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8  
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:

Case No. 79/16-13400

13  
14 **ANGEL C. CHAVEZ, OWNER; DBA**  
**CHAVEZ SMOG CHECK**  
15 **117 W. 7<sup>th</sup> St.**  
**Calexico, CA 92231**

**A C C U S A T I O N**

16 **Automotive Repair Dealer Registration**  
**ARD 253725,**  
17 **Smog Check Station License No. RC 253725,**  
18 **Lamp Station License No. LS 253725,**  
**Brake Station License No. BS 253725;**

19 **and**

20 **JOSE CARMELO PONCE BARRERA**  
21 **1313 East 7<sup>th</sup> St., SPC 92**  
**Holtville, CA 92250**

22 **Smog Check Inspector License No. EO**  
23 **633756,**  
24 **Brake Adjuster License No. BA 633756,**  
**Lamp Adjuster License No. LA 633756.**

25 Respondents.

26  
27 Complainant alleges:  
28

1 **PARTIES**

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

4 2. On or about February 22, 2008, the Bureau issued Automotive Repair Dealer  
5 Registration Number ARD 253725 to Chavez Smog Check; Angel C. Chavez (Respondent  
6 Chavez). The Automotive Repair Dealer Registration will expire on December 31, 2017, unless  
7 renewed.

8 3. On or about March 25, 2008, the Bureau issued Smog Check Station License  
9 Number RC 253725 to Respondent Chavez. The Smog Check Station License will expire on  
10 December 31, 2017, unless renewed.

11 4. On or about April 22, 2008, the Bureau issued Lamp Station License No. LS 253725,  
12 class A and Brake Station License No. BS 253725, class C. These licenses will expire on  
13 December 31, 2017, unless renewed.

14 5. On or about October 26, 2011, the Bureau issued Advanced Emission Specialist  
15 Technician License No. EA 633756 to Jose Carmelo Ponce Barrera (Respondent Barrera). It was  
16 due to expire on June 30, 2013, however it was cancelled on June 28, 2013. Pursuant to  
17 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was  
18 renewed, pursuant to Respondent Barrera's election, as Smog Check Inspector License No. EO  
19 633756, effective June 28, 2013.<sup>1</sup> This license will expire on June 30, 2017, unless renewed.

20 6. On July 24, 2013, the Bureau issued Brake Adjuster License No. BA 633756, class C,  
21 to Respondent Barrera. On July 22, 2013, the Bureau issued Lamp Adjuster License No. LA  
22 633756, class A, to Respondent Barrera. These licenses will expire on June 30, 2017, unless  
23 renewed.

24 **JURISDICTION**

25  
26 <sup>1</sup> 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 (EB) Technician license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1           7.     This Accusation is brought before the Director of the Department of Consumer  
2     Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.  
3     All references are to the business code unless otherwise stated.

4           8.     Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
5     surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed  
6     with a disciplinary action during the period within which the license may be renewed, restored,  
7     reissued or reinstated.

8           9.     Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid  
9     registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
10    proceeding against an automotive repair dealer or to render a decision invalidating a registration  
11    temporarily or permanently.

12          10.    Section 9884.20 of the Code states:

13                "All accusations against automotive repair dealers shall be filed within three years after the  
14    performance of the act or omission alleged as the ground for disciplinary action, except that with  
15    respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,  
16    the accusation may be filed within two years after the discovery, by the bureau, of the alleged  
17    facts constituting the fraud or misrepresentation."

18          11.    Section 9884.22 of the Code states:

19                "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny  
20    at any time any registration required by this article on any of the grounds for disciplinary action  
21    provided in this article. The proceedings under this article shall be conducted in accordance with  
22    Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
23    Code, and the director shall have all the powers granted therein.

24                ". . . ."

25          12.    Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
26    Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
27    the Motor Vehicle Inspection Program.

28          13.    Section 44072.4 of the Health and Safety Code states:

1 "The director may take disciplinary action against any licensee after a hearing as provided  
2 in this article by any of the following:

3 "(a) Imposing probation upon terms and conditions to be set forth by the director.

4 "(b) Suspending the license.

5 "(c) Revoking the license."

6 14. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
7 expiration or suspension of a license by operation of law, or by order or decision of the Director  
8 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
9 the Director of jurisdiction to proceed with disciplinary action.

10 15. Section 44072.7 of the Health and Safety Code states:

11 "All accusations against licensees shall be filed within three years after the act or omission  
12 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a  
13 violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after  
14 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation  
15 prohibited by that section."

