulent certificates of compliance. The data reported to the Bureau indicated Respondent Ramos performed all 10 of the fraudulent inspections while he was employed by J&A Smog.

*Testimony by Respondent Martinez*

18. Respondent Martinez purchased the predecessor of J&A Smog on June 3, 2017 with the intent and expectation that he personally would conduct smog check inspections. At the time of his purchase, Respondent Martinez was unaware that the Bureau required a licensed smog check inspector to conduct such inspections. After learning of the requirement, Respondent Martinez enrolled at the Smog Tech Institute (S.T.I.) in Fullerton, California to obtain training to become a licensed smog check inspector. He attended full-time classes at S.T.I., four days a week from June 19 to July 25, 2017.

19. To keep J&A Smog operating while he attended classes at S.T.I., Respondent Martinez hired Respondent Ramos on July 7, 2017 to conduct smog check inspections at J&A Smog. Respondent Martinez was not personally familiar with Respondent Ramos before hiring him; he hired Respondent Ramos on the basis of a recommendation from someone who worked at a neighboring business. Respondent Ramos was the sole employee of J&A Smog from July 7 to October 31, 2017.

20. From sometime in June 2017 until November 1, 2017, in addition to attending S.T.I., Respondent Martinez worked as a driver for CKK Auto Group (CKK), a wholesale automobile buyer, to pay the rent of J&A Smog and to support his family. As a result, during this period, Respondent Martinez only visited J&A Smog on Saturdays, when he would pay Respondent Ramos and review the business invoices. Respondent Martinez did not perform any smog inspections during this time, and he was unaware that Respondent Ramos, while employed by J&A Smog, had conducted any clean plugging on any of the vehicles tested at J&A Smog.

21. Once Respondent Martinez obtained his smog check inspector license on November 1, 2017, he terminated Respondent Ramos. Since then, Respondent Martinez has been the sole smog check inspector working at J&A Smog; J&A Smog has no other employees.

22. At hearing, Respondent Martinez recognized that he erred by not fully investigating Respondent Ramos before hiring him and by allowing the business to operate without any meaningful supervision. His testimony was candid and remorseful. Respondent Martinez now understands it is his responsibility to ensure that J&A Smog's employees follow the law. Since obtaining his smog check inspector license, Respondent Martinez has taken his

responsibilities as a smog check inspector seriously, and he is committed to operating his business within the confines of the law.

23. Complainant submitted as evidence the costs of prosecution of this matter a Certificate of Prosecution Costs: Declaration of Heather Vo, certifying that the Department of Justice Office of the Attorney General, billed the Bureau \$2,355 for legal services provided through May 15, 2018. Complainant also submitted as evidence of the Bureau's costs two declarations, one by PR Evans and the second by Mark Casillas, PR Evans's supervisor, certifying that the Bureau had incurred a total of \$797.38 investigating claims against J&A Smog and Respondent Ramos. The evidence established that complainant incurred total costs of \$3,152.38, all of which are deemed reasonable.

24. Respondent Martinez lives with his wife, his two children, ages four and six, and his two disabled parents. He is the sole breadwinner for his family, his parents also receive social security. Since April 2018, when J&A Smog's ARD registration and smog check station licenses were suspended, Respondent Martinez has been forced to resume driving part-time for CKK, his former employer. Currently, Respondent Martinez earns approximately \$1,800 to \$2,400 per month, and his monthly household expenses are approximately \$1,900 per month, excluding the costs of rent for J&A Smog.

## LEGAL CONCLUSIONS

### *Jurisdiction; Burden and Standard of Proof*

1. The suspension of J&A Smog's ARD registration and smog check station license does not deprive the Bureau of jurisdiction to proceed with disciplinary action against the registration and license held by J&A Smog. (Bus. & Prof. Code, § 9884.13; Health & Saf. Code, § 44072.6.)

2. The burden of proof is on the Bureau. J&A Smog's ARD registration and station license are nonprofessional licenses because they do not require extensive educational, training, or testing requirements similar to a professional license. (See *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894.) Therefore, the standard of proof for the Bureau to prevail in this matter is a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917; Evid. Code, §115.) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it." [citations omitted] . . . . The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325, emphasis in original.)

