

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

In the Matter of the Accusation and Petition to Revoke
Probation Against:

**SMOG MAN, LLC, BRIAN CARLSEN;
LINDSIE CARLSEN, and JENNIFER
ALLEN, Members**

Automotive Repair Dealer Registration Number ARD
256719
Smog Check-Test Only Station License No.
TC256719

and,

BENJAMIN ALBERTO RODRIGUEZ

Smog Check Inspector License Number
EO632641
Smog Check Repair Technician License
No. EI632641 (Formerly Advanced Emissions
Technician License Number EA632641)

and,

JOSE LUIS BERNALES

Smog Check Inspector License Number
EO633102
Smog Check Repair Technician License
Number EI633102 (Formerly Advanced Emission
Technician License Number EA633102)

Respondents.

Case No. 79/14-73

OAH No. 2014070214

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby
accepted and adopted by the Director of Consumer Affairs as the Decision in the above-

entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the Proposed Decision is corrected as follows:

Page 1, case caption: "TC56719" is corrected to "TC256719."

Page 1, case caption: "E0632641" is corrected to "EO632641."

Page 1, case caption: "EA1632641" is corrected to "EI632641."

Page 1, case caption: "E0633102" is corrected to "EO633102."

Page 1, case caption: "E1633102" is corrected to "EI633102."

This Decision shall become effective March 18, 2015.

DATED: February 12, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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

In the Matter of the Accusation and Petition to
Revoke Probation Against:

SMOG MAN, LLC, BRIAN CARLSEN;
LINDSIE CARLSEN, AND JENNIFER
ALLEN, Members

Automotive Repair Dealer
Registration Number ARD256719
Smog Check-Test Only Station License No.
TC56719

and,

BENJAMIN ALBERTO RODRIGUEZ

Smog Check Inspector License Number
E0632641
Smog Check Repair Technician License No.
EA1632641
(Formerly Advanced Emissions Technician
License Number EA632641)

and,

JOSE LUIS BERNALES

Smog Check Inspector License Number
E0633102
Smog Check Repair Technician License
Number E1633102
(Formerly Advanced Emission Technician
License Number EA633102)

Respondents.

Case No. 79/14 - 73

OAH No. 2014070214

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter on December 2, 2013, in Oakland, California.

Tim McDonough, Deputy Attorney General, represented Complainant Bureau of Automotive Repair (Bureau).

Jose Luis Bernales, respondent, appeared and represented himself.

The matter was submitted for decision on December 2, 2014.

FACTUAL FINDINGS

1. On December 20, 2013, the Bureau issued the Accusation and Petition to Revoke Probation, No. 79/14 – 73 (Accusation), against respondents Smog Man, LLC, Brain Carlsen, Lindsie Carlsen, and Jennifer Allen, Members; Benjamin Alberto Rodriguez, smog technician; and, Jose Luis Bernales, smog technician.

Prior to the hearing, stipulated settlements were reached between the Bureau and respondents Smog Man, LLC, Brain Carlsen, Lindsie Carlsen, and Jennifer Allen, Members, and with Benjamin Alberto Rodriguez.¹ Only the allegations relating to respondent Bernales are addressed in this proposed decision.

2. Advanced Emission Specialist (EA) Technician License No. 633102 was issued to respondent Jose Luis Bernales on May 9, 2011. The license was cancelled on February 21, 2013, and pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), respondent was issued Smog Check Inspector (EI) License No. 633102 and Smog Check Repair Technician (EO) License No. 633102. The licenses will expire on May 31, 2015.

3. The Accusation seeks revocation or suspension of respondent Bernales' licenses. Respondent Bernales was employed by Smog Man as a smog technician. Respondent Bernales was not on probation and his licenses had not previously been disciplined at the time the events alleged in the Accusation occurred.

4. Respondent filed a timely appeal of the Accusation and this hearing followed.

¹ Effective February 6, 2012, pursuant to the Decision and Order in the Matter of the Accusation against Smog Man LLC, Case Number 79/11-08 (Decision), the Director of the Bureau of Automotive Repair invalidated respondent Smog Man's Automotive Repair Dealer Registration Number ARD256719 and revoked Smog Check Station License Number TC256719. However, the invalidation/revocation was stayed and respondent Smog Man was placed on probation for five years with certain terms and conditions.

Basis for the Accusation

5. The Accusation is based on respondent Bernales' failure to correctly perform a smog test on an undercover vehicle that had been altered and documented by the Bureau, and then used to conduct compliance tests at smog test stations. On November 9, 2012, a Bureau undercover operator drove the vehicle, a 1994 Toyota pickup truck (Toyota), to Smog Man and requested a smog inspection. The undercover operator did not meet or speak with respondent Bernales at that time, but respondent Bernales performed the smog test.

6. Prior to bringing the Toyota to Smog Man, a Bureau technician removed from the Toyota's engine compartment the Pulsed Secondary Air Injection system (PAIR). The PAIR is a required component of the emission control system. The PAIR's location in the engine compartment is depicted on the vehicle's under hood label, which was in place.

7. In order to complete the required visual inspection portion of the smog test for this vehicle, the technician is required to verify that the PAIR is installed. The vehicle inspection report reflects that respondent Bernales entered "Pass" in the computer, indicating the presence of the PAIR, when it was in fact missing.

