

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

In the Matter of the Petition For Interim
Suspension Order Against:

Case No. 79/12-118

OAH No. 2012050861

AUTO SMOG EXPRESS #2
MICHAEL C. MENSAH, Owner
Automotive Repair Dealer Registration
No. ARD 260305
Smog Test Only Station License No.
TC 260305

AUTO SMOG EXPRESS
MICHAEL C. MENSAH, Owner
Automotive Repair Dealer Registration
No. ARD 254379
Smog Test Only Station License No.
TC 254379

MICHAEL MENSAH
Advanced Emission Specialist Technician
License No. EA 155148

RUBEN PALOMARES
Advanced Emission Specialist Technician
License No. EA 155105

EVERARDO RODRIGUEZ JR.
Advanced Emission Specialist Technician
License No. EA 632939

JOSEPH O. OKAI
Advanced Emission Specialist Technician
License No. EA 630113

Respondents.

INTERIM SUSPENSION ORDER

The Petition for an Interim Suspension Order against Respondents was heard on June 8, 2012, at Los Angeles, by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings. Petitioner was represented by William Gardener, Deputy Attorney General. Respondents, except respondent Ruben Palomares, were represented by Michael B. Levin, Attorney at Law. Respondent Ruben Palomares did not appear at the hearing on the Petition for Interim Suspension Order though he was timely and properly served with the Notice of Hearing.

The Petition and supporting documents were received and considered. The Administrative Law Judge makes the following factual findings, legal conclusions, and order.

FACTUAL FINDINGS

1. Deputy Attorney General William D. Gardner brought this Petition for Interim Suspension Order (ISO) on behalf of John Wallauch, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.
2. Michael Mensah (respondent Mensah) does business in two locations in the City of Compton as Auto Smog Express and Auto Smog Express #2. Respondent Mensah holds licenses issued to him by the Bureau to operate Smog Check Test Only Stations, license numbers TC 254379 and the TC 260305, under the above mentioned fictitious names. Respondent Mensah also holds Automobile Repair Dealer Registration (ARD), numbers ARD 254379 and ARD 260305. Both are in full force and effect.
3. Respondent Mensah also holds Advance Emission Specialist Technician License No. EA 155148. The license is scheduled to expire on October 31, 2013.
4. Ruben Palomares (respondent Palomares) currently holds Advanced Emission Technician No. EA 155105. The license is in full force and effect.
5. Everardo Rodriguez Jr. (respondent Rodriguez) currently holds Advance Emission Specialist Technician License No. EA 632939. The license is scheduled to expire on July 31, 2013.
6. Joseph O. Okai (respondent Okai) currently holds Advanced Emission Technician No. EA 630113. The license is in full force and effect.
7. On October 6, 2011, Bureau program representatives Albert Ramos and Raul Galvan performed a videotaped surveillance of respondent Auto Smog Express #2 smog check station, located at 2601 East Alondra Blvd., Compton, California. Mr. Ramos observed respondents Rodriguez and Palomares at the facility during the surveillance period.

The surveillance operation and information obtained from the Bureau's VID revealed that between approximately 1604 hours and 1908 hours, respondents Palomares and Rodriguez, with the assistance of an unlicensed individual identified as Raul Padilla, combined to perform a total of ten illegal smog inspections, resulting in the issuance of nine fraudulent certificates of compliance and one fraudulent test failure. The following illegal smog inspections occurred during the surveillance period:

- (a) The evidence established that during the period of surveillance, respondent's Rodriguez's smog technician license (EA 632939) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670711C for a 1987 Dodge B250 Van, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The Dodge B250 Van was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of a green 1997 Nissan Pathfinder, license plate number 3WUM668, registered to Raul Padilla, were used in a method known as "clean piping" to issue a fraudulent electronic certificate of compliance.¹
- (b) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670712C for a 1978 Toyota pickup truck, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1978 Toyota pickup was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.
- (c) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670713C for a 2001 Dodge Neon, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The Dodge Neon was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.

¹ Clean piping is sampling the clean tailpipe emissions and/or the RPM readings of another vehicle for the purpose of illegally issuing smog certificates to vehicles that are not in compliance or are not present in the smog check area during the time of certification.

- (d) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670714C for a 1994 Honda Civic, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1994 Honda Civic was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.
- (e) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670715C for a 1988 Honda Civic, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1988 Honda Civic was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.
- (f) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670716C for a 1999 Honda Civic, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1999 Honda Civic was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.
- (g) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670717C for a 2001 Chevrolet Monte Carlo, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 2001 Chevrolet Monte Carlo was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.
- (h) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670718C for a 1990 Ford Mustang, certifying that he had tested and inspected the vehicle and that

the vehicle was in compliance with applicable laws and regulations. The 1990 Ford Mustang was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.

- (i) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670719C for a 1997 Ford Explorer, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1997 Ford Explorer was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.
- (j) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ670719C for a 1997 Ford Explorer, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1997 Ford Explorer was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.

8. On October 27, 2011, Bureau program representatives Albert Ramos and Raul Galvan performed a second videotaped surveillance of respondent Auto Smog Express #2 smog check station, located at 2601 East Alondra Blvd., Compton, California. Mr. Ramos observed respondent Palomares at the facility during the surveillance period. The surveillance operation and information obtained from the Bureau's VID revealed that between approximately 1710 hours and 1804 hours, respondent Palomares, with the assistance of an unlicensed individual identified as Raul Padilla, combined to perform a total of six illegal smog inspections, resulting in the issuance of six fraudulent certificates of compliance and one fraudulent test failure. The following illegal smog inspections occurred during the surveillance period:

- (a) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ926240C for a 1995 Nissan Altima, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1995

Nissan Altima was a Bureau undercover vehicle that had been equipped with several hidden cameras to obtain surveillance videos of the smog inspection. The surveillance video obtained from the vehicles on-board cameras demonstrate that respondent Palomares failed to perform a visual inspection and a functional inspection of the vehicle, both of which are required under state law.

