

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

In the Matter of the Accusation Against:

**EDUARDO PALMA GOMEZ, Owner
N&K SMOG CHECK TEST ONLY**
Automobile Repair Dealer Registration
Number ARD 268060,
Smog Check Test Only Station
Number TC 268060

MARCO ANTONIO GOMEZ
Advanced Emission Specialist Technician
License Number EA 632070 (to be
redesignated upon renewal as EO 632070
and/or EI 632070)

ISMAEL ENRIQUEZ ALEMAN
Smog Check Inspector License Number
EO 635098

EDWARD LOPEZ
Smog Check Inspector License Number
EO 635079,

Respondents.

Case No. 79/14-20

OAH No. 2014011029

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 only as to respondents Marco Antonio Gomez, Advanced Emission Specialist Technician License No. EA 632070 (to be redesignated upon renewal as EO 632070 and/or EI 632070) and Edward Lopez, Smog Check Inspector License No. EO 635079.

In addition, pursuant to Government Code section 11517(c)(2)(C), the typographical error in the Proposed Decision is corrected as follows:

Page 1, case caption: "Ismael Enriques Aleman" is corrected to read "Ismael Enriquez Aleman."

This Decision shall become effective

January 9, 2015.

DATED:

December 3, 2014


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 Against:

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Respondents.

Case No. 79/14-20

OAH No. 2014011029

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California, on August 26, 2014, and September 12, 2014. The matter was submitted on September 12, 2014.

Kevin J. Rigley, Deputy Attorney General, Department of Justice, State of California, represented complainant Patrick Dorais, Acting Chief, Bureau of Automotive Repair (bureau), Department of Consumer Affairs, State of California.

Respondents Marco Antonio Gomez and Edward Lopez appeared on their own behalf and were present throughout the disciplinary proceeding.

Prior to the hearing, respondents Eduardo Palma and Ismael Aleman entered into stipulated settlements with the bureau that resolved the disciplinary actions in this matter that had been filed against them.

SUMMARY

Respondents Edward Lopez and Marco Antonio Gomez performed fraudulent smog inspections of four undercover bureau vehicles. As a result, their licenses must be revoked.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 30, 2013, complainant signed the Accusation in his official capacity. Complainant seeks the revocation of respondent Marco Antonio Gomez's Advanced Emission Specialist Technician License and respondent Edward Lopez's Smog Technician license as a result of unlawful smog inspections they performed during an undercover operation involving four vehicles. Complainant alleges that respondents failed to perform emissions control tests on four undercover vehicles as required by Health and Safety Code section 44012; failed to comply with applicable regulations governing the inspection of these vehicles; and engaged in dishonest and fraudulent acts by knowingly misrepresenting that the vehicles passed the inspections in violation of Health and Safety Code section 44072.2, subdivisions (c) and (d). Because respondents conducted fraudulent smog inspections, complainant asks that respondents' licenses be revoked pursuant to Health and Safety Code section 44072.10, subdivision (c), which requires the revocation of a license of any smog technician who fraudulently certifies a vehicle has passed a smog inspection or participates in the fraudulent inspection of a vehicle. Complainant did not request costs relating to the investigation and prosecution of this matter.

License History

2. On May 12, 2010, the bureau issued Advanced Emission Specialist (EA) Technician License number EA 632070 to respondent Marco Antonio Gomez. This license expired on January 31, 2014, and upon renewal will be designated as EO 632070 and/or EI 632070.

3. On December 31, 2012, the bureau issued Smog Check Technician License Number EO 635079 to Edward Lopez. The license will expire on January 31, 2015.

California's Smog Control Legislation and Smog Inspections

4. To improve air quality, the California Legislature enacted legislation designed to reduce toxic emissions resulting from the operation of motor vehicles. This clean air

legislation requires every motor vehicle registered in California to pass a smog check inspection upon change of ownership and every two years when a vehicle is registered in designated areas in California.

A licensed smog check station issues an electronic certificate of compliance when a vehicle passes a smog check inspection. If the vehicle being tested does not pass, it must be repaired and retested. A certificate of compliance should not be issued until a vehicle passes a smog check inspection.

Only licensed smog check technicians working at licensed smog check stations may perform valid smog check inspections.

A smog check inspection is conducted by using a computer-based device known as an emission inspection system (EIS). Each EIS has a unique identification number. An EIS is activated when a licensed smog check technician enters a personal identification number. Thereafter, the technician inputs information pertaining to identity of the vehicle being inspected.

After the required vehicle identification information is entered, the EIS prompts the technician to insert a diagnostic probe into the tailpipe of the vehicle being tested. This procedure permits that vehicle's exhaust emissions to be tested to determine if they exceed state levels for certain kinds of emissions.

After the engine emissions are gathered, the EIS leads the technician through a visual inspection in which the technician confirms that required vehicle emission control systems and devices are present. After the results of the visual inspection are entered, the EIS leads the technician through functional tests of various emission control devices, the results of which are entered into the EIS.

When a smog check inspection is completed, the EIS generates a written report known as a vehicle inspection report (VIR) that contains a description of the vehicle and the results of the testing. If the vehicle has passed, an electronic certificate of compliance is issued automatically.

The smog-check information entered into the EIS is maintained for several years in a statewide database. Bureau representatives have direct access to this information.

Undercover Operation Number 1: 1995 Acura

5. On September 26, 2012, [REDACTED], a bureau undercover operative, participated in a bureau undercover operation at N&K Smog in Riverside. Program Representative Steve P. Koch instructed [REDACTED] to drive a bureau owned 1995 Acura to N&K Smog, ask for "Marco," and tell "Marco" that a friend referred her to him to do a smog check on the Acura. Mr. Koch initiated the investigation based on an anonymous tip that a person named "Marco" was performing illegal smog inspections at N&K Smog.

Prior to the undercover operation, Michael Stubblefield, a bureau employee, removed the Positive Crankcase Ventilation (PCV) system and the three way catalytic converter from the Acura; he disconnected certain emission components, and installed illegal adjustable camshaft gears on the vehicle. Mr. Stubblefield performed a smog check inspection of the Acura, and it failed the inspection as a “gross polluter.”¹

At N&K, [REDACTED] requested a smog inspection from an unidentified male employee. [REDACTED] told this person that she was looking for “Marco” and was referred by a friend. The male employee pointed to respondent Marco Gomez. The employee then asked [REDACTED], “You don’t have a catalytic converter do you?” The employee called [REDACTED] into the shop and told her that “we’re going to pass it for \$120, but don’t say anything.” At the hearing, Mr. Koch testified this amount was well above the sum smog inspection stations typically charge for a smog inspection.

[REDACTED] observed the 1995 Acura being pulled into the test bay and could hear the car being driven on the dynamometer.² A short time later, respondent Marco Gomez met [REDACTED] in N&K’s office. He asked her who had referred her to him. [REDACTED] said her friend’s boyfriend. She asked respondent Marco Gomez how much she owed him, and he told her \$120. [REDACTED] paid Marco Gomez \$120 in cash. He asked her to complete the invoice with her personal information, which she did. Marco Gomez gave [REDACTED] a passing Vehicle Inspection Report. He did not, however, give her a copy of the invoice. In the passing VIR that he gave to [REDACTED], Marco Gomez certified under penalty of perjury that he had performed the inspection of the 1995 Acura in accordance with all bureau requirements and that the information listed in the VIR report was true and accurate. As a result of the information he transmitted in the VIR report, Certificate of Compliance No. [REDACTED] was issued.

After the undercover operation, [REDACTED] delivered the 1995 Acura to Mr. Koch who, in turn, delivered the vehicle to Mr. Stubblefield. On October 3, 2012, Mr. Stubblefield inspected the vehicle and found that the condition of the vehicle had not changed. The vehicle failed a smog inspection performed by Mr. Stubblefield.

Undercover Operation Number 2: 1995 Chevrolet

6. On November 13, 2012, [REDACTED] participated in another bureau undercover operation at N&K, using a bureau-owned 1995 Chevrolet S-10 pickup truck.

¹ The bureau defines “gross polluter” vehicles as vehicles whose emissions are at least twice as high as those of an ordinary failing vehicle.

² The first part of the smog check test is a loaded mode test of the vehicle’s tailpipe emissions on the dynamometer. In this test, the vehicle’s drive wheels are placed on rollers and vehicle is driven at speeds of fifteen and twenty-five miles per hour to simulate driving conditions while the exhaust emissions are sampled by the EIS.

Douglas Giese, a bureau employee, disabled the vehicle's EGR system³ and modified the oxygen sensor circuit. As a result, the 1995 Chevrolet had excessive tailpipe emissions and had failed a smog inspection conducted before the undercover operation as a gross polluter. Mr. Koch instructed [REDACTED] to drive the Chevrolet to N&K Smog, say she was instructed to ask for "Marco," and inform respondent Marco Gomez that she had a friend's truck that needed a smog test.

When she arrived at N&K, [REDACTED] spoke with Marco Gomez. She told him that she had brought her friend's Chevrolet truck to him because the check engine light would sometimes turn on and off. Marco Gomez asked her if the vehicle had failed a smog inspection at any other shops. She said she didn't know. Respondent Marco Gomez asked [REDACTED] to wait while other vehicles were being inspected. While she waited, respondent Marco Gomez apologized for taking so long, and told her that he would definitely "make the truck pass." Respondent Marco Gomez asked her to complete paperwork, but she did not sign the paperwork she completed or receive a copy of it. [REDACTED] saw the Chevrolet in the testing area and heard it running on the dynamometer. After the test, respondent Marco Gomez informed her that she owed him \$120, which she paid in cash. [REDACTED] said she would send respondent Marco Gomez more business. In response, respondent Marco Gomez told her that she was part of the family. He then gave [REDACTED] a passing VIR. In the VIR, respondent Marco Gomez certified under penalty of perjury that he had performed the inspection of the 1995 Chevrolet in accordance with all bureau requirements and that the information listed in the VIR report was true and accurate. As a result of the information he certified in the VIR report and transmitted, Certificate of Compliance No. [REDACTED] was issued.

On November 14, 2012, [REDACTED] delivered the Chevrolet to Program Representative Koch who, in turn, delivered the vehicle to Mr. Giese. On November 14, 2012, Mr. Giese conducted a smog inspection of the vehicle. The Chevrolet failed the inspection for Gross Polluter levels of Nitrogen Oxide at 15 mph and at 25 mph. The tamper indicators on the EGR valve and the oxygen sensor circuit defects were still intact, indicating that the system defects he induced had not been corrected.

Undercover Operation Number 3: 1999 Dodge Stratus

7. On January 18, 2013, Mr. Koch instructed bureau undercover operator [REDACTED] to take a bureau-owned 1999 Dodge Stratus to N&K for a smog inspection. Before this operation, Bureau Representative Paul Hsu modified the vehicle so it would fail a smog inspection as a result of high Nitrogen Oxide emissions due to a modified heat sensor circuit. After the modification, the vehicle failed a smog inspection performed by Mr. Hsu due to high Nitrogen Oxide emissions.

³ EGR refers to the Exhaust Gas Recirculation System. The EGR system reroutes exhaust gases through the vehicle's manifolds to lower engine temperature and reduce Nitrogen Oxide emissions.

When [REDACTED] arrived at N&K he was greeted by respondent Lopez. [REDACTED] completed paperwork related to a smog inspection but did not receive a copy of the paperwork he completed. [REDACTED] observed respondent Lopez drive the Dodge Stratus into the testing bay and sit inside the Dodge while respondent Aleman inserted the analyzer probe into the tailpipe. Respondent Lopez stated that the emission levels were high and asked if respondent Aleman wanted to "use his car cold." Respondent Aleman said "ok." Respondent Lopez then exited the Dodge and walked over to a white Lincoln Town Car that was parked adjacent to the testing bay. He started the engine of the Lincoln Town Car. Respondent Lopez then took the analyzer probe that was previously inserted in the Dodge's exhaust and walked it over to the Lincoln Town Car.⁴ Respondent Aleman inserted a "dummy probe" into the tailpipe of the Dodge. The dummy probe is a short probe that is made to look like a probe that has been connected to the analyzer to disguise the deception. [REDACTED] could see the end of the probe lying near the rear tire of the Dodge. Respondent Lopez got into the Lincoln Town Car and increased the engine speed while respondent Aleman drove the Dodge onto the dynamometer. Respondent Aleman then exited the Dodge, removed the "dummy probe," from the tailpipe of the Dodge, and walked over to the analyzer. Respondent Lopez exited the Lincoln Town Car and walked back to the analyzer with the analyzer probe in his hand. A few minutes later, respondent Aleman told [REDACTED] that the test was complete and that he owed him \$140. [REDACTED] paid respondent Aleman \$140 in cash.

The information relating to the test and the test result was transmitted by modem from N&K's EIS to the Bureau's database and the DMV. This information indicated that respondent Aleman had passed the Dodge Stratus and that Certificate of Compliance No. [REDACTED] had been issued for that vehicle.

On January 25, 2013, Mr. Hsu inspected the Dodge Stratus and performed a Smog Check inspection. The vehicle failed the inspected due to high Nitrogen Oxide emissions.

Undercover Operation Number 4: 1992 Plymouth Acclaim

8. On February 1, 2013, Mr. Koch instructed [REDACTED] to take the bureau's 1992 Plymouth Acclaim, to N&K and say that he needed a smog test for his friend's vehicle. Prior to the undercover operation, Program Representative Jose Corona removed the internal material from the Plymouth's three-way catalytic converter, which caused the vehicle to emit excessive tailpipe emissions. Mr. Corona then conducted an inspection of the vehicle; it failed smog inspection as a gross polluter.

At N&K, [REDACTED] met respondent Lopez. Respondent Lopez told him that the cost of a smog inspection was \$50. [REDACTED] told respondent Lopez that the vehicle "needed some help." Respondent Lopez asked the operator if he had spoken with respondent Aleman. [REDACTED] stated that he had. Respondent Lopez then replied, "No problem." [REDACTED]

⁴ This is known as "clean piping."

██████████ was told to fill out paperwork. He completed the paperwork, but did not receive a copy of it.

██████████ then observed respondent Aleman start a Buick Regal parked in the shop adjacent to the testing bay while respondent Lopez drove the 1992 Plymouth into the testing bay.⁵ Respondent Aleman checked the emissions of the 1992 Plymouth in manual mode after respondent Lopez inserted the analyzer probe into the 1992 Plymouth's tailpipe. ██████████ overheard respondent Lopez state, "Yes, it's dirty. That's why it has that smell." Respondent Lopez removed the analyzer probe from the 1992 Plymouth and placed it next to the analyzer. Respondent Aleman picked up the probe and walked over to the rear of the Buick Regal. He bent down behind the Buick Regal and walked back to the 1992 Plymouth where he inserted a "dummy probe" into the tailpipe. ██████████ observed the end of the "dummy probe" lying near the rear tire of the 1992 Plymouth. Respondent Lopez then got inside the Buick Regal and increased the engine speed while respondent Aleman drove the 1992 Plymouth on the dynamometer. Respondent Lopez exited the Buick Regal and walked back to the analyzer with the analyzer probe in his hand. Respondent Aleman exited the 1992 Plymouth and removed the "dummy probe" from the Plymouth's exhaust. ██████████ observed both respondent Lopez and respondent Aleman standing in front of the analyzer while respondent Lopez entered data into the EIS. Respondent Lopez then drove the 1992 Plymouth out of the test bay. Respondent Aleman indicated that the test was done. ██████████ asked respondent Aleman if he could have a discount if he brought more cars into the shop, and respondent Aleman replied that he could do it for \$120.

██████████ then asked respondent Aleman if the cost for the inspection was \$120, and he said yes. ██████████ handed respondent Aleman \$120 in cash and received a VIR that indicated the Plymouth had passed the smog inspection. In the passing VIR, respondent Lopez certified under penalty of perjury that he had performed the inspection of the 1992 Plymouth Acclaim in accordance with all bureau requirements and that the information listed in the VIR report was true and accurate. As a result of the information he transmitted in the VIR report, Certificate of Compliance No. ██████████ was issued.

On February 5, 2013, Mr. Corona inspected the vehicle. The vehicle failed the inspection due to excessive tailpipe emissions.

Criminal Convictions for Fraudulent Smog Inspections

9. As a result of the bureau's undercover operations, on October 1, 2013, respondents Aleman, Lopez and Marco Gomez were charged in Superior Court of California, Riverside County, in Felony Complaint No. RIF1311000, with performing fraudulent smog inspections.

⁵ The bureau later received documentation from the DMV that the Buick that had been used to clean pipe the Plymouth Acclaim was registered to respondent Marco Gomez.

On June 3, 2014, in Superior Court of California, Riverside County, in the matter captioned *People v. Marco Gomez, Ismael Aleman, and Edward Lopez*, Case No. RIF1311000, pursuant to his guilty plea, respondent Lopez was convicted of violating Penal Code section 502, subdivision (c), subsection (1), a felony, for performing a fraudulent smog inspection on the 1992 Plymouth Acclaim on February 1, 2013.⁶ As a result of his plea, respondent Lopez was ordered incarcerated for 120 days, which he was allowed to serve through the Work Release Program; he was placed on probation for 36 months; and he was ordered to pay fines and fees, among other terms and conditions.

On June 3, 2014, in Superior Court of California, Riverside County, in the matter captioned *People v. Marco Gomez, Ismael Aleman, and Edward Lopez*, Case No. RIF1311000, pursuant to his guilty plea, respondent Marco Gomez was convicted of violating Penal Code section 502, subdivision (c), subsection (1), for performing a fraudulent smog inspection on the 1995 Acura on September 26, 2012. The court reduced the felony to a misdemeanor pursuant to Penal Code section 17, subdivision (b). As a result of his plea, respondent Marco Gomez was ordered incarcerated for 120 days, which he was allowed to serve through the Work Release Program; he was placed on probation for 36 months; and he was ordered to pay fines and fees, among other terms and conditions.

These convictions preclude both respondents from relitigating whether they committed fraud in their inspections of the 1995 Acura and the 1992 Plymouth under the doctrine of collateral estoppel. (*Teitelbaum Furs, Inc. v. Dominion Ins. Co.* (1962) 58 Cal.2d 601, 604; *Gabriel v. Wells Fargo Bank, N.A.* (2010) 188 Cal.App.4th 547, 556.)

Respondent's Evidence and Argument

10. Both respondents declined to testify. In their closing arguments, they claimed that the Accusation should be dismissed because the bureau lacked clean hands and the evidence the bureau relied on failed to meet the "Frye standard" necessary to determine the admissibility of scientific evidence pursuant to *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). In addition, respondents provided copies of Penal Code sections 118 and 118.1 and Vehicle Code section 27156. Respondents argued that because bureau staff drove vehicles during the undercover operations that were gross polluters in violation of California law, the disciplinary action must be dismissed. Respondents' arguments are without merit.

⁶ Penal Code section 502, subdivision (c), provides as follows: "Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense: (1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data."

Evaluation

11. On September 26, 2012, respondent Marco Gomez fraudulently certified that the 1992 Acura passed smog inspection when the vehicle had excessive tailpipe emissions and should not have passed. Respondent Gomez was criminally convicted of fraud on June 3, 2013, as a result of this misconduct. On November 13, 2012, respondent Gomez fraudulently certified that the 1995 Chevrolet passed smog inspection on November 13, 2012, when the vehicle had excessive tailpipe emissions and was a gross polluter. Respondent Gomez told the undercover operator that he would definitely make the truck pass inspection; he charged her an amount in excess of the amount typically charged for a smog inspection; and he didn't provide her with a signed invoice.

On January 18, 2013, respondent Lopez assisted respondent Aleman in clean piping the 1999 Dodge to enable that vehicle to pass a smog inspection. He met the undercover operator when he first arrived at N&K. Respondent Lopez drove the vehicle into the test area and raised the engine speed of the Lincoln Town Car with the probe in the exhaust pipe while Mr. Aleman drove the undercover vehicle on the dynamometer with the dummy probe. After the test, respondent Lopez removed the dummy probe from the undercover vehicle and entered false data into the EIS. On February 1, 2013, respondent Lopez fraudulently certified that the 1992 Plymouth had passed smog inspection when the vehicle had excessive tailpipe emissions. Respondent Lopez was criminally convicted of fraud on June 3, 2013, for this misconduct.

Both respondents used their licenses in a scheme to clean pipe vehicles and evade California's clean air legislation. In the interest of public health and safety, their conduct warrants the revocation of their licenses.

LEGAL CONCLUSIONS

Purpose of Administrative Disciplinary Proceedings

1. Administrative proceedings to revoke, suspend, or impose discipline on a licensee are noncriminal and nonpenal; they are not intended to punish the licensee, but to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

Burden and Standard of Proof

2. In smog certificate revocation proceedings, the bureau must prove that charges in the Accusation are true and must do so using the preponderance of the evidence standard. (*Imports Performance et al. v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.)

Disciplinary Statutes

3. Health and Safety Code section 44072.2 provides:

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

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

(b) Is convicted of any crime substantially related to the qualifications, functions, or duties of the license holder in question.

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

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

(e) Has misrepresented a material fact in obtaining a license.

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection.

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

4. Health and Safety Code section 44072.10, subdivision (c), provides in part:

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

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

[¶] . . . [¶]

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

5. Health and Safety Code section 44012 requires a smog check inspection be performed in accordance with procedures prescribed by the bureau.

