

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

In the Matter of the Accusation Against:

**JULIO C. CARBALLO, dba MALONE DEE TEST ONLY**

13136 Paramount Blvd.

South Gate, CA 90280

Automotive Repair Dealer Registration No. ARD 294837

Smog Check Test Only Station License No. TC 294837

and

**JULIO C. CARBALLO**

3366 Imperial Hwy.

Lynwood, CA 90262

Smog Check Inspector License No. EO 644542

and

**ANTHONY A. POZ-GOMEZ**

1309 Torington Dr.

Las Vegas, NV 89108

Smog Check Inspector License No. EO 641248

and

**BRANDON IVAN MORENO**

5811 Loveland St., Apt L

Bell Gardens, CA 90201

Smog Check Inspector License No. EO 642902

Respondents.

Case No. 79/21-11084

OAH No. 2023060779

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on DEC 05 2024.

IT IS SO ORDERED Oct. 29, 2024.



GRACE ARUPO RODRIGUEZ  
Assistant Deputy Director  
Legal Affairs Division  
Department of Consumer Affairs

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

**In the Matter of the First Amended Accusation Against:**

**JULIO C. CARBALLO, DBA MALONE DEE TEST ONLY**

**Automotive Repair Dealer Registration No. ARD 294837**

**Smog Check, Test Only Station License No. TC 294837**

**And**

**JULIO C. CARBALLO**

**Smog Check Inspector License No. EO 644542**

**And**

**ANTHONY A. POZ-GOMEZ**

**Smog Check Inspector License No. EO 641248**

**And**

**BRANDON IVAN MORENO**

**Smog Check Inspector License No. EO 642902**

## **Respondents.**

**Agency Case No. 79/21-11084**

**OAH No. 2023060779**

### **PROPOSED DECISION**

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 29 and 30, and September 5 and 13, 2024.

Deputy Attorney General Heather Vo appeared by videoconference and represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Frank C. Brucculeri, Attorney at Law, Frank Brucculeri Law Corporation, appeared and represented respondent Julio C. Carballo individually and doing business as Malone Dee Test Only (respondent Carballo). Mr. Carballo was present for all days of hearing.

Sarkis Paronyan, Attorney at Law, Paronyan Law Firm, appeared and represented respondent Anthony A. Poz-Gomez (respondent Poz-Gomez) on July 29 and 30, 2024. Respondent Poz-Gomez represented himself on September 5 and 13, 2024, and was present for all days of hearing.

Respondent Brandon Ivan Moreno (respondent Moreno) appeared and represented himself on July 29 and 30, 2024. At the beginning of hearing on July 30, 2024, respondent Moreno stated he no longer wanted to appear for hearing and

disconnected from the videoconference. Respondent Moreno did not appear on the additional days of hearing.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on September 13, 2024.

Upon the ALJ's review, the exhibits presented by the parties contained respondent Poz-Gomez's confidential information, including his date of birth. On her own motion, the ALJ redacted the confidential information.

### **SUMMARY**

Complainant requests the registrations and licenses issued by the Bureau to respondents Carballo, Poz-Gomez, and Moreno (collectively, respondents), be revoked or suspended based on their violations of the Automotive Repair Act (Repair Act) (Bus. & Prof. Code, §§ 9880 et seq.) and the Motor Vehicle Inspection Program (Inspection Program) (Health and Saf. Code, §§ 44000 et seq.). (Undesignated statutory references are to the Business and Professions Code.) Complainant alleges that between April 27 and July 13, 2021, respondents performed and certified fraudulent smog inspections on four vehicles. Complainant further alleges respondent Carballo engaged in dishonest conduct when obtaining his smog check inspector license.

Respondent Carballo denied knowledge of any fraudulent smog inspections and asserted any incorrect information he provided on his smog check inspector application was due to his mistake. However, respondent Carballo's denials of responsibility for his actions are hollow and not supported by credible evidence.

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Respondent Poz-Gomez denied performing the smog inspection attributed to his smog check inspector license and introduced evidence of his character and rehabilitation. Although respondent Poz-Gomez established his work ethic and achievements in educational and employment advancements outside of his work as a smog check inspector, during hearing his credibility was impeached. Portions of his testimony were dishonest and he misrepresented the accuracy and reliability of certain exhibits. Accordingly, the evidence presented by respondent Poz-Gomez is not credited.

Respondent Moreno did not offer evidence regarding the allegations against him.

Complainant established the truth of the allegations in the First Amended Accusation. Respondents failed to establish their rehabilitation or that protection of the public would be served if they were granted probationary registrations or licenses. The registrations and licenses issued by the Bureau to respondents are revoked and respondents are ordered to pay reasonable costs.

## **FACTUAL FINDINGS**

### **Jurisdiction**

#### **RESPONDENT CARBALLO**

1. On January 12, 2019, the Bureau issued Automotive Repair Dealer (ARD) Registration number ARD 294837 to respondent Carballo. On January 12, 2021, the Bureau issued Smog Check, Test Only Station (TC) License number TC 294837 to respondent Carballo. Respondent Carballo's ARD registration and TC license were in

full force and effect at all times relevant to the charges brought in the First Amended Accusation and expired on July 31, 2024.

2. On January 1, 2021, the Bureau certified respondent Carballo as a STAR Station. Respondent Carballo's STAR certification was terminated on March 9, 2022.

3. On September 8, 2023, the Bureau issued Smog Check Inspector License number EO 644542 to respondent Carballo.

### **RESPONDENT POZ-GOMEZ**

4. On July 20, 2018, the Bureau issued Smog Check Inspector License number EO 641248 to respondent Poz-Gomez. The EO license was in full force and effect at all times relevant to the charges brought in the First Amended Accusation and is scheduled to expire on July 31, 2025.

### **RESPONDENT MORENO**

5. On February 16, 2021, the Bureau issued Smog Check Inspector License number EO 642902 to respondent Moreno. The EO license was in full force and effect at all times relevant to the charges brought in the First Amended Accusation and expired on July 31, 2023.

### **OPERATIVE PLEADING**

6. On December 19, 2023, complainant, acting in his official capacity, brought the First Amended Accusation, the operative pleading, against respondents. Respondents timely filed notices of defense.

7. Jurisdictional requirements have been met.

## **California's Smog Check Program**

8. California's Smog Check Program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. Smog checks require a visual, functional, and computer-based inspection.

9. Effective March 9, 2015, California's Smog Check Program requires the use of an On-Board Diagnostic Inspection System (OIS) when inspecting most model-year 2000 and newer gasoline vehicles. The OIS is comprised of a Data Acquisition Device (DAD), computer, bar code scanner, and printer. Vehicles are equipped with an On-Board Diagnostics (OBDII) system, which contains a vehicle's emission and engine control systems information that is required to be reported to the Bureau's VID (Vehicle Inspection Database).

10. Licensed smog check inspectors are the only persons authorized by the Bureau to perform official inspections. Smog check inspectors are issued a personal access code (PAC) and a license number, which are used to gain access to the OIS to perform smog check inspections.

