

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 HEATHER VO
Deputy Attorney General
4 State Bar No. 223418
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2574
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Petition to Revoke
12 Probation Against:
13 **OXNARD SMOG TEST ONLY, INC.**
14 **dba OXNARD SMOG TEST ONLY**
15 **CENTER; FIDEL LOPEZ, President**
3434 S. Saviers Rd, Unit B
Oxnard, CA 93033
16
17 Automotive Repair Dealer Registration
No. ARD 233855
18 Smog Check Test Only Station License
No. TC 233855
19
20 And
21 **FIDEL LOPEZ**
3592 Almond Drive
Oxnard, CA 93030
22
23 Smog Check Inspector License No. EO 143295
(formerly Advanced Emission Specialist
24 Technician License No. EA 143295)
25 Respondents.

Case No. *79/15-121*
PETITION TO REVOKE PROBATION

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1 Complainant alleges:

2 **PARTIES**

3 1. Patrick Dorais (Complainant) brings this Petition to Revoke Probation solely in his
4 official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer
5 Affairs.

6 **Automotive Repair Dealer Registration**

7 2. On or about June 28, 2004, the Bureau of Automotive Repair (Bureau) issued
8 Automotive Repair Dealer Registration No. ARD 233855 (registration) to Oxnard Smog Test
9 Only, Inc., doing business as Oxnard Smog Test Only Center, with Fidel Lopez as President
10 (Respondents). The Automotive Repair Dealer Registration was in effect at all times relevant to
11 the charges brought herein and will expire on May 31, 2016, unless renewed.

12 **Smog Check Test Only Station License**

13 3. On or about July 7, 2004, the Bureau issued Smog Check Test Only Station License
14 No. TC 233855 (station license) to Respondents. The Smog Check Test Only Station License
15 was in effect at all times relevant to the charges brought herein and will expire on May 31, 2016,
16 unless renewed.

17 **Advanced Emission Specialist Technician License**

18 4. On a date uncertain in 2001, the Bureau issued Advanced Emission Specialist
19 Technician License No. EA 143295 ("technician license") to Fidel Lopez. The technician license
20 was in full force and effect at all times relevant to the charges brought herein and expired on
21 April 30, 2013. Upon timely renewal, the license was redesignated as Licensed Smog Check
22 Inspector No. EO 143295¹ and will expire on April 30, 2017, unless renewed.

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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area Technician (EB) license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 “(2) Causing or allowing a customer to sign any work order that does not state the repairs
2 requested by the customer or the automobile's odometer reading at the time of repair.

3 “(3) Failing or refusing to give to a customer a copy of any document requiring his or her
4 signature, as soon as the customer signs the document.”

5 10. Business and Professions Code section 9884.8 states:

6 “All work done by an automotive repair dealer, including all warranty work, shall be
7 recorded on an invoice and shall describe all service work done and parts supplied. Service work
8 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
9 prices for service work and for parts, not including sales tax, and shall state separately the sales
10 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice
11 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
12 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
13 statement indicating whether any crash parts are original equipment manufacturer crash parts or
14 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
15 given to the customer and one copy shall be retained by the automotive repair dealer.”

16 11. Health and Safety Code section 44012, subdivision (f) states:

17 “The test at the smog check stations shall be performed in accordance with procedures
18 prescribed by the department and may require loaded mode dynamometer testing in enhanced
19 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other
20 appropriate test procedures as determined by the department in consultation with the state board.
21 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
22 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
23 no earlier than January 1, 2013. However, the department, in consultation with the state board,
24 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
25 idle testing for vehicles with onboard diagnostic systems that the department and the state board
26 determine exhibit operational problems. The department shall ensure, as appropriate to the test
27 method, the following:

28

1 “(f) A visual or functional check is made of emission control devices specified by the
2 department, including the catalytic converter in those instances in which the department
3 determines it to be necessary to meet the findings of Section 44001. The visual or functional
4 check shall be performed in accordance with procedures prescribed by the department.”

5 12. Health and Safety Code section 44032 states:

6 “No person shall perform, for compensation, tests or repairs of emission control devices or
7 systems of motor vehicles required by this chapter unless the person performing the test or repair
8 is a qualified smog check technician and the test or repair is performed at a licensed smog check
9 station. Qualified technicians shall perform tests of emission control devices and systems in
10 accordance with Section 44012.”

11 **REGULATORY PROVISIONS**

12 13. California Code of Regulations, title 16, section 3340.30 states, in pertinent part:

13 “A licensed smog check inspector and/or repair technician shall comply with the following
14 requirements at all times while licensed:

15 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of
16 the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of
17 this article.”

18 14. California Code of Regulations, title 16, section 3340.35 states, in pertinent part:

19

20 “(c) A licensed station shall issue a certificate of compliance or noncompliance to the
21 owner or operator of any vehicle that has been inspected in accordance with the procedures
22 specified in section 3340.42 of this article and has all the required emission control equipment
23 and devices installed and functioning correctly. The following conditions shall apply:

24 “(1) Customers shall be charged the same price for certificates as that paid by the licensed
25 station; and

26 “(2) Sales tax shall not be assessed on the price of certificates.”