6. Health and Safety Code section 44015 requires that a proper smog check inspection be performed before issuing a certificate of compliance.

Relevant Regulations

7. California Code of Regulations, title 16, section 3340.1 states,

Clean piping for the purposes of Health and Safety Code section 44072.10, subdivision (c), subsection (1), means the use of a substitute exhaust sample in place of the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle. . . .

8. California Code of Regulations, title 16, section 3340.24, subdivision (c), prohibits the issuance of a fraudulent certificate of compliance.

9. California Code of Regulations, title 16, section 3340.30, subdivision (a), requires technicians to perform smog check inspections consistent with Health and Safety Code section 44012, Health and Safety Code section 44035 and California Code of Regulations, title 16, section 3340.42.

10. California code of Regulations, title 16, section 3340.35, subdivision (c), prohibits the issuance of a certificate of compliance when a vehicle has not been inspected as required.

11. California Code of Regulations, title 16, section 3340.41, subdivision (c), prohibits the entry of false information into an EIS.

12. California Code of Regulations, title 16, section 3340.42, requires that a smog check inspection be conducted in accordance with the Bureau's specifications.

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Cause Exists to Revoke Respondent's Licenses

13. Cause exists to revoke the advanced emission specialist technician license issued to respondent Marco Gomez for violations of Health and Safety Code section 44072.2, subdivisions (a), (c), and (d), and Health and Safety Code section 44072.10, subdivision (c).

A preponderance of the evidence established that on September 26, 2012, in connection with the smog check inspection of the 1995 Acura, and on November 13, 2012, in connection with the smog check inspection of the 1995 Chevrolet, respondent Gomez fraudulently passed both vehicles. As a result, he violated the Motor Vehicle Inspection Program [sixth and fourteenth causes for discipline]; failed to comply with regulations enacted under the Motor Vehicle Inspection Program [seventh and fifteenth causes for discipline]; and engaged in dishonesty and fraud [eighth and sixteenth causes for discipline]. Because respondent Gomez fraudulently certified the 1995 Acura on September 26, 2012, and the 1995 Chevrolet on November 13, 2012, the outright revocation of his advanced emission specialist technician license is required pursuant to Health and Safety Code section 44072.10, subsection (c).

14. Cause exists to revoke the smog check inspector license technician license issued to respondent Edward Lopez for violations of Health and Safety Code section 44072.2, subdivisions (a), (c), and (d) and Health and Safety Code section 44072.10, subdivision (c).

A preponderance of the evidence established that on January 18, 2013, in connection with the smog check inspection of the 1999 Dodge, respondent Lopez participated in clean piping the vehicle to fraudulently pass the smog check inspection. A preponderance of the evidence also establishes that on February 1, 2013, in connection with the smog check inspection of the 1992 Plymouth, Mr. Gomez fraudulently passed this vehicle. As a result, he violated the Motor Vehicle Inspection Program [twenty-second and thirtieth causes for discipline]; failed to comply with regulations enacted under the Motor Vehicle Inspection Program [twenty-third and thirty-first causes for discipline]; and engaged in dishonesty and fraud [twenty-fourth and thirty-second causes for discipline]. Because Mr. Lopez participated in clean piping the 1999 Dodge on January 18, 2013, and fraudulently passed the 1992 Plymouth on February 1, 2013, the outright revocation of his advanced emission specialist technician license is required pursuant to Health and Safety Code section 44072.10, subdivision (c).

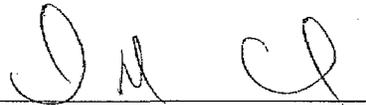
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ORDERS

Advanced Emission Specialist Technician License No. EA 632070 issued to Marco Antonio Gomez is revoked.

Smog Check Inspector License No. EO 635079 issued to Edward Lopez is revoked.

DATED: October 15, 2014

A handwritten signature in black ink, appearing to read 'A M L', is written above a horizontal line.

ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. **79/14-20**

13 **EDUARDO PALMA GOMEZ, OWNER,**
14 **d.b.a. N&K SMOG TEST ONLY**
15 **7572 Indiana Avenue**
Riverside, CA 92504

ACCUSATION

(Smog Check)

16 **Automotive Repair Dealer Registration**
17 **Number ARD 268060, Smog Check Test**
18 **Only Station License Number TC 268060,**

19 **MARCO ANTONIO GOMEZ,**
20 **4550 Berkley Avenue,**
21 **Hemet, Ca. 92544,**
22 **Advanced Emission Specialist Technician**
23 **License Number EA 632070 (to be**
24 **redesignated upon renewal as EO 632070**
25 **and/or EI 632070)**

26 **ISMAEL ENRIQUEZ ALEMAN**
27 **3004 N. Orange Avenue,**
28 **Rialto, Ca. 92377**
Smog Check Inspector License Number EO
635098

EDWARD LOPEZ,
5751 Willard Way,
Riverside, Ca. 92504
Smog Check Inspector License Number EO
635079

Respondent.

1 Complainant alleges:

2 **PARTIES**

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

6 **Automotive Repair Dealer Registration**

7 2. On or about February 23, 2012, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 268060 ("registration") to Eduardo Palma Gomez ("Respondent
9 N&K"), doing business as N&K Smog Test Only. The registration was in full force and effect at
10 all times relevant to the charges brought herein and will expire on February 28, 2014, unless
11 renewed.

12 **Smog Check Test Only Station License**

13 3. On or about March 20, 2012, the Bureau issued Smog Check Test Only Station
14 License Number TC 268060 ("station license") to Respondent N&K. The station license was in
15 full force and effect at all times relevant to the charges brought herein and will expire on February
16 28, 2014, unless renewed.

17 **Marco Antonio Gomez- Advanced Emission Specialist Technician License**

18 4. On or about May 12, 2010, the Bureau issued Advanced Emission Specialist
19 Technician License Number EA 632070 to Marco Antonio Gomez ("Respondent Gomez"). The
20 technician license was in full force and effect at all times relevant to the charges brought herein
21 and will expire on January 31, 2014, unless renewed. Upon timely renewal of the license, the
22 license will be redesignated as EO 632070 and/or EI 632070.¹

23 ///

24 ///

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 **Ismael Enriquez Aleman-Smog Check Inspector License**

2 5. On or about January 7, 2013, the Bureau issued Smog Check Inspector License
3 Number EO 635098 ("inspector license") (previously EA 635098) to Ismael Enriquez Aleman
4 ("Respondent Aleman"). The technician license was in full force and effect at all times relevant
5 to the charges brought herein and will expire on November 30, 2014, unless renewed.

6 **Edward Lopez-Smog Check Inspector License**

7 6. On or about December 31, 2012, the Bureau issued Smog Check Inspector License
8 Number EO 635079 ("inspector license") (previously EA 635079) to Edward Lopez
9 ("Respondent Lopez"). The technician license was in full force and effect at all times relevant to
10 the charges brought herein and will expire on January 31, 2015, unless renewed.

11 **JURISDICTION**

12 7. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
13 the Director may revoke an automotive repair dealer registration.

14 8. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
15 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
16 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
17 invalidating (suspending or revoking) a registration.