8. Respondent Bernales provided the undercover operator with a Vehicle Inspection Report (VIR) and a DMV Renewal Notice indicating the Toyota had passed the smog test. The VIR confirmed that respondent Bernales conducted the tests. However, without the PAIR, the Toyota could not pass a properly administered smog test.

Respondent's Evidence

9. Respondent testified that he was a new smog technician at the time when the test at issue was conducted. Although he had worked at other smog test stations, the vast majority of the work he performed at those locations was as a mechanic doing car repairs, as opposed to smog test work. He came to Smog Man as a weekend employee to gain more experience.

10. Respondent testified that when he began working at Smog Man he lacked confidence in his skills and relied too much on another smog technician, Benjamin Rodriguez, to tell him what to do. Respondent testified that at the time he performed the test, he believed he had done so correctly.

11. Respondent testified that the smog test he performed on the Toyota occurred on only the second day of his employment at Smog Man and that he did not know that Smog Man's license was on probation when he took the job there.

12. While working at Smog Man, respondent found a full-time job during the week at another test station, 4 Less Smog, where he continues to be employed. Respondent left Smog Man in 2013. Respondent provided evidence from the Bureau's website indicating he fails more cars than is the average for other smog technicians.

13. Respondent believes he was “caught up” in the Bureau’s larger investigation of Smog Man, when in fact he had nothing to do with the practices that that were the basis for the discipline that led to its probation in 2011, and with the exception of the test he performed on the Toyota, he was not a participant in the subsequent events that led to the loss of the other respondents’ licenses.

14. Respondent is married and has a young child. He works at a STAR rated smog test station and states he performs his work with pride and integrity.

LEGAL CONCLUSIONS

1. Health and Safety Code section 44072.2, subdivision (a),² provides:

The director may suspend, revoke, or take other disciplinary action against a licensee as provided in this article if the licensee . . . does any of the following:

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which relate to the licensed activities.

Section 44012, subdivision (f), provides that a complete smog inspection must include a visual inspection of required components. Section 44032 provides a technician must perform tests of emission control devices in accordance with Section 44012. By reason of Findings 5-8, cause exists to discipline respondent’s licenses pursuant to section 44072.2, as that section relates to section 44012, subdivision (f), and to section 44032.

2. Code section 44072.2, subdivision (c), authorizes the director to discipline a license, when the licensee “violates any of the regulations adopted by the director. . .” California Code of Regulations, title 16, section 3340.30, subdivision (a),³ together with section 3340.41, subdivision (c), prohibit a licensee from knowingly entering into the emissions inspection system any false information about the vehicle being tested. Section 3340.42, subdivision (b), of the Bureau’s Regulations, requires a visual inspection of emission control components to verify their proper operation. By reason of Findings 5-8, cause exists to discipline respondent’s license pursuant to Section 44072.2, subdivision (c), as it relates to sections 3340.30, subdivision (a), 33041, subdivision (c), and 3340.42, subdivision (b), of the Bureau’s Regulations.

² All statutory references are to the Health and Safety Code unless otherwise indicated.

³ All references to the California Administrative Code, title 16, section 3340 et seq. are referred to as the Bureau’s Regulations.

3. Section 44072.2, subdivision (d), authorizes the director to discipline a license, when the licensee "Commits any act involving, dishonesty, fraud, or deceit whereby another is injured." Cause was not established to discipline respondent Bernales for acts involving dishonesty.

4. Respondent Bernales is easily distinguished from the other respondents in this case by the fact that he was a smog technician, and not a smog check station owner, and he was not on probation nor had he been cited for any discipline prior to the time the Accusation was issued. (Finding 3.) Moreover, respondent Bernales had only worked at Smog Man for two days when the undercover vehicle was presented for testing. (Finding 11.) On the other hand, he failed to perform the test correctly or in compliance with the Bureau's Regulations. The issue is then the appropriate level of discipline, within the range of discipline the director is entitled to impose.

5. The Bureau has adopted guidelines to assist in the determination of appropriate penalties.⁴ In the case of accusations, the guidelines state:

The Bureau normally submits cases for the filing of an Accusation based on the investigations and the use of undercover vehicle operations in order to detect and document multiple violations of the Smog Check Program or the Automotive Repair Act.

Here, the prior violations all related to respondents other than respondent Bernales, who at the time of the investigation was a new employee. (Finding 1.) There are no aggravating factors with respect to respondent Bernales. Based on these facts, revocation or suspension, or even placing respondent Bernales' licenses on probation, would be inconsistent with discipline recommended by the guidelines.

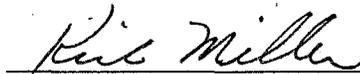
6. Code section 44031.5, subdivision (c), provides: "Whenever the department determines, through investigation, that a previously qualified smog check technician may lack the skills to reliably and accurately perform the test or repair functions within the required qualification, the department may prescribe for the technician one or more retraining courses which have been certified by the department." This case involves an inspection error, as opposed to fraudulent conduct. The facts indicate the need for further training, especially with respect to testing older cars, and the need for respondent Bernales to more thoroughly perform the visual inspection portion of the smog test. Respondent Bernales will be ordered to take a training course. Given the nature of the violation, it is not against the public interest for respondent Bernales to continue to perform smog tests while completing the training.

⁴ The guidelines are found at California Code of Regulations, title 16, section 3340.16 et seq.

ORDER

Respondent Jose Luis Bernales shall complete an 8-hour training course within 30 days of the effective date of this decision.