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1 15. California Code of Regulations, title 16, section 3356 states, in pertinent part:
2 “(a) All invoices for service and repair work performed, and parts supplied, as provided
3 for in Section 9884.8 of the Business and Professions Code, shall comply with the following:
4 “(1) The invoice shall show the automotive repair dealer's registration number and the
5 corresponding business name and address as shown in the Bureau's records. If the automotive
6 repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b)
7 of Section 3371 of this chapter.”

8 **FIRST CAUSE TO REVOKE PROBATION**

9 **(Obey All Laws)**

10 16. At all times during probation, Respondents were subject to the following condition:
11 Condition #(2) “OBEY ALL LAWS. Comply with all statutes, regulations and rules
12 governing automotive inspections, estimates and repairs.”

13 17. Respondents’ probation is subject to revocation because he failed to comply with
14 Probation Condition 2, reference above. The facts and circumstances regarding these violations
15 are as follows:

16 **Probation Conference on December 26, 2013**

17 18. During a probation conference with Respondents on December 26, 2013, Bureau
18 Representative James Ayres performed an invoice review which revealed violations. Prior to the
19 probation conference, the Bureau conducted a probation run on December 11, 2013 on
20 Respondents to verify compliance of the terms and condition of the probation order. Respondents
21 performed an inspection on a 2002 Ford Mustang with a missing exhaust gas recirculation (EGR)
22 valve. While Respondents failed the vehicle, he committed violations of the Automotive Repair
23 Act as follows:

24 a. Code section 9884.7(a)(2): Respondents failed to properly document the odometer
25 reading on the signed estimate #238388.

26 b. Code section 9884.8 and CCR section 3356(a): Respondents failed to properly show the
27 dealer registration number on the invoice. The Automotive Repair Dealer number noted on the
28 invoice was AE233855, which should be 233855.

1 Undercover Operation on August 20, 2014

2 19. On or about August 20, 2014, the Bureau conducted an undercover operation in which
3 it sent a 1988 Toyota Corolla to Respondents with a missing air injection system. Respondents
4 failed to perform a proper smog inspection and issued a Certificate of Compliance PK147476 to a
5 Bureau documented vehicle that should not have passed a properly performed smog inspection, in
6 violation of the following provisions:

7 a. **Health and Safety Code section 44012, subdivision (f):** Respondents failed to
8 perform a visual/functional check of emission control devices according to procedures prescribed
9 by the department.

10 b. **California Code of Regulations, title 16, section 3340.35, subdivision (c):**
11 Respondents issued a certificate of compliance to a vehicle which had not been inspected in
12 accordance with California Code of Regulations, title 16, section 3340.42 or did not have required
13 emission control devices installed and functioning.

14 c. **Business and Professions Code section 9884.8 and California Code of**
15 **Regulations, title 16, section 3356, subdivision (a)(1):** Respondents failed to show dealer
16 registration number on invoice.

17 d. **Business and Professions Code section 9884.7, subdivision (a)(2):** Respondents
18 caused or allowed a customer to sign a work order that did not state the automobile's odometer
19 reading at the time of repair.

20 e. **Business and Professions Code section 9884.7, subdivision (a)(3):** Respondents
21 failed to provide a customer with a copy of a signed document.

22 f. **Health and Safety Code section 44032:** Respondents shall perform tests of
23 emission control systems and devices in accordance with Health and Safety Code section 44012.

24 g. **California Code of Regulations, title 16, section 3340.30, subdivision (a):**
25 Respondents shall inspect, test and repair vehicles in accordance with Health and Safety Code
26 sections 44012, 44035, and California Code of Regulations, title 16, section 3340.42.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Director issue a decision:

4 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
5 No. 79/13-50 and imposing the disciplinary order that was stayed thereby revoking Automotive
6 Repair Dealer Registration No. ARD 233855 issued to Oxnard Smog Test Only, Inc., doing
7 business as Oxnard Smog Test Only Center, with Fidel Lopez as President;

8 2. Revoking or suspending Automotive Repair Dealer Registration No. ARD 233855,
9 issued to Oxnard Smog Test Only, Inc., doing business as Oxnard Smog Test Only Center, with
10 Fidel Lopez as President;

11 3. Revoking or suspending Smog Check Test Only Station License No. TC 233855,
12 issued to Oxnard Smog Test Only, Inc., doing business as Oxnard Smog Test Only Center, with
13 Fidel Lopez as President;

14 4. Revoking or suspending Smog Check Inspector License No. EO 143295, issued to
15 Fidel Lopez; and

16 5. Taking such other and further action as deemed necessary and proper.
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20 DATED: May 14, 2015

Patrick Dorais
21 PATRICK DORAIS
22 Chief
23 Bureau of Automotive Repair
24 Department of Consumer Affairs
25 State of California
26 Complainant
27

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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/13-50