- (b) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ926241C for a 2002 Toyota Camry, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 2002 Toyota Camry was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of the Bureau's Nissan Altima, license plate number 3KMR077 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.
- (c) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ926242C for a 2001 Toyota Camry Solara, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 2001 Toyota Camry Solara was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of the Bureau's Nissan Altima, license plate number 3KMR077 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.
- (d) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ926243C for a 1990 Cadillac Deville, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1990 Cadillac Deville was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.
- (e) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ926244C for a 1995 GMC S15 Sonoma, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1995 GMC S15 Sonoma was never in the station's test bay during the

surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.

- (f) Respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ926245C for a 2000 Ford Windstar, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. The 2000 Ford Windstar was never in the station's test bay during the surveillance period. Instead, the tail pipe emissions of Mr. Padilla's green 1997 Nissan Pathfinder, license plate number 3WUM668 were used in the clean piping method in order to issue a fraudulent electronic certificate of compliance.

9. Between April 16, 2012 and May 2, 2012, Bureau representative Albert Ramos downloaded and analyzed test data information from the vehicle information database (VID) for smog tests conducted by respondent Auto Smog Express for the period of January 2010 through April 15, 2012. Among other things, Mr. Ramos analyzed the diagnostic trouble codes stored in the memories of the power train control modules (PCM) on 14 vehicles that were certified by respondent Auto Smog Express during that time period. After researching the original equipment manufacturer (OEM) service information for these vehicles and consulting Mitchell On-Demand and Alldata Information System, Mr. Ramos determined that certain trouble codes not applicable to these 14 vehicles had been detected during their inspections, meaning that other vehicles were used in place of these 14 vehicles during their respective OBD II functional tests. This type of fraudulent activity constitutes clean-plugging.² The following instances of clean-plugging occurred at Auto Smog Express:

- (a) On March 4, 2010, a 1999 Chevrolet Tahoe (VIN No. 3GNEK18R9XG151618) was improperly certified by respondent Mensah and the vehicle was issued Certificate No. WH576729C (inapplicable trouble code P1794 detected).
- (b) On March 4, 2010, a 1996 Land Rover (License No. 6CXA108) was improperly certified by respondent Okai and the vehicle was issued Certificate No. WH576731C (inapplicable trouble code P1794 detected).

² 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 component failure.

- (c) On March 4, 2010, a 2002 Hyundai Santa Fe (License No. 5YJD814) was improperly certified by respondent Okai and the vehicle was issued Certificate No. WH576734C (inapplicable trouble code P1794 detected).
- (d) On April 3, 2010, a 1997 Mitsubishi Eclipse (License No. 3UFF497) was improperly certified by respondent Mensah and the vehicle was issued Certificate No. WH930792C (inapplicable trouble code P1404 detected).
- (e) On April 10, 2010, a 1996 GMC Safari (License No. 4DKJ865) was improperly certified by respondent Mensah and the vehicle was issued Certificate No. WJ177865C (inapplicable trouble code P1404 detected).
- (f) On April 17, 2010, a 1997 Infiniti I30 (License No. 3UTB388) was improperly certified by respondent Mensah and the vehicle was issued Certificate No. WJ177886C (inapplicable trouble code P1404 detected).
- (g) On April 22, 2010, a Mitsubishi Gallant (License No. 5UXU526) was improperly certified by respondent Okai and the vehicle was issued Certificate No. WJ386459C (inapplicable trouble code P1404 detected).
- (h) On April 28, 2010, a 2001 Ford 150 SuperCrew Cab (License No. 7Z44411) was improperly certified by respondent Okai and the vehicle was issued Certificate No. WJ386485C (inapplicable trouble code P1404 detected).
- (i) On April 28, 2010, a 1997 Nissan Altima (License No. 6BWA161) was improperly certified by respondent Okai and the vehicle was issued Certificate No. WJ386486C (inapplicable trouble code P1404 detected).
- (j) On July 21, 2010, a 1996 Ford Thunderbird (License No. 4WLH987) was improperly certified by respondent Okai and the vehicle was issued Certificate No. WL567696C (inapplicable trouble code P1404 detected).
- (k) On August 29, 2011, a 1999 Volkswagen Beetle (License No. 6JOS026) was improperly certified by respondent Okai and the vehicle was issued Certificate No. WX909127C (inapplicable trouble code P1320 detected).
- (l) On March 5, 2012 a 2000 Ford Windstar (License No. 4JLW495) was improperly certified by respondent Okai and the vehicle was issued Certificate No. XD906128C (inapplicable trouble code P1776 detected).
- (m) On March 5, 2012 a 2002 Toyota Celica (License No. 5YFH924) was improperly certified by respondent Okai and the vehicle was issued Certificate No. XD906129C (inapplicable trouble code P1776 detected).

(n) On March 5, 2012 a 2000 Ford Escort (License No. 4LFP973) was improperly certified by respondent Okai and the vehicle was issued Certificate No. XD906130C (inapplicable trouble code P1776 detected).

10. Respondent Mensah stated in his declaration that during the relevant time period, he would go to the Auto Express #2 every two weeks for approximately 15 minutes each time, and that he did not have any personal knowledge of any illegal activities that occurred at the facility. Regarding Auto Smog Express, respondent Mensah stated that he did not work on Mondays and was not at the facility on the dates when the alleged clean plugging occurred. Finally, respondent Mensah stated that he had no direct personal knowledge of any illegal activities that occurred at Auto Smog Express and at Auto Smog Express #2.

11. Respondent Rodriguez states in his declaration that his license and access code were used on only one clean piping incident, and that he had no knowledge of any illegal clean piping occurring at the facility. Respondent Rodriguez further states that he never worked at Auto Smog Express. Finally, since there is only one allegation tying respondent Rodriguez to the illegal activity alleged in the Petition, he contends that such an allegation would not support an ISO with respect to his license.

