

XAVIER BECERRA
Attorney General of California
LINDA K. SCHNEIDER
Senior Assistant Attorney General
CHAR SACHSON
Supervising Deputy Attorney General
State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3513
Facsimile: (415) 703-5480
Attorneys for Complainant Bureau of Automotive Repair

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

In the Matter of the Accusation Against:

Case Number: **79/17-1199**

**CHEVREM CORPORATION
d.b.a TEST ONLY SMOG STATION II
FATIH TEKIN, PRESIDENT/SECRETARY/
TREASURER
5200 Telegraph Avenue
Oakland, CA 94609**

A C C U S A T I O N

**Automotive Repair Dealer No. ARD 236306
Smog Check, Test Only, License No. TC 236306**

**FATIH TEKIN
5200 Telegraph Avenue
Oakland, CA 94609**

**Mailing address:
121 Diamond Court
Hercules, CA 94547**

Smog Check Inspector License No. EO 26524

**LEONARD DAVID INDALECIO
10439 A San Pablo Avenue
El Cerrito, CA 94530**

**Mailing address:
2751 Bonhill Lane
San Pablo, CA 94806**

Smog Check Inspector License No. EO 637641

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1 **JEFFREY EDWARD ORTIZ**
2 **1540 California Avenue**
3 **San Pablo, CA 94806**

4 **Smog Check Inspector License No. EO 638354**

5 Respondents.e

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7 Complainant alleges:

8 **PARTIES**

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

11 **Automotive Repair Dealer Registration – Respondent Test Only Smog Station**

12 2.ee In 2004, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer
13 Registration Number ARD 236306 (Registration) to Chevrem Corporation, Fatih Tekin,
14 President/Secretary/Treasurer d.b.a Test Only Smog Station (Respondent Test Only Smog Station
15 II). The Registration was in full force and effect at all times relevant to the charges brought herein
16 and will expire on October 31, 2019, unless renewed.

17 **Smog Check Test Only Station License – Respondent Test Only Smog Station II**

18 3.ee On or about February 14, 2005, the Bureau issued Smog Check, Test Only, Station
19 License Number TC 236306 to Respondent Test Only Smog Station II. The License was in full
20 force and effect at all times relevant to the charges brought herein and will expire on October 31,
21 2019, unless renewed.

22 4.ee On or about January 1, 2013, the Bureau issued a STAR Certificate to Respondent
23 Test Only Smog Station II. The STAR Certificate was in full force and effect at all times relevant
24 to the charges brought herein and will remain active unless the Automotive Repair Dealer
25 registration and/or Smog Check Station license is revoked, canceled, licenses become delinquent
26 or certification is invalidated.

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1 institute or continue a disciplinary proceeding against the licensee upon any ground provided by
2 law or to enter an order suspending or revoking the license or otherwise taking disciplinary action
3 against the licensee on any such ground.”

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

8 STATUTORY AND REGULATORY PROVISIONS

9 12.ee Section **9884.7** of the Code states, in pertinent part:ee

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

15 (1)eMaking or authorizing in any manner or by any means whatever any statement writtenee
16 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable
17 care should be known, to be untrue or misleading.

18 . . .
19 (4)eAny other conduct that constitutes fraud.ee

20 . . .
21 (6)eFailure in any material respect to comply with the provisions of this chapter ore
22 regulations adopted pursuant to it.

23 . . .
24 (c)eNotwithstanding subdivision (b), the director may suspend, revoke, or place onee
25 probation the registration for all places of business operated in this state by an automotive repair
26 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
27 and willful violations of this chapter, or regulations adopted pursuant to it.

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1 13. 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 14. Section **44012** of the Health and Safety Code, in pertinent part, states:

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

9 . . .
10 "(f) A visual or functional check is made of emission control devices specified by the
11 department, including the catalytic converter in those instances in which the department
12 determines it to be necessary to meet the findings of Section 44001. The visual or functional
13 check shall be performed in accordance with procedures prescribed by the department.

14 . . . "

15 15. Section **44015** of the Health and Safety Code, subdivision (b) provides that if a
16 vehicle meets the requirements of Section 44012, a smog check station licensed to issue
17 certificates shall issue a certificate of compliance or a certificate of noncompliance.