11. A smog check inspector uses the bar code scanner to input the smog check inspector's PAC and license number, the vehicle's identification number (VIN), and DMV renewal information. To retrieve information from a vehicle, the smog check inspector uses the vehicle's Diagnostic Link Connector (DLC) (a cable), to connect the DAD (the OIS acquisition device) to the vehicle's OBDII system. Data retrieved and captured from a vehicle's OBDII system and recorded to the VID during an OIS smog check inspection includes the vehicle's eVIN (digitally stored Vehicle Identification Number programmed into the vehicle's Powertrain Control Module (PCM)), communication protocol, and its Parameter Identifications (PID) count.



12. A "vehicle communication protocol" is the specific language the vehicle's PCM uses to relay information to scan tools and other computers or devices, such as the Bureau's VID, and is programmed into the vehicle's on-board computer during manufacture and does not change. A PID count is the number of specific data values each vehicle's PCM reports related to emission controls, e.g., engine speed and temperature.

13. After the smog check is complete, the OIS printer provides a Vehicle Inspection Report (VIR). A smog check technician must sign the VIR under penalty of perjury to affirm the inspection was completed as required by the Bureau's guidelines. An unsigned VIR is transmitted to the VID. If the vehicle passes the visual, functional, and OIS tests, it passes the overall inspection and a Certificate of Compliance is issued and transmitted electronically to the Bureau's VID. Each Certificate of Compliance has a unique control number so that it can be tracked to determine which Smog Check Station purchased the Certificate of Compliance and to which vehicle it was issued.

14. The Inspection Program and Repair Act prohibit fraudulent smog inspection and certification. Clean plugging is one form of fraudulent smog inspection whereby (1) the smog check inspector uses another vehicle's properly functioning OBDII or another source to transmit passing diagnostic readings through the smog check station's OIS to the Bureau's VID; and then (2) the smog check inspector and smog test station issue a fraudulent smog Certificate of Compliance to the vehicle allegedly tested, though the vehicle was not in smog compliance or was not connected to the smog station's OIS for testing.

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## **Respondents' Violations**

### **CLEAN PLUGGING**

15. Between April 27 and July 13, 2021, respondents Poz-Gomez and Moreno, while working for respondent Carballo's ARD and TC as smog check inspectors, clean plugged four vehicles, Vehicles 1 through 4. Bureau Program Representative (PR) II Marc Ortega discovered these fraudulent tests and certifications when he investigated and reviewed specific OIS Test Data for respondent Carballo. PR II Ortega wrote the Bureau's Investigative Report for this matter, dated December 15, 2022 (Exhibit 4), and testified at hearing regarding his investigation and findings.

16. PR II Ortega compared the data received from the four certified vehicles to data from vehicles of the same year, make, and model stored in the Bureau's VID (comparable vehicle data). PR II Ortega found the percentage of similar vehicles tested statewide that reported the expected OBD characteristics for the four vehicles ranged between 99.2 percent and 99.8 percent. However, respondent Carballo's OIS Test Data contained a pattern of discrepancies between the four vehicles' identifying information transmitted to the Bureau's VID during the inspections and the four vehicles' identifying information established at the time of manufacture. All four vehicles transmitted unexpected eVINS, as well as either incorrect vehicle communication protocol or incorrect PID counts, or a combination of these incorrect data points.

17. Using the underlying eVIN information reported for Vehicles 1 through 4 during the fraudulent smog inspections, PR II Ortega found the smog check history for the four separate vehicles respondents Poz-Gomez and Moreno used to perform the four smog checks in question (tested vehicles). The smog check inspection information for the four tested vehicles revealed respondents Poz-Gomez and Moreno performed

smog check inspections on the four tested vehicles using Malone Dee Test Only's OIS within minutes of performing the associated fraudulent smog inspections on Vehicles 1 through 4.

18. PR II Ortega did not personally observe respondents clean plug any of the four vehicles. However, the VIR and OIS testing data showed respondent Poz-Gomez's EO license and PAC number entered on the smog inspection for Vehicle 1 and that respondent Poz-Gomez issued Certificate of Compliance number SA363834C to Vehicle 1. The VIR and OIS testing data also showed respondent Moreno's EO license and PAC number were entered on the smog inspections of Vehicles 2 through 4, and that respondent Moreno issued Certificate of Compliance numbers SC719791C, IL690686C, and SE004898C, to Vehicles 2 through 4, respectively.

19. PR II Ortega's review of respondent Carballo's purchase of Certificates of Compliance confirmed each of the four Certificates of Compliance issued to Vehicles 1 through 4 were purchased by and delivered to the Malone Dee Test Only OIS platform using an Automated Clearing House payment method. Respondent Carballo's Certificate Sales between April 19 and July 9, 2021, show respondent Carballo purchased certificates SA363801 through SA363850, SC719751 through SC719800, IL690651 through IL690700, and SE004851 through SE004900. (Exh. 19.)

20. The following vehicle inspection summaries show the reported and expected protocols, PID counts, VINS, and eVINS, or absence thereof, for the four vehicles respondents fraudulently certified with Certificates of Compliance, as well the comparable vehicle data for the actual vehicle used to perform each smog inspection.

#### **VEHICLE 1**

2006 Dodge Charger R/T. Inspection Date: April 27, 2021, 5:45 p.m.

Reported Protocol: ICAN11bt500. Expected Protocol: ICAN11bt500.

Reported PIDs: 44|12. Expected PIDs: 43|12, 43|2, or 43|6.

Reported VIN: 2B3KA53H76H507603.

Reported eVIN: 4JGBB86E18A358374. Expected eVIN: 2B3KA53H76H507603.

Certificate of Compliance number SA363834C.

Inspector: Respondent Poz-Gomez.

Out of 1,000 2006 Dodge Charger R/T vehicles tested statewide between March 17 and September 22, 2022, 99.6 percent reported the expected OBD characteristics.

21. On April 27, 2021, at 6:03 p.m., 18 minutes after respondent Poz-Gomez conducted the smog inspection on Vehicle 1, respondent Poz-Gomez conducted a smog inspection of a 2008 Mercedes-Benz ML 350 (2008 Mercedes-Benz) at Malone Dee Test Only. The 2008 Mercedes-Benz reported 4JGBB86E18A358374 both as the VIN and eVIN and reported a protocol of 1CAN11bt500 and a PID count of 44|12.

22. The evidence established respondent Poz-Gomez used the 2008 Mercedes-Benz's properly functioning OBDII to transmit passing diagnostic readings through Malone Dee Test Only's OIS to the Bureau's VID on behalf of Vehicle 1. Respondents Poz-Gomez and Carballo then issued fraudulent smog Certificate of Compliance number SA363834C to Vehicle 1 though the vehicle was not connected to Malone Dee Test Only's OIS for testing.

## **VEHICLE 2**

2003 Ford F150. Inspection Date: June 21, 2021, 7:02 p.m.

Reported Protocol: ICANbt500. Expected Protocol: JPWM.

Reported PIDs: 44|7|8. Expected PIDs 22.

Reported VIN: 1FTRX17L43NA18548.

Reported eVIN: 2GCEC19C071587024. Expected eVIN: 1FTRX17L43NA18548.

Certificate of Compliance number SC719791C.

Inspector: Respondent Moreno.

