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

12 In the Matter of the Accusation Against:

Case No. *79/13-50*

13 **OXNARD SMOG TEST ONLY, INC. dba**  
14 **OXNARD SMOG TEST ONLY CENTER;**  
15 **FIDEL LOPEZ, President**  
16 **3434 S. Saviers Rd, Unit B**  
17 **Oxnard, CA 93033**

ACCUSATION  
*smog check*

18 **Automotive Repair Dealer Registration No.**  
19 **ARD 233855**  
20 **Smog Check, Test Only, Station License No.**  
21 **TC 233855**

22 And

23 **FIDEL LOPEZ**  
24 **3592 Almond Drive**  
25 **Oxnard, CA 93030**

26 **Advanced Emission Specialist Technician**  
27 **License No. EA 143295**

28 Respondents.

Complainant alleges:

**PARTIES**

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



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

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

12 7. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid  
13 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
14 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
15 temporarily or permanently.

16 8. Section 9884.9 of the Code states, in pertinent part:

17 (a) The automotive repair dealer shall give to the customer a written estimated price  
18 for labor and parts necessary for a specific job. No work shall be done and no charges shall  
19 accrue before authorization to proceed is obtained from the customer. No charge shall be  
20 made for work done or parts supplied in excess of the estimated price without the oral or  
21 written consent of the customer that shall be obtained at some time after it is determined  
22 that the estimated price is insufficient and before the work not estimated is done or the parts  
23 not estimated are supplied. Written consent or authorization for an increase in the original  
24 estimated price may be provided by electronic mail or facsimile transmission from the  
25 customer. The bureau may specify in regulation the procedures to be followed by an  
26 automotive repair dealer if an authorization or consent for an increase in the original  
27 estimated price is provided by electronic mail or facsimile transmission. If that consent is  
28 oral, the dealer shall make a notation on the work order of the date, time, name of person  
authorizing the additional repairs and telephone number called, if any, together with a  
specification of the additional parts and labor and the total additional cost, and shall do  
either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the  
work order .

(2) Upon completion of the repairs, obtain the customer's signature or initials to an  
acknowledgment of notice and consent, if there is an oral consent of the customer to  
additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

\_\_\_\_\_  
(signature or initials)"

:Nothing in this section shall be construed as requiring an automotive repair dealer to give a  
written estimated price if the dealer does not agree to perform the requested repair.

9. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid  
registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
2 temporarily or permanently.

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

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

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

10 (a) Violates any section of this chapter [the Motor Vehicle Inspection  
11 Program (Health and Saf. Code, § 44000, ct seq.))] and the regulations adopted  
12 pursuant to it, which related to the licensed activities.

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

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

17 12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
18 expiration or suspension of a license by operation of law, or by order or decision of the Director  
19 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
20 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary  
21 proceedings against the licensee, or to render a decision suspending or revoking the license.

22 13. Section 44072.8 of the Health and Safety Code states:

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

26 14. Section 118, subdivision (b) of the Code states:

27 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a  
28 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
order of a court of law, or its surrender without the written consent of the board, shall not, during  
any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
authority to institute or continue a disciplinary proceeding against the licensee upon any ground

1 provided by law or to enter an order suspending or revoking the license or otherwise taking  
2 disciplinary action against the licensee on any such ground.

3 15. Section 22 of the Code states:

4 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the  
5 administration of the provision is vested, and unless otherwise expressly provided, shall include  
6 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and  
7 'agency.'

8 "(b) Whenever the regulatory program of a board that is subject to review by the Joint  
9 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2  
10 (commencing with Section 473), is taken over by the department, that program shall be  
11 designated as a 'bureau.'"

12 16. Section 477, subdivision (b) of the Code states:

13 As used in this division:

14 "(b) 'License' includes certificate, registration or other means to engage in a  
15 business or profession regulated by this code."

#### 16 COST RECOVERY

17 17. Section 125.3 of the Code provides, in pertinent part, that the 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, with failure of the licentiate to comply subjecting the license to not being  
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
22 included in a stipulated settlement.