12. Respondent Okai states in his declaration that he had nothing to do with any of the illegal activities alleged to have occurred at Auto Smog Express #2 because he never worked there. Regarding the BAR review of the vehicle inspection data (VID) at Auto Smog Express, respondent Okai is requesting the opportunity to have an expert review the data because he asserts that there are certain sources or references that in some cases would contradict the references used by the BAR. Finally, he asserts that there is no surveillance video showing that respondent Okai clean-plugged any vehicles during the relevant time period.

13. The false smog certificates and related information were transmitted to a vehicle data base. The Department of Motor Vehicles (DMV) accesses that data base to establish that a car has passed a smog check before a car's registration is renewed. It is reasonably inferred that the owners of the automobiles for which false certificates issued were able to renew the registration of their vehicles, and that the DMV relied on the false information in the data base in renewing the vehicle registrations.

14. California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. It is also designed to comply with federal law, the Clean Air Act. (See Health & Saf. Code, §§ 44000, 44000.5, & 44001.)

15. Allowing the Respondents to continue to engage in their licensed activity would endanger the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter exists under Business and Professions Code sections 494 and 9884.7, and Health and Safety Code section 44072.2, based on Factual Findings 1 through 6.

2. Respondents Auto Smog Express, Auto Smog Express #2, and owner Michael Mensah violated Health and Safety Code section 44072, subdivisions (a), (c) and (d), and Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), by allowing unlicensed persons to utilize the smog stations known as Auto Smog Express and Auto Smog Express #2 for the purpose of engaging in clean piping and clean plugging, and issuing false and fraudulent smog certificates, based on Factual Findings 7 through 9. Therefore, cause exists under Business and Professions Code section 494 and Health and Safety Code section 44002, to temporarily suspend the Automotive Repair Dealer Registrations and the Smog Check, Test Only Licenses held by respondents Auto Smog Express and Auto Smog Express #2 (Owner – Michael C. Mensah).

3. Respondent Michael C. Mensah violated Health and Safety Code section 44072, subdivisions (a), (c) and (d), and Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), by engaging in clean-plugging and issuing false and fraudulent smog certificates, based on Factual Finding 9. Therefore, cause exists under Business and Professions Code section 494 and Health and Safety Code section 44002, to temporarily suspend the Advanced Technician Specialist License held by respondent Michael C. Mensah.

4. Respondent Ruben Palomares violated Health and Safety Code section 44072, subdivisions (a), (c) and (d), and Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), by allowing unlicensed persons to utilize his license and personal access code for the purpose of engaging in clean piping and issuing false and fraudulent smog certificates, based on Factual Findings 7 and 8. Therefore, cause exists under Business and Professions Code section 494 and Health and Safety Code section 44002, to temporarily suspend the Advanced Technician Specialist License held by respondent Ruben Palomares.

5. Respondent Everardo Rodriguez Jr. violated Health and Safety Code section 44072, subdivisions (a), (c) and (d), and Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), by allowing unlicensed persons to utilize his license and personal access code for the purpose of engaging in clean piping and issuing false and fraudulent smog certificates, based on Factual Findings 7 and 8. Therefore, cause exists under Business and Professions Code section 494 and Health and Safety Code section 44002, to temporarily suspend the Advanced Technician Specialist License held by respondent Everardo Rodriguez Jr.

6. Respondent Joseph O. Okai violated Health and Safety Code section 44072, subdivisions (a), (c) and (d), and Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), by engaging in clean-plugging and issuing false and fraudulent smog certificates, based on Factual Finding 9. Therefore, cause exists under Business and

Professions Code section 494 and Health and Safety Code section 44002, to temporarily suspend the Advanced Technician Specialist License held by respondent Joseph O. Okai.

7. Respondents Mensah, Auto Smog Express, and Auto Smog Express #2 allowed an unlicensed individual to perform acts of illegal clean-piping and to issue fraudulent certificates of compliance at the above mentioned licensed facilities. In addition, respondents Palomares and Rodriguez allowed their licenses and access codes to be used to clean-pipe automobiles and issued false certificates of compliance. Finally, respondents Mensah and Okai engaged in clean-plugging.

8. The undersigned has considered the declarations of respondents Mensah, Rodriguez and Okai. Respondent Mensah's contention that he should not suffer the consequences of any illegal conduct of his employees is rejected. Under Business and Professions Code section 9884.7, respondents Mensah Auto Smog Express, and Auto Smog Express #2 are subject to discipline for the illegal acts or omission of their employees. Respondent Okai's contention that his license should not be suspended because there was no surveillance video showing him clean-plugging is rejected. The Evidence established that his license was used illegally to certify 10 vehicles. Respondent Rodriguez's contention that his license should not be suspended because there is only one allegation of misconduct is rejected. One act of clean piping is sufficient to suspend. In any event, respondent Rodriguez was present at Auto Smog Express #2 during the period that the clean-piping was occurring.

9. Permitting Respondents to continue in their licensed activity, in light of their actions of allowing unlicensed individuals to use their facility and license to perform dishonest and fraudulent acts, would endanger the public health, safety, and welfare, based on Factual Findings 4 through 10.

10. The control and elimination of air pollutants is necessary to protect the public health and well being, and to protect property and vegetation (Health and Safety Code section 43000, subdivision (b); declaration of Barbara Weller Ph.D. in exhibit 7). Furthermore, Respondents' conduct is pernicious to the public welfare because the issuance of fraudulent documents by a licensee or by his or her employees or agents, become part of a public record and are relied upon by public agencies, including DMV.

11. Based on all the foregoing, cause has been established to issue an interim suspension order, suspending Respondents' licenses until a hearing can be held on an Accusation.

ORDER

1. The ARD issued to respondent Auto Smog Express, ARD No. 254379, is hereby suspended pursuant to Business and Professions Code section 494.

