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5 **BEFORE THE**
6 **DEPARTMENT OF CONSUMER AFFAIRS**
7 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
8 **STATE OF CALIFORNIA**

8 In the Matter of the Accusation Against:

Case No. 79/14-61

9 **OTAY MESA TEST ONLY,**
10 **VICTOR HUGO LOPEZ, OWNER**
11 **6950 Camino Maquiladora, Unit A**
12 **San Diego, CA 92154**

OAH No. 2013100828

DEFAULT DECISION AND ORDER AS
TO MIGUEL A. OCHOA, ADVANCED
EMISSION SPECIALIST TECHNICIAN

12 **Automotive Repair Dealer Registration No.**
13 **ARD 260863**
14 **Smog Check - Test Only Station License No.**
15 **TC 260863**

14 **MIGUEL A. OCHOA, ADVANCED**
15 **EMISSION SPECIALIST TECHNICIAN**
16 **4049 West Point Loma Boulevard**
17 **San Diego, CA 92110**

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

19 Respondents.

20 **FINDINGS OF FACT**

21 1. On November 26, 2013, Complainant Patrick Dorais, in his official capacity as the
22 Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, filed
23 Accusation No. 79/14-61 against Miguel A. Ochoa, Advanced Emission Specialist Technician
24 (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

25 2. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist
26 Technician License Number EA 142967 (technician license) to Miguel A. Ochoa (Respondent).
27 The technician license was in full force and effect at all times relevant to the charges brought
28

1 herein, expire on June 30, 2014. Upon renewal Respondent Ochoa's license will be redesignated
2 as EO 142967 and/or EI 142967.¹

3 3. On November 26, 2013, Respondent was served by Certified and First Class Mail
4 copies of the Accusation No. 79/14-61, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Code section 136, is required to be reported
7 and maintained with the Bureau. Respondent's address of record was and is 4049 West Point
8 Loma Boulevard San Diego, CA 92110.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Code section 124.

11 5. On December 3, 2013, Respondent's counsel signed and returned a Notice of
12 Defense, requesting a hearing in this matter. On December 16, 2013, a Notice of Hearing was
13 served by mail at Respondent's address of record and on his attorney of record by Certified and
14 First Class Mail, which informed Respondent that an administrative hearing in this matter was
15 scheduled for December 30, 2013. On December 15, 2013, Respondent's Counsel notified the
16 Office of Administrative Hearings of his withdrawal as counsel for Respondent Ochoa.
17 Respondent failed to appear at the noticed hearing.

18 6. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
23 may nevertheless grant a hearing.

24 7. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent.

¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license to Smog Check Inspector (EO) license and/or Smog
Check Repair Technician (EI) license.

1 ii. Section 3340.30, subdivision (a): Respondent failed to inspect and test the
2 vehicle in accordance with H&S Code section 44012.

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

5 c. Respondent's technician license is subject to discipline pursuant to H&S Code
6 section 44072.2, subdivision (d), in that on or about September 17, 2013 and October 24, 2013,
7 he committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing
8 an electronic certificate of compliance for vehicles without performing a bona fide inspection of
9 the emission control devices and systems, thereby depriving the People of the State of California
10 of the protection afforded by the Motor Vehicle Inspection Program.

11 **ORDER**

12 IT IS SO ORDERED that Advanced Emission Specialist Technician License No. EA
13 142967, heretofore issued to Respondent Miguel A. Ochoa, is revoked.

14 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
15 written motion requesting that the Decision be vacated and stating the grounds relied on within
16 seven days after service of the Decision on Respondent. The motion should be sent to the Bureau
17 of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho
18 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing
19 on a showing of good cause, as defined in the statute.

20
21 This Decision shall become effective on May 14, 2014

22 It is so ORDERED April 22, 2014

23
24 
25 _____
DONALD CHANG

26 Assistant Chief Counsel
27 Department of Consumer Affairs

28 Attachment: Exhibit A: Accusation

70838981.DOCXSD2013706298

Exhibit A

Accusation No. 79/14-61

1 KAMALA D. HARRIS
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Attorneys for Complainant

8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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13 **OTAY MESA TEST ONLY,**
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16 **Automotive Repair Dealer Registration No.**
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19 **4049 West Point Loma Boulevard**
San Diego, CA 92110
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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 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.

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 (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.

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 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.

13

14 14. 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 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 plugging².

23 ² 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 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.

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

3 **TABLE I**

4 Date & Time of Inspection	Vehicle and Vin Number.	Certificate No.	Unsupported Fault Code
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 ///

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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.

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;

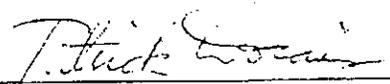
23 2. Revoking or suspending any other automotive repair dealer registration issued to
24 Victor Hugo Lopez;

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

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Attorneys for Complainant

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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 **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
22
23 Respondents.

Case No. 79/14-61

OAH No. 2013100828

NOTICE OF HEARING
[Gov. Code, § 11509.]

Hearing: Monday, December 30, 2013

24 YOU ARE HEREBY NOTIFIED that a hearing in this matter will commence on Monday,
25 December 30, 2013, at 09:00 a.m. before an Administrative Law Judge at the address listed
26 below.

