

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

In the Matter of the Accusation Against:

**TUNES LUBES & SMOG II
MIGUEL A. TORRES, OWNER**
3114 Fairmont Avenue
San Diego, CA 92105

Case No. 79/14-32

Automotive Repair Dealer Registration
No. ARD 263149
Smog Check Station license
No. RC 263149
Brake Station License No. BS 263149
Lamp Station License No. LS 263149

MIGUEL A. TORRES
35913 Burgundy Court
Winchester, CA 92596

Smog Check Inspector License No. EO 631939

and

Smog Check Repair Technician License No.
EI 631939 (formerly Advanced Emission
Specialist Technician License No. EA 631939)
Brake Adjuster License No. BA 631939

Respondents.

DECISION

The attached Stipulation for Revocation of Licenses and Order As To Tunes Lubes & Smog II, Miguel A. Torres, is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

March 11, 2014

DATED: FEB 14 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DAVID E. HAUSFELD
Deputy Attorney General
4 State Bar No. 110639
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/14-32

13 **TUNES LUBES & SMOG II**
MIGUEL A. TORRES, OWNER
14 **3114 Fairmount Avenue**
San Diego, CA 92105

STIPULATION FOR REVOCATION OF
LICENSES AND ORDER AS TO TUNES
LUBES & SMOG II, MIGUEL A.
TORRES

15 **Automotive Repair Dealer Registration**
16 **No. ARD 263149**
Smog Check Station License
17 **No. RC 263149**
Brake Station License No. BS 263149
18 **Lamp Station License No. LS 263149**

19 **MIGUEL A. TORRES**
20 **35913 Burgundy Court**
Winchester, CA 92596

21 **Smog Check Inspector License No.**
EO 631939 and
22 **Smog Check Repair Technician License**
No. EI 631939
23 **(formerly Advanced Emission Specialist**
Technician License No. EA 631939)

24 **Brake Adjuster License No. BA631939**

25 Respondents.
26
27
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1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
5 (BAR). He brought this action solely in his official capacity and is represented in this matter by
6 Kamala D. Harris, Attorney General of the State of California, by David E. Hausfeld, Deputy
7 Attorney General.

8 2. Tunes Lubes & Smog II; Miguel A. Torres, Owner, (Respondent) is represented in
9 this proceeding by attorney Jonathan B. Jordan, whose address is: 3233 Third Avenue, San
10 Diego, CA 92103.

11 3. On or about September 1, 2010, the BAR issued Automotive Repair Dealer
12 Registration Number ARD 263149 to Miguel A. Torres, doing business as Tunes Lubes & Smog
13 II (Respondent). Respondent's registration was in full force and effect at all times relevant to the
14 charges brought herein and will expire on September 30, 2014, unless renewed.

15 4. On or about September 16, 2010, the BAR issued Smog Check Station License
16 Number RC 263149 to Miguel A. Torres, doing business as Tunes Lubes & Smog II
17 (Respondent). Respondent's registration was in full force and effect at all times relevant to the
18 charges brought herein and will expire on September 30, 2014, unless renewed.

19 5. On or about November 8, 2010, the BAR issued Brake Station License Number BS
20 263149, to Miguel A. Torres, doing business as Tunes Lubes & Smog II (Respondent). The
21 registration was in full force and effect at all times relevant to the charges brought herein and will
22 expire on September 30, 2014, unless renewed.

23 6. On or about November 8, 2010, the BAR issued Lamp Station License Number LS
24 263149, to Miguel A. Torres, doing business as Tunes Lubes & Smog II (Respondent). The
25 registration was in full force and effect at all times relevant to the charges brought herein and will
26 expire on September 30, 2014, unless renewed.

27 7. On or about April 8, 2010, the BAR issued Advanced Emission Specialist License
28 Number EA 631939 to Miguel A. Torres (Respondent). The technician license was due to expire

1 on August 31, 2012, however it was cancelled on August 9, 2012. Pursuant to California Code of
2 Regulations, title 16, section 3340.28, subdivision (e), the technician license was renewed,
3 pursuant to Respondent's election, as Smog Check Inspector License No. EO 631939, and Smog
4 Check Repair Technician License No. EI 631939, effective August 9, 2012. Respondent's smog
5 check inspector license and smog check repair technician license will expire on August 31, 2014,
6 unless renewed.

7 8. On or about April 22, 2011, the BAR issued Brake Adjuster License Number BA
8 631939 to Miguel A. Torres (Respondent). The brake adjuster license was in full force and effect
9 at all times relevant to the charges brought herein and will expire on August 31, 2014, unless
10 renewed.

11 **JURISDICTION**

12 9. Accusation No. 79/14-32 was filed before the Director of Consumer Affairs
13 (Director), for the BAR, and is currently pending against Respondent. The Accusation and all
14 other statutorily required documents were properly served on Respondent on October 18, 2013.
15 Respondent timely filed his Notice of Defense contesting the Accusation.

16 10. A copy of Accusation No. 79/14-32 is attached as Exhibit A and incorporated herein
17 by reference.

18 **ADVISEMENT AND WAIVERS**

19 11. Respondent has carefully read, fully discussed with counsel, and understands the
20 charges and allegations in Accusation No. 79/14-32. Respondent has also carefully read, fully
21 discussed with counsel, and understands the effects of this Stipulation for Revocation of Licenses
22 and Order.

23 12. Respondent is fully aware of his legal rights in this matter, including the right to a
24 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
25 his own expense; the right to confront and cross-examine the witnesses against him; the right to
26 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
27 the attendance of witnesses and the production of documents; the right to reconsideration and
28

1 court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

3 13. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
4 every right set forth above.

