

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

In the Matter of the Second Amended  
Accusation Against:

A AFFORDABLE SMOG TEST ONLY  
MICHAEL LUIS LEGARRETA, OWNER  
Automotive Repair Dealer Registration number  
ARD 243351, Smog Check Test Only Station  
License number TC243351

and

VINCENT ALBERT GUTIERREZ  
Advanced Emission Specialist Technician  
License No. EA 146773

Respondents.

Case No. 79/11-64

OAH No. 2011120127

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 10/11/12.

IT IS SO ORDERED September 4, 2012.

ref

  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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DEPARTMENT OF CONSUMER AFFAIRS  
FOR THE BUREAU OF AUTOMOTIVE REPAIR  
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Accusation Against:

A AFFORDABLE SMOG TEST ONLY  
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and

VINCENT ALBERT GUTIERREZ  
Advanced Emission Specialist Technician  
License No. EA 146773

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**PROPOSED DECISION**

The hearing in the above-captioned matter took place on June 5, 2012, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Complainant was represented by Terrence M. Mason, Deputy Attorney General. Respondent Michael Legarretta appeared and represented himself. Respondent Vincent Gutierrez was represented by William D. Ferreira.

At the outset of the hearing, Complainant's attorney announced that a settlement had been reached with Respondent Legarretta, and a stipulation to that effect was placed on the record, which included the terms of an order to issue separately from the Bureau of Automotive Repair (Bureau). Therefore, no findings or orders will be made herein regarding Respondent Legarretta, except as necessary to provide context to findings pertaining to Respondent Gutierrez.

Before turning to the case against Respondent Gutierrez, Complainant's counsel gave notice that Complainant had filed a Second Amended Accusation, which contained amendments to correct typographical errors, and amendments to establish the renewal dates

of Respondent Legarreta's licenses. There was no objection to the filing of the Second Amended Accusation.

Respondent Gutierrez stipulated to the truth of the main factual allegations against him, intending to rely on legal defenses asserted in his trial brief. Complainant was therefore given time to file a brief on the issues raised by Gutierrez, and the record was held open until June 26, 2012 for Mr. Mason to submit a brief. That brief was timely received, and is identified as Exhibit 9. The matter was deemed submitted on June 26, 2012.

Based on the stipulation and other evidence received, as well as the parties' briefs, the ALJ makes the following factual findings, legal conclusions, and orders.

## FACTUAL FINDINGS

### *The Parties and Jurisdiction*

1. Sherry Mehl (Mehl) filed the initial Accusation and First Amended Accusation in the above-captioned matter while acting in her official capacity as the Chief of the Bureau. Thereafter, John Wallauch succeeded Ms. Mehl as Chief of the Bureau, and he caused the Second Amended Accusation to be filed and maintained while acting in his official capacity.

2. Respondent Vincent Albert Gutierrez (Gutierrez)<sup>1</sup> is licensed as an Advanced Emission Specialist Technician, holding license number EA 146773, and he has been so licensed since 2003. His license will expire in November 2012 unless renewed. After receiving the Accusation, Gutierrez filed a Notice of Defense, requesting a hearing, and this matter ensued.

3. During April 2009, Respondent Gutierrez was employed by Respondent Legarreta at the latter's Smog Check Only Station, A Affordable Smog Test Only. Thereafter, as detailed below, Gutierrez opened his own smog check station.

### *The Clean Piping Incident*

4. On April 27, 2009, representatives of the Bureau conducted surveillance of the smog test business at Legarreta's facility. In the course of that investigation, it was established that Respondent, while acting as the smog check technician, purported to test four vehicles, did so through illegal and dishonest means, and then issued a false certificate of compliance for each of those four vehicles.<sup>2</sup> In each of the four cases, Gutierrez used

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<sup>1</sup> In light of Legarreta's settlement, all further references to "Respondent" shall be to Gutierrez, unless otherwise noted.

