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

11 In the Matter of the Accusation Against:

Case No. 79/16-15223

12 **QUITO SMOG; ANGEL ANTHONY**
13 **RAMIREZ – OWNER**
2033 W. Highland Ave.
14 San Bernardino, CA 92407

A C C U S A T I O N

S M O G C H E C K

15 Automotive Repair Dealer Registration No. ARD
283864.
16 Smog Check Test Only Station License No. TC
283864

17 and

18 **MANUEL VILLANUEVA**
920 Tribune St.
19 Redlands, CA 92374

20 Smog Check Inspector License No. EO 639030

21
22 Respondents.
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24 Complainant alleges:

25 **PARTIES**

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

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1 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

10 12. Health and Safety Code section 44072.10 states, in pertinent part:

11

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

15 (1) Clean piping, as defined by the department.

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

19 **REGULATORY PROVISIONS**

20 13. California Code of Regulations, title 16, section 3340.1 states, in pertinent:

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22 "Clean piping," for the purposes of Health and Safety Code section
23 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of
24 the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of
compliance for the test vehicle . . .

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1 14. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:
2 “The bureau may suspend or revoke the license of or pursue other legal action against a
3 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
4 certificate of noncompliance.”

5 15. California Code of Regulations, title 16, section 3340.28(e), states that “[u]pon
6 renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist
7 Technician license issued prior to the effective date of this regulation, the licensee may apply to
8 renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

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

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

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

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

25 COST RECOVERY

26 20. Business and Professions Code section 125.3 provides, in pertinent part, that a Board
27 may request the administrative law judge to direct a licentiate found to have committed a

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

3 VID DATA REVIEW

4 21. Beginning March 9, 2015, California's Smog Check Program was updated requiring
5 the use of an On-Board Diagnostic Inspection System (OIS). OIS is the Smog Check equipment
6 required in all areas of the State when inspecting most model-year 2000 and newer gasoline and
7 hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data
8 Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD is an On Board
9 Diagnostic (OBD) scan tool that, when requested by the California OIS software, retrieves OBD
10 data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the
11 California OIS software and will be retrieved. The DAD connects between the OIS computer and
12 the vehicle's DLC. The California OIS software requires a continuous Internet connection when
13 performing a Smog Check inspection and the OIS software communicates with BAR's central
14 database through the Internet connection. The bar code scanner is used to input technician
15 information, the vehicles identification number (VIN), and DMV renewal information. The
16 printer provides a Vehicle Inspection Report (VIR) containing inspection results for motorists and
17 a Smog Check Certificate of Compliance number for passing vehicles.

18 22. Data retrieved and recorded during an OIS smog check includes; the eVIN, which is
19 the digitally stored VIN programmed into the vehicle's Powertrain Control Module (PCM); the
20 communication protocol, which is the manufacturer/vehicle specific language the PCM uses to
21 relay information; and the number of Parameter Identifications (PIDs), which is the number of
22 specific data values each PCM uses related to emissions controls.

23 23. If the vehicle passes the visual and functional tests, it passes the overall inspection
24 and a Certificate of Compliance is issued and transmitted electronically to the Vehicle
25 Information Database (VID.) These Certificates of Compliance are purchased in blocks of fifty
26 (50) through the EIS or OIS from the VID, using a pre-arranged electronic bank account debit
27 system or by check, via mail, from Bureau Headquarters in Sacramento. Each Certificate of
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1 Compliance has a unique control number so that it can be tracked to determine which Smog
2 Check Station purchased the Certificate of Compliance and to which vehicle it was issued.

3 24. The VID contains registration data from Department of Motor Vehicles (DMV) plus
4 emission standards, vehicle smog check inspections, smog check stations and technicians, and
5 Certificates of Compliance. The VID receives the passing smog check results immediately
6 following the inspection. During the vehicle registration process, the DMV accesses the VID to
7 verify that the vehicle has been tested and certified. The Bureau can also access the VID to view
8 test data on smog check inspections performed at any Smog Check Station, or search for, retrieve,
9 and print a test record for a particular vehicle which has been tested. The EIS or OIS, depending
10 on the test type, also prints a Vehicle Inspection Report (VIR), which is a physical record of the
11 test results and shows the Certificate of Compliance number that was issued if the vehicle passed
12 the smog inspection.

13 25. The smog check technician must sign the VIR under penalty of perjury to indicate
14 that the inspection was done within Bureau guidelines. Smog Check Stations are required by law
15 to maintain a copy of the VIR along with a copy of the repair invoice for three years. The
16 consumer's VIR serves as a receipt and proof that the VID was updated and a Certificate of
17 Compliance was issued. Licensed Smog Check Technicians are the only persons authorized by
18 the Bureau to perform official inspections. They are issued a personal access code and a license,
19 which are used to gain access to the EIS and OIS to perform smog check inspections.
20 Unauthorized use of another technician's access code or license is prohibited.

21 FACTUAL BACKGROUND

22 26. From in or around July 2016 through in or around April 2017, a Bureau
23 representative conducted an investigation in which he reviewed OIS Test Data for Quito Smog
24 for that time period. The data obtained in connection with this investigation revealed anomalies
25 consistent with fraudulent Smog Check activities.

26 27. A further in-depth analysis of this OIS data revealed that there were a total of twelve
27 (12) vehicles of various years, makes, and models that were issued fraudulent Certificates of
28 Compliance using the clean plugging method. These twelve (12) vehicles were fraudulently

certified, as evidenced by the fact that the *communication protocol codes* and *PID counts* which were transmitted in connection with all twelve (12) of these smog tests performed by Respondent Villanueva were incorrect, in that they were inconsistent with the actual *protocol codes* and *PID counts* which should have been reflected in regard to all twelve (12) vehicles. These discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected to these vehicles that were being certified, causing the issuance of fraudulent Smog Certificates of Compliance as to each of these vehicles. The following chart illustrates the documented clean plugging activities of Respondent Villanueva between August 2, 2016 and April 10, 2017.

TABLE 1

	Test date	Vehicle Tested and certified	VIN or License #	Certificate# Issued	Smog Check Inspector No.
1	8-2-16	2010 Mini Cooper,	6LYZ978	ZF766426C	E0639030 M. Villanueva
2	9-3-16	2010 Toyota Camry	6XYN696	ZJ699211C	E0639030 M. Villanueva
3	9-10-16	2010 Dodge Journey SXT	6LRT562	ZJ699231C	E0639030 M. Villanueva
4	9-16-16	2010 Mitsubishi Outlander	6MVB090	ZJ699243C	E0639030 M. Villanueva
5	9-20-16	2010 Ford F150	8Z41205	QE459652C	E0639030 M. Villanueva
6	11-4-16	2010 Toyota Camry BASE	6KAL302	QG719159C	E0639030 M. Villanueva
7	11-30-16	2009 Nissan Altima 2.5	1N4AL21EX9N547350	ZL275172C	E0639030 M. Villanueva
8	12-10-16	2009 Nissan Rogue S	JN8AS58VX9W160302	ZL559579C	E0639030 M. Villanueva
9	12-13-16	2009 Volkswagen Jetta TDI	3VWRL71K09M134831	ZL559593C	E0639030 M. Villanueva
10	1-7-17	2010 Honda Civic EX	6VXV224	ZN432305C	E0639030 M. Villanueva
11	1-10-17	2006 Ford Expedition XLS	5WMP607	ZN432311C	E0639030 M. Villanueva
12	4-10-17	2011 Volkswagen Jetta TDI	3VWLL7AJ1BM043165	ZT223465C	E0639030 M. Villanueva

1 a. Section 44012: Respondent Quito Smog failed to ensure that the emission control tests
2 were performed on the vehicles, in accordance with procedures prescribed by the department.

3 b. Section 44015: Respondent Quito Smog issued electronic certificates of compliance for
4 the vehicles, without ensuring that the vehicles were properly tested and inspected to determine if
5 they were in compliance with Health and Safety Code section 44012.

6 **FOURTH CAUSE FOR DISCIPLINE**

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

9 31. Respondent Quito Smog's station license is subject to discipline pursuant to Health
10 and Safety Code section 44072.2(c), in that from August 2, 2016 through April 10, 2017,
11 regarding the vehicles set forth above in Table 1, Respondent Quito Smog failed to comply with
12 provisions of California Code of Regulations, title 16, as follows:

13 a. Section 3340.24, subdivision (c): Respondent Quito Smog falsely or fraudulently issued
14 electronic smog certificates of compliance for those vehicles.

15 b. Section 3340.35, subdivision (c): Respondent Quito Smog issued electronic certificates
16 of compliance even though those vehicles had not been inspected in accordance with section
17 3340.42 of that Code.

18 c. Section 3340.41, subdivision (c): Respondent Quito Smog knowingly entered false
19 information into the emissions inspection system for those vehicles.

20 d. Section 3340.42: Respondent Quito Smog failed to conduct the required smog tests and
21 inspections on those vehicles in accordance with the Bureau's specifications.

22 **FIFTH CAUSE FOR DISCIPLINE**

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

24 32. Respondent Quito Smog's station license is subject to discipline pursuant to Health
25 and Safety Code section 44072.2(d), in that from August 2, 2016 through April 10, 2017
26 regarding the vehicles set forth above in Table 1, Respondent Quito Smog committed acts
27 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
28 certificates of compliance for those vehicles without performing bona fide inspections of the

1 emission control devices and systems on the vehicles, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 33. Respondent Villanueva's technician license is subject to discipline pursuant to Health
6 and Safety Code section 44072.2(a), in that from August 2, 2016 through April 10, 2017,
7 regarding the vehicles set forth above in Table 1 attributable to his technician license, he failed to
8 comply with section 44012 of that Code in a material respect, as follows: Respondent Villanueva
9 failed to perform the emission control tests on those vehicles in accordance with procedures
10 prescribed by the department.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

14 34. Respondent Villanueva's technician license is subject to discipline pursuant to Health
15 and Safety Code section 44072.2(c), in that from August 2, 2016 through April 10, 2017,
16 regarding the vehicles set forth above in Table 1 attributable to his technician license, he failed to
17 comply with provisions of California Code of Regulations, title 16, as follows:

18 a. Section 3340.24, subdivision (c): Respondent Villanueva falsely or fraudulently issued
19 electronic smog certificates of compliance for those vehicles.

20 b. Section 3340.35, subdivision (c): Respondent Villanueva issued electronic certificates
21 of compliance even though those vehicles had not been inspected in accordance with section
22 3340.42 of that Code.

23 c. Section 3340.41, subdivision (c): Respondent Villanueva knowingly entered false
24 information into the emissions inspection system for those vehicles.

25 d. Section 3340.42: Respondent Villanueva failed to conduct the required smog tests and
26 inspections on those vehicles in accordance with the Bureau's specifications.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 35. Respondent Villanueva's technician license is subject to discipline pursuant to Health
4 and Safety Code section 44072.2(d), in that from August 2, 2016 through April 10, 2017,
5 regarding the vehicles set forth above in Table 1 attributable to his technician license, he
6 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
7 electronic certificates of compliance without performing bona fide inspections of the emission
8 control devices and systems on those vehicles, thereby depriving the People of the State of
9 California of the protection afforded by the Motor Vehicle Inspection Program.

10 **OTHER MATTERS**

11 36. Pursuant to Code section 9884.7, subdivision (c), the Bureau may refuse to validate,
12 or may invalidate temporarily or permanently, the registrations for all places of business operated
13 in this state by Angel Anthony Ramirez upon a finding that he has, or is, engaged in a course of
14 repeated and willful violations of the laws and regulations pertaining to an automotive repair
15 dealer.

16 37. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
17 Number TC 283864, issued to Angel Anthony Ramirez, doing business as Quito Smog, is
18 revoked or suspended pursuant to a hearing, any additional license issued under Chapter 5 of Part
19 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise
20 revoked or suspended by the director.

21 38. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
22 No. EO 639030 issued to Manuel Villanueva is revoked or suspended pursuant to a hearing, any
23 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code
24 in the name of said licensee may be likewise revoked or suspended by the director.

25 **PRAYER**

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