

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

In the Matter of the Accusation Against:

MARK THOMAS ESPINOZA

689 San Miguel Avenue
Sunnyvale, CA 94085

Smog Check Inspector License No.
EO 635131

Respondent.

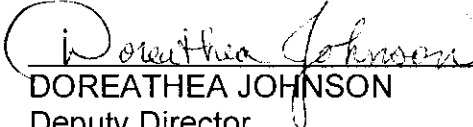
Case No. 79/16-120

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective November 1, 2016.

DATED: 9/13/16


DOREATHEA JOHNSON
Deputy Director
Division of Legal Affairs
Department of Consumer Affairs

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2 DIANN SOKOLOFF
Supervising Deputy Attorney General
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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

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12 In the Matter of the Accusation Against:

Case No. 79/16-120

13 **MARK THOMAS ESPINOZA**
14 **689 San Miguel Avenue**
Sunnyvale, CA 94085

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Smog Check Inspector License No.**
16 **EO635131**

17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He
23 brought this action solely in his official capacity and is represented in this matter by Kamala D.
24 Harris, Attorney General of the State of California, by Kim M. Settles, Deputy Attorney General.

25 2. Respondent Mark Thomas Espinoza ("Respondent") is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about January 17, 2013, the Bureau of Automotive Repair issued Smog Check
28 Inspector License No. EO 635131 to Mark Thomas Espinoza (Respondent). The Smog Check

1 Inspector License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 79/16-120, and will expire on April 30, 2017, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 79/16-120 was filed before the Director of Consumer Affairs
5 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on July 11, 2016. Respondent timely filed his Notice of Defense contesting the
8 Accusation.

9 5. A copy of Accusation No. 79/16-120 is attached as exhibit A and incorporated by
10 reference.

11 **ADVISEMENT AND WAIVERS**

12 6. Respondent has carefully read, and understands the charges and allegations in
13 Accusation No. 79/16-120. Respondent has also carefully read, and understands the effects of
14 this Stipulated Settlement and Disciplinary Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 79/16-120.

27 10. Respondent agrees that his Smog Check Inspector License is subject to discipline and
28 he agrees to be bound by the Director's imposition of discipline as set forth in the Disciplinary

1 Order below.

2 **CONTINGENCY**

3 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or
4 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
5 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
6 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
7 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
8 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
9 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision
10 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
11 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
12 Director shall not be disqualified from further action by having considered this matter.

13 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
14 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
15 signatures thereto, shall have the same force and effect as the originals.

16 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
17 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
18 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
19 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
20 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
21 writing executed by an authorized representative of each of the parties.

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

25 **DISCIPLINARY ORDER**

26 IT IS HEREBY ORDERED that Smog Check Inspector License No. EO 635131 issued to
27 Respondent, Mark Thomas Espinoza is revoked.


28 IT IS FURTHER ORDERED, as a consideration of this stipulation in settlement and the

1 Bureau's waiver of its right to collect costs now, that Respondent reimburse the Bureau for its
2 costs of investigation and prosecution of this case in the amount of \$13,986.61 prior to submitting
3 any petition for reinstatement, or application for re-licensure, or application for any other license
4 regulated by the Bureau or the Department of Consumer Affairs.

5 **ACCEPTANCE**

6 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
7 stipulation and the effect it will have on my Smog Check Inspector License. I enter into this
8 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
9 to be bound by the Decision and Order of the Director of Consumer Affairs.

10 DATED: 8/10/16

11 
12 MARK THOMAS ESPINOZA
13 Respondent

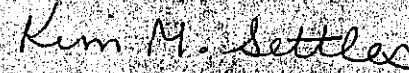
14 **ENDORSEMENT**

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
16 submitted for consideration by the Director of Consumer Affairs

17 Dated: 8/10/16

18 Respectfully submitted,

19 KAMALA D. HARRIS
20 Attorney General of California
21 DIANN SOKOLOFF
22 Supervising Deputy Attorney General

23 
24 KIM M. SETTLES
25 Deputy Attorney General
26 Attorneys for Complainant

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Exhibit A

Accusation No. 79/16-120

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9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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12 **In the Matter of the Accusation Against:**

Case No. 79/16-120

13 **MARK THOMAS ESPINOZA**
689 San Miguel Avenue
14 Sunnyvale, CA 94085

ACCUSATION

15 **Smog Check Inspector License No. EO**
16 **635131**

17 **Respondent.**

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 17, 2013, the Bureau of Automotive Repair issued Smog Check
23 Inspector License Number EO 635131 to Mark Thomas Espinoza. ("Respondent"). The Smog
24 Check Inspector License was in full force and effect at all times relevant to the charges brought in
25 this Accusation and will expire on April 30, 2017, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Director of the Department of Consumer
28 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

1 4. Business and Professions Code ("Code") section 118, subdivision (b), provides that
2 the expiration of a license shall not deprive the Director of jurisdiction to proceed with a
3 disciplinary action during the period within which the license may be renewed, restored, reissued
4 or reinstated.

5 5. Code section 9889.1 provides, in pertinent part, that the Director may suspend or
6 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
7 Automotive Repair Act.

8 6. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a
9 license by operation of law by order or decision of the Director or a court of law, or the voluntary
10 surrender of a license shall not deprive the director of jurisdiction to proceed with any
11 disciplinary proceedings.

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

15 8. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
16 expiration or suspension of a license by operation of law, or by order or decision of the Director
17 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
18 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
19 proceedings against the licensee, or to render a decision suspending or revoking the license.

20 **STATUTORY/REGULATORY PROVISIONS**

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

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

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

28

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

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

3 10. Section 44032 of the Health and Safety Code states:

4 “No person shall perform, for compensation, tests or repairs of emission control devices or
5 systems of motor vehicles required by this chapter unless the person performing the test or repair
6 is a qualified smog check technician and the test or repair is performed at a licensed smog check
7 station. Qualified technicians shall perform tests of emission control devices and systems in
8 accordance with Section 44012.”

9 11. Section 44012 of the Health and Safety Code states, in pertinent part:

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

14

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

19 12. California Code of Regulations, title 16, section 3340.42, states, in pertinent part:

20 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
21 section 3340.45.

22 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test
23 methods:

24 ...

25 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
26 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.

27 The OBD test failure criteria are specified in section 3340.42.2.

28

1 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
2 receive the following:

3 “(1) A visual inspection of emission control components and systems to verify the vehicle's
4 emission control systems are properly installed.

5 “(2) A functional inspection of emission control systems as specified in the Smog Check
6 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
7 operation.”

8 13. California Code of Regulations, title 16, section 3340.24, subdivision (c) states:

9 “(c) The bureau may suspend or revoke the license of or pursue other legal action against a
10 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
11 certificate of noncompliance.”

12 14. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

13 “(c) No person shall enter into the emissions inspection system any vehicle identification
14 information or emission control system identification data for any vehicle other than the one
15 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
16 information about the vehicle being tested.”

17 15. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

18 “A smog check technician shall comply with the following requirements at all times while
19 licensed.

20 “(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
21 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
22 3340.42 of this article.”

23 **COST RECOVERY**

24 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
28

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **FACTUAL ALLEGATIONS**

4 17. On November 18, 2015, Bureau representative Matthew Rodriguez reviewed the OIS
5 ("On Board Diagnostic Inspection System") smog check data for vehicles inspected and certified
6 by A Discount Smog Check Center #1, for the period between December 4, 2013 and November
7 30, 2015. During Rodriguez' investigation, he accessed the Vehicle Information Database
8 ("VID"), and performed a focused review of BAR-OIS test data for A Discount Smog Check
9 Center #1. BAR-OIS test data is the OBD ("On Board Diagnostics System") information
10 transmitted during a smog inspection from the computer of the vehicle being inspected to the
11 BAR-OIS. Beginning March 9, 2015, California's Smog Check Program was updated and now
12 requires smog inspectors and stations to use the BAR-OIS computer system during smog
13 inspections, for most model year 2000 and newer gasoline and hybrid vehicles, and most 1998
14 and new diesel vehicles. The BAR-OIS consists of a BAR-certified Data Acquisition Device
15 ("DAD"), computer, bar code scanner, and printer. The DAD serves as an on-board diagnostic
16 ("OBD") scan tool. The DAD is an interface box that connects the computer containing the
17 BAR-OIS software to the diagnostic link connector ("DLC") of the vehicle being inspected.
18 When requested by the BAR-OIS software, the DAD retrieves data from the vehicle's on-board
19 computer system ("OBD II").

20 18. The information obtained by the BAR-OIS software during a smog inspection is
21 organized in a detailed inspection report for each vehicle inspected and is known as a BAR-OIS
22 Test Detail. The BAR-OIS Test Detail contains information segregated into eight different
23 blocks titled as follows: Station, Vehicle, Test Status, Visual Details, Functional Details, OBDII
24 Details, OBDII Readiness Monitor Status, and OBDII DTC Details. For the purposes of
25 Rodriguez' investigation of Respondent A Discount Smog Check Center #1, he focused on
26 information in the "Vehicle" and "OBDII Details" blocks because they contain a unique
27 combination of information for the vehicle being inspected and "like vehicles" inspected. Like
28 vehicles are vehicles of the same manufacturer, model, and model year that were inspected on the

1 BAR-OIS. The unique combination of information analyzed by Rodriguez includes the eVIN
2 (“Electronic Vehicle Identification Number”), PID (“Parameter Identification”) count, and
3 communication protocol. Rodriguez compared the eVIN, communication protocol, and PID
4 count for a vehicle that was certified to like vehicles.