Out of 505 2003 Ford F150 vehicles tested statewide between September 23, 2021, and September 22, 2022, 100 percent reported the expected OBD characteristics.

23. On July 17, 2019, Vehicle 2 was tested at SVG Smog and the OIS Test Detail reported the expected protocol, PID count, and eVIN. On June 21, 2021, at 6:48 p.m., 14 minutes before respondent Moreno conducted the smog inspection on Vehicle 2, respondent Moreno conducted a smog inspection of a 2007 Chevrolet Silverado C1500 (2007 Chevrolet) using Malone Dee Test Only's OIS. The 2007 Chevrolet reported 2GCEC19C071587024 both as the VIN and eVIN and reported a protocol of 1CAN11bt500 and a PID count of 44|7|8.

24. The evidence established respondent Moreno used the 2007 Chevrolet's properly functioning OBDII to transmit passing diagnostic readings through Malone Dee Test Only's OIS to the Bureau's VID on behalf of Vehicle 2. Respondents Moreno and Carballo then issued fraudulent smog Certificate of Compliance number SC719791C to Vehicle 2 though the vehicle was not connected to respondent Malone Dee Test Only's OIS for testing.

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### **VEHICLE 3**

2000 Ford F250 Super Duty. Inspection Date: July 7, 2021, 4:35 p.m.

Reported Protocol: ICANbt500. Expected Protocol: JPWM.

Reported PIDs: 42. Expected PIDs 18 or 19.

Reported VIN: 1FTNW21S8YEA83482.

Reported eVIN: 2T3YFREV4DW024099. Expected eVIN: Not Expected.

Certificate of Compliance number. IL690686C.

Inspector: Respondent Moreno.

Out of 270 2000 Ford F250 Super Duty vehicles tested statewide between September 25, 2021, and September 22, 2022, 94.4 percent reported the expected OBD characteristics.

25. On July 7, 2021, at 3:51 p.m., 34 minutes before respondent Moreno conducted the smog inspection on Vehicle 3, respondent Moreno conducted a smog inspection of a 2013 RAV4 Limited (2013 RAV4) using Malone Dee Test Only's OIS. The 2013 RAV4 reported 2T3YFREV4DW024099 both as the VIN and eVIN and reported a protocol of 1CAN11bt500 and a PID count of 42.

26. The evidence established respondent Moreno used the 2013 RAV4's properly functioning OBDII to transmit passing diagnostic readings through Malone Dee Test Only's OIS to the Bureau's VID on behalf of Vehicle 3. Respondents Moreno and Carballo then issued fraudulent smog Certificate of Compliance number

IL690686C to Vehicle 3 though the vehicle was not connected to Malone Dee Test Only's OIS for testing.

#### **VEHICLE 4**

2005 Nissan Quest S. Inspection Date: July 13, 2021, 6:59 p.m.

Reported Protocol: ICANbt500. Expected Protocol: I914.

Reported PIDs: 43. Expected PIDs 21 or 22.

Reported VIN: 5N1BV28UX5N114901.

Reported eVIN: 5N1AR1NNXCC623600. Expected eVIN: 5N1BV28UX5N114901.

Certificate of Compliance number. SE004898C.

Inspector: Respondent Moreno.

Out of 942 2005 Nissan Quest S vehicles tested statewide between September 22, 2021, and September 22, 2022, 99.8 percent reported the expected OBD characteristics.

27. On July 13, 2021, at 6:47 p.m., 12 minutes before respondent Moreno conducted the smog inspection on Vehicle 4, respondent Moreno conducted a smog inspection of a 2012 Nissan Pathfinder S (2012 Nissan) using Malone Dee Test Only's OIS. The 2012 Nissan reported 5N1AR1NNXCC623600 both as the VIN and eVIN and reported a protocol of 1CAN11bt500 and a PID count of 43.

28. The evidence established respondent Moreno used the 2012 Nissan's properly functioning OBDII to transmit passing diagnostic readings through Malone Dee Test Only's OIS to the Bureau's VID on behalf of Vehicle 4. Respondents Moreno

and Carballo then issued fraudulent smog Certificate of Compliance number SE00489C to Vehicle 4 though the vehicle was not connected to Malone Dee Test Only's OIS for testing.

### **RESPONDENT CARBALLO'S SMOG CHECK INSPECTOR LICENSE APPLICATION**

29. On July 24, 2023, respondent Carballo applied for a smog inspector license. (Exh. 21.) Question 10d on the application asks, "Has the Department of Consumer Affairs (DCA) or [Bureau] ever issued you a license? If YES, provide the type of license(s) and license number(s) below." (*Id.* at p. A301.) Respondent Carballo answered "No" to this question, despite the Bureau having issued him his ARD registration on July 12, 2019, and his TC license on January 12, 2021. Respondent Carballo signed the application for licensure under penalty of perjury.

30. PR Sahapone Yantarak was assigned to investigate respondent Carballo's smog inspector license application. PR Yantarak summarized his investigation and findings in the Bureau's Investigative Report Supplement, dated October 13, 2023 (Exh. 20) and testified at hearing. PR Yantarak reviewed respondent Carballo's history of license certifications by the Bureau and found that at the time he submitted his July 24, 2023 smog inspector application he had been issued ARD registration number 294837 and TC license number 294837. Both respondent Carballo's ARD registration and TC license were in full force and effect at the time of his smog check inspector license application.

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## **Respondent's Evidence**

### **RESPONDENT CARBALLO**

31. During his testimony, respondent Carballo asserted multiple claims disavowing the knowledge, intent, or actions required to be held responsible for complainant's allegations against him as holder of his ARD registration, TC License, or EO license. Respondent Carballo's assertions misrepresented evidence and were not corroborated and are therefore not believed.

### **Presence at and Supervision of Malone Dee Test Only**

32. Respondent Carballo professed that during the smog inspections at issue, his primary focus was working as a truck driver and he only visited Malone Dee Test Only for a couple of hours on the weekend to check receipts; he stated he was rarely present at Malone Dee Test Only. Respondent Carballo denied knowing whether respondents Poz-Gomez or Moreno worked for him as smog check inspectors at the time of the smog check inspections for Vehicles 1 through 4. Respondent Carballo testified he knew, based on conversations with Mr. Brucculeri, that as the ARD registrant and TC licensee which issued the certificates of compliance at issue, he was responsible for the actions of respondents Poz-Gomez and Moreno, but he denied any knowledge of their actions.

33. Further demonstrating his lack of responsibility or adherence to licensing requirements, respondent Carballo explained that he recently opened a smog check inspection location at 3366 Imperial Highway, entering into a business relationship with a person named "Armando." Respondent Carballo has known Armando for approximately one and one-half years, but stated he does not know his last name. Respondent Carballo agreed to conjointly run a smog check inspection business with

Armando. Respondent Carballo claims he told Armando not to use his ARD registration or TC license in the conduct of any business, but respondent Carballo also knew Armando was not licensed by the Bureau. Yet Armando operated respondent Carballo's smog check inspection business at the Imperial Highway address, at which respondent Carballo was also rarely present.