2. The Smog Test Only Station license issued to respondent Auto Smog Express (No. TC 254379) is hereby suspended pursuant to Business and Professions Code section 494.
3. The ARD issued to respondent Auto Smog Express #2, ARD No. 260305, is hereby suspended pursuant to Business and Professions Code section 494.
4. The Smog Test Only Station license issued to respondent Auto Smog Express #2 (No. TC 260305) is hereby suspended pursuant to Business and Professions Code section 494.
5. Advance Emission Specialist Technician License No. 155148 issued to respondent Michael C. Mensah is hereby suspended pursuant to Business and Professions Code section 494.
6. Advance Emission Specialist Technician License No. 155105 issued to respondent Ruben Palomares is hereby suspended pursuant to Business and Professions Code section 494.
7. Advance Emission Specialist Technician License No. 632939 issued to respondent Everardo Rodriguez Jr. is hereby suspended pursuant to Business and Professions Code section 494.
8. Advance Emission Specialist Technician License No. 630113 issued to respondent Joseph O. Okai is hereby suspended pursuant to Business and Professions Code section 494.
9. Complainant shall file an accusation and set a hearing thereon in compliance with Business and Professions Code section 494, and other applicable law.

DATED: June 11, 2012


Humberto Flores
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
4 State Bar No. 244817
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2114
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Interim Suspension Order
Against:

12 **AUTO SMOG EXPRESS #2; MICHAEL C.**
13 **MENSAH**
14 2601 East Alondra Blvd
Compton, CA 90221
15 Automotive Repair Dealer Registration No.
ARD 260305
16 Smog Check, Test Only, Station License No.
TC 260305,

17 **AUTO SMOG EXPRESS; MICHAEL C.**
18 **MENSAH**
4201 E. Rosencrans Ave.
19 Compton, CA 90221
Automotive Repair Dealer Registration No.
20 ARD 254379
Smog Check, Test Only, Station License No.
21 TC 254379,

22 **MICHAEL C. MENSAH**
8674 Harrison Way
23 Buena Park, CA 90620
Advanced Emission Specialist Technician
24 License No. EA 155148,

25 **RUBEN PALOMARES**
6812 Motz Street
26 Paramount, CA 90723
Advanced Emission Specialist Technician
27 License No. EA 155105,
28

Case No. 79/12-118

OAH No.

**PETITION FOR INTERIM
SUSPENSION ORDER**

[Business and Professions Code section 494]

(Filed concurrently with Memorandum of
Points and Authorities in Support of Interim
Suspension Order)

DATE: June 8, 2012

TIME: 10:00 a.m.

**PLACE: Office of Administrative
Hearings, 320 West Fourth
Street, Suite 630
Los Angeles, CA 90013**

1 **EVERARDO RODRIGUEZ, JR.**
2 **1313 W. Park Western Drive, #22**
3 **San Pedro, CA 90732**
4 **Advanced Emission Specialist Technician**
5 **License No. EA 632939,**

6 **JOSEPH O. OKAI**
7 **10070 Gilbert Street, #91**
8 **Anaheim, CA 92804**
9 **Advanced Emission Specialist Technician**
10 **License No. EA 630113**

11 Respondents.

12 **INTRODUCTION**

13 Petitioner John Wallauch ("Petitioner"), Chief of the Bureau of Automotive Repair,
14 Department of Consumer Affairs ("Bureau"), State of California, by and through his counsel,
15 Kamala D. Harris, Attorney General of the State of California, by Deputy Attorney General
16 William D. Gardner, hereby petitions for an Interim Suspension Order pursuant to Business and
17 Professions Code section 494, in conjunction with Health and Safety Code section 44002, to
18 temporarily suspend the following licenses and registration until a hearing can be held on an
19 Accusation charging Respondents identified herein with violations of the Motor Vehicle
20 Inspection Program (Health and Safety Code section 44000, et. seq.): (1) Automotive Repair
21 Dealer Registration Number ARD 260305 and Smog Check, Test Only, Station License Number
22 TC 260305 issued to Auto Smog Express #2; Michael C. Mensah, owner; (2) Automotive Repair
23 Dealer Registration Number ARD 254379 and Smog Check, Test Only, Station License Number
24 TC 254379 issued to Auto Smog Express; Michael C. Mensah, owner; (3) Advanced Emission
25 Specialist Technician License Number EA 155148 issued to Michael C. Mensah; (4) Advanced
26 Emission Specialist Technician License Number EA 155105 issued to Ruben Palomares; (5)
27 Advanced Emission Specialist Technician License Number EA 632939 issued to Everardo
28 Rodriguez, Jr.; and (6) Advanced Emission Specialist Technician License Number EA 630113
issued to Joseph O. Okai. This Petition is based upon this petition for interim suspension order,
the concurrently

1 filed memorandum of points and authorities, supporting declarations and exhibits, all documents
2 on file in this matter, as well as any oral argument made at the hearing.

3 **PARTIES**

4 1. Petitioner is duly appointed and serving as the Bureau Chief of the Bureau, and files
5 this Petition in his official capacity.

6 2. On or about December 22, 2009, the Bureau of Automotive Repair issued
7 Automotive Repair Déaler Registration Number ARD 260305 to Auto Smog Express #2; Michael
8 C. Mensah. The Automotive Repair Dealer Registration was in full force and effect at all times
9 relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

10 3. On or about December 23, 2009, the Bureau of Automotive Repair issued Smog
11 Check, Test Only, Station License Number TC 260305 to Auto Smog Express #2; Michael C.
12 Mensah. The Smog Check, Test Only, Station License was in full force and effect at all times
13 relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

14 4. On or about April 8, 2008, the Bureau of Automotive Repair issued Automotive
15 Repair Dealer Registration Number ARD 254379 to Auto Smog Express; Michael C. Mensah.
16 The Automotive Repair Dealer Registration expired on April 30, 2012.