5 19. Rodriguez identified a 2001 Mazda MVP Wagon certified by Respondents, A
6 Discount Smog Check Center #1 and Mark Thomas Espinoza, on August 12, 2015, using the
7 OBDII of a 2011 Ford Edge ESL. The OIS Data transmitted during Mark Thomas Espinoza’s
8 inspection showed a discrepancy in the communication protocol and PID, the smog check
9 inspection test history for the Mazda MPV Wagon, and the OIS Inspection data for the 2011 Ford
10 Edge SEL.

11 20. Rodriguez’ review of the BAR-OIS data for the Mazda MVP Wagon certified by
12 Respondents, A Discount Smog Check Center #1 and Mark Thomas Espinoza, as set forth in
13 paragraph 32, above, constitutes a fraudulent smog inspection that resulted in the issuance of a
14 fraudulent certificate of compliance. Respondent, Mark Thomas Espinoza therefore clean
15 plugged the Mazda MVP Wagon, resulting in Respondent, A Discount Smog Check Center #1
16 issuing a fraudulent Certificate of Compliance on August 12, 2015.

17 21. On November 18, 2015, Bureau representative Matthew Rodriguez reviewed the OIS
18 smog check data for vehicles inspected and certified by Speedy Smog, for the period between
19 December 4, 2013 and November 30, 2015. During Rodriguez’ investigation, he accessed the
20 Vehicle Information Database (“VID”), and performed a focused review of BAR-OIS (“On Board
21 Diagnostic Inspection System”) test data for Speedy Smog.

22 22. Rodriguez identified two vehicles certified by Respondents Speedy Smog and Mark
23 Thomas Espinoza between March 16, 2015 and March 29, 2015, that failed to transmit the
24 expected eVIN, protocol, and PID count. The data transmitted during Respondent Mark Thomas
25 Espinoza’s inspections either differed from the OIS data the vehicles transmitted during other
26 inspections, or the data was inconsistent with the OIS data transmitted by “like vehicles”
27 inspected, or both.

28

1 23. Rodriguez' review of the BAR-OIS data for the vehicles certified by Respondents
2 Speedy Smog and Mark Thomas Espinoza during the above-referenced time period revealed a
3 pattern of fraudulent smog inspections that resulted in the issuance of fraudulent certificates of
4 compliance. There were two instances in which Respondent Mark Thomas Espinoza certified
5 vehicles by fraudulently using the OBDII system of another vehicle. Respondent Mark Thomas
6 Espinoza therefore clean plugged two vehicles, resulting in Respondent Speedy Smog issuing two
7 fraudulent Certificate of Compliance between March 16, 2015 and March 29, 2015. The details
8 of each instance of clean plugging is as follows:

9 24. **Clean Plug Number 1:**

10 a. Rodriguez' review of the OBDII Test Data contained in the BAR's VID indicated
11 that on March 16, 2015, Respondent, Mark Thomas Espinoza inspected a 2001 Cadillac Seville
12 SLS, VIN #1G6KS54Y31U117214, and Respondent, Speedy Smog issued smog Certificate of
13 Compliance #YP468088C. The OIS Test Data for the Cadillac Seville SLS shows eVIN
14 #2LNBL8EV3BX763147, the communication protocol is listed as ICAN11bt500, and the PID
15 count was 47. Comparative OIS Test Data shows that similar 2001 Cadillac Seville SLS's
16 report the eVIN, the expected communication protocol is listed as JVPW, and the expected PID
17 count is 21.

18 b. Further review of Respondent, Speedy Smog's OIS Inspection Data for March 16,
19 2015, showed that Respondent, Mark Thomas Espinoza inspected and certified a 2011 Lincoln
20 Town Car Executive L. The OIS Test Details for the Lincoln Town Car matched the eVIN, the
21 communication protocol and the PID count that was reported on the certifying inspection of the
22 Cadillac Seville SLS at Respondent, Speedy Smog on March 16, 2015.

