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

11
12 In the Matter of the Accusation Against:
13 **OTAY MESA TEST ONLY,**
VICTOR HUGO LOPEZ, OWNER
14 **6950 Camino Maquiladora, Unit A**
San Diego, CA 92154
15
16 **Automotive Repair Dealer Registration No.**
ARD 260863
17 **Smog Check - Test Only Station License No.**
TC 260863
18 **MIGUEL A. OCHOA, ADVANCED**
EMISSION SPECIALIST TECHNICIAN
19 **4049 West Point Loma Boulevard**
San Diego, CA 92110
20
21 **Advanced Emission Specialist Technician**
License No. EA 142967 (to be redesignated
22 **upon renewal as EO 142967 and/or**
EI142967),
23
24 Respondents.

Case No. **79/14-61**
OAH No. 2013100828
ACCUSATION

25 Complainant alleges:

26 **PARTIES**

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

1 12. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
2 "bureau," "commission," "committee," "department," "division," "examining committee,"
3 "program," and "agency." "License" includes certificate, registration or other means to engage in
4 a business or profession regulated by the Bus. & Prof. Code.

5 13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

12

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

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

17

18 14. Health & Saf. Code section 44072.8 states:

19 "When a license has been revoked or suspended following a hearing under this article, any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

22 15. Health & Saf. Code section 44072.10 states, in pertinent part:

23

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

28

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

 16. Health & Saf. Code section 44012 provides, in pertinent part, that the test at the smog
check station shall be performed in accordance with procedures prescribed by the department,
pursuant to Section 44013.

1 17. Health & Saf. Code section 44037 states, in pertinent part:

2 “....

3 “Qualified technicians shall perform tests of emission control devices and systems in
4 accordance with Section 44012.”

5 **REGULATORY PROVISIONS**

6 18. California Code of Regulations, title 16, section 3340.24 (c), states:

7 “(c) The bureau may suspend or revoke the license of or pursue other legal action against a
8 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
9 certificate of noncompliance.”

10 19. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

11 “A smog check technician shall comply with the following requirements at all times while
12 licensed.

13 “(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
14 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
15 3340.42 of this article.

16 “....”

17 20. California Code of Regulations, title 16, section 3340.35, provides, in pertinent part,
18 that a licensed station shall issue a certificate of compliance . . . to the owner or operator of any
19 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
20 this article and has all the required emission control equipment and devices installed and
21 functioning correctly.

22 21. California Code of Regulations, title 16, section 3340.41 (c), states:

23 “No person shall enter into the emissions inspection system any vehicle identification
24 information or emission control system identification data for any vehicle other than the one
25 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
26 information about the vehicle being tested.”

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1 26. Vehicles 3 and 4, set forth in Table 1, below, were certified with the same pending
2 code P0325 stored in the PCM memory, while the original equipment manufacturer (OEM)
3 service information shows these vehicles did not support the P0325 code. The only conclusion is
4 that vehicles 3 and 4 received smog certificates without an OBD II functional test and instead
5 another “clean” vehicle was used, which constitutes clean-plugging.

6 27. Vehicles 5 and 6, set forth in Table 1, below, were certified with pending code P0101
7 stored in the PCM memory, while the original equipment manufacturer (OEM) service
8 information shows these vehicles did not support the P0101 code. The only conclusion is that
9 vehicles 5 and 6 received smog certificates without an OBD II functional test and instead another
10 “clean” vehicle was used, which constitutes clean-plugging.

11 28. Vehicle 7, set forth in Table 1, below, was certified with pending code P1457 stored
12 in the PCM memory, while the original equipment manufacturer (OEM) service information
13 shows that vehicle 7 does not support the P1457 code. The only conclusion is that vehicle 7
14 received a smog certificate without an OBD II functional test and instead another “clean” vehicle
15 was used, which constitutes clean-plugging.

16 29. Vehicle 8, set forth in Table 1, below, was certified with pending code P1456 stored
17 in the PCM memory, while the original equipment manufacturer (OEM) service information
18 shows that vehicle 8 does not support the P1456 code. The only conclusion is that vehicle 8
19 received a smog certificate without an OBD II functional test and instead another “clean” vehicle
20 was used, which constitutes clean-plugging.

