

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DAVID E. HAUSFELD  
Deputy Attorney General  
4 State Bar No. 110639  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2025  
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:  
13 **TUNES LUBES & SMOG II**  
**MIGUEL A. TORRES, OWNER**  
14 **3114 Fairmount Avenue**  
**San Diego, CA 92105**  
15  
16 **Automotive Repair Dealer Registration**  
**No. ARD 263149**  
**Smog Check Station License**  
17 **No. RC 263149**  
**Brake Station License No. BS 263149**  
18 **Lamp Station License No. LS 263149**  
19  
20 **MIGUEL A. TORRES**  
**35913 Burgundy Court**  
**Winchester, CA 92596**  
21  
22 **Smog Check Inspector License No.**  
**EO 631939 and**  
**Smog Check Repair Technician License**  
23 **No. EI 631939**  
**(formerly Advanced Emission Specialist**  
24 **Technician License No. EA 631939)**  
25  
26 **Brake Adjuster License No. BA631939**  
  
Respondents.

Case No. *79/14-32*  
  
**ACCUSATION**  
*Smog check*

1 Complainant alleges:

2 PARTIES

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

5 **Automotive Repair Dealer Registration No. ARD 263149**

6 2. On or about September 1, 2010, the BAR issued Automotive Repair Dealer  
7 Registration Number ARD 263149 (registration) to Miguel A. Torres, doing business as Tunes  
8 Lubes & Smog II (Respondent Tunes L & S). Respondent's registration was in full force and  
9 effect at all times relevant to the charges brought herein and will expire on September 30, 2014,  
10 unless renewed.

11 **Smog Check Station License No. RC 263149**

12 3. On or about September 16, 2010, the BAR issued Smog Check Station License  
13 Number RC 263149 (smog check station license) to Miguel A. Torres, doing business as Tunes  
14 Lubes & Smog II (Respondent Tunes L & S). Respondent's registration was in full force and  
15 effect at all times relevant to the charges brought herein and will expire on September 30, 2014,  
16 unless renewed.

17 **Brake Station License No. BS 263149**

18 4. On or about November 8, 2010, the BAR issued Brake Station License Number BS  
19 263149, class A, to Miguel A. Torres, doing business as Tunes Lubes & Smog II (Respondent  
20 Tunes L & S). The registration was in full force and effect at all times relevant to the charges  
21 brought herein and will expire on September 30, 2014, unless renewed.

22 **Lamp Station License No. LS 263149**

23 5. On or about November 8, 2010, the BAR issued Lamp Station License Number LS  
24 263149, class A, to Miguel A. Torres, doing business as Tunes Lubes & Smog II (Respondent  
25 Tunes L & S). The registration was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on September 30, 2014, unless renewed.

27 ///

28 ///



1 11. 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 12. 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 13. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:  
9 "Upon renewal of an unexpired Basic Arca 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 14. 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.

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

20 . . . .

21 (4) Any other conduct that constitutes fraud.

21 . . . .

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

24 . . . .

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

1 15. 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 16. 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  
is injured.

13 . . . .

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

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

18 18. 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 19. 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 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in  
2 subsections (a) and (b) of Section 3340.17.

### 3 COST RECOVERY

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

### 8 VID DATA REVIEW

9 27. In or about May 2013, the BAR initiated an investigation of Respondents based on a  
10 review of information from the BAR's vehicle information database (VID), which indicated that  
11 they may be engaging in fraudulent smog check inspections.

12 28. Beginning in May of 2013, a representative of the BAR conducted a detailed review  
13 of VID data for all smog inspections performed at Respondent's automotive repair dealership  
14 facility for the period of March 15, 2013 through May 15, 2013. The review showed a pattern of  
15 OBD II<sup>2</sup> code P0332 being reported to the VID as if it was stored in the power train control  
16 module (PCM) memory of 35 different vehicles that received smog certificates in the two (2)  
17 month period. The BAR specifically examined the VID data, in detail, for ten (10) of the vehicles  
18 that were certified from April 5, 2013 to May 7, 2013 and it was determined that none of them  
19 support the OBD II code. Vehicles 1 through 10, set forth in Table 1, below, were all certified  
20 with the same pending code P0332 stored in the PCM memory, while the original equipment  
21 manufacturer (OEM) service information shows these vehicles did not support the P0332 code.

22 29. In August of 2013 the BAR conducted an additional review of the VID data for smog  
23 check inspections requiring the OBD II functional test performed at Respondent Tunes L & S for

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

1 the period June 4, 2013 through August 4, 2013. On July 10, 2013 vehicle 11, in Table 1, below,  
2 was certified with codes P0327 and P0328 stored in the PCM memory. The OEM service  
3 information shows this vehicle did not support the P0327 and P0328 codes.

