

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

In the Matter of the Accusation Against:

EVERY DAY SMOG; EDGAR IVAN
GODINEZ, OWNER,

Automotive Repair Dealer No. ARD 261653
Smog Check Station License No. RC 261653
Brake Station License No. BS 261653, Class C
Lamp Station License No. LS 261653, Class A

and

EDGAR IVAN GODINEZ

Smog Check Inspector (EO) License No. 154357
Smog Check Repair Technician (EI) License
No. 154357
Brake Adjuster License No. BA 154357
Lamp Adjuster License No. LA 154357

and

JOEL MENDEZ ESTRADA,

Smog Check Inspector (EO) License No. 635462
Brake Adjuster License No. BA 635462
Lamp Adjuster License No. LA 635462

Respondents.

Case No. 79/15-5617

OAH No. 2017050298

PROPOSED DECISION

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge,
Office of Administrative Hearings, State of California, on June 1 and 2, and October 3 and 4,
2017, in Sacramento, California.

Joshua B. Eisenberg, Deputy Attorney General, represented Patrick Dorais (complainant), Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

Michael B. Levin, Attorney at law, represented respondent Edgar Ivan Godinez (respondent Godinez or Mr. Godinez) and his business Every Day Smog (Every Day).

Evidence was received, and the record was held open until November 20, 2017, for the parties to submit written closing arguments. Complainant's closing argument was timely received and marked for identification as Exhibit 63. Respondent's closing argument was timely received and marked for identification as Exhibit P. Complainant's reply to respondent's closing argument was timely received and marked for identification as Exhibit 64. The record was closed on November 20, 2017, and the matter submitted for decision.

FACTUAL FINDINGS

License Histories

1. On April 20, 2010, the Bureau issued Automotive Repair Dealer Registration No. ARD 261653 to respondent Godinez doing business as Every Day Smog. The registration will expire on April 30, 2018, unless renewed or revoked.
2. On May 10, 2010, the Bureau issued Smog Check Station License No. RC 261653 to respondent Godinez doing business as Every Day Smog. The station license will expire on April 30, 2018, unless renewed or revoked.
3. On November 20, 2014, the Bureau issued Brake Station License No. BS 261653, Class C, to respondent Godinez doing business as Every Day Smog. The station license will expire on April 30, 2018, unless renewed or revoked.
4. On November 13, 2014, the Bureau issued Lamp Station License No. LS 261653, Class A, to respondent Godinez doing business as Every Day Smog. The station license will expire April 30, 2018, unless renewed or revoked.
5. On an unspecified date in 2007, the Bureau issued Advanced Emission Specialist (EA) Technician License No. 154357 to respondent Godinez. The license expired April 30, 2013, and was renewed as Smog Check Inspector (EO) License No. 154357 and Smog Check Repair Technician (EI) License No. 154357 on May 1, 2013. The smog check inspector and smog check repair technician licenses will expire on April 30, 2019, unless renewed or revoked.
6. On May 23, 2011, the Bureau issued Brake Adjuster License No. BA 154357, Class C, to respondent Godinez. The license will expire on April 30, 2019, unless renewed or revoked.

7. On January 26, 2015, the Bureau issued Lamp Adjuster License No. LA 154357, Class A, to respondent Godinez. The license will expire on April 30, 2018, unless renewed or revoked.

8. On April 29, 2013, the Bureau issued Smog Check Inspector (EO) License No. 635462 to respondent Estrada, who signed a Stipulated Revocation of Licenses on May 1, 2017.¹

9. On October 13, 2014, the Bureau issued Brake Adjuster License No. BA 635462, Class A, to respondent Estrada, who signed a Stipulated Revocation of Licenses on May 1, 2017.

10. On or about October 3, 2014, the Bureau issued Lamp Adjuster License No. LA 635462, Class A, to respondent Estrada, who signed a Stipulated Revocation of Licenses on May 1, 2017.

Updated Smog Check Program – On Board Diagnostic System

11. On March 9, 2015, California's Smog Check Program was updated, and now requires the use of an On-Board Diagnostic Inspection (BAR-OIS) when performing smog inspections on most model-year 2000 and newer gasoline and hybrid vehicles and most model-year 1998 and newer diesel vehicles. The BAR-OIS system consists of a certified Data Acquisition Device (DAD), computer, barcode scanner, and printer. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used to input technician information, the vehicle identification number (VIN), and the Department of Motor Vehicle (DMV) renewal information. The VIN that is physically present on all vehicles is required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on 2005 and newer vehicles, and has also been programmed into the OBD II computer in many vehicles of earlier model-years.