21 30. Vehicle 9, set forth in Table 1, below, was certified with pending codes P1128 and
22 P0734 stored in the PCM memory, while the original equipment manufacturer (OEM) service
23 information shows that vehicle 9 does not support either P1128 or P0734 code. The only
24 conclusion is that vehicle 9 received a smog certificate without an OBD II functional test and
25 instead another “clean” vehicle was used, which constitutes clean-plugging.

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27 _____
28 (...continued)
component failure.

31. All of the fraudulent inspections set forth in Table 1 below were performed under Respondent Ochoa's license number.

TABLE 1

Date & Time of Inspection	Vehicle and Vin Number.	Certificate No.	Unsupported Fault Code
1. 4/15/2013 13:31 – 13:49 hours	2004 Toyota RAV 4, JTEGD20V740035906	XT298288C	P1545
2. 4/17/2013 13:39 – 13:51 hours	2000 Volvo S80, YV1TS90D3Y1098780	XT386610C	P1545
3. 5/08/2013 16:01 – 16:14 hours	2002 Mazda MPV, JM3LW28A220315784	XT700784C	P0325
4. 5/23/2013 17:33 – 17:48 hours	2001 PT Cruiser, 3C8FY4BB51T547261	XT958740C	P0325
5. 6/04/2013 09:11 – 09:30 hours	1999 Dodge Ram 1500, 2B7HB11Y9XK534260	XV177938C	P0101
6. 6/10/2013 14:23 – 14:37 hours	1999 Jeep Wrangler, 1J4FY49S4XP430723	XV272446C	P0101
7. 6/21/2013 17:24 – 17:36 hours	2003 Toyota Corolla, 1JTDBR32E932001424	XV555117C	P1457
8. 6/27/2013 12:57 – 13:15 hours	2003 Toyota Corolla, 1NXBR32E33Z062638	XV654476C	P1456
9. 9/17/2013 16:20 – 16:29 hours	2007 Nissan Altima, 1N4AL21E07N435086	XX978042C	P1128 and P0734

32. BAR also conducted a detailed review of the VID data for all smog check inspections requiring the OBD II functional test performed at Respondent Otay Mesa Test Only for the period from September 9, 2013 through October 24, 2013. That review showed a pattern of the same repeating OBD II code stored in the power train control module (PCM) memory of different inspected and certified vehicles.

33. BAR examined, in detail, four different vehicles with the identical PCM code and it was determined that none of them supported the OBD II code reported. Vehicles 10 through 13, set forth in Table 2, below, were certified with the same pending code P0441 code stored in the PCM memory, while the original equipment manufacturer (OEM) service information shows these vehicles did not support the P0441 code. The only conclusion is that vehicles 10 through 13 received smog certificates without an OBD II functional test and instead another "clean" vehicle was used, which constitutes clean-plugging.

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TABLE 2

Date & Time of Inspection	Vehicle and Vin Number.	Certificate No.	Unsupported Fault Code
10. 10/24/2013 14:34 – 14:41 hours	2005 Buick Century, 2G4WS52J951101231	XZ656293C	P0441
11. 10/24/2013 14:46 – 14:56 hours	2004 Saturn Vue AWD, 5GZCZ53464S878801	XZ656294C	P0441
12. 10/24/2013 15:21 – 15:29 hours	2001 MAZDA B3000 Super Cab, 4F4YR16U61TM01889	XZ656296C	P0441
13. 10/24/2013 17:12 – 17:24 hours	1999 Mercury Cougar, 1ZWFT61LXX5640560	XZ656300C	P0441

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

34. Respondent's Lopez's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent 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 certified that vehicles 1 through 13, identified in Tables 1 and 2 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not actually test or inspect the vehicles as required by Health & Saf. Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

35. Respondent Lopez's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 13, identified in Tables 1 and 2 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violations of Motor Vehicle Inspection Program)**

3 36. Respondent Lopez's Smog Check Test Only Station License is subject to disciplinary
4 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
5 to comply with the following sections of that Code:

6 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
7 devices and systems required by law for vehicles 1 through 13, identified in Tables 1 and 2 above,
8 were installed and functioning correctly in accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the emission
10 control tests were performed on vehicles 1 through 13, identified in Tables 1 and 2 above, in
11 accordance with procedures prescribed by the department.