#### 23 UNDERCOVER OPERATION – July 25, 2012

24 18. On or about July 25, 2012, a Bureau undercover operator ("operator") drove a Bureau  
25 documented 1999 Chevrolet Malibu to Oxnard Smog Test Only Center and requested a smog  
26 inspection. The Positive Crankcase Ventilation ("PCV") components had been removed, causing  
27 the vehicle to be incapable of passing a smog inspection. The operator was not provided with a  
28 written estimate and did not sign a work order prior to the smog inspection. Respondent's smog

1 check technician performed the smog inspection and issued electronic Certificate of Compliance  
2 No. OO736571, certifying that he had tested and inspected the vehicle and that it was in  
3 compliance with applicable laws and regulations when, in fact, the vehicle could not have passed  
4 the visual portion of the smog inspection due to the fact that the PCV components had been  
5 removed from the vehicle. The operator paid Respondent \$50, and was provided with a copy of  
6 Invoice No. 25319 and a Vehicle Inspection Report.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 19. Respondent's registration is subject to discipline under Business & Professions Code  
10 section 9884.7, subdivision (a)(1), in that on or about July 25, 2012, he made statements which he  
11 knew or which by exercise of reasonable care should have known to be untrue or misleading by  
12 issuing electronic Certificate of Compliance No. OO736571 for the 1999 Chevrolet Malibu,  
13 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, it  
14 could not have passed the visual portion of the smog inspection due to the fact that the PCV  
15 components had been removed from the vehicle.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 20. Respondent's registration is subject to discipline under Business & Professions Code  
19 section 9884.7, subdivision (a)(4), in that on or about July 25, 2012, he committed acts  
20 constituting fraud by issuing electronic Certificate of Compliance No. OO736571 for the 1999  
21 Chevrolet Malibu without performing a bona fide inspection of the emission control devices and  
22 systems on the vehicle, thereby depriving the People of the State of California of the protection  
23 afforded by the Motor Vehicle Inspection Program.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Code)**

26 21. Respondent has subjected his registration to discipline pursuant to Bus & Prof Code  
27 section 9884.7, subdivision (a)(6), in that on or about July 25, 2012, Respondent failed to comply  
28 with the following section of that code:

1 a. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with a  
2 written estimated price for parts and labor for a specific job.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 22. Respondent's station license is subject to discipline pursuant to Health & Safety Code  
6 section 44072.2, subdivision (a), in that on or about July 25, 2012, regarding the 1999 Chevrolet  
7 Malibu, he failed to comply with the following sections of that Code:

8 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission  
9 control devices and systems required by law were installed and functioning correctly in  
10 accordance with test procedures.

11 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control  
12 inspections on the vehicle in accordance with procedures prescribed by the department.

13 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
14 Compliance No. OO736571 for the vehicle without properly inspecting the vehicle to determine  
15 if it was in compliance with Health & Safety Code section 44012.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Regulations)**

18 23. Respondent's station license is subject to discipline pursuant to Health & Safety Code  
19 section 44072.2, subdivision (c), in that on or about July 25, 2012, regarding the 1999 Chevrolet  
20 Malibu, he failed to comply with provisions of California Code of Regulations, title 16, as  
21 follows:

22 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
23 Compliance No. OO736571 for the vehicle even though the vehicle had not been inspected in  
24 accordance with section 3340.42.

25 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the  
26 Emissions Inspection System unit by entering "Pass" for the visual portion of the inspection  
27 when, in fact, the PCV components had been removed from the vehicle.

28

1 c. **Section 3340.42:** Respondent failed to perform an emission control inspection on the  
2 vehicle in accordance with procedures prescribed by the department.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 24. Respondent's station license is subject to discipline pursuant to Health & Safety Code  
6 section 44072.2, subdivision (d), in that on or about July 25, 2012, regarding the 1999 Chevrolet  
7 Malibu, he committed dishonest, fraudulent or deceitful acts whereby another is injured by  
8 issuing electronic Certificate of Compliance No. OO736571 for the vehicle without performing a  
9 bona fide inspection of the emission control devices and systems on the vehicle, thereby  
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
11 Inspection Program.

12 **PRIOR CITATIONS**

13 25. To determine the degree of discipline, if any, to be imposed on Respondent,  
14 Complaint alleges the following:

15 a. On or about October 6, 2010, the Bureau issued Citation No. C2011-0402 against  
16 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a  
17 visual/functional check of emission control devices according to procedures prescribed by the  
18 department), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate  
19 of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a  
20 Bureau undercover vehicle that was not in compliance with Health & Safety Code section 44012.  
21 The Bureau assessed civil penalties totaling \$1000.00 against Respondent for the violations.  
22 Respondent complied with this citation on November 8, 2010.

23 b. On or about February 28, 2011, the Bureau issued Citation No. C2011-0989 against  
24 Respondent for violating Health and Safety Code section 44012(f) (failure to determine that  
25 emission control devices and systems required by State and Federal law are installed and  
26 functioning correctly in accordance with test procedures), and California Code of Regulations,  
27 title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly  
28 tested), for issuing a certificate of compliance to a Bureau undercover vehicle that was not in

1 compliance with Health & Safety Code section 44012. The Bureau assessed civil penalties  
2 totaling \$1,500.00 against Respondent for the violations. Respondent complied with this citation  
3 on May 16, 2011.

4 c. On or about May 14, 2012, the Bureau issued Citation No. C2012-1555 against  
5 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a  
6 visual/functional check of emission control devices according to procedures prescribed by the  
7 department), for issuing a certificate of compliance to a Bureau undercover vehicle that was not  
8 in compliance with Health & Safety Code section 44012. The Bureau assessed civil penalties  
9 totaling \$1,500.00 against Respondent for the violations. Respondent complied with this citation  
10 on June 29, 2012.

11 **OTHER MATTERS**

12 26. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke,  
13 or place on probation the registrations for all places of business operated in this state by Oxnard  
14 Smog Test Only Inc., Fidel Lopez - President, upon a finding that Respondent has, or is, engaged  
15 in a course of repeated and willful violations of the laws and regulations pertaining to an  
16 automotive repair dealer.

17 27. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only  
18 Station License Number TC 233855, issued to Oxnard Smog Test Only Inc., Fidel Lopez -  
19 President, doing business as Oxnard Smog Test Only Center, is revoked or suspended, any  
20 additional license issued under this chapter in the name of said licensees may be likewise revoked  
21 or suspended by the director.

22 **PRAYER**

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

25 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
26 Registration No. ARD 233855, issued to Oxnard Smog Test Only Inc., Fidel Lopez - President,  
27 doing business as Oxnard Smog Test Only Center;

28

1           2.       Revoking, suspending, or placing on probation any other automotive repair dealer  
2 registration issued to Oxnard Smog Test Only Inc., Fidel Lopez - President;

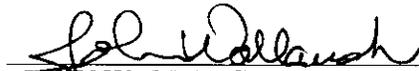
3           3.       Revoking or suspending Smog Check Test Only Station License Number TC  
4 233855, issued to Oxnard Smog Test Only Inc., Fidel Lopez - President, doing business as  
5 Oxnard Smog Test Only Center;

6           4.       Revoking or suspending any additional license issued under Chapter 5 of the  
7 Health and Safety Code in the name of Oxnard Smog Test Only Inc., Fidel Lopez – President,  
8 including, but not limited to Advanced Emission Specialist License Number EA 143295;

9           5.       Ordering Oxnard Smog Test Only Inc., Fidel Lopez - President to pay the Director  
10 of Consumer Affairs the reasonable costs of the investigation and enforcement of this case,  
11 pursuant to Code section 125.3.

12           6.       Taking such other and further action as deemed necessary and proper.  
13  
14  
15  
16

17 DATED: FEBRUARY 15, 2013

  
18 **JOHN WALLAUCH**  
19 Chief  
20 Bureau of Automotive Repair  
21 Department of Consumer Affairs  
22 State of California  
23 *Complainant*

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