

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

79/11-26

11 In the Matter of the Accusation Against:

Case No.

12 **A & E TEST ONLY**
13 **20226 Saticoy Street**
Winnetka, CA 91306
14 **HEBER ALEXIS VILLALTA**
Automotive Repair Dealer Registration
No. ARD 227490
15 **Smog Check Test Only Station License**
No. TC 227490

ACCUSATION

SMOG CHECK

16 and

17 **HEBER ALEXIS VILLALTA**
18 **20226 Saticoy Street**
Winnetka, CA 91306
19 **Advanced Emission Specialist Technician**
License No. EA 145240

20 and

21 **EDDIE A. VILLALTA, AKA**
22 **EDDIE ADEMIR VILLALTA HERNANDEZ**
9526 Delco Avenue
23 **Chatsworth, CA 91311**
Advanced Emission Specialist Technician
24 **License No. EA 155003**

25 Respondents.

26
27 Complainant alleges:

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1 PARTIES

2 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
3 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

4 **Automotive Repair Dealer Registration**

5 2. On a date uncertain in 2003, the Bureau issued Automotive Repair Dealer
6 Registration Number ARD 227490 ("registration") to Heber Alexis Villalta ("Respondent A &
7 E"), doing business as A & E Test Only. The registration was in full force and effect at all times
8 relevant to the charges brought herein and will expire on May 31, 2011, unless renewed.

9 **Smog Check Test Only Station License**

10 3. On or about May 16, 2003, the Bureau issued Smog Check Test Only Station License
11 Number TC 227490 ("station license") to Respondent A & E. The station license was in full
12 force and effect at all times relevant to the charges brought herein and will expire on May 31,
13 2011, unless renewed.

14 **Advanced Emission Specialist Technician License**

15 4. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist
16 Technician License Number EA 145240 ("technician license") to Heber Alexis Villalta
17 ("Respondent H. Villalta"). The technician license was in full force and effect at all times
18 relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

19 **Advanced Emission Specialist Technician License**

20 5. On a date uncertain in 2007, the Bureau issued Advanced Emission Specialist
21 Technician License Number EA 155003 ("technician license") to Eddie A. Villalta, also known
22 as Eddie Ademir Villalta Hernandez ("Respondent E. Villalta"). The technician license was in
23 full force and effect at all times relevant to the charges brought herein and will expire on April 30,
24 2012, unless renewed.

25 STATUTORY PROVISIONS

26 6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
27 part:

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

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

10 (4) Any other conduct that constitutes fraud.

11 (b) Except as provided for in subdivision (c), if an automotive repair
12 dealer operates more than one place of business in this state, the director pursuant to
13 subdivision (a) shall only suspend, revoke, or place on probation the registration of
14 the specific place of business which has violated any of the provisions of this chapter.
15 This violation, or action by the director, shall not affect in any manner the right of the
16 automotive repair dealer to operate his or her other places of business.

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

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

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

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

10. Section 44072.2 of the Health and Safety Code states, in pertinent 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:

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

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

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

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

12 12. Section 44072.8 of the Health and Safety Code states:

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

16 COST RECOVERY

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

21 FACTUAL BACKGROUND

22 14. On or about May 17, 2010, the Bureau conducted a detailed review of the Vehicle
23 Information Database ("VID") for all smog inspections performed at Respondent A & E's facility
24 for the period May 11, 2009, through February 4, 2010. The VID showed a pattern of various
25 random diagnostic trouble codes stored in memory of the power train control module ("PCM") on
26 different vehicles. Vehicles 1 through 4, set forth in Table 1, below, were all certified with
27 various pending codes stored in the PCM memory while the original equipment manufacturer
28 ("OEM") service information shows these vehicles do not support the pending codes stored in the
PCM memory. Vehicles 5 through 7, set forth in Table 1, below, were all tested with various
pending codes stored in the PCM memory while the original equipment manufacturer ("OEM")
service information shows these vehicles do not support the pending codes stored in the PCM

memory. Vehicles 1 through 7 were not tested during the OBD II functional test¹ and another vehicle was used, constituting clean plugging². All of the following inspections were performed by Respondents H. Villalta and E. Villalta.

TABLE 1

Date & Time	Vehicle Certified	Certificate No.	Technician
1. 05/11/2009 1211 – 1332 hours	1999 GMC Jimmy, License No. 5HWG343	NK241582	H. Villalta
2. 07/13/2009 0841 – 0919 hours	1996 Infinity I30, License No. 4JUV673	NM103267	E. Villalta
3. 07/24/2009 0951 – 1010 hours	1997 Infinity QX4, License No. 989RYT	NM292453	E. Villalta
4. 08/28/2009 1711 – 1719 hours	2001 Hyundai Santa Fe, License No. LVMAJ1	NM775054	H. Villalta
5. 10/07/2009 1312 – 1322 hours	1997 Nissan Pickup, License No. 5M13907	No Cert Issued	H. Villalta
6. 02/02/2010 1456 – 1506 hours	1998 BMW 3-Series, License No. 4PKT413	No Cert Issued	H. Villalta
7. 02/04/2010 0815 – 0942 hours	1997 Chevrolet Astro, License No. 5HHN049	No Cert Issued	H. Villalta

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

15. Respondent A & E has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about May 11, 2009, through February 4, 2010, he made

¹ The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

² Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

1 statements which he knew or which by exercise of reasonable care he should have known were
2 untrue or misleading as follows: Respondent certified that vehicles 1 through 4, set forth in Table
3 1, above, had passed inspection and were in compliance with applicable laws and regulations. In
4 fact, Respondent conducted the inspections on those vehicles using clean plugging methods by
5 substituting or using different vehicles during the OBD II functional tests in order to issue smog
6 certificates of compliance for those 4 vehicles, and did not test or inspect those vehicles as
7 required by Health and Safety Code section 44012.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 16. Respondent A & E has subjected his registration to discipline under Code section
11 9884.7, subdivision (a)(4), in that on or May 11, 2009, through February 4, 2010, he committed
12 acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through
13 4, set forth in Table 1, above, without performing bona fide inspections of the emission control
14 devices and systems on those vehicles, thereby depriving the People of the State of California of
15 the protection afforded by the Motor Vehicle Inspection Program.