5 **CULPABILITY**

6 14. Respondent admits the truth of each and every charge and allegation in Accusation
7 No. 79/14-32.

8 15. Respondent agrees that cause exists for discipline and hereby stipulates to the
9 revocation of his Automotive Repair Dealer Registration No. ARD 263149, his Smog Check
10 Station License No. RC 263149, his Brake Station License Number BS 263149 and his Lamp
11 Station License Number LS 263149, issued to Miguel A. Torres, doing business as Tunes Lubes
12 & Smog II. Respondent also stipulates to the revocation of his Smog Check Inspector License
13 No. EO 631939, his Smog Check Repair Technician License No. EI 631939 and his Brake
14 Adjuster License Number BA 631939 issued to Miguel A. Torres.

15 **CONTINGENCY**

16 16. This stipulation shall be subject to approval by the Director of Consumer Affairs or
17 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
18 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
19 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
20 or participation by Respondent or his counsel. By signing the stipulation, Respondent
21 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
22 prior to the time the Director considers and acts upon it. If the Director fails to adopt this
23 stipulation as the Decision and Order, the Stipulation for Revocation of Licenses and Order shall
24 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
25 between the parties, and the Director shall not be disqualified from further action by having
26 considered this matter.

27 ///

28 ///

1 Technician and Brake Adjuster in California as of the effective date of the Director's Decision
2 and Order.

3 3. Respondent shall cause to be delivered to the Bureau his Automotive Repair Dealer
4 Registration, Smog Check Station License, Brake Station License, Lamp Station License, Smog
5 Check Inspector License, Smog Check Repair Technician License and Brake Adjuster License on
6 or before the effective date of the Decision and Order.

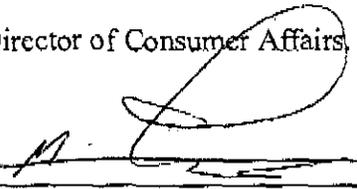
7 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
8 California, the Bureau shall treat it as a new application for licensure. Respondent must comply
9 with all the laws, regulations and procedures for licensure in effect at the time the application or
10 petition is filed, and all of the charges and allegations contained in Accusation No. 79/14-32 shall
11 be deemed to be true, correct and admitted by Respondent when the Director determines whether
12 to grant or deny the application or petition.

13 5. Respondent shall pay the Bureau its costs of investigation and enforcement in the
14 amount of \$6,805.96, at the time of application for a new registration or license issued by the
15 Bureau or petition for reinstatement of revoked registration or license.

16 ACCEPTANCE

17 I have carefully read the above Stipulation for Revocation of Licenses and Order and have
18 fully discussed it with my attorney, Jonathan B. Jordan. I understand the stipulation and the
19 effect it will have on my Automotive Repair Dealer Registration, Smog Check Station License,
20 Brake Station License, Lamp Station License, Smog Check Inspector License, Smog Check
21 Repair Technician License and Brake Adjuster License. I enter into this Stipulation for
22 Revocation of Licenses and Order voluntarily, knowingly, and intelligently, and agree to be
23 bound by the Decision and Order of the Director of Consumer Affairs.

24
25 DATED: 1-15-14



26 MIGUEL A. TORRES
27 Individually and as authorized agent for,
28 TUNES LUBES & SMOG II
Respondent

1 I have read and fully discussed with Respondent Miguel A. Torres the terms and conditions
 2 and other matters contained in the above Stipulation for Revocation of Licenses and Order. I
 3 approve its form and content.

4 DATED: 1-15-14



JONATHAN B. JORDAN
 Attorney for Respondent

7 **ENDORSEMENT**

8 The foregoing Stipulation for Revocation of Licenses and Order is hereby respectfully
 9 submitted for consideration by the Director of Consumer Affairs

11 Dated:

Respectfully submitted,

KAMALA D. HARRIS
 Attorney General of California
 JAMES M. LEDAKIS
 Supervising Deputy Attorney General

DAVID E. HAUSFELD
 Deputy Attorney General
Attorneys for Complainant

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1 I have read and fully discussed with Respondent Miguel A. Torres the terms and conditions
2 and other matters contained in the above Stipulation for Revocation of Licenses and Order. I
3 approve its form and content.

4 DATED: _____

JONATHAN B. JORDAN
Attorney for Respondent

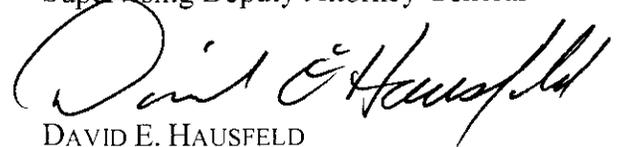
7 **ENDORSEMENT**

8 The foregoing Stipulation for Revocation of Licenses and Order is hereby respectfully
9 submitted for consideration by the Director of Consumer Affairs

10
11 Dated: *1/30/14*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



DAVID E. HAUSFELD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/14-32

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3 DAVID E. HAUSFELD
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Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. *79/14-32*

13 **TUNES LUBES & SMOG II**
MIGUEL A. TORRES, OWNER
14 3114 Fairmount Avenue
San Diego, CA 92105
15
16 Automotive Repair Dealer Registration
No. ARD 263149
Smog Check Station License
17 No. RC 263149
Brake Station License No. BS 263149
18 Lamp Station License No. LS 263149

ACCUSATION
smog check

19 **MIGUEL A. TORRES**
35913 Burgundy Court
20 Winchester, CA 92596
21 Smog Check Inspector License No.
EