

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

In the Matter of the Accusation Against:

**M & C SMOG TEST ONLY
MOISES ORTIZ FERNANDEZ, OWNER**
6111 Columbus Avenue
Riverside, CA 92504

Automotive Repair Dealer Registration No.
ARD 263478

Smog Check - Test Only Station License No.
TC 263478,

and

CRYSTIAN DAVID GUERRERO
18780 Alderbrook Drive
Riverside, CA 92508

Advanced Emission Specialist Technician
License No. EA 632279

Smog Check Inspector License No. EO
632279

Smog Check Repair Technician License No.
EI 632279

Respondents.

Case No. 79/12-172

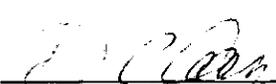
OAH No. 2012090717

DECISION

The attached Stipulated Revocation of License and Order re: Crystian David Guerrero Only is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Crystian David Guerrero, Advanced Emission Specialist Technician License EA 632279, Smog Check Inspector License No. EO 632279, and Smog Check Repair Technician License No. EI 632279.

This Decision shall become effective 2/22/13.

DATED: February 5, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

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14 **MOISES ORTIZ FERNANDEZ, OWNER**
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Case No. 79/12-172

OAH No. 2012090717

16 **Automotive Repair Dealer Registration No.**
17 **ARD 263478**

STIPULATED REVOCATION OF
LICENSE AND ORDER RE: CRYSTIAN
DAVID GUERRERO ONLY

18 **Smog Check - Test Only Station License No.**
19 **TC 263478,**

20 **and**

21 **CRYSTIAN DAVID GUERRERO**
22 **18780 Alderbrook Drive**
Riverside, CA 92508

23 **Advanced Emission Specialist Technician**
24 **License No. EA 632279**

25 **Smog Check Inspector License No. EO**
26 **632279**

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1 **Smog Check Repair Technician License No.**
2 **EI 632279**

3 Respondents.

4 In the interest of a prompt and speedy resolution of this matter, consistent with the public
5 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of
6 Automotive Repair the parties hereby agree to the following Stipulated Revocation and
7 Disciplinary Order which will be submitted to the Director for his approval and adoption as the
8 final disposition of the Accusation.

9 PARTIES

10 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He
11 brought this action solely in his official capacity and is represented in this matter by Kamala D.
12 Harris, Attorney General of the State of California, by Adrian R. Contreras, Deputy Attorney
13 General.

14 2. Crystian David Guerrero (Respondent) is representing himself in this proceeding and
15 has chosen not to exercise his right to be represented by counsel.

16 3. On or about July 15, 2010, the Director issued Advanced Emission Specialist
17 Technician License Number EA 632279 ("Technician License") to Respondent. The Technician
18 License was in full force and effect at all times relevant to the charges brought herein and expired
19 on August 31, 2012. Thereafter, it was converted to Smog Check Inspector License No. EO
20 632279, and Smog Check Repair Technician License No. EI 632279, both of which will expire
21 on August 31, 2014, unless renewed.

22 JURISDICTION

23 4. Accusation No. 79/12-172 was filed before the Director of Consumer Affairs
24 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
25 Respondent. The Accusation and all other statutorily required documents were properly served
26 on Respondent on June 28, 2012. Respondent timely filed his Notice of Defense contesting the
27 Accusation. A copy of Accusation No. 79/12-172 is attached as Exhibit A and incorporated by
28 reference.

1 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
2 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director
3 considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and
4 Order, the Stipulated Revocation and Disciplinary Order shall be of no force or effect, except for
5 this paragraph, it shall be inadmissible in any legal action between the parties, and the Director
6 shall not be disqualified from further action by having considered this matter.

7 11. The parties understand and agree that email and facsimile copies of this Stipulated
8 Revocation of License and Order, including email and facsimile signatures thereto, shall have the
9 same force and effect as the originals.

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

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

19 **ORDER**

20 IT IS HEREBY ORDERED that Advanced Emission Specialist Technician License
21 Number EA 632279, Smog Check Inspector License No. EO 632279, and Smog Check Repair
22 Technician License No. EI 632279 issued to Respondent Crystian David Guerrero are revoked
23 and accepted by the Director of Consumer Affairs.

24 1. The revocation of Respondent's Advanced Emission Specialist Technician License,
25 Smog Check Inspector License, and Smog Check Repair Technician License, and the acceptance
26 of the revoked licenses by the Bureau shall constitute the imposition of discipline against
27 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
28 Respondent's license history with the Bureau of Automotive Repair.

1 2. Respondent shall lose all rights and privileges as an Advanced Emission Specialist
2 Technician, Smog Check Inspector, and Smog Check Repair Technician in California as of the
3 effective date of the Director's Decision and Order.

4 3. Respondent shall cause to be delivered to the Bureau his pocket license and, if one
5 was issued, his wall certificate on or before the effective date of the Decision and Order.