17 5. On or about April 21, 2008, the Bureau of Automotive Repair issued Smog Check,
18 Test Only, Station License Number TC 254379 to Auto Smog Express; Michael C. Mensah. The
19 Smog Check, Test Only, Station License expired on April 30, 2012.

20 6. On a date uncertain in 2008, the Bureau of Automotive Repair issued Advanced
21 Emission Specialist Technician License Number EA 155148 to Michael C. Mensah. The
22 Advanced Emission Specialist Technician License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

24 7. On a date uncertain in 2008, the Bureau of Automotive Repair issued Advanced
25 Emission Specialist Technician License Number EA 155105 to Ruben Palomares. The Advanced
26 Emission Specialist Technician License was in full force and effect at all times relevant to the
27 charges brought herein and will expire on April 30, 2012, unless renewed.

28 ///

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

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

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

7 **VIOLATIONS OF THE AUTOMOTIVE REPAIR ACT AND MOTOR**
8 **VEHICLE INSPECTION PROGRAM**

9 Respondents Auto Smog Express #2, Michael C. Mensah, owner; Auto Smog Express,
10 Michael C. Mensah, owner; Michael C. Mensah, Ruben Palomares, Everardo Rodriguez, Jr. and
11 Joseph O. Okai (collectively, "Respondents") have engaged in acts or omissions constituting
12 violations of the Motor Vehicle Inspection Program (Health and Safety Code section 44000 et
13 seq.) in the following respects:

14 **Auto Smog Express #2: Clean Piping (10/6/2011)**

15 12. On or about October 6, 2011, Bureau program representatives Albert Ramos and
16 Raul Galvan performed a video-taped surveillance of the Auto Smog Express #2 smog check
17 station, located at 2601 East Alondra Blvd., Compton, CA. Bureau program representative
18 Ramos observed respondents Rodriguez and Palomares at the Auto Smog Express #2 smog check
19 station during the surveillance period. The surveillance operation and information obtained from
20 the Bureau's VID revealed that between approximately 1604 hours and 1908 hours, respondents
21 Palomares and Rodriguez, with the assistance of an unlicensed individual identified as Raul
22 Padilla, combined to perform a total of ten (10) illegal smog inspections, resulting in the issuance
23 by respondent Auto Smog Express #2; Michael C. Mensah of nine (9) fraudulent certificates of
24 compliance and one (1) fraudulent test failure. The details of Respondents' fraudulent activities
25 on October 6, 2011, are as follows:

26 a. The Bureau's surveillance operation and information obtained from the Bureau's
27 VID revealed that between approximately 1604 and 1628 hours, respondent Rodriguez's smog
28 technician license (EA 632939) and access code were used to perform a smog inspection that
resulted in the issuance of electronic Certificate of Compliance No. WZ670711C for a 1987

1 Dodge B250 Van, certifying that he had tested and inspected that vehicle and that the vehicle was
2 in compliance with applicable laws and regulations. At no time during the test period was the
3 Dodge B250 Van seen in or around the station's test bay. Instead, the tail pipe emissions of a
4 green 1997 Nissan Pathfinder, license plate 3WUM668, registered to the aforementioned Raul
5 Padilla, were used in a method known as "clean piping"² to issue a fraudulent electronic
6 certificate of compliance.

7 b. The Bureau's surveillance operation and information obtained from the Bureau's
8 VID revealed that between approximately 1722 and 1727 hours, respondent Palomares' smog
9 technician license (EA 155105) and access code were used to perform a smog inspection that
10 resulted in the issuance of electronic Certificate of Compliance No. WZ670712C for a 1978
11 Toyota pickup truck, certifying that he had tested and inspected that vehicle and that the vehicle
12 was in compliance with applicable laws and regulations. At no time during the test period was
13 the Toyota pickup truck seen in or around the station's test bay. Instead, Padilla's green 1997
14 Nissan Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate
15 of compliance through the clean piping method as previously described.

16 c. The Bureau's surveillance operation and information obtained from the Bureau's
17 VID revealed that between approximately 1733 and 1737 hours, respondent Palomares' smog
18 technician license (EA 155105) and access code were used to perform a smog inspection that
19 resulted in a failed test for a 1987 Mercedes 300E. This vehicle was fraudulently tested. At no
20 time during the test period was the 1987 Mercedes 300E seen in or around the station's test bay.
21 Instead, Padilla's green 1997 Nissan Pathfinder, license plate 3WUM668, remained in the test
22 bay during the test period.

23 d. The Bureau's surveillance operation and information obtained from the Bureau's
24 VID revealed that between approximately 1740 and 1746 hours, respondent Palomares' smog
25

26 ² "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

1 technician license (EA 155105) and access code were used to perform a smog inspection that
2 resulted in the issuance of electronic Certificate of Compliance No. WZ670713C for a 2001
3 Dodge Neon, certifying that he had tested and inspected that vehicle and that the vehicle was in
4 compliance with applicable laws and regulations. At no time during the test period was the
5 Dodge Neon seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan
6 Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of
7 compliance through the clean piping method as previously described.

8 e. The Bureau's surveillance operation and information obtained from the Bureau's
9 VID revealed that between approximately 1753 and 1758 hours, respondent Palomares' smog
10 technician license (EA 155105) and access code were used to perform a smog inspection that
11 resulted in the issuance of electronic Certificate of Compliance No. WZ670714C for a 1994
12 Honda Civic, certifying that he had tested and inspected that vehicle and that the vehicle was in
13 compliance with applicable laws and regulations. At no time during the test period was the
14 Honda Civic seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan
15 Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of
16 compliance through the clean piping method as previously described.

17 f. The Bureau's surveillance operation and information obtained from the Bureau's
18 VID revealed that between approximately 1803 and 1810 hours, respondent Palomares' smog
19 technician license (EA 155105) and access code were used to perform a smog inspection that
20 resulted in the issuance of electronic Certificate of Compliance No. WZ670715C for a 1988
21 Honda Civic, certifying that he had tested and inspected that vehicle and that the vehicle was in
22 compliance with applicable laws and regulations. At no time during the test period was the
23 Honda Civic seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan
24 Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of
25 compliance through the clean piping method as previously described.