27 Office of Administrative Hearings
1350 Front Street, Suite 3005
28 San Diego, CA 92101

1 The hearing will be conducted before the Director of Consumer Affairs, Bureau of
2 Automotive Repair by an Administrative Law Judge of the Office of Administrative Hearings,
3 upon the charges made in the Accusation served upon you.

4 If you object to the place of hearing, you must notify the presiding officer within ten (10)
5 days after this notice is served on you. Failure to notify the presiding officer within ten (10) days
6 will deprive you of a change in the place of hearing.

7 You may be present at the hearing. You have the right to be represented by an attorney at
8 your own expense. You are not entitled to the appointment of an attorney to represent you at
9 public expense. You are entitled to represent yourself without legal counsel. You may present
10 any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying
11 against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses
12 and the production of books, documents, or other things by applying to the Office of
13 Administrative Hearings, 1350 Front Street, Suite 3005, San Diego, CA 92101, telephone: (619)
14 525-4475.

15 INTERPRETER: Pursuant to section 11435.20 of the Government Code, the hearing shall
16 be conducted in the English language. If a party or a party's witness does not proficiently speak
17 or understand the English language and before commencement of the hearing requests language
18 assistance, an agency subject to the language assistance requirement in section 11435.15 of the
19 Government Code shall provide a certified interpreter or an interpreter approved by the
20 administrative law judge conducting the proceedings. The cost of providing the interpreter shall
21 be paid by the agency having jurisdiction over the matter if the administrative law judge or
22 hearing officer so directs, otherwise by the party for whom the interpreter is provided. If you or a
23 witness requires the assistance of an interpreter, ample advance notice of this fact should be given
24 to the Office of Administrative Hearings so that appropriate arrangements can be made.

25 CONTINUANCES: Under section 11524 of the Government Code, the agency may grant a
26 continuance, but when an administrative law judge of the Office of Administrative Hearings has
27 been assigned to the hearing, no continuance may be granted except by him or her or by the
28 presiding Administrative Law Judge for good cause. When seeking a continuance, a party shall

1 apply for the continuance within ten (10) working days following the time the party discovered or
2 reasonably should have discovered the event or occurrence which establishes good cause for the
3 continuance. A continuance may be granted for good cause after the ten (10) working days have
4 lapsed only if the party seeking the continuance is not responsible for and has made a good faith
5 effort to prevent the condition or event establishing the good cause.

6 Continuances are not favored. If you need a continuance, immediately write or call the
7 Office of Administrative Hearings: 1350 Front Street, Suite 3005, San Diego, CA 92101
8 telephone: (619) 525-4475.

9 Dated: December 16, 2013

Respectfully submitted,

10 KAMALA D. HARRIS
11 Attorney General of California
12 LINDA K. SCHNEIDER
13 Supervising Deputy Attorney General



14 LAURO A. PAREDES
15 Deputy Attorney General
16 *Attorneys for Complainant*

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1 Michael B. Levin
2 Attorney at Law (State Bar No. 115895)
3 3727 Camino del Rio South, Suite 200
4 San Diego, Ca. 92108
5 Phone: (800)-550-8222
6 Facsimile: (888)-550-5705
7
8 Attorney for Respondents
9 OTAY MESA TEST ONLY.
10 VICTOR LOPEZ,
11 MIGUEL OCHOA

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

11	In the Matter of the Accusation Against:	Case No. 79/14-61
12	OTAY MESA TEST ONLY.) NOTICE OF DEFENSE
13	VICTOR HUGO LOPEZ, OWNER	
14	6950 Camino Maquiladora, Unit A	
15	San Diego, CA 92154	
16	Automotive Repair Dealer Registration No.	
17	ARD 260863	
18	Smog Check - Test Only Station License No.	
19	TC 260863	
20	MIGUEL A. OCHOA, ADVANCED EMISSION) _____
21	SPECIALIST TECHNICIAN	
22	4049 West Point Loma Boulevard	
23	San Diego, CA 92110	
24	Advanced Emission Specialist Technician) _____
25	License No. EA 142967 (to be redesignated upon	
26	renewal as EO 142967 and/or EI142967) _____
27	Respondents.	

24
25 Respondents herein, OTAY MESA TEST ONLY, 6950 Camino Maquiladora, Unit A, San
26 Diego, California, VICTOR HUGO LOPEZ, Owner, 6950 Camino Maquiladora, Unit A, San
27 Diego, California, and MIGUEL A. OCHOA, 4049 West Point Loma Boulevard, San Diego,
28 California, hereby request a hearing before the Department of Consumer Affairs for the Bureau of

1 Automotive Repair to permit Respondents to present their defense as to the charges contained in said
2 Accusation.

3 Respondents hereby request a court reporter in lieu of the tape recording of the proceedings.

4 The Respondents have retained counsel, Michael B. Levin, as their attorney of record, whose
5 mailing address and phone number are listed above.

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7 Dated: 12/3/13



MICHAEL B. LEVIN
Attorney For Respondents
OTAY MESA TEST ONLY.
VICTOR LOPEZ,
MIGUEL OCHOA

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