DATED: December 31, 2014



KIRK E. MILLER

Administrative Law Judge

Office of Administrative Hearings

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

11
12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against:

14 **SMOG MAN, LLC, BRIAN CARLSEN;**
LINDSIE CARLSEN, AND JENNIFER
15 **ALLEN, MEMBERS**
16 **3753 SAN PABLO DAM RD.**
EL SOBRANTE, CA 94803

17 MAILING ADDRESS:
18 **3650 MAPLE AVENUE**
19 **OAKLAND, CA 94602**

20 **AUTOMOTIVE REPAIR DEALER**
REGISTRATION NUMBER ARD256719
21 **SMOG CHECK-TEST ONLY STATION LICENSE**
NUMBER TC256719

22 **BENJAMIN ALBERTO RODRIGUEZ**
23 **452 SHERYL DRIVE**
24 **SAN PABLO, CA 94806**

25 **SMOG CHECK INSPECTOR LICENSE NUMBER**
EO632641
26 **SMOG CHECK REPAIR TECHNICIAN LICENSE**
NUMBER EI632641
27 **(FORMERLY ADVANCED EMISSIONS**
28 **TECHNICIAN LICENSE NUMBER EA632641)**

Case No. **79/14-73**

ACCUSATION AND PETITION TO
REVOKE PROBATION

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AND

JOSE LUIS BERNALES
6015 SUTTER AVE
RICHMOND, CA 94804

SMOG CHECK INSPECTOR LICENSE NUMBER
EO633102
SMOG CHECK REPAIR TECHNICIAN LICENSE
NUMBER EI633102
(FORMERLY ADVANCED EMISSIONS
TECHNICIAN LICENSE NUMBER EA633102)

Respondents.

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration ARD256719

2. On or about November 19, 2008, the Bureau issued Automotive Repair Dealer Registration Number ARD256719 (registration) to Smog Man LLC, Brian Andrew Carlsen, Jennifer Lynn Allen, and Lindsie Carlsen, Members, doing business as Smog Man (Respondent Smog Man). The registration was in full force and effect at all times relevant to the charges brought in this Accusation and Petition and expired on November 30, 2013, and has not been renewed.

Smog Check Station License Number TC256719

3. On or about December 23, 2008, the Bureau issued Smog Check Station License Number TC256719, to Respondent Smog Man. The license was in full force and effect at all

1 times relevant to the charges brought in this Accusation and Petition and expired on November
2 30, 2013, and has not been renewed.

3 **Advanced Emissions Specialist License Number EA632641**

4 4. On or about November 3, 2010, the Bureau issued Advanced Emission Specialist
5 Technician License Number EA632641 (technician license) to Benjamin Alberto Rodriguez
6 (Respondent Rodriguez). The technician license was in full force and effect at all times relevant
7 to the charges brought in this Accusation and Petition. Respondent Rodriguez's technician
8 license expired on January 31, 2013. Respondent timely renewed the license and under
9 California Code of Regulations, Title 16, section 3340.28, subdivision (e), the original license
10 became Smog Check Inspector license number EO632641 and Smog Check Repair Technician
11 license number EI632641, effective January 31, 2013. These licenses will expire January 31,
12 2015.¹

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15 **Advanced Emissions Specialist License Number EA633102**

16 5. On or about May 9, 2011 the Bureau issued Advanced Emission Specialist
17 Technician License Number EA633102 to Jose Luis Bernales (Respondent Bernales). The
18 technician license was in full force and effect at all times relevant to the charges brought in this
19 Accusation and Petition. Respondent Bernales' technician license expired on May 31, 2013.
20 Respondent timely renewed the license and under California Code of Regulations, Title 16,
21 section 3340.28, subdivision (e), the original license became Smog Check Inspector license
22 number EO633102 and Smog Check Repair Technician license number EI633102, effective May
23 31, 2013. These licenses will expire May 31, 2015.

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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 Emissions 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 PRIOR DISCIPLINARY ACTION

2 6. Effective February 6, 2012, pursuant to the Decision and Order in *the Matter of the*
3 *Accusation Against Smog Man LLC*, Case Number 79/11-08 (Decision), the Director invalidated
4 Respondent Smog Man's Automotive Repair Dealer Registration Number ARD256719 and revoked
5 Smog Check Station License Number TC256719. However, the invalidation/revocation was stayed
6 and Respondent Smog Man was placed on probation for five years with certain terms and
7 conditions. A copy of the Decision is attached as exhibit "A" and incorporated by reference.
8

9 JURISDICTION

10 7. This Accusation is brought before the Director of Consumer Affairs (Director) for
11 the Bureau of Automotive Repair, under the authority of the following laws. All sections
12 references are to the Business and Professions Code (Code) unless otherwise indicated.
13

14 8. Code section 118, subdivision (b), states:

15 The suspension, expiration, or forfeiture by operation of law of a license issued by a
16 board in the department, or its suspension, forfeiture, or cancellation by order of the
17 board or by order of a court of law, or its surrender without the written consent of the
18 board, shall not, during any period in which it may be renewed, restored, reissued, or
19 reinstated, deprive the board of its authority to institute or continue a disciplinary
proceeding against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action against the
licensee on any such ground.

20 9. Code section 9884.7 provides that the Director may revoke an automotive repair
21 dealer registration.