### **Smog Check Inspector Application**

34. Respondent Carballo also alleged he mistakenly answered "No" on July 23, 2023, to question 10d because he did not know of the allegations the Bureau had raised against him in the May 2023 Accusation. However, respondent Carballo's defense amounts to immaterial United States Postal Service (USPS) tracking details and immaterial change of address forms provided to the Bureau and is not credited. Initially, whether respondent Carballo had received the Accusation is immaterial as to how he answered the question posed by question 10d. Respondent Carballo's explanations for why he answered "No" to question 10d demonstrate his continued willingness to be dishonest with the Bureau.

35. Regarding his false statement on his smog check inspector application, respondent Carballo offered an elaborate explanation in support of his claim that his answering "No" to question 10d was a mistake. Respondent Carballo asserted he applied for his smog check inspector license after his ARD registration and TC license had expired (or, as respondent Carballo testified, had terminated). However, this is a false statement. Respondent Carballo applied for the smog check inspector license in July 2023 and his ARD registration and TC license expired in July 2024.

36. Respondent Carballo also claimed he never received the May 2023 Accusation, alerting him to the allegations against his ARD registration and TC License,

and implied this was somehow relevant to his answer to question 10d on his smog check inspector application. In support of this claim respondent Carballo attempted to introduce a USPS tracking detail (Exhibit O) allegedly demonstrating the Accusation was not delivered to respondent Carballo. However, Exhibit O was excluded as irrelevant because although respondent Carballo claimed Exhibit O demonstrated he was not serviced the Accusation, upon the ALJ's review during hearing, the USPS tracking detail number on Exhibit O did not match the tracking detail number on complainant's declaration of service of the Accusation (Exhibit. 1, p. A65). Respondent Carballo could lay no foundation as to how Exhibit O related to his assertion that he did not receive the Accusation or his alleged mistake when answering question 10d. Rather, respondent Carballo's efforts and time spent attempting to introduce Exhibit O amounted to a misrepresentation of baseless information which ultimately was irrelevant.

37. Finally, respondent Carballo asserted the Bureau should have sent the Accusation to the physical and mailing addresses he provided in his smog check inspector application, on Imperial Highway in Lynwood, California, and on Santa Ana Street, in South Gate, California, respectively. (Exh. 21, p. A301.) However, respondent Carballo's assertion is immaterial and incorrect. Again, where complainant sent the Accusation has no bearing on how respondent Carballo answered question 10d, and at the time complainant served the Accusation, respondent Carballo's mailing address registered with the Bureau for Malone Dee Test Only was the Wilmington Boulevard, Wilmington, California address, the address to which the Bureau sent the Accusation. (Exhs. 1, p. A66, 25, p. A312.) Accordingly, and similar to his claims regarding his lack of receipt of the Accusation, his claims that complainant sent the Accusation to the incorrect address are baseless and immaterial. Based on his denials and presentations at hearing, respondent Carballo made misrepresentations at hearing.

## **Costs**

38. Regarding complainant's request for costs, respondent Carballo asserted the request was unreasonable. Respondent Carballo further testified he financially supports his parents and earns a limited income from trucking and smog check inspector work. Respondent Carballo is struggling financially.

## **RESPONDENT POZ-GOMEZ**

### **Advancements in Education and Employment**

39. Respondent Poz-Gomez presented himself as hard working and independent and focused on his career growth. After leaving high school in 2017 he obtained his smog check inspector license in 2018 and began working at an automotive repair shop. Respondent Poz-Gomez then worked at Meineke, a car care center, for approximately 18 months. He quickly became a supervisor who, among other responsibilities, was responsible for ensuring employees adhered to safety rules. Respondent Poz-Gomez has since obtained his repair license and on June 7, 2021, completed the Master Trucking Academy's Commercial Entry Level Training Course and obtained his Class A driver's license. According to respondent Poz-Gomez he left the work of smog inspecting approximately two to three years ago; he has since been focused on his trucking career and his education and works for Barney Trucking. Nonetheless, respondent Poz-Gomez renewed his smog check inspector license this year after taking a four-hour continuing education course.

40. On May 8, 2023, respondent Poz-Gomez completed his high school graduation requirements with Compton Adult School. Soon after, respondent Poz-Gomez enrolled in Sophia Learning, an online school providing college courses. Respondent Poz-Gomez submitted his unofficial transcript (Exhibit K), dated July 24,

2024, which shows he enrolled in Sophia Learning on approximately May 29, 2023, and took courses between May 29 and September 29, 2023. The unofficial transcript shows respondent Poz-Gomez obtained 38 units of college credit in this four-month period, by completing 15 college courses including, for example, English Composition, Introduction to Sociology, Introduction to Chemistry, and Pre-Calculus. Many of the courses lasted approximately three to four days, though some lasted as long as two weeks. The unofficial transcript shows respondent Poz-Gomez achieved 90 percent or higher in all but two classes, in which he achieved 82 and 89 percent. However, little weight is given to respondent Poz-Gomez's unofficial transcript. Based on the number of courses and credits obtained in a four-month period it is reasonable to conclude the substance of the course work was minimal.

41. Respondent Poz-Gomez's goal is to become a surgical nurse. He is inspired to do so because his grandmother recently passed after a battle with cancer. Respondent Poz-Gomez has pursued his education and employment opportunities to advance his career and income. He asserted complainant's request for costs was unreasonable. Respondent Poz-Gomez finds the current economy challenging and he has limited income to pay complainant's requested costs.

42. Respondent Poz-Gomez opined complainant's evidence is simply data and it does not establish he was present at Malone Dee Test Only on April 27, 2021, or that he conducted the smog inspection for Vehicle 1. Nonetheless, respondent Poz-Gomez acknowledge he created his PAC and maintained its confidentiality and never shared it with anyone. He could not explain how his name and smog inspector license appeared on the April 27, 2021 smog inspection information for Vehicle 1.

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## **Denial of Clean Plugging Vehicle 1**

43. Respondent Poz-Gomez denied clean plugging Vehicle 1 and asserted he was not present at Malone Dee Test Only on the date and time of the smog inspection of Vehicle 1. In support of his assertion, respondent Poz-Gomez submitted a printout from the Bureau website which showed the inspection history for Vehicle 1 and the 2008 Mercedes-Benz. According to its inspection history, Vehicle 1 passed its five most recent smog inspections occurring between August 14, 2012, and April 27, 2021, and the 2008 Mercedes-Benz passed its six most recent smog inspections occurring between August 9, 2013, and April 12, 2023, including the April 27, 2021, smog inspection conducted by respondent Poz-Gomez. The inspection history for Vehicle 1 and the 2008 Mercedes-Benz failed to establish Poz-Gomez did not clean plug Vehicle 1 or that he was not present at Malone Dee Test Only on the date and time of the inspection of Vehicle 1. Rather, the printout showed the information transmitted to the Bureau's VID by the respective smog check inspectors and TC licensees. It is only by analyzing a TC's OIS data, as PR II Ortega explained, that discrepancies in expected and reported vehicle information can be discovered.