6 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
7 California, the Bureau shall treat it as a new application for licensure. Respondent must comply
8 with all the laws, regulations and procedures for licensure in effect at the time the application or
9 petition is filed, and all of the charges and allegations contained in Accusation No. 79/12-172
10 shall be deemed to be true, correct, and admitted by Respondent when the Director determines
11 whether to grant or deny the application or petition.

12 5. Respondent shall pay the agency its costs of investigation and enforcement in the
13 amount of \$5,539.62 prior to issuance of a new or reinstated license.

14 6. If Respondent should ever apply or reapply for a new license or certification, or
15 petition for reinstatement of a license, by any other health care licensing agency in the State of
16 California, all of the charges and allegations contained in Accusation, No. 79/12-172 shall be
17 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
18 Issues or any other proceeding seeking to deny or restrict licensure.

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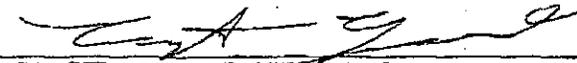
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ACCEPTANCE

I have carefully read the Stipulated Revocation of License and Order. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License, Smog Check Inspector License, and Smog Check Repair Technician. I enter into this Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED:

1-18-13



CRYSTIAN DAVID GUERRERO
Respondent

ENDORSEMENT

The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated:

1/18/13

Respectfully submitted,

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



ADRIAN R. CONTRERAS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/12-172

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Supervising Deputy Attorney General
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8 *Attorneys for Complainant*

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

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16 **Automotive Repair Dealer Registration No.**
ARD 263478
17
18 **Smog Check - Test Only Station License No.**
TC 263478,
19
20 **and**
21 **CRYSTIAN DAVID GUERRERO**
22 **18780 Alderbrook Drive**
Riverside, CA 92508
23 **Advanced Emission Specialist Technician**
24 **License No. EA 632279**
25 **Respondents.**

Case No. 79/12-172
ACCUSATION
SMOG CHECK

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Complainant alleges:

PARTIES

1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

M & C Smog Test Only; Moises Ortiz Fernandez, Owner

2. On or about October 14, 2010, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 263478 ("Registration") to Moises Ortiz Fernandez, Owner of M & C Smog Test Only ("Respondent Fernandez"). The Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.

3. On or about November 5, 2010, the Director issued Smog Check - Test Only Station License Number TC 263478 ("Smog Check Station License") to Respondent Fernandez. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.

Crystian David Guerrero

4. On or about July 15, 2010, the Director issued Advanced Emission Specialist Technician License Number EA 632279 ("Technician License") to Crystian David Guerrero ("Respondent Guerrero"). The Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.

JURISDICTION

5. This Accusation is brought before the Director under the authority of the following laws.

6. Section 9884.13 of the Business and Professions Code ("Code") provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

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

5 12. Section 9884.7 of the Code states:

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

11 "(1) Making or authorizing in any manner or by any means whatever any statement written
12 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable
13 care should be known, to be untrue or misleading.

14 "..."

15 "(4) Any other conduct that constitutes fraud.

16 "..."

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

21 13. Section 44072.2 of the Health and Safety Code states:

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

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

28 "..."

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

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

3 "...."

4 14. Health & Safety Code section 44072.10 states, in pertinent part:

5 "...

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

9 "...

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

12 15. Section 44072.8 of the Health and Safety Code states:

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

16 COSTS

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

21 FACTUAL BACKGROUND

22 17. In or about January 2012, the Bureau initiated an investigation of Respondent
23 Fernandez's smog check station based on a review of information from the Bureau's Vehicle
24 Information Database ("VID"), which indicated that Respondent Fernandez or his employees may
25 have been engaging in fraudulent smog check inspections.

26 18. On January 19, 2012, a representative of the Bureau conducted a detailed review of
27 the VID data for all smog inspections performed at Respondent Fernandez's facility for the period
28 of July 26, 2011, through October 24, 2011. The representative found that the VID recorded the

1 same diagnostic trouble code ("code") during the OBD II test¹ of the five vehicles identified
 2 below regardless of the make or model of the vehicle. The representative obtained information
 3 indicating that the codes were not applicable to these vehicles. The VID data also showed that
 4 Respondent Guerrero performed the inspections on the vehicles using a method known as "clean
 5 plugging,"² resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 9/13/2011 1645 - 1700	2003 Dodge Viper; License No. SSFUNDS	WZ158569C
2. 10/20/2011 1531 - 1544	2003 Dodge Durango; License No. 5MWN735	WZ844014C
3. 10/22/2011 1126 - 1133	1996 Honda Accord; VIN No. 1HGCD5691TA214726	WZ844030C
4. 10/22/2011 1219 - 1224	2001 Ford Focus; License No. 5GQK352	WZ844033C
5. 10/22/2011 1228 - 1241	2001 Mitsubishi Eclipse; VIN No. 4A3AC44G71E182873	WZ844034C

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 19. Respondent Fernandez's Registration is subject to disciplinary action under Code
 17 section 9884.7, subdivision (a)(1) in that he made or authorized statements which he knew or in

18
 19 ¹ The On Board Diagnostic, generation II ("OBD II"), functional test is an automated
 20 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a
 21 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
 22 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
 23 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
 Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically
 retrieves information from the vehicle's on-board computer about the status of the readiness
 indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
 II functional test, it will fail the overall inspection.