### *Liability for Employee Conduct*

3. Respondent Martinez testified he did not supervise Respondent Ramos at J&A Smog and he did not conduct the actual inspections in question. However, as the owner of J&A

Smog, Respondent Martinez is liable for the acts of his employees, including Respondent Ramos. The Appellate Court explained in *Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797:

[t]he owner of a license is obligated to see that the license is not used in violation of the law. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360). "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." (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192.)

4. Accordingly, "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." (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192.) The licensee's responsibility is not dependent on whether he or she has authorized the unlawful acts or had actual knowledge of the activities. (*Id.* at 192-193.)

5. In this case, during the relevant period, Respondent Martinez chose to operate his smog inspection business completely through his employee Respondent Ramos. Therefore, Respondent Martinez and his business J&A Smog had a duty to ensure that Respondent Ramos complied with the laws and regulations governing the licensed business. Respondent Martinez was also responsible for Respondent Ramos' violations committed in the exercise of the facility's license. As with *Arenstein*, this holds true even if either Respondent Martinez or J&A Smog did not authorize the unlawful acts or have actual knowledge of them. Consequently, the Bureau may discipline the ARD registration and station license of held by Respondent Martinez as owner of and doing business as J&A Smog for the violations of its employee, Respondent Ramos, while conducting smog inspections.

#### *Causes for Discipline*

6. *First Cause for Discipline (Untrue or Misleading Statements)*: J&A Smog's ARD registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).<sup>3</sup> J&A Smog made or authorized statements which it knew or in the exercise of reasonable care should have known were untrue or misleading, as follows: Between September 23, 2017, and September 28, 2017, J&A Smog certified that 10 vehicles passed smog check inspections and were in compliance with applicable laws and regulations. In fact, J&A Smog, through its employee Respondent Ramos, used clean plugging methods to issue smog certificates of compliance for the vehicles and did not actually test or inspect the vehicles as required by Health and Safety Code section 44012.

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<sup>3</sup> All further statutory references are to the Business and Professions Code unless otherwise stated.

7. *Second Cause for Discipline (Fraud)*: J&A Smog's ARD registration is subject to discipline pursuant to section 9884.7, subdivision (a)(4). Between September 23, 2017 and September 28, 2017, J&A Smog committed acts that constitute fraud by issuing electronic smog certificates of compliance for 10 vehicles without performing bona fide inspections of the emission control devices and systems for those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

8. *Third Cause for Discipline (Material Violation of Automotive Repair Act)*: J&A Smog's ARD registration is subject to discipline pursuant to section 9884.7, subdivision (a)(6). Between September 23, 2017 and September 28, 2017, J&A Smog committed acts that failed in material respects to comply with the provisions of the Automotive Repair Act and the regulations promulgated thereunder by issuing electronic smog certificates of compliance for 10 vehicles without performing bona fide inspections of the emission control devices and systems for those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

9. *Fourth Cause for Discipline (Violation of Motor Vehicle Inspection Program)*: J&A Smog's Smog Check, Test Only, Station License is subject to discipline action pursuant to Health and Safety Code section 44072.2, subdivision (a). Between September 23, 2017 and September 28, 2017, J&A Smog failed to comply with the following sections of the Health and Safety Code:

a. Section 44012: J&A Smog failed to ensure that the emission control tests were performed on the 10 subject vehicles in accordance with procedures prescribed by the Department of Consumer Affairs.

b. Section 44015: J&A Smog issued electronic smog certificates of compliance for the 10 subject vehicles without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

10. *Fifth Cause for Discipline (Failure to Comply with Regulations)*: J&A Smog's Smog Check, Test Only, Station License is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c). Between September 23, 2017 and September 28, 2017, J&A Smog failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. Section 3340.24, subdivision (c): J&A Smog, through its employee, falsely or fraudulently issued electronic smog certificates of compliance for 10 vehicles.

b. Section 3340.35, subdivision (c): J&A Smog, through its employee, issued electronic smog certificates of compliance for 10 vehicles even though the vehicles had not been inspected in accordance with section 3340.42.

c. Section 3340.41, subdivision (c): J&A Smog, through its employee, knowingly entered false information into the emissions inspection system for 10 vehicles.



d. Section 3340.42: J&A Smog failed to ensure that the required smog tests were conducted on 10 vehicles in accordance with the Bureau's specifications.

