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7

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. 79/19-8005

13 **OCTAVIO GONZALEZ, dba EL NENE**
14 **TEST ONLY**
15 **8171 Sierra Ave. Unit R**
Fontana, CA 92335

ACCUSATION

16 **Mailing Address:**
17 **627 South Olive Ave Unit A**
Rialto, CA 92376

18 **Automotive Repair Dealer Registration No.**
ARD 280412
19 **Smog Check, Test Only, Station License No.**
TC 280412

20 **DANIEL VASQUEZ**
21 **7318 Lenox Ave**
Riverside, CA 92504

22 **Mailing Address:**
23 **5946 Mountain View Ave.**
Riverside, CA 92504

24 **Smog Check Inspector License No. EO**
25 **636877,**

26 **and**

1 **JESSIE GALVAN**
2 **461 W. 3rd Street**
3 **Rialto, CA 92376**

4 **Smog Check Inspector License No. EO**
5 **641623**

Respondents.

6
7 **PARTIES**

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

10 2. On or about June 3, 2015, the Bureau of Automotive Repair (“Bureau”) issued
11 Automotive Repair Dealer Registration Number ARD 280412 to Octavio Gonzalez, dba El Nene
12 Test Only (“Respondent Gonzalez”). The Automotive Repair Dealer Registration and will expire
13 on June 30, 2020, unless renewed.

14 3. On or about June 18, 2015, the Bureau issued Smog Check, Test Only, Station
15 License Number TC 280412 to Respondent Gonzalez. The Smog Check, Test Only, Station
16 License was in full force and effect at all times relevant to the charges brought herein and will
17 expire on June 30, 2020, unless renewed. On or about September 23, 2015, the Station was
18 certified as a STAR station.

19 4. On or about June 13, 2013, the Bureau issued Smog Check Inspector License Number
20 EO 635621 to Respondent Gonzalez. The Smog Check Inspector License was in full force and
21 effect at all times relevant to the charges brought herein and will expire on January 31, 2021,
22 unless renewed.

23 5. On or about May 12, 2014, the Bureau issued Smog Check Inspector License Number
24 EO 636877 to Daniel Vasquez (“Respondent Vasquez”). The Smog Check Inspector License was
25 in full force and effect at all times relevant to the charges brought herein and will expire on
26 November 30, 2021, unless renewed.

27 6. On or about January 2, 2019, the Bureau issued Smog Check Inspector License
28 Number EO 641623 to Jessie Galvan (“Respondent Galvan”). The Smog Check Inspector

1 License was in full force and effect at all times relevant to the charges brought herein and will
2 expire on August 31, 2020, unless renewed.

3 **JURISDICTION**

4 7. This Accusation is brought before the Director of the Department of Consumer
5 Affairs (“Director”) for the Bureau of Automotive Repair, under the authority of the following
6 laws.

7 8. Business and Professions Code section 9884.7 provides that the Director may revoke
8 an automotive repair dealer registration.

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

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

16 11. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration
17 or suspension of a license by operation of law, or by order or decision of the Director, or a court
18 of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
19 proceed with disciplinary action.

20 12. Section 118, subdivision (b), of the Code provides that suspension, expiration,
21 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed
22 with a disciplinary action during the period within which the license may be renewed, restored,
23 reissued or reinstated.

24 **STATUTORY PROVISIONS**

25 13. Section 9884.7 of the Code states in pertinent part:

26 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
27 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
28 dealer for any of the following acts or omissions related to the conduct of the business of the

1 automotive repair dealer, which are done by the automotive repair dealer or any automotive
2 technician, employee, partner, officer, or member of the automotive repair dealer.

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

6 ...

7 (4) Any other conduct that constitutes fraud.

8 ...

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

11 14. Section 9889.22 states:

12 “The willful making of any false statement or entry with regard to a material matter in any
13 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
14 by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the
15 Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.”

16 15. Section 44012 of the Health and Safety Code states:

17 “The test at the smog check stations shall be performed in accordance with procedures
18 prescribed by the department and may require loaded mode dynamometer testing in enhanced
19 areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other
20 appropriate test procedures as determined by the department in consultation with the state board.
21 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
22 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
23 no earlier than January 1, 2013. However, the department, in consultation with the state board,
24 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
25 idle testing for vehicles with onboard diagnostic systems that the department and the state board
26 determine exhibit operational problems. The department shall ensure, as appropriate to the test
27 method, the following:

28 ///

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

4 (b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
5 the vehicle's emission control system.

