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

In the Matter of the Accusation Against:

**JAVIER REGALADO, OWNER,
DOING BUSINESS AS JR SMOG CHECK
ONLY
P.O. Box 52559
Riverside, CA 92517

3720 Rubidoux Boulevard, #C
Riverside, CA 92509

Automotive Repair Dealer Registration No.
ARD 267929
Smog Check-Test Only Station License No.
TC 267929

EDGAR CHAVEZ
2409 Mission Inn Avenue
Riverside, CA 92507

Smog Check Inspector License No. EO
634002 (formerly Advanced Emission
Specialist Technician License No. EA
634002),

Respondents.**

Case No. 79/15-38

**DEFAULT DECISION AND ORDER RE:
ONLY EDGAR CHAVEZ**

[Gov. Code, §11520]

FINDINGS OF FACT

1
2 1. On or about September 15, 2014, Complainant Patrick Dorais, in his official capacity
3 as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed
4 Accusation No. 79/15-38 against Javier Regalado, Owner, doing business as JR Smog Check
5 Only (Regalado) and Respondent Edgar Chavez (Respondent Chavez) before the Director of
6 Consumer Affairs. (Accusation attached as Exhibit A.)

7 2. On February 3, 2012, the Bureau of Automotive Repair issued Advanced Emission
8 Specialist Technician License No. EA 634002 to Respondent Chavez. The license was cancelled
9 on December 12, 2013. On that date, it was redesignated as Smog Check Inspector License No.
10 EO 634002 (Inspector License).¹ The Inspector License was in full force and effect at all times
11 relevant to the charges brought herein and will expire on November 30, 2015, unless renewed.

12 3. On or about September 16, 2014, Respondent Chavez was served by Certified and
13 First Class Mail copies of the Accusation No. 79/15-38, Statement to Respondent, Notice of
14 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
15 11507.6, and 11507.7) at his addresses of record which, under Business and Professions Code
16 section 136 and title 16, California Code of Regulations, section 3303.3, is required to be reported
17 and maintained with the Bureau. Respondent Chavez's address of record was and is:
18 2409 Mission Inn Avenue
19 Riverside, CA 92507.

20 4. Service of the Accusation was effective as a matter of law under the provisions of
21 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
22 124.

23 5. Government Code section 11506 states, in pertinent part:

24 (c) The respondent shall be entitled to a hearing on the merits if the respondent
25 files a notice of defense, and the notice shall be deemed a specific denial of all parts
of the accusation not expressly admitted. Failure to file a notice of defense shall

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

1 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
2 may nevertheless grant a hearing.

3 6. Respondent Chavez failed to file a Notice of Defense within 15 days after service
4 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
5 Accusation No. 79/15-38.

6 7. California Government Code section 11520 states, in pertinent part:

7 (a) If the respondent either fails to file a notice of defense or to appear at the
8 hearing, the agency may take action based upon the respondent's express admissions
9 or upon other evidence and affidavits may be used as evidence without any notice to
10 respondent.

11 8. Under its authority under Government Code section 11520, the Director after having
12 reviewed the proof of service dated September 16, 2014, finds Respondent Chavez is in default.
13 The Director will take action without further hearing and, based on Accusation, No. 79/15-38, the
14 proof of service, and the Affidavit of Bureau Representative Steve Koch, finds that the allegations
15 in Accusation are true.

16 DETERMINATION OF ISSUES

17 1. Based on the foregoing findings of fact, Respondent Chavez has subjected his Smog
18 Check Inspector License No. EO 634002 to discipline.

19 2. The agency has jurisdiction to adjudicate this case by default.

20 3. The Director of Consumer Affairs is authorized to revoke Respondent Chavez's
21 Smog Check Inspector License based upon the following violations alleged in the Accusation
22 which are supported by the evidence contained in the affidavit of Bureau Representative Steve
23 Koch in this case:

24 a. Respondent Chavez's Inspector License is subject to disciplinary action under Health
25 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a), in that
26 Respondent Chavez failed to comply with the following sections of that Code:

27 (i) Section 44012: Respondent Chavez failed to perform the tests of the
28 emission control systems and devices on four vehicles in accordance with procedures prescribed
by the Department.