11. *Sixth Cause for Discipline (Dishonesty, Fraud or Deceit)*: J&A Smog's Smog Check, Test Only, Station License is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d). Between September 23, 2017 and September 28, 2017, J&A Smog committed dishonest, fraudulent or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance for 10 vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

#### *Level of Discipline*

12. The Bureau has issued guidelines to assist in determining the discipline of a license. Those "Guidelines for Disciplinary Orders and Terms of Probation" (revised March 2016) (Guidelines) are incorporated by reference at California Code of Regulations, title 16, section 3395.4.

13. Under the Guidelines, the recommended discipline for the violations alleged in the Accusation ranges from two years to five years of probation. The Guidelines also provide that the maximum discipline for each individual violation is revocation of the applicable registration or license. Multiple violations or multiple instances of the same violations are to be taken into consideration when determining the level of discipline. (Guidelines, p. 3.)

14. The Guidelines set forth aggravating and mitigating factors to be considered in determining whether revocation, suspension, or probation is to be imposed in a given case. (*Id.*, pp. 1-2.) As a factor in aggravation, J&A Smog's unlawful acts were part of a pattern of practice as there were 10 instances of clean plugging over a five-day period. Significant evidence of mitigation also exists: neither J&A Smog nor Respondent Martinez have any disciplinary history with the Bureau; Respondent Ramos has not worked for Respondent Martinez or J&A Smog since November 1, 2017; Respondent Martinez has obtained the necessary educational training to conduct smog check inspections and has become a licensed smog check inspector; Respondent Martinez is the sole smog check inspector at J&A Smog, and Respondent Martinez is now aware of his responsibilities as a business owner and is committed to operating his business lawfully.

15. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) In light of the foregoing, discipline short of outright revocation would be sufficient to protect the public interest. The fraudulent issuance of certificates of compliance for the 10 subject vehicles by J&A Smog was not only against the law, but also harmed the public health and welfare. However, no evidence was submitted that the conduct is likely to recur. There is no evidence that Respondent Martinez engaged in clean plugging, and, prior to this incident, he never had been disciplined by the Bureau. Although responsible for Respondent Ramos' conduct, Respondent Martinez was not aware of Respondent Ramos' clean plugging or that customers had

requested illegal smog inspections. In addition, Respondent Ramos is no longer employed by J&A Smog.

16. Respondent Martinez accepted responsibility for Respondent Ramos' wrongdoing. He acknowledged that he made a mistake not checking Respondent Ramos' references before hiring him and not supervising respondent Ramos more closely. Respondent Martinez also credibly testified that he intends to follow the law. He purchased the business to benefit his family, and he has no desire to jeopardize the business or his licenses. He has operated J&A Smog without incident since obtaining his smog inspector license. The public interest therefore will be served by closely monitoring J&A Smog's registration and license for a period of three years. As respondent's ARD registration and station licenses already have been suspended for more than two months, no further suspension is warranted.

17. In addition, under Health and Safety Code section 44072.8, when a license has been suspended or revoked by the Bureau, the Bureau may also suspend or revoke any additional license issued in the name of the licensee by the Bureau. Accordingly, the public interest will be further served by placing Respondent Martinez's Smog Inspector License number EO 640702 on probation for a period of three years as well.

#### *Costs*

18. Business and Professions Code section 125.3 provides that a licensee found to have committed a violation of an applicable licensing act shall pay the reasonable costs of the investigation and enforcement of the case. As set forth in Factual Finding 17, that amount is \$3,152.38. Apportionment of costs is addressed in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, where the administrative law judge and the licensing agency are directed to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Bureau must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the Bureau must consider a respondent's ability to pay; and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relative innocuous misconduct.

19. Applying the *Zuckerman* criteria, Respondent Martinez received a reduction in the severity of the discipline sought and he had a good faith belief in the merits of his position. The costs also were incurred in connection with licenses held by Respondent Martinez as well as Respondent Ramos. In addition, Respondent Martinez' ability to pay costs is constrained by his limited financial resources and his financial obligations to his family. Costs therefore are reduced by two thirds to \$1,050.79, and Respondent Martinez will be permitted to pay such costs on a reasonable payment plan.