18 9. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
19 part, that the Director has all the powers and authority granted under the Automotive Repair Act
20 for enforcing the Motor Vehicle Inspection Program.

21 10. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
22 suspension of a license by operation of law, or by order or decision of the Director of Consumer
23 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
24 of jurisdiction to proceed with disciplinary action.

25 **STATUTORY AND REGULATORY PROVISIONS**

26 11. Bus. & Prof. Code section 9884.7 states, in pertinent part:

27 (a) The director, where the automotive repair dealer cannot show there
28 was a bona fide error, may deny, suspend, revoke or place on probation the
 registration of an automotive repair dealer for any of the following acts or omissions

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

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

7

8 (4) Any other conduct that constitutes fraud.

9

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

15 12. Bus. & Prof. Code section 22, subdivision (a), states:

16 "Board" as used in any provision of this Code, refers to the board in
17 which the administration of the provision is vested, and unless otherwise expressly
18 provided, shall include "bureau," "commission," "committee," "department,"
19 "division," "examining committee," "program," and "agency."

20 13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
21 "license" includes "registration" and "certificate."

22 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

29

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

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

34 15. Health & Saf. Code section 44072.10 states, in pertinent part:

35

36 (c) The department shall revoke the license of any smog check technician

1 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
2 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
3 the following:

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

5 16. Health & Saf. Code section 44072.8 states that when a license has been revoked or
6 suspended following a hearing under this article, any additional license issued under this chapter
7 in the name of the licensee may be likewise revoked or suspended by the director.

8 17. California Code of Regulations, title 16, section 3340.1 states, in pertinent:

9

10 "Clean piping," for the purposes of Health and Safety Code section
11 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of
12 the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of
13 compliance for the test vehicle . . .

14 COST RECOVERY

15 18. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
16 the administrative law judge to direct a licentiate found to have committed a violation or
17 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
18 and enforcement of the case.

19 UNDERCOVER OPERATION #1: 1995 ACURA

20 19. On September 26, 2012, a representative of the Bureau, acting in an undercover
21 capacity ("operator"), took the Bureau's 1995 Acura to Respondent Gomez's facility. The
22 positive crankcase ventilation ("PCV") system on the Bureau-documented vehicle was missing,
23 the three-way catalytic converter ("TWC") was missing, certain emission related components
24 were disconnected, illegal adjustable camshaft gears had been installed on the vehicle, and the
25 vehicle had failed a smog test as a "gross polluter". The operator met with a male employee
26 ("Employee #1") and requested a smog inspection. The operator further told the employee that
27 she was looking for a person named "Marco" and was referred by a friend. Employee #1 then
28 pointed to another employee working at the other end of the shop and identified him as "Marco".
Employee #1 then asked the operator, "You don't have a catalytic converter, do you?" The
operator told Employee #1 that she was not surc. Approximately five minutes later, Employee #1

1 approached the operator and told her that since the car failed previously, they might have to fail it
2 and have her come back another day to pass it. He said "it wouldn't look good otherwise."
3 Approximately ten minutes later, Employee #1 called the operator into the shop area. He told the
4 operator "we're going to pass it for \$120, but don't say anything." The operator agreed to pay the
5 employee \$120 to certify the vehicle. The operator then observed the Bureau's 1995 Acura
6 being pulled into the test bay and could hear the car driving on the rollers. A short time later
7 Marco came back into the office and asked the operator to fill out an invoice with her personal
8 information which she did. Marco gave the operator a vehicle inspection report ("VIR") but did
9 not give her any type of an invoice indicating that she paid for a smog test.

10 20. The Bureau's VID (vehicle information database) data indicated that the vehicle
11 passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No.
12 [REDACTED] The VID data showed that Respondent Gomez performed the smog inspection on the
13 vehicle.

14 21. On October 3, 2012, the Bureau inspected the vehicle and found that the condition of
15 the vehicle had not changed. The PCV components and catalytic converter were still missing.
16 The adjustable camshaft timing gears were still installed. A smog inspection was then performed
17 on the vehicle. The vehicle failed the inspection due to excessive tailpipe emissions. The Bureau
18 concluded that Respondent Gomez performed the smog inspection on the vehicle using clean
19 piping methods, resulting in the issuance of a fraudulent smog certificate of compliance.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 22. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
23 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
24 which he knew or in the exercise of reasonable care should have known to be untrue or
25 misleading, as follows:

26 a. Respondent N&K allowed his employee, Respondent Gomez, to certify under penalty
27 of perjury on the VIR that he performed the smog inspection on the Bureau's 1995 Acura in
28 accordance with all Bureau requirements and that the vehicle had passed the inspection and was

1 in compliance with applicable laws and regulations. In fact, Respondent Gomez used clean
2 piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle
3 as required by Health & Saf. Code section 44012.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 23. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
7 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
8 constitutes fraud, as follows: Respondent N&K allowed his employee, i.e. Respondent Gomez to
9 issue an electronic smog certificate of compliance for the Bureau's 1995 Acura without ensuring
10 that a bona fide inspection was performed of the emission control devices and systems on the
11 vehicle, thereby depriving the People of the State of California of the protection afforded by the
12 Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 24. Respondent N&K's smog check station license is subject to disciplinary action
16 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
17 comply with the following sections of that Code:

18 a. **Section 44012:** Respondent N&K failed to ensure that the emission control tests
19 were performed on the Bureau's 1995 Acura in accordance with procedures prescribed by the
20 department.

21 b. **Section 44015:** Respondent N&K allowed his employee, i.e., Respondent Gomez to
22 issue an electronic smog certificate of compliance for the Bureau's 1995 Acura without ensuring
23 that the vehicle was properly tested and inspected to determine if it was in compliance with
24 Health & Saf. Code section 44012.

25 ///

26 ///

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply with Regulations Pursuant
3 to the Motor Vehicle Inspection Program)

4 25. Respondent N&K's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent N&K failed
6 to comply with the provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.35, subdivision (c)**: Respondent N&K allowed his employee
8 Respondent Gomez to issue an electronic smog certificate of compliance for the Bureau's 1995
9 Acura even though the vehicle had not been inspected in accordance with Health & Saf. Code
10 section 3340.42.

11 b. **3340.41, subdivision (c)**: Respondent N&K allowed his employee, i.e., Respondent
12 Gomez to enter false information into the Emissions Inspection System ("EIS") by entering
13 vehicle identification information or emission control system identification data for a vehicle
14 other than the one being tested.

15 c. **Section 3340.42**: Respondent N&K failed to ensure that the required smog tests were
16 conducted on the Bureau's 1995 Acura in accordance with the Bureau's specifications.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 (Dishonesty, Fraud or Deceit)

19 26. Respondent N&K's smog check station license is subject to disciplinary action
20 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
21 dishonest, fraudulent or deceitful act whereby another is injured by allowing his employee
22 Respondent Gomez to issue an electronic smog certificate of compliance for the Bureau's 1995
23 Acura without ensuring that a bona fide inspection was performed of the emission control
24 devices and systems on the vehicle, thereby depriving the People of the State of California of the
25 protection afforded by the Motor Vehicle Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 27. Respondent Gomez's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
5 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
6 emission control tests on the Bureau's 1995 Acura in accordance with procedures prescribed by
7 the department.

8 **SEVENTH CAUSE FOR DISCIPLINE**

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

11 28. Respondent Gomez's technician license is subject to disciplinary action pursuant to
12 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
13 provisions of California Code of Regulations, title 16, as follows:

14 a. **Section 3340.30, subdivision (a)**: Respondent Gomez failed to inspect and test the
15 Bureau's 1995 Acura in accordance with Health & Saf. Code sections 44012 and 44035, and
16 California Code of Regulations, title 16, section 3340.42.

17 b. **Section 3340.41, subdivision (c)**: Respondent Gomez entered false information into
18 the EIS by entering vehicle identification information or emission control system identification
19 data for a vehicle other than the one being tested.

20 c. **Section 3340.42**: Respondent Gomez failed to conduct the required smog tests on the
21 Bureau's 1995 Acura in accordance with the Bureau's specifications.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 29. Respondent Gomez's technician license is subject to disciplinary action pursuant to
25 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
26 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
27 compliance for the Bureau's 1995 Acura without performing a bona fide inspection of the
28

1 emission control devices and systems on the vehicle, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **UNDERCOVER OPERATION #2: 1995 CHEVROLET**

4 30. On November 13, 2012, a Bureau undercover operator took the Bureau's 1995
5 Chevrolet to Respondent N&K's facility. The truck was equipped with a disabled EGR system
6 and a modified oxygen sensor circuit which caused the vehicle to emit excessive tailpipe
7 emissions. The operator went into the office and was met by Respondent Gomez and his assistant
8 Ismael. The operator requested a smog test on the vehicle. Respondent Gomez asked the
9 operator if the truck had failed at any other shops to which she replied no. The operator was
10 asked to wait in the waiting room while other vehicles were tested. While she waited Respondent
11 Gomez apologized for how long it was taking, and informed her that he would definitely "make
12 the truck pass." Respondent Gomez approached her thereafter and she was asked to fill out
13 paperwork but she did not sign the paperwork nor received a copy of it. After the test was
14 completed, Respondent Gomez informed her that she owed him \$120 for the test, and he normally
15 charged \$140. She paid Respondent Gomez \$120 and informed him that she would send him
16 more business. Respondent Gomez then told the operator that she was "part of the family" and
17 gave her a passing VIR for the vehicle.

18 31. The Bureau's VID (vehicle information database) data indicated that the vehicle
19 passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No.
20 [REDACTED]. The VID data showed that Respondent Gomez performed the smog inspection on the
21 vehicle.

22 32. On November 14, 2012, the Bureau performed a smog inspection on the vehicle. The
23 vehicle failed the inspection due to excessive tailpipe emissions, which were at gross polluter
24 levels. The tamper indicators on the EGR valve and oxygen sensor circuit defect were still intact
25 indicating that the system defects had not been corrected. The Bureau concluded that Respondent
26 Gomez had performed the smog inspection on the vehicle using clean piping methods, resulting
27 in the issuance of a fraudulent smog certificate of compliance.

28 ///

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 33. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
5 which he knew or in the exercise of reasonable care should have known to be untrue or
6 misleading, as follows:

7 a. Respondent N&K's technician, Respondent Gomez, certified under penalty of perjury
8 on the VIR that he performed the smog inspection on the Bureau's 1995 Chevrolet in accordance
9 with all Bureau requirements and that the vehicle had passed the inspection and was in
10 compliance with applicable laws and regulations. In fact, Respondent Gomez used clean piping
11 methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as
12 required by Health & Saf. Code section 44012. As such, the vehicle would not pass the
13 inspection required by Health & Saf. Code section 44012.

14 **TENTH CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 34. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
17 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent N&K committed an act that
18 constitutes fraud, as follows: Respondent N&K allowed his employee to issue an electronic smog
19 certificate of compliance for the Bureau's 1995 Chevrolet without ensuring that a bona fide
20 inspection was performed of the emission control devices and systems on the vehicle, thereby
21 depriving the People of the State of California of the protection afforded by the Motor Vehicle
22 Inspection Program.

23 **ELEVENTH CAUSE FOR DISCIPLINE**

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

25 35. Respondent N&K's smog check station license is subject to disciplinary action
26 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent N&K failed
27 to comply with the following sections of that Code:
28

1 a. Section 44012: Respondent N&K failed to ensure that the emission control tests
2 were performed on the Bureau's 1995 Chevrolet in accordance with procedures prescribed by the
3 department.

4 b. Section 44015: Respondent N&K allowed his employee to issue an electronic smog
5 certificate of compliance for the Bureau's 1995 Chevrolet without ensuring that the vehicle was
6 properly tested and inspected to determine if it was in compliance with Health & Saf. Code
7 section 44012.

8 **TWELFTH CAUSE FOR DISCIPLINE**

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

11 36. Respondent N&K's smog check station license is subject to disciplinary action
12 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent N&K failed
13 to comply with the provisions of California Code of Regulations, title 16, as follows:

14 a. Section 3340.35, subdivision (c): Respondent Gomez issued an electronic smog
15 certificate of compliance for the Bureau's 1995 Chevrolet even though the vehicle had not been
16 inspected in accordance with Health & Saf. Code section 3340.42.

17 b. 3340.41, subdivision (c): Respondent N&K permitted his technician, Respondent
18 Gomez, to enter false information into the EIS unit by entering vehicle identification information
19 or emission control system identification data for a vehicle other than the one being tested.

20 c. Section 3340.42: Respondent N&K failed to ensure that the required smog tests were
21 conducted on the Bureau's 1995 Chevrolet in accordance with the Bureau's specifications.

22 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

24 37. Respondent N&K's smog check station license is subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
26 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
27 certificate of compliance for the Bureau's 1995 Chevrolet without ensuring that a bona fide
28 inspection was performed of the emission control devices and systems on the vehicle, thereby

1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

5 38. Respondent Gomez's technician license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
7 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
8 emission control tests on the Bureau's 1995 Chevrolet in accordance with procedures prescribed
9 by the department.

10 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

13 39. Respondent Gomez's technician license is subject to disciplinary action pursuant to
14 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
15 provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.30, subdivision (a)**: Respondent Gomez failed to inspect and test the
17 Bureau's 1995 Chevrolet in accordance with Health & Saf. Code sections 44012 and 44035, and
18 California Code of Regulations, title 16, section 3340.42.

19 b. **Section 3340.41, subdivision (c)**: Respondent Gomez entered false information into
20 the EIS by entering vehicle identification information or emission control system identification
21 data for a vehicle other than the one being tested.

22 c. **Section 3340.42**: Respondent Gomez failed to conduct the required smog tests on the
23 Bureau's 1995 Chevrolet in accordance with the Bureau's specifications.

24 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

26 40. Respondent Gomez's technician license is subject to disciplinary action pursuant to
27 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
28 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of

1 compliance for the Bureau's 1995 Chevrolet without performing a bona fide inspection of the
2 emission control devices and systems on the vehicle, thereby depriving the People of the State of
3 California of the protection afforded by the Motor Vehicle Inspection Program.

4 **UNDERCOVER OPERATION #3: 1999 DODGE**

5 41. On January 18, 2013, a Bureau undercover operator took the Bureau's 1999 Dodge to
6 Respondent N&K's facility. The vehicle was equipped with a modified heated oxygen sensor
7 circuit which caused the vehicle to emit excessive tailpipe emissions. The operator went into the
8 office and was greeted by Respondent Lopez. The operator requested a smog test on the vehicle.
9 The operator was approached thereafter and told to fill out paperwork which he completed but did
10 not receive a copy of it. The operator then observed Respondent Lopez drive the vehicle into the
11 testing bay and sit inside the Dodge while Respondent Aleman inserted the analyzer probe into
12 the vehicle. Respondent Lopez stated that the emissions levels were high and asked Respondent
13 Aleman if he wanted to "use his car cold". Respondent Aleman replied "ok". Respondent Lopez
14 then exited the Dodge and walked over to a white Lincoln Towncar parked adjacent to the testing
15 bay and started the engine. Respondent Lopez then took the analyzer probe that was previously
16 inserted in the Dodge and walked it over to the rear of the Lincoln Towncar. Respondent Aleman
17 inserted a "dummy probe"² into the tailpipe of the Dodge. Respondent Lopez then got into the
18 Lincoln Towncar and raised the engine speed while Respondent Aleman drove the Dodge onto
19 the dynamometer. Respondent Aleman then exited the Dodge, removed the "dummy probe" from
20 the tailpipe of the Dodge, and walked over to the analyzer. Respondent Lopez exited the Lincoln
21 Towncar and walked back to the analyzer with the analyzer probe in his hand. A few minutes
22 later, Respondent Aleman informed the operator that the test was completed.

23 42. After the test was completed, Respondent Aleman informed the operator that he owed
24 him \$140 for the test. The operator paid Respondent Aleman \$140 and asked Respondent Aleman
25

26 ² The "dummy probe" is a short probe not connected to the analyzer but made to look like
27 a probe is connected to the analyzer to disguise anyone conducting surveillance that the actual car
28 is being tested and not a different car. In this case, the undercover operator could see the end of
the probe lying near the rear tire of the Dodge.

1 if he could bring more cars to him that needed "help" with the smog test. Respondent Aleman
2 said that he could but to call first.

3 43. The Bureau's VID (vehicle information database) data indicated that the vehicle
4 passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No.
5 [REDACTED] The VID data showed that Respondent Aleman performed the smog inspection on
6 the vehicle.

7 44. On January 25, 2013, the Bureau performed a smog inspection on the vehicle. The
8 vehicle failed the inspection due to excessive tailpipe emissions. The Bureau concluded that
9 Respondent Aleman had performed the smog inspection on the vehicle using clean piping
10 methods, resulting in the issuance of a fraudulent smog certificate of compliance.

11 **SEVENTEENTH CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 45. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
14 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
15 which he knew or in the exercise of reasonable care should have known to be untrue or
16 misleading, as follows:

17 a. Respondent N&K's technician, Respondent Aleman, with the assistance of
18 Respondent Lopez, certified under penalty of perjury on the VIR that he performed the smog
19 inspection on the Bureau's 1999 Dodge in accordance with all Bureau requirements and that the
20 vehicle had passed the inspection and was in compliance with applicable laws and regulations. In
21 fact, Respondent Aleman used clean piping methods in order to issue a certificate for the vehicle
22 and did not test or inspect the vehicle as required by Health & Saf. Code section 44012. As such,
23 the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

24 **EIGHTEENTH CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 46. Respondent N&K's registration is subject to disciplinary action pursuant to Bus. &
27 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent N&K committed an act that
28 constitutes fraud, as follows: Respondent N&K allowed his employee to issue an electronic smog

1 certificate of compliance for the Bureau's 1999 Dodge without ensuring that a bona fide
2 inspection was performed of the emission control devices and systems on the vehicle, thereby
3 depriving the People of the State of California of the protection afforded by the Motor Vehicle
4 Inspection Program.

5 **NINETEENTH CAUSE FOR DISCIPLINE**

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

7 47. Respondent N&K's smog check station license is subject to disciplinary action
8 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent N&K failed
9 to comply with the following sections of that Code:

10 a. **Section 44012:** Respondent N&K failed to ensure that the emission control tests
11 were performed on the Bureau's 1999 Dodge in accordance with procedures prescribed by the
12 department.

13 b. **Section 44015:** Respondent N&K allowed his employee to issue an electronic smog
14 certificate of compliance for the Bureau's 1999 Dodge without ensuring that the vehicle was
15 properly tested and inspected to determine if it was in compliance with Health & Saf. Code
16 section 44012.

17 **TWENTIETH CAUSE FOR DISCIPLINE**

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

20 48. Respondent N&K's smog check station license is subject to disciplinary action
21 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent N&K failed
22 to comply with the provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.35, subdivision (c):** Respondent Aleman, with the assistance of
24 Respondent Lopez, issued an electronic smog certificate of compliance for the Bureau's 1999
25 Dodge even though the vehicle had not been inspected in accordance with Health & Saf. Code
26 section 3340.42.

27 b. **3340.41, subdivision (c):** Respondent N&K permitted his technician, Respondent
28 Aleman, with the assistance of Respondent Lopez, to enter false information into the EIS unit by

1 entering vehicle identification information or emission control system identification data for a
2 vehicle other than the one being tested.

3 c. **Section 3340.42**: Respondent N&K failed to ensure that the required smog tests were
4 conducted on the Bureau's 1999 Dodge in accordance with the Bureau's specifications.

5 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

7 49. Respondent N&K's smog check station license is subject to disciplinary action
8 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
9 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
10 certificate of compliance for the Bureau's 1999 Dodge without ensuring that a bona fide
11 inspection was performed of the emission control devices and systems on the vehicle, thereby
12 depriving the People of the State of California of the protection afforded by the Motor Vehicle
13 Inspection Program.

14 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

16 50. Respondents Aleman and Lopez inspector licenses are subject to disciplinary action
17 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that both Respondents failed
18 to comply with section 44012 of that Code in a material respect, as follows: Respondents failed
19 to perform the emission control tests on the Bureau's 1999 Dodge in accordance with procedures
20 prescribed by the department.

21 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

24 51. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary
25 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that both Respondents
26 failed to comply with provisions of California Code of Regulations, title 16, as follows:
27
28

1 a. **Section 3340.30, subdivision (a)**: Respondents failed to inspect and test the
2 Bureau's 1999 Dodge in accordance with Health & Saf. Code sections 44012 and 44035, and
3 California Code of Regulations, title 16, section 3340.42.

4 b. **Section 3340.41, subdivision (c)**: Respondent Aleman with the assistance of
5 Respondent Lopez entered false information into the EIS by entering vehicle identification
6 information or emission control system identification data for a vehicle other than the one being
7 tested.

8 c. **Section 3340.42**: Respondents failed to conduct the required smog tests on the
9 Bureau's 1999 Dodge in accordance with the Bureau's specifications.

10 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

12 52. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary
13 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondents
14 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an
15 electronic smog certificate of compliance for the Bureau's 1999 Dodge without performing a
16 bona fide inspection of the emission control devices and systems on the vehicle, thereby
17 depriving the People of the State of California of the protection afforded by the Motor Vehicle
18 Inspection Program.

