

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

Received in BAR EPO  
SEP 14 2015

In the Matter of the Accusation Against:

**AUTOMOTIVE SPEEDY SMOG**  
**RIGOBERTO CORTEZ, OWNER**  
1433 West Linden Street, #K  
Riverside, CA 92507

Automotive Repair Dealer Registration  
No. ARD 248108  
Smog Check, Test Only, Station License  
No. TC 248108

**RIGOBERTO CORTEZ**  
798 Kelly Lane  
Riverside, CA 92501

Smog Check Inspector License No. EO  
147061 (formerly Advanced Emission  
Specialist Technician License No. EA  
147061)

Respondent.

Case No. 79/15-6

OAH No. 2014120211

**DECISION**

The attached Stipulation for Revocation of Licenses and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective October 7, 2015.

DATED: September 9, 2015

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DAVID E. HAUSFELD  
Deputy Attorney General  
4 State Bar No. 110639  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2025  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation Against:  
**AUTOMOTIVE SPEEDY SMOG**  
13 **RIGOBERTO CORTEZ, OWNER**  
1433 West Linden Street, #K  
14 Riverside, CA 92507

Case No. 79/15-6

OAH No. 2014120211

**STIPULATION FOR REVOCATION OF  
LICENSES AND ORDER**

15 **Automotive Repair Dealer Registration**  
**No. ARD 248108**  
16 **Smog Check, Test Only, Station License**  
**No. TC 248108**

17 **RIGOBERTO CORTEZ**  
18 798 Kelly Lane  
19 Riverside, CA 92501

20 **Smog Check Inspector License**  
**No. EO 147061**  
(formerly Advanced Emission Specialist  
21 Technician License No. EA 147061)

22 Respondent.

23  
24 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
25 entitled proceedings that the following matters are true:

26 **PARTIES**

27 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair  
28 (BAR). He brought this action solely in his official capacity and is represented in this matter by

1 Kamala D. Harris, Attorney General of the State of California, by David E. Hausfeld, Deputy  
2 Attorney General.

3 2. Rigoberto Cortez, dba Automotive Speedy Smog (Respondent) is representing  
4 himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

5 3. On or about December 1, 2006, the Bureau of Automotive Repair issued Automotive  
6 Repair Dealer Registration No. ARD 248108 to Rigoberto Cortez, dba Automotive Speedy Smog  
7 (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all  
8 times relevant to the charges brought in Accusation No. 79/15-6 and will expire on November 30,  
9 2015, unless renewed. The Automotive Repair Dealer Registration is currently cancelled.

10 4. On or about December 4, 2006, the Bureau of Automotive Repair issued Smog  
11 Check, Test Only, Station License No. TC 248108 to Rigoberto Cortez, dba Automotive Speedy  
12 Smog (Respondent). The Smog Check, Test Only, Station License was in full force and effect at  
13 all times relevant to the charges brought in Accusation No. 79/15-6 and will expire on November  
14 30, 2015, unless renewed. The Smog Check, Test Only, Station License is currently cancelled.

15 5. In 2003, the Bureau issued Advanced Emission Specialist Technician License  
16 Number EA 147061 to Rigoberto Cortez (Respondent). The technician license was due to expire  
17 on June 30, 2013, however it was cancelled on June 28, 2013. Pursuant to California Code of  
18 Regulations, title 16, section 3340.28, subdivision (e), the technician license was renewed,  
19 pursuant to Respondent's election, as Smog Check Inspector License No. EO 147061, effective  
20 June 28, 2013. Respondent's smog check inspector license will expire on June 30, 2015, unless  
21 renewed.

## 22 **JURISDICTION**

23 6. Accusation No. 79/15-6 was filed before the Director of Consumer Affairs (Director),  
24 for the BAR, and is currently pending against Respondent. The Accusation and all other  
25 statutorily required documents were properly served on Respondent on July 16, 2014.  
26 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation  
27 No. 79/15-6 is attached as Exhibit A and incorporated by reference.