## ORDER

1. Automotive Repair Dealer Registration Number ARD 287686 and Smog Check, Test Only, Station License No. TC 287686 issued to Respondent Andres Marmolejo Martinez, as owner of and doing business as J&A Smog Check, are revoked.

2. Smog Check Inspector License No. EO 640702 issued to respondent Andres Marmolejo Martinez is also revoked.

3. Each of the revocations are stayed and each of the licenses issued to Respondent Martinez are placed on probation for three years on the following terms and conditions:

1. **Obey All Laws.** During the period of probation, respondent Martinez shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by respondent Martinez.

2. **Quarterly Reporting.** During the period of probation, respondent Martinez shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. **Report Financial Interests.** Respondent Martinez shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR during the period of probation, report any financial interest which respondent Martinez or any partners, officers, or owners of J & A Smog may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

4. **Access to Examine Vehicles and Records.** Respondent Martinez shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

5. **Tolling of Probation.** If, during probation, respondent Martinez leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent Martinez shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirements, training requirements, and that respondent Martinez obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent Martinez is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California.

Any period of time of 30 days or more in which respondent Martinez is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

6. **Violation of Probation.** If respondent Martinez violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondent Martinez is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. **Maintain Valid License.** Respondent Martinez shall, at all times while on probation, maintain a current and active registration or license with BAR, including any period during which suspension or probation is tolled. If respondent Martinez's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by respondent Martinez within 30 days of that date. If respondent Martinez's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal respondent Martinez's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

8. **Cost Recovery.** Respondent Martinez shall pay the Bureau of Automotive Repair \$1,050.79 for the reasonable costs of the investigation and enforcement of case number 79/17-15899. Respondent Martinez shall make such payment on a scheduled payment plan agreeable to respondent Martinez and the Bureau. Any agreement for a scheduled payment plan shall require full

payment to be completed no later than six months before probation terminates. Respondent Martinez shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for Case No. 79/17-15899. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. **Completion of Probation.** Upon successful completion of probation, respondent Martinez's affected registration and license will be fully restored or issued without restriction, if respondent Martinez meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

10. **License Surrender.** Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent Martinez ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent Martinez may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate respondent Martinez's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.


Respondent Martinez may not petition the Director for reinstatement of the surrendered registration and license, or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If respondent Martinez applies to BAR for a registration or license at any time after that date, respondent Martinez must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

11. **Supervision Requirements.** Respondent Martinez shall not delegate his supervisory duties, as they relate to the business activities relevant to the probationary registration and/or license, to another person during the period of probation. Any persons employed by Respondent Martinez to carry out such business

activities shall be directly supervised by respondent Martinez. In the event that a bona fide medical condition arises during the period of probation, which temporarily prevents respondent Martinez from exercising direct supervision over employees, notice and medical substantiation of the condition shall be submitted to BAR within 10 days of the medical affirmation of the condition.

This Decision shall be effective at **5:00 p.m.** on DEC 27 2018.

IT IS SO ORDERED this 15 day of Nov., 2018.

  
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GRACE ARUPO RODRIGUEZ  
Assistant Deputy Director  
Legal Affairs Division  
Department of Consumer Affairs

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7 *Attorneys for Complainant*

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:

Case No. 79/17-15899

12 **J&A SMOG CHECK,**  
13 **MARMOLEJO ANDRES MARTINEZ,**  
14 **Owner**  
715 S. Witmer St.  
Los Angeles, CA 90017

**ACCUSATION**

15 Automotive Repair Dealer Registration No.  
ARD 287686  
16 Smog Check, Test Only, Station License No.  
TC 287686  
17

18 And

19 **MARCO AURELIO GONZALEZ RAMOS**  
4006 South Trinity  
20 Los Angeles, CA 90037

21 Smog Check Inspector License No. EO 638985

22 Respondents.

23  
24 Complainant alleges:

25 **PARTIES**

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

1 Automotive Repair Dealer Registration

2 2. On or about June 22, 2017, the Bureau issued Automotive Repair Dealer Registration  
3 No. ARD 287686 to Respondent Marmolejo Andres Martinez, Owner, dba J&A Smog Check.  
4 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the  
5 charges brought herein and will expire on June 30, 2018, unless renewed. However, ARD 287686  
6 was suspended on April 11, 2018 as a result of an Interim Suspension Order granted after hearing  
7 on April 6, 2018.

