

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

In the Matter of the Accusation Against:

**RUBIDOUX AUTO SERVICE,
RAUL H. HERNANDEZ, PARTNER
MARIA D. JACOBO, PARTNER**

Case No. 79/16-109

OAH No. 201608 193

Automotive Repair Dealer Registration
No. ARD 247614
Smog Check Test Only Station License
No. RC 247614

ADAN GOMEZ
Smog Check Inspector License No.
EO 636076

JUAN PABLO VAZQUEZ
Smog Check Inspector License No.
EO 637054

Respondents.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the following typographical errors in the Proposed Decision are corrected, as set forth below.

- 1.tttPage 8, paragraph 17, third and fourth sentences: References to "OBII"ttt are corrected to "OBDII".ttt
- 2.tttPage 9, paragraph 18, second to last sentence: Reference to "OBII" isttt corrected to "OBDII".ttt
- 3.tttPage 11, paragraph 27, second sentence: Reference to "Regulationsttt section 1042" is corrected to "section 1042 of title 1 of the California Codettt of Regulations".ttt

The technical or minor changes made above do not affect the factual or legal basis of the Proposed Decision.

This Decision shall become effective 11/29/16.

DATED: 10/19/2016



RYAN MARCROFT
Assistant Chief Counsel
Division of Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

**RUBIDOUX AUTO SERVICE,
RAUL H. HERNANDEZ, PARTNER
MARIA D. JACOBO, PARTNER**

Automotive Repair Dealer Registration
No. ARD 247614
Smog Check Test Only Station License
No. RC 247614

ADAN GOMEZ
Smog Check Inspector License
No. EO 636076

JUAN PABLO VAZQUEZ
Smog Check Inspector License
No. EO 637054

Respondents.

Case No. 79/16-109

OAH No. 2016080093

PROPOSED DECISION

This matter came on regularly for hearing on August 19 and 22, 2016, at Los Angeles, California, before Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California.

Patrick Dorais, Chief, Bureau of Automotive Repair (complainant) was represented by Deputy Attorney General T. Travis Peery who was accompanied by Alfred Denno, Program Representative II of the Bureau of Automotive Repair (Bureau).

Respondents Rubidoux Auto Service, Raul H. Hernandez (Hernandez) and Maria D. Jacobo (Jacobo) (collectively, the Rubidoux respondents), were represented by Freddy Vernon Vega, Attorney at Law. Respondents Hernandez and Jacobo were present and assisted throughout the hearing by a Spanish-language interpreter.

Respondents Adan Gomez (respondent Gomez) and Juan Pablo Vazquez (respondent Vazquez) were present and represented themselves.

Evidence was presented by way of testimony and documents, the record was closed and the matter was submitted for decision on August 22, 2016.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

Parties and Licenses Subject to Discipline

1. The Accusation was brought by complainant Patrick Dorais in his official capacity as Chief of the Bureau (Bureau), Department of Consumer Affairs. All parties were properly served with all required documents and the respondents timely filed their notices of defense contesting the Accusation.

2. Automotive Repair Dealer Registration and Smog Check Station license issued to the Rubidoux respondents. On November 9, 2006, the Bureau issued Automotive Repair Dealer (ARD) Registration Number ARD 247614 to Raul H. Hernandez and Maria D. Jacobo, partners, dba Rubidoux Auto Service. The ARD Registration is scheduled to expire on October 31, 2016. In 2006, the Bureau issued Smog Check Station License Number RC 247614 to respondents' facility. The Smog Check Station License is scheduled to expire on October 31, 2016. On June 30, 2016, an Interim Suspension Order (ISO) suspending the Rubidoux respondents' registration and license pending a final decision in this action was issued.

3. Smog Check Inspector License issued to respondent Adan Gomez. On September 26, 2013, the Bureau issued Smog Check Inspector (EO) License Number 636076 to Adan Gomez (respondent Gomez). Respondent Gomez's EO License is scheduled to expire on June 30, 2017. On June 30, 2016, an ISO suspending respondent Gomez's EO license pending a final decision in this action was issued..

4. Smog Check Inspector License issued to respondent Vazquez. On July 2, 2014, the Bureau issued EO License Number 637054 to respondent Vazquez. Respondent Vazquez's EO License is scheduled to expire on December 31, 2017. On June 30, 2016, an ISO suspending respondent Vazquez's EO license pending a final decision in this action was issued.

The smog check process

5. The Bureau is responsible for the licensure and regulation of smog check stations and smog check inspectors. California's smog check program is designed to improve

air quality and to protect the public health by reducing vehicle emissions. Air pollution harmfully impacts the public health. The Bureau plays a key role in maintaining air quality by verifying that licensees properly inspect motor vehicles. The purpose of a proper smog inspection is to determine that all required emission control devices and systems are installed and functioning properly and to detect and reduce tampering and emission control failures. This purpose is undermined by fraudulent smog inspections which place vehicles on the road that discharge noxious gasses.

6. As part of the smog test on vehicles built after 1999, the smog inspector must retrieve information from the tested vehicle's on-board computer. When that information is retrieved, it is relayed to a database maintained by the Bureau.

7. Since March 2015, the smog test process on vehicles constructed after 1999 requires the inspector to perform an On Board Diagnostics Generation Two (OBDII) functional test in which the inspector connects a Data Acquisition Device (DAD) between the vehicle's Diagnostic Link Connector (DLC), which is a plug found inside the vehicle's passenger cabin, to the Bureau's On Board Diagnostic Inspection System (BAR-OIS). The DAD is an OBDII scan tool which, when requested by the BAR-OIS software, retrieves OBDII data from the vehicle and transmits it to the Bureau's database. Some of the data retrieved includes the Vehicle Identification Number (VIN), the vehicle's communication protocol (Protocol), and the Parameter Identification Data (PID).

8. For model-year 2005 and newer vehicles and on some earlier model- years, the VIN is programed into the vehicle's OBDII system electronic control unit (ECU). The electronically programed VIN (eVIN) is captured by the BAR during a smog check inspection and under normal circumstances matches the physical VIN on the vehicle.

9. The Protocol is the language used to communicate with the vehicle's computer(s) is built into the DAD unit, and identifies five protocols used by vehicles manufactured and sold in the United States that are subject to the smog check program.

10. Parameter Identifications (PIDs) are data points reported by the vehicle's OBDII system ECU to the DAD and BAR-OIS. Examples of PIDs are engine speed/rpm, vehicle speed, engine temperature and other input/output values utilized by the OBDII system ECU. The PID count is the number of data points reported by the OBDII system, is programed during manufacture, and does not change. Each vehicle reports a specific PID count with slight variations based on whether the vehicles are equipped with automatic or manual transmissions and, on rare occasions, vehicle trim variations.

11. This dispute involves the use of "clean plugging," to inspect 14 vehicles, an illegal smog check method designed to pass vehicles which would otherwise fail properly administered legal smog checks. Clean plugging is an illegal method used by some smog check stations and smog check inspectors to issue improper/fraudulent smog check certificates of compliance. Clean plugging involves using another vehicle's properly-

functioning OBDII system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent certificates of compliance to vehicles which are not compliant and/or not present for testing. Here, clean plugging was accomplished by the use of an external device, a OBII-ECU simulator (simulator), that substituted for the vehicle's DLC, and sent pre-programmed PIDs to the DAD and BAR-OIS system, instead of the true information from the vehicle's OBII-ECU.