26 g. The Bureau's surveillance operation and information obtained from the Bureau's
27 VID revealed that between approximately 1823 and 1827 hours, respondent Palomares' smog
28 technician license (EA 155105) and access code were used to perform a smog inspection that

1 resulted in the issuance of electronic Certificate of Compliance No. WZ670716C for a 1999
2 Honda Civic, certifying that he had tested and inspected that vehicle and that the vehicle was in
3 compliance with applicable laws and regulations. At no time during the test period was the
4 Honda Civic seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan
5 Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of
6 compliance through the clean piping method as previously described.

7 h. The Bureau's surveillance operation and information obtained from the Bureau's
8 VID revealed that between approximately 1832 and 1836 hours, respondent Palomares' smog
9 technician license (EA 155105) and access code were used to perform a smog inspection that
10 resulted in the issuance of electronic Certificate of Compliance No. WZ670717C for a 2001
11 Chevrolet Monte Carlo, certifying that he had tested and inspected that vehicle and that the
12 vehicle was in compliance with applicable laws and regulations. At no time during the test period
13 was the Chevrolet Monte Carlo seen in or around the station's test bay. Instead, Padilla's green
14 1997 Nissan Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic
15 certificate of compliance through the clean piping method as previously described.

16 i. The Bureau's surveillance operation and information obtained from the Bureau's
17 VID revealed that between approximately 1841 and 1845 hours, respondent Palomares' smog
18 technician license (EA 155105) and access code were used to perform a smog inspection that
19 resulted in the issuance of electronic Certificate of Compliance No. WZ670718C for a 1990 Ford
20 Mustang, certifying that he had tested and inspected that vehicle and that the vehicle was in
21 compliance with applicable laws and regulations. At no time during the test period was the Ford
22 Mustang seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan Pathfinder,
23 license plate 3WUM668, was used to issue a fraudulent electronic certificate of compliance
24 through the clean piping method as previously described.

25 j. The Bureau's surveillance operation and information obtained from the Bureau's
26 VID revealed that between approximately 1852 and 1908 hours, respondent Palomares' smog
27 technician license (EA 155105) and access code were used to perform a smog inspection that
28 resulted in the issuance of electronic Certificate of Compliance No. WZ670719C for a 1997 Ford

1 Explorer, certifying that he had tested and inspected that vehicle and that the vehicle was in
 2 compliance with applicable laws and regulations. At no time during the test period was the Ford
 3 Explorer seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan Pathfinder,
 4 license plate 3WUM668, was used to issue a fraudulent electronic certificate of compliance
 5 through the clean piping method as previously described.

6 The following chart ("Table 1") illustrates the illegal smog tests performed at Auto Smog
 7 Express #2 on October 6, 2011.

8 **Table 1**

9 Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
10 10/6/2011 11 1604-1628 12 hours	1987 Dodge B250 Van 7F32378	1997 Nissan Pathfinder 3WUM668	WZ670711C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Rodriguez.
14 10/6/2011 15 1722-1727 16 hours	1978 Toyota Pickup 6G00334	1997 Nissan Pathfinder 3WUM668	WZ670712C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
18 10/6/2011 19 1733-1737 20 hours	1987 Mercedes 300E 4MST075	1997 Nissan Pathfinder 3WUM668	None	Vehicle not seen at shop during time that test was performed. Vehicle falsely failed by respondent Palomares.
23 10/6/2011 24 1740-1746 25 hours	2001 Dodge Neon 4ZZK669	1997 Nissan Pathfinder 3WUM668	WZ670713C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.

1	10/6/2011	1994 Honda Civic 4LJP450	1997 Nissan Pathfinder 3WUM668	WZ670714C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
2	1753-1758 hours				
3					
4					
5	10/6/2011	1988 Honda Civic 6APK928	1997 Nissan Pathfinder 3WUM668	WZ670715C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
6	1803-1810 hours				
7					
8					
9	10/6/2011	1999 Honda Civic 4HKU256	1997 Nissan Pathfinder 3WUM668	WZ670716C	Vehicle not seen at shop during - time that it was certified. Vehicle certified by respondent Palomares.
10	1823-1827 hours				
11					
12					
13	10/6/2011	2001 Chevrolet Monte Carlo 5GBJ009	1997 Nissan Pathfinder 3WUM668	WZ670717C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
14	1832-1836 hours				
15					
16					
17	10/6/2011	1990 Ford Mustang 5PNG142	1997 Nissan Pathfinder 3WUM668	WZ670718C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
18	1841-1845 hours				
19					
20					
21	10/6/2011	1997 Ford Explorer 6HNE979	1997 Nissan Pathfinder 3WUM668	WZ670719C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
22	1852-1908 hours				
23					
24					

Auto Smog Express #2: Clean Piping (10/27/2011)

13. On or about October 27, 2011, Bureau program representatives Albert Ramos and Raul Galvan performed a second video-taped surveillance of the Auto Smog Express #2 smog check station, located at 2601 East Alondra Blvd., Compton, CA. Bureau program representative

1 Ramos observed respondent Palomares at the Auto Smog Express #2 smog check station during
2 the surveillance period. The surveillance operation and information obtained from the Bureau's
3 VID revealed that between approximately 1710 hours and 1834 hours, respondent Palomares,
4 with the assistance of an unlicensed individual identified as Raul Padilla, performed a total of six
5 (6) illegal smog inspections, resulting in the issuance by respondent Auto Smog Express #2;
6 Michael C. Mensah of six (6) fraudulent certificates of compliance. The details of Respondents'
7 fraudulent activities on October 27, 2011, are as follows:

8 a. The Bureau's surveillance operation and information obtained from the Bureau's
9 VID revealed that between approximately 1710 and 1716 hours, respondent Palomares' smog
10 technician license (EA 155105) and access code were used to perform a smog inspection that
11 resulted in the issuance of electronic Certificate of Compliance No. WZ926240C for a 1995
12 Nissan Altima, license plate number 3KMR077, certifying that he had tested and inspected that
13 vehicle and that the vehicle was in compliance with applicable laws and regulations. The 1995
14 Nissan Altima was a Bureau undercover vehicle that had been equipped with several hidden
15 cameras to obtain surveillance video of the smog inspection. The surveillance video obtained
16 from the vehicle's onboard cameras demonstrates that respondent Palomares failed to perform a
17 visual inspection and a functional inspection of the vehicle, both of which are required under state
18 law.