8 Smog Check, Test Only, Station

9 3. On or about July 14, 2017, the Bureau issued Smog Check, Test Only, Station  
10 License No. TC 287686 to Respondent Marmolejo Andres Martinez, Owner, dba J&A Smog  
11 Check. The Smog Check, Test Only, Station License was in full force and effect at all times  
12 relevant to the charges brought herein and will expire on June 30, 2018, unless renewed.  
13 However, TC 287686 was suspended on April 11, 2018 as a result of an Interim Suspension  
14 Order granted after hearing on April 6, 2018.

15 Smog Check Inspector

16 4. On or about February 10, 2016, the Bureau issued Smog Check Inspector License No.  
17 EO 638985 to Respondent Marco Aurelio Gonzalez Ramos. The Smog Check Inspector License  
18 was in full force and effect at all times relevant to the charges brought herein and will expire on  
19 January 31, 2020, unless renewed. However, EO 638985 was suspended on April 11, 2018 as a  
20 result of an Interim Suspension Order granted after hearing on April 6, 2018.

21 JURISDICTION

22 5. This Accusation is brought before the Director of the Department of Consumer  
23 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

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

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

3 8. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent  
4 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
5 for enforcing the Motor Vehicle Inspection Program.

6 9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
7 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
8 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
9 of jurisdiction to proceed with disciplinary action.

#### 10 STATUTORY PROVISIONS

11 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

21 ....

22 (4) Any other conduct that constitutes fraud.

23 ....

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

26 ....

27 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or  
28 place on probation the registration for all places of business operated in this state by  
an automotive repair dealer upon a finding that the automotive repair dealer has, or is,  
engaged in a course of repeated and willful violations of this chapter, or regulations  
adopted pursuant to it.

11. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes  
"bureau," "commission," "committee," "department," "division," "examining committee,"

1 "program," and "agency." "License" includes certificate, registration or other means to engage in  
2 a business or profession regulated by the Bus. & Prof. Code.

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

5 13. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate  
6 of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section  
7 40012.

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

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

11 (a) Violates any section of this chapter [the Motor Vehicle Inspection  
12 Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted  
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  
another is injured . . .

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

20 16. Health & Saf. Code section 44072.10 states, in pertinent part:

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

25 ....  
26 (4) Intentional or willful violation of this chapter or any regulation,  
standard, or procedure of the department implementing this chapter . . .  
27  
28

1 REGULATORY PROVISIONS

2 17. California Code of Regulations (CCR), title 16, section 3340.15, subdivision (h),  
3 prohibits a licensed smog check station from subletting inspections or repairs required as part of  
4 the Smog Check Program.

5 18. CCR, title 16, section 3340.24, subdivision (c), states:

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

9 19. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician  
10 shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section  
11 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42  
12 of this article."

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

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

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

25 COST RECOVERY

26 23. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
27 the administrative law judge to direct a licensee found to have committed a violation or  
28

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
2 and enforcement of the case.

3 VID DATA REVIEW

4 24. On March 9, 2015, the Bureau implemented a policy change requiring the use of  
5 an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas  
6 powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer  
7 diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data lists differences in

8 Vehicle Identification Numbers (VIN) for vehicles that have received smog inspections, in  
9 addition to communication protocol (the language used to communicate) and Parameter ID (PID)  
10 differences with vehicles that have been certified correctly that are the same make and model  
11 vehicles.