22 10. Code section 9884.13 provides, in part, that the expiration of a valid registration shall
23 not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an
24 automotive repair dealer or to render a decision temporarily or permanently invalidating
25 (suspending or revoking) a registration.
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1 11. Health and Safety Code section 44002, provides, in part, that the Director has all of
2 the powers and authority granted under the Automotive Repair Act for enforcing the Motor
3 Vehicle Inspection Program.

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

9 **STATUTORY PROVISIONS**

10 13. Code Section 9884.7 states, in part:
11

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

18 (1) Making or authorizing in any manner or by any means whatever any
19 statement written or oral which is untrue or misleading, and which is known, or which
20 the exercise of reasonable care should be known, to be untrue or misleading.
21

22 ...
23 (4) Any other conduct that constitutes fraud.
24

25 ...
26 (6) Failure in any material respect to comply with the provisions of this chapter
27 [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations
28 adopted pursuant to it.

14. Code section 9884.9, subdivision (a), states, in part:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the

1 REGULATORY PROVISIONS

2 17. California Code of Regulations, title 16, section 3373, states:

3 No automotive repair dealer or individual in charge shall, in filling out an estimate,
4 invoice, or work order or record required to be maintained under section 3340.15(f)
5 of this chapter, withhold therefrom or insert therein any statement or information
6 which will cause any such document to be false or misleading, or where the tendency
or effect thereby would be to mislead or deceive customers, prospective customers, or
the public.

7 18. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:

8 Upon renewal of an unexpired Basic Area Technician license or an Advanced
9 Emission Specialist Technician license issued prior to the effective date of this
10 regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check
Repair Technician, or both.

11 COST RECOVERY

12 19. Code section 125.3 provides, in part, that a Board may request the administrative
13 law judge to direct a licentiate found to have committed a violation or violations of the licensing
14 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
15 case.

16 UNDERCOVER OPERATION # 1: OCTOBER 18, 2012

17 20. On or about October 18, 2012, a Bureau undercover operator drove a Bureau-
18 documented 1990 Mercury to Respondent Smog Man's facility. The vehicle could not pass a
19 properly performed smog inspection because the ignition timing was set beyond manufacturer's
20 specifications.

21 21. Prior to the smog inspection, no one at Respondent Smog Man asked the operator to
22 sign any paperwork or provided the operator with a written estimate.

23 22. Respondent Rodriguez performed the inspection. He did not perform the ignition
24 timing check, low pressure fuel evaporative test (LPFET), and tire pressure check. Respondent
25 Rodriguez issued electronic Certificate of Compliance Number [REDACTED] for the vehicle even
26 though it could not have passed the functional portion of the smog inspection. The operator paid
27
28

1 \$74.00 for the smog inspection and received a copy of Invoice Number [REDACTED] and the Vehicle
2 Inspection Report (VIR).

3 23. Invoice Number [REDACTED] stated that an "evap" test and tire pressure test were performed
4 and the operator was charged \$15.00 for the "evap" test.
5

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Untrue and Misleading Statements)**

8 24. Respondent Smog Man subjected its registration to discipline by making untrue or
9 misleading statements. (Code section 9884.7, subd. (a)(1).) Specifically, on or about October
10 18, 2012, Respondent made or authorized statements which he knew, or in the exercise of
11 reasonable care should have known, to be untrue or misleading by issuing a certificate of
12 compliance for the 1990 Mercury. It certified that the vehicle was in compliance with applicable
13 laws and regulations when, in fact, it could not have passed the functional ignition timing portion
14 of the smog inspection because the vehicle's ignition timing was set beyond manufacturer's
15 specification. The circumstances are more particularly set forth in paragraphs 20 through 23,
16 above.
17

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 25. Respondent Smog Man subjected its registration to discipline by committing acts
21 of fraud. (Code § 9884.7, subd. (a)(4).) Specifically, on or about October 18, 2012, Respondent
22 charged a customer for an LPFET when it did not perform the test and Respondent issued a
23 certificate of compliance for the 1990 Mercury without performing a bona fide inspection of the
24 emission control devices and systems on the vehicle, thereby depriving the People of the State of
25 California of the protection afforded by the Motor Vehicle Inspection Program. The
26 circumstances are more particularly set forth in paragraphs 20 through 23, above.
27
28

1 THIRD CAUSE FOR DISCIPLINE

2 (Failure to Provide Written Estimate)

3 26. Respondent Smog Man subjected its registration to discipline by failing to provide
4 a written estimate for parts and labor for a specific job. (Code § 9884.9, subd. (a).) Specifically,
5 on or about October 18, 2012, Respondent did not provide a customer with an estimate for the
6 smog inspection and the LPFET. The circumstances are more particularly set forth in paragraphs
7 20 through 23, above.
8

9 FOURTH CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 27. Respondent Smog Man subjected its station license to discipline by failing to
12 comply with the Motor Vehicle Inspection Program. (Health & Saf. Code § 44072.2, subd. (a).)
13 Specifically, as more particularly set forth in paragraphs 20 through 23, above, on or about
14 October 18, 2012, Respondent failed to comply with the following Health and Safety Code
15 sections:
16

17 a. **44012:** Respondent failed to ensure that the emission control tests on the 1990
18 Mercury were performed in accordance with procedures prescribed by the Department.