23 25. **Clean Plug Number 2:**

24 a. Rodriguez' review of the OBDII Test Data contained in the BAR's VID indicated
25 that on March 29, 2015, Respondent, Mark Thomas Espinoza inspected a 2005 Chevrolet
26 Trailblazer LS/LT, VIN #1GNDS13S752154559, and Respondent, Speedy Smog issued smog
27 Certificate of Compliance #YP670992C. The OIS Test Data for the Chevrolet Trailblazer LS/LT
28 shows no eVIN was reported, the communication protocol is listed as I9140808, and the PID

1 count was 17. Comparative OIS Test Data shows that similar 2005 Chevrolet Trailblazer LS/LT's
2 report the eVIN, the expected communication protocol is listed as JVPW, and the expected PID
3 count is 19.

4 b. Rodriguez concluded that the above-referenced information indicated that
5 Respondent Mark Thomas Espinoza fraudulently issued a smog check certificate to a 2005
6 Chevrolet Trailblazer LS/LT, using the OBDII system of a different vehicle.

7 26. On October 19, 2015, Bureau representative Christopher Cummings reviewed the
8 OIS smog data for vehicles inspected by Mark Thomas Espinoza and Matthew Robert Cortez and
9 certified by All Smog El Camino, for the period between August 20, 2015 and November 7,
10 2015. During Cummings' investigation, he accessed the VID, and performed a focused review of
11 BAR-OIS test data for All Smog El Camino.

12 27. Cummings identified nine vehicles certified by Respondents All Smog El Camino
13 and Mark Thomas Espinoza's inspection either differed from the OIS data the vehicles
14 transmitted during other inspections, or the data was inconsistent with the OIS data transmitted by
15 "like vehicles" inspected or both.

16 28. Cummings' review of the BAR-OIS data for the vehicles certified by Respondent
17 Mark Thomas Espinoza during the above-referenced time period revealed a pattern of fraudulent
18 smog inspections that resulted in the issuance of fraudulent certificates of compliance. There
19 were nine instances in which Respondent Mark Thomas Espinoza certified vehicles that were not
20 connected to the DAD when they were certified. Respondent Mark Thomas Espinoza therefore
21 clean plugged nine vehicles, resulting in the issuance of nine fraudulent Certificate of Compliance
22 between August 20, 2015 and November 17, 2015. The details of each instance of clean plugging
23 is as follows:

24 29. **Clean Plug Number 3:**

25 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
26 August 20, 2015, Respondent Mark Thomas Espinoza inspected a 2002 Acura 3.2 TL Type-S,
27 VIN # 19UUA56832A013039, and All Smog El Camino issued smog Certificate of Compliance
28 #YT851429C. The OIS Test Details for the Acura shows eVIN #KM8JN72D55U075612, the

1 communication protocol is listed as KWPF8FEF, and the PID count was 21. Comparative OIS
2 Test data shows that similar 2002 Acura 3.2 TL Type-S vehicles report no eVIN, have an
3 expected communication protocol of I914, and an expected PID count of 16.

4 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
5 to the 2002 Acura 3.2 TL Type S being certified, resulting in the issuance of a fraudulent smog
6 Certificate of Compliance.

7 **30. Clean Plug Number 4:**

8 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
9 August 20, 2015, Respondent Mark Thomas Espinoza inspected a 2000 Ford Ranger VIN
10 #1FTYR14V6YPB28525, and All Smog El Camino issued smog Certificate of Compliance
11 #YT851432C. The OIS Test Details for the Acura shows eVIN #JTLKE50E581024212, the
12 communication protocol is listed as ICAN11bt500, and the PID count was 39. Comparative OIS
13 Test data shows that similar 2000 Ford Rangers report no eVIN, have an expected communication
14 protocol of JPWM, and an expected PID count of 19.

15 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
16 to the 2000 Ford Ranger being certified, resulting in the issuance of a fraudulent smog Certificate
17 of Compliance.

18 **31. Clean Plug Number 5:**

19 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
20 August 25, 2015, Respondent Mark Thomas Espinoza inspected a 2000 Chevrolet Express
21 G1500, VIN # 1GCFG15M1Y1118409, and All Smog El Camino issued smog Certificate of
22 Compliance #YT851533C. The OIS Test Details for the Chevrolet Express shows no eVIN
23 reported, the communication protocol is listed as I9140808, and the PID count was 17.

24 Comparative OIS Test data shows that similar 2000 Chevrolet Express G1500 vehicles report no
25 eVIN, have an expected communication protocol of JVPW, and an expected PID count of 21.

26 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
27 to the 2000 Chevrolet Express G1500 being certified, resulting in the issuance of a fraudulent
28 smog Certificate of Compliance.

1 **32. Clean Plug Number 6:**

2 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
3 September 3, 2015, Respondent Mark Thomas Espinoza inspected a 2005 Chrysler PT Cruiser
4 GT, VIN # 3C3AY75S65T701219, and All Smog El Camino issued smog Certificate of
5 Compliance #PW110024C. The OIS Test Details for the 2005 Chrysler PT Cruiser GT shows
6 eVIN #JN8AZ08T55W318214, the communication protocol is listed as I9140808, and the PID
7 count was 22. Comparative OIS Test data shows that similar 2005 Chrysler PT Cruiser GT
8 vehicles report the correct eVIN, have an expected communication protocol of JVPW, and an
9 expected PID count of 18/3.

10 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
11 to the 2005 Chrysler PT Cruiser GT being certified, resulting in the issuance of a fraudulent smog
12 Certificate of Compliance.

13 **33. Clean Plug Number 7:**

14 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
15 September 10, 2015, Respondent Mark Thomas Espinoza inspected a 2008 BMW 328I SULEV,
16 VIN # WBAVC53518FZ88459 , and All Smog El Camino issued smog Certificate of
17 Compliance #PW354814C. The OIS Test Details for the 2008 BMW 328I SULEV shows no
18 eVIN reported, the communication protocol is listed as I9140808, and the PID count was 17.
19 Comparative OIS Test data shows that similar 2008 BMW 328I SULEV vehicles report the
20 correct eVIN, have an expected communication protocol of ICAN11bt5, and an expected PID
21 count of 46/11.

22 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
23 to the 2008 BMW 328I SULEV being certified, resulting in the issuance of a fraudulent smog
24 Certificate of Compliance.

25 **34. Clean Plug Number 8:**

26 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
27 September 17, 2015, Respondent Mark Thomas Espinoza inspected a 2005 Audi A4 1.8T
28 Quattro/SPEC EDIT, VIN # WAULC68E95A116853 , and All Smog El Camino issued smog

1 Certificate of Compliance #PW471419C. The OIS Test Details for the 2005 Audi A4 1.8T
2 Quattro/SPEC EDIT shows the eVIN listed as YS3EF58Z213014589, the communication
3 protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that
4 similar 2005 Audi A4 1.8T Quattro/SPEC EDIT vehicles report the correct eVIN, have an
5 expected communication protocol of KWPS, and an expected PID count of 18/1.

6 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
7 to the 2005 Audi A4 1.8T Quattro/SPEC EDIT being certified, resulting in the issuance of a
8 fraudulent smog Certificate of Compliance.

9 **35. Clean Plug Number 9:**

10 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
11 September 18, 2015, Respondent Mark Thomas Espinoza inspected a 2002 Chevrolet Tahoe
12 C1500, VIN # 1GNEC13V82R147604, and All Smog El Camino issued smog Certificate of
13 Compliance #PW471427C. The OIS Test Details for the 2002 Chevrolet Tahoe C1500 vehicle
14 shows the eVIN listed as JTLKE50E581024212, the communication protocol is listed as
15 ICAN11bt500, and the PID count was 39. Comparative OIS Test data shows that similar 2002
16 Chevrolet Tahoe C1500 vehicles report the correct eVIN, have an expected communication
17 protocol of JVPW, and an expected PID count of 22.

18 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
19 to the 2002 Chevrolet Tahoe C1500 being certified, resulting in the issuance of a fraudulent smog
20 Certificate of Compliance.

21 c. On September 8, 2015, the same 2002 Chevrolet Tahoe C1500 failed a smog
22 inspection at 76 Smog Test. During the inspection, the correct eVIN, communication protocol
23 and PID count was displayed.

24 d. On September 9, 2015, the same 2002 Chevrolet Tahoe C1500 failed a smog
25 inspection at Middlefield Smog Check. During the inspection, the correct eVIN, communication
26 protocol and PID count was displayed.

1 **36. Clean Plug Number 10:**

2 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
3 September 18, 2015, Respondent Mark Thomas Espinoza inspected a 2001 Mercedes-Benz E320,
4 VIN # WDBJF65JX1B212514, and All Smog El Camino issued smog Certificate of Compliance
5 #PW471428C. The OIS Test Details for the 2001 Mercedes-Benz E320 vehicle shows the eVIN
6 listed as JTLKE50E581024212, the communication protocol is listed as ICAN11bt500, and the
7 PID count was 39. Comparative OIS Test data shows that similar 2001 Mercedes-Benz E320
8 vehicles report no eVIN, have an expected communication protocol of KWPF and an expected
9 PID count of 22.

10 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
11 to the 2001 Mercedes-Benz E320 being certified, resulting in the issuance of a fraudulent smog
12 Certificate of Compliance.

13 c. The reported eVIN for this inspection was identical to the eVIN reported for the
14 inspection performed on the 2000 Ford Ranger (Clean Plug Number 2) and the 2002 Chevrolet
15 Tahoe (Clean Plug Number 7), as described above.