6 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
7 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
8 mode are tested in accordance with procedures prescribed by the department. In determining how
9 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure
10 that the emission reduction targets for the enhanced program are met.

11 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
12 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
13 compound emissions, in accordance with procedures prescribed by the department.

14 (e) For diesel-powered vehicles, a visual inspection is made of emission control devices and
15 the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
16 department, that may include, but are not limited to, onboard diagnostic testing. The test may
17 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
18 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

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

25 (h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a
26 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
27 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
28 would have passed a tailpipe test.

1 (i) The test procedures may authorize smog check stations to refuse the testing of a vehicle
2 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
3 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the
4 vehicle from compliance with all applicable requirements of this chapter.”

5 16. Section 44015 of the Health and Safety Code, subdivision (b), states:

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

8 17. Section 44032 of the Health and Safety Code states:

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

14 18. Section 44059 of the Health and Safety Code states:

15 “The willful making of any false statement or entry with regard to a material matter in any
16 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
17 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
18 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

19 19. Section 44072.2 of the Health and Safety code states, in pertinent part:

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

23 (a) Violates any section of this chapter and the regulations adopted pursuant to it, which
24 related to the licensed activities.

25 ...

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

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

28 ...

1 (h) Violates or attempts to violate the provisions of this chapter relating to the particular
2 activity for which he or she is licensed.”

3 20. Section 44072.8 of the Health and Safety Code states:

4 “When a license has been revoked or suspended following a hearing under this article, any
5 additional license issued under this chapter in the name of the licensee may be likewise revoked
6 or suspended by the director.”

7 **REGULATORY PROVISIONS**

8 21. California Code of Regulations, title 16, section 3340.30, subdivision (a), states:

9 “A licensed smog check inspector and/or repair technician shall comply with the following
10 requirements at all times while licensed:

11 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
12 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
13 article.

14 ...

15 22. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:

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

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

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

23 23. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

24 “(c) No person shall enter into the emissions inspection system any vehicle identification
25 information or emission control system identification data for any vehicle other than the one
26 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
27 information about the vehicle being tested.”

28 ///

1 24. California Code of Regulations, title 16, section 3340.45, states:

2 “(a) All Smog Check inspections shall be performed in accordance with requirements and
3 procedures prescribed in the following:

4 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
5 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

6 (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
7 manual shall become effective on or after January 1, 2013.”

8 25. California Code of Regulations, title 16, section 3373, states:

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

14 **COST RECOVERY**

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

21 **FACTUAL ALLEGATIONS**

22 27. Based on a review of confidential Smog Check data, the Bureau initiated an
23 investigation of the Smog Check activities of El Nene Test Only. A Bureau representative
24 conducted a detailed review of second-by-second emissions test data for Smog Check inspections
25 performed at El Nene Test Only. The review showed a pattern of gas readings consistent with
26 “clean gassing.”¹

27 ¹ “Clean gassing” is a method by which a surrogate gas is introduced into the Emission
28 Inspection System (“EIS”) so that the EIS will measure the surrogate gas, or a mixture of the

1 Smog Check Program Background

2 28. California’s Smog Check Program requires the owners of most motor vehicles in the
3 Enhanced and Basic areas of the State subject their vehicles to and pass a Smog Check inspection
4 and receive a Certificate of Compliance every two years when renewing their registration and
5 also when the vehicle’s title is transferred. These inspections are performed by Smog Check
6 inspectors at Smog Check Stations, both of which are licensed by the Bureau. The Smog Check
7 Program is designed and intended to reduce air pollution by identifying and requiring the repair of
8 polluting vehicles.

9 29. The Smog Check inspection in certain Enhanced areas of the State is an Acceleration
10 Simulation Mode (“ASM”) test performed using an Emission Inspection System (“EIS”), also
11 known as BAR 97. This is a computer-based five-gas analyzer that measures hydrocarbons,
12 carbon monoxide, oxides of nitrogen, carbon dioxide, and oxygen. The first part of the test is a
13 loaded mode test of the vehicle’s tailpipe emissions on a dynamometer. This puts the vehicle’s
14 drive wheels on rollers and the vehicle is driven at speeds of fifteen and twenty-five miles per
15 hour to simulate driving conditions while the emissions are sampled by the EIS.