19 b. **44015, subdivision (b):** Respondent issued a certificate of compliance for the
20 1990 Mercury without properly testing and inspecting the vehicle to determine if it was in
21 compliance with Health and Safety Code section 44012.
22

23 FIFTH CAUSE FOR DISCIPLINE

24 (Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

25 28. Respondent Smog Man subjected its station license to discipline by failing to
26 comply with the Motor Vehicle Inspection Program. (Health & Saf. Code § 44072.2, subd. (c).)
27 Specifically, as more particularly set forth in paragraphs 20 through 23, above, on or about
28

1 October 18, 2012, Respondent failed to comply with the following California Code of
2 Regulations, title 16, sections:

3 a. **3340.35, subdivision (c)**: Respondent issued a certificate of compliance for the
4 1990 Mercury even though the vehicle had not been inspected in accordance with California
5 Code of Regulations, title 16, section 3340.42.

6 b. **3340.42**: Respondent failed to ensure the required emission control tests were
7 conducted on the 1990 Mercury in accordance with Bureau specifications.

8 c. **3373**: Respondent created a false and misleading record by stating on the invoice
9 that the "evap" test and the tire pressures tests were performed, when in fact, they were not.
10

11 **SIXTH CAUSE FOR DISCIPLINE**

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

13
14 29. Respondent Smog Man subjected its station license to discipline by committing acts
15 of dishonesty, fraud, or deceit whereby another was injured. (Health & Saf. Code § 44072.2,
16 subd. (d).) Specifically, on or about October 18, 2012, Respondent issued a certificate of
17 compliance for the 1990 Mercury without performing a bona fide inspection of the emission
18 control devices and systems on the vehicle, thereby depriving the People of the State of California
19 of the protection afforded by the Motor Vehicle Inspection Program. The circumstances are more
20 particularly set forth in paragraphs 20 through 23, above.
21

22 **SEVENTH CAUSE FOR DISCIPLINE**

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

24 30. Respondent Rodriguez subjected his technician licenses to discipline by violating the
25 Motor Vehicle Inspection Program. (Health & Saf. Code § 44072.2, subd. (a).) Specifically, as
26 more particularly set forth in paragraphs 20 through 23, above, on or about October 18, 2012,
27 Respondent Rodriguez failed to comply with the following Health and Safety Code sections:
28

1 a. **44012:** Respondent Rodriguez failed to perform the required emission control tests
2 on the 1990 Mercury in accordance with procedures prescribed by the Department.

3 b. **44032:** Respondent Rodriguez failed to perform tests of the emission control
4 devices and systems on the 1990 Mercury in accordance with Health and Safety Code section
5 44012.
6

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

9 31. Respondent Rodriguez subjected his technician licenses to discipline by failing to
10 comply with the Motor Vehicle Inspection Program. (Health & Saf. Code § 44072.2, subd. (c).)
11 Specifically, as more particularly set forth in paragraphs 20 through 23, above, on or about
12 October 18, 2012, he failed to comply with the following California Code of Regulations, title 16,
13 sections:
14

15 a. **3340.30, subdivision (a):** Respondent Rodriguez failed to inspect and test the
16 1990 Mercury in accordance with Health and Safety Code sections 44012 and 44035, and
17 California Code of Regulations, title 16, section 3340.42.

18 b. **3340.41, subdivision (c):** Respondent Rodriguez entered false information into
19 the Emission Inspection System for the 1990 Mercury by entering "Pass" for the functional
20 portion of the smog inspection when, in fact, the vehicle could not pass the functional portion of
21 the inspection because the vehicle's ignition timing was set beyond manufacturer's specifications
22 and for entering "Pass" for the LPFET when in fact, he never performed this inspection on the
23 undercover vehicle.
24

25 c. **3340.42:** Respondent Rodriguez failed to conduct the required smog tests and
26 inspections on the 1990 Mercury in accordance with the Bureau's specifications.
27
28

1 NINTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 32. Respondent Rodriguez subjected his technician licenses to discipline by committing
4 acts involving dishonesty, fraud or deceit whereby another was injured. (Health & Saf. Code §
5 section 44072.2, subd. (d).) Specifically, on or about October 18, 2012, Respondent Rodriguez
6 issued a certificate of compliance for the 1990 Mercury without performing a bona fide
7 inspection of the emission control devices and systems on the vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program. The circumstances are more particularly set forth in paragraphs 20 through 23, above.

10 UNDERCOVER OPERATION #2: NOVEMBER 9, 2012

11 33. On or about November 9, 2012, a Bureau undercover operator drove the Bureau's
12 1994 Toyota to Respondent Smog Man's facility. The vehicle could not pass a properly
13 performed smog inspection because it was missing the required Pulse Air Injection Reactor
14 (PAIR) system.

15 34. Prior to the smog inspection, no one at Respondent Smog Man asked the operator
16 to sign any paperwork or provided the operator with a written estimate.

17 35. Respondent Bernales performed the inspection. He did not perform the ignition
18 timing check and tire pressure check. Respondent Bernales issued electronic Certificate of
19 Compliance Number [REDACTED] for the vehicle even though it could not have passed the smog
20 inspection. The operator paid \$59.00 for the smog inspection and received a copy of Invoice
21 Number [REDACTED] and the VIR.