28 ///



1 fails to adopt this stipulation as the Decision and Order, the Stipulation for Revocation of  
2 Licenses and Order shall be of no force or effect, except for this paragraph, it shall be  
3 inadmissible in any legal action between the parties, and the Director shall not be disqualified  
4 from further action by having considered this matter.

5 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
6 copies of this Stipulation for Revocation of Licenses and Order, including PDF and facsimile  
7 signatures thereto, shall have the same force and effect as the originals.

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

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

17 **ORDER**

18 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 248108  
19 and Smog Check, Test Only, Station License No. TC 248108, issued to Rigoberto Cortez, dba  
20 Automotive Speedy Smog, and Smog Check Inspector License No. EO 147061, issued to  
21 Rigoberto Cortez are revoked.

22 1. The revocation of Respondent's Automotive Repair Dealer Registration No. ARD  
23 248108; Smog Check Station License No. TC 248108; and Smog Check Inspector License No.  
24 EO 147061, shall constitute the imposition of discipline against Respondent. This stipulation and  
25 order constitute a record of the discipline and shall become a part of Respondent's license history  
26 with the Bureau.

27 ///

28 ///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

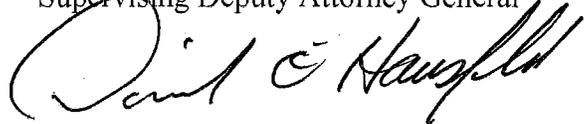
**ENDORSEMENT**

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

Dated: 5/18/15

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JAMES M. LEDAKIS  
Supervising Deputy Attorney General



DAVID E. HAUSFELD  
Deputy Attorney General  
*Attorneys for Complainant*

SD2014707014  
70920016.doc

**Exhibit A**

**Accusation No. 79/15-6**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DAVID E. HAUSFELD  
Deputy Attorney General  
4 State Bar No. 110639  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2025  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:  
13 **AUTOMOTIVE SPEEDY SMOG**  
14 **RIGOBERTO CORTEZ, OWNER**  
15 **1433 West Linden Street, #K**  
16 **Riverside, CA 92507**  
17 **Automotive Repair Dealer Registration**  
18 **No. ARD 248108**  
19 **Smog Check, Test Only, Station License**  
20 **No. TC 248108**  
21 **RIGOBERTO CORTEZ**  
22 **798 Kelly Lane**  
23 **Riverside, CA 92501**  
24 **Smog Check Inspector License**  
25 **No. EO 147061**  
26 **(formerly Advanced Emission Specialist**  
27 **Technician License No. EA 147061)**  
28 Respondents.

Case No. **79/15-6**  
**ACCUSATION**

Complainant alleges:

**PARTIES**

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





1 the conduct of the business of the automotive repair dealer, which are done by the  
2 automotive repair dealer or any automotive technician, employee, partner, officer,  
3 or member of the automotive repair dealer.

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

6 (6) Failure in any material respect to comply with the provisions of this  
7 chapter or regulations adopted pursuant to it.

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

13 13. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

22 14. Section 44072.8 of the Health and Safety Code states:

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

26 15. Section 44012 of the Health and Safety Code states, in pertinent part:

27 The test at the smog check stations shall be performed in accordance with  
28 procedures prescribed by the department, pursuant to Section 44013, shall require,  
at a minimum, loaded mode dynamometer testing in enhanced areas, and  
two-speed testing in all other program areas, and shall ensure all of the following:

1 (a) Emission control systems required by state and federal law are reducing  
2 excess emissions in accordance with the standards adopted pursuant to  
3 subdivisions (a) and (c) of Section 44013.

4 (b) Motor vehicles are preconditioned to ensure representative and  
5 stabilized operation of the vehicle's emission control system.

6 . . . .

