

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

In the Matter of the Accusation Against:

**OTAY MESA TEST ONLY,  
VICTOR HUGO LOPEZ, OWNER**  
6950 Camino Maquiladora, Unit A  
San Diego, CA 92154

Automotive Repair Dealer Registration No.  
ARD 260863  
Smog Check – Test Only Station License No.  
TC 260863

**MIGUEL A. OCHOA, ADVANCED EMISSION  
SPECIALIST TECHNICIAN**  
4049 West Point Loma Boulevard  
San Diego, CA 92110

Advanced Emission Specialist Technician  
License No. EA 142967 (to be redesignated  
upon renewal as EO 142967 and/or  
EI 142967),

Case No. 79/14-61

OAH No. 2013120450

Respondents.

**DECISION**

The attached Stipulated Settlement As To Only Respondent Victor Hugo Lopez is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Victor Hugo Lopez, Automotive Repair Dealer Registration No. ARD 260863, and Smog Check – Test Only Station License No. TC 260863. The following typographical errors are noted:

1. Page 2, lines 15 and 16: The expiration date of "January 31, 2014" is corrected to read "January 31, 2015."
2. Page 2, lines 20 and 21: The expiration date of "January 31, 2014" is corrected to read "January 31, 2015."

This Decision shall become effective

April 24, 2014.

DATED: APR 01 2014

  
\_\_\_\_\_  
DONALD CHANG  
Assistant Chief Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 LAURO A. PAREDES  
Deputy Attorney General  
4 State Bar No. 254663  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2091  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

9 **BEFORE THE**  
**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. 79/14-61

13 **OTAY MESA TEST ONLY,**  
14 **VICTOR HUGO LOPEZ, OWNER**  
15 **6950 Camino Maquiladora, Unit A**  
**San Diego, CA 92154**

OAH No. 2013120450

**STIPULATED SETTLEMENT AS TO**  
**ONLY RESPONDENT VICTOR HUGO**  
**LOPEZ**

16 **Automotive Repair Dealer Registration No.**  
**ARD 260863**  
17 **Smog Check - Test Only Station License No.**  
**TC 260863**

18 **MIGUEL A. OCHOA, ADVANCED**  
19 **EMISSION SPECIALIST TECHNICIAN**  
20 **4049 West Point Loma Boulevard**  
**San Diego, CA 92110**

21 **Advanced Emission Specialist Technician**  
22 **License No. EA 142967 (to be redesignated**  
**upon renewal as EO 142967 and/or**  
**EI142967),**

23 Respondents.  
24

25 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
26 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of  
27 Automotive Repair the parties hereby agree to the following Stipulated Settlement and  
28

1 Disciplinary Order which will be submitted to the Director for the Director's approval and  
2 adoption as the final disposition of the Accusation solely with respect to Respondent Victor Hugo  
3 Lopez.

4 **PARTIES**

5 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He  
6 brought this action solely in his official capacity and is represented in this matter by Kamala D.  
7 Harris, Attorney General of the State of California, by Lauro A. Paredes, Deputy Attorney  
8 General.

9 2. Respondent Otay Mesa Test Only, Victor Hugo Lopez, Owner ("Respondent") is  
10 represented in this proceeding by attorney Michael B. Levin, Esq., whose address is 3727 Camino  
11 del Rio South, Suite 200 San Diego, CA 92108.

12 3. On or about February 18, 2010, the Bureau of Automotive Repair issued Automotive  
13 Repair Dealer Registration No. ARD 260863 to Otay Mesa Test Only, Victor Hugo Lopez,  
14 Owner (Respondent). The Automotive Repair Dealer Registration was in full force and effect at  
15 all times relevant to the charges brought in Accusation No. 79/14-61 and will expire on January  
16 31, 2014, unless renewed.

17 4. On or about March 3, 2010, the Bureau of Automotive Repair issued Smog Check -  
18 Test Only Station License No. TC 260863 to Otay Mesa Test Only, Victor Hugo Lopez, Owner  
19 (Respondent). The Smog Check - Test Only Station License was in full force and effect at all  
20 times relevant to the charges brought in Accusation No. 79/14-61 and will expire on January 31,  
21 2014, unless renewed.

22 **JURISDICTION**

23 5. Accusation No. 79/14-61 was filed before the Director of Consumer Affairs  
24 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against  
25 Respondent. The Accusation and all other statutorily required documents were properly served  
26 on Respondent on November 26, 2013. Respondent timely filed his Notice of Defense contesting  
27 the Accusation.

28



**CONTINGENCY**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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



1 decision. In this event, all changes and allegations contained in the Accusation are deemed  
2 admitted by Respondent and true for the purposes of such administrative proceedings.

3       **8. Violation of Probation.** Should the Director of Consumer Affairs determine that  
4 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
5 after giving notice and opportunity to be heard temporarily or permanently revoke any license or  
6 registration issued by the Bureau of Automotive Repair. In this event, all charges and allegations  
7 contained in the Accusation are deemed admitted by Respondent and true for the purposes of such  
8 administrative proceedings.

9       **9. Cost Recovery.** Respondent is to reimburse the Bureau its investigation and  
10 enforcement costs in the amount of \$9,264.77 in 30 equal monthly installments of \$308.83.  
11 Payments must be completed no later than 6 months before probation terminates. Failure to  
12 complete payment of cost recovery within this time frame shall constitute a violation of probation  
13 which may subject Respondent's licenses to outright revocation; however, the Director or the  
14 Director's Bureau of Automotive Repair designee may elect to continue probation until such time  
15 as reimbursement of the entire cost recovery amount has been made to the Bureau.