44. Respondent Poz-Gomez claimed he started his workday on April 27, 2021, at Masters Trucking Academy and was at Meineke during the time of the smog inspection of Vehicle 1. In support of this testimony, respondent Poz-Gomez submitted a written timeline of his locations on April 27, 2021 (Exhibit H), and an email exchange occurring on May 30 and June 1, 2023, between himself and his then attorney, Lucy McAllister (Exhibit I). Included in the email exchange are screen shots of respondent Poz-Gomez's Google Map allegedly showing his whereabouts on April 27, 2021. The first map appears at Exhibit I, page B21. On this page the map shows coordinates for respondent Poz-Gomez's location between 9:44 a.m. and noon and

shows he was at "Branmire Branding and Marketing" between 1:34 p.m. and 6:16 p.m. Respondent Poz-Gomez testified this shows definitively he was not at Malone Dee Test Only when Vehicle 1 was inspected, at 5:45 p.m. on April 27, 2021. He alleged the Google Map is created by Google and is an accurate representation of his location.

45. Contrary to respondent Poz-Gomez's representation, and upon questioning and review of the remaining pages of Exhibit I, it was discovered respondent Poz-Gomez sent Ms. McAllister a similar Google Map which he had personally revised. Respondent Poz-Gomez changed the coordinates location to "Master Trucking Academy" and replaced "Branmire Branding and Marketing" with the address "4559 Artesia Blvd." (Exh. I, p. B24.) Ultimately, respondent Poz-Gomez acknowledged he was able to make changes to the Google Map but reasserted it definitively shows he was not a Malone Dee Test Only on April 27, 2021, at 5:45 p.m. Respondent Poz-Gomez misrepresented the authenticity and accuracy of the Google map while under oath, a dishonest act. Notably, upon further review of the evidence, it is apparent that neither map identifies him at a Meineke location during the date and time of the clean plug of Vehicle 1, but rather placed him at Branmire Branding and Marketing. The map's failure to show he was at Meineke further discredits respondent Poz-Gomez's testimony regarding the accuracy and relevancy of the Google Map.

### **Character Reference Letters**

46. Respondent Poz-Gomez submitted three character reference letters. The letters were authored by Levi S. Taylor, dated May 30, 2023, Justin Blackburn, dated May 31, 2023, and Qazi Fazalurrehman Khan, dated June 1, 2023. The three authors wrote their letters under penalty of perjury and were aware of the allegations brought against respondent Poz-Gomez.

47. Mr. Taylor worked with respondent Poz-Gomez as co-managers of a Meineke store. Mr. Taylor observed respondent Poz-Gomez to be courteous and kind with customers and fellow employees and professional and detail oriented in his duties and adherence to rules.

48. Mr. Blackburn is a Class A truck driver for Victory Logistics. Mr. Blackburn has worked with respondent Poz-Gomez at Victory Logistics, often six days per week. Mr. Blackburn has always observed respondent Poz-Gomez to be hard working and encouraging of others. In addition, respondent Poz-Gomez volunteers with A7FL, a professional football league in which Mr. Blackburn participates, by bringing water to players and cleaning up after games.

49. Finally, Mr. Khan is the owner of the Meineke at which respondent worked. Mr. Kahn found respondent Poz-Gomez managed the repair shop professionally and honestly and that he was highly motivated and energetic. He further stated he, Mr. Khan, managed multiple businesses in April 2021. Because of his other work commitments and resulting absence, respondent Poz-Gomez worked for him the entire month. Mr. Khan added respondent Poz-Gomez would arrive at approximately noon, after attending his trucking school. However, Mr. Khan's assertions regarding Mr. Poz-Gomez's whereabouts during his absences from the Meineke store are given little weight as Mr. Khan's assertion that he was aware of Mr. Poz-Gomez's location is based on speculation.

### **Credibility of Respondent Poz-Gomez**

50. Complainant examined respondent Poz-Gomez on whether he worked at Pedro Smog after his work for Malone Dee Test Only. Respondent Poz-Gomez answered that the name sounded familiar but he was uncertain of the timeline.



Complainant then introduced for impeachment purposes Exhibit 26, the Accusation filed in Bureau case number 79/23-4939, against respondent Poz-Gomez's EO license and Sandra Guerra Carranza, doing business as Pedro Smog Check (Pedro Smog Accusation), served on respondent Poz-Gomez on June 7, 2024, less than two months before respondent Poz-Gomez's testimony. (Exh. 26, p. A313 & A361.) (The ALJ has not reviewed Exhibit 26 other than the pleading page and the declaration of service.)

51. Upon seeing the Pedro Smog Accusation, respondent Poz-Gomez acknowledged he was aware of Pedro Smog but claimed he had worked for many smog test stations and so he failed to remember Pedro Smog Check when initially asked. Respondent Poz-Gomez's attempt to explain himself is self-serving and is not credited. Throughout his testimony and presentation of evidence, respondent Poz-Gomez presented himself as highly responsible and attentive to detail. Further, the email exchange with Ms. McAllister showed he was in communication with counsel about the Accusation filed in this matter on May 30, 2023, within a few weeks of the Accusation being served. Respondent Poz-Gomez's asserted failure of memory is contrary to his own presentations of himself and is disbelieved. Respondent Poz-Gomez must have been aware of Pedro Smog and the Pedro Smog Accusation when he testified at hearing. Complainant effectively impeached respondent Poz-Gomez's credibility and based on the evidence presented, respondent Poz-Gomez provided false testimony when he denied knowing whether he had worked for Pedro Smog.

### **Costs of Investigation and Enforcement**

52. Pursuant to section 125.3, complainant requests the award of the Bureau's costs of investigation and enforcement in the total amount of \$24,477.13. This amount consists of costs incurred directly by Bureau employees (\$4,017.13), as

well as costs charged by the Office of the Attorney General and for which the Bureau has been billed (\$20,460).

53. At hearing, complainant introduced the following documents in support of his request for payment of investigation costs: a September 3, 2021, Declaration of PR III Mark Casillas; a December 5, 2021, Declaration of PR II Marc Ortega; an October 13, 2023, Declaration of PR Sahapone Yantarak; and the respective Case Hours and Costs Spreadsheets for PRs Casillas, Ortega, and Yantara. These documents showed that PR III Casillas performed six and one-half hours of investigative work on this matter at a rate of \$96.38 per hour, that PR II Ortega performed 24 hours of investigative work on this matter at a rate of \$99.99 per hour, and that PR Yantarak performed 10 hours of investigative work on this matter at a rate of \$99.09 per hour, amounting to total investigative costs of \$4,017.13. The investigative work consisted of case review, report writing, and review of applicable laws.

54. Complainant also introduced a January 15, 2024 Certification of Prosecution Costs: Declaration of Heather Vo (Declaration), which requests enforcement costs in the amount of \$20,460. Attached to Ms. Vo's Declaration is a printout of a Matter Time Activity by Professional Type (time printout), which describes tasks performed by the Office of the Attorney General on this matter through January 15, 2024, and for which the Bureau has been billed the total sum of \$20,460. The time printout specified tasks performed including case management, witness and document preparation, and communication with client and other parties.

55. Costs of investigation and enforcement in the total amount of \$24,477.13 are reasonable in light of the issues involved in this matter.

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## **LEGAL CONCLUSIONS**

### **Authority**

1. The Director of the Department of Consumer Affairs (Director) has the authority issued under the Repair Act, including the power to revoke any license issued under the Act. (§ 9889.1.)