12 25. On or about September 26, 2017, Bureau representative Ian Evans initiated an  
13 investigation in which he reviewed OIS test data for J&A Smog Check. Representative Evans'  
14 investigation revealed that the data related to certain vehicles certified by J&A Smog Check  
15 contained a pattern of unmistakable discrepancies between the information transmitted during the  
16 inspections and documented information known about the subject vehicles. Specifically,  
17 representative Evans compared the data received from the certified vehicles to data from vehicles  
18 of the same year, make, and model and determined that the data from at least ten (10) of the  
19 certified vehicles contained the following unmistakable discrepancies: 1) four of the ten  
20 inspections identified in the report were certified with an unexpected eVIN; 2) the data for all  
21 the vehicles certified also contained different communication protocols and/or different PID  
22 amounts; and 3) all of the vehicles in the report consistently reported the same Protocol of I914  
23 and PID Count of 9 when this data combination was inappropriate for the vehicle allegedly being  
24 tested. These documented discrepancies confirm that the vehicles receiving smog certificates  
25 from J&A Smog Check were fraudulently tested during the smog inspection using the "clean  
26  
27  
28

plugging" method.<sup>1</sup> The following chart illustrates the documented clean plugging activities of Respondents between September 23, 2017 to September 28, 2017.

Test Date	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details
Vehicle #1 9/23/2017	2002 Toyota Camry LE Lic. 4XQJ512 <sup>2</sup>	Cert. HF015423C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: matched)  PID Count: 9 (expected: 17)  eVIN: Reported, But Not Expected
Vehicle #2 9/23/2017	2009 Toyota Camry Hybrid Lic. 6VDA862 <sup>3</sup>	Cert. HF015424C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: ICAN11bt5)  PID Count: 9 (expected: 38/21)  eVIN: Matched

<sup>1</sup> "Clean plugging" refers to the use of another vehicle's properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic 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.

<sup>2</sup> This vehicle was previously tested at another smog check station on January 29, 2016. The OIS Test Detail for that test indicated the eVIN was not transmitted, the communication protocol was transmitted as I914, and the PID count was 17, consistent with the expected Similar Vehicle OIS Test Data.

<sup>3</sup> This vehicle was previously tested at another smog check station on March 21, 2017. The OIS Test Detail for that test indicated the eVIN was transmitted matched, the communication protocol was transmitted as ICAN11bt5, and the PID count was 38/21, consistent with the expected Similar Vehicle OIS Test Data.

Vehicle #3 9/23/2017	2003 Toyota Camry LE Lic. 5ACS106 <sup>4</sup>	Cert. HF015426C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: matched)  PID Count: 9 (expected: 17, or 18)  eVIN: Reported, But Not Expected
Vehicle #4 9/25/2017	2014 Nissan Versa Note S Lic. 7ETK637	Cert. HF015428C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: ICAN11bt5)  PID Count: 9 (expected: 39, 39/15, or 39/16)  eVIN: Matched
Vehicle #5 9/25/2017	2009 BMW 328i SULEV Lic. None <sup>5</sup>  VIN: #WBAWV13579P 123126	Cert. HF015429C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: ICAN11bt5)  PID Count: 9 (expected: 46, or 46/11)  eVIN: Matched

<sup>4</sup> This vehicle was previously tested at another smog check station on October 17, 2015. The OIS Test Detail for that test indicated the eVIN was not transmitted, the communication protocol was transmitted as I914, and the PID count was 17, consistent with the expected Similar Vehicle OIS Test Data.

<sup>5</sup> This vehicle was previously tested at another smog check station on September 15, 2017. The OIS Test Detail for that test indicated the eVIN was transmitted matched, the communication protocol was transmitted as ICAN11bt5, and the PID count was 46/11, consistent with the expected Similar Vehicle OIS Test Data.

Vehicle #6 9/26/2017	2003 Honda Civic Hybrid Lic. None <sup>6</sup>  VIN: #JHME595613S00 6057	Cert. HF015430C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: matched)  PID Count: 9 (expected: 4/17)  eVIN: Reported, But Not Expected
Vehicle #7 9/26/2017	2004 Buick Rendezvous CX Lic. 6WVS944 <sup>7</sup>	Cert. HF015432C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: JVPW)  PID Count: 9 (expected: 19)  eVIN: Matched
Vehicle #8 9/27/2017	2012 Dodge Ram 2500 Laramie Lic. 97523F1 <sup>8</sup>	Cert. HF015433C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: ICAN11bt5)  PID Count: 9 (expected: 48)  eVIN: Matched
Vehicle #9 9/27/2017	2013 Toyota Camry SE Lic. 6ZLS914	Cert. HF015434C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: 1CAN11bt5)  PID Count: 9 (expected: 47/18)  eVIN: Matched

<sup>6</sup> This vehicle was previously tested at another smog check station on December 20, 2016. The OIS Test Detail for that test indicated the eVIN was not transmitted, the communication protocol was transmitted as I914, and the PID count was 4/17, consistent with the expected Similar Vehicle OIS Test Data.

<sup>7</sup> This vehicle was previously tested at another smog check station on July 25, 2016. The OIS Test Detail for that test indicated the eVIN was transmitted matched, the communication protocol was transmitted as JVPW, and the PID count was 19, consistent with the expected Similar Vehicle OIS Test Data.

<sup>8</sup> This vehicle was previously tested at another smog check station on August 18, 2017. The OIS Test Detail for that test indicated the eVIN was transmitted matched, the communication protocol was transmitted as ICAN11bt5, and the PID count was 48, consistent with the expected Similar Vehicle OIS Test Data.

Vehicle #10 9/28/2017	2004 Nissan Quest S Lic. 7SPJ889 <sup>9</sup>	Cert. HF015438C	EO 638985 (Respondent Ramos)	Comm. Protocol: I914 (expected: matched)  PID Count: 9 (expected: 22)  eVIN: Reported, But Not Expected
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26. The data analysis conducted on Respondent J&A Smog Check between September 23, 2017 to September 28, 2017 shows that Respondents participated in a scheme to perform at least ten (10) fraudulent smog check inspections resulting in the issuance of ten (10) fraudulent electronic smog check certificates of compliance.

**FIRST CAUSE FOR DISCIPLINE**

(Untrue or Misleading Statements)

27. Respondent J&A Smog Check's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent J&A Smog Check certified that the 10 vehicles identified in paragraph 25 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent J&A Smog Check conducted the inspections of the 10 vehicles identified in paragraph 25 above, using clean-plugging methods in that he substituted or used a different vehicle(s), or another source, during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles. Respondent J&A Smog Check did not test or inspect any of the 10 vehicles as required by Health & Saf. Code section 44012.

<sup>9</sup> This vehicle was previously tested at another smog check station on March 30, 2016. The OIS Test Detail for that test indicated the eVIN was not transmitted, the communication protocol was transmitted as I914, and the PID count was 22, consistent with the expected Similar Vehicle OIS Test Data.



1 Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs  
2 25 through 26, above, as though set forth fully herein.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 28. Respondent J&A Smog Check's Automotive Repair Dealer Registration is subject to  
6 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he  
7 committed acts that constitute fraud by issuing electronic smog certificates of compliance for the

8 10 vehicles identified in paragraph 25 above, without performing bona fide inspections of the  
9 emission control devices and systems on the vehicles, thereby depriving the People of the State of  
10 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant  
11 refers to, and by this reference incorporates, the allegations contained in paragraphs 25 through  
12 26, above, as though set forth fully herein.

13 **THIRD CAUSE FOR DISCIPLINE**

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

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

24 **FOURTH CAUSE FOR DISCIPLINE**

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

26 30. Respondent J&A Smog Check's Smog Check, Test Only, Station License is subject  
27 to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he  
28 failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent J&A Smog Check failed to ensure that the emission control tests were performed on the 10 vehicles identified in paragraph 25 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent J&A Smog Check issued electronic smog certificates of compliance for the 10 vehicles identified in paragraph 25 above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health & Saf. Code section 44012.

Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 25 through 26, above, as though set forth fully herein.

**FIFTH CAUSE FOR DISCIPLINE**

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

31. Respondent J&A Smog Check's Smog Check, Test Only, Station License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent J&A Smog Check falsely or fraudulently issued electronic smog certificates of compliance for the 10 vehicles identified in paragraph 25 above.

b. **Section 3340.35, subdivision (c):** Respondent J&A Smog Check issued electronic smog certificates of compliance for the 10 vehicles identified in paragraph 25 above, even though the vehicles had not been inspected in accordance with section 3340.42.

c. **Section 3340.41, subdivision (c):** Respondent J&A Smog Check knowingly entered false information into the emissions inspection system for the 10 vehicles identified in paragraph 25 above.

d. **Section 3340.42:** Respondent J&A Smog Check failed to ensure that the required smog tests were conducted on the 10 vehicles identified in paragraph 25 above, in accordance with the Bureau's specifications.