16 16. Section 44072.8 of the Health and Safety Code states:

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

20 17. California Code of Regulations, title 16, section 3340.28, subdivision (e) states that  
21 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
22 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
23 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

#### 24 STATUTORY PROVISIONS

25 18. Section 22 of the Code states:

26 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the  
27 administration of the provision is vested, and unless otherwise expressly provided, shall include  
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1 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and  
2 'agency.'

3 "(b) Whenever the regulatory program of a board that is subject to review by the Joint  
4 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2  
5 (commencing with Section 473), is taken over by the department, that program shall be  
6 designated as a 'bureau.'"

7 19. Section 23.7 of the Code states:

8 "Unless otherwise expressly provided, license means license, certificate, registration, or  
9 other means to engage in a business or profession regulated by this code or referred to in Section  
10 1000 or 3600."

11 20. Section 9884.7 of the Code states:

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

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

20 "...

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

22 "...

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

25 "...

26 "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on  
27 probation the registration for all places of business operated in this state by an automotive repair  
28

1 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated  
2 and willful violations of this chapter, or regulations adopted pursuant to it."

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

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

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

10 "...

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

12 "..."

13 22. Section 44072.10 of the Health and Safety Code states:

14 "(a) Notwithstanding Sections 44072 and 44072.4, the director, or the director's designee,  
15 pending a hearing conducted pursuant to subdivision (e), may temporarily suspend any smog  
16 check station or technician's license issued under this chapter, for a period not to exceed 60 days,  
17 if the department determines that the licensee's conduct would endanger the public health, safety,  
18 or welfare before the matter could be heard pursuant to subdivision (e), based upon reasonable  
19 evidence of any of the following:

20 "(1) Fraud.

21 "(2) Tampering.

22 "(3) Intentional or willful violation of this chapter or any regulation, standard, or procedure  
23 of the department implementing this chapter.

24 "(4) A pattern or regular practice of violating this chapter or any regulation, standard, or  
25 procedure of the department implementing this chapter.

26 "...  
27  
28

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

4       “(1) Clean piping, as defined by the department.

5       “(2) Tampering with a vehicle emission control system or test analyzer system.

6       “(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or  
7 falsely fail an inspection.

8       “(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure  
9 of the department implementing this chapter.”

#### 10                               REGULATORY PROVISIONS

11       23.   California Code of Regulations, title 16, section 3395.4, states:

12       “In reaching a decision on a disciplinary action under the Administrative Procedure Act  
13 (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of  
14 Administrative Hearing, the Bureau of Automotive Repair shall consider the disciplinary  
15 guidelines entitled ‘Guidelines for Disciplinary Penalties and Terms of Probation’ [May, 1997]  
16 which are hereby incorporated by reference. The ‘Guidelines for Disciplinary Penalties and  
17 Terms of Probation’ are advisory. Deviation from these guidelines and orders, including the  
18 standard terms of probation, is appropriate where the Bureau of Automotive Repair in its sole  
19 discretion determines that the facts of the particular case warrant such deviation -for example: the  
20 presence of mitigating factors; the age of the case; evidentiary problems.”

#### 21                               COSTS

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

28   ///

## CLEAN PLUGGING

25. The On-Board Diagnostics – Generation II (OBD II) communication protocol describes the specified communication “language” used by the OBD II system electronic control unit to communicate to scan tools and other devices such as the On-Board Diagnostic Inspection System (OIS). The communication protocol is programmed into the OBD II system electronic control unit during manufacture and does not change.

26. Parameter Identifications (PID) are data points reported by the OBD II system electronic control unit to the scan tool or OIS. Examples of PIDs are engine speed (RPM), vehicle speed, engine temperature, and other input and output values utilized by the OBD II system electronic control unit. The PID count is the number of data points reported by the OBD II system electronic control unit and is programmed during manufacture.

27. The Vehicle Identification Number (VIN) that is physically present on all vehicles is also required to be programmed into the vehicle’s OBD II on 2005 and newer vehicles, and on many occasions was programmed into the OBD II system electronic control unit in earlier model years. This electronically programmed VIN, also known as the “eVIN,” is captured by BAR during a Smog Check, and should match the physical VIN on the vehicle.