7 (e) For diesel-powered vehicles, if the department determines that the  
8 inclusion of those vehicles is technologically and economically feasible, a visual  
9 inspection is made of emission control devices and the vehicle's exhaust emissions  
10 in an idle mode or loaded mode are tested in accordance with procedures  
11 prescribed by the department. The test may include testing of emissions of any or  
12 all of the pollutants specified in subdivision (c) and, upon the adoption of  
13 applicable standards, measurement of emissions of smoke or particulates, or both.

14 (f) A visual or functional check is made of emission control devices  
15 specified by the department, including the catalytic converter in those instances in  
16 which the department determines it to be necessary to meet the findings of Section  
17 44001. The visual or functional check shall be performed in accordance with  
18 procedures prescribed by the department.

19 (g) A determination as to whether the motor vehicle complies with the  
20 emission standards for that vehicle's class and model-year as prescribed by the  
21 department.

22 . . . .

23 16. Section 44015, subdivision (b), of the Health and Safety Code states:

24 "(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to  
25 issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

26 17. Section 44032 of the Health and Safety Code states, in pertinent part:

27 ". . . . Qualified technicians shall perform tests of emission control devices and systems in  
28 accordance with Section 44012."

### REGULATORY PROVISIONS

29 18. California Code of Regulations, title 16, (CCR) section 3340.30, states, in pertinent  
30 part:

31 "A smog check technician shall comply with the following requirements at all times while  
32 licensed.

33 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
34 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
35 3340.42 of this article.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

“...”

19. CCR section 3340.35, states, in pertinent part:

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

“...”

20. CCR section 3340.42, provides, in pertinent part, that smog check stations and smog check technicians shall conduct tests and inspections in accordance with the bureau's BAR 97 Emissions Inspection System Specifications referenced in subsections (a) and (b) of Section 3340.17.

**COST RECOVERY**

21. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

**UNDERCOVER OPERATION – DECEMBER 17, 2013**

22. On December 17, 2013, a Bureau undercover operator (operator) drove a Bureau documented 2008 Ford (Ford) to Respondent’s facility in Riverside, California, for a smog check. The undercover vehicle had previously had its Diesel Particulate Filter (DPF) removed by a Bureau lab technician and replaced with a DPF delete pipe in the exhaust gas after-treatment system. The Ford’s Powertrain Control Module (PCM) had also been reprogrammed. A vehicle with a missing DPF will fail the visual portion of a properly conducted smog check vehicle inspection.

23. On December 17, 2013, the operator arrived at Respondent Speedy Smog and signed a work order to perform the smog inspection. The operator did not receive an estimate copy. The

1 vehicle was inspected by Respondent Cortez. Following completion of the inspection the  
2 operator received a copy of an unnumbered invoice and the Vehicle Inspection Report (VIR).  
3 The VIR indicated the Ford had passed the inspection and was issued Certificate of Compliance  
4 No. [REDACTED]

5 24. The operator then drove the vehicle and gave custody of it back to a Bureau  
6 representative. On December 17, 2013, Respondents Speedy Smog and Cortez issued a  
7 Certificate of Compliance for the Ford that should have failed the inspection.

8 **FIRST CAUSE FOR DISCIPLINE**

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

10 25. Respondent Speedy Smog's registration is subject to disciplinary action pursuant to  
11 Health and Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply  
12 with the following sections of that Code:

13 a. **Section 44012:** Respondent failed to follow emission control systems inspection or  
14 test procedures.

15 b. **Section 44012, subdivision (f):** Respondent failed to determine that emission control  
16 devices and systems required by the department are installed and functioning correctly in  
17 accordance with test procedures.

18 c. **Section 44015, subdivision (b):** Respondent issued an electronic smog certificate,  
19 without ensuring that the vehicle was properly tested and inspected to determine if it was in  
20 compliance with Health and Safety Code section 44012.

21 **SECOND CAUSE FOR DISCIPLINE**

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

23 26. Respondent Speedy Smog's registration is subject to disciplinary action pursuant to  
24 Health and Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply  
25 with provisions of California Code of Regulations, title 16, as follows:

26 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate  
27 of compliance for a vehicle, even though the vehicle had not been inspected in accordance with  
28 section 3340.42, and did not have the required emission control devices installed and functioning.