18 16. Section **44032** of the Health and Safety Code, provides that no person shall perform,
19 for compensation, tests or repairs of emission control devices or systems of motor vehicles
20 required by this chapter unless the person performing the test or repair is a qualified smog check
21 technician and the test or repair is performed at a licensed smog check station. Qualified
22 technicians shall perform tests of emission control devices and systems in accordance with
23 Section 44012.

24 17. Section **44059** of the Health and Safety Code states, in pertinent part:

25 "The willful making of any false statement or entry with regard to a material matter in any
26 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
27 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
28 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

1 18. Section **44072.2** of the Health and Safety Code states, in pertinent part:

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

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

8 . . .
9 "(c) Violates any of the regulations adopted by the director pursuant to this chapter.

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

11 . . .
12 "(h) Violates or attempts to violate the provisions of this chapter relating to the particular
13 activity for which he or she is licensed."

14 19.00 Section **44072.6** of the Health and Safety Code provides, in pertinent part, that the
15 expiration or suspension of a license by operation of law, or by order or decision of the Director
16 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
17 the Director of jurisdiction to proceed with disciplinary action.

18 20.00 Section **44072.8** of the Health and Safety Code states:00

19 "When a license has been revoked or suspended following a hearing under this article, any
20 additional license issued under this chapter in the name of the licensee may be likewise revoked
21 or suspended by the director."

22 21.00 Section **44072.10, subdivision (c)** of the Health and Safety Code states:00

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

26 (1) Clean piping, as defined by the department. . ."00

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22.ee California Code of Regulations, title 16, section **3340.24, subdivision (c)** states:ee

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

23.ee California Code of Regulations, title 16, section **3340.30, subdivision (a)** states:ee

"A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

"(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article."

. . .

24.ee California Code of Regulations, title 16, section **3340.35, subdivision (c)** states:ee

"(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. The following conditions shall apply:

"(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

"(2) Sales tax shall not be assessed on the price of certificates.

. . ."

25.ee California Code of Regulations, title 16, section **3340.41, subdivision (c)** states:ee

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

26.ee California Code of Regulations, title 16, section **3340.42, subdivision (b)(2)**, states:ee in pertinent part that "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45."

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

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

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

...

27. California Code of Regulations, title 16, section **3340.45**, states:

(a) All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the following:

(1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

(2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This manual shall become effective on or after January 1, 2013.

28. California Code of Regulations, title 16, **section 3373** states:

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

COSTS

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

FACTUAL SUMMARY

30.aa California's Smog Check Program requires the owners of most motor vehicles inaa California to take and pass a Smog Check inspection and receive a Certificate of Compliance every two years when renewing their registration and also when the vehicle's title is transferred. These inspections are performed by Smog Check inspectors at Smog Check Stations, both of which are licensed by the Bureau.

31.aa The Smog Check inspection in certain Enhanced areas of the state is an Accelerationaa Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known as a BAR 97. This is a computer based five-gas analyzer that measures hydrocarbons, carbon monoxide, oxides of nitrogen, carbon dioxide, and oxygen. The inspection involves a test of the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the state, or depending on a vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute (RPM).

32.aa The inspector also performs visual and functional tests on the vehicle as outlined inaa the Smog Check Manual. The visual inspection of the emission control components verifies the required emission control devices are present and properly connected. Functional tests are also performed which, depending on the vehicle, may include checking the ignition timing, malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas cap.

33.aa On March 9, 2015, the Bureau implemented a statewide regulatory change requiringaa the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.

34.aa The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), aaa computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a

1 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
2 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
3 vehicle. The bar code scanner is used to input technician information, the vehicle identification
4 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
5 Reports.

6 35. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN, which
7 is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
8 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
9 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
10 number of specific data values each PCM uses related to emissions controls.

11 36. As part of the BAR-OIS smog inspections, the technician also performs a visual and
12 functional test on the vehicle being inspected. The visual inspection of the emission control
13 components verifies the required emission control devices are present and properly connected and
14 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
15 makes the determination whether or not the vehicle passes the inspection based on the results of
16 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
17 compliance is issued. The information from the smog inspection is then transmitted to the
18 Vehicle Information Data (VID).