<sup>2</sup> The four vehicles tested and receiving false certificates were a 1977 Cadillac, certificate of compliance number VZ404943C; a 1993 Isuzu, certificate of compliance

clean piping methods; that is, he used and tested exhaust samples generated by a vehicle other than the one ostensibly tested, in order to assure that the emissions data entered into the testing equipment would be within acceptable levels. In connection with the tests conducted on two of the four vehicles, Gutierrez used his own pick-up truck to generate the exhaust sample.

#### *Respondent's Criminal Conviction*

5. Thereafter, Respondent was prosecuted in the Superior Court of California, County of San Bernardino, and convicted of one count of violating Vehicle Code section 4462, subdivision (a), forgery or falsification of a certificate. His conviction was entered on or about October 26, 2009, as a misdemeanor following his plea of nolo contendere in case number FVI 901447. Respondent was placed on probation for three years, and ordered to pay fines, penalties, and assessments of approximately \$1,500. One of the terms and conditions of his probation was that he comply with all reasonable directives of the Bureau.

6. In the course of the criminal proceeding against Respondent, Mr. Mason appeared before the Superior Court on behalf of Ms. Mehl, seeking restrictions upon Respondent's licensed activities pending the outcome of the criminal prosecution. Ms. Mehl sought those restrictions pursuant to section 23 of the Penal Code.

7. The court granted the request and barred Gutierrez from acting as a smog check technician. The restriction, imposed on or about September 10, 2009, was lifted when Respondent entered his plea and was convicted in October 2009.

#### *The October 2010 Inspection*

8. In October 2010, Gutierrez was operating his own smog test facility, known as Affordable Smog Test Only, in Hesperia, California. He did so pursuant to Smog Check Test Only Station license number TC 258032, and Automotive Repair Dealer (ARD) registration number 258032. Respondent conducted tests at his facility with his own technician's license. At that time, Respondent was on criminal probation.

9. On October 5, 2010, the Bureau conducted an undercover operation against Respondent at his facility, by sending a 1997 Nissan Pathfinder to the facility to obtain a smog check. That vehicle was modified by Bureau technicians so that its timing was not correctly set. Respondent failed to detect that problem, and he failed to adjust the timing. He then issued a certificate of compliance for the Nissan Pathfinder, certifying that he had checked the timing and that it was within manufacturer's specifications. He therefore issued a false and inaccurate certificate of compliance.

#### *The Bureau's Costs*

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number VZ404984C; a 1999 Ford pick-up, certificate of compliance number VZ404950C; and a 1996 Saturn, certificate of compliance number VZ43651C.

10. The Bureau incurred costs of investigation and prosecution in connection with this case, which costs total \$17,523.21. As part of his agreement with the Bureau, Legarreta has agreed to pay costs in the sum of \$8,761 over a two-year period. That would leave a balance of \$8,762.21 on the total cost claim, a reasonable amount for Respondent to pay.

## LEGAL CONCLUSIONS

### *Jurisdiction*

1. Jurisdiction was established to proceed in this matter, pursuant to sections 9884.7 and 9884.13 of the Business and Professions Code, and sections 44002, 44072.2, 44072.6, and 44072.8 of the Health and Safety Code, based on Factual Findings 1 and 2.

### *Respondent's Defenses*

2. Respondent asserts several legal theories as a bar to the disciplinary action that Complainant seeks. First, he asserts that the Bureau is estopped to go forward in this proceeding in light of the Bureau's involvement with the criminal proceeding. Respondent also asserts laches as a defense. Finally, he asserts that the Bureau should follow the usual disciplinary steps in response to the October 2010 incident. As discussed below, the Bureau is not barred from proceeding in this matter.

3. (A) Respondent asserts that the related theories of res judicata or collateral estoppel apply in this case to bar the Bureau from pursuing discipline against Respondent's licenses. Respondent asserts that under the broader concept of res judicata, the judgment of the Superior Court bars this administrative litigation. He further argues that collateral estoppel bars litigation of issues presented in this case. Respondent is incorrect on both counts.