The 14 illegal smog checks

12. In December 2015, Mr. Denno began investigating the activities at respondents' facility by reviewing OIS test data generated by smog tests there for the period of August 26, 2015, through December 22, 2015.

13. Mr. Denno's review of respondents' facility's test data revealed that 14 vehicles of various model-years (2002 through 2008), makes (Chevrolet, Volkswagen, Kia, Suzuki, Hyundai, Chrysler, Nissan, Dodge, and Ford), and models were issued certificates of compliance. The OIS test data from the 14 vehicles were compared to OIS test data of similar vehicles of the same year, make and model that received passing smog check inspections and received smog certificates. The data comparison showed multiple discrepancies with 14 vehicles which were certified, including: all of the vehicles were missing or had incorrect eVINs; all of the vehicles had the same incorrect communication protocol (I9140808), the communication interface which is built into the PID; and all of the vehicles transmitted incorrect PID counts. All of this information demonstrated an extremely high statistical probability that the 14 vehicles receiving smog certificates were tested during the smog inspection using the clean plugging method. There was no other credible rationale for the discrepant data.

14. Eight of the 14 vehicles receiving smog certificates were inspected and passed by respondent Vazquez. The remaining six vehicles were inspected and passed by respondent Gomez.

15. The disputed smog checks are set forth in the following table which compares the OIS test data results with the expected results of similar vehicles:

//
//
//
//
//
//
//
//
//
//
//
//

	Test Date and Time (in military time hours)	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Results
15(a)	8/26/2015 1638-1642	2005 Chevrolet Aveo LS 5MSX899	PU897211C	EO637054 Vasquez	Comm. Protocol I9140808 (ex- pected KWPF) PID Count: 10 (expected 21) eVIN-Missing
15(b)	9/5/2015 1114-1124	2004 Chevrolet Express G2500 7H53668	YV102703C	EO637054 Vasquez	Comm. Protocol I9140808 (ex- pected JVPW) PID Count: 10 (expected 22) eVIN-Incorrect
15(c)	9/8/2015 1152-1200	2005 Chevrolet Impala VIN# 2G1WF52E95931 7778	YV102709C	EO637054 Vasquez	Comm. Proto- col: I9140808(expec ted JVPW PID Count: 10 (expected: 19) eVIN-Missing
15(d)	9/11/2015 1253-1309	2005 Volkswagen New Jetta 2.5 VIN # 3VWVRG71K85M61 39	YV102732C	EO637054 Vasquez	Comm. Proto- col: I9140808(expec ted KWPS) PID Count: 11 (expected 20) eVIN-Mission
14(e)	9/12/2015 0924-0931	2006 Kia Optima LX/EX 6BMD176	YV102735C	EO637054 Vasquez	Comm. Proto- col: I9140808(expec ted KWPS) PID Count: 9 (expected 17) eVIN-Missing

15(f)	9/21/2015 1630-1635	2005 Chevrolet Impala 6VDY249	PW620966C	EO637054 Vasquez	Comm. Protocol: I9140808 (expected JVPW) PID Count: 10 (expected 19) eVIN-Incorrect
15(g)	10/1/2015 1611-1615	2006 Suzuki Forenza Premium 5RMK886	PY053852C	EO637054 Vasquez	Comm. Protocol: 19140808 (expected KWPF) PID Count: 10 (expected 36) eVIN-Missing
15(h)	10/10/2015 1447-1450	2005 Hyundai Elantra GLS/GT 5NVV156	PY053895C	EO637054 Vasquez	Comm. Protocol: 19140808 (expected KWPF) PID Count: 10 (expected 17) eVIN-Missing
15(i)	11/17/2015 1550-1606	2005 Chrysler PT Cruiser GT 5PZA575	QA069204C	EO636076 Gomez	Comm. Protocol: 19140808 (expected JVPW) PID Count: 9 (expected 18) eVIN-Missing

//
//
//
//
//
//
//
//
//
//
//

15(j)	11/21/2015 0935-0948	2008 Nissan Sentra 2.0/2.0S/2.0SL 6UDR036	QA069209C	EO636076 Gomez	Comm. Proto- col: 19140808 (expected ICAN11bt5) PID Count: 17 (expected 38) eVIN-Missing
15(k)	12/1/2015 1203-1213	2002 Chevrolet C1500 Suburban 6TBU311	QA069211C	EO636076 Gomez	Comm. Proto- col: 19140808 (expected JVPW) OBDII readi- ness Monitor "K" supported PID Count: 10 (expected 22) OBDII readi- ness Monitor: "K" not supported eVIN-Missing
15(l)	12/2/2015 1040-1047	2003 Dodge Neon SE 4XXJ103	QA069212C	EO636076 Gomez	Comm. Proto- col: 19140808 (expected JVPW) OBDII readi- ness Monitor: "J" supported PID Count: 9 (expected 18) OBDII readi- ness Monitor: "J" not supported eVIN-Missing

//
//
//
//
//
//

15(m)	12/16/2015 0944-0956	2005 Ford Explorer Sport Trac 8A35260	QA069226C	EO636076 Gomez	Comm. Protocol: 19140808 (expected JPWM) PID Count: 10 (expected 22) eVIN-Missing
15(n)	12/22/2015 1036-1100	2007 Volkswagen Rabbit 5XGR415	QA069231C	EO636076 Gomez	Comm. Protocol: 19140808 (expected ICAN11bt5) PID Count: 10 (expected 40) eVIN-Missing

The weight of the evidence supports discipline

16. In this case, evidence was not obtained from an on-site undercover operation or video surveillance. Instead, evidence of clean plugging was obtained from data collected from the BAR-OIS by the Bureau and analyzed against statewide data for similar vehicles. The Bureau met its burden of proof with the persuasive and credible testimony of Mr. Denno, who oversaw the investigation, thoroughly and meticulously combed through respondents Rubidoux's smog checks, compared them against the manufacturers' specifications for the disputed vehicles and extensive statewide data of smog checks for the same vehicle brand. Mr. Denno reviewed the history of smog checks at the Rubidoux respondents and found about 1200 suspect smog check inspections. Based upon his exhaustive analysis of statewide OIS test data of similar vehicles with the same year, make and model that received passing smog check inspections and received smog certificates, and previous smog checks of the same vehicles, Mr. Denno concluded that respondents used clean plugging to pass the 14 disputed vehicles. Mr. Denno has worked for the Bureau since 2005. He has over 30 years of experience in the field of automotive repair, and is certified as an Automotive Service Excellence (ASE) Master Auto Technician. During his employment as an automotive technician from 1980 through 2005, his area of expertise was smog inspection and emissions repair.