1 (ii). Section 44015: Respondent Chavez issued a certificate of compliance for
2 four vehicles without properly testing and inspecting them to determine if they were in
3 compliance with Health & Safety Code section 44012.

4 (iii) Section 44035: Respondent Chavez failed to meet or maintain the
5 standards prescribed for qualification, equipment, performance, or conduct by failing to properly
6 perform smog inspections on four vehicles or certifying that such tests had been properly
7 performed, when in fact they were not properly performed.

8 b. Respondent Chavez's Inspector License is subject to disciplinary action under Health
9 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a) in that
10 Respondent Chavez failed to comply with the following sections of California Code of
11 Regulations, title 16:

12 (i) Section 3340.35, subdivision (c): Respondent Chavez failed to inspect and
13 test four vehicles in accordance with the procedures specified in section 3340.42 of the
14 Regulations and failed to ensure that these vehicles had all the required emission control
15 equipment and devices installed and functioning correctly.

16 (ii) Section 3340.41, subdivision (c): Respondent Chavez knowingly entered
17 into the Emissions Inspection System false information about four vehicles providing passing
18 results for smog inspections which were not properly performed.

19 (iii) Section 3340.42: Respondent Chavez failed to conduct the required smog
20 tests on all four vehicles in accordance with the Bureau's specifications

21 c. Respondent Chavez's Inspector License is subject to disciplinary action under Health
22 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d), in that
23 Respondent Chavez committed dishonest, fraudulent, or deceitful acts whereby another is injured.

24 d. Respondent Chavez's Inspector License is subject to disciplinary action for clean
25 piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in California Code
26 of Regulations, title 16, section 3340.1, in that he used a substitute exhaust emission sample of
27 one vehicle in place of another vehicle's exhaust emission sample in order to cause the Emissions
28 Inspection System to issue certificates of compliance for the inspections of four vehicles.

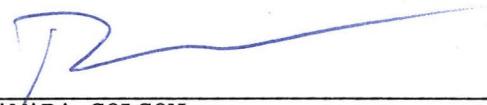
1 **ORDER**

2 IT IS SO ORDERED that Smog Check Inspector License No. EO 634002, heretofore
3 issued to Edgar Chavez, is revoked.

4 Under Government Code section 11520, subdivision (c), Respondent Chavez may serve a
5 written motion requesting that the Decision be vacated and stating the grounds relied on within
6 seven (7) days after service of the Decision on Respondent. The motion should be sent to the
7 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho
8 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing
9 on a showing of good cause, as defined in the statute.

10 This Decision shall become effective on February 25, 2015.

11 It is so ORDERED January 5, 2015

12
13 
14 TAMARA COLSON
15 Assistant General Counsel
16 Department of Consumer Affairs

17 70962273.DOC
18 DOJ Matter ID:SD2014707308

19 Attachment:
20 Exhibit A: Accusation
21
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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
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6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
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E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:
13 **JAVIER REGALADO, OWNER,**
14 **DOING BUSINESS AS JR SMOG CHECK ONLY**
15 **P.O. Box 52559**
Riverside, CA 92517
16 **3720 Rubidoux Boulevard, #C**
17 **Riverside, CA 92509**
18 **Automotive Repair Dealer Registration No. ARD**
267929
19 **Smog Check-Test Only Station License No. TC**
20 **267929**
21 **EDGAR CHAVEZ**
22 **2409 Mission Inn Avenue**
23 **Riverside, CA 92507**
24 **Smog Check Inspector License No. EO 634002**
(formerly Advanced Emission Specialist Technician
25 **License No. EA 634002),**
26 Respondents.

Case No. 79/15-38
ACCUSATION
(SMOG CHECK)

27 ///
28 ///

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about February 10, 2012, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 267929 (the Registration) to Javier Regalado, Owner,
7 doing business as JR Smog Check Only (Respondent Regalado). The Automotive Repair Dealer
8 Registration was in full force and effect at all times relevant to the charges brought herein and
9 will expire on February 28, 2015, unless renewed.

10 3. On or about March 5, 2012, the Bureau of Automotive Repair issued Smog Check-
11 Test Only Station License Number TC 267929 (the Station License) to Respondent Regalado.
12 The Station License was in full force and effect at all times relevant to the charges brought herein
13 and will expire on February 28, 2015, unless renewed.

14 4. On February 3, 2012, the Bureau of Automotive Repair issued Advanced Emission
15 Specialist Technician License No. EA 634002 to Edgar Chavez (Respondent Chavez). The
16 license was cancelled on December 12, 2013. On that date, it was redesignated as Smog Check
17 Inspector License No. EO 634002 (Inspector License).¹ The Inspector License was in full force
18 and effect at all times relevant to the charges brought herein and will expire on November 30,
19 2015, unless renewed.

20 **JURISDICTION**

21 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the
22 Bureau of Automotive Repair, under the authority of the following laws.

23 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
24 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
25

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

1 disciplinary action during the period within which the license may be renewed, restored, reissued
2 or reinstated.

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

7 8. Section 9884.20 of the Code states:

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

13 9. Section 9884.22 of the Code states:

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

19 "..."

20 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
21 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
22 the Motor Vehicle Inspection Program.

23 11. Section 44072 of the Health and Safety Code states:

24 "Any license issued under this chapter and the regulations adopted pursuant to it may be
25 suspended or revoked by the director. The director may refuse to issue a license to any applicant
26 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted
27 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
28 of the Government Code, and the director shall have all the powers granted therein."

1 (commencing with Section 473), is taken over by the department, that program shall be
2 designated as a 'bureau.'"

3 17. Section 23.7 of the Code states:

4 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or
5 other means to engage in a business or profession regulated by this code or referred to in Section
6 1000 or 3600."

7 18. Section 9884.7 of the Code states:

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

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

16 "...

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

18 "...

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

23 19. Section 44072.2 of the Health and Safety Code states:

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

27
28

1 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
2 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

3 COSTS

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

10 FIRST UNDERCOVER RUN

11 24. At all times alleged in this Accusation, Respondent Chavez and Jessie were acting in
12 the course and within the scope of a technician, employee, partner, officer, or member of
13 Respondent Regalado.

14 25. On January 9, 2014, at approximately 1045 hours, a Bureau representative gave an
15 undercover operator (the Operator) a Bureau-documented 2001 Honda. In its documented
16 condition, the 2001 Honda had the following parts removed: exhaust manifold, catalytic
17 converter, air intake cleaner assembly, Positive Crankcase Ventilation hose, camshaft gears, and
18 fuel pressure regulator. It had aftermarket exhaust headers and pipes without a catalytic
19 converter, an aftermarket air intake system, adjustable camshaft gears, an adjustable fuel pressure
20 regulator, and a breather assembly in place of the Positive Crankcase Ventilation hose. This
21 condition rendered the vehicle incapable of passing a proper smog inspection because of Gross
22 Polluter tailpipe emissions, missing and modified parts, and an illuminated system malfunction
23 light with a P0420 Catalyst System Efficiency code. The Operator was instructed to take the
24 vehicle to Respondent Regalado’s smog station, JR Smog Check Only, for a smog inspection.

25 26. When the Operator arrived at JR Smog Check Only, he spoke with one of Respondent
26 Regalado’s employees, Jessie. The Operator told Jessie that he had a vehicle that needed to pass
27 its smog inspection. After quoting the Operator \$180.00, Jessie told the Operator that the
28

1 station's emission analyzer wasn't working and asked him to return another day. The Operator
2 left the smog station.

3 27. On January 14, 2014, at 1019 hours, the Operator returned to Respondent Regalado's
4 smog station, JR Smog Check Only, for the inspection. Three males were at the station, including
5 Jessie and Respondent Chavez. Jessie asked the Operator for the keys and drove the Honda into
6 the testing bay, and opened the hood.

7 28. Respondent Chavez clean-piped the Bureau-documented Honda using the exhaust
8 sample from a Mercedes Benz ML430, CA License Number 6WGS663.