19 37. The Bureau can access the VID to view test data on smog check inspection
20 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
21 particular vehicle which has been tested.

22 38. The Bureau has become aware of methods some Smog Check stations and Smog
23 Check inspectors use to fraudulently issue smog certificates to vehicles that will not pass a Smog
24 Check test on their own, or in some instances, are not even present during the time the test is
25 performed.

26 39. One method is known as "clean plugging." Clean plugging is the act of using one
27 vehicle's properly functioning OBDII system, or another source, to generate passing data readings
28 or diagnostic information for the purpose or fraudulently issue a smog certificate of compliance to

1 a vehicle that is not in smog compliance and/or not present for testing. The vehicle being tested is
2 not the one being issued the certificate of compliance.

3 40.ee The Bureau initiated an investigation of Respondent Test Only Smog Station II.ee
4 Beginning on or about May 18, 2015 and continuing until about December 29, 2016
5 Respondents² were found to have performed three fraudulent smog inspections using clean-
6 plugging methods. Clean-plugging is the practice of testing one OBD II system (a system that
7 would pass the smog inspection), for the purpose of fraudulently issuing a smog certificate of
8 compliance to another vehicle that would not pass the smog inspection and/or is not present for
9 testing. The vehicle receiving the certificate of compliance is not actually tested during the smogee
10 inspection.

11 41.ee A Bureau representative reviewed data for three clean plugged vehicles inspected byee
12 Respondents Indalecio, and Ortiz and certified by Respondent Test Only Smog Station II. The
13 data revealed that the three vehicles that were purportedly tested by Respondents were not and
14 could not have been connected to the DAD when they were being certified because the OBD-II
15 data purportedly transmitted by those vehicles could not have been transmitted by those vehicles.

16 42.ee Respondents clean plugged and issued fraudulent certificates of compliance to threee
17 following three vehicles:

18 a)ee Clean Plug# 1 - 2013 Toyota Scion XB, VIN: JTLZE4FE7DJ040728, CA licenseee
19 number 7AQZ090, performed by Respondent Indalecio on May 18, 2015:

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Certificate #	eVIN	Protocol	PID count
YR464040C			
Fraudulent Passing Inspection (05/18/2015)	Not Reported	I914ee	<u>17</u>
Expected OBDII Value	JTLZE4FE7DJ040728	ICAN11bt5	<u>40 or 42</u>

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28 ² Respondents Indalecio, and Ortiz performed the smog tests on behalf of Respondent Test Only Smog Station II.

b) Clean Plug #2 – 2008 Mazda MX-5 Miata, VIN: JM1NC26F980157283, CAee license number 6HPC332, performed by Respondent Ortiz on February 27, 2016:

Certificate #	eVIN	Protocol	PID count
YZ232606C			
Fraudulent Passing Inspection (02/27/2016)	JM1BL1L82C1606034	ICAN11bt5ee	<u>45/18</u>
Expected OBDII Value	JM1NC26F980157283	ICAN11bt5	<u>38 or 38/12</u>

c)ee Clean Plug #3 – 2002 Toyota Prius, VIN: JT2BK18U320049673, CA licensee number 4WDX459, performed by Respondent Ortiz on December 29, 2016:

Certificate #	eVIN	Protocol	PID count
ZL965233C			
Fraudulent Passing Inspection (12/29/2016)	WBADX7C5XDE828768	ICAN11bt5	<u>41</u>
Expected OBDII Value	Not Reported	I914ee	<u>17/8 or 17/8/3</u>

FIRST CAUSE FOR DISCIPLINE
(Misleading Statements - Registration)

43.ee Respondent Test Only Smog Station II has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that it made statements which it knew or which by exercise of reasonable care he should have known were untrue or misleading, as set forth above in paragraphs 40-42, above. Respondents fraudulently purported to test the three vehicles, and certified that the three vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using clean-plugging methods.

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SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

44.ss Respondent Test Only Smog Station II has subjected its registration to discipliness under Code section 9884.7, subdivision (a)(4), in that it committed acts which constitute fraud, as set forth above in paragraphs 40-42, above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Provisions of the Automotive Repair Act)

45.ss Respondent Test Only Smog Station II has subjected its registration to discipliness under Code section 9884.7, subdivision (a)(6), in that it failed in a material respect to comply with the provisions of this chapter or regulations adopted, as set forth above in paragraphs 40-42, above.s

FOURTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program – Smog Check Station License)

46.ss Respondent Test Only Smog Station II has subjected its station license to discipliness under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that it violated sections of that Code and applicable regulations, as set forth above in paragraphs 40-42, as follows:

a. **Section 44012:** Respondent Test Only Smog Station II failed to ensure that thess emission control tests were performed on those vehicles in accordance with procedures prescribed by the department.

b. **Section 44012, subdivision (f):** Respondent Test Only Smog Station II failed toss perform a visual or functional check of emission control devices on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b):** Respondent Test Only Smog Station II issued electronic smog certificates of compliance but failed to ensure that the vehicles were properly tested and inspected to determine if the emission control tests performed on those vehicles in accordance with procedures prescribed by the department.

d.ss **Section 44059:** Respondent Test Only Smog Station II willfully made false entriesss for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

1 e.ee **Section 3340.35, subdivision (c):** Respondent Test Only Smog Station II failed to
2 ensure that the emission control tests were performed on those vehicles in accordance with
3 procedures prescribed by the department.

4 f. **Section 3340.42, subdivision(b)(2):** Respondent Test Only Smog Station II failed to
5 conduct a functional inspection of emission control systems for vehicles as specified in the Smog
6 Check Manual, referenced by California Code of Regulations, title 16, section 3340.45.

7 g. **Section 3340.45, subdivision(a)(2):** Respondent Test Only Smog Station II failed to
8 perform smog check inspections in accordance with requirements and procedures prescribed in
9 the Smog Check Inspection Manual.

10 h. **Section 3373:** Respondent Test Only Smog Station II created false or misleading
11 work orders by issuing the fraudulent certificates of compliance for the three vehicles.

12 **FIFTH CAUSE FOR DISCIPLINE**
13 **(Dishonesty, Fraud or Deceit -- Smog Check Station License)**

14 47.ee Respondent Test Only Smog Station II subjected its station license to discipline under
15 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that it committed acts
16 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
17 certificates of compliance for vehicles without performing bona fide inspections of the emission
18 control devices and systems on the vehicles, thereby depriving the People of the State of
19 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
20 in paragraphs 40-42, above.

21 **SIXTH CAUSE FOR DISCIPLINE**
22 **(Violations of the Motor Vehicle Inspection Program:
23 Smog Check Inspector License - Indalecio)**

24 48.ee Respondent Indalecio has subjected his Smog Check Inspector License to discipline
25 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
26 violated sections of that Code and applicable regulations, as set forth above in paragraphs 40-42,
27 as follows:

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1 a. **Section 44012:** Respondent Indalecio failed to ensure that the emission control testsee
2 were performed on those vehicles in accordance with procedures prescribed by the department.ee

3 b. **Section 44012, subdivision (f):** Respondent Indalecio failed to perform a visual oree
4 functional check of emission control devices on those vehicles in accordance with procedures
5 prescribed by the department.

6 c. **Section 44032:** Respondent Indalecio failed to perform tests of emission controlee
7 devices and systems on those vehicles in accordance with Section 44012.

8 d. **Section 44059:** Respondent Indalecio willfully made false entries for the electronic
9 certificates of compliance by certifying that those vehicles had been inspected as required when,
10 in fact, they had not.

11 e. **Section 3340.30, subdivision (a):** Respondent Indalecio failed to inspect and testee
12 those vehicles in accordance with Health and Safety Code section 44012 and California code of
13 Regulations title 16, section 3340.42.

14 fee **Section 3340.41, subdivision (c):** Respondent Indalecio entered vehicleeee
15 identification information for a vehicle other than the one being tested into the emissions
16 inspection system. Respondent Indalecio knowingly entered false information about the vehicle
17 being tested into the emissions inspection system.

18 g. **Section 3340.42, subdivision(b)(2):** Respondent Indalecio failed to conduct a
19 functional inspection of emission control systems for vehicles as specified in the Smog Check
20 Manual, referenced by California Code of Regulations, title 16, section 3340.45.

21 h. **Section 3340.45, subdivision(a)(2):** Respondent Indalecio failed to perform smogee
22 check inspections in accordance with requirements and procedures prescribed in the Smog Check
23 Inspection Manual.

24 **SEVENTH CAUSE FOR DISCIPLINE**
(Dishonesty, Fraud or Deceit – Smog Check Inspector License)

25 49.ee Respondent Indalecio subjected his Smog Check Inspector license to discipline underee
26 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
27 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
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1 certificates of compliance for vehicles without performing bona fide inspections of the emission
2 control devices and systems on the vehicles, thereby depriving the People of the State of
3 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
4 in paragraphs 40-42.

5 **EIGHTH CAUSE FOR DISCIPLINE**
6 **(Violations of the Motor Vehicle Inspection Program:**
7 **Smog Check Inspector License - Ortiz)**

8 50.00 Respondent Ortiz has subjected his Smog Check Inspector license to discipline under
9 Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
10 violated sections of that Code and applicable regulations, as set forth above in paragraphs 40-42,
11 as follows:

12 a. **Section 44012:** Respondent Ortiz failed to ensure that the emission control tests were
13 performed on those vehicles in accordance with procedures prescribed by the department.

14 b. **Section 44012, subdivision (f):** Respondent Ortiz failed to perform a visual or
15 functional check of emission control devices on those vehicles in accordance with procedures
16 prescribed by the department.

17 c. **Section 44032:** Respondent Ortiz failed to perform tests of emission control devices
18 and systems on those vehicles in accordance with Section 44012.

19 d. **Section 44059:** Respondent Ortiz willfully made false entries for the electronic
20 certificates of compliance by certifying that those vehicles had been inspected as required when,
21 in fact, they had not.

22 e. **Section 3340.30, subdivision (a):** Respondent Ortiz failed to inspect and test those
23 vehicles in accordance with Health and Safety Code section 44012 and California code of
24 Regulations title 16, section 3340.42.

25 f. **Section 3340.41, subdivision (c):** Respondent Ortiz entered vehicle identification
26 information for a vehicle other than the one being tested into the emissions inspection system.
27 Respondent Ortiz knowingly entered false information about the vehicle being tested into the
28 emissions inspection system.

1 g. **Section 3340.42, subdivision(b)(2):** Respondent Ortiz failed to conduct a functionalee
2 inspection of emission control systems for vehicles as specified in the Smog Check Manual,
3 referenced by California Code of Regulations, title 16, section 3340.45.

4 h.ee **Section 3340.45, subdivision(a)(2):** Respondent Ortiz failed to perform smog checkee
5 inspections in accordance with requirements and procedures prescribed in the Smog Check
6 Inspection Manual.

7 **NINTH CAUSE FOR DISCIPLINE**
8 **(Dishonesty, Fraud or Deceit – Smog Check Inspector License)**

9 51.ee Respondent Ortiz subjected his Smog Check Inspector License to discipline underee
10 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
11 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
12 certificates of compliance for vehicles without performing bona fide inspections of the emission
13 control devices and systems on the vehicles, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
15 in paragraphs 40-42.

16 **OTHER MATTERS**

17 52.ee Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,ee
18 or place on probation the registration for all places of business operated in this state by
19 Respondent Test Only Smog Station II, upon a finding that Respondent Test Only Smog Station
20 II has, or is, engaged in a course of repeated and willful violations of the laws and regulations
21 pertaining to an automotive repair dealer.

22 53.ee Pursuant to Health & Safety Code section 44072.8, if Respondent Test Only Smogee
23 Station II's Station License is revoked or suspended, any additional license issued under Chapter
24 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
25 likewise revoked or suspended by the director.

26 54.ee Pursuant to Health & Safety Code section 44072.8, if Respondent Indalecio's Smogee
27 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
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1 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
2 likewise revoked or suspended by the director.

3 55.aa Pursuant to Health & Safety Code section 44072.8, if Respondent Ortiz's Smogaa
4 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
6 likewise revoked or suspended by the director.