1 issued Citation Number C2011-0919 to Respondent Speedy Smog and Citation Number M2011-  
2 0920 to Respondent Cortez, for the issuance of a Certificate of Compliance to an undercover  
3 vehicle that had a missing Positive Crankcase Ventilation (PCV) system. The Bureau ordered  
4 Respondent Speedy Smog to pay a \$1,000.00 penalty, which was paid on March 14, 2011, and  
5 Respondent Cortez complete an 8 hour training course, which was completed on April 27, 2011.  
6 Those Citations are now final and are incorporated by reference as if fully set forth.

7 33. To determine the degree of discipline, if any, to be imposed on Respondent Rigoberto  
8 Cortez, Complainant alleges that on or about December 5, 2011, in a prior action, the Bureau  
9 issued Citation Number C2012-0597 to Respondent Speedy Smog and Citation Number M2012-  
10 0598 to Respondent Cortez, for the issuance of a Certificate of Compliance to an undercover  
11 vehicle that had a missing Fuel Evaporative Canister. The Bureau ordered Respondent Speedy  
12 Smog to pay a \$1,500.00 penalty, which was paid on January 9, 2012, and Respondent Cortez  
13 complete a 16 hour training course, which was completed on January 19, 2012. Those Citations  
14 are now final and are incorporated by reference as if fully set forth.

15 34. To determine the degree of discipline, if any, to be imposed on Respondent Rigoberto  
16 Cortez, Complainant alleges that on or about July 11, 2013, in a prior action, the Bureau issued  
17 Citation Number C2014-0020 to Respondent Speedy Smog and Citation Number M2014-0021 to  
18 Respondent Cortez, for the issuance of a Certificate of Compliance to an undercover vehicle that  
19 had the ignition timing adjusted beyond specifications. The Bureau ordered Respondent Speedy  
20 Smog to pay a \$3,000.00 penalty, which was appealed, affirmed, and has not been paid as of July  
21 14, 2014. The Bureau ordered Respondent Cortez to complete a 68 hour training course and pay  
22 a \$1,000.00 penalty, which was appealed, affirmed, and has not been satisfied by completion of  
23 training or payment of penalty as of July 14, 2014. Those Citations are currently on appeal.

24 **OTHER MATTERS**

25 35. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke  
26 or place on probation the registration for all places of business operated in this state by  
27 Respondent Rigoberto Cortez, owner of Automotive Speedy Smog, upon a finding that  
28

1 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and  
2 regulations pertaining to an automotive repair dealer.

3 36. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,  
4 Station License Number TC 248108, issued to Respondent Rigoberto Cortez, owner of  
5 Automotive Speedy Smog, is revoked or suspended, any additional license issued under this  
6 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

7 37. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector  
8 License No. EO 147061, issued to Respondent Rigoberto Cortez, is revoked or suspended, any  
9 additional license issued under this chapter in the name of said licensee may be likewise revoked  
10 or suspended by the Director.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Director of Consumer Affairs issue a decision:

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
15 248108, issued to Rigoberto Cortez, dba Automotive Speedy Smog;

16 2. Revoking or suspending any other automotive repair dealer registration issued to  
17 Rigoberto Cortez;

18 3. Revoking or suspending Smog Check, Test Only, Station License Number TC  
19 248108, issued to Rigoberto Cortez, dba Automotive Speedy Smog;

20 4. Revoking or suspending Smog Check Inspector License No. EO 147061, issued to  
21 Rigoberto Cortez;

22 5. Revoking or suspending any additional license issued under Chapter 5 of the Health  
23 and Safety Code in the name of Rigoberto Cortez;

24 6. Ordering Rigoberto Cortez to pay the Bureau of Automotive Repair the reasonable  
25 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
26 Code section 125.3;

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED: 7-15-14

~~PATRICK DORAIS by Jim [Signature]~~  
PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

Assist. Chief  
Doug BALAH

SD2014707014  
70905569.doc