16 30. In Basic areas, or depending on a vehicle’s configuration (all-wheel drive, traction
17 control issue), a similar test called a Two Speed Idle (TSI) test is performed, but instead of
18 applying a load to the vehicle’s drive wheels with a dynamometer, the EIS measures the
19 emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxygen at idle as well as 2,500
20 revolutions per minute (“RPM”).

21 31. The inspector also performs visual and functional tests on the vehicle as outlined in
22 the Smog Check Manual. The visual inspection of the emission control components verifies the
23 required emission control devices are present and properly connected. Functional tests are also
24 performed which, depending on the vehicle, may include checking the ignition timing,
25 malfunction indicator light (“MIL”), Exhaust Gas Recirculation (“EGR”) system, a low pressure
26 test of the evaporative emissions controls (“LPFET”), a visible smoke test, and a pressure test of
27 _____
28 surrogate gas and exhaust emissions, and issue a passing result based on those readings rather
than the actual vehicle emissions.

1 the gas cap.

2 32. An On-Board Diagnostics (“OBDII”) functional test is also performed on most 1996
3 to 1999 model year vehicles. The inspector is required to connect a test cable from the EIS to the
4 Diagnostic Link Connector (“DLC”) which is located in the vehicle’s passenger compartment.
5 Through the DLC, the EIS retrieves information from the vehicle’s on-board computer about its
6 ability to communicate, the status of the I/M readiness monitors and the MIL light command, as
7 well as diagnostic trouble codes (“DTC”). The I/M readiness monitors tell whether the OBDII
8 system has run a sufficient number of self-tests on the vehicle’s emission and engine control
9 systems. A failure of one or more of the OBDII functional criteria, depending on model year,
10 will result in the vehicle failing its Smog Check Inspection. In addition to reporting the outcome
11 of the OBDII functional test, the Smog Check inspection results also show DTCs if there are any
12 in the vehicle’s on-board computer memory.

13 33. The inspector enters the results of the visual and functional inspections into the EIS.
14 The EIS unit makes the determination whether the vehicle passes the inspection based on the
15 results of the tailpipe, visual and functional tests.

16 34. The EIS is connected by telephone modem to the Bureau’s Vehicle Information
17 Database (“VID”), which is maintained by a state contractor. If the vehicle passes the visual,
18 functional and tailpipe tests, it passes the overall inspection and a Certificate of Compliance is
19 issued and transmitted electronically to the VID. Additionally, all data gathered during a Smog
20 Check inspection, regardless of the type of inspection, is transmitted to and retained in the VID.

21 35. Beginning on March 9, 2015, California’s Smog Check Program was updated to keep
22 pace with ever advancing technology. The program update requires the use of an On-Board
23 Diagnostic Inspection System (“BAR-OIS”). The BAR-OIS is the Smog Check equipment
24 required in all areas of the State when inspecting most model-year 2000 and newer gasoline and
25 hybrid vehicles and 1998 and newer diesel vehicles subject to the program. The system consists
26 of a certified Data Acquisition Device (“DAD”), computer, bar code scanner, and printer. The
27 DAD is an On-Board Diagnostic (“OBD”) scan tool that, when requested by the California BAR-
28 OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it

1 supports is requested by the California BAR-OIS software and will be retrieved. Sensitive data,
2 such as vehicle location (“GPS”) and accident-related information (air bag deployment), is not
3 retrieved. The DAD connects between the BAR-OIS computer and the vehicle’s DLC. The
4 DAD is the only BAR-certified component of the BAR-OIS. The California BAR-OIS software
5 requires a continuous internet connection when performing a Smog Check inspection. The BAR-
6 OIS uses the California BAR-OIS software to communicate with the CID through the internet
7 connection. The bar code scanner is used to input inspector information, the vehicle
8 identification number ("VIN"), and Department of Motor Vehicles (“DMV”) renewal
9 information. The printer provides a Vehicle Inspection Report (“VIR”) containing inspection
10 results for motorists and a Smog Check Certificate of Compliance number for passing vehicles.

11 36. As with the EIS, inspectors also perform a visual and functional test on the vehicle.
12 The visual inspection of the emission control components verifies the required emission control
13 devices are present and properly connected, and a functional test is performed of the MIL. The
14 BAR-OIS software makes the determination whether the vehicle passes the inspection based on
15 the results of the OBD, visual and functional tests.