24 ² Clean-plugging is the use of the OBD II readiness monitor status and stored code status
 25 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that
 26 is not in compliance due to the noncompliant vehicle's failure to complete the minimum number
 27 of self tests, known as monitors, or due to the presence of a stored code that indicates an emission
 28 control system or component failure. Clean plugging occurs during the inspection of a vehicle
 that has an OBD II system. To clean plug a vehicle, the smog technician enters information into
 the EIS for the vehicle the technician wishes to certify and then plugs the OBD II system
 connection from the EIS into another vehicle that has a properly functioning OBD II system,
 rather than plugging the connection into the vehicle that was originally identified for testing.

1 the exercise of reasonable care should have known to be untrue or misleading as follows:
2 Respondent Fernandez's smog check technician, Respondent Guerrero, certified that the vehicles
3 identified in paragraph 18 above, had passed inspection and were in compliance with applicable
4 laws and regulations. In fact, Respondent Guerrero conducted the inspections on the vehicles
5 using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBD
6 II functional tests in order to issue smog certificates of compliance for the vehicles, and did not
7 test or inspect the vehicles as required by Health and Safety Code section 44012.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 20. Respondent Fernandez's Registration is subject to disciplinary action under Code
11 section 9884.7, subdivision (a)(4) in that Respondent Fernandez committed acts that constitute
12 fraud by issuing electronic smog certificates of compliance for the vehicles described in
13 paragraph 18 above, without performing bona fide inspections of the emission control devices
14 and systems on the vehicles, thereby depriving the People of the State of California of the
15 protection afforded by the Motor Vehicle Inspection Program.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violations of the Motor Vehicle Inspection Program)**

18 21. Respondent Fernandez's Smog Check Station License is subject to disciplinary action
19 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (a), in that Respondent
20 Guerrero failed to comply with the following sections of that Code:

21 a. **Section 44012:** Respondent Fernandez failed to ensure that the emission control tests
22 were performed on the vehicles identified in paragraph 18 above, in accordance with procedures
23 prescribed by the department.

24 b. **Section 44015:** Respondent Fernandez issued electronic smog certificates of
25 compliance for the vehicles identified in paragraph 18 above, without ensuring that they were
26 properly tested and inspected to determine if they were in compliance with Health and Safety
27 Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent Fernandez's Smog Check Station License is subject to disciplinary action
4 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (c), in that Respondent
5 Fernandez failed to comply with provisions of California Code of Regulations, title 16, as
6 follows:

7 a. **Section 3340.35, subdivision (c)**: Respondent Fernandez issued electronic smog
8 certificates of compliance for the vehicles described in paragraph 18 above, even though they had
9 not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.42**: Respondent Fernandez failed to ensure that the required smog tests
11 were conducted on the vehicles described in paragraph 18 above, in accordance with the Bureau's
12 specifications.

13 **FIFTH CAUSE FOR DISCIPLINE**

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

15 23. Respondent Fernandez's Smog Check Station License is subject to disciplinary action
16 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that Respondent
17 Fernandez committed dishonest, fraudulent, or deceitful acts whereby another is injured by
18 issuing electronic smog certificates of compliance for the vehicles described in paragraph 18
19 above without performing bona fide inspections of the emission control devices and systems on
20 the vehicles, thereby depriving the People of the State of California of the protection afforded by
21 the Motor Vehicle Inspection Program.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Violations of the Motor Vehicle Inspection Program)**

24 24. Respondent Guerrero's Technician License is subject to disciplinary action under
25 Health and Safety Code sections 44072.10 and 44072.2, subdivision (a), in that Respondent
26 Guerrero failed to comply with sections 44012 of that Code as follows: Respondent Guerrero
27 failed to perform the emission control tests on the vehicles described in paragraph 18 above in
28 accordance with procedures prescribed by the department.

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SEVENTH CAUSE FOR DISCIPLINE

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

25. Respondent Guerrero's Technician License is subject to disciplinary action under Health and Safety Code sections 44072.10 and 44072.2, subdivision (c), in that Respondent Guerrero failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a)**: Respondent Guerrero failed to inspect and test the vehicles described in paragraph 18 above in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42**: Respondent Guerrero failed to conduct the required smog tests on the vehicles described in paragraph 18 above in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

26. Respondent Guerrero's Technician License is subject to disciplinary action under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for the vehicles described in paragraph 18 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.

OTHER MATTERS

27. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the registration for all places of business operated in this state by Respondent Fernandez upon a finding that Respondent Fernandez has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

28. Pursuant to Health & Safety Code section 44072.8, if Respondent Fernandez's Smog Check Station License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of the Health and Safety Code in the name of Respondent Fernandez.