2. The Bureau is within the Department, and under the supervision and control of the Director, the Bureau has the duty of enforcing and administering the Repair Act. (§ 9882.) Similarly, the duty of enforcing and administering the Inspection Program is vested in the Chief of the Bureau who is responsible to the Director. (Health & Saf. Code, § 44001.5.)

3. The Bureau's highest priority in exercising its licensing, regulatory, and disciplinary functions is protection of the public. (§ 9880.3.)

4. The Clean Air Act (42 U.S.C. §§ 7401 et seq.) provides air quality standards for the nation and requires states to comply with those standards. (42 U.S.C. §§ 7410, 7413.) The California Legislature established uniform procedures for compliance with standards which control or eliminate pollution. (Health and Saf. Code, § 43000, subd. (c).)

5. The Bureau is vested with the duty of enforcing and administering the Clean Air Act. (Health & Saf. Code, §§ 44000, 44001.5, subd. (a).) The Bureau must adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution. (Health and Saf. Code, § 43013, subd. (a).) As of January 1, 2006, the Bureau has been charged with implementing regulations that achieve the

maximum feasible and cost-effective reduction of greenhouse gas emissions. (Health and Saf. Code, § 43018.5, subd. (a).)

6. The Department has the sole and exclusive authority within the state for developing and implementing the Inspection Program. For the purposes of administration and enforcement of the Inspection Program, the Department has all the powers and authority granted under the Inspection Program, the Repair Act, and California Code of Regulations, title 16 (Regulations), commencing with section 3300, and all inspections and repairs performed pursuant to the Inspection Program must meet the requirements of these statutes and regulations. (Health & Saf. Code, § 44002.)

7. The expiration of a valid registration or license does not deprive the Director or the Bureau of jurisdiction to proceed with any investigation or disciplinary proceeding against an ARD registrant or licensee to render a decision invalidating a registration or license temporarily or permanently. (§ 9884.13; Health & Saf. Code, § 44072.6.) Accordingly, despite the expirations of respondent Carballo's ARD registration and TC License and Respondent Moreno's EO license, the Bureau has jurisdiction to discipline Carballo's registration and respondents Carballo and Moreno's respective licenses.

### **Burden and Standard of Proof**

8. Complainant has the burden of proving the allegations in the First Amended Accusation by a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

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## **Statutory Law**

### **REPAIR ACT**

9. The Bureau may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact. (§ 498.)

10. The Bureau may suspend, revoke, or take other disciplinary action against a license if the licensee violates any section of the Code that relates to his or her licensed activities, or has misrepresented a material fact in obtaining a license. (§§ 9882, subds. (a) & (e), 9889.3.)

11. When an ARD cannot show there was a bona fide error, the Director may revoke the ARD's ARD registration if any of the following occur: the dealer or any employee makes or authorizes any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; commits an act that constitutes fraud; or fails in any material respect to comply with the provisions of the Repair Act. (§ 9884.7, subd. (a)(1), (4), & (6).)

### **INSPECTION PROGRAM**

12. Smog check tests must be performed in accordance with the smog check procedures prescribed by the Department. (Health & Safe. Code, § 44012.)

13. A smog check station may issue Certificates of Compliance only if a vehicle meets the requirements of the Inspection Program. ((Health & Safe. Code, § 44015, subd. (b).)

14. Health and Safety Code section 44072.2 provides the Director may revoke a Bureau issued license if the licensee violates any section of the Repair Act or its regulations related to the licensed activities (subd. (a)), violates any regulations adopted by the Director (subd. (c)), commits any act involving dishonesty, fraud, or deceit whereby another is injured (subd. (d)); or has misrepresented a material fact in obtaining a license (subd. (e)).

15. Health and Safety Code section 44072.10, subdivision (c), requires the Department to revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, an intentional or willful violation of the Inspection Program or any regulation, standard, or procedure of the Department in implementing the Inspection Program. (Health. & Saf. Code, § 44072.10, subd. (c)(4).)

### **Regulatory Law**

16. The Bureau may suspend or revoke a Bureau issued license if the licensee falsely or fraudulently issues a Certificate of Compliance. (Regulations, § 3340.24, subd. (c).)

17. A licensed smog check inspector must inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035, and Regulations, section 3340.42. (Regulations, § 3340.30, subd. (a).)

18. A licensed smog check station must issue a Certificate of Compliance to the owner or operator of any vehicle that has been inspected in accordance with the Inspection Program and the procedures specified in Regulations, section 3340.42, and

that has all the required emission control equipment and devices installed and functioning correctly. (Regulations, § 3340.35, subd. (c).)

19. Regulations, section 3340.41, subdivision (c), prohibits all persons from entering any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the Emission Inspection System (EIS) or OIS, and further prohibits all persons from entering into the EIS or OIS any false information about the vehicle being tested.

20. Smog check inspectors must comply with the Bureau's Smog Check Manual, by conducting the visual and functional inspection, and using the vehicle's OBD system to inspect gasoline-powered vehicles 2000 model-year and newer. (Regulations, § 3340.42.)

### **Respondents' Additional Registrations and Licenses**

21. The Director may revoke the ARD registration for all places of business operated in this state by an ARD upon a finding that the ARD has, or is, engaged in a course of repeated and willful violations of the Repair Act, or regulations adopted pursuant to it. (§ 9884.7, subd. (c).)

22. When the Director revokes a license under the Inspection Program, the Director may revoke any additional license in the name of the licensee issued under the Program. (Health and Saf. Code, § 44072.8.)

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## **Cause for Discipline**

### **RESPONDENT CARBALLO'S ARD REGISTRATION**

#### **First Cause for Discipline – Untrue or Misleading Statements**

23. Cause exists under section 9884.7, subdivision (a)(1), to discipline respondent Carballo's ARD registration. Complainant established by a preponderance of the evidence respondent Carballo, and his smog check inspectors, respondents Poz-Gomez and Moreno, made or authorized written statements that were untrue and which were known, or which by the exercise of reasonable care should have been known, to be untrue. Respondents certified four vehicles had passed California smog check inspections and were in compliance with applicable laws and regulations, though respondents used another vehicle's OBDII system, or another source, to gather data and generate the Certificates of Compliance. Respondent Carballo did not present evidence establishing these violations were due to a bona fide error. (Factual Findings 9-30; Legal Conclusion 11.)

#### **Second Cause for Discipline - Fraud**

24. Cause exists under section 9884.7, subdivision (a)(4), to discipline respondent Carballo's ARD registration. Complainant established by a preponderance of the evidence respondents clean plugged four vehicles. The smog check inspectors, respondents Poz-Gomez and Moreno, whom respondent Carballo employed, fraudulently inspected and certified the four vehicles, knowingly sending false information to the Bureau's VID, and respondent Carballo issued passing Certificates



of Compliance for these vehicles. Respondent Carballo did not establish these acts were due to a bona fide error. (Factual Findings 9-30; Legal Conclusion 11.)