16 37. The EIS or BAR-OIS, depending on the test type, prints a VIR, which is a physical
17 record of the test results and shows the Certificate of Compliance number that was issued if the
18 vehicle passed the Smog Check inspection. The Smog Check inspector must sign the VIR to
19 indicate that the inspection was performed within Bureau guidelines. Licensed Smog Check
20 inspectors are the only persons authorized by the Bureau to perform official inspections. They
21 are issued a license and a personal access code which are used to gain access to the EIS and used
22 to set up a username and password within the BAR-OIS to perform Smog Check inspections.
23 Unauthorized use of another inspector’s license, access code, or username and password is
24 prohibited.

25 38. The VID contains registration data from DMV plus emission standards, vehicle Smog
26 Check inspections, smog check stations and inspectors, and Certificates of Compliance. The VID
27 has an internal clock that is set to Pacific Standard Time and records the time and date for each
28 inspection. Each Certificate of Compliance has a unique control number so that it can be tracked

1 to determine which Smog Check Station purchased the Certificate of Compliance and to which
2 vehicle it was issued. The VID receives the Smog Check results immediately following the
3 inspection. The Bureau can access the VID to view test data on Smog Check inspections
4 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
5 particular vehicle which has been tested. If a vehicle passes the Smog Inspection, the vehicle
6 information and test results are electronically transmitted to DMV.

7 Bureau Investigation of El Nene Smog Check Test Only

8 39. The Bureau's review of the Smog Check activities at El Nene Test Only confirmed
9 fourteen (14) Smog Check Certificates of Compliance were fraudulently issued using the clean
10 gassing method, as follows:

11 a. Clean Gas Vehicle No. 1

12 BAR 97 Test Data from the VID indicates that on July 5, 2017, a 1996 GMC C1500 Sierra,
13 VIN 1GTEC19M7TE535486, California license number 5J59657, was tested and smog certificate
14 number ZX010692C was issued under licensed Smog Check Technician, license number
15 EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of the
16 second-by-second pollutant concentrations measured during the exhaust gas measurement portion
17 of the Smog Check inspection.

18 The Bureau's analysis of the second-by-second data from the subject test identified two or
19 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
20 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
21 noted that all three pollutants began to drop at or about second 53, which was during a period of
22 steady state vehicle speed and began to rise toward prior levels at or about second 71. A second
23 drop occurred at or about second 106. This pattern is highly irregular and unexpected in a normal
24 Smog Check.

25 b. Clean Gas Vehicle No. 2

26 BAR 97 Test Data from the VID indicates that on August 2, 2017, a 1983 Chevrolet S10
27 Pickup 2WD, VIN 1GCBS14BXD8165260, California license number 3B26259, was tested and
28 smog certificate number QI230498C was issued under licensed Smog Check Technician, license

1 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of
2 the second-by-second pollutant concentrations measured during the exhaust gas measurement
3 portion of the Smog Check inspection.

4 The Bureau's analysis of the second-by-second data from the subject test identified two or
5 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
6 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
7 noted that all three pollutants began to drop at or about second 34, which was during a period of
8 steady state vehicle speed and began to rise toward prior levels at or about second 54. A second
9 drop occurred at or about second 75. This pattern is highly irregular and unexpected in a normal
10 Smog Check.

11 c. Clean Gas Vehicle No. 3

12 BAR 97 Test Data from the VID indicates that on August 22, 2017, a 1999 Toyota Corolla,
13 VIN 1NXBR12E3XZ301261, California license number 4HHF615, was tested and smog
14 certificate number HD156070C was issued under licensed Smog Check Technician, license
15 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of
16 the second-by-second pollutant concentrations measured during the exhaust gas measurement
17 portion of the Smog Check inspection.

18 The Bureau's analysis of the second-by-second data from the subject test identified two or
19 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
20 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
21 noted that all three pollutants began to drop at or about second 31, which was during a period of
22 steady state vehicle speed and began to rise toward prior levels at or about second 54. A second
23 drop occurred at or about second 79. This pattern is highly irregular and unexpected in a normal
24 Smog Check.

25 d. Clean Gas Vehicle No. 4

26 BAR 97 Test Data from the VID indicates that on August 24, 2017, a 1990 Honda Accord,
27 VIN 1HGCB7262LA059990, California license number 6GLT215, was tested and smog
28 certificate number HD156073C was issued under licensed Smog Check Technician, license

1 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of
2 the second-by-second pollutant concentrations measured during the exhaust gas measurement
3 portion of the Smog Check inspection.