1 Complainant refers to, and by this reference incorporates, the allegations contained in  
2 paragraphs 25 through 26, above, as though set forth fully herein.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 32. Respondent J&A Smog Check's Smog Check, Test Only, Station License is subject  
6 to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he  
7 committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing

8 electronic smog certificates of compliance for the 10 vehicles identified in paragraph 25 above,  
9 without performing bona fide inspections of the emission control devices and systems on the  
10 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
11 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the  
12 allegations contained in paragraphs 25 through 26, above, as though set forth fully herein.

13 **SEVENTH CAUSE FOR DISCIPLINE**

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

15 33. Respondent Ramos' Smog Check Inspector License is subject to disciplinary action  
16 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with  
17 section 44012 of that Code in a material respect, as follows: Respondent Ramos failed to perform  
18 the emission control tests on 10 of the vehicles identified in paragraph 25 above, in accordance  
19 with procedures prescribed by the department. Complainant refers to, and by this reference  
20 incorporates, the allegations contained in paragraphs 25 through 26, above, as though set forth  
21 fully herein.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 34. Respondent Ramos' Smog Check Inspector License is subject to disciplinary action  
25 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with  
26 provisions of California Code of Regulations, title 16, as follows:

27 a. **Section 3340.24, subdivision (c):** Respondent Ramos falsely or fraudulently issued  
28 electronic smog certificates of compliance for 10 of the vehicles identified in paragraph 25 above.

1       b. Section 3340.30, subdivision (a): Respondent Ramos failed to inspect and test 10 of  
2 the vehicles identified in paragraph 25 above, in accordance with Health & Saf. Code sections  
3 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

4       c. Section 3340.41, subdivision (c): Respondent Ramos knowingly entered false  
5 information into the emissions inspection system for 10 of the vehicles identified in paragraph 25  
6 above.

7       d. Section 3340.42: Respondent Ramos failed to conduct the required smog tests on 10  
8 of the vehicles identified in paragraph 25 above, in accordance with the Bureau's specifications.

9       Complainant refers to, and by this reference incorporates, the allegations contained in  
10 paragraphs 25 through 26, above, as though set forth fully herein.

11                               **NINTH CAUSE FOR DISCIPLINE**

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

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

21                               **OTHER MATTERS**

22       36. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the  
23 Director may suspend, revoke or place on probation the registration for all places of business  
24 operated in this state by Marmolejo Andres Martinez, upon a finding that Respondent has, or is,  
25 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an  
26 automotive repair dealer.

27       37. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only,  
28 Station License TC 287686, issued to Respondent Marmolejo Andres Martinez is revoked or

1 suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health  
2 and Safety Code in the name of said licensee may be likewise revoked or suspended by the  
3 Director.

4 38. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License  
5 No. EO 638985 issued to Marco Aurelio Gonzalez Ramos, is revoked or suspended, any  
6 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code  
7 in the name of said licensee may be likewise revoked or suspended by the Director.

8 PRAYER

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

11 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
12 287686, issued to Respondent Marmolejo Andres Martinez, Owner; dba J&A Smog Check;

13 2. Revoking or suspending any other automotive repair dealer registration issued to  
14 Marmolejo Andres Martinez;

15 3. Revoking or suspending Smog Check, Test Only, Station License Number TC  
16 287686, issued to Respondent Marmolejo Andres Martinez, Owner; dba J&A Smog Check;

17 4. Revoking or suspending any additional license under Chapter 5 of Part 5 of Division  
18 26 of the Health and Safety Code in the name of Marmolejo Andres Martinez;

19 5. Revoking or suspending Smog Check Inspector License No. EO 638985 issued to  
20 Respondent Marco Aurelio Gonzalez Ramos;

21 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
22 Division 26 of the Health and Safety Code in the name of Marco Aurelio Gonzalez Ramos;

23 7. Ordering Respondent Marmolejo Andres Martinez, Owner; dba J&A Smog Check;  
24 and Respondent Marco Aurelio Gonzalez Ramos to pay the Bureau of Automotive Repair the  
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
26 Professions Code section 125.3; and,

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

DATED: April 25, 2018



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

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