16 **37. Clean Plug Number 11:**

17 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
18 September 24, 2015, Respondent Mark Thomas Espinoza inspected a 2000 BMW M5, VIN
19 #WBSDE9347YB294984, and All Smog El Camino and issued smog Certificate of Compliance
20 #PW676283C. The OIS Test Details for the 2000 BMW M5 vehicle shows the eVIN listed as
21 1G4HP52KX34137496, the communication protocol is listed as JVPW1850, and the PID count
22 was 19. Comparative OIS Test data shows that similar 2000 BMW M5 vehicles report the correct
23 eVIN, have an expected communication protocol of I914 and an expected PID count of 23.

24 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
25 to the 2000 BMW M-5 being certified, resulting in the issuance of a fraudulent smog Certificate
26 of Compliance.

27 **38.** On October 19, 2015, Bureau representative Christopher Cummings reviewed the
28 OIS smog data for vehicles inspected by Mark Thomas Espinoza and certified by A Street Smog

1 Check Hayward, for the period between June 3, 2015 and February 9, 2016. During Cummings'
2 investigation, he accessed the VID, and performed a focused review of BAR-OIS test data for A
3 Street Smog Check Hayward.

4 39. Cummings identified eleven vehicles certified by Respondents A Street Smog Check
5 Hayward and Mark Thomas Espinoza's inspection either differed from the OIS data the vehicles
6 transmitted during other inspections, or the data was inconsistent with the OIS data transmitted by
7 "like vehicles" inspected or both.

8 40. Cummings' review of the BAR-OIS data for the vehicles certified by Respondents A
9 Street Smog Check Hayward and Mark Thomas Espinoza during the above-referenced time
10 period revealed a pattern of fraudulent smog inspections that resulted in the issuance of fraudulent
11 certificates of compliance. There were eleven instances in which Respondent Mark Thomas
12 Espinoza certified vehicles that were not connected to the DAD when they were certified.
13 Respondent Mark Thomas Espinoza therefore clean plugged eleven vehicles, resulting in
14 Respondent A Street Smog Check Hayward issuing eleven fraudulent Certificate of Compliance
15 between June 3, 2015 and February 9, 2015. The details of each instance of clean plugging is as
16 follows:

17 41. **Clean Plug Number 12:**

18 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
19 June 3, 2015, Respondent Mark Thomas Espinoza inspected a 2008 Dodge Sprinter 3500 and A
20 Street Smog Check Hayward issued smog Certificate of Compliance #YR526540C. The OIS
21 Test Details for the 2008 Dodge Sprinter 3500 shows no eVIN reported, the communication
22 protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that
23 similar 2008 Dodge Sprinter 3500 vehicles report the correct eVIN, have an expected
24 communication protocol of ICAN11bt5, and an expected PID count of 32.

25 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
26 to the 2008 Dodge Sprinter 3500 being certified, resulting in the issuance of a fraudulent smog
27 Certificate of Compliance.

28

1 **42. Clean Plug Number 13:**

2 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
3 September 8, 2015, Respondent Mark Thomas Espinoza inspected a 2003 Chrysler Sebring
4 Limited and A Street Smog Check Hayward issued smog Certificate of Compliance
5 #PW124691C. The OIS Test Details for the 2003 Chrysler Sebring Limited shows no eVIN
6 reported, the communication protocol is listed as I9140808, and the PID count was 17.
7 Comparative OIS Test data shows that similar 2003 Chrysler Sebring Limited vehicles report no
8 eVIN, have an expected communication protocol of JVPW, and an expected PID count of 22/3.

9 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
10 to the 2008 Dodge Sprinter 3500 being certified, resulting in the issuance of a fraudulent smog
11 Certificate of Compliance.

12 **43. Clean Plug Number 14:**

13 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
14 September 15, 2015, Respondent Mark Thomas Espinoza inspected a 2000 Ford Mustang and A
15 Street Smog Check Hayward issued smog Certificate of Compliance #PW333985C. The OIS
16 Test Details for the 2000 Ford Mustang shows no eVIN reported, the communication protocol is
17 listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar
18 2000 Ford Mustang vehicles report no eVIN, have an expected communication protocol of
19 JPWM, and an expected PID count of 20 or 21.

20 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
21 to the 2000 Ford Mustang being certified, resulting in the issuance of a fraudulent smog
22 Certificate of Compliance.

23 **44. Clean Plug Number 15:**

24 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
25 September 29, 2015, Respondent Mark Thomas Espinoza inspected a 2004 Cadillac Deville and
26 A Street Smog Check Hayward issued smog Certificate of Compliance #PW897153C. The OIS
27 Test Details for the 2004 Cadillac Deville shows no eVIN reported, the communication protocol
28 is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar

1 2004 Cadillac Deville vehicles report the correct eVIN, have an expected communication
2 protocol of JVPW and an expected PID count of 23.