4 The Bureau's analysis of the second-by-second data from the subject test identified two or
5 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
6 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
7 noted that all three pollutants began to drop at or about second 22, which was during a period of
8 steady state vehicle speed and began to rise toward prior levels at or about second 33. A second
9 drop occurred at or about second 50. This pattern is highly irregular and unexpected in a normal
10 Smog Check.

11 e. Clean Gas Vehicle No. 5

12 BAR 97 Test Data from the VID indicates that on August 26, 2017, a 1989 Ford E150
13 Econoline, VIN 1FDEE14H6KHB82400, California license number 4DUU532, was tested and
14 smog certificate number HD156074C was issued under licensed Smog Check Technician, license
15 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of
16 the second-by-second pollutant concentrations measured during the exhaust gas measurement
17 portion of the Smog Check inspection.

18 The Bureau's analysis of the second-by-second data from the subject test identified two or
19 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
20 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
21 noted that all three pollutants began to drop at or about second 40, which was during a period of
22 steady state vehicle speed and began to rise toward prior levels at or about second 57. A second
23 drop occurred at or about second 82. This pattern is highly irregular and unexpected in a normal
24 Smog Check.

25 f. Clean Gas Vehicle No. 6

26 BAR 97 Test Data from the VID indicates that on August 29, 2017, a 1993 BMW 3-Series,
27 VIN WBACB431XPFL10566, California license number 3FDJ405, was tested and smog
28 certificate number HD156077C was issued under licensed Smog Check Technician, license

1 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of
2 the second-by-second pollutant concentrations measured during the exhaust gas measurement
3 portion of the Smog Check inspection.

4 The Bureau's analysis of the second-by-second data from the subject test identified two or
5 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
6 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
7 noted that all three pollutants began to drop at or about second 41, which was during a period of
8 steady state vehicle speed and began to rise toward prior levels at or about second 56. This
9 pattern is highly irregular and unexpected in a normal Smog Check.

10 g. Clean Gas Vehicle No. 7

11 BAR 97 Test Data from the VID indicates that on September 23, 2017, a 1992 Ford F150
12 Reg Cab, VIN 1FTDF15N1NLA90842, California license number 94199V1, was tested and
13 smog certificate number HF699354C was issued under licensed Smog Check Technician, license
14 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of
15 the second-by-second pollutant concentrations measured during the exhaust gas measurement
16 portion of the Smog Check inspection.

17 The Bureau's analysis of the second-by-second data from the subject test identified two or
18 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
19 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
20 noted that all three pollutants began to drop at or about second 54, which was during a period of
21 steady state vehicle speed and began to rise toward prior levels at or about second 72. A second
22 drop occurred at or about second 96. This pattern is highly irregular and unexpected in a normal
23 Smog Check.

24 h. Clean Gas Vehicle No. 8

25 BAR 97 Test Data from the VID indicates that on November 16, 2017, a 1998 Nissan
26 Frontier, VIN 1N6DD26S1WC320572, California license number 11758D2, was tested and smog
27 certificate number HH680085C was issued under licensed Smog Check Technician, license
28 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of

1 the second-by-second pollutant concentrations measured during the exhaust gas measurement
2 portion of the Smog Check inspection.

3 The Bureau's analysis of the second-by-second data from the subject test identified two or
4 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
5 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
6 noted that all three pollutants began to drop at or about second 21, which was during a period of
7 steady state vehicle speed and began to rise toward prior levels at or about second 43. A second
8 drop occurred at or about second 61. This pattern is highly irregular and unexpected in a normal
9 Smog Check.

10 i. Clean Gas Vehicle No. 9

11 BAR 97 Test Data from the VID indicates that on December 16, 2017, a 1989 Nissan
12 Pickup, VIN 1N6ND11S7KC302206, California license number 8T16407, was tested and smog
13 certificate number HJ862562C was issued under licensed Smog Check Technician, license
14 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of
15 the second-by-second pollutant concentrations measured during the exhaust gas measurement
16 portion of the Smog Check inspection.

17 The Bureau's analysis of the second-by-second data from the subject test identified two or
18 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
19 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
20 noted that all three pollutants began to drop at or about second 43, which was during a period of
21 steady state vehicle speed and began to rise toward prior levels at or about second 56. A second
22 drop occurred at or about second 84. This pattern is highly irregular and unexpected in a normal
23 Smog Check.

24 j. Clean Gas Vehicle No. 10

25 BAR 97 Test Data from the VID indicates that on January 17, 2018, a 1997 GMC Safari,
26 VIN 1GKDM19W4VB545279, California license number 6FQE148, was tested and smog
27 certificate number HJ862591C was issued under licensed Smog Check Technician, license
28 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of

1 the second-by-second pollutant concentrations measured during the exhaust gas measurement
2 portion of the Smog Check inspection.