12 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
13 compliance for vehicles 1 through 13, identified in Tables 1 and 2 above, without ensuring that
14 the vehicles were properly tested and inspected to determine if they were in compliance with
15 Health & Saf. Code section 44012.

16 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of
17 compliance for vehicles 1 through 13, identified in Tables 1 and 2 above, by certifying that the
18 vehicles had been inspected as required when, in fact, they had not.

19 **FOURTH CAUSE FOR DISCIPLINE**

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

21 37. Respondent Lopez's Smog Check Test Only Station License is subject to disciplinary
22 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
23 to comply with provisions of California Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic smog certificates of compliance for vehicles 1 through 13, identified in Tables 1 and 2
26 above.

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1 and inspecting the vehicles to determine if they were in compliance with Health & Saf. Code
2 section 44012.

3 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of
4 compliance for vehicles 1 through 13, identified in Table 1 and 2 above, by certifying that the
5 vehicles had been inspected as required when, in fact, they had not.

6 **SEVENTH CAUSE FOR DISCIPLINE**

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

8 40. Respondent Ochoa's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
10 provisions of California Code of Regulations, title 16, as follows:

11 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
12 electronic smog certificates of compliance for vehicles 1 through 13, identified in Table 1 and 2
13 above.

14 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
15 through 13, identified in Table 1 and 2 above, in accordance with Health & Saf. Code sections
16 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

17 c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection
18 system vehicle identification information or emission control system identification data for a
19 vehicle other than the one being tested for vehicles 1 through 13, identified in Table 1 and 2
20 above.

21 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
22 through 13, identified in Table 1 and 2 above, in accordance with the Bureau's specifications.

23 **EIGHTH CAUSE FOR DISCIPLINE**

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

25 41. Respondent Ochoa's technician license is subject to disciplinary action pursuant to
26 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
27 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
28 compliance for vehicles 1 through 13, identified in Table 1 and 2 above, without performing bona

1 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
2 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
3 Program.

4 **OTHER MATTERS**

5 42. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
6 suspend, revoke or place on probation the registration for all places of business operated in this
7 state by Respondent Victor Hugo Lopez, owner of Otay Mesa Test Only, upon a finding that
8 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
9 regulations pertaining to an automotive repair dealer.

10 43. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
11 Number TC 260863, issued to Respondent Victor Hugo Lopez, owner of Otay Mesa Test Only, is
12 revoked or suspended, any additional license issued under this chapter in the name of said
13 licensee may be likewise revoked or suspended by the Director.

14 44. Pursuant to Health & Saf. Code section 44072.8, if Emissions Specialist Technician
15 No. EA 142967, issued to Respondent Miguel A. Lopez, is revoked or suspended, any additional
16 license issued under this chapter in the name of said licensee may be likewise revoked or
17 suspended by the Director.

18 **PRAYER**

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

21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 260863, issued to Victor Hugo Lopez, owner of Otay Mesa Smog Test Only;

23 2. Revoking or suspending any other automotive repair dealer registration issued to
24 Victor Hugo Lopez;

25 3. Revoking or suspending Smog Check Test Only Station License No. TC 260863,
26 issued to Victor Hugo Lopez, owner of Otay Mesa Smog Test Only;

27 4. Revoking or suspending Advanced Emission Specialist Technician No. EA 142967,
28 to be redesignated upon renewal as EO 142967 and/or EI 142967, issued to Miguel A. Ochoa;

- 1 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Victor Hugo Lopez;
- 3 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
4 and Safety Code in the name of Miguel A. Ochoa;
- 5 7. Ordering Victor Hugo Lopez to pay the Bureau of Automotive Repair the reasonable
6 costs of the investigation and enforcement of this case, pursuant to Business and Professions
7 Code section 125.3;
- 8 8. Ordering Miguel A. Ochoa to pay the Bureau of Automotive Repair the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3;
- 11 9. Taking such other and further action as deemed necessary and proper.

12
13 DATED: November 25, 2013



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

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