17. Mr. Denno's testimony was supported by Bureau Air Quality Engineer, Jonathan Gee, who was one of three engineers who developed the software for the BAR-OIS system and was uniquely qualified to testify about the disputed smog checks. Mr. Gee persuasively and credibly testified about the functioning of the Bureau's BAR-OIS and how the disputed smog checks could not have resulted in a passing score without clean-plugging. According to Mr. Gee, data from a vehicle's OBII cannot be altered if the smog check is properly administered and the data obtained was consistent with clean plugging. Mr. Gee was familiar with the OBII simulator developed for clean plugging. It is a black market product manufactured in China. He had spoken to the individual who designed it. The simu-

lator can be programmed in a limited capacity, but cannot be programmed to completely replicate the data for each vehicle. An operator would have to be extremely sophisticated to program the simulator for each vehicle brand, and the simulator used here was generically programmed with default settings. For example, the PID counts are about the same. On cross-examination Mr. Gee conceded the "possibility" that a technician might not know there was a clean plugging simulator, but on further examination, it was clear that the possibility was so remote as to be speculative. For example, the Jetta DLC is purple and any smog check inspector who did frequent smog checks would recognize any errant device. According to Mr. Gee, it was not plausible that 14 random customers would come in with the same clean plugging simulator pre-installed under the dash as respondents' Gomez and Vasquez claim. The simulators cost approximately \$300.00 and are not easy to acquire.

18. Respondents were likeable individuals, but their testimony was not credible. Respondents Gomez and Vasquez claimed ignorance of the clean plugging simulator device. Respondents Gomez and Vasquez claimed that the Rubidoux respondents handled all the money and negotiations with the car owners and had an arrangement with a used car dealer to conduct smog inspections on his cars before resale. They maintained that the simulator could have been attached to the bottom of the car and they would not have detected it. Respondents Gomez and Vasquez maintained they first heard of the existence of a simulator from their attorney at the time of the ISO hearing in June 2016. Respondent Vasquez attempted to implicate the Rubidoux respondents by claiming cars he rejected as not mechanically reliable, were returned to the smog check bay after the owner visited the office. Respondent Gomez claimed he was not trained to detect a fake simulator as part of his licensing curriculum and insisted the simulators must have been attached to the vehicles in such a way as to be indistinguishable from the vehicles' legal OBII. Respondent Gomez also offered the business card of a company referred to as "mobile mechanic," not connected by any evidence to the Rubidoux respondents, which offered a variety of services, including smog checks, and proclaimed "we make it pass" (exhibit g-a).

19. Respondent Hernandez has worked fifty years as a mechanic. He employs his disabled son as a helper, but works alone and has no record of poor performance as a mechanic and has no other means of supporting himself and his family, which includes his spouse, respondent Jacobo.

20. Respondent Hernandez denied any culpability for illegal smog checks. Mr. Hernandez personally hired Gomez and Vasquez but rarely supervised their work and only occasionally entered the smog check bay to consult on mechanical issues. He denied having any arrangement with a used car business and stated that he was referred cars by a smog check inspection station that had lost its license and was no longer doing business. Respondent Hernandez offered that other smog check stations could have sent him the cars to ruin his business. Respondent Hernandez also suggested the EIS was faulty and cost him money for issuing excessive blank certificates. He denied any knowledge of illegal smog checks. He denied sending vehicles back to the smog check station after respondents Vasquez and Gomez rejected them. Mr. Hernandez's claim of innocence was

not supported by his position as an owner or the evidence, including the historical records of his smog checks which were reviewed by Messrs. Denno and Gee and revealed a pattern of erroneous smog checks.

21. Respondent Jacobo was a partner and investor, but stayed in the office and had no substantive involvement in the business; she deferred to Respondent Hernandez for all business decisions.

22. Respondents' defenses were not supported by the weight of the evidence. Mr. Gee confirmed that seven of the disputed vehicles were in the process of resale, but given the data it was improbable that each vehicle was outfitted with its own hidden simulator attached to the vehicle and in such a manner as to be undetected by a trained smog inspector. For Mr. Gee, respondents Gomez and Vasquez claim regarding the seven vehicles for resale was not credible because clean plugging was not limited to those vehicles but was also found in seven other vehicles owned by various individuals. Mr. Gee also noted that the many vehicles came to the Rubidoux respondents' facility from far away, which is unusual for a smog check facility. Mr. Gee offered that the Volkswagen's purple simulator was obvious and distinct from the illegal simulator.

23. Mr. Hernandez's defenses were equally specious. He was responsible for accepting the vehicles for inspection and he and his partner, respondent Jacobo, were responsible for processing the payments for the inspections. He was an experienced mechanic, responsible for his employees as the owner of the smog check facility. The evidence established that he came to the smog station bay to advise respondents Gomez and Vasquez about mechanical issues. His claim that the EIS was defective based upon the issuance of excessive blank certificates was disingenuous and undermined his credibility. Both Mr. Denno and Mr. Gee found a pattern of anomalous smog checks from his station consistent with clean plugging from their review of the Rubidoux respondents' smog station.

24. Respondent Hernandez attempted to defend his innocence by introducing one bank statement showing the Bureau withdrew a large amount of money for payment for the excessive number of blank certificates. In fact, the Bureau admitted it had a problem with the mistaken and excessive issuance of the forms, and reimbursed the Rubidoux respondents for overpayment. Respondent Hernandez elected not to show the bank statement showing reimbursement.

25. Overall, respondents' defenses were not supported by the Bureau's data and testimony and their claimed individual and collective ignorance was not believable.

Costs of Investigation

26. The Bureau seeks recovery of its reasonable costs of investigation and prosecution, all contained in exhibit 2 (which is admitted over objection), and summarized as follows:

A. William D. Thomas, Program Manager II of the BAR certified the Investigative Costs. Investigative services by BAR personnel, including travel, time, evidence, report writing, and clerical services, with breakdowns by hours and hourly rates by Program Representative I are for fiscal year 2015-2016, 40 hours at a rate of 70.30 per hour for a total of \$2,812.00; and Program Representative II for fiscal year 2016-2017, 16 hours at a rate of 75.30 per hour for a total of \$1,204.80. The total costs of investigation are \$4,016.80. The billing statement lacked any detail as to the tasks performed and did not identify the personnel.

B. Deputy Attorney General costs: M. Travis Peery, Deputy Attorney General, certified prosecution (or enforcement) costs through August 18, 2016. The prosecution costs do not include costs incurred after August 18, 2016. The prosecution costs included the cost of prosecuting this action, case number 2016080093, (exhibit 2, p. exhibit a), and the related Interim Suspension Order (ISO) case number 2016060371 (exhibit 2, p. exhibit b). The costs of prosecuting this action, case number 2016080093, are: 29.00 hours by Deputies Attorney General at hourly fees of \$170.00, and one hour of paralegal time at \$120 per hour. The total costs of prosecuting case number 2016060371 are \$5,050.00. The total costs of prosecuting the ISO, case number 2016060371 are: for the 2015-2016 fiscal year, 32.25 hours by Deputies Attorney General at hourly fees of \$170.00, and .50 hour of paralegal time at \$120 an hour for a total of \$5,542.50, for the 2016-2017 fiscal year (post-ISO), 2.75 hours of by Deputies Attorney General fees at hourly fees of \$170.00, and .25 hour of paralegal time at \$120 an hour for a total of \$497.50. Mr. Peery's' declaration and the billing statements attached thereto included the minimal level of detail required. Much of the attorney time in case number 2016080093 is devoted to case management and activities that do not appear distinct from the preparation required for the ISO. The total of \$497.50 billed for the ISO is not supported as a prosecution cost as the cost was incurred after the issuance of the ISO. In view of the extensive preparation for the ISO and the use of similar evidence for this action, the reasonable costs of prosecution of the ISO and the Accusation are \$7,000.