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1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Untrue and Misleading Statements)**

3 36. Respondent Smog Man subjected its registration to discipline by making or
4 authorizing statements which he knew, or in the exercise of reasonable care should have known to
5 be untrue or misleading. (Code § 9884.7, subd. (a)(1).) Specifically, on or about November 9,
6 2012, Respondent Smog Man issued a certificate of compliance for the 1994 Toyota, certifying
7 that the vehicle was in compliance with applicable laws and regulations when, in fact, the PAIR
8 system was missing. The circumstances are more particularly set forth in paragraphs 33 through
9 35, above.
10

11 **ELEVENTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 37. Respondent Smog Man subjected its registration to discipline by committing acts
14 of fraud (Code § 9884.7, subd. (a)(4).) Specifically, on or about November 9, 2012, Respondent
15 Smog Man issued a certificate of compliance the 1994 Toyota without performing a bona fide
16 inspection of the emission control devices and systems on the vehicle, thereby depriving the
17 People of the State of California of the protection afforded by the Motor Vehicle Inspection
18 Program. The circumstances are more particularly set forth in paragraphs 33 through 35, above.
19
20

21 **TWELFTH CAUSE FOR DISCIPLINE**

22 **(Failure to Provide Written Estimate)**

23 38. Respondent Smog Man subjected its registration to discipline in that on or about
24 November 9, 2012, it failed to provide a customer with a written estimated price for parts and
25 labor for a specific job. (Code § 9884.9, subd. (a).) The circumstances are more particularly set
26 forth in paragraphs 33 through 35, above.
27
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1 THIRTEENTH CAUSE FOR DISCIPLINE

2 (Violation of the Motor Vehicle Inspection Program)

3 39. Respondent Smog Man subjected its station license to discipline by failing to
4 comply with the Motor Vehicle Inspection Program. (Health & Saf. Code § 44072.2, subd. (a).)
5 Specifically, on or about November 9, 2012, as more particularly set forth in paragraphs 33
6 through 35, above, Respondent Smog Man failed to comply with the following Health and Safety
7 Code sections:
8

9 a. **44012:** Respondent Smog Man failed to ensure that the emission control tests on
10 the 1994 Toyota were performed in accordance with procedures prescribed by the Department.
11

12 b. **44015, subdivision (b):** Respondent Smog Man issued a certificate of compliance
13 for the 1994 Toyota without properly testing and inspecting the vehicle to determine if it was in
14 compliance with Health and Safety Code section 44012.

15 FOURTEENTH CAUSE FOR DISCIPLINE

16 (Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

17 40. Respondent Smog Man subjected its station license to discipline by failing to comply
18 with the Motor Vehicle Inspection Program. (Health & Saf. Code § 44072.2, subd. (c).)
19 Specifically, on or about November 9, 2012, as more particularly set forth in paragraphs 33
20 through 35, above, Respondent Smog Man failed to comply with the following California Code
21 of Regulations, title 16, sections:
22

23 a. **3340.35, subdivision (c):** Respondent Smog Man issued a certificate of
24 compliance for the 1994 Toyota even though the vehicle had not been inspected in accordance
25 with California Code of Regulations, title 16, section 3340.42.

26 b. **3340.42:** Respondent Smog Man failed to ensure the required emission control
27 tests were conducted on the 1994 Toyota in accordance with Bureau specifications.
28

1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

3 41. Respondent Smog Man subjected its station license to discipline by committing acts
4 involving dishonesty, fraud or deceit whereby another was injured. (Health & Saf. Code §
5 44072.2, subd. (d).) Specifically, on or about November 9, 2012, Respondent Smog Man issued a
6 certificate of compliance for the 1994 Toyota without performing a bona fide inspection of the
7 emission control devices and systems on the vehicle, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program. The
9 circumstances are more particularly set forth in paragraphs 33 through 35, above.
10

11 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

13 42. Respondent Bernales subjected his technician licenses to discipline by failing to
14 comply with the Motor Vehicle Inspection Program. (Health & Saf. Code § 44072.2, subd. (a).)
15 Specifically, on or about November 9, 2012, as more particularly set forth in paragraphs 33
16 through 35, above, he failed to comply with the following Health and Safety Code sections:
17

18 a. **44012:** Respondent Bernales failed to perform the required emission control tests
19 on the 1994 Toyota in accordance with procedures prescribed by the Department.
20

21 b. **44032:** Respondent Bernales failed to perform tests of the emission control devices
22 and systems on the 1994 Toyota in accordance with Health and Safety Code section 44012.

23 **SEVENTEENTH CAUSE FOR DISCIPLINE**

24 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

25 43. Respondent Bernales subjected his technician licenses to discipline by failing to
26 comply with the Motor Vehicle Inspection Program. (Health & Saf. Code § 44072.2, subd. (c).)
27 Specifically, on or about November 9, 2012, as more particularly set forth in paragraphs 33
28

1 through 35, above, he failed to comply with the following California Code of Regulations, title
2 16, sections:

3 a. **3340.30, subdivision (a):** Respondent Bernales failed to inspect and test the 1994
4 Toyota in accordance with Health and Safety Code sections 44012 and 44035, and California
5 Code of Regulations, title 16, section 3340.42.
6

7 b. **3340.41, subdivision (c):** Respondent Bernales entered false information into the
8 Emission Inspection System for the 1994 Toyota by entering "Pass" for the visual portion of the
9 smog inspection when in fact, the vehicle could not pass the visual portion of the inspection
10 because the vehicle's PAIR system was missing.