### **Third Cause for Discipline – Material Violation of the Repair Act**

25. Cause exists under section 9884.7, subdivision (a)(6), to discipline respondent Carballo's ARD registration. Complainant established by a preponderance of the evidence respondent Carballo failed in a material respect to comply with the provisions of the Repair Act when respondent Carballo issued electronic Certificates of Compliance for Vehicles 1 through 4, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Inspection Program. (Factual Findings 9-30; Legal Conclusion 11.)

### **RESPONDENT CARBALLO'S TC LICENSE**

### **Fourth Cause for Discipline – Violations of the Motor Vehicle Inspection Program**

26. Cause exists under Health and Safety Code section 44072.2, subdivision (a), to discipline respondent Carballo's TC license. Complainant established by a preponderance of the evidence respondent Carballo failed to comply with Health and Safety Code sections 44012 and 44015. Respondent Carballo failed to ensure required emission control tests were performed on the four vehicles at issue in accordance with Department procedures by issuing passing Certificates of Compliance to the four vehicles without first determining if they were in compliance with Health and Safety Code section 44012. (Factual Findings 9-30; Legal Conclusion 14.)

## **Fifth Cause for Discipline – Failure to Comply with Regulations Pursuant to the Inspection Program**

27. Cause exists under Health and Safety Code section 44072.2, subdivision (c), to discipline respondent Carballo's TC license. Complainant established by a preponderance of the evidence respondent Carballo failed to comply with Regulations, section 3340.35, subdivision (c), and through the doctrine of respondeat superior, failed to comply with Regulations, sections 3340.41, subdivision (c), and 3340.42. Respondent Carballo fraudulently issued passing Certificates of Compliance to four vehicles without performing bona fide inspections of the vehicles' emission control devices and systems as required by Health and Safety Code section 44012 and did so even though the four vehicles had not been inspected in accordance with Regulations section 3340.42. In so doing, respondent Carballo issued Certificates of Compliance to the owner or operator of four vehicles that had not been inspected in accordance with the Inspection Program and the procedures specified in Regulations section 3340.42. (Factual Findings 9-30; Legal Conclusions 14, 18.)

28. Further, respondent Carballo's smog check inspectors, respondents Poz-Gomez and Moreno, entered vehicle identification information or emission control system identification data for vehicles other than the four vehicles being tested into the EIS or OIS in violation of Regulations, section 3340.41, subdivision (c). In so doing, respondent Carballo's smog check inspectors, respondents Poz-Gomez and Moreno, failed to use each tested vehicle's OBD system to conduct the respective smog inspections, but instead used another vehicle or another source, in violation of Regulations, section 3340.42. (Factual Findings 9-30; Legal Conclusions 14, 19, 20.)

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### **Sixth Cause for Discipline – Dishonesty, Fraud, or Deceit**

29. Cause exists under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c)(4), to revoke respondent Carballo's TC license. Complainant established by a preponderance of the evidence respondent Carballo committed dishonest, fraudulent or deceitful acts whereby another was injured by issuing electronic smog Certificates of Compliance for Vehicles 1 through 4 without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Inspection Program. (Factual Findings 9-30; Legal Conclusions 14 & 15.)

### **RESPONDENT CARBALLO'S EO LICENSE**

#### **Tenth Cause for Discipline – Dishonest Conduct – Fraud in Obtaining Smog Check Inspector License**

30. Cause exists under sections 498, 9889.3, subdivisions (a) and (e), and 9884.7, subdivision (a)(4), and under Health and Safety Code section 44072.2, subdivision (e), to discipline respondent Carballo's EO license. Complainant established by a preponderance of the evidence respondent Carballo secured his smog check inspector license by knowingly misrepresenting or omitting a material fact in his smog check inspector license application. (Factual Findings 29 & 30.)

31. Respondent Carballo provided false information to the Bureau on his smog check inspector license application when he answered "No" to question 10d, which asked if the Department or Bureau had ever issued him a license. The fact of this question appearing on the smog check inspector application makes it a material fact.

At the time he completed the application, respondent Carballo knew, as evidenced by his operation of Malone Dee Test Only and hiring of respondents Poz-Gomez and Moreno to conduct smog check inspections, the Bureau had issued him an ARD registration and TC license. Nonetheless, respondent Carballo signed the application for licensure under penalty of perjury, fraudulently representing that his answer that neither the Department of Consumer Affairs nor the Bureau had ever issued him a license was true and correct. (Factual Findings 29 & 30.)

32. Respondent Carballo's claims of his lack of knowledge of his licensure and alleged mistake when answering question 10d are not believed. (Factual Findings 34-37.) Rather, based on the evidence presented, respondent Carballo has a pattern of absentee ownership, of accepting little to no responsibility for his actions as an ARD or TC, or for his communications with the Bureau, and he willingly misrepresented evidence and provided dishonest testimony at hearing. (Factual Findings 15-37.)

### **RESPONDENTS POZ-GOMEZ AND MORENO'S EO LICENSES**

#### **Seventh Cause for Discipline – Violations of the Motor Vehicle Inspection Program**

33. Cause exists under Health and Safety Code section 44072.2, subdivision (a), to discipline respondents Poz-Gomez's and Moreno's smog check inspector licenses. Complainant established by a preponderance of the evidence respondents Poz-Gomez and Moreno failed to comply with section 44012 by failing to perform the emission control tests on Vehicles 1 through 4. (Factual Findings 9-30; Legal Conclusions 12, 14.)

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### **Eighth Cause for Discipline – Failure to Comply with Regulations Pursuant to the Inspection Program**

34. Cause exists under Health and Safety Code section 44072.2, subdivision (c), and Regulations, sections 3340.24, subdivision (c), 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42 to discipline respondents Poz-Gomez's and Moreno's smog check inspector licenses. Respondent Poz Gomez fraudulently certified Vehicle 1, and respondent Moreno fraudulently certified Vehicles 2, 3, and 4, had passed a California Smog Check inspection and were in compliance with applicable laws and regulations. However, respondents Poz-Gomez and Moreno entered into Malone Dee Test Only's OIS false information about Vehicle's 1 through 4, respectively, and used another vehicle's OBDII system, or another source, to gather data and generate the Certificates of Compliance. Respondents Poz-Gomez's and Moreno's actions were not in compliance with the smog check requirements of Health and Safety Code section 44012 and violated the Bureau's smog check specifications. (Factual Findings 9-30; Legal Conclusions 14, 16, 17, 19, & 20.)

### **Ninth Cause for Discipline – Dishonesty, Fraud, Deceit**

35. Cause exists under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c)(4), to discipline respondents Poz-Gomez's and Moreno's EO licenses. Complainant established by a preponderance of the evidence respondents Poz-Gomez and Moreno fraudulently certified the four vehicles and participated in the fraudulent inspections of the four vehicles by willfully violating the Program, the Regulations, and the Department's Procedures for implementing the Program. (Factual Findings 9-30; Legal Conclusions 14, 15.)

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## **Assessment of Discipline**

### **DISCIPLINARY GUIDELINES**

36. The Bureau's Guidelines for Disciplinary Orders and Terms of Probation (Guidelines) (Rev. June 2021) provide ranges of discipline for listed violations as well as factors in aggravation and in mitigation to consider when determining registration and license discipline. The Guidelines provide revocation as the maximum order for each of respondents' violations. In consideration of lesser discipline, the Guidelines' applicable factors in aggravation include factor (9), evidence the unlawful acts were part of a pattern of practice. (Guidelines, pp. 1-2.) The Guidelines' applicable factor in mitigation include factor (6), that respondents do not have prior disciplinary action. (Guidelines, pp. 2-3.)