3 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
4 to the 2004 Cadillac Deville being certified, resulting in the issuance of a fraudulent smog
5 Certificate of Compliance.

6 **45. Clean Plug Number 16:**

7 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
8 October 6, 2015, Respondent Mark Thomas Espinoza inspected a 2000 Chevrolet Silverado
9 C1500 and A Street Smog Check Hayward issued smog Certificate of Compliance #PY095319C.
10 The OIS Test Details for the 2000 Chevrolet Silverado C1500 shows no eVIN reported, the
11 communication protocol is listed as I9140808, and the PID count was 18. Comparative OIS Test
12 data shows that similar 2000 Chevrolet Silverado C1500 vehicles report the correct eVIN, have
13 an expected communication protocol of JVPW and an expected PID count of 22 or 23.

14 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
15 to the 2000 Chevrolet Silverado C1500 being certified, resulting in the issuance of a fraudulent
16 smog Certificate of Compliance.

17 **46. Clean Plug Number 17:**

18 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
19 October 6, 2015, Respondent Mark Thomas Espinoza inspected a 2004 Nissan Sentra 1.8/1.8S
20 and A Street Smog Check Hayward issued smog Certificate of Compliance #PY095324C. The
21 OIS Test Details for the 2004 Nissan Sentra 1.8/1.8S shows the eVIN as KNDJJ741X95029809,
22 the communication protocol is listed as ICAN11bt500, and the PID count was 42. Comparative
23 OIS Test data shows that similar 2004 Nissan Sentra 1.8/1.8S vehicles do not report an eVIN,
24 have an expected communication protocol of I914 and an expected PID count of 18.

25 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
26 to the 2004 Nissan Sentra 1.8/1.8S being certified, resulting in the issuance of a fraudulent smog
27 Certificate of Compliance.

28

1 47. **Clean Plug Number 18:**

2 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
3 October 20, 2015, Respondent Mark Thomas Espinoza inspected a 2006 Mercedes-Benz C230
4 and A Street Smog Check Hayward issued smog Certificate of Compliance #PY415538C. The
5 OIS Test Details for the 2006 Mercedes-Benz C230 shows no eVIN, the communication protocol
6 is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar
7 2006 Mercedes-Benz C230 vehicles report the correct eVIN, report an expected communication
8 protocol of ICAN11bt5 and an expected PID count of 44.

9 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
10 to the 2006 Mercedes-Benz C230 being certified, resulting in the issuance of a fraudulent smog
11 Certificate of Compliance.

12 48. **Clean Plug Number 19:**

13 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
14 November 3, 2015, Respondent Mark Thomas Espinoza inspected a 2006 Mercedes-Benz ML350
15 and A Street Smog Check Hayward issued smog Certificate of Compliance #PY837328C. The
16 OIS Test Details for the 2006 Mercedes-Benz ML350 shows no eVIN, the communication
17 protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that
18 similar 2006 Mercedes-Benz ML350 vehicles report the correct eVIN, report an expected
19 communication protocol of ICAN11bt5 and an expected PID count of 44.

20 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
21 to the 2006 Mercedes-Benz ML350 being certified, resulting in the issuance of a fraudulent smog
22 Certificate of Compliance.

23 49. **Clean Plug Number 20:**

24 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
25 November 24, 2015, Respondent Mark Thomas Espinoza inspected a 2008 Dodge Sprinter 2500
26 and A Street Smog Check Hayward issued smog Certificate of Compliance #QA389665C. The
27 OIS Test Details for the 2008 Dodge Sprinter 2500 shows no eVIN, the communication protocol
28 is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar

1 2008 Dodge Sprinter 2500 vehicles report the correct eVIN, report an expected communication
2 protocol of ICAN11bt5 and an expected PID count of 32.

3 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
4 to the 2008 Dodge Sprinter 2500 being certified, resulting in the issuance of a fraudulent smog
5 Certificate of Compliance.

6 **50. Clean Plug Number 21:**

7 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
8 January 12 , 2016, Respondent Mark Thomas Espinoza inspected a 2009 Pontiac G6 GT and A
9 Street Smog Check Hayward issued smog Certificate of Compliance #YV732757C. The OIS
10 Test Details for the 2009 Pontiac G6 GT shows no eVIN, the communication protocol is listed as
11 I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2009
12 Pontiac G6 GT vehicles report the correct eVIN, report an expected communication protocol of
13 ICAN11bt5 and an expected PID count of 44/7.