12. The electronically programmed VIN (eVIN), is captured by the Bureau during a smog check inspection and should match the physical VIN on the vehicle. A printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection results and the Smog Check Certificate of Compliance Number for passing vehicles. Data retrieved and

¹ Joel Mendez Estrada was employed by Every Day Smog from mid-2014 to March 30, 2017, as a smog check inspector and brake and lamp adjuster. On May 1, 2017, Mr. Estrada signed a Stipulated Revocation of Licenses and did not appear in this matter. Based on the revocation, complainant moved at hearing to strike from the Accusation all Causes for Discipline relating solely to Mr. Estrada, specifically Causes for Discipline 9 through 12, 22 through 25, 34 through 37, 46 through 49, and 58 through 61. The motion to strike was granted, and no findings are made regarding the stricken Causes for Discipline.

recorded during an OIS smog check include the eVIN, the communication protocol, and the number of Parameter Identifications (PID's). The OBD II communication protocol describes the specific manufacturer/vehicle communication "language" used by the OBD II computer to communicate with scan tools and other devices such as the BAR-OIS. PIDs are data points reported by the OBD II computer to the scan tool or BAR-OIS (e.g., engine speed, vehicle speed, engine temperature, etc.). Each make and model of vehicle reports a specific number of PID counts, and does not vary for that make and model of vehicle.

First through Eighth Causes for Discipline – Clean-Plugging²

13. William Nicks, employed by the Bureau as a Program Representative II, reviewed OIS test data for vehicles inspected by Mr. Godinez and Mr. Estrada at Every Day during the period of June 15, 2015, through April 6, 2016. Mr. Nicks' review revealed the issuance of Smog Certificates of Compliance to 11 vehicles that were not connected to the DAD when they were certified, as indicated by the fact that the OIS data transmitted when the 11 vehicles were certified differed from the OIS test data the vehicles transmitted during other BAR-OIS inspections and/or the OIS test data transmitted was not consistent with the OIS test data transmitted by vehicles of the same make and model when they were tested. The following paragraphs describe the testing of each of the 11 vehicles.

14. 2000 Ford Expedition XLT: BAR-OIS test data showed that on June 25, 2015, Mr. Estrada performed a smog inspection on a 2000 Ford Expedition XLT, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly administered smog inspection. The BAR-OIS test details showed that the e-VIN recorded during the inspection did not match the VIN for the Ford Expedition XLT, but instead matched a 2005 Dodge Neon SRT-4 which was smog tested by Mr. Godinez at Every Day on June 25, 2015. In addition, the communication protocol and the PID count recorded during the inspection of the 2005 Dodge Neon SRT-4 were consistent with the communication protocol and PID count recorded during the smog check of the 2000 Ford Expedition XLT. This evidence demonstrates that Mr. Estrada used the 2005 Dodge Neon's properly functioning OBD II system to generate a false Certificate of Compliance for the 2000 Ford Expedition XLT.

15. 2004 Chevrolet C1500 Suburban: BAR-OIS test data showed that on September 9, 2015, Mr. Estrada performed a smog inspection on a 2004 Chevrolet C1500 Suburban, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly administered smog inspection. The BAR-OIS test details showed that the e-VIN recorded during the inspection did not match the VIN for the Chevrolet C1500 Suburban, but instead matched a 2004 Chevrolet Silverado that was smog tested at Every Day on September 9, 2015. In addition, the communication

² Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog certificate of compliance for another vehicle that is not in compliance with the Smog Check Program and/or is not present for testing.

protocol and the PID count recorded during the inspection of the 2004 Chevrolet Silverado were consistent with the communication protocol and PID count recorded during the smog check of the 2004 Chevrolet C1500 Suburban. This evidence demonstrates that Mr. Estrada used the 2004 Chevrolet Silverado's properly functioning OBD II system to generate a false Certificate of Compliance for the 2004 Chevrolet C1500 Suburban.

16. 2007 Honda Civic SI: On September 14, 2015, Mr. Estrada performed a smog inspection of a 2007 Honda Civic SI, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly performed smog inspection. The e-VIN was not transmitted to the VID during inspection, and the PID count recorded during the smog check of the 2007 Honda Civic SI was not consistent with the PID count for that make and model. This evidence demonstrates that Mr. Estrada did not connect the DAD to the vehicle during the smog inspection, and that he generated a false Certificate of Compliance.

17. 2004 BMW 545i: On December 17, 2015, Mr. Estrada performed a smog inspection of a 2004 BMW 545i, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly performed smog inspection. The e-VIN was not transmitted to the VID during inspection. The Comparative OIS Test Data for 2004 BMW 545i vehicles show that the majority transmit the eVIN during the inspection, and that the PID count recorded during the smog check of the 2004 BMW 545i was not consistent with the PID count for that make and model. This evidence demonstrates that Mr. Estrada did not connect the DAD to the vehicle during the smog inspection, and that he generated a false Certificate of Compliance.

18. 2005 Mitsubishi Lancer Evolution AWD: On January 30, 2016, Mr. Estrada performed a smog inspection of a 2005 Mitsubishi Lancer Evolution AWD, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly performed smog inspection. The e-VIN was not transmitted to the VID during inspection, and the PID count recorded during the smog check of the 2005 Mitsubishi Lancer Evolution AWD was not consistent with the PID count for that make and model. This evidence demonstrates that Mr. Estrada did not connect the DAD to the vehicle during the smog inspection, and that he generated a false Certificate of Compliance.

19. 2008 GMC Canyon: BAR-OIS test data showed that on March 4, 2016, Mr. Godinez performed a smog inspection on a 2008 GMC Canyon, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly administered smog inspection. The BAR-OIS test details showed that the e-VIN recorded during the inspection did not match the VIN for the 2008 GMC Canyon, but instead matched a 2003 GMC Envoy XL which was smog tested at Every Day on May 23, 2015. In addition, the communication protocol and the PID count recorded during the inspection of the 2003 GMC Envoy XL were consistent with the communication protocol and PID count recorded during the smog check of the 2008 GMC Canyon. This evidence demonstrates that Mr. Godinez used the 2003 GMC Envoy's properly functioning OBD II system to generate a false Certificate of Compliance for the 2008 GMC Canyon.

20. 2008 BMW 335i: BAR-OIS test data showed that on March 8, 2016, Mr. Estrada performed a smog inspection on a 2008 BMW 335i, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly administered smog inspection. The BAR-OIS test details showed that the e-VIN recorded during the inspection did not match the VIN for the 2008 BMW 335i, but instead matched a 2008 Nissan Sentra which was smog tested at Every Day on March 8, 2016. In addition, the communication protocol and the PID count recorded during the inspection of the 2008 Nissan Sentra were consistent with the communication protocol and PID count recorded during the smog check of the 2008 BMW 335i. This evidence demonstrates that Mr. Estrada used the 2008 Nissan Sentra's properly functioning OBD II system to generate a false Certificate of Compliance for the 2008 BMW 335i.

21. 2001 Volkswagen Jetta GL: On March 8, 2016, Mr. Estrada performed a smog inspection of a 2001 Volkswagen Jetta GL, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly performed smog inspection. The e-VIN was not transmitted to the VID during inspection, and the PID count recorded during the smog check of the 2001 Volkswagen Jetta GL was not consistent with the PID count for that make and model. This evidence demonstrates that Mr. Estrada did not connect the DAD to the vehicle during the smog inspection, and that he generated a false Certificate of Compliance.

22. 2007 Chevrolet Silverado C1500: BAR-OIS test data showed that on April 5, 2016, Mr. Estrada performed a smog inspection on a 2007 Chevrolet Silverado C1500, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly administered smog inspection. The BAR-OIS test details showed that the e-VIN recorded during the inspection did not match the VIN for the 2007 Chevrolet Silverado C1500, but instead matched a 2003 Chevrolet Silverado C1500 which was smog tested at Every Day on April 5, 2016. In addition, the communication protocol and the PID count recorded during the inspection of the 2003 Chevrolet Silverado C1500 were consistent with the communication protocol and PID count recorded during the smog check of the 2007 Chevrolet Silverado C1500. This evidence demonstrates that Mr. Estrada used the 2003 Chevrolet Silverado's properly functioning OBD II system to generate a false Certificate of Compliance for the 2007 Chevrolet Silverado C1500.

23. 2008 Dodge Caravan SXT: On April 5, 2016, Mr. Estrada performed a smog inspection of a 2008 Dodge Caravan SXT, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly performed smog inspection. The e-VIN was not transmitted to the VID during inspection, and the PID count recorded during the smog check of the 2008 Dodge Caravan SXT was not consistent with the PID count for that make and model. This evidence demonstrates that Mr. Estrada did not connect the DAD to the vehicle during the smog inspection, and that he generated a false Certificate of Compliance.

24. 2007 Ford 500 SEL AWD: On April 16, 2016, Mr. Estrada performed a smog inspection of a 2007 Ford 500 SEL AWD, and issued a Certificate of Compliance which included a certification under penalty of perjury that the vehicle passed a properly performed

smog inspection. The e-VIN transmitted during the inspection did not match the 2007 Ford 500 SEL AWD. Also, the PID count recorded during the smog check of the 2007 Ford 500 SEL AWD was not consistent with the PID count for that make and model. This evidence demonstrates that Mr. Estrada did not connect the DAD to the vehicle during the smog inspection, and that he generated a false Certificate of Compliance.

Thirteenth through Twenty-First Causes for Discipline – Secret Shopper³ Operation, April 2, 2015

25. On April 2, 2015, John Galindo, an undercover operator paid but not employed by the Bureau, took a 2007 Toyota Camry owned by the Bureau to Every Day, met with Mr. Godinez, and requested a smog, brake, and lamp inspection. Mr. Galindo signed a work order under an assumed name. Mr. Godinez did not give Mr. Galindo a copy of the signed work order or a repair estimate before Mr. Estrada commenced work on the Camry.

26. Mr. Galindo watched Mr. Estrada perform the brake and lamp inspections, and observed that Mr. Estrada did not remove the wheels, and that the vehicle was not taken out from Every Day for road-testing during the course of the inspection. At the conclusion of the inspection, Mr. Galindo paid \$120 for the work, and Mr. Godinez gave Mr. Galindo an invoice, vehicle inspection report, brake certificate, and a lamp certificate. The brake certificate, signed by Mr. Estrada, certified under penalty of perjury that the Camry was road tested and required seven feet to stop at 20 miles per hour. There is no evidence that the Camry was road tested during the inspection at Every Day. Mr. Galindo observed that Mr. Godinez did not leave the premises of Every Day during the inspection.

Twenty-Sixth through Thirty-Third Causes for Discipline – Undercover Operation, November 19, 2015

27. On November 19, 2015, Mr. Galindo took a 2007 Ford Mustang owned by the Bureau to Every Day, met with Mr. Godinez, and requested a smog, brake, and lamp inspection. Mr. Godinez did not provide a repair estimate to Mr. Galindo or have him sign a repair order before Mr. Estrada commenced the inspection of the Mustang.

28. Mr. Galindo watched Mr. Estrada perform the brake and lamp inspections, and observed that Mr. Estrada did not remove the wheels, and that the vehicle was not taken out from Every Day for road-testing during the course of the inspection. At the conclusion of the inspection, Galindo paid \$120 for the work, and Mr. Godinez gave Mr. Galindo an invoice, vehicle inspection report, brake certificate, and a lamp certificate. The brake certificate, signed by Mr. Estrada, certified under penalty of perjury that the Mustang was road tested and required nine feet to stop at 20 miles per hour. There is no evidence that the Mustang

³ A “secret shopper” operation is distinguished from an “undercover” operation because the vehicle used in a secret shopper run is properly functioning and has not been manipulated by the Bureau to make the vehicle defective in a way that would cause it to fail a properly administered test.

was road tested during the inspection at Every Day. Mr. Galindo observed that Mr. Godinez did not leave the premises of Every Day during the inspection.

29. Prior to the inspection, Jeff Vietzke, a Program Representative II employed by the Bureau, modified the 2007 Ford Mustang. He installed right front and left rear brake rotors that did not meet manufacturer's specifications for minimum thickness. He also adjusted the front low beam head lamps out of manufacturer's specifications. He also installed tamper indicators on the wheels and headlamps that would break if the wheels were removed to inspect the brakes or the headlamps were adjusted. On November 20, 2015, Mr. Vietzke reinspected the vehicle. The headlamps had been adjusted to meet specifications, and the tamper indicators were broken. The tamper indicators on the wheels were unbroken, and the brake rotors remained out of specification.

Thirty-Eighth through Forty-Fifth Causes for Discipline – Undercover Operation, December 11, 2015

30. On December 11, 2015, Mr. Galindo took a 2001 Pontiac Firebird owned by the Bureau to Every Day, met with Mr. Godinez, and requested a smog, brake, and lamp inspection. Mr. Godinez did not provide a repair estimate to Mr. Galindo or have him sign a repair order before the inspection of the Firebird commenced.

31. Mr. Galindo watched Mr. Estrada perform the brake and lamp inspections, and observed that Mr. Estrada did not remove the wheels, and that the vehicle was not taken out from Every Day for road-testing during the course of the inspection. At the conclusion of the inspection, Mr. Galindo paid \$60 for the work, and Mr. Godinez gave Mr. Galindo an invoice, vehicle inspection report, brake certificate, and a lamp certificate. The brake certificate, signed by Mr. Estrada, certified under penalty of perjury that the Firebird was road tested and required 12 feet to stop at 20 miles per hour. There is no evidence that the Firebird was road tested during the inspection at Every Day. Mr. Galindo observed that Mr. Godinez did not leave the premises of Every Day during the inspection. The lamp certificate signed by Mr. Estrada certified that the Firebird had been properly inspected.

32. Prior to the inspection, Ramon Jimenez, a Program Representative I employed by the Bureau, adjusted the head lamp so that the passenger side low beam was grossly misaligned, and machined the left front and right rear brake rotors below manufacturer's specifications. Mr. Jimenez also installed tamper indicators on the head lamps and all four wheels which would be broken if the wheels were removed to inspect the brakes or the head lamps were adjusted. Following the inspection at Every Day, Mr. Jimenez inspected the Firebird and found that the headlamps had been adjusted but remained misaligned, and that the tamper indicators on the wheels had not been broken indicating that the brakes had not been inspected.

///

Fiftieth through Fifty-Seventh Causes for Discipline – Undercover Operation, January 8, 2016

33. On January 8, 2016, Mr. Galindo took a 2002 Chevrolet Camaro owned by the Bureau to Every Day, met with Mr. Godinez, and requested a smog, brake, and lamp inspection. Mr. Godinez did not provide a repair estimate to Mr. Galindo or have him sign a repair order before the inspection of the Camaro commenced.

34. Mr. Galindo watched Mr. Estrada perform the brake and lamp inspections, and observed that the vehicle was not taken out from Every Day for road-testing during the course of the inspection. At the conclusion of the inspection, Mr. Godinez gave Mr. Galindo an invoice, vehicle inspection report, brake certificate, and a lamp certificate. The brake certificate, signed by Mr. Estrada, certified under penalty of perjury that the Camaro was road tested and required eight feet to stop at 20 miles per hour. There is no evidence that the Camaro was road tested during the inspection at Every Day. Mr. Galindo observed that Mr. Godinez did not leave the premises of Every Day during the inspection. The lamp certificate signed by Mr. Estrada certified that the Camaro had been properly inspected.

35. Prior to the inspection a Program Representative employed by the Bureau made modifications/adjustments, and re-inspected the vehicle subsequent to the undercover run. The modifications/adjustments and the re-inspection findings are not in evidence.

