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

In the Matter of the Accusation Against:
PABLO ENRIQUE MENDEZ ALVAREZ,
aka PABLO MENDEZ ALVAREZ
939 La Borgne Ave.
La Puente, CA 91746
**Smog Check Inspector Licese No. EO
636038,**

Respondent.

Case No. 79/16-58

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 4, 2016, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/16-58 against Pablo Enrique Mendez Alvarez, aka Pablo Mendez Alvarez (Respondent) before the Director of Consumer Affairs. (A copy of the Accusation is attached hereto as Exhibit A.)

2. On or about September 16, 2013, the Bureau of Automotive Repair (Bureau) issued Smog Check Inspector License No. EO 636038 to Respondent. The license expired on January 31, 2016, and has not been renewed.

1 3. On or about February 9, 2016, Respondent was served by both Certified and First
2 Class Mail with copies of the Accusation No. 79/16-58, Statement to Respondent, Notice of
3 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
4 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
5 Professions Code section 136, is required to be reported and maintained with the Bureau.
6 Respondent's address of record was and is: 939 La Borgne Ave., La Puente, CA 91746.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. Neither the Certified or First Class mailings of the aforementioned documents were
11 returned by the U.S. Postal Service as undeliverable and the USPS website indicates the Certified
12 mailing was successfully delivered on February 11, 2016.

13 6. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 79/16-58.

20 8. California Government Code section 11520 states, in pertinent part:

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

24 9. Pursuant to its authority under Government Code section 11520, the Director after
25 having reviewed the proof of service dated February 9, 2016, signed by C. Vuu, and the USPS
26 Track & Confirm Notice finds Respondent is in default. The Director will take action without
27 further hearing and, based on Accusation, No. 79/16-58, proof of service and on the Affidavit of
28 Bureau Representative Mario Salas, finds that the allegations in Accusation are true.

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on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 23, 2016.

It is so ORDERED May 30, 2016



TAMARA COLSON
Assistant General Counsel
Division of Legal Affairs
Department of Consumer Affairs

Attachments:

Exhibit A: Accusation packet, proof of service, and USPS Track & Confirm

Exhibit B: Affidavit of Mario Salas

Exhibit A

Accusation packet, proof of service, and USPS Track & Confirm

(PABLO ENRIQUE MENDEZ ALVAREZ, AKA PABLO MENDEZ ALVAREZ)

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

11 In the Matter of the Accusation Against:

Case No. *79/16-58*

12 **PABLO ENRIQUE MENDEZ ALVAREZ**
13 aka PABLO MENDEZ ALVAREZ
939 La Borgne Ave.
La Puente, CA 91746

A C C U S A T I O N
(SMOG CHECK)

14 Smog Check Inspector License No. EO 636038;

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about September 16, 2013, the Bureau issued Smog Check Inspector License
22 No. EO 636038 to Pablo Enrique Mendez Alvarez, aka Pablo Mendez Alvarez (Respondent
23 Alvarez). The license was in full force and effect at all times relevant to the charges brought
24 herein and will expire on January 31, 2016, unless renewed.

25 **JURISDICTION**

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

1 4. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
2 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
3 the Motor Vehicle Inspection Program.

4 5. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog
5 check stations shall be performed in accordance with procedures prescribed by the department.

6 6. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate
7 of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section
8 40012.

9 7. Section 44032 of the Health & Saf. Code provides, in pertinent part, that “[q]ualified
10 technicians shall perform tests of emission control devices and systems in accordance with
11 Section 44012.”

12 8. Section 44035 of the Health & Saf. Code provides, in pertinent part, that “[a] smog
13 check station’s license or a qualified smog check technician’s qualification may be suspended or
14 revoked. . . for failure to meet or maintain the standards prescribed for. . . conduct.”

15 9. Section 44072.2 of the Health & Saf. Code states, in pertinent part:

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

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

21
22 “(c) Violates any of the regulations adopted by the director pursuant to this chapter.”

23 10. Section 44072.8 of the Health & Saf. Code states:

24 “When a license has been revoked or suspended following a hearing under this article, any
25 additional license issued under this chapter in the name of the licensee may be likewise revoked
26 or suspended by the director.”

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations ("CCR"), title 16, section 3340.30, subdivision (a),
3 states that a licensed smog technician shall at all times "[i]nspect, test and repair vehicles, as
4 applicable, in accordance with section 44012 of the Health & Saf. Code, section 44035 of the
5 Health & Saf. Code, and section 3340.42 of this article."

6 12. CCR, title 16, section 3340.41, subdivision (c), provides: "No person shall enter into
7 the emissions inspection system any vehicle identification information or emission control system
8 identification data for any vehicle other than the one being tested. Nor shall any person
9 knowingly enter into the emissions inspection system any false information about the vehicle
10 being tested."

11 13. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
12 procedures which apply to all vehicles inspected in the State of California.

13 **COST RECOVERY**

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

18 **BUREAU INVESTIGATION, SURVEILLANCE, AND SEARCH WARRANT**

19 15. Based on a review of confidential Bureau of Automotive Repair information, an
20 investigation of the smog check activities of licensed facility Smog Master in El Monte,
21 California, was initiated. Bureau Representatives performed a video recording surveillance of
22 Smog Master which revealed numerous individuals at the facility conspired to perform fraudulent
23 smog check inspections. These fraudulent inspections resulted in the issuance of numerous
24 fraudulent Certificates of Compliance, using the "clean piping" method ¹ on vehicles that were
25 not present

26 _____
27 ¹ "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of another vehicle for
28 the purpose of illegally issuing smog certifications to vehicles that are not in compliance or are not present in the
smog check area during the time of the certification.

1 at the time of each respective test.

2 16. On November 05, 2014, Bureau Representatives and Investigators from the Los
3 Angeles County District Attorney's (D.A.) Office, Bureau of Investigations, served Arrest and
4 Search Warrants at Smog Master. The D.A. Investigators arrived on scene first, secured the
5 location, and were followed by Bureau Representatives.

6 17. Upon initial arrival, D.A. Investigators observed one of the individuals previously
7 identified as part of the clean piping conspiracy, licensed smog technician Milan C. Valles, at the
8 smog analyzer in the process of performing an inspection. Respondent Pablo Enrique Mendez
9 Alvarez was in the driver's seat of the car allegedly being tested with the engine running and the
10 drive wheels on the dynamometer. The EIS monitor remained in the drive configuration menu,
11 portion of the smog check inspection. This menu appears moments before the dynamometer
12 portion of the test begins. A Bureau Representative aborted the test, then printed the Smog Check
13 Vehicle Inspection Report (VIR) and the Status Page for the inspection. The VIR showed Valles'
14 smog check inspector license was used for the aborted "clean pipe." The aborted test record
15 shows Valles input information for a 1990 Honda Accord (CA license plate # 6UVM583). The
16 actual vehicle being operated on the dynamometer by Respondent Alvarez was a 1991 Acura
17 Integra (CA license plate 3XFC996). The 1990 Honda Accord allegedly being tested was not
18 present at the facility or in the parking lot. After being placed in custody and advised of his
19 Miranda rights, Valles admitted to performing illegal smog checks in collusion with others and he
20 revealed that information about the smog checks could be found in his smart cell phone.

21 18. On December 04, 2014, L.A. District Attorney's High Technology Laboratory
22 provided the Bureau with a disk containing data extracted from Valles' cell phone. This included
23 Short Message Service (SMS), text, photographs, and cellular phone call log for Valles. Data
24 from the Extraction Report revealed communications between Valles and Respondent Alvarez's
25 cell phone (telephone number 626-209-7582), where Alvarez provided vehicle information and
26 photographs of registration documents for the purpose of performing fraudulent smog
27 inspections.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Perform Test in Accordance With Prescribed Procedures)**

3 19. Respondent Alvarez has subjected his smog check inspector license to discipline
4 under Health & Saf. Code section 44032 in conjunction with section 44012, in that on or about
5 November 5, 2014, as a licensed smog inspector, he aided and abetted in at least one illegal smog
6 inspection using the clean piping method.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Failure to Maintain Standards of Conduct)**

9 20. Respondent Alvarez has subjected his smog check inspector license to discipline
10 under Health & Saf. Code section 44035, in that on or about November 5, 2014, he failed to meet
11 or maintain the standards prescribed for conduct of a licensed smog inspector when he aided and
12 abetted in at least one illegal smog inspection using the clean piping method.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 21. Respondent Alvarez has subjected his smog check inspector license to discipline
16 under Health & Saf. Code section 44072.2, subdivision (c), in that on or about November 5,
17 2014, while aiding and abetting an illegal smog check inspection, he violated the following
18 sections of the CCR, title 16, with respect to the inspection of the vehicle:

19 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the vehicle
20 in accordance with Health & Saf. Code section 44012.

21 b. **Section 3340.41, subdivision (c):** Respondent aided and abetted in the entering of
22 false information into the EIS for the electronic certificate for a vehicle other than the vehicle
23 being certified.

24 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
25 inspections on the vehicle in accordance with the Bureau's specifications.

26 Complainant refers to, and by this reference incorporates, the allegations set forth above in
27 paragraphs 15 through 18, inclusive, as though set forth fully herein.

28

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent Alvarez has subjected his smog check inspector license to discipline
4 under Health & Saf. Code section 44072.2, subdivision (d), in that on or about November 5,
5 2014, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
6 aiding and abetting in the attempted issuance of an electronic certificate of compliance for a
7 vehicle for which he knew a bona fide inspection of the emission control devices and system on
8 said vehicle was not performed, thereby depriving the People of the State of California of the
9 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
10 reference incorporates, the allegations set forth above in paragraphs 15 through 18, inclusive, as
11 though set forth fully herein.

12 **OTHER MATTERS**

13 23. Pursuant to Health & Saf. Code section 44072.8, if Respondent Pablo Enrique
14 Mendez Alvarez's Smog Check Inspector License Number EO 636038 is revoked or suspended,
15 any additional license issued under this chapter in the name of said licensee may be likewise
16 revoked or suspended by the director.

17 **PRAYER**

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

20 1. Revoking or suspending Smog Check Inspector License Number EO 636038 issued
21 to Pablo Enrique Mendez Alvarez, also known as Pablo Mendez Alvarez;

22 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 & Saf. Code in the name of Pablo Enrique Mendez Alvarez, also known as Pablo Mendez
24 Alvarez;

25 3. Ordering Pablo Enrique Mendez Alvarez, also known as Pablo Mendez Alvarez, to
26 pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement
27 of this case, pursuant to Bus. & Prof. Code section 125.3;

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

DATED: February 4, 2016 Patrick Dorais

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

Alvarez Acc (1/4/16)