37. In favor of lesser discipline is the fact the neither respondent Carballo, Poz-Gomez, nor Moreno, have prior disciplinary action. However, based on the manner and means by which the four fraudulent smog inspections were conducted, respondents' unlawful acts were part of a pattern or practice. Respondent Moreno on three occasions between June 21 and July 13, 2021, used the OBD II information from the three vehicles nearly immediately preceding the three fraudulent inspections of Vehicles 2 through 4 to clean plug Vehicles 2 through 4. Similarly, respondent Poz-Gomez used the OBD II information from the 2008 Mercedes-Benz, which he smog checked immediately subsequent to his smog check inspection of Vehicle 1, to clean plug Vehicle 1. As to respondents Carballo and Moreno, the evidence of their unlawful acts being a part of a pattern or practice was established. Respondent Poz-Gomez completed just one fraudulent smog check inspection within this unlawful pattern and practice and so this aggravating factor is given less weight against respondent Poz-Gomez's rehabilitation.

## REHABILITATION

38. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940), but mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991; see also *In re Schwartz* (1982) 31 Cal.3d 395, 400-401, citing *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [where petitioner's criminal acts occurred just two years prior to his discipline hearing, evidence of rehabilitation was insufficient to demonstrate rehabilitation].)

39. Respondent Carballo expressed knowledge that he is responsible for the acts of his smog check inspectors, as advised by his counsel pursuant to the rule of nondelegable duties of licensees and strict liability. (See *CA Assn. of Health Facilities* (1997) 16 Cal.4th 284; *Ford Dealers Assn v. Department of Motor Vehicles* (1982) 32 Cal.3d 347; *Rob-Mac, Inc. v. DMV* (1983) 148 Cal.App.3d 7930.) However, respondent Carballo did not acknowledge or express remorse for his violations of the Repair Act or Inspection Program. Rather, he attributed any cause for the clean plugging to his smog check inspectors and any failure to accurately complete his smog check inspector application to false representations that he had not been served with the Accusation and that he had provided a new business address for Malone Dee Test Only to the Bureau before the Accusation was served. (Factual Findings 34-37.) Based on his representations respondent Carballo demonstrated his willingness to be dishonest with the Bureau as recently as July 29, 2024, when he testified at hearing.

40. Respondent Poz-Gomez denied clean plugging Vehicle 1 and denied any wrongdoing. He relied on evidence of his educational and employment pursuits and achievements outside of the automotive repair industry to establish his character, work ethic, and honesty. However, respondent Poz-Gomez misrepresented evidence and provided dishonest testimony at hearing. For these reasons, respondent Poz-Gomez, as recently as the hearing in this matter, demonstrated continued dishonesty with the Bureau and therefore failed to establish his rehabilitation. (Factual Findings 39-49.)

41. Respondent Moreno did not acknowledge responsibility for, or remorse regarding his violations of the Repair Act or Inspection Program. Further, respondent Moreno did not present evidence of rehabilitation.

### **ASSESSMENT**

42. In consideration of the Guidelines and applicable statutes and regulations, including section 9884.7 and Health and Safety Code, section 44072.10, subdivision (c)(4), complainant established by a preponderance of the evidence the protection of the public requires the revocation of respondent Carballo's ARD registration number 294837, TC license number 294837, and EO license number 644542, and the revocation of respondent Poz-Gomez's EO license number EO642902, and respondent Moreno's EO license number EO641248. (Factual Findings 8-51; Legal Conclusions 23-41.)

### **Additional Registrations and Licenses**

43. Cause exists under section 9884.7, subdivision (c), to revoke the ARD registration for all places of business operated in this state by respondent Carballo because complainant established by a preponderance of the evidence respondent



Carballo has engaged in a course of repeated and willful violations of the Act and the regulations adopted pursuant to it.

44. Cause exists under Health and Safety Code, section 44072.8, to revoke any additional licenses issued in the name of respondents Carballo, Poz-Gomez, and Moreno because respondents' licenses issued under the Program are revoked.

### **Award of Costs**

45. In any order issued in resolution of a disciplinary proceeding, at the request of the Bureau, the Administrative Law Judge may direct the licentiate found to have committed a violation to pay a sum not to exceed the reasonable costs of investigation and enforcement. A certified copy of the actual costs signed by the Bureau or its designated representative is prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General. (§ 125.3, subds. (a), (c); see Regulations § 1042, subd. (b).)

46. The Bureau must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure registrants and licentiates with potentially meritorious claims or defenses are not deterred from exercising their right to a hearing, and must not assess the full costs of investigation and prosecution when to do so would unfairly penalize the licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. (See *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Factors to be considered in determining costs sought pursuant to section 125.3 include: the licentiate's success in getting the

charges dismissed or reduced; the licentiate's subjective good faith belief in the merits of his or her position; whether the licentiate raised a colorable challenge to the proposed discipline; the licentiate's financial ability to pay; and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*)

47. The declarations signed by Ms. Vo and PRs Casilla, Ortega, and Yantarak constitute prima facie evidence of the reasonableness of the total costs incurred by the Bureau in the amount of \$24,477.13. (§ 125.3, subd. (c).) (Factual Findings 52-55.) Respondents failed to rebut the reasonableness of the costs. However, the revocations of their respective registrations and licenses will limit their income and therefore impact their financial ability to pay the costs. Due to these factors, the total costs are reduced by 20 percent. Respondents will be ordered to pay \$19,581.70 before seeking reinstatement of any registrations or licenses hereby revoked.

### **ORDER**

1. Automotive Repair Dealer Registration number ARD 294837, and all other ARD registrations, issued to respondent Julio C. Carballo, doing business as Malone Dee Test Only, are revoked.

2. Smog Check, Test Only Station License number TC 294837, and all other smog check, test only station licenses, issued to respondent Julio C. Carballo, doing business as Malone Dee Test Only, are revoked.

3. Smog Check Inspector license number EO 644541, and all other smog check inspector licenses, issued to respondent Julio C. Carballo, are revoked.

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4. Smog Check Inspector license number EO 642902, and all other smog check inspector licenses, issued to respondent Brandon Ivan Moreno, are revoked.

5. Smog Check Inspector license number EO 641248, and all other smog check inspector licenses, issued to respondent Anthony A. Poz-Gomez, are revoked.

6. Respondent Julio C. Carballo, doing business as Malone Dee Test Only, respondent Brandon Ivan Moreno, and respondent Anthony A. Poz-Gomez are jointly and severally responsible to pay to the Bureau of Automotive Repair investigation and enforcement costs in the sum of \$19,581.70, before seeking reinstatement of any registrations or licenses hereby revoked.

DATE: 10/08/2024

  
Chantal Sampogna (Oct 8, 2024 16:23 PDT)

CHANTAL M. SAMPOGNA

Administrative Law Judge

Office of Administrative Hearing