(B) As noted by the Supreme Court in *People v. Sims*,

Collateral estoppel is a "secondary aspect" of the res judicata doctrine. (*Clark v. Leshner, supra*, 46 Cal.2d at p. 880.) In its primary aspect, res judicata operates as a bar to the maintenance of a second suit between the same parties or parties in privity with them on the same cause of action. (*Ibid.*; *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd., supra*, 58 Cal.2d at p. 604.) The court decisions and legal commentators often do not distinguish between the two aspects of the doctrine and refer generally to "res judicata" when discussing whether determinations of administrative agencies may be binding in subsequent proceedings.

(32 Cal.3d 468, 477, fn. 6.)

(C) If anything, the judgment entered against Respondent in the Superior Court provides collateral estoppel not as a shield for Respondent, but as a sword for the Bureau, so it can establish Respondent's culpability in this proceeding, at least as to part of the clean piping charge. That is, in the Superior Court Respondent was convicted for issuing a false and fraudulent document, which document pertained to his occupation of smog testing vehicles. Thus, this case is akin to the outcome in the case of *Imen v. Glassford* (1988) 201 Cal.App.3d 898. In that case a real estate licensee was found to have engaged in fraudulent behavior when the Department of Real Estate brought an administrative proceeding to discipline his license. The Superior Court, in a subsequent civil case for fraud against the real estate licensee, used the administrative decision to establish that the licensee/defendant had engaged in fraud in connection with the underlying real estate transaction, making him liable for damages.

(D) It must be noted that the issues in the two cases—the criminal proceeding and this one—were different. In the criminal case, Respondent was prosecuted for violating section 4463, subdivision (a) of the Vehicle Code. Violation of that statute is not asserted in the present action, which pertains to violations of various provisions of the Business and Professions Code, and of the Health and Safety Code. While there is an overlap in the charges—he is accused of issuing a false certificate in either case—the pending action also asserts improper test methods, the failure to inspect, entry of false information into the EIS system, and failure to comply with various statutes and regulations. From that point of view, there is not a unity of issues in the two cases, a required element of collateral estoppel. (*People v. Sims* (1982) 32 Cal.3d 468, 484.)

(E) The cases cited by Complainant, which focus on the differing remedies that are available in the two tribunals—the administrative tribunal and the civil courts—are apposite in this case. The purpose of the criminal courts is to adjudicate claims of criminal activity and to punish those who engage in it. The Superior Court did that in this case. It is also well settled that the purpose of hearings of this type is not to punish an errant licensee, but to protect the public from the dishonest and incompetent. (E.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) That is the task assigned to the Bureau by the Legislature, and it may carry that task out through this proceeding, but it is not barred from notifying local prosecutors that a licensee's misconduct has risen to the level of a crime. If the Bureau may bring an administrative action against a smog check licensee, and if a district attorney may bring a civil action for unfair business practices against a licensee for the same misconduct, it follows that the district attorney may bring a criminal proceeding to punish a violation of the Vehicle Code

(F) The appearance by Ms. Mehl in the criminal proceeding, through Mr. Mason and pursuant to Penal Code section 23, did not make Ms. Mehl and the Bureau parties to the criminal proceeding. While the parties have argued over whether or not Mr. Mason made a motion in the criminal court, Ms. Mehl did not become the prosecutor, and Mr. Mason did not take over the case from the San Bernardino District Attorney. At bottom, a recommendation was made to the court by a third party who, by statute, is given standing to make such recommendations.

(G) In this latter regard, the statutory schemes indicate that the Legislature did not intend that a criminal case would, through *res judicata*, bar an agency from pursuing an administrative license discipline action. Nor can it be discerned that the Legislature intended that an agency's recommendation, submitted to the courts under Penal Code section 23, would deprive the agency of the right to discipline a license, one of a licensing agency's core functions. Indeed, the Business and Professions Code is rife with provisions allowing an agency to discipline a license if the license holder has been convicted of a crime. (E.g., Bus. & Prof. Code, §§ 490, 2236 [physicians and surgeons], 10177, subd.(b) [real estate brokers and agents].)<sup>3</sup>

4. (A) Respondent asserts that Complainant is estopped based on the theory of laches. Aside from the fact that laches is not a species of estoppel, the defense will not lie in this case.