Respondent Godinez's Evidence and Argument

36. Mr. Godinez argued through counsel that Mr. Estrada was responsible for the clean plugging of 10 of the 11 vehicles, and that Mr. Estrada did some things correctly and missed other things while inspecting the vehicles in the secret shopper and undercover runs. Mr. Godinez also argued that mitigating factors apply, in that during the time of the clean plugging he had chronic back pain and was also obliged to travel with his wife for medical appointments in the Bay Area. Mr. Godinez's assertion that Mr. Estrada is responsible for the clean-plugging is rejected on the basis that the shop owner is responsible for the conduct of employees in the course of his business. (Legal Conclusion 14.) The mitigating factors argued by Mr. Godinez are de minimis when considered against the number and duration of violations established by the evidence. Other arguments advanced by Mr. Godinez have been considered and rejected.

Costs

37. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of \$45,155.50. This amount consists of the following:

- (a) Complainant has requested costs for the investigation and enforcement work of the Office of the Attorney General in the total amount of \$10,222.50. In support of its cost request, complainant submitted a signed Certification of

Prosecution Costs accompanied by a computer printout detailing the general tasks performed, the time spent on each task, and the hourly rate charged for the investigation and enforcement work performed by the Deputy Attorney General, Supervising Deputy Attorney General, and a paralegal. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).) When all the supporting evidence is reviewed, complainant demonstrated that, given the allegations made in this matter, the costs requested for the investigation and enforcement work performed by the Office of the Attorney General were reasonable.

(b) Complainant has requested additional investigative and other costs in the total amount of \$34,932.90. This amount consists of: (1) 181 hours of time spent by Program Representatives I in the 2015/16 fiscal year at the rate of \$70.30 per hour (\$12,724.30), (2) 279 hours of time spent by Program Representatives II in the 2015/16 fiscal year at the rate of \$75.30 per hour (\$21,008.60); (3) four days of operator fees at \$200 per day (\$800); and (4) miscellaneous expenses (\$400). Pursuant to California Code of Regulations, title 1, section 1042, subdivision (b)(1), in order to receive costs for the services of an agency employee, complainant must submit a declaration describing “the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service.” The information submitted by complainant for the investigative and other costs requested for agency employees does not comply with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(1). Consequently, these costs may not be awarded against respondent.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving, by a preponderance of the evidence, that the charges in the Accusation are true and that the requested discipline against respondent’s station license and automotive repair dealer registration should be imposed. (Evid. Code, § 115; *Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-17.)

2. California’s Motor Vehicle Inspection Program (Health & Saf. Code, § 44000, et seq.) is an “enforcement program [intended to be] vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven.” (Health & Saf. Code, § 44001, subd. (b)(5)(E).) The Bureau’s chief is responsible for enforcing and administering the Program. (§§ 44001.5, 44002.) Laws and regulations governing the duties and discipline of Program licensees are set forth in Health and Safety Code section 44072 et seq. and California Code of Regulations, title 16, section 3300 et seq.

///

3. Business and Professions Code section 9884.7, subdivision (a), provides:

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

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

[¶] ... [¶]

(3) Failing or refusing to give a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

[¶] ... [¶]

(4) Any other conduct that constitutes fraud.

[¶] ... [¶]

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

4. Business and Professions Code section 9884.9, subdivision (a), provides that an automotive repair dealer is required to give the customer a written estimate of price and labor for a specific job, and that no work shall be done and no charges shall accrue before authorization is obtained from the customer.

5. Business and Professions Code section 9889.3, provides the following grounds for suspension, revocation, or other disciplinary action of a licensee:

(a) Violates any section of the Business and Professions Code that relates to his or her licensed activities.

[¶] ... [¶]

(c) Violates any section of the regulations promulgated by the director pursuant to this chapter.

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

[¶] ... [¶]

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

6. A licensed brake or lamp adjuster who conducts an inspection or adjustment in a licensed station and determines that the brakes or lamps conform to the requirements of the Vehicle Code, shall, when requested by the driver or owner of the vehicle, issue a certificate of adjustment. (Bus. & Prof. Code, § 9889.16.)

7. All adjustments, inspections, services, and repairs of brake systems and lamp systems necessary for the issuance of a certificate of adjustment must be performed at an “official” station in accordance with current standards. (Cal. Code Regs., tit. 16, § 3305, subd. (a).)

8. A lamp adjustment certificate may be issued when “all of the lamps, lighting equipment, and related electrical systems on the vehicle have been inspected and found to be in compliance with all requirements of the Vehicle Code and Bureau regulations” (Cal. Code Regs., tit. 16, § 3316, subd. (d)(2).)

9. A brake adjustment certificate may be issued when the “entire brake system on any vehicle has been inspected or tested and found to be in compliance with all requirements of the Vehicle Code and Bureau regulations, and the vehicle has been road-tested” (Cal. Code Regs., tit. 16, § 3321, subd. (c).)

10. Smog check stations and smog check technicians are required to conduct tests and inspections in accordance with the Bureau’s emissions inspections specifications. (Cal. Code Regs., tit. 16, §§ 3340.30, subd., (a), 3340.42.) A licensed station shall only issue a certificate of compliance to the owner or operator of any vehicle “that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the

required emission control equipment and devices installed and functioning correctly.” (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).)

11. Emission control tests at smog check stations “shall be performed in accordance with procedures prescribed by the department. . .” (Health & Saf. Code, § 44012.) A smog test station shall not issue certificates of compliance for vehicles that do not meet the testing requirements in accordance with Section 44012.” (Health & Saf. Code, § 44015.)

12. Health and Safety Code section 44072.2, provides in relevant part:

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

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

[¶] ... [¶]

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

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

13. Health and Safety Code section 44072.10, subdivision (c), provides the Bureau “shall revoke the license of any smog check technician or station license who fraudulently certifies the vehicles or participates in the fraudulent inspection of vehicles.” A fraudulent inspection includes a willful or intentional violation of any regulation, standard, or procedure of the Department implementing the smog check program. (Health & Saf. Code, § 44072.10, subd. (c)(1).)

14. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct, and he is responsible for the acts of his agents or employees done in the course of his business. A licensee may not insulate himself from regulation by electing to function through employees or independent contractors. (*Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.)

First through Eighth Causes for Discipline – Clean-Plugging

15. First Cause for Discipline: By reason of the matters set forth in Factual Findings 13 through 24, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), and Health and Safety Code section 44012, in that Mr. Godinez or persons under his supervision and control conducted smog inspections using clean-plugging methods.

16. Second Cause for Discipline: By reason of the matters set forth in Factual Findings 13 through 24, cause for discipline exists pursuant to Business and Professions Code section 9884.7(a)(4), in that Mr. Godinez or persons under his supervision and control issued fraudulent electronic smog certificates based on smog inspections using clean-plugging methods.

17. Third Cause for Discipline: By reason of the matters set forth in Factual Findings 13 through 24, cause for discipline exists pursuant to Health and Safety Code sections 44012, subdivision (a); 44015; and 44072.2, subdivision (a), in that Mr. Godinez failed to ensure emission control test standards were followed, and that he or persons under his supervision and control issued smog certificates of compliance for vehicles that were not tested according to Bureau standards.

18. Fourth Cause for Discipline: By reason of the matters set forth in Factual Findings 13 through 24, cause for discipline exists pursuant to Health and Safety Code section 44072.2, subdivision (c); and California Code of Regulations, title 16, sections 3340.35, subdivision (c), and 3340.42, in that Mr. Godinez failed to ensure emission control test standards were followed, and that he or persons under his supervision and control issued smog certificates of compliance for vehicles that were not tested according to Bureau standards.

19. Fifth Cause for Discipline: By reason of the matters set forth in Factual Findings 13 through 24, cause for discipline exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Mr. Godinez committed dishonest and fraudulent acts whereby another was injured in that he or persons under his supervision and control issued smog certificates without ensuring that vehicles were tested according to Bureau standards.

20. Sixth Cause for Discipline: By reason of the matters set forth in Factual Findings 13 through 24, cause for discipline exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Mr. Godinez or persons under his supervision and control failed to ensure that Bureau emission control test standards were followed.

21. Seventh Cause for Discipline: By reason of the matters set forth in Factual Findings 13 through 24, cause for discipline exists pursuant to Health and Safety Code section 44072.2, subdivision (c); and California Code of Regulations, title 16, sections 3340.30, subdivision (a); and 3340.42, in that Mr. Godinez failed to ensure compliance with Bureau standards for vehicle inspections and emission control test standards, and that he or persons under his supervision and control issued smog certificates of compliance for vehicles that were not tested according to Bureau standards.

22. Eighth Cause for Discipline: By reason of the matters set forth in Factual Findings 13 through 24, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivision (d), in that Mr. Godinez or persons under his supervision and control committed dishonest and fraudulent acts whereby another was injured by issuing smog certificates without ensuring that vehicles were tested according to Bureau standards.

///

Thirteenth through Twenty-First Causes for Discipline – Secret Shopper Operation, April 2, 2015

23. Thirteenth Cause for Discipline: By reason of the matters set forth in Factual Findings 25 and 26, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that Mr. Godinez or persons under his supervision and control made untrue and misleading statements by issuing a brake certificate containing false representations.

24. Fourteenth Cause for Discipline: By reason of the matters set forth in Factual Findings 25 and 26, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Mr. Godinez or persons under his supervision and control obtained payment for inspections and repairs that were not performed.

25. Fifteenth Cause for Discipline: By reason of the matters set forth in Factual Findings 25 and 26, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(3), in that Mr. Godinez failed to ensure that the vehicle operator was provided with a copy of the repair order as soon as the operator signed the document.

26. Sixteenth Cause for Discipline: By reason of the matters set forth in Factual Findings 25 and 26, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), in that Mr. Godinez or persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

27. Seventeenth Cause for Discipline: By reason of the matters set forth in Factual Findings 25 and 26, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(6); and California Code of Regulations, title 16, sections 3305, subdivision (a), and 3321, subdivision (c)(2), in that Mr. Godinez or persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

28. Eighteenth Cause for Discipline: By reason of the matters set forth in Factual Findings 25 and 26, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivision (d), in that Mr. Godinez or persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards, thereby causing injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program.

29. Nineteenth Cause for Discipline: By reason of the matters set forth in Factual Findings 25 and 26, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), in that Mr. Godinez or persons under his supervision

and control issued a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

30. Twentieth Cause for Discipline: By reason of the matters set forth in Factual Findings 25 and 26, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivision (c), in that in that Mr. Godinez or persons under his supervision and control violated applicable regulations by issuing a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

31. Twenty-First Cause for Discipline: By reason of the matters set forth in Factual Findings 25 and 26, cause for discipline exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Mr. Godinez or persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certified that the vehicle was in compliance with Bureau standards, constituting an act of dishonesty, fraud or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program.

Twenty-Sixth through Thirty-Third Causes for Discipline – Undercover Operation, November 19, 2015

32. Twenty-Sixth Cause for Discipline: By reason of the matters set forth in Factual Findings 27 through 29, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that Mr. Godinez or persons under his supervision and control made untrue and misleading statements by issuing a brake certificate containing false representations.

33. Twenty-Seventh Cause for Discipline: By reason of the matters set forth in Factual Findings 27 through 29, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Mr. Godinez or persons under his supervision and control obtained payment for inspections and repairs that were not performed.

34. Twenty-Eighth Cause for Discipline: By reason of the matters set forth in Factual Findings 27 through 29, cause for discipline exists pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6); 9884.9, subdivision (a); and 9889.16, in that Mr. Godinez or persons under his supervision and control failed to comply with applicable laws and regulations in that he failed to give the vehicle operator a written estimated price, and issued a brake certificate without conducting a complete inspection and falsely certified that the vehicle was in compliance with Bureau standards.

35. Twenty-Ninth Cause for Discipline: By reason of the matters set forth in Factual Findings 27 through 29, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, sections 3305, subdivision (a), and 3321, subdivision (c)(2), in that Mr. Godinez or

persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certified that the vehicle was in compliance with Bureau standards.

36. Thirtieth Cause for Discipline: By reason of the matters set forth in Factual Findings 27 through 29, cause for discipline exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Mr. Godinez or persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards, constituting an act of dishonesty, fraud or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program.

37. Thirty-First Cause for Discipline: By reason of the matters set forth in Factual Findings 27 through 29, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivision (d), in that Mr. Godinez or persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards, thereby causing injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program.

38. Thirty-Second Cause for Discipline: By reason of the matters set forth in Factual Findings 27 through 29, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), in that Mr. Godinez or persons under his supervision and control failed to give the vehicle operator a written estimated price, and issued a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

39. Thirty-Third Cause for Discipline: By reason of the matters set forth in Factual Findings 27 through 29, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivision (c), in that Mr. Godinez or persons under his supervision and control violated applicable regulations by issuing a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

Thirty-Eighth through Forty-Fifth Causes for Discipline – Undercover Operation, December 11, 2015

40. Thirty-Eighth Cause for Discipline: By reason of the matters set forth in Factual Findings 30 through 32, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that Mr. Godinez or persons under his supervision and control made untrue and misleading statements by issuing a brake certificate and a lamp certificate containing false representations.

41. Thirty-Ninth Cause for Discipline: By reason of the matters set forth in Factual Findings 30 through 32, cause for discipline exists pursuant to Business and

Professions Code section 9884.7, subdivision (a)(4), in that Mr. Godinez or persons under his supervision and control obtained payment for inspections and repairs that were not performed.

42. Fortieth Cause for Discipline: By reason of the matters set forth in Factual Findings 30 through 32, cause for discipline exists pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6); 9884.9, subdivision (a); and 9889.16, in that Mr. Godinez or persons under his supervision and control failed to comply with applicable laws and regulations in that he failed to give the vehicle operator a written estimated price, and issued a brake certificate without conducting a complete inspection and falsely certified that the vehicle was in compliance with Bureau standards.

43. Forty-First Cause for Discipline: By reason of the matters set forth in Factual Findings 30 through 32, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(6); and California Code of Regulations, title 16, sections 3305, subdivision (a); 3316, subdivision (d)(2); and 3321, subdivision (c)(2), in that Mr. Godinez or persons under his supervision and control issued a brake certificate and a lamp certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

44. Forty-Second Cause for Discipline: By reason of the matters set forth in Factual Findings 30 through 32, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivision (d), in that Mr. Godinez or persons under his supervision and control issued a brake certificate and a lamp certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards, thereby causing injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program.

45. Forty-Third Cause for Discipline: By reason of the matters set forth in Factual Findings 30 through 32, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), in that Mr. Godinez or persons under his supervision and control failed to give the vehicle operator a written estimated price, and issued a brake certificate and lamp certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

46. Forty-Fourth Cause for Discipline: By reason of the matters set forth in Factual Findings 30 through 32, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivision (c), in that in that Mr. Godinez or persons under his supervision and control violated applicable regulations by issuing a brake certificate and a lamp certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

47. Forty-Fifth Cause for Discipline: By reason of the matters set forth in Factual Findings 30 through 32, cause for discipline exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Mr. Godinez or persons under his supervision and control issued a brake certificate and a lamp certificate without conducting a complete

inspection and falsely certifying that the vehicle was in compliance with Bureau standards, constituting an act of dishonesty, fraud or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program.

Fiftieth through Fifty-Seventh Causes for Discipline – Undercover Operation, January 8, 2016

48. Fiftieth Cause for Discipline: By reason of the matters set forth in Factual Findings 33 through 35, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that Mr. Godinez or persons under his supervision and control made untrue and misleading statements by issuing a brake certificate containing false representations.

49. Fifty-First Cause for Discipline: By reason of the matters set forth in Factual Findings 33 through 35, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Mr. Godinez or persons under his supervision and control obtained payment for inspections and repairs that were not performed.

50. Fifty-Second Cause for Discipline: By reason of the matters set forth in Factual Findings 33 through 35, cause for discipline exists pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6); 9884.9, subdivision (a); and 9889.16, in that Mr. Godinez or persons under his supervision and control failed to comply with applicable laws and regulations in that he failed to give the vehicle operator a written estimated price, and issued a brake certificate without conducting a complete inspection and falsely certified that the vehicle was in compliance with Bureau standards.

51. Fifty-Third Cause for Discipline: By reason of the matters set forth in Factual Findings 33 through 35, cause for discipline exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(6); and California Code of Regulations, title 16, sections 3305, subdivision (a), and 3321, subdivision (c)(2), in that Mr. Godinez or persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

52. Fifty-Fourth Cause for Discipline: By reason of the matters set forth in Factual Findings 33 through 35, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivision (d), in that Mr. Godinez or persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certified that the vehicle was in compliance with Bureau standards, constituting an act of dishonesty, fraud or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program.

53. Fifty-Fifth Cause for Discipline: By reason of the matters set forth in Factual Findings 33 through 35, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), in that Mr. Godinez or persons under his supervision and control failed to give the vehicle operator a written estimated price, and

issued a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

54. Fifty-Sixth Cause for Discipline: By reason of the matters set forth in Factual Findings 33 through 35, cause for discipline exists pursuant to Business and Professions Code section 9889.3, subdivision (c), in that Mr. Godinez or persons under his supervision and control violated applicable regulations by issuing a brake certificate without conducting a complete inspection and falsely certifying that the vehicle was in compliance with Bureau standards.

55. Fifty-Seventh Cause for Discipline: By reason of the matters set forth in Factual Findings 33 through 35, cause for discipline exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Mr. Godinez or persons under his supervision and control issued a brake certificate without conducting a complete inspection and falsely certified that the vehicle was in compliance with Bureau standards, constituting an act of dishonesty, fraud or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program.

Penalty Determination

56. Over a period of approximately one year (April 2015 to April 2016) Mr. Godinez knowingly violated and allowed his employee Mr. Estrada to repeatedly violate the laws and regulations regarding smog tests, brake inspections, and lamp inspections. By his actions, Mr. Godinez demonstrated a disregard for the integrity of the Motor Vehicle Inspection Program and the protections the program affords. Considering this, revocation of Mr. Godinez's licenses is the discipline most appropriate to protect the public safety.

Costs

57. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

58. As set forth in Factual Finding 37(a), there was sufficient evidence to substantiate that \$10,222.50 in costs charged by the Office of the Attorney General were reasonable in light of the allegations set forth in the Accusation. Respondent was not successful in challenging any of the Causes for Discipline in the Accusation. Also, respondent did not provide any evidence that he is financially unable to pay the costs

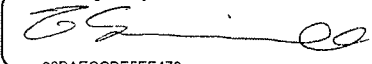
requested by the Office of the Attorney General. Based upon all the factors set forth in *Zuckerman*, respondent should be ordered to pay the Bureau \$10,222.50 in costs. Enforcement costs in the amount of \$34,932.90 claimed by the Bureau are not awarded, pursuant to Factual Finding 37(b).

ORDER

1. All of the registrations and licenses issued by the Bureau of Automotive Repair to respondent Edgar Ivan Godinez, owner of Every Day Smog, are hereby REVOKED, including, but not limited to Automotive Repair Dealer Registration Number ARD 261653, Smog Check Station License Number RC 261653, Brake Station License Number BS 261653, Lamp Station License Number LS 261653, Smog Check Inspector License Number 154357, Smog Check Repair Technician License Number 154357, Brake Adjuster License Number BA 154357, and Lamp Adjuster License Number LA 154357.

2. Upon licensure by the Bureau or reinstatement of any of the revoked registrations or licenses, respondent Edgar Ivan Godinez shall pay to the Bureau \$10,222.50 as the reasonable costs of investigation and prosecution of this case. The Bureau may establish a payment schedule for the payment of these costs over any period of probation.

DATED: December 20, 2017

DocuSigned by:

26BAECCBE5EF478...

TIMOTHY J. ASPINWALL
Administrative Law Judge
Office of Administrative Hearings