19 b. The Bureau's surveillance operation and information obtained from the Bureau's
20 VID revealed that between approximately 1721 and 1727 hours, respondent Palomares' smog
21 technician license (EA 155105) and access code were used to perform a smog inspection that
22 resulted in the issuance of electronic Certificate of Compliance No. WZ926241C for a 2002
23 Toyota Camry, certifying that he had tested and inspected that vehicle and that the vehicle was in
24 compliance with applicable laws and regulations. At no time during the test period was the
25 Toyota Camry seen in or around the station's test bay. Instead, the Bureau's undercover Nissan
26 Altima, license plate number 3KMR077, was used to issue a fraudulent electronic certificate of
27 compliance through the clean piping method as previously described.

28 ///

1 c. The Bureau's surveillance operation and information obtained from the Bureau's
2 VID revealed that between approximately 1733 and 1742 hours, respondent Palomares' smog
3 technician license (EA 155105) and access code were used to perform a smog inspection that
4 resulted in the issuance of electronic Certificate of Compliance No. WZ926242C for a 2001
5 Toyota Camry Solara, certifying that he had tested and inspected that vehicle and that the vehicle
6 was in compliance with applicable laws and regulations. At no time during the test period was
7 the Toyota Camry Solara seen in or around the station's test bay. Instead, the Bureau's
8 undercover Nissan Altima, license plate number 3KMR077, was used to issue a fraudulent
9 electronic certificate of compliance through the clean piping method as previously described.

10 d. The Bureau's surveillance operation and information obtained from the Bureau's
11 VID revealed that between approximately 1746 and 1801 hours, respondent Palomares' smog
12 technician license (EA 155105) and access code were used to perform a smog inspection that
13 resulted in the issuance of electronic Certificate of Compliance No. WZ926243C for a 1990
14 Cadillac Deville, certifying that he had tested and inspected that vehicle and that the vehicle was
15 in compliance with applicable laws and regulations. At no time during the test period was the
16 Cadillac Deville seen in or around the station's test bay. Instead, the green 1997 Nissan
17 Pathfinder, license plate 3WUM668, registered to the aforementioned Raul Padilla was used to
18 issue a fraudulent electronic certificate of compliance through the clean piping method as
19 previously described.

20 e. The Bureau's surveillance operation and information obtained from the Bureau's
21 VID revealed that between approximately 1812 and 1819 hours, respondent Palomares' smog
22 technician license (EA 155105) and access code were used to perform a smog inspection that
23 resulted in the issuance of electronic Certificate of Compliance No. WZ926244C for a 1996 GMC
24 S15 Sonoma, certifying that he had tested and inspected that vehicle and that the vehicle was in
25 compliance with applicable laws and regulations. At no time during the test period was the GMC
26 S15 Sonoma seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan
27 Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of
28 compliance through the clean piping method as previously described.

f. The Bureau's surveillance operation and information obtained from the Bureau's VID revealed that between approximately 1825 and 1834 hours, respondent Palomares' smog technician license (EA 155105) and access code were used to perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. WZ926245C for a 2000 Ford Windstar, certifying that he had tested and inspected that vehicle and that the vehicle was in compliance with applicable laws and regulations. At no time during the test period was the Ford Windstar seen in or around the station's test bay. Instead, Padilla's green 1997 Nissan Pathfinder, license plate 3WUM668, was used to issue a fraudulent electronic certificate of compliance through the clean piping method as previously described.

The following chart ("Table 2") illustrates the illegal smog tests performed at Auto Smog Express #2 on October 27, 2011.

Table 2

Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
10/27/2011 1710-1716 hours	1995 Nissan Altima 3KMR077 (BAR Undercover vehicle)	1995 Nissan Altima 3KMR077 (BAR Undercover vehicle)	WZ926240C	No visual inspection or functional inspection performed. Vehicle certified by respondent Palomares.
10/27/2011 1721-1727 hours	2002 Toyota Camry 4VGP895	1995 Nissan Altima 3KMR077 (BAR Undercover vehicle)	WZ926241C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10/27/2011 1733-1742 hours	2001 Toyota Camry Solara 4TSJ114	1995 Nissan Altima 3KMR077 (BAR Undercover vehicle)	WZ926242C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.

1	10/27/2011	1990 Cadillac Deville 4WFS334	1997 Nissan Pathfinder 3WUM668	WZ926243C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
2	1746-1801 hours				
3					
4					
5	10/27/2011	1996 GMC S15 Sonoma 7P44690	1997 Nissan Pathfinder 3WUM668	WZ926244C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
6	1812-1819 hours				
7					
8					
9	10/27/2011	2000 Ford Windstar VIN#	1997 Nissan Pathfinder 3WUM668	WZ926245C	Vehicle not seen at shop during time that it was certified. Vehicle certified by respondent Palomares.
10	1825-1834 hours	2FNZA5147YBB92252			
11					
12					

13 **Auto Smog Express: Clean Plugging**

14 14. Between April 16, 2012 and May 2, 2012, Bureau representative Albert Ramos
15 downloaded and analyzed test data information from the vehicle information database (VID) for
16 smog tests conducted by respondent Auto Smog Express for the period of January 2010 through
17 April 15, 2012. Among other things, Bureau representative Ramos analyzed the diagnostic
18 trouble codes stored in the memories of the power train control modules ("PCM") on fourteen
19 (14) vehicles that were certified by respondent Auto Smog Express during that time period. After
20 researching the original equipment manufacturer ("OEM") service information for these vehicles,
21 and after consulting Mitchell On-Demand and Alldata Information Systems, Bureau
22 representative Ramos determined that certain trouble codes not applicable to these fourteen (14)
23 vehicles had been detected during their inspections, meaning that other vehicles were used in
24 place of these fourteen (14) vehicles during their respective OBD II functional tests. This
25 fraudulent conduct constitutes clean plugging.³

26 ³ Clean plugging is the use of the OBD II readiness monitor status and stored fault code
27 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
28 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
(continued...)