(B) First of all, it should be noted that the Bureau has three years to bring an action of this sort. Section 9889.8 of the Business and Professions Code provides a three year statute of limitations for actions against an ARD; the three year period runs from the date of the act or omission unless the matter involves dishonesty or fraud, in which case the Bureau has two years after discovery of the wrong to proceed. Health and Safety Code section 44072.7 uses virtually identical language, again, providing three years to bring an action against a smog test station or emission technician license, excepting the Director has two years to bring an action for dishonesty and deceit, that term to begin running on discovery of the wrongdoing. Here, the initial accusation was filed by Ms. Mehl on January 31, 2011, less than two years after Respondent's clean piping, and some 15 months after the criminal conviction entered. An action, brought within an applicable statute of limitations, should not be barred by laches. (See *Lam v. Bureau of Sec. & Investigative Servs.* (1995) 34 Cal.App.4th 29, 36.) (Hereafter *Lam.*)

(C) Even if the statutes of limitations are not controlling, Respondent, who would bear the burden of establishing laches, must establish prejudicial delay. (*Lam, supra*, 34 Cal.App.4th 38-39.) There was no evidence of a prejudicial delay, only the assertions of Respondent's counsel in his brief, which arguments are not evidence, and can not prove laches.

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<sup>3</sup> Indeed, it appears that the Bureau could proceed against Respondent's ARD and Smog Check Station licenses pursuant to Business and Professions Code sections 490 and 9889.8, subdivision (b), based on his conviction.

(D) Finally, Respondent's stipulation that he clean piped in 2009 tends to waive such a defense, especially where Complainant stood ready, at the outset of the proceeding, to present documentary and testimonial evidence regarding the Respondent's misconduct.

5. The Bureau is not obligated to follow its usual practices of issuing several citations before bringing an accusation. Respondent has cited no hard and fast rule on the point. While progressive discipline is a worthy goal for any licensing agency, the particular facts and circumstances of a case may auger for a different approach so that the public welfare is protected. In this case, the Respondent is not a technician who misread a vehicle's ignition timing by failing to bypass the computer, or who made some other remediable mistake. Instead, he defrauded the system by clean piping, and then he failed to perform a step in the testing process while under the compulsion of criminal probation to comply with applicable laws and regulations. The Bureau is not obligated to give him more chances to learn how to discharge his duties when his basic honesty and integrity have been found wanting.

6. Cause exists to discipline the advanced emission specialist technician's license issued to Respondent Gutierrez pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on April 27, 2009, he failed to comply with provisions of the Health and Safety Code which regulate the testing of emission control systems, including sections 44012, subdivisions (a) and (f); and section 44059 of that Code, based on Factual Finding 4.

7. Cause exists to discipline the advanced emission specialist technician's license issued to Respondent Gutierrez pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on April 27, 2009, he violated and failed to comply with the following provisions of title 16 of the California Code of Regulations: 3340.24, subdivision (c); 3340.30, subdivision (a); 3340.41, subdivision (c); and 3340.42. This Conclusion is based on Factual Finding 4.

8. Cause exists to discipline the advanced emission specialist technician's license held by Respondent Gutierrez pursuant to Health and Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud, and deceit in clean piping vehicles and issuing fraudulent certificates of compliance for such vehicles on April 27, 2009, based on Factual Finding 4.

9. Cause exists to discipline the advanced emission specialist technician's license issued to Respondent Gutierrez pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on October 5, 2010, he failed to comply with Health and Safety Code section 44032, based on Factual Findings 8 and 9.