28. During a Bureau representative’s review of Respondents’ certified test results in the Vehicle Information Database (VID) for inspections purportedly performed on the OIS between from May 2016 to August 2016, eleven (11) vehicles identified below had deviations in one or more of the following: eVIN, incorrect vehicle communication protocol, and/or incorrect PID count. This indicates that the vehicles receiving smog certificates were fraudulently tested during the smog check inspection by a method known as Clean Plugging.<sup>2</sup> A detailed explanation of each fraudulent smog check is as follows:

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<sup>2</sup> To “clean plug” a vehicle, the technician uses another vehicle’s properly functioning OBD II system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to vehicles that are not in smog compliance or not present during the certified test.



1           **a.     Clean Plug 1**

2           OIS Test Data indicates that on May 23, 2016, between hours 1635 and 1639, a 2001  
3 Chevrolet Silverado K1500 was tested and a smog certificate was issued under licensed Smog  
4 Check Inspector #EO 633756, Respondent Barerra. The OIS Test Data for the 2001 Chevrolet  
5 Silverado K1500 showed an eVIN that was different than the reported VIN, a communication  
6 protocol of JVPW1850, and a PID count of 22. Based on comparative OIS Test Data for similar  
7 2001 Chevrolet Silverado K1500 vehicles, the following OIS Test Data was expected: the same  
8 eVIN and VIN, communication protocol JVPW, and a PID count of 23.

9           Bureau review of the OIS Test Data revealed that although the reported eVIN did not match  
10 the VIN of the test vehicle, it did match the VIN of a 2004 Chevrolet Suburban K1500 that  
11 happened to be certified at Chavez Smog Check on the same day, just moments after the test in  
12 question (between 1639 and 1641 hours) by the same inspector. This finding suggests  
13 Respondent Barrera used the 2004 Chevrolet Suburban K1500 to clean plug the 2001 Chevrolet  
14 Silverado K1500.

15           The discrepancies noted above prove the OIS Data Acquisition Device (DAD) was not  
16 connected to the 2001 Chevrolet Silverado K1500 being certified, causing the issuance of a  
17 fraudulent Smog Certificate of Compliance.

18           **b.     Clean Plug #2**

19           OIS Test Data indicates that on June 29, 2016, between hours 1212 and 1218, a 2002  
20 Volkswagen Jetta GLS was tested and a smog certificate was issued under licensed Smog Check  
21 Inspector #EO 633756, Respondent Barerra. The OIS Test Data for the 2002 Volkswagen Jetta  
22 GLS showed an eVIN that was different than the reported VIN, a communication protocol of  
23 ICAN11bt500, and a PID count of 38. Based on comparative OIS Test Data for similar 2002  
24 Volkswagen Jetta GLS vehicles, the following OIS Test Data was expected: the eVIN should  
25 match the VIN when reported, a communication protocol of I914, and a PID count of 18 or 18/6.

26           The eVIN reported during the June 29, 2016 test (which differed from the actual VIN)  
27 was matched to a 2012 Chrysler 200 Touring that was certified at Chavez Smog Check on the  
28 same day (June 29, 2016) between 1209 and 1212 hours by Respondent Barrera, immediately

1 before the test in question. This finding suggests Respondent used the 2012 Chrysler 200  
2 Touring to clean plug the 2002 Volkswagen Jetta GLS.

3 In addition, Bureau review of the OIS Test Data for the vehicle in question revealed that  
4 on August 3, 2015, between 1007 and 1018 hours, a prior OIS test was performed at Chavez  
5 Smog Check on the same 2002 Volkswagen Jetta GLS and the vehicle failed inspection. The OIS  
6 Test Data on that date showed the eVIN was properly reported and matched the VIN, the  
7 communication protocol was I9140808, and the PID count was 18/6. Further review of OIS Test  
8 Data revealed that on December 10, 2015, between 1417 and 1420 hours, a third test was  
9 performed at another smog station on the same 2002 Volkswagen Jetta GLS. The vehicle also  
10 failed that inspection. The OIS Test Data from that test showed the eVIN was reported and  
11 matched the VIN, the communication protocol was I9140808, and the PID count was 18/6.

12 The discrepancies noted above prove the OIS DAD was not connected to the 2002  
13 Volkswagen Jetta GLS being certified, causing the issuance of a fraudulent Smog Certificate of  
14 Compliance.

15 **c. Clean Plug #3**

16 OIS Test Data indicates that on June 30, 2016, between hours 0907 and 0911, a 2012  
17 Volkswagen Jetta Base/S was tested and a smog certificate was issued under licensed Smog  
18 Check Inspector #EO 633756, Respondent Barerra. The OIS Test Data for the 2012 Volkswagen  
19 Jetta Base/S showed an eVIN that was different than the reported VIN, a communication  
20 protocol of ICAN11bt500, and a PID count of 38/14. Based on comparative OIS Test Data for  
21 similar 2012 Volkswagen Jetta Base/S vehicles, the following OIS Test Data was expected: the  
22 eVIN should match the VIN when reported, a communication protocol of ICAN11bt5, and a PID  
23 count of 37/14 or 38/14.

24 Bureau review of OIS Test Data revealed that on March 23, 2015, between 0930 and 0937  
25 hours, a prior OIS test was performed at another station on the same 2012 Volkswagen Jetta  
26 Base/S and the vehicle had passed the inspection. The Test Data from that test showed the eVIN  
27 was reported and matched the VIN, a communication protocol of ICAN11bt500, and a PID count  
28 of 38/14.

1 Further Bureau review of the OIS Test Data revealed that although the reported eVIN did  
2 not match the VIN of the test vehicle on June 30, 2016, it did match the VIN of a 2009  
3 Volkswagen Rabbit that was certified at Chavez Smog Check on July 1, 2016, between 1102 and  
4 1104 hours, just a day after the test vehicle was tested. This finding suggests Respondent Barrera  
5 used the 2009 Volkswagen Rabbit to clean plug the 2012 Volkswagen Jetta Base/S the day prior.

6 The discrepancies noted above prove the OIS DAD was not connected to the 2012  
7 Volkswagen Jetta Base/S being certified, causing the issuance of a fraudulent Smog Certificate of  
8 Compliance.

9 **d. Clean Plug #4**

10 OIS Test Data indicates that on July 1, 2016, between hours 1512 and 1514, a 2001  
11 Lincoln Town Car Signature was tested and a smog certificate was issued under licensed Smog  
12 Check Inspector #EO 633756, Respondent Barerra. The OIS Test Data for the 2001 Lincoln  
13 Town Car Signature showed an eVIN that was different than the reported VIN, a communication  
14 protocol of JPWM1850, and a PID count of 20/18. Based on comparative OIS Test Data for  
15 similar 2001 Lincoln Town Car Signature vehicles, the following OIS Test Data was expected:  
16 the eVIN should match the VIN when reported, a communication protocol of JPWM, and a PID  
17 count of 20.

18 Bureau review of OIS test data revealed that although the reported eVIN did not match the  
19 VIN of the test vehicle on July 1, 2016, it did match the VIN of a 2000 Ford F150 that was  
20 certified at Chavez Smog Check on July 1, 2016, between 1509 and 1511 hours, just moments  
21 before the 2001 Lincoln Town Car Signature was tested. This finding suggests Respondent  
22 Barrera used the 2000 Ford F150 to clean plug the 2001 Lincoln Town Car Signature.

23 The discrepancies noted above prove the OIS DAD was not connected to the 2001  
24 Lincoln Town Car Signature being certified, causing the issuance of a fraudulent Smog  
25 Certificate of Compliance.

26 **e. Clean Plug #5**

27 OIS Test Data indicates that on July 22, 2016, between hours 1512 and 1517, a 2008  
28 Toyota FJ Cruiser was tested and a smog certificate was issued under licensed Smog Check

1 Inspector #EO 633756, Respondent Barerra. The OIS Test Data for the 2008 Toyota FJ Cruiser  
2 showed an eVIN that was different than the reported VIN, a communication protocol of  
3 JVPW1850, and a PID count of 18. Based on comparative OIS Test Data for similar 2008 Toyota  
4 FJ Cruiser vehicles, the following OIS Test Data was expected: the eVIN should match the VIN  
5 when reported, a communication protocol of ICAN11bt5, and a PID count of 46.

6 Bureau review of OIS test data revealed that although the reported eVIN did not match the  
7 VIN of the test vehicle on July 22, 2016, it did match the VIN of a 2004 Dodge Neon SXT that  
8 was certified at Chavez Smog Check on July 22, 2016, between 1518 and 1520 hours, just  
9 moments after the 2008 Toyota FJ Cruiser was tested. This finding suggests Respondent Barrera  
10 used the 2004 Dodge Neon SXT to clean plug the 2008 Toyota FJ Cruiser.

11 The discrepancies noted above prove the OIS DAD was not connected to the 2008 Toyota  
12 FJ Cruiser being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

13 **f. Clean Plug #6**

14 OIS Test Data indicates that on July 28, 2016, between hours 1558 and 1603, a 2008  
15 Saturn Astra XR was tested and a smog certificate was issued under licensed Smog Check  
16 Inspector #EO 633756, Respondent Barerra. The OIS Test Data for the 2008 Saturn Astra XR  
17 showed an eVIN that was different than the reported VIN, a communication protocol of  
18 ICAN11bt500, and a PID count of 47. Based on comparative OIS Test Data for similar 2008  
19 Saturn Astra XR vehicles, the following OIS Test Data was expected: the eVIN should match the  
20 VIN when reported, a communication protocol of ICAN11bt5, and a PID count of 41 or 41/4.

21 Bureau review of OIS test data revealed that although the reported eVIN did not match the  
22 VIN of the test vehicle on July 28, 2016, it did match the VIN of a 2005 Ford Mustang that was  
23 certified at Chavez Smog Check on July 28, 2016, between 1603 and 1606 hours, just moments  
24 after the 2008 Saturn Astra XR was tested. This finding suggests Respondent Barrera used the  
25 2005 Ford Mustang to clean plug the 2008 Saturn Astra XR.

26 The discrepancies noted above prove the OIS DAD was not connected to the 2008 Saturn  
27 Astra XR being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

28 ///

1           **g.     Clean Plug #7**

2           OIS Test data indicates that on July 29, 2016, between hours 0824 and 0826, a 2009  
3 Hyundai Sonata GLS was tested and a smog certificate was issued under licensed Smog Check  
4 Inspector #EO 633756, Respondent Barerra. The OIS Test Data for the 2009 Hyundai Sonata  
5 GLS showed an eVIN that was different than the reported VIN, a communication protocol of  
6 ICAN11bt500, and a PID count of 39/17. Based on comparative OIS Test Data for similar 2009  
7 Sonata GLS Hyundai vehicles, the following OIS Test Data was expected: the eVIN should  
8 match the VIN when reported, a communication protocol of ICAN11bt5, and a PID count of 42,  
9 42/1, or 42/4.

10          Bureau review of OIS test data revealed that although the reported eVIN did not match the  
11 VIN of the test vehicle on July 29, 2016, it did match the VIN of a 2008 Mazda Mazda 3S that  
12 was certified at another station located in Calexico on October 9, 2015. This finding suggests  
13 Respondent Barrera used the 2008 Mazda Mazda 3S to clean plug the 2009 Hyundai Sonata GLS.

14          The discrepancies noted above prove the OIS DAD was not connected to the 2009 Hyundai  
15 Sonata GLS being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

16           **h.     Clean Plug #8**

17          The OIS Test Data indicates that on August 1, 2016, between hours 0813 and 0817, a  
18 2006 Chrysler 300C was tested and a smog certificate was issued under licensed Smog Check  
19 Inspector #EO 633756, Respondent Barerra. The OIS Test Data for the 2006 Chrysler 300C  
20 showed an eVIN that was different than the reported VIN, a communication protocol of  
21 ICAN11bt500, and a PID count of 39/17. Based on comparative OIS Test Data for similar 2006  
22 Chrysler 300C vehicles, the following OIS Test Data was expected: the eVIN should match the  
23 VIN when reported, a communication protocol of ICAN11bt5, and a PID count of 41, 43/12, or  
24 43/6.

25          Bureau review of OIS test data revealed that although the reported eVIN did not match the  
26 VIN of the test vehicle on August 1, 2016, it did match the VIN of a 2008 Mazda Mazda 3S  
27 (same vehicle as in Clean Plug #7) that was certified at another station located in Calexico on  
28

1 October 9, 2015. This finding suggests Respondent Barrera used the 2008 Mazda Mazda 3S to  
2 clean plug the 2006 Chrysler 300C.

3 The discrepancies noted above prove the OIS DAD was not connected to the 2006 Chrysler  
4 300C being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

5 **i. Clean Plug #9**

6 The OIS Test Data indicates that on August 4, 2016, between hours 1440 and 1445, a  
7 2007 Chrysler 300 Touring was tested and a smog certificate was issued under licensed Smog  
8 Check Inspector #EO 633756, Respondent Barerra. The OIS Test Data for the 2007 Chrysler 300  
9 Touring showed an eVIN that was different than the reported VIN, a communication protocol of  
10 JPWM1850, and a PID count of 19. Based on comparative OIS Test Data for similar 2007  
11 Chrysler 300 Touring vehicles, the following OIS Test Data was expected: the eVIN should  
12 match the VIN when reported, a communication protocol of ICAN11bt5, and a PID count of 43,  
13 or 43/12.