9 29. After the inspection, Jessie removed the probes from the exhaust of both vehicles.
10 Respondent Chavez got out of the Honda, went to the analyzer, and typed on the keyboard. Jessie
11 gave the Operator a work order to fill out. Jessie gave the Operator a copy of the invoice and the
12 Vehicle Inspection Report showing that the vehicle passed and that a certificate of compliance
13 had been issued. The Operator paid Jessie \$180.00, left with the vehicle, and returned custody of
14 it to a Bureau representative.

15 30. Later, a Bureau representative re-inspected the Honda. He confirmed that the
16 condition of the Honda had not changed since he released custody of it previously for the
17 undercover operation and that it would still fail a proper smog inspection in its condition.

18 **SECOND UNDERCOVER RUN**

19 31. On February 25, 2014, a Bureau representative gave an Operator a Bureau-
20 documented 2002 Ford. In its documented condition, the vehicle had its existing catalytic
21 converter and H-pipe removed. A Bureau representative installed an illegal, off-road X-pipe that
22 had no catalytic converters. The vehicle's existing air filter housing and inlet tube had been
23 removed; they were replaced with a non-approved cold air inlet system that did not have an
24 Executive Order sticker and was illegal. The Bureau representative also installed an illegal open
25 breather and a modification to prevent the malfunction indicator light from illuminating. In its
26 documented condition, the vehicle would fail a proper smog inspection because of Gross Polluter
27 tailpipe emissions and missing and modified components. The Operator was instructed to take
28

1 the vehicle to Respondent Regalado's smog station, JR Smog Check Only, ask them to perform a
2 smog inspection on that vehicle, and tell them that it needed to pass.

3 32. At 1130 hours on February 25, 2014, the Operator arrived at Respondent Regalado's
4 smog station, JR Smog Check Only. Jessie and Respondent Chavez were there. The Operator
5 told Jessie that he needed to have the Ford pass its smog inspection. Jessie quoted him \$120.00
6 for the inspection.

7 33. Jessie had the Operator fill out a work order. The Operator paid Jessie \$120.00. The
8 Operator received a copy of the invoice and Vehicle Inspection Report showing that a certificate
9 of compliance was issued. The Operator left with the Bureau-documented 2002 Ford and
10 returned custody of it to a Bureau representative.

11 34. Later, a Bureau representative re-inspected it. He confirmed that the condition of the
12 Ford had not changed since he released custody of it previously for the undercover operation and
13 that it still would fail a proper smog inspection in its condition.

14 35. Respondents had clean-piped the Bureau-documented Ford; a GMC Safari, California
15 license number 4YFP153; and a Honda Civic, California license number 5KKU100 using the
16 exhaust sample from a Honda Civic, California License number 6VXG265. All three of these
17 certified smog inspections resulted in smog certificates of compliance being issued.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 36. Respondent Regalado's Registration is subject to disciplinary action under section
21 9884:7, subdivision (a)(1), in that Respondent Regalado made or authorized statements which
22 Respondent Regalado knew or in the exercise of reasonable care should have known to be untrue
23 or misleading as follows: Respondent Regalado certified that the four vehicles described in
24 paragraphs 24-35 were properly inspected and passed their smog inspections, when in fact and in
25 truth those vehicles were not properly inspected.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 43. Respondent Chavez's Inspector License is subject to disciplinary action under Health
4 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d), in that
5 Respondent Chavez committed dishonest, fraudulent, or deceitful acts whereby another is injured
6 by issuing smog inspection certificates for the vehicles described in paragraphs 24-35 without
7 performing bona fide inspections of the emission control devices and systems on them, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **NINTH CAUSE FOR DISCIPLINE**

11 **(Clean Piping)**

12 44. Respondent Chavez's Inspector License is subject to disciplinary action for clean
13 piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in California Code
14 of Regulations, title 16, section 3340.1, in that he used a substitute exhaust emission sample of
15 one vehicle in place of another vehicle's exhaust emission sample in order to cause the Emissions
16 Inspection System to issue certificates of compliance for the inspections of the vehicles described
17 in paragraphs 24-35.

18 **OTHER MATTERS**

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

23 46. Under Health & Safety Code section 44072.8, if Respondent Regalado's Station
24 License is revoked or suspended, the Director may likewise revoke or suspend any additional
25 license issued under Chapter 5 of the Health and Safety Code in the name of Respondent
26 Regalado.