10. Cause exists to discipline the advanced emission specialist technician's license issued to Respondent Gutierrez pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on October 5, 2010, he violated and failed to comply with the following provisions of title 16 of the California Code of Regulations: 3340.30, subdivision (a), and, 3340.42. This Conclusion is based on Factual Findings 8 and 9.

11. The Bureau is entitled to recover its costs of investigation and prosecution pursuant to Business and Professions Code section 125.3, based on Legal Conclusions 1 through 10. The reasonable amount of those costs owing by Guterrez is \$8,762.21, based on Factual Finding 10.

12. Respondent has provided no evidence in mitigation or extenuation. Likewise, he has failed to provide any evidence of rehabilitation. He remains on criminal probation, and could not comply with one the terms of that probation, as noted in Legal Conclusion 5. He clean piped vehicles in gross dereliction of his duties, fraudulent and deceitful acts of moral turpitude. In these circumstances, his technician's license should be revoked.

13. Cause exists to discipline the other licenses held by Respondent Gutierrez, that is, his Automotive Repair Dealer Registration and his Smog Check Test Only Station license, pursuant to Health and Safety Code section 44072.8, based on Legal Conclusions 1 through 10, and 12, and their factual predicates.

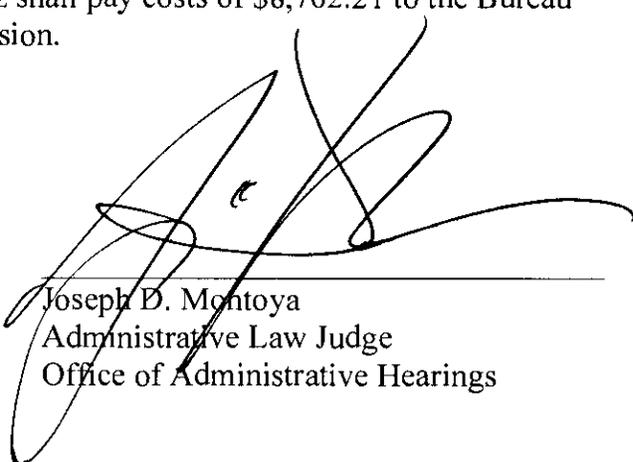
### ORDER

1. The Advanced Emmision Specialist Technician License, number EA 146773, held by Respondent Vincent Albert Gutierrez, is hereby revoked.

2. The Automobile Repair Dealer Registration, number ARD 258032, and the Smog Check Test Only Station license, number TC 258032, held by Respondent Vincent Albert Gutierrez, are hereby revoked.

3. Respondent Vincent Albert Gutierrez shall pay costs of \$8,762.21 to the Bureau within 30 days of the effective date of this decision.

July 25, 2012



Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

12 **A AFFORDABLE SMOG TEST ONLY**  
13 **MICHAEL LUIS LEGARRETA, OWNER**  
18737 Hwy 18, Suite 12  
14 Apple Valley, CA 92307  
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)

22  
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.

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28





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  
8 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of  
the following:

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

10 . . . .  
11 (4) Intentional or willful violation of this chapter or any regulation,  
12 standard, or procedure of the department implementing this chapter . . .

13 13. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
14 suspended following a hearing under this article, any additional license issued under this chapter  
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  
19 is performed at a licensed smog check station. Qualified technicians shall perform  
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 licensee 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  
26 **VIDEO SURVEILLANCE OPERATION OF APRIL 27, 2009**

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 methods<sup>1</sup>, 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.

24  
 25  
 26 <sup>1</sup> 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.

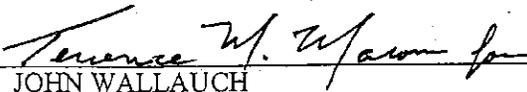
23 30. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist  
24 Technician License Number EA 146773, issued to Respondent Vincent Albert Gutierrez, is  
25 revoked or suspended, any additional license issued under this chapter in the name of said  
26 licensee may be likewise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

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)