14 Bureau review of OIS test data revealed that although the reported eVIN did not match the  
15 VIN of the test vehicle on August 4, 2016, it did match the VIN of a 2001 Ford Ranger that was  
16 certified at Chavez Smog Check on August 4, 2016, between 1447 and 1450 hours, just moments  
17 after the 2007 Chrysler 300 Touring was tested. This finding suggests Respondent Barrera used  
18 the 2001 Ford Ranger to clean plug the 2007 Chrysler 300 Touring.

19 The discrepancies noted above prove the OIS DAD was not connected to the 2007 Chrysler  
20 300 Touring being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

21 **j. Field Visit**

22 On August 26, 2016, a Bureau representative made a field visit to Chavez Smog Check to  
23 perform a Station compliance inspection and to inspect records from May 20, 2016, to August 20,  
24 2016. None of the records for the above mentioned nine (9) clean plugged vehicles were present  
25 in the date range of records requested. The representative made copies of seven (7) VIRs that  
26 were not signed along with their related invoices. On August 29, 2016, the representative  
27 conducted another review of Smog Check data from the VID consisting of data transmitted from  
28 Chavez Smog Check's Smog Check OIS System for August 26, 2016. The representative's

1 review revealed Respondent Barrera illegally certified two (2) additional vehicles after the  
2 representative left the station, resulting in the issuance of an additional two (2) fraudulent  
3 Certificates of Compliance, using the "Clean Plugging" method.

4 **k. Clean Plug #10**

5 The OIS Test Data indicates that on August 26, 2016, between hours 1408 and 1411, a  
6 2010 Audi A4 2.0T Premium Plus was tested and a smog certificate was issued under licensed  
7 Smog Check Inspector #EO 633756, Respondent Barrera. The OIS Test Data for the 2010 Audi  
8 A4 2.0T Premium Plus showed an eVIN that was different than the reported VIN, a  
9 communication protocol of ICAN11bt500, and a PID count of 40. Based on comparative OIS  
10 Test Data for similar 2010 Audi A4 2.0T Premium Plus vehicles, the following OIS Test Data  
11 was expected: the eVIN should match the VIN when reported, a communication protocol of  
12 ICAN11bt5, and a PID count of 37/10 or 37/14.

13 Bureau review of OIS test data revealed that although the reported eVIN did not match the  
14 VIN of the test vehicle on August 26, 2016, it did match the VIN of a 2011 Nissan Altima 2.5/2.5  
15 S that was certified at Chavez Smog Check on August 19, 2016. This finding suggests  
16 Respondent Barrera used the 2011 Nissan Altima 2.5/2.5 S to clean plug the 2010 Audi A4 2.0T  
17 Premium Plus.

18 The discrepancies noted above prove the OIS DAD was not connected to the 2010 Audi A4  
19 2.0T Premium Plus being certified, causing the issuance of a fraudulent Smog Certificate of  
20 Compliance.

21 **l. Clean Plug #11**

22 OIS Test Data indicates that on August 26, 2016, between hours 1412 and 1414, a 2003  
23 Acura RSX Type-S was tested and a smog certificate was issued under licensed Smog Check  
24 Inspector #EO 633756, Respondent Barrera. The OIS Test Data for the 2003 Acura RSX Type-S  
25 showed an eVIN that was different than the reported VIN, a communication protocol of  
26 ICAN11bt500, and a PID count of 40. Based on comparative OIS Test Data for similar 2003  
27 Acura RSX Type-S vehicles, the following OIS Test Data was expected: no eVIN should be  
28 reported, a communication protocol of I914, and a PID count of 15, 16, or 17.

1 Bureau review revealed that on February 25, 2015, between 1635 and 1639 hours, a prior  
2 OIS test was performed at another station on the same 2003 Acura RSX Type-S. The test data  
3 from that test showed the eVIN was not reported, a communication protocol I9140808, and a PID  
4 count of 16.

5 Additional Bureau review of OIS test data revealed that although the reported eVIN did  
6 not match the VIN of the test vehicle on August 26, 2016, it did match the VIN of a 2011 Nissan  
7 Altima 2.5/2.5 S (same vehicle as in Clean Plug #10) that was certified at Chavez Smog Check on  
8 August 19, 2016. This finding suggests Respondent Barrera used the 2011 Nissan Altima 2.5/2.5  
9 S to clean plug the 2003 Acura RSX Type-S.

10 The discrepancies noted above prove the OIS DAD was not connected to the 2003 Acura  
11 RSX Type-S being certified, causing the issuance of a fraudulent Smog Certificate of  
12 Compliance.