7 DISCIPLINE CONSIDERATIONS

8 56.aa To determine the degree of discipline, if any, to be imposed on Respondent Test Onlyaa
9 Smog Station II, Complainant alleges that on or about June 27, 2003, in a prior action, an
10 accusation was filed on Gurnur International Corporation and its President, Fatih Tekin, d.b.a.
11 GIC Smog Station for causing the issuance of 13 fraudulent Smog Check Inspection Certificates
12 of Compliance to be issued. The business name for GIC Smog Station was changed to Walnut
13 Creek Star Smog and ownership of the facility is under Chevrem Corporation with Fatih Tekin as
14 President. On December 6, 2004, the Department of Consumer Affairs adopted a decision in the
15 matter of Accusation 79/04-00 which revoked GIC Smog Station's Smog Check Station licenses
16 and Automotive Repair Dealer registrations. However, the revocations were stayed and the
17 stations were placed on three years probation.

18 57.aa To determine the degree of discipline, if any, to be imposed on Respondent Test Onlyaa
19 Smog Station II, Complainant alleges that on or about September 15, 2008, in a prior action, an
20 accusation was filed on Chevrem Corporation and its President, Fatih Tekin, d.b.a. Clear Blue
21 Test Only Smog Station, Clear Blue Test Only Smog Station 2, Clear Blue Test Only Station 3,
22 Test Only Smog Station II, and GIC Smog Station for causing the issuance of 13 fraudulent Smog
23 Check Inspection Certificates of Compliance. On April 6, 2009, the Department of Consumer
24 Affairs adopted a decision in the matter of Accusation 79/09-21 which revoked all Smog Check
25 Station licenses and Automotive Repair Dealer registrations for each facility. However, the
26 revocations were stayed and the stations were placed on five years probation. In addition, each
27 station was suspended anywhere from 5 to 45 days.

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PRAYER

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

1.ee Revoking or suspending Automotive Repair Dealer Registration Number ARDee 236306, issued to Chevrem Corporation, Fatih Tekin, President, doing business as Test Only Smog Station II;

2.ee Revoking or suspending Smog Check Test Only Station License Number TCee 236306, issued to Chevrem Corporation, Fatih Tekin, President, doing business as Test Only Smog Station II;

3.ee Revoking or suspending any additional Automotive Repair Dealer Registration,ee Smog Check Station License, Smog Check Inspector License, or Smog Check Repair Technician license, issued to Chevrem Corporation, Fatih Tekin, President;

4.ee Ordering Chevrem Corporation, Fatih Tekin, President to pay the Bureau ofee Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

5.ee Revoking or suspending Smog Check Inspector License EO 26524 issued to Fatihee Tekin;

6. Revoking or suspending any additional Smog Check Station License, Smog Checkee Inspector License, or Smog Check Repair Technician License, issued to Fatih Tekin;

7.ee Ordering Fatih Tekin to pay the Bureau of Automotive Repair the reasonable costsee of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

11.ee Revoking or suspending Smog Check Inspector License EO 637641 issued toee Leonard David Indalecio;

12.ee Revoking or suspending any additional Smog Check Station License, Smog Checkee Inspector License, or Smog Check Repair Technician License, issued to Leonard David Indalecio;

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1 13. ee Ordering Leonard David Indalecio to pay the Bureau of Automotive Repair threee
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 14. ee Revoking or suspending Smog Check Inspector License EO 638354 issued toee
5 Jeffrey Edward Ortiz;

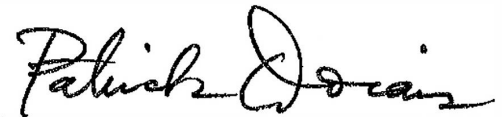
6 15. ee Revoking or suspending any additional Smog Check Station License, Smog Checkee
7 Inspector License, or Smog Check Repair Technician License, issued to Jeffrey Edward Ortiz;

8 16. ee Ordering Jeffrey Edward Ortiz to pay the Bureau of Automotive Repair threee
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3;

11 17. ee Taking such other and further action as deemed necessary and proper. ee

12
13 DATED:

February 19, 2019



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