3 The Bureau's analysis of the second-by-second data from the subject test identified two or
4 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
5 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
6 noted that all three pollutants began to drop at or about second 28, which was during a period of
7 steady state vehicle speed and began to rise toward prior levels at or about second 56. A second
8 drop occurred at or about second 73. This pattern is highly irregular and unexpected in a normal
9 Smog Check.

10 k. Clean Gas Vehicle No. 11

11 BAR 97 Test Data from the VID indicates that on April 2, 2018, a 1997 Nissan Pathfinder,
12 VIN JN8AR05S3VW148186, California license number 7WJN913, was tested and smog
13 certificate number HP477995C was issued under licensed Smog Check Technician, license
14 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of
15 the second-by-second pollutant concentrations measured during the exhaust gas measurement
16 portion of the Smog Check inspection.

17 The Bureau's analysis of the second-by-second data from the subject test identified two or
18 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
19 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
20 noted that all three pollutants began to drop at or about second 45, which was during a period of
21 steady state vehicle speed and began to rise toward prior levels at or about second 74. A second
22 drop occurred at or about second 85. This pattern is highly irregular and unexpected in a normal
23 Smog Check.

24 l. Clean Gas Vehicle No. 12

25 BAR 97 Test Data from the VID indicates that on December 1, 2018, a 1998 Nissan Sentra,
26 VIN 1N4AB41D8WC701616, California license number 3XHG922, was tested and smog
27 certificate number HX406289C was issued under licensed Smog Check Technician, license
28 number EO636877, issued to Respondent Vasquez. The Bureau's review included an analysis of

1 the second-by-second pollutant concentrations measured during the exhaust gas measurement
2 portion of the Smog Check inspection.

3 The Bureau's analysis of the second-by-second data from the subject test identified two or
4 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
5 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
6 noted that all three pollutants began to drop at or about second 35, which was during a period of
7 steady state vehicle speed and began to rise toward prior levels at or about second 54. A second
8 drop occurred at or about second 79. This pattern is highly irregular and unexpected in a normal
9 Smog Check.

10 m. Clean Gas Vehicle No. 13

11 BAR 97 Test Data from the VID indicates that on December 11, 2018, a 1999 Chevrolet
12 K1500 Suburban, VIN 3GNFK16R6XG164074, California license number 7WLC258, was tested
13 and smog certificate number HX406300C was issued under licensed Smog Check Technician,
14 license number EO636877, issued to Respondent Vasquez. The Bureau's review included an
15 analysis of the second-by-second pollutant concentrations measured during the exhaust gas
16 measurement portion of the Smog Check inspection.

17 The Bureau's analysis of the second-by-second data from the subject test identified two or
18 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
19 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
20 noted that all three pollutants began to drop at or about second 45, which was during a period of
21 steady state vehicle speed and began to rise toward prior levels at or about second 64. A second
22 drop occurred at or about second 88. This pattern is highly irregular and unexpected in a normal
23 Smog Check.

24 n. Clean Gas Vehicle No. 14

25 BAR 97 Test Data from the VID indicates that on April 22, 2019, a 1996 GEO Prizm, VIN
26 1Y1SK5268TZ027220, California license number 7TVH513, was tested and smog certificate
27 number QQ532640C was issued under licensed Smog Check Technician, license number
28 EO641623, issued to Respondent Galvan. The Bureau's review included an analysis of the

1 second-by-second pollutant concentrations measured during the exhaust gas measurement portion
2 of the Smog Check inspection.

3 The Bureau's analysis of the second-by-second data from the subject test identified two or
4 more sharp, simultaneous drops and at least one sharp, simultaneous rise in the concentrations of
5 nitrogen oxides, carbon monoxide, and/or hydrocarbons. In particular, the Bureau investigator
6 noted that all three pollutants began to drop at or about second 39, which was during a period of
7 steady state vehicle speed and began to rise toward prior levels at or about second 57. A second
8 drop occurred at or about second 61. This pattern is highly irregular and unexpected in a normal
9 Smog Check.

10 40. The Bureau's analysis determined that there is no plausible explanation other than
11 clean gassing that can explain the highly irregular gas profiles of the fifteen subject passing Smog
12 Check tests by Respondents Vasquez and Galvan at El Nene Test Only.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 41. Complainant re-alleges and incorporates by reference the allegations set forth in
16 paragraphs 27 through 40.

17 42. Respondent Gonzalez's Automotive Repair Dealer Registration is subject to
18 disciplinary action under section 9884.7, subdivision (a)(1) in conjunction with section 9889.22,
19 in that Respondent Gonzalez made or authorized statements which Respondent Gonzalez knew or
20 in the exercise of reasonable care should have known to be untrue or misleading.

21 43. Respondent Gonzalez certified that the vehicles at issue above had passed inspection
22 and were in compliance with all applicable laws and regulations, when in fact and in truth
23 Respondent Gonzalez unlawfully used the clean gassing method to issue smog certificates of
24 compliance.

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1 **SECOND CAUSE FOR DISCIPLINE**

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

3 44. Complainant re-alleges and incorporates by reference the allegations set forth in
4 paragraphs 27 through 40.

5 45. Respondent Gonzalez’s Automotive Repair Dealer Registration is subject to
6 disciplinary action under section 9884.7, subdivision (a)(4), in that Respondent Gonzalez
7 committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing a smog
8 certificate of compliance for the vehicles at issue 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.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Material Violation of the Automotive Repair Act)**

13 46. Complainant re-alleges and incorporates by reference the allegations set forth in
14 paragraphs 27 through 40.

15 47. Respondent Gonzalez’s Automotive Repair Dealer Registration is subject to
16 disciplinary action under section 9884.7, subdivision (a)(6), in that it failed in a “material respect
17 to comply with the provisions of this chapter or the regulations adopted pursuant to it” when it
18 issued smog certificates of compliance for the vehicles at issue without performing bona fide
19 inspections of the emission control devices and systems on the vehicles, thereby depriving the
20 People of the State of California of the protection afforded by the Motor Vehicle Inspection
21 Program.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

24 48. Complainant re-alleges and incorporates by reference the allegations set forth in
25 paragraphs 27 through 40.

26 49. Respondent Gonzalez’s Smog Check, Test Only, Station License is subject to
27 discipline under Health and Safety Code section 44072.2, subdivision (a), in that Respondent
28 Gonzalez failed to comply with the following sections of the Health and Safety Code:

1 a. **Section 44012:** Respondent Gonzalez failed to perform the tests of the emission
2 control systems and devices on the vehicles at issue in accordance with the procedures prescribed
3 by the Department.

4 b. **Section 44015, subdivision (b):** Respondent Gonzalez issued smog certificates
5 of compliance for the vehicles at issue without properly testing and inspecting them to determine
6 if they were in compliance with Health and Safety Code section 44012.

7 c. **Section 44059:** Respondent Gonzalez willfully made false entries for smog
8 certificates of compliance for the vehicles at issue by certifying that those vehicles had been
9 inspected as required when, in fact, they had not.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 50. Complainant re-alleges and incorporates by reference the allegations set forth in
13 paragraphs 27 through 40.

14 51. Respondent Gonzalez's Automotive Repair Dealer Registration and Smog Check,
15 Test Only, Station License are subject to disciplinary action under Health and Safety Code section
16 44072.2, subdivision (d), in that Respondent Gonzalez committed acts involving dishonesty,
17 fraud and deceit when El Nene Test Only issued smog certificates of compliance for the vehicles
18 at issue without performing bona fide inspections of the emission control devices and systems on
19 the vehicles.

20 **SIXTH CAUSE FOR DISCIPLINE**

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

22 52. Complainant re-alleges and incorporates by reference the allegations set forth in
23 paragraphs 27 through 40.

24 53. Respondent Gonzalez's Smog Check, Test Only, Station License is subject to
25 disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that
26 Respondent Gonzalez failed to comply with the following sections of Title 16, California Code of
27 Regulations:

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1 a. **Section 3340.35, subdivision (c):** Respondent Gonzalez failed to inspect and
2 test the vehicles at issue in accordance with the procedures specified in section 3340.42 of the
3 Regulations and failed to ensure that the vehicles had all the required emission control equipment
4 and devices installed and functioning correctly.

5 b. **Section 3340.42:** Respondent Gonzalez failed to conduct the required smog
6 tests and inspections on the vehicles at issue in accordance with the Bureau's specifications.

7 c. **Section 3340.45:** Respondent Gonzalez failed to perform smog check
8 inspections on the vehicles at issue as prescribed in the operative Smog Check Manual.