4 30. The representative obtained information indicating that none of these codes were  
5 applicable to the eleven vehicles. The VID data also showed that the inspections on all of the  
6 vehicles were performed under the technician license of Respondent Torres. The BAR concluded  
7 that Respondent performed the smog inspections on the vehicles using a different vehicle(s)  
8 during the OBD II tests, a method known as clean-plugging,<sup>3</sup> resulting in the issuance of  
9 fraudulent certificates of compliance for the vehicles.

10 **TABLE 1**

<b>Date &amp; Time of Inspection</b>	<b>Vehicle Certified &amp; License or Vin No.</b>	<b>Certificate No.</b>
11 1. 4/5/2013 12 17:07 – 17:13 hours	1999 Suzuki Grand Vitara, 6XVR254	XT142308C
13 2. 4/13/2013 10:52 – 10:58 hours	2002 Ford Explorer, 6VLH094	XT142328C
14 3. 4/13/2013 13:28 – 13:39 hours	1999 Buick Century, 4EEA964	XT142329C
15 4. 4/15/2013 16:53 – 16:59 hours	2005 Chevrolet Astro, 7U26013	XT142334C
16 5. 5/1/2013 16:23 – 16:28 hours	2002 Chevrolet Silverado 1500, 7Z41677	XT433644C
17 6. 5/2/2013 9:44 – 10:09 hours	1998 Ford Expedition, 4VDC877	XT433646C
18 7. 5/2/2013 13:11 – 13:16 hours	2004 Dodge Ram 1500, 8T94586	XT433649C
19 8. 5/6/2013 9:45 – 9:53 hours	1999 Ford F150, 8X46755	XT664716C
20 9. 5/7/2013 11:41 – 11:48 hours	2000 Ford E350, 7T97115	XT664724C
21 10. 5/7/2013 14:59 – 15:03 hours	2001 Ford Expedition, 4SMC505	XT664725C
22 11. 7/10/13 13:37 – 13:46 hours	2000 Honda Odyssey, 4MXF896	XV842707C

23  
24  
25 <sup>3</sup> Clean-plugging is the use of the OBD II readiness monitor status and stored fault code  
26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to  
27 another vehicle that is not in compliance due to a failure to complete the minimum number of self  
28 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission  
control system or component failure.





1 compliance for vehicles 1 through 11, identified in Table 1 above, without performing bona fide  
2 inspections of the emission control devices and systems on the vehicles, thereby depriving the  
3 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
4 Program.

5 **SIXTH CAUSE FOR DISCIPLINE**

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

7 36. Respondent's technician license is subject to disciplinary action pursuant to Health &  
8 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
9 following sections of that Code:

10 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control  
11 devices and systems required by law for vehicles 1 through 11, identified in Table 1 above, were  
12 installed and functioning correctly in accordance with test procedures.

13 b. **Section 44012, subdivision (f):** Respondent failed to perform the emission control  
14 tests on vehicles 1 through 11, identified in Table 1 above, in accordance with procedures  
15 prescribed by the department.

16 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of  
17 compliance for vehicles 1 through 11, identified in Table 1 above, without properly testing and  
18 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section  
19 44012.

20 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of  
21 compliance for vehicles 1 through 11, identified in Table 1 above, by certifying that the vehicles  
22 had been inspected as required when, in fact, they had not.

23 **SEVENTH CAUSE FOR DISCIPLINE**

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

25 37. Respondent's technician license is subject to disciplinary action pursuant to Health &  
26 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions  
27 of California Code of Regulations, title 16, as follows:  
28

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

3 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1  
4 through 11, identified in Table 1 above, in accordance with Health & Saf. Code sections 44012  
5 and 44035, and California Code of Regulations, title 16, section 3340.42.

6 c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection  
7 system vehicle identification information or emission control system identification data for a  
8 vehicle other than the one being tested for vehicles 1 through 11, identified in Table 1 above.

9 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1  
10 through 11, identified in Table 1 above, in accordance with the Bureau's specifications.

#### 11 **EIGHTH CAUSE FOR DISCIPLINE**

##### 12 **(Dishonesty, Fraud or Deceit)**

13 38. Respondent's technician license is subject to disciplinary action pursuant to Health &  
14 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent,  
15 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance  
16 for vehicles 1 through 11, identified in Table 1 above, without performing bona fide inspections  
17 of the emission control devices and systems on the vehicles, thereby depriving the People of the  
18 State of California of the protection afforded by the Motor Vehicle Inspection Program.

##### 19 **OTHER MATTERS**

20 39. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
21 suspend, revoke or place on probation the registration for all places of business operated in this  
22 state by Respondent Miguel A. Torres, owner of Tunes Lubes & Smog II, upon a finding that  
23 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and  
24 regulations pertaining to an automotive repair dealer.

25 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License  
26 Number RC 263149, issued to Respondent Miguel A. Torres, owner of Tunes Lubes & Smog II,  
27 is revoked or suspended, any additional license issued under this chapter in the name of said  
28 licensee may be likewise revoked or suspended by the Director.



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

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

DATED: 10-1-13

*Pat Dorais by Doug Balatti*  
PATRICK DORAIS  
Acting Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2011801381  
70761644.doc