1 The following chart ("Table 3") illustrates the clean plugging activities at respondent Auto
 2 Smog Express on that the dates at issue, as established by the Declaration of Albert Ramos (see
 3 Memorandum of Points & Authority, Exh. 12).

4 **Table 3**

5 Test Date and Time	6 Vehicle Certified & 7 License No.	8 Certificate No.	9 Details
10 03/04/2010 11 1152-1204 hours	12 1999 Chevrolet 13 Tahoe 14 VIN# 15 3GNEK18R9XG151618	16 WH576729C	17 Inapplicable trouble 18 code P1794 detected; 19 vehicle certified by 20 respondent Mensah.
21 03/04/2010 22 1237-1255 hours	23 1996 Land Rover 24 Range Rover 25 6CXA108	26 WH576731C	27 Inapplicable trouble 28 code P1794 detected; vehicle certified by respondent Okai.
03/04/2010 1451-1457 hours	2002 Hyundai Santa Fe 5YJD814	WH576734C	Inapplicable trouble code P1794 detected; vehicle certified by respondent Okai.
04/03/2010 1233-1244 hours	1997 Mitsubishi Eclipse 3UFF497	WH930792C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Mensah.
04/10/2010 1251-1258 hours	1996 GMC Safari 4DKJ865	WJ177865C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Mensah.
04/17/2010 1048-1101 hours	1997 Infinity I30 3UTB388	WJ177886C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Mensah.
04/22/2010 1709-1720 hours	1996 Mitsubishi Galant 5UXU526	WJ386459C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Okai.
04/28/2010 1411-1424 hours	2001 Ford 150 Super Crew Cab 7Z44411	WJ386485C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Okai.

control system or component failure.

1	04/28/2010 1449-1506 hours	1997 Nissan Altima 6BWA161	WJ386486C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Okai.
2				
3	07/21/2010 1528-1535 hours	1996 Ford Thunderbird 4WLH987	WL567696C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Okai.
4				
5				
6	08/29/2011 1342-1350 hours	1999 Volkswagen New Beetle 6JOS026	WX909127C	Inapplicable trouble code P1320 detected; vehicle certified by respondent Okai.
7				
8	03/05/2012 1636-1652 hours	2000 Ford Windstar 4JLW495	XD906128C	Inapplicable trouble code P1776 detected; vehicle certified by respondent Okai.
9				
10				
11	03/05/2012 1707-1712 hours	2002 Toyota Celica 5YFH924	XD906129C	Inapplicable trouble code P1776 detected; vehicle certified by respondent Okai.
12				
13				
14	03/05/2012 1756-1808 hours	2000 Ford Escort 4LFP973	XD906130C	Inapplicable trouble code P1776 detected; vehicle certified by respondent Okai.
15				

16 15. The illegal smog inspections set forth in paragraphs 12-14, above, subject
17 Respondents to discipline pursuant to Health and Safety Code section 44072.2, subdivisions (a),
18 (c), and (d) and Business and Professions Code section 9889.3, subdivisions (a), (c), and (d).

19
20 **CONTINUED PRACTICE BY RESPONDENT WILL ENDANGER THE PUBLIC**
21 **HEALTH, SAFETY AND WELFARE**

22 16. Respondents are participating in a scheme at multiple smog check locations to
23 fraudulently certify vehicles that have not undergone the necessary testing to ensure that they
24 have met California's strenuous emissions standards.

25 17. Allowing Respondents to continue to operate will endanger the public health, safety
26 and welfare of the citizens of the State of California in that for each fraudulent smog inspection
27 performed by Respondents, there is another vehicle placed on the road that has illegally
28 circumvented California's Smog Check Program and disproportionately discharging noxious

1 gasses that pollute the environment and contributes to the destruction of the ozone. Children, the
2 elderly, people with pulmonary and respiratory disorders and the immune-suppressed are
3 particularly susceptible to the health hazards caused by Respondents' conduct.

4 18. The concurrently-filed memorandum of points and authorities, declarations, and other
5 evidence more fully document and establish the foregoing.

6 **PRAYER**

7 WHEREFORE, Petitioner prays that an Administrative Law Judge on behalf of the Bureau
8 of Automotive Repair issue an interim order suspending the automotive repair dealer registrations
9 and smog check station licenses of respondent Auto Smog Express #2; Michael C. Mensah and
10 Auto Smog Express; Michael C. Mensah, as well as the advanced emission specialist technician
11 licenses of respondents Mensah, Rodriguez, Palomares and Okai pursuant to Business and
12 Professions Code section 494, in conjunction with Health and Safety Code section 44002, for
13 violations of the Motor Vehicle Inspection Program and further, order any other and further relief
14 deemed necessary to protect the public health, safety, and welfare.

15 Dated: May 14, 2012

16 Respectfully submitted,

17 KAMALA D. HARRIS
18 Attorney General of California
19 KAREN B. CHAPPELLE
20 Supervising Deputy Attorney General



21 WILLIAM D. GARDNER
22 Deputy Attorney General
23 *Attorneys for Complainant*

24
25 LA2012506534
26 51094803.doc
27
28