9 d. **Section 3373:** Respondent Gonzalez issued false and misleading records when
10 El Nene Test Only issued smog certificates of compliance for the vehicles at issue without
11 performing bona fide inspections of the emission control devices and systems on the vehicles,
12 thereby depriving the People of the State of California of the protection afforded by the Motor
13 Vehicle Inspection Program.

14 **SEVENTH CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 54. Complainant re-alleges and incorporates by reference the allegations set forth in
17 paragraphs 27 through 40.

18 55. Respondent Vasquez and Respondent Galvan have subjected their Smog Check
19 Inspector Licenses to disciplinary action under section 9889.22, in that Respondent Vasquez and
20 Respondent Galvan willfully made false statements or entries with regard to a material matter on
21 the smog certificates of compliance issued for the vehicles at issue.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 56. Complainant re-alleges and incorporates by reference the allegations set forth in
25 paragraphs 27 through 40.

26 57. Respondent Vasquez and Respondent Galvan have subjected their Smog Check
27 Inspector Licenses to disciplinary action under Health and Safety Code section 44072.2,
28 subdivision (a), in that Respondent Vasquez and Respondent Galvan failed to comply with the

1 following sections of the Health and Safety Code:

2 a. **Section 44012:** Respondent Vasquez and Respondent Galvan failed to perform
3 the tests of the emission control systems and devices on the vehicles at issue in accordance with
4 the procedures described by the Department.

5 b. **Section 44032:** Respondent Vasquez and Respondent Galvan failed to perform
6 tests of emission control devices and systems in accordance with Section 44012.

7 c. **Section 44059:** Respondent Vasquez and Respondent Galvan willfully made
8 false entries for smog certificates of compliance for the vehicles at issue by certifying that those
9 vehicles had been inspected as required when, in fact, they had not.

10 **NINTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 58. Complainant re-alleges and incorporates by reference the allegations set forth in
13 paragraphs 27 through 40.

14 59. Respondent Vasquez's Smog Check Inspector License and Respondent Galvan's
15 Smog Check Inspector License are subject to disciplinary action under Health and Safety Code
16 section 44072.2, subdivision (d), in that Respondent Vasquez and Respondent Galvan committed
17 acts involving dishonesty, fraud and deceit when they issued smog certificates of compliance for
18 the vehicles at issue without performing bona fide inspections of the emission control devices and
19 systems on the vehicles.

20 **TENTH CAUSE FOR DISCIPLINE**

21 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Programs)**

22 60. Complainant re-alleges and incorporates by reference the allegations set forth in
23 paragraphs 27 through 40.

24 61. Respondent Vasquez and Respondent Galvan have subjected their Smog Check
25 Inspector Licenses to disciplinary action under Health and Safety Code section 44072.2,
26 subdivision (c), in that Respondent Vasquez and Respondent Galvan failed to comply with the
27 following sections of Title 16, California Code of Regulations:

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1 a. **Section 3340.30, subdivision (a):** Respondent Vasquez and Respondent
2 Galvan failed to inspect and test the vehicles at issue in accordance with Health and Safety Code
3 section 44012.

4 b. **Section 3340.41, subdivision (c):** Respondent Vasquez and Respondent Galvan
5 entered false information into the EIS for the smog certificates of compliance by entering vehicle
6 emission control information for a vehicle other than the vehicles being certified.

7 c. **Section 3340.45:** Respondent Vasquez and Respondent Galvan failed to
8 perform smog check inspections on the vehicles at issue as prescribed in the operative Smog
9 Check Manual.

10 **OTHER MATTERS**

11 62. 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 Respondent Gonzalez upon a finding that it has engaged in a course of repeated and
14 willful violations of the laws and regulations pertaining to an automotive repair dealer.

15 63. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,
16 Station License Number TC 280412 issued to Respondent Gonzalez dba El Nene Test Only is
17 revoked or suspended, any additional license, issued under Chapter 5 of Part 5 of Division 26 of
18 the Health and Safety Code, in the name of said licensee may be likewise revoked or suspended
19 by the Director.

20 64. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
21 Number EO 636877, issued to Respondent Vasquez, is revoked or suspended, any additional
22 license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name
23 of said licensee may be likewise revoked or suspended by the Director.

24 65. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
25 Number EO 641623, issued to Respondent Galvan, is revoked or suspended, any additional
26 license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name
27 of said licensee may be likewise revoked or suspended by the Director.

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

DATED: February 19, 2020

SIGNATURE ON FILE

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

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