27. Respondents objected to exhibit 2 on the grounds that the costs were not supported by testimony at hearing, were not certified, were based on inadmissible hearsay and lacked foundation pursuant to Evidence Code section 1280. Respondents' objections are overruled, but consideration is given to the adequacy of the supporting records pursuant to Regulations section 1042. The total reasonable costs of prosecution are \$7,000. The investigation costs are discounted because they lack any detail. The respondents' source of income from their Bureau registration and licenses ended on June 24, 2016, when the ISO was issued. The respondents vigorously defended their licenses, but lost all their sources of income when the ISO was issued. Although respondent Hernandez has worked as a mechanic for years, and is capable of continuing to work, he has not worked since the ISO. In addition respondent Hernandez and Jacobo have incurred additional debt as a result of the ISO for business expenses which they could not offset against revenues. Absent evidence of alternative sources of income, it is uncertain whether the respondents will have any resources

to pay prosecution costs if their licenses are revoked. As such, respondents shall not be required to pay the Bureau's cost of investigation and prosecution.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. The burden of proof is preponderance of the evidence. (*See Imports Performance v. Department of Consumer Affairs, BAR of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) The testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance*, (1986) 189 Cal.App.3d 1040, 1052. Based on the persuasive testimony of Mr. Denno and Mr. Gee, and the supporting documentary evidence, the Bureau met its burden of proof as to the Rubidoux respondents, and respondents Gomez and Vazquez.

2. The Director of the Department of Consumer Affairs (Director) is authorized to suspend, revoke or otherwise discipline a licensee for all businesses or licenses registered in their name in the state and may pursue licensees regardless of whether the license is active, voluntarily surrendered, or expired. (Bus. & Prof. Code § 9884.7 (Business Code), subd. (c), and Health & Saf. Code (Health Code) §§44002, and 44072.8).

Cause for discipline of the Rubidoux respondents' ARD registration and smog check station license

3. The Rubidoux respondents are responsible for the acts of their employees under the doctrine of respondeat superior. The Rubidoux respondents have a non-delegable duty for their employees' conduct when they act under their license or through their business. (*See Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal. App.3d 793, 797-799 (citing *Ford Dealers Ass'n v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360-361 [automotive dealer has non-delegable duty to ensure salesperson does not tamper with odometers] and *Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App.2d 179 192 [licensed pharmacy responsible for wrongdoing of licensed employees]). In rare circumstances owners might be able to distance themselves from the conduct of their employees if they can demonstrate they instituted reasonable measures to prevent illegal or improper smog checks, by, *inter alia*, educating and monitoring their employees and the smog checks, taking steps to correct improper smog checks and refunding the money. (*Rob-Mac, Inc. supra*, 148 Cal. App. 3d. at pp. 798-799; citing *Ford Dealers Ass'n., supra*, 32 Cal. 3d at p. 361 & fn. 8.) The Rubidoux respondents provide no such evidence of responsible oversight. The Rubidoux respondents admitted to little oversight of respondents Gomez and Vasquez.

4. Cause exists to suspend or revoke the smog check station license of the Rubidoux respondents pursuant to Business Code section 9884.7, subdivisions (a)(1) (First

Cause for Discipline) and legal conclusion 3, for making authorized statements which they knew or in the exercise of reasonable care should have known to be untrue and misleading when they certified the 14 vehicles had passed inspection and were in compliance with applicable laws and regulations using clean plugging without testing or inspecting the 14 vehicles as required by Health Code section 44012, as set forth in factual findings 5-25.

5. Cause exists to suspend or revoke the ARD registration of the Rubidoux respondents pursuant to Business Code section 9884.7, subdivisions (a)(4) (Second Cause for Discipline) and legal conclusion 3, for committing acts which constitute fraud by issuing electronic smog certificates of compliance for the 14 vehicles set forth in factual finding 15, without performing bona fide inspections of the emission control devices and systems in those vehicles as set forth in factual findings 5-25.

6. Cause exists to suspend or revoke the smog check station license of the Rubidoux respondents pursuant to Health Code section 44072.2, subdivision (a) (Third Cause for Discipline) for Violations of the Motor Vehicle Inspection Program and Health Code section 44012 (failure to ensure emission control tests were performed according to Department procedures) and Health Code section 44015 (issuance of electronic smog certificates of compliance without proper testing and inspection of the vehicle in compliance with Health Code section 44012), and legal conclusion 3, as set forth in factual findings 5-25.

7. Cause exists to suspend or revoke the smog check station license of the Rubidoux respondents for violation of Health Code section 44072.2, subdivision (a) (Fourth Cause for Discipline), and legal conclusion 3, for failure to comply with regulations of the Motor Vehicle Inspection Program, more specifically, California Code of Regulations, title 16 (Regulations): section 3340.24, subdivision (c) (false or fraudulent issuance of electronic smog certificates without bona fide inspections of the emission control devices and systems as required by Health Code section 44012); section 3340.35, subdivision (c) (issuance of certificates of compliance even though the vehicles had not been inspected in accordance with Regulation section 3340.42); and Regulation section 3340.42, (failure to ensure smog tests were conducted in accordance with the Bureau's specifications) for the illegal smog checks of the 14 vehicles as set forth in factual findings 5-25.

8. Cause exists to suspend or revoke the Rubidoux respondents' smog check inspector license for acts constituting dishonesty, fraud or deceit pursuant to Health Code section 44072.2 subdivision (d) (Fifth Cause for Discipline), and legal conclusion 3, for committing acts involving dishonesty, fraud or deceit which injured another by depriving the public of the protections afforded by the Motor Vehicle Inspection Program, in their illegal smog checks as set forth in factual findings 5-25.

9. Based on the evidence, allowing the Rubidoux respondents to continue to engage in licensed smog check activity would endanger the public health, safety and welfare. The Rubidoux respondents, based upon their complicity with, and disregard of, the conduct of their employees, have demonstrated their disregard for the smog check laws. Further, the

public will only be adequately protected by revoking all licenses and the ARD associated with the Rubidoux respondents.

Cause for discipline of respondent Vasquez's smog check license

10. Cause exists to suspend or revoke respondent Vasquez's smog check inspector license (Sixth Cause for Discipline) 44072.2, subdivision (a), failing to perform emission control tests on eight vehicles in factual finding 15(a) through 15(h) for failing to perform emission control tests on those vehicles in accordance with Department procedures, as set forth in factual findings 5-25.

11. Cause exists to suspend or revoke respondent Vasquez's smog check license for violation of Health Code section 44072.2, subdivision (c) (Seventh Cause for Discipline), for failure to comply with regulations of the Motor Vehicle Inspection Program, more specifically, Regulations: section 3340.24, subdivision (c) (false or fraudulent issuance of electronic smog certificates without bona fide inspections of the emission control devices and systems as required by Health Code section 44012); section 3340.30, subdivision (a) (failure to test the vehicles in accordance with Health Code section 44012); and Regulation section 3340.42, (failure to ensure smog tests were conducted in accordance with the Bureau's specifications) for the illegal smog checks of eight vehicles in factual finding 15(a) through 15(h), as set forth in factual findings 5-25.

12. Cause exists to suspend or revoke respondent Vasquez's smog check inspector license pursuant to Health Code section 44072.2, subdivision (d) (Eighth Cause for Discipline) for dishonesty, fraud or deceit for issuing electronic smog certificates of compliance for the eight vehicles in factual findings 15(a) through 15(h)) without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the public of the protection of the Motor Vehicle Inspection program, as set forth in factual findings 5-25.

13. Based on the evidence, and the number of violations, the public will only be adequately protected if respondent Vasquez's smog inspection license is revoked.

Cause for discipline of respondent Gomez's smog check license

14. Cause exists to suspend or revoke respondent Gomez's smog check inspector license (Ninth Cause for Discipline) 44072.2, subdivision (a), failing to perform emission control tests on six vehicles in factual finding 15(i) through 15(n) for failing to perform emission control tests on those vehicles in accordance with Department procedures, as set forth in factual findings 5-25.

15. Cause exists to suspend or revoke respondent Gomez's smog check license for violation of Health Code section 44072.2, subdivision (c) (Tenth Cause for Discipline), for failure to comply with regulations of the Motor Vehicle Inspection Program, more

specifically, Regulations: section 3340.24, subdivision (c) (false or fraudulent issuance of electronic smog certificates without bona fide inspections of the emission control devices and systems as required by Health Code section 44012); section 3340.30, subdivision (a) (failure to test the vehicles in accordance with Health Code section 44012); and Regulation section 3340.42, (failure to ensure smog tests were conducted in accordance with the Bureau's specifications) for the illegal smog checks of six vehicles in factual finding 15(i) through 15(n), as set forth in factual findings 5-25.

16. Cause exists to suspend or revoke respondent Gomez's smog check inspector license pursuant to Health Code section 44072.2, subdivision (d) (Eleventh Cause for Discipline) for dishonesty, fraud or deceit for issuing electronic smog certificates of compliance for the six vehicles in factual findings 15(i) through 15(n) without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the public of the protection of the Motor Vehicle Inspection program, as set forth in factual findings 5-25.

17. Based on the evidence, and the number of violations, the public will only be adequately protected if respondent Gomez's smog inspection license is revoked.

Reasonable Costs of Investigation and Prosecution

18. Under Business and Professions Code section 125.3, the Bureau may request the administrative law judge to direct licensees found to have committed a violation or violations of the licensing act in question to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. An estimate may be used when the actual costs are not available. Respondents claim that the Bureau's investigative costs (exhibit 2) are insufficiently described to support reimbursement under Regulation section 1042 because the investigative costs do not specify the individual or the activity, but the total costs incurred by classification of investigator. At a minimum, absent confidentiality concerns, the individual and the activity should be at least generally described similar to the Attorney General's billing record, but no specificity was provided. As such, respondents' objection to the investigative fees is sustained.

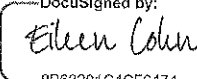
19. The Bureau is entitled to recover its reasonable costs of prosecution of this matter, including fees of the Attorney General, under the provisions of Business and Professions Code section 125.3 and Regulation section 1042. However, the holding in *Zuckerman v. State Board of Chiropractors* (2002) 29 Cal.4th 32, 45, requires the licensing agency to take into account respondents' ability to pay costs which in this action includes a consideration of the severity of the ISO which suspended respondents' licenses and registration, the below order revoking respondents' licenses and registration, and their current income, support, set forth in factual findings 26-27. Based upon a consideration of the circumstances in this action, respondents will not be required to pay the reasonable costs of prosecution as set forth in factual findings 26-27.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Automotive Repair Dealer Registration Number 247614, issued to partners Raul H. Hernandez and Maria D. Jacobo, doing business as Rubidoux Auto Service, together with all licensing rights appurtenant thereto, is revoked.
2. Smog Check Test Only Station License Number RC 247614, issued to partners Raul H. Hernandez and Maria D. Jacobo, doing business as Rubidoux Auto Service, together with any additional smog check licenses issued to either Raul H. Hernandez or Maria D. Jacobo, is revoked.
3. Smog Check Inspector License Number EO 636076, issued to Adan Gomez, together with all licensing rights appurtenant thereto, and any additional smog check licenses issued to Adan Gomez, is revoked.
4. Smog Check Inspector License Number EO 637054, issued to Juan Pablo Vazquez, together with all licensing rights appurtenant thereto, and any additional smog check licenses issued to Juan Pablo Vazquez, is revoked.

DATED: September 20, 2016

DocuSigned by:

8B63201C4CF6474...
EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 SHAWN P. COOK
Deputy Attorney General
4 State Bar No. 117851
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-9954
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**

12 In the Matter of the Accusation Against:

Case No. 79/16-109

13 **RUBIDOUX AUTO SERVICE,**
14 **RAUL H. HERNANDEZ, PARTNER,**
15 **MARIA D. JACOBO, PARTNER**
18131 Valley Blvd.
Bloomington, CA 92316

ACCUSATION

16 Automotive Repair Dealer Registration No.
ARD 247614
17 Smog Check, Station License No.
18 RC 247614

19 and

20 **ADAN GOMEZ**
9469 Grace Ave.
21 Fontana, CA 92335
Smog Check Inspector License No. EO 636076

22 and

23
24 **JUAN PABLO VAZQUEZ**
22383 Cottonwood Ave.
25 Moreno Valley, CA 92553
Smog Check Inspector License No. EO 637054

26 Respondents.
27
28

1 Complainant alleges:

2 **PARTIES**

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

5 **Rubidoux Auto Service, Raul H. Hernandez, Partner, Maria D. Jacobo, Partner**

6 **Automotive Repair Dealer Registration**

7 2. On or about November 9, 2006, the Bureau of Automotive Repair issued Automotive
8 Repair Dealer Registration Number ARD 247614 to Raul H. Hernandez and Maria D. Jacobo,
9 partners, dba Rubidoux Auto Service. The Automotive Repair Dealer Registration was in full
10 force and effect at all times relevant to the charges brought herein and will expire on October 31,
11 2016, unless renewed.

12 **Smog Check, Test Only, Station License**

13 3. In or about 2006, the Bureau of Automotive Repair issued Smog Check Station
14 License Number RC 247614 to Raul H. Hernandez and Maria D. Jacobo, partners, dba Rubidoux
15 Auto Service. The Smog Check Station License was in full force and effect at all times relevant
16 to the charges brought herein and will expire on October 31, 2016, unless renewed.

17 **Adan Gomez**

18 **Smog Check Inspector License**

19 4. On September 26, 2013, the Bureau of Automotive Repair issued Smog Check
20 Inspector (EO) License Number 636076 to Adan Gomez. The Smog Check Inspector's License
21 was in full force and effect at all times relevant to the charges brought herein and will expire on
22 June 30, 2017, unless renewed.

23 **Juan Pablo Vazquez**

24 **Smog Check Inspector License**

25 5. On July 2, 2014, the Bureau of Automotive Repair issued Smog Check Inspector
26 (EO) License Number 637054 to Juan Pablo Vazquez. The Smog Check Inspector's License was
27 in full force and effect at all times relevant to the charges brought herein and will expire on
28 December 31, 2017.

1 **JURISDICTION**

2 6. Business and Professions Code ("Code") section 9884.7 provides that the Director
3 may revoke an automotive repair dealer registration.

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

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

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

15 **STATUTORY PROVISIONS**

16 10. Section 9884.7 of the Code states:

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

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

25 ...

26 "(4) Any other conduct which constitutes fraud.

27 ...

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

5 11. Section 44012 of the Health and Safety Code states:

6 “The test at the smog check stations shall be performed in accordance with procedures
7 prescribed by the department and may require loaded mode dynamometer testing in enhanced
8 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other
9 appropriate test procedures as determined by the department in consultation with the state board.
10 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
11 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
12 no earlier than January 1, 2013. However, the department, in consultation with the state board,
13 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
14 idle testing for vehicles with onboard diagnostic systems that the department and the state board
15 determine exhibit operational problems. The department shall ensure, as appropriate to the test
16 method, the following:

17 “(a) Emission control systems required by state and federal law are reducing excess
18 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
19 Section 44013.

20 “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
21 the vehicle's emission control system.

22 “(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
23 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
24 mode are tested in accordance with procedures prescribed by the department. In determining how
25 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure
26 that the emission reduction targets for the enhanced program are met.

1 “(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
2 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
3 compound emissions, in accordance with procedures prescribed by the department.

4 “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices
5 and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
6 department, that may include, but are not limited to, onboard diagnostic testing. The test may
7 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
8 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

9 “(f) A visual or functional check is made of emission control devices specified by the
10 department, including the catalytic converter in those instances in which the department
11 determines it to be necessary to meet the findings of Section 44001. The visual or functional
12 check shall be performed in accordance with procedures prescribed by the department.

13 “(g) A determination as to whether the motor vehicle complies with the emission standards
14 for that vehicle's class and model-year as prescribed by the department.

15 “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a
16 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
17 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
18 would have passed a tailpipe test.

19 “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle
20 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
21 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the
22 vehicle from compliance with all applicable requirements of this chapter.”

23 12. Section 44015 of the Health and Safety Code states:

24 ...

25 “(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
26 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.”

27 ///

28 ///

1 13. Section 44059 of the Health and Safety Code states:

2 "The willful making of any false statement or entry with regard to a material matter in any
3 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
4 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
5 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

6 14. Section 44072.2 of the Health and Safety Code states:

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

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

13 ...

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

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

16 15. Section 44072.8 of the Health and Safety Code states:

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

20 **REGULATORY PROVISIONS**

21 16. California Code of Regulations, title 16, section 3340.24, subdivision (c) states:

22 ...

23 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a
24 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
25 certificate of noncompliance."

26 17. California Code of Regulations, title 16, section 3340.30, subdivision (a) states:

27 "A licensed smog check inspector and/or repair technician shall comply with the following
28 requirements at all times while licensed:

1 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
2 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
3 article.”

4 18. California Code of Regulations, title 16, section 3340.35, subdivision (c) states:

5 “A licensed station shall issue a certificate of compliance or noncompliance to the owner or
6 operator of any vehicle that has been inspected in accordance with the procedures specified in
7 section 3340.42 of this article and has all the required emission control equipment and devices
8 installed and functioning correctly.”

9 19. California Code of Regulations, title 16, section 3340.42, states: "Smog check
10 inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

11 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test
12 methods:

13 “(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year
14 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The
15 loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of
16 nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of
17 Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode
18 (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

19 “On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection
20 shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table
21 (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby
22 incorporated by reference. If the emissions standards for a specific vehicle are not included in
23 this table then the exhaust emissions shall be compared to the emissions standards set forth in
24 TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its
25 measured emissions are less than or equal to the applicable emission standards specified in the
26 applicable table.

27 “(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-
28 year vehicles, except diesel-powered, registered in all program areas of the state, except in those

1 areas of the state where the enhanced program has been implemented. The two-speed idle mode
2 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
3 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of
4 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall
5 be measured and compared to the emission standards set forth in this section and as shown in
6 TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are
7 less than or equal to the applicable emissions standards specified in Table III.

8 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
9 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
10 The OBD test failure criteria are specified in section 3340.42.2.

11 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
12 receive the following:

13 “(1) A visual inspection of emission control components and systems to verify the vehicle's
14 emission control systems are properly installed.

15 “(2) A functional inspection of emission control systems as specified in the Smog Check
16 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
17 operation.

18 “(c) The bureau may require any combination of the inspection methods in sections (a) and
19 (b) under any of the following circumstances:

20 “(1) Vehicles that the department randomly selects pursuant to Health and Safety Code
21 section 44014.7 as a means of identifying potential operational problems with vehicle OBD
22 systems.

23 “(2) Vehicles identified by the bureau as being operationally or physically incompatible
24 with inspection equipment.

25 “(3) Vehicles with OBD systems that have demonstrated operational problems.

26 “(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are
27 as follows:
28

1 “(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides
2 of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables
3 described in subsection (a), as applicable.

4 “(2) Vehicles with emission levels exceeding the emission standards for gross polluters
5 during an initial inspection will be considered gross polluters and the provisions pertaining to
6 gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and
7 44081 of the Health and Safety Code.

8 “(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until
9 the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle
10 included in the tables described in subsection (a), as applicable. However, the provisions
11 described in section 44017 of the Health and Safety Code may apply.

12 “(4) This subsection applies in all program areas statewide to vehicles requiring inspection
13 pursuant to sections 44005 and 44011 of the Health and Safety Code.”

14 **COST RECOVERY**

15 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
20 included in a stipulated settlement.

21 **VID DATA REVIEW**

22 21. On December 14, 2015, a Bureau Representative conducted an investigation in which
23 he reviewed On-board Diagnostic Inspection System (OIS) test data for Rubidoux Auto Service
24 Smog Check. The test data revealed anomalies consistent with fraudulent Smog Check activities.
25 A further in depth analysis of OIS test data revealed that there were a total of fourteen (14)
26 vehicles of various years, make and models that were issued 14 fraudulent Certificates of
27 Compliance by using a surrogate vehicle's properly functioning On Board Diagnostic, Generation
28 II, (OB II) system or other source to generate passing diagnostic readings for the purpose of

fraudulently issuing Smog Check certificates to vehicles that are not in smog compliance and/or not present for testing. The OIS test data from these fourteen (14) vehicles were compared to the OIS test data of similar vehicles of the same year, make and model that received passing Smog Check inspections and received smog certificates. The data comparison showed multiple discrepancies with fourteen (14) vehicles that were all certified with the e-VIN missing, incorrect vehicle communication protocols¹ and incorrect Parameter Identification (PID) count, which confirms the vehicles receiving smog certificates were fraudulently tested during the smog inspection using the clean plugging method². Table 1 illustrates the clean plugging activities at Respondent Rubidoux Auto Service between August 26, 2015 to December 22, 2015.

TABLE 1

Test Date and Time*	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details
08/26/2015 1638-1642 hours	2005 Chevrolet Aveo LS SMSX899	PU897211C	EO637054, (Respondent Vazquez	Comm. Protocol: I9140808 (expected KWPF) PID Count: 10 (expected 21) e-VIN-Missing
9/5/2015 1114-1124 hours	2004 Chevrolet Express G2500 7H53668	YV102703C	EO637054, (Respondent Vazquez	Comm. Protocol: I9140808 (expected JVPW) PID Count: 10 (expected 22) e-VIN-Incorrect

¹ Protocol is simply the language used to communicate with a vehicle's computer(s). Protocol is a communication interface. This automated determination of the communication interface, or protocol, is built into the Data Acquisition Device (DAD) unit. This automatic function identifies five (5) protocols used by vehicles manufactured and sold in the United States that are subject to the Smog Check program.

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.

Test Date and Time*	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details
9/8/2015 1152-1200 hours	2005 Chevrolet Impala VIN# 2G1WF52E959317778	YV102709C	EO637054, (Respondent Vazquez)	Comm. Protocol: I9140808 (expected) JVPW) PID Count: 10 (expected 19) e-VIN-Missing
9/11/2015 1253-1309 hours	2005 Volkswagen New Jetta 2.5 VIN# 3VWRG71K85M646139	YV102732C	EO637054, (Respondent Vazquez)	Comm. Protocol: I9140808 (expected KWPS) PID Count: 11 (expected 20) e-VIN-Missing
9/12/2015 0924-0931 hours	2006 Kia Optima LX/EX 6BMD176	YV102735C	EO637054, (Respondent Vazquez)	Comm. Protocol: I9140808 (expected KWPF) PID Count: 9 (expected 17) e-VIN-Missing
9/21/2015 1630-1635 hours	2005 Chevrolet Impala 6VDY249	PW620966C	EO637054, (Respondent Vazquez)	Comm. Protocol: I9140808 (expected JVPW) PID Count: 10 (expected 19) e-VIN-Incorrect
10/1/2015 1611-1615 hours	2006 Suzuki Forenza Premium 5RMK886	PY053852C	EO637054, (Respondent Vazquez)	Comm. Protocol: I9140808 (expected KWPF) PID Count: 10 (expected 36) e-VIN-Missing

Test Date and Time*	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details
10/10/2015 1447-1450 hours	2005 Hyundai Elantra GLS/GT 5NVV156	PY053895C	EO637054, (Respondent Vazquez)	Comm. Protocol: I9140808 (expected KWPF) PID Count: 10 (expected 17) e-VIN-Missing
11/17/2015 1550-1606 hours	2005 Chrysler PT Cruiser GT 5PZA575	QA069204C	EO636076 (Respondent Gomez)	Comm. Protocol: I9140808 (expected JVPW) PID Count: 9 (expected 18) e-VIN-Missing
11/21/2015 0935-0948 hours	2008 Nissan Sentra 2.0/2.0S/2.0SL 6UDR036	QA069209C	EO636076 (Respondent Gomez)	Comm. Protocol: I9140808 (expected ICAN11bt5) PID Count: 17 (expected 38) e-VIN-Missing
12/1/2015 1203-1213 hours	2002 Chevrolet C1500 Suburban 6TBU311	QA069211C	EO636076 (Respondent Gomez)	Comm. Protocol: I9140808 (expected JVPW) OBD II readiness Monitor: "K" supported PID Count: 10 (expected 22) OBD II readiness Monitor: "K" not supported e-VIN-Missing

Test Date and Time*	Vehicle Certified & License No.	Certificate No.	Technician License No.	OIS Test Data Details
12/2/2015 1040-1047 hours	2003 Dodge Neon SE 4XXJ103	QA069212C	EO636076 (Respondent Gomez)	Comm. Protocol: I9140808 (expected JVPW) OBD II readiness Monitor: "J" supported PID Count: 9 (expected 18) OBD II readiness Monitor: "J" not supported e-VIN-Missing
12/16/2015 0944-0956 hours	2005 Ford Explorer Sport Trac 8A35260	QA069226C	EO636076 (Respondent Gomez)	Comm. Protocol: I9140808 (expected JPWM) PID Count: 10 (expected 22) e-VIN-Missing
12/22/2015 1036-1100 hours	2007 Volkswagen Rabbit 5XGR415	QA069231C	EO636076 (Respondent Gomez)	Comm. Protocol: I9140808 (expected ICAN11bt5) PID Count: 10 (expected 40) e-VIN-Missing

* Test times are in military time.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

22. Respondent Rubidoux Auto Service 's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that between August 26, 2015 to December 22, 2015, Respondent Rubidoux Auto Service made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

Respondent Rubidoux Auto Service certified that vehicles 1 through 14, set forth above in Table 1, had passed inspection and were in compliance with applicable laws and regulations. In fact,

1 Respondent Rubidoux Auto Service conducted the inspections on the vehicles using the clean
2 plugging method by substituting or using different vehicles during the OBD II functional tests in
3 order to issue smog certificates of compliance for the 14 vehicles, and did not test or inspect the
4 14 vehicles as required by Health and Safety Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 23. Respondent Rubidoux Auto Service 's registration is subject to discipline pursuant to
8 Code section 9884.7, subdivision (a)(4), in that between August 26, 2015 to December 22, 2015,
9 Rubidoux Auto Service committed acts which constitute fraud by issuing electronic smog
10 certificates of compliance for vehicles 1 through 14, set forth above in Table 1, without
11 performing bona fide inspections of the emission control devices and systems on those vehicles,
12 thereby depriving the People of the State of California of the protection afforded by the Motor
13 Vehicle Inspection Program.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Motor Vehicle Inspection Program)**

16 24. Respondent Rubidoux Auto Service 's station license is subject to discipline pursuant
17 to Health and Safety Code section 44072.2, subdivision (a), in that between August 26, 2015 to
18 December 22, 2015, regarding vehicles 1 through 14, set forth above in Table 1, Respondent failed
19 to comply with the following sections of that Code:

20 a. **Section 44012:** Respondent Rubidoux Auto Service failed to ensure that the emission
21 control tests were performed on vehicles 1 through 14, in accordance with procedures prescribed
22 by the department.

23 b. **Section 44015:** Respondent Rubidoux Auto Service issued electronic smog certificates
24 of compliance for vehicles 1 through 14, without ensuring that the vehicles were properly tested
25 and inspected to determine if they were in compliance with Health and Safety Code section
26 44012.