11 c. **3340.42:** Respondent Bernales failed to conduct the required smog tests and
12 inspections on the 1994 Toyota in accordance with the Bureau's specifications.
13

14 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

16 44. Respondent Bernales subjected his technician licenses to discipline by committing
17 acts involving dishonesty, fraud or deceit whereby another was injured. (Health & Saf. Code §
18 44072.2, subd. (d).) Specifically, on or about November 9, 2012, Respondent issued a certificate
19 of compliance for the 1994 Toyota without performing a bona fide inspection of the emission
20 control devices and systems on the vehicle, thereby depriving the People of the State of California
21 of the protection afforded by the Motor Vehicle Inspection Program. The circumstances are more
22 particularly set forth in paragraphs 33 through 35, above.
23

24 **UNDERCOVER OPERATION #3: DECEMBER 4, 2012**

25 45. On or about December 4, 2012, a Bureau undercover operator drove the Bureau's
26 1991 Ford to the Respondent Smog Man's facility and requested a smog inspection. The vehicle
27
28

1 could not pass a properly performed smog inspection because the ignition timing was set beyond
2 manufacturer's specifications.

3 46. Prior to the smog inspection, no one at Respondent Smog Man asked the operator to
4 sign any paperwork nor did anyone provide the operator with a written estimate.
5

6 47. Respondent Rodriguez performed the inspection. He did not perform the ignition
7 timing check, fuel cap test, and tire pressure check. Respondent Rodriguez issued electronic
8 Certificate of Compliance Number [REDACTED] for the vehicle even though it could not have
9 passed the smog inspection. The operator paid \$74.00 for the smog inspection and received a
10 copy of Invoice Number [REDACTED] and the VIR.

11 **NINETEENTH CAUSE FOR DISCIPLINE**

12 (Untrue and Misleading Statements)

13 48. Respondent Smog Man subjected its registration to discipline by making or
14 authorizing statements which he knew, or in the exercise of reasonable care should have known,
15 to be untrue or misleading. (Code § 9884.7, subd. (a)(1).) Specifically, on or about December 4,
16 2012, Respondent issued a certificate of compliance for the 1991 Ford, certifying that the vehicle
17 was in compliance with applicable laws and regulations when in fact, the ignition timing was set
18 beyond manufacturer's specification. The circumstances are more particularly set forth in
19 paragraphs 45 through 47, above.
20
21

22 **TWENTIETH CAUSE FOR DISCIPLINE**

23 (Fraud)

24 49. Respondent Smog Man subjected its registration to discipline by committing acts of
25 fraud. (Code § 9884.7, subd. (a)(4).) Specifically, on or about December 4, 2012, Respondent
26 Smog Man issued a certificate of compliance for the 1991 Ford without performing a bona fide
27 inspection of the emission control devices and systems on the vehicle, thereby depriving the
28

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program. The circumstances are more particularly set forth in paragraphs 45 through 47, above.

3 **TWENTY FIRST CAUSE FOR DISCIPLINE**

4 **(Failure to Provide Written Estimate)**

5
6 50. Respondent Smog Man subjected its registration to discipline by failing to provide
7 the operator with a written estimated price for parts and labor for a specific job. (Code § 9884.9,
8 subd. (a).) Specifically, on or about December 4, 2012, Respondent did not provide the operator
9 with an estimate for the smog inspection. The circumstances are more particularly set forth in
10 paragraphs 45 through 47, above.

11 **TWENTY SECOND CAUSE FOR DISCIPLINE**

12 **(Violation of the Motor Vehicle Inspection Program)**

13
14 51. Respondent Smog Man subjected its station license to discipline by failing to
15 comply with the Motor Vehicle Inspection Program. (Health & Saf. Code § 44072.2, subd. (a).)
16 Specifically, on or about December 4, 2012, as more particularly set forth in paragraphs 45
17 through 47, above, Respondent failed to comply with the following Health and Safety Code
18 sections:

19 a. **44012:** Respondent failed to ensure that the emission control tests on the 1991
20 Ford were performed in accordance with procedures prescribed by the Department.

21 b. **44015, subdivision (b):** Respondent issued a certificate of compliance for the
22 1991 Ford without properly testing and inspecting the vehicle to determine if it was in compliance
23 with section 44012 of that Code.
24

25 ///

26 ///

1 c. 3340.42: Respondent Rodriguez failed to conduct the required smog tests and
2 inspections on the 1991 Ford in accordance with the Bureau's specifications.

3 **TWENTY SEVENTH CAUSE FOR DISCIPLINE**

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

5
6 56. Respondent Rodriguez has subjected his technician licenses to discipline by
7 committing acts involving dishonesty, fraud or deceit whereby another was injured. (Health &
8 Saf. Code § 44072.2, subd. (d).) Specifically, on or about December 4, 2012, Respondent issued
9 a certificate of compliance for the 1991 Ford without performing a bona fide inspection of the
10 emission control devices and systems on the vehicle, thereby depriving the People of the State of
11 California of the protection afforded by the Motor Vehicle Inspection Program. The
12 circumstances are more particularly set forth in paragraphs 45 through 47, above.

13
14 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

15 57. This Petition to Revoke Probation is brought before the Director for the Bureau of
16 Automotive Repair under Probation Term and Condition Number G of the Decision and Order in
17 *the Matter of the Accusation Against Smog Man LLC*, Case Number 79/11-08. Condition G of
18 the Decision states:

19
20 Should the Director of Consumer Affairs determine that Respondent has failed
21 to comply with the terms and conditions of probation, the Department may, after
22 giving notice and opportunity to be heard, permanently invalidate the registration
23 and/or suspend or revoke the license.