16       **10. STAR Certification.** Respondent's facility's STAR certification shall be revoked  
17 immediately upon the effective date of the decision and for the full term of probation. Upon  
18 Respondent's successful completion of probation Respondent will have the right to reapply for  
19 STAR certification. Respondent's application will be treated as a new application for  
20 certification.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael B. Levin, Esq.. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration, and Smog Check - Test Only Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

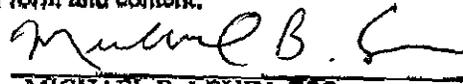
DATED: 12-27-13



OTAY MESA TEST ONLY, VICTOR HUGO LOPEZ, OWNER  
Respondent

I have read and fully discussed with Respondent Otay Mesa Test Only, Victor Hugo Lopez, Owner the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/27/13



MICHAEL B. LEVIN, ESQ.  
Attorney for Respondent

ENDORSEMENT

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

Dated:

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
LINDA K. SCHNEIDER  
Supervising Deputy Attorney General



LAURO A. PARIDES  
Deputy Attorney General  
Attorneys for Complainant

SD2013706298  
70801330.docx

**Exhibit A**

**Accusation No. 79/14-61**

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 LAURO A. PAREDES  
Deputy Attorney General  
4 State Bar No. 254663  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2091  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation Against:

Case No.

79/14-61

13 **OTAY MESA TEST ONLY,**  
14 **VICTOR HUGO LOPEZ, OWNER**  
6950 Camino Maquiladora, Unit A  
San Diego, CA 92154

OAH No. 2013100828

**ACCUSATION**

15 Automotive Repair Dealer Registration No.  
16 **ARD 260863**  
17 Smog Check - Test Only Station License No.  
**TC 260863**

18 **MIGUEL A. OCHOA, ADVANCED**  
19 **EMISSION SPECIALIST TECHNICIAN**  
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 Respondents.

24  
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 8. Health and Safety Code (Health & Saf. Code) section 44002 provides, in pertinent  
2 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
3 for enforcing the Motor Vehicle Inspection Program.

4 9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
5 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
6 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
7 of jurisdiction to proceed with disciplinary action.

8 10. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:  
9 "Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
10 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
11 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

12 **STATUTORY PROVISIONS**

13 11. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

24 (4) Any other conduct that constitutes fraud.

25 (6) Failure in any material respect to comply with the provisions of this  
26 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or  
27 regulations adopted pursuant to it.

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

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  
thereof, does any of the following:

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

10                   ....

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

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

14                   ....

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

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

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

19                   ....

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

23                   ....

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

26           16. Health & Saf. Code section 44012 provides, in pertinent part, that the test at the smog  
27 check station shall be performed in accordance with procedures prescribed by the department,  
28 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."

27 ///

28 ///

1 22. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part,  
2 that smog check stations and smog check technicians shall conduct tests and inspections in  
3 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in  
4 subsections (a) and (b) of Section 3340.17.

#### 5 COST RECOVERY

6 23. Section 125.3 of the Code provides, in pertinent part, that the Director may request  
7 the administrative law judge to direct a licensee found to have committed a violation or  
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
9 and enforcement of the case.

#### 10 VID DATA REVIEW

11 24. BAR conducted a detailed review of the VID data for all smog check inspections  
12 requiring the OBD II functional test performed at Respondent Otay Mesa Test Only for the period  
13 from April 6, 2013 through June 27, 2013 and for the day of September 17, 2013. That review  
14 showed a pattern of the same repeating OBD II codes stored in the power train control module  
15 (PCM) memory of different inspected and certified vehicles.

16 25. BAR examined, in detail, the nine vehicle codes in question and it was determined  
17 that none of them supported the OBD II codes reported. Vehicles 1 and 2, set forth in Table 1,  
18 below, were certified with the same pending code P1545 stored in the PCM memory, while the  
19 original equipment manufacturer (OEM) service information shows these vehicles did not support  
20 the P1545 code. The only conclusion is that vehicles 1 and 2 received smog certificates without  
21 an OBD II functional test and instead another "clean" vehicle was used, which constitutes clean-  
22 plugging<sup>2</sup>.

23 <sup>2</sup> The On Board Diagnostic, generation II (OBD II) functional test is an automated function of the  
24 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface  
25 cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the  
26 vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's  
27 on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction  
28 indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

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

(continued...)

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 I, 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.

26  
27 \_\_\_\_\_  
28 (...continued)  
component failure.

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

3 **TABLE 1**

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

14  
15 32. BAR also conducted a detailed review of the VID data for all smog check inspections  
16 requiring the OBD II functional test performed at Respondent Otay Mesa Test Only for the period  
17 from September 9, 2013 through October 24, 2013. That review showed a pattern of the same  
18 repeating OBD II code stored in the power train control module (PCM) memory of different  
19 inspected and certified vehicles.

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

27 ///

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.

///

///

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.

27 ///

28 ///



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;

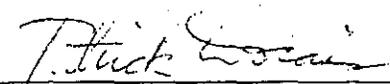
23 2. Revoking or suspending any other automotive repair dealer registration issued to  
24 Victor Hugo Lopez;

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*

14  
15  
16  
17  
18  
19 SD2013706091  
20 70787059.docx  
21  
22  
23  
24  
25  
26  
27  
28