1 c. **Section 44059:** Respondent Rubidoux Auto Service willfully made false entries for the
2 electronic smog certificates of compliance by certifying that those vehicles had been inspected as
3 required when, in fact, they had not.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant to the**
6 **Motor Vehicle Inspection Program)**

7 25. Respondent Rubidoux Auto Service 's station license is subject to discipline pursuant
8 to Health and Safety Code section 44072.2, subdivision (c), in that between November 9, 2015 to
9 December 22, 2015, regarding vehicles 1 through 14, set forth above in Table 1, Respondent failed
10 to comply with provisions of California Code of Regulations, title 16, as follows:

11 a. **Section 3340.24, subdivision (c):** Respondent Rubidoux Auto Service falsely or
12 fraudulently issued electronic smog certificates of compliance for those vehicles without
13 performing bona fide inspections of the emission control devices and systems on the vehicles as
14 required by Health and Safety Code section 44012.

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

18 c. **Section 3340.42:** Respondent Rubidoux Auto Service failed to conduct the required
19 smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

20 **FIFTH CAUSE FOR DISCIPLINE**

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

22 26. Respondent Rubidoux Auto Service 's station license is subject to discipline pursuant
23 to Health and Safety Code section 44072.2, subdivision (d), in that between August 26, 2015 to
24 December 22, 2015, regarding vehicles 1 through 14, set forth above in Table 1, Respondent
25 Rubidoux Auto Service committed acts involving dishonesty, fraud or deceit whereby another
26 was injured by issuing electronic smog certificates of compliance for those vehicles without
27 performing bona fide inspections of the emission control devices and systems on the vehicles,
28

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

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 27. Respondent Vazquez' Inspector License is subject to discipline pursuant to Health
6 and Safety Code section 44072.2, subdivision (a), in that between August 26, 2015 to October 10,
7 2015, regarding vehicles 1 through 8, set forth above in Table 1, he failed to comply with section
8 44012 of that Code in a material respect, as follows: Respondent Vazquez failed to perform the
9 emission control tests on those vehicles in accordance with procedures prescribed by the
10 department.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

14 28. Respondent Vazquez' Inspector License is subject to discipline pursuant to Health and
15 Safety Code section 44072.2, subdivision (c), in that between August 26, 2015 to October 10,
16 2015, regarding vehicles 1 through 8, set forth above in Table 1, he failed to comply with
17 provisions of California Code of Regulations, title 16, as follows:

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

22 b. **Section 3340.30 subdivision (a)**: Respondent Vazquez failed to inspect and test those
23 vehicles in accordance with Health and Safety Code sections 44012.

24 c. **Section 3340.42**: Respondent Vazquez failed to conduct the required smog tests and
25 inspections on those vehicles in accordance with the Bureau's specifications.
26
27
28

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 29. Respondent Vazquez' Inspector License is subject to discipline pursuant to Health
4 and Safety Code section 44072.2, subdivision (d), in that between August 26, 2015 to October 10,
5 2015, regarding vehicles 1 through 8, set forth above in Table 1, he committed acts involving
6 dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of
7 compliance without performing bona fide inspections of the emission control devices and systems
8 on those vehicles, thereby depriving the People of the State of California of the protection
9 afforded by the Motor Vehicle Inspection Program.

10 **NINTH CAUSE FOR DISCIPLINE**

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

12 30. Respondent Gomez' Inspector License is subject to discipline pursuant to Health and
13 Safety Code section 44072.2, subdivision (a), in that between November 17, 2015 to December 22,
14 2015, regarding vehicles 9 through 14, set forth above in Table 1, he failed to comply with section
15 44012 of that Code in a material respect, as follows: Respondent Gomez failed to perform the
16 emission control tests on those vehicles in accordance with procedures prescribed by the
17 department.

18 **TENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Regulations Pursuant to the**
20 **Motor Vehicle Inspection Program)**

21 31. Respondent Gomez' Inspector License is subject to discipline pursuant to Health and
22 Safety Code section 44072.2, subdivision (c), in that between November 17, 2015 to December
23 22, 2015, regarding vehicles 9 through 14,, set forth above in Table 1, he failed to comply with
24 provisions of California Code of Regulations, title 16, as follows:

25 a. **Section 3340.24, subdivision (c)**: Respondent Gomez falsely or fraudulently issued
26 electronic smog certificates of compliance without performing bona fide inspections of the
27 emission control devices and systems on those vehicles as required by Health and Safety Code
28 section 44012.

1 b. Section 3340.30 subdivision (a): Respondent Gomez failed to inspect and test those
2 vehicles in accordance with Health and Safety Code sections 44012.

3 c. Section 3340.42: Respondent Gomez failed to conduct the required smog tests and
4 inspections on those vehicles in accordance with the Bureau's specifications.

5 **ELEVENTH CAUSE FOR DISCIPLINE**

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

7 32. Respondent Gomez' Inspector License is subject to discipline pursuant to Health and
8 Safety Code section 44072.2, subdivision (d), in that between November 17, 2015 to December 22,
9 2015, regarding vehicles 9 through 14, set forth above in Table 1, he committed acts involving
10 dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of
11 compliance without performing bona fide inspections of the emission control devices and systems
12 on those vehicles, thereby depriving the People of the State of California of the protection
13 afforded by the Motor Vehicle Inspection Program.

14 **OTHER MATTERS**

15 33. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke,
16 or place on probation the registrations for all places of business operated in this state by Raul H.
17 Hernandez and Maria D. Jacobo, partners, dba Rubidoux Auto Service, upon a finding that they
18 have or are engaged in a course of repeated and willful violation of the laws and regulations
19 pertaining to an automotive repair dealer.

20 34. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License
21 No. RC 247614, issued to Rubidoux Auto Service, Raul H. Hernandez and Maria D. Jacobo,
22 partners, is revoked or suspended, any additional license issued under this chapter in the name of
23 said licensee may be likewise revoked or suspended by the director.

24 35. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
25 License No. EO 636076, issued to Adan Gomez, is revoked or suspended, any additional license
26 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
27 the director.
28

36. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector License No. EO 637054, issued to Juan Pablo Vazquez, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

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. Revoking or suspending Automotive Repair Dealer Registration Number ARD 247614, issued to Raul H. Hernandez and Maria D. Jacobo, partners, dba Rubidoux Auto Service;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration, issued to Raul H. Hernandez and Maria D. Jacobo, partners, dba Rubidoux Auto Service;

3. Revoking or suspending Smog Check Station License Number RC 247614, issued to Raul H. Hernandez and Maria D. Jacobo, partners, dba Rubidoux Auto Service;

4. Revoking or suspending Smog Check Inspector License Number EO 636076, issued to Adan Gomez;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Adan Gomez;

6. Revoking or suspending Smog Check Inspector License Number EO 637054, issued to Juan Pablo Vazquez;

7. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Adan Gomez;

///

///

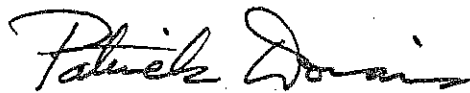
///

1 8. Ordering Raul H. Hernandez and Maria D. Jacobo, partners, Adan Gomez and Juan
2 Pablo Vazquez to pay the Bureau of Automotive Repair the reasonable costs of the investigation
3 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

4 9. Taking such other and further action as deemed necessary and proper.

5
6 DATED:

July 14, 2016



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

7
8
9
10 LA2016601207
52153939.doc