14 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
15 to the 2009 Pontiac G6 GT being certified, resulting in the issuance of a fraudulent smog
16 Certificate of Compliance.

17 **51. Clean Plug Number 22:**

18 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
19 February 9 , 2016, Respondent Mark Thomas Espinoza inspected a 2006 Chevrolet Trailblazer
20 EXT LS/LT and A Street Smog Check Hayward issued smog Certificate of Compliance
21 #YX627656C. The OIS Test Details for the 2006 Chevrolet Trailblazer shows no eVIN, the
22 communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test
23 data shows that similar 2006 Chevrolet Trailblazer EXT LS/LT vehicles report the correct eVIN,
24 report an expected communication protocol of JVPW and an expected PID count of 19.

25 b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected
26 to the 2009 Pontiac G6 GT being certified, resulting in the issuance of a fraudulent smog
27 Certificate of Compliance.

28

FIRST CAUSE FOR DISCIPLINE

(Violation of Motor Vehicle Inspector Program)

1
2
3 52. Respondent, Mark Thomas Espinoza has subjected his Smog Check Inspector
4 License to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision
5 (a) and (c), in that he failed to connect twenty-three vehicles to the BAR-OIS when the vehicles
6 were being certified, as set forth in paragraphs 19, 20, 22-25, 27, 28-37, and 39-51, above. The
7 circumstances are as follows:

8 a. **Health & Safety Code, section 44012, subdivision (f):** Respondent Mark Thomas
9 Espinoza failed to follow test procedures in accordance with the Onboard Inspection System
10 ("OIS") specifications when he failed to properly conduct the functional portion of the smog
11 inspection by failing to connect twenty-three vehicles to the BAR-OIS when the vehicles were
12 being certified.

13 b. **Health & Safety Code, section 44032:** Respondent Mark Thomas Espinoza failed to
14 ensure that the emission control tests were performed in accordance with the procedures
15 prescribed by the department.

16 c. **Cal. Code Regs., tit. 16, section 3340.24, subdivision (c):** Respondent Mark
17 Thomas Espinoza falsely or fraudulently issued certificates of compliance for twenty-three
18 vehicles without performing bona fide inspections of the emission control devices and systems on
19 the vehicles as required by Health and Safety Code section 44012.

20 d. **Cal. Code Regs., tit. 16, section 3340.30, subdivision (a):** Respondent Mark
21 Thomas Espinoza failed to inspect and test twenty-three vehicle in accordance with Health &
22 Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section
23 3340.42.

24 e. **Cal. Code Regs., tit. 16, section 3340.35, subdivision (c):** Respondent Mark
25 Thomas Espinoza issued certificates of compliance to twenty-three vehicles that were not
26 properly inspected in accordance with California Code of Regulations, title 16, section 3340.42.

27 f. **Cal. Code Regs., tit. 16, section 3340.41, subdivision (c):** Respondent Mark
28 Thomas Espinoza entered into the BAR-OIS vehicle identification information or emission

1 inspection information for twenty-three vehicles other than the vehicles being inspected, and also
2 entered false information for the vehicle being inspected.

3 g. Cal. Code Regs., tit. 16, section 3340.42, subdivision (b)(2): Respondent Mark
4 Thomas Espinoza failed to conduct the functional inspections in accordance with the smog check
5 manual referenced in California Code of Regulations, title 16, section 3340.45.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Violation of Motor Vehicle Inspection Program)**

8 53. Respondent, Mark Thomas Espinoza has subjected his Smog Check Inspector
9 License to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision
10 (d), in that he committed acts involving dishonesty, fraud, or deceit, whereby another was injured,
11 when he caused twenty-three fraudulent certificates of compliance to be issued as set forth in
12 paragraphs 32, 33, 36-39, 41, 43-52, and 56-68, above.

13 g. Cal. Code Regs., tit. 16, section 3340.42, subdivision (b)(2): Respondent,
14 Matthew Robert Cortez failed to conduct the functional inspections in accordance with the smog
15 check manual referenced in California Code of Regulations, title 16, section 3340.45.

16 **PRAYER**

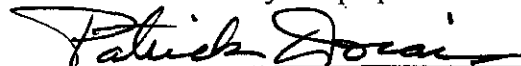
17 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
18 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

19 1. Revoking or suspending Smog Check Inspector License Number EO 635131, issued
20 to Mark Thomas Espinoza;

21 2. Ordering Mark Thomas Espinoza to pay the Bureau of Automotive Repair the
22 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
23 Professions Code section 125.3;

24 3. Taking such other and further action as deemed necessary and proper.

25 DATED: July 8, 2016

26 
27 PATRICK DORAIS
28 Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant