

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

In the Matter of the Accusation Against:

**A AFFORDABLE SMOG TEST ONLY;
MICHAEL LUIS LEGARRETA, OWNER**
18737 Highway 18, Suite 12
Apple Valley, CA 92307

Case No. 79/11-64

OAH No. L-2011120127

Automotive Repair Dealer Registration No.
ARD 243351

Smog Check, Test Only, Station License No.
TC 243351

Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

The suspension of Automotive Repair Dealer Registration No. ARD 243351 and Smog Check, Test Only, Station License No. TC 243351 shall commence on the effective date of this Decision.

This Decision shall become effective 8/7/12.

DATED: July 18, 2012


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 TERRENCE M. MASON
Deputy Attorney General
4 State Bar No. 158935
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Attorneys for Complainant
7

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

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11 In the Matter of the Accusation Against:
12 **A AFFORDABLE SMOG TEST ONLY;**
MICHAEL LUIS LEGARRETA, OWNER
13 18737 Highway 18, Suite 12
Apple Valley, CA 92307
14
15 Automotive Repair Dealer Registration No.
ARD 243351
16 Smog Check Test Only Station License No.
TC 243351
17
18 Respondent.

Case No. 79/11-64
OAH No. L-2011120127
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He
24 brought this action solely in his official capacity and is represented in this matter by Kamala D.
25 Harris, Attorney General of the State of California, by Terrence M. Mason, Deputy Attorney
26 General.

1 represented by counsel at his own expense; the right to confront and cross-examine the witnesses
2 against him; the right to present evidence and to testify on his own behalf; the right to the
3 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
4 the right to reconsideration and court review of an adverse decision; and all other rights accorded
5 by the California Administrative Procedure Act and other applicable laws.

6 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
7 every right set forth above.

8 CULPABILITY

9 10. Respondent admits the truth of each and every charge and allegation in Second
10 Amended Accusation No. 79/11-64.

11 11. Respondent agrees that his Automotive Repair Dealer Registration and his Smog
12 Check Test Only Station License are each subject to discipline and he agrees to be bound by the
13 Director's probationary terms as set forth in the Disciplinary Order below.

14 CONTINGENCY

15 12. This stipulation shall be subject to approval by the Director of Consumer Affairs or
16 his designee. Respondent understands and agrees that counsel for Complainant and the staff of
17 the Bureau of Automotive Repair may communicate directly with the Director and staff of the
18 Department of Consumer Affairs regarding this stipulation and settlement, without notice to or
19 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
20 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director
21 considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and
22 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
23 this paragraph, it shall be inadmissible in any legal action between the parties, and the Director
24 shall not be disqualified from further action by having considered this matter.

25 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
26 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
27 effect as the originals.

28

1 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
2 Director of Consumer Affairs.

3
4 Dated: June 14, 2012 Michael L. Legarreta
5 MICHAEL LUIS LEGARRETA, Owner
6 A AFFORDABLE SMOG TEST ONLY
7 Respondent

8 **ENDORSEMENT**

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Director of Consumer Affairs.

11 Dated: June 26, 2012

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

Terrence M. Mason
TERRENCE M. MASON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 79/11-64

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9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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11 In the Matter of the Accusation Against:
12 **A AFFORDABLE SMOG TEST ONLY**
MICHAEL LUIS LEGARRETA, OWNER
13 18737 Hwy 18, Suite 12
Apple Valley, CA 92307
14 Automotive Repair Dealer Reg. No. ARD 243351
15 Smog Check Test Only Station License
No. TC 243351
16
and
17 **VINCENT ALBERT GUTIERREZ**
18 13911 Nowata Court
Apple Valley, CA 92307
19 Advanced Emission Specialist Technician License
20 No. EA 146773
21 Respondents.

Case No. 79/11-64
OAH No. L-2011120127
SECOND AMENDED
ACCUSATION
(Smog Check)

23 Complainant alleges:

24 **PARTIES**

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

27 ///

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

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

4 12. Health & Saf. Code section 44072.10 states, in pertinent part:

5

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

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

10

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

12 13. Health & Saf. Code section 44072.8 states that when a license has been revoked or
13 suspended following a hearing under this article, any additional license issued under this chapter
14 in the name of the licensee may be likewise revoked or suspended by the director.

15 14. Section 44032 of the Health and Safety Code states, in pertinent part:

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

20 **COST RECOVERY**

21 15. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
22 the administrative law judge to direct a licentiate found to have committed a violation or
23 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
24 and enforcement of the case.

25 **VIDEO SURVEILLANCE OPERATION OF APRIL 27, 2009**

26
27 16. On April 27, 2009, representatives of the Bureau conducted a video surveillance
28 operation of Respondent Legarreta's smog check facility. The surveillance video and information

1 obtained from the Bureau's vehicle information database revealed that Respondent Gutierrez
 2 issued electronic smog certificates of compliance on behalf of Respondent Legarreta, certifying
 3 that he had tested and inspected the vehicles identified below and that the vehicles were in
 4 compliance with applicable laws and regulations. In fact, Respondent conducted the inspections
 5 using clean piping methods¹, resulting in the issuance of fraudulent certificates of compliance for
 6 the vehicles. Further, the Bureau determined that the 1992 Chevrolet pickup, License #4M54754,
 7 which was used to certify two of the vehicles, was registered to Respondent Gutierrez.

No.	Time of Inspection	Vehicle Certified & License No.	Vehicle Actually Tested	Certificate No.
1	1126 - 1139	1977 Cadillac Deville; License #926SXX	1992 Chevrolet pickup; License #4M54754	VZ404943C
2	1259 - 1305	1993 Isuzu Rodeo; License #3BSL200	Same as above.	VZ404948C
3	1326 - 1337	1999 Ford F150 pickup; License #5Y31574	GMC SUV	VZ404950C
4	1344 - 1350	1996 Saturn SL; License #3PZA353	Same as above.	VZ436451C

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 17. Respondent Legarreta's automotive repair dealer registration is subject to disciplinary
 17 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made
 18 or authorized statements which he knew or in the exercise of reasonable care should have known
 19 to be untrue or misleading, as follows: Respondent Legarreta's technician, Respondent Gutierrez,
 20 certified that vehicles 1 through 4, identified in paragraph 16 above, had passed inspection and
 21 were in compliance with applicable laws and regulations. In fact, Respondent Gutierrez used
 22 clean piping methods in order to issue certificates for the vehicles and did not test or inspect the
 23 vehicles as required by Health & Saf. Code section 44012.

26 ¹ Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "clean piping" means
 27 the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS to issue a certificate of
 28 compliance for another vehicle.

1 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3
4 **UNDERCOVER OPERATION OF OCTOBER 5, 2010**

5 25. On October 5, 2010, representatives of the Bureau conducted an undercover
6 operation at Respondent Vincent Albert Gutierrez's own smog check facility named "Affordable
7 Smog Test Only" (A.R.D. Reg. No. ARD 258032, Smog Check Test Only Station License No.
8 TC 258032), located at 16095 Main Street in Hesperia, California. That station is at a different
9 location from, and is not affiliated with, A Affordable Smog Test Only. The undercover operation
10 and information obtained from the Bureau's vehicle information database revealed that
11 Respondent Gutierrez issued an electronic smog certificate of compliance to a 1997 Nissan
12 Pathfinder that had an introduced malfunction that should have failed a smog inspection, to wit,
13 ignition timing adjusted beyond specifications. Respondent Gutierrez, who was on criminal
14 probation at the time for violating Vehicle Code section 4463(a) (forgery or falsification of a
15 certificate) (San Bernardino County Superior Court Case No. FVI901447), issued a certificate of
16 compliance for the Pathfinder and certified under penalty of perjury that he had inspected the
17 vehicle in accordance with all bureau requirements and that the vehicle was in compliance with
18 applicable laws and regulations. In fact, Respondent Gutierrez failed to adjust the ignition timing
19 to within specifications and no certificate of compliance should have been issued to the
20 Pathfinder.

21 **NINTH CAUSE FOR DISCIPLINE**

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

23 26. Respondent Gutierrez has subjected his technician license to discipline under
24 Health and Safety Code section 4072.2, subdivision (a), in that on or about October 5, 2010, he
25 violated sections of that Code as follows:

26 a. **Section 44032:** Respondent Gutierrez failed to perform tests of the emission
27 control devices and systems on the 1997 Nissan Pathfinder identified in paragraph 25 above, in
28

1 accordance with section 44012.

2 **TENTH CAUSE FOR DISCIPLINE**

3 **(Failure to Comply with Regulations Pursuant**
4 **to the Motor Vehicle Inspection Program)**

5 27. Respondent Gutierrez's technician license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
7 provisions of California Code of Regulations, title 16, as follows:

8 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the 1997
9 Nissan Pathfinder identified in paragraph 25 above, in accordance with Health & Saf. Code
10 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

11 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the vehicle
12 in accordance with the Bureau's specifications.

13 **OTHER MATTERS**

14 28. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
15 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
16 business operated in this state by Respondent Michael Luis Legarreta, owner of A Affordable
17 Smog Test Only, upon a finding that said Respondent has, or is, engaged in a course of repeated
18 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

19 29. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
20 License Number TC 243351, issued to Respondent Michael Luis Legarreta, owner of A
21 Affordable Smog Test Only, is revoked or suspended, any additional license issued under this
22 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

23 30. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
24 Technician License Number EA 146773, issued to Respondent Vincent Albert Gutierrez, is
25 revoked or suspended, any additional license issued under this chapter in the name of said
26 licensee may be likewise revoked or suspended by the Director.

27
28

PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 243351, issued to Michael Luis Legarreta, owner of A Affordable Smog Test Only;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Michael Luis Legarreta;

3. Revoking or suspending Smog Check Test Only Station License Number TC 243351, issued to Michael Luis Legarreta, owner of A Affordable Smog Test Only;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Michael Luis Legarreta;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 146773, issued to Vincent Albert Gutierrez;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Vincent Albert Gutierrez;

7. Ordering Respondents Michael Luis Legarreta, owner of A Affordable Smog Test Only, and Vincent Albert Gutierrez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

Dated: June 1, 2012


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

(rev. 6/1/12)