24 58. At all times after the effective date of Respondent Smog Man's probation, Term A of
25 the Decision stated that "Respondent shall comply with all statutes, regulations and rules
26 governing automotive inspections, estimates and repairs."

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28 ///

1 CAUSE TO REVOKE PROBATION

2 **(Failure to Comply With All Statutes, Regulations, and Rules)**

3 59. Respondent Smog Man's probation is subject to revocation because it failed to
4 comply with all of the Bureau's statutes, regulations and rules as required. (Probation Term A.)
5 The circumstances are more particularly set forth in paragraphs 6, 20 through 29, 33 through 41,
6 and 45 through 53, and their subparts, above.
7

8 OTHER MATTERS

9 60. Under Business and Professions Code section 9884.7, subdivision (c), the director
10 may invalidate temporarily or permanently or refuse to validate, the registrations for all places of
11 business operated in this state by Smog Man LLC, and Brian Andrew Carlsen, Jennifer Lynn
12 Allen, and Lindsie Carlsen, Members, doing business as Smog Man upon a finding that they,
13 have, or are engaged in a course of repeated and willful violations of the laws and regulations
14 pertaining to an automotive repair dealer.

15 61. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
16 Station License Number TC256719, issued to Smog Man LLC, Brian Andrew Carlsen, Jennifer
17 Lynn Allen and Lindsie Carlsen, Members, doing business as Smog Man, is revoked or
18 suspended, any additional license issued under this chapter in the name of the licensee may be
19 likewise revoked or suspended by the director.

20 62. Pursuant to Health and Safety Code section 44072.8, if Respondent Rodriguez's
21 technician license(s), EO632641 and/or EI632641, is/are revoked or suspended, any additional
22 license issued under this chapter in the name of said licensee may be likewise revoked or
23 suspended by the Director.

24 63. Pursuant to Health and Safety Code section 44072.8, if Respondent Bemales'
25 technician license(s), EO633102 and EI633102, is/are revoked or suspended, any additional
26 license issued under this chapter in the name of said licensee may be likewise revoked or
27 suspended by the Director.
28

PRAYER

1
2 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
3 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of
4 Consumer Affairs issue a decision:

5 1. Vacating the stay and re-imposing the order of invalidation of the Automotive Repair
6 Dealer Registration Number ARD256719 issued to Smog Man LLC, and Brian Andrew Carlsen,
7 Jennifer Lynn Allen, and Lindsie Carlsen, Members, doing business as Smog Man;

8 2. Revoking, suspending, or placing on probation any other Automotive Repair
9 Dealer registration issued to Smog Man LLC, Brian Andrew Carlsen, Jennifer Lynn Allen, and/or
10 Lindsie Carlsen;

11 3. Vacating the stay and re-imposing the order of revocation of the Smog Check Test
12 Only Station License Number TC256719 issued to Smog Man LLC and Brian Andrew Carlsen,
13 Jennifer Lynn Allen, and Lindsie Carlsen, Members, doing business as, Smog Man;

14 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
15 and Safety Code in the name of Sinog Man LLC, Brian Andrew Carlsen, Jennifer Lynn Allen,
16 and/or Lindsie Carlsen;

17 5. Revoking or suspending Benjamin Alberto Rodriguez's smog technician license(s),
18 EO632641 and/or EI632641;

19 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
20 and Safety Code in the name of Benjamin Alberto Rodriguez;

21 7. Revoking or suspending Jose Luis Bernales' smog technician license(s), EO633102
22 and EI633102;

23 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
24 and Safety Code in the name of Jose Luis Bernales;

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9. Ordering Smog Man LLC, and Brian Andrew Carlsen, Jennifer Lynn Allen and
Lindsie Carlsen, Members, doing business as Smog Man; Benjamin Alberto Rodriguez; and Jose
Luis Bernales to pay the Director the reasonable costs of the investigation and enforcement of this
case, pursuant to Business and Professions Code section 125.3; and

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

DATED: December 20, 2013


PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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ARD 256719

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **In the Matter of the Accusation and Petition to Revoke Probation Against:
Smog Man; Brian Carlsen; Jennifer Allen;
Lindsie Carlsen; Benjamin Alberto Rodriguez; Jose Luis Bernales**

No.: 79/14-73

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 26, 2013, I served the attached **Statement to Respondent, Request for Discovery, Notice of Defense (2 copies), and Discovery Statues** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **Statement to Respondent, Request for Discovery, Notice of Defense (2 copies), and Discovery Statues** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

SMOG MAN, LLC, BRIAN CARLSEN;
LINDSIE CARLSEN, AND JENNIFER
ALLEN, MEMBERS
3650 MAPLE AVENUE
OAKLAND, CA 94602
Certified Mail Article No.
7013 0600 0001 5205 1131

JOSE LUIS BERNALES
6015 SUTTER AVE
RICHMOND, CA 94804
Certified Mail Article No.
7013 0600 0001 5205 1155

BENJAMIN ALBERTO RODRIGUEZ
452 SHERYL DRIVE
SAN PABLO, CA 94806
Certified Mail Article No.
7013 0600 0001 5205 1148

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 26, 2013, at Oakland, California.

Tanisha N. Marshall
Declarant

Tanisha N. Marshall
Signature