19 **UNDERCOVER OPERATION #4: 1992 PLYMOUTH**

20 53. On February 1, 2013, a Bureau undercover operator took the Bureau's 1992 Plymouth
21 to Respondent N&K's facility. The vehicle was equipped with a three-way catalytic converter
22 with its internal material removed which caused the vehicle to emit excessive tailpipe emissions.
23 Once he arrived, the operator went into the office and was greeted by Respondent Lopez. The
24 operator requested a smog test on the vehicle. The operator was told by Respondent Lopez that
25 the smog test would cost \$50.00. The operator stated to Respondent Lopez that the vehicle
26 "needed some help". Respondent Lopez asked the operator if he had spoken to Respondent
27 Aleman to which the operator stated that he had. Respondent Lopez then replied "no problem".
28 The operator was told to fill out paperwork which he completed but did not receive a copy of it.

1 The operator then observed Respondent Aleman start a Buick Regal parked in the shop adjacent
2 to the testing bay while Respondent Lopez drove the 1992 Plymouth into the testing bay.
3 Respondent Aleman then checked the emissions of the 1992 Plymouth in manual mode after
4 Respondent Lopez inserted the analyzer probe into the 1992 Plymouth 's tailpipe. Respondent
5 Lopez was overheard by the operator stating: "Yes, it's dirty. That's why it has that smell."

6 54. Respondent Lopez then removed the analyzer probe from the 1992 Plymouth and
7 placed it next to the analyzer. Respondent Aleman then picked up the probe and walked over to
8 the rear of the Buick Regal. He then bent down behind the Regal and walked back to the 1992
9 Plymouth where he inserted a "dummy probe" into the tailpipe. The undercover operator
10 observed the end of the "dummy probe" lying near the rear tire of the 1992 Plymouth.
11 Respondent Lopez then got inside the Buick Regal and raised the engine speed while Respondent
12 Aleman drove the 1992 Plymouth on the dynamometer. After the 1992 Plymouth was done
13 running on the dynamometer, Respondent Lopez exited the Buick Regal and walked back to the
14 analyzer with the analyzer probe in his hand. Respondent Aleman exited the 1992 Plymouth and
15 removed the "dummy probe" from the Plymouth's exhaust. The operator then observed both
16 Respondent Lopez and Respondent Aleman standing in front of the analyzer while Respondent
17 Lopez entered data into the EIS. Respondent Lopez then drove the 1992 Plymouth out of the test
18 bay. Respondent Aleman indicated that the test was done. The operator asked Respondent
19 Aleman if he could have a discount if he brought more cars into the shop and Respondent Aleman
20 replied that he could do it for \$120.00.

21 55. Respondent Aleman then asked the operator to come into the waiting area and asked
22 Respondent Aleman if it was \$120 to which he replied "yes." The operator handed Respondent
23 Aleman \$120 in cash and in return received a VIR (vehicle inspection report) and the DMV
24 document. Respondent Aleman stated to the operator "anytime you need help, bring them by."

25 56. The Bureau's VID (vehicle information database) data indicated that the vehicle
26 passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No.
27 [REDACTED] The VID data showed that Respondent Lopez performed the smog inspection on the
28 vehicle.

1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

3 60. Respondent N&K's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent N&K failed
5 to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent N&K failed to ensure that the emission control tests
7 were performed on the Bureau's 1992 Plymouth in accordance with procedures prescribed by the
8 department.

9 b. **Section 44015:** Respondent N&K allowed his employee to issue an electronic smog
10 certificate of compliance for the Bureau's 1992 Plymouth without ensuring that the vehicle was
11 properly tested and inspected to determine if it was in compliance with Health & Saf. Code
12 section 44012.

13 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

16 61. Respondent N&K's smog check station license is subject to disciplinary action
17 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent N&K failed
18 to comply with the provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.35, subdivision (c):** Respondent Lopez, with the assistance of
20 Respondent Aleman, issued an electronic smog certificate of compliance for the Bureau's 1992
21 Plymouth even though the vehicle had not been inspected in accordance with Health & Saf. Code
22 section 3340.42.

23 b. **3340.41, subdivision (c):** Respondent N&K permitted his technician, Respondent
24 Lopez, with the assistance of Respondent Aleman, to enter false information into the EIS unit by
25 entering vehicle identification information or emission control system identification data for a
26 vehicle other than the one being tested.

27 c. **Section 3340.42:** Respondent N&K failed to ensure that the required smog tests were
28 conducted on the Bureau's 1992 Plymouth in accordance with the Bureau's specifications.

1 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

3 62. Respondent N&K's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
5 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
6 certificate of compliance for the Bureau's 1992 Plymouth without ensuring that a bona fide
7 inspection was performed of the emission control devices and systems on the vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **THIRTIETH CAUSE FOR DISCIPLINE**

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

12 63. Respondents Aleman and Lopez inspector licenses are subject to disciplinary action
13 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that both Respondents failed
14 to comply with section 44012 of that Code in a material respect, as follows: Respondents failed
15 to perform the emission control tests on the Bureau's 1992 Plymouth in accordance with
16 procedures prescribed by the department.

17 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

20 64. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary
21 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that both Respondents
22 failed to comply with provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.30, subdivision (a)**: Respondents failed to inspect and test the
24 Bureau's 1992 Plymouth in accordance with Health & Saf. Code sections 44012 and 44035, and
25 California Code of Regulations, title 16, section 3340.42.

26 b. **Section 3340.41, subdivision (c)**: Respondent Lopez with the assistance of
27 Respondent Aleman entered false information into the EIS by entering vehicle identification
28

1 information or emission control system identification data for a vehicle other than the one being
2 tested.

3 c. Section 3340.42: Respondents failed to conduct the required smog tests on the
4 Bureau's 1992 Plymouth in accordance with the Bureau's specifications.

5 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

7 65. Respondents' Aleman and Lopez's inspector licenses are subject to disciplinary
8 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondents
9 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an
10 electronic smog certificate of compliance for the Bureau's 1992 Plymouth without performing a
11 bona fide inspection of the emission control devices and systems on the vehicle, thereby
12 depriving the People of the State of California of the protection afforded by the Motor Vehicle
13 Inspection Program.

14 **OTHER MATTERS**

15 66. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
16 or may invalidate temporarily or permanently, the registrations for all places of business operated
17 in this state by Eduardo Palma Gomez upon a finding that he has, or is, engaged in a course of
18 repeated and willful violations of the laws and regulations pertaining to an automotive repair
19 dealer.

20 67. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
21 License Number TC 268060, issued to Eduardo Palma Gomez, doing business as N&K Smog
22 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
23 of said licensee may be likewise revoked or suspended by the director.

24 68. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
25 Technician License Number currently designated as EA 632070 (and upon timely renewal of the
26 license, to be redesignated as EO 632070 and/or EI 632070), issued to Marco Antonio Gomez, is
27 revoked or suspended, any additional license issued under this chapter in the name of said
28 licensee may be likewise revoked or suspended by the director.

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8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Ismael Enriquez Aleman;

9. Revoking or suspending Smog Check Inspector License Number EO 635079, issued to Edward Lopez;

10. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Edward Lopez;

11. Ordering Eduardo Palma Gomez, Marco Antonio Gomez, Ismael Enriquez Aleman and Edward Lopez to jointly and severally pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: August 30, 2013



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