13 29. At all times alleged in this Accusation, Respondent Barrera was acting in the course  
14 and within the scope of a technician, employee, partner, officer, or member of Chavez Smog  
15 Check.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statement)**

18 30. Complainant re-alleges and incorporates by reference the allegations set forth above  
19 in the foregoing paragraphs.

20 31. Respondent Chavez's Registration is subject to disciplinary action under section  
21 9884.7, subdivision (a)(1), in that Chavez Smog Check made or authorized statements which  
22 Chavez Smog Check knew or in the exercise of reasonable care should have known to be untrue  
23 or misleading.

24 32. Respondent Chavez certified that the vehicles listed in paragraph 28, subparagraphs a.  
25 through l., had passed inspection and were in compliance with all applicable laws and regulations,  
26 when in fact and in truth, Chavez Smog Check inspected the vehicles using the clean plugging  
27 method to issue fraudulent certificates of compliance.

28 ///





1 3340.42 of the Regulations and failed to ensure that the vehicles had all the required emission  
2 control equipment and devices installed and functioning correctly.

3 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection  
4 System false information about the vehicles listed in paragraph 28, subparagraphs a. through l.,  
5 providing results for smog inspections which were not actually performed.

6 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicles listed in  
7 paragraph 28, subparagraphs a. through l., in accordance with the Bureau's specifications.

8 d. **Section 3340.45**: failed to conduct the required smog tests on the vehicles listed in  
9 paragraph 28, subparagraphs a. through l., in accordance with the Smog Check Manual, dated  
10 2013.

#### 11 **FOURTH CAUSE FOR DISCIPLINE**

##### 12 **(Dishonesty, Fraud, or Deceit)**

13 37. Complainant re-alleges and incorporates by reference the allegations set forth above  
14 in the foregoing paragraphs.

15 38. Respondent Chavez's Registration is subject to disciplinary action under Code section  
16 9884.7, subdivision (a)(4) and Respondent Chavez's Smog Check Station License is subject to  
17 disciplinary action under Health and Safety Code sections 44072.10, subdivision (c) and 44072.2,  
18 subdivision (d), in that Chavez Smog Check committed dishonest, fraudulent, or deceitful acts  
19 whereby another is injured by issuing a smog certificate of compliance for the vehicles listed in  
20 paragraph 28, subparagraphs a. through l., without performing bona fide inspections of the  
21 emission control devices and systems on the vehicles, thereby depriving the People of the State of  
22 California of the protection afforded by the Motor Vehicle Inspection Program.

#### 23 **FIFTH CAUSE FOR DISCIPLINE**

##### 24 **(Violation of Motor Vehicle Inspection Program)**

25 39. Complainant re-alleges and incorporates by reference the allegations set forth above  
26 in the foregoing paragraphs.

1       40. Respondent Barerra's Smog Check Inspector License is subject to disciplinary action  
2 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,  
3 subdivision (a), in that Barerra failed to comply with the following sections of that Code:

4       a. **Section 44012**: failed to perform the tests of the emission control systems and  
5 devices on the vehicles listed in paragraph 28, subparagraphs a. through l., in accordance with  
6 procedures prescribed by the Department.

7       b. **Section 44015, subd. (a) and (b)**: issued a certificate of compliance for the vehicles  
8 listed in paragraph 28, subparagraphs a. through l., without properly testing and inspecting them  
9 to determine if they were in compliance with Health & Safety Code section 44012.

10       c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,  
11 equipment, performance, or conduct by failing to properly perform a smog inspection on the  
12 vehicles listed in paragraph 28, subparagraphs a. through l., or certifying that such tests had been  
13 performed, when in fact they were never performed.

14       d. **Section 44032**: failed to test emission control devices and systems in accordance  
15 with Section 44012 on the vehicles listed in paragraph 28, subparagraphs a. through l.

#### 16                                   **SIXTH CAUSE FOR DISCIPLINE**

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

18       41. Complainant re-alleges and incorporates by reference the allegations set forth above  
19 in the foregoing paragraphs.

20       42. Respondent Barerra's Smog Check Inspector License is subject to disciplinary action  
21 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,  
22 subdivision (a) in that Barerra failed to comply with the following sections of Title 16, California  
23 Code of Regulations:

24       a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles listed in  
25 paragraph 28, subparagraphs a. through l., in accordance with the procedures specified in section  
26 3340.42 of the Regulations and failed to ensure that the vehicles listed in paragraph 28,  
27 subparagraphs a. through l., had all the required emission control equipment and devices installed  
28 and functioning correctly.

1       b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection  
2 System false information about the vehicles listed in paragraph 28, subparagraphs a. through l.,  
3 providing results for smog inspections which were not actually performed.

4       c. **Section 3340.42**: failed to conduct the required smog tests on the vehicles listed in  
5 paragraph 28, subparagraphs a. through l., in accordance with the Bureau's specifications.

6       d. **Section 3340.45**: failed to conduct the required smog tests on the vehicles listed in  
7 paragraph 28, subparagraphs a. through l., in accordance with the Smog Check Manual, dated  
8 2013.

#### 9                                   **SEVENTH CAUSE FOR DISCIPLINE**

##### 10                                   **(Dishonesty, Fraud, or Deceit)**

11       43. Complainant re-alleges and incorporates by reference the allegations set forth above  
12 in the foregoing paragraphs.

13       44. Respondent Barerra's Smog Check Inspector License is subject to disciplinary action  
14 under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2,  
15 subdivision (d), in that Barerra committed dishonest, fraudulent, or deceitful acts whereby another  
16 is injured by issuing a smog certificate of compliance for the vehicles listed in paragraph 28,  
17 subparagraphs a. through l., without performing bona fide inspections of the emission control  
18 devices and systems on the vehicles, thereby depriving the People of the State of California of the  
19 protection afforded by the Motor Vehicle Inspection Program.

#### 20                                   **DISCIPLINARY CONSIDERATIONS**

21       45. On April 8, 2010, Respondent was issued Citation C2010-1061 by the Bureau for  
22 violation of Section 44012(f) of the Health and Safety Code and Section 3340.35(c) of title 16 of  
23 the California Code of Regulations. Respondent Chavez was assessed a civil penalty of \$500 for  
24 issuance of a Certificate of Compliance to a Bureau undercover vehicle with a non-functional  
25 Exhaust Gas Recirculation (EGR) system.

26       46. On April 8, 2010, Respondent Chavez was issued M2010-1062 by the Bureau for  
27 violation of Section 44032 of the Health and Safety Code and Section 3340.30(a) of title 16 of the  
28 California Code of Regulations. Respondent Chavez was directed to complete an 8-hour training

1 for issuance of a Certificate of Compliance to a Bureau undercover vehicle with a non-functional  
2 Exhaust Gas Recirculation (EGR) system.

3 **OTHER MATTERS**

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

8 48. Under Health & Safety Code section 44072.8, if Respondent Chavez's Smog Check  
9 Station License is revoked or suspended, the Director may likewise revoke or suspend any  
10 additional license issued under Chapter 5 of the Health and Safety Code in the name of  
11 Respondent Chavez.

12 49. Under Health and Safety Code section 44072.8, if Respondent Barerra's Smog Check  
13 Inspector License is revoked or suspended, any additional license issued under the Motor Vehicle  
14 Inspection Program in the name of Barerra may be likewise revoked or suspended by the  
15 Director.

16 **PRAYER**

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

19 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration  
20 No. ARD 253725, issued to Respondent Chavez.

21 2. Revoking, suspending or placing on probation Smog Check Station License No. RC  
22 253725, issued to Respondent Chavez.

23 3. Revoking, suspending or placing on probation Lamp Station License No. 253725.

24 4. Revoking, suspending or placing on probation Brake Station License No. 253725.

25 5. Revoking, suspending or placing on probation any additional license issued under  
26 Chapter 5 of the Health and Safety Code in the name of Respondent Chavez.

27 6. Revoking, suspending or placing on probation the registration for all places of  
28 business operated in this State in the name of Respondent Chavez.

1           7.     Revoking, suspending or placing on probation Smog Check Inspector No. EO  
2 633756, issued to Respondent Barerra.

3           8.     Revoking, suspending or placing on probation Brake Adjuster License No. BA  
4 633756, issued to Respondent Barrera;

5           9.     Revoking, suspending or placing on probation Lamp Adjuster License No. LA  
6 633756, issued to Respondent Barrera;

7           10.    Revoking, suspending or placing on probation any additional license issued under  
8 Chapter 5 of the Health and Safety Code in the name of Respondent Barerra;

9           11.    Ordering Respondents Chavez and Barrera to pay the Bureau of Automotive Repair  
10 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
11 Professions Code section 125.3; and,

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

13  
14  
15 DATED:

March 29, 2017



PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

*Complainant*

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