16 **THIRD CAUSE FOR DISCIPLINE**

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

18 17. Respondent A & E has subjected his station license to discipline under Health and
19 Safety Code section 44072.2, subdivision (a), in that on or about May 11, 2009, through February
20 4, 2010, regarding vehicles 1 through 7, set forth in Table 1, above, he violated sections of that
21 Code, as follows:

22 a. **Section 44012:** Respondent A & E failed to ensure that the emission control tests
23 were performed on vehicles 1 through 7, in accordance with procedures prescribed by the
24 department.

25 b. **Section 44015:** Respondent A & E issued electronic certificates of compliance for
26 vehicles 1 through 4, without ensuring that the vehicles were properly tested and inspected to
27 determine if they were in compliance with Health and Safety Code section 44012.

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1 a. **Section 44059:** Respondent A & E willfully made false entries for the electronic
2 certificates of compliance by certifying that vehicles 1 through 4 had been inspected as required
3 when, in fact, they had not.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 18. Respondent A & E has subjected his station license to discipline under Health and
7 Safety Code section 44072.2, subdivision (c), in that on or about May 11, 2009, through February
8 4, 2010, regarding vehicles 1 through 7, set forth in Table 1, above, he violated sections of the
9 California Code of Regulations, title 16, as follows:

10 a. **Section 3340.24, subdivision (c):** Respondent A & E falsely or fraudulently issued
11 electronic certificates of compliance for vehicles 1 through 4 without performing bona fide
12 inspections of the emission control devices and systems on those vehicles as required by Health
13 and Safety Code section 44012.

14 b. **Section 3340.35, subdivision (c):** Respondent A & E issued electronic certificates of
15 compliance even though vehicles 1 through 4 had not been inspected in accordance with section
16 3340.42 of that Code.

17 c. **Section 3340.42:** Respondent A & E failed to conduct the required smog tests and
18 inspections on vehicles 1 through 7 in accordance with the Bureau's specifications.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 19. Respondent A & E has subjected his station license to discipline under Health and
22 Safety Code section 44072.2, subdivision (d), in that on or about May 11, 2009, through February
23 4, 2010, regarding vehicles 1 through 4, set forth in Table 1, above, he committed acts involving
24 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
25 compliance for those vehicles without performing bona fide inspections of the emission control
26 devices and system on the vehicles, thereby depriving the People of the State of California of the
27 protection afforded by the Motor Vehicle Inspection Program.

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

4 **NINTH CAUSE FOR DISCIPLINE**

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

6 23. Respondent H. Villalta has subjected his technician license to discipline under Health
7 and Safety Code section 44072.2, subdivision (a), in that on or about May 11, 2009, through
8 February 4, 2010, regarding vehicles 1, 4, 5, 6, and 7, set forth in Table 1, above, he failed to
9 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
10 perform the emission control tests on those vehicles in accordance with procedures prescribed by
11 the department.

12 **TENTH CAUSE FOR DISCIPLINE**

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

14 24. Respondent H. Villalta has subjected his technician license to discipline under Health
15 and Safety Code section 44072.2, subdivision (c), in that on or about May 11, 2009, through
16 February 4, 2010, regarding vehicles 1, 4, 5, 6, and 7, set forth in Table 1, above, he violated
17 sections of the California Code of Regulations, title 16, as follows:

18 a. **Section 3340.24, subdivision (c):** Respondent H. Villalta falsely or fraudulently
19 issued electronic certificates of compliance to vehicles 1 and 4 without performing bona fide
20 inspections of the emission control devices and systems on those vehicles as required by Health
21 and Safety Code section 44012.

22 b. **Section 3340.30, subdivision (a):** Respondent H. Villalta failed to inspect and test
23 vehicles 1, 4, 5, 6, and 7, in accordance with Health and Safety Code section 44012.

24 c. **Section 3340.42:** Respondent H. Villalta failed to conduct the required smog tests
25 and inspections on vehicles 1, 4, 5, 6, and 7, in accordance with the Bureau's specifications.

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1 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
2 Registration Number ARD 227490, issued to Heber Alexis Villalta doing business as A & E Test
3 Only;

4 2. Revoking, suspending, or placing on probation any other automotive repair dealer
5 registration issued in the name of Heber Alexis Villalta;

6 3. Revoking or suspending Smog Check Test Only Station License Number TC 227490,
7 issued to Heber Alexis Villalta doing business as A & E Test Only;

8 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
9 and Safety Code in the name of Heber Alexis Villalta, including but not limited to Advanced
10 Emission Specialist Technician License Number EA 145240, issued to Heber Alexis Villalta;

11 5. Revoking or suspending Advanced Emission Specialist Technician License Number
12 EA 155003, issued to Eddie A. Villalta, also known as Eddie Ademir Villalta Hernandez;

13 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
14 and Safety Code in the name of Eddie A. Villalta, also known as Eddie Ademir Villalta
15 Hernandez;

16 7. Ordering Heber Alexis Villalta and Eddie A. Villalta, also known as Eddie Ademir
17 Villalta Hernandez to pay the Bureau of Automotive Repair the reasonable costs of the
18 investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3; and

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

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22
23 DATED: _____

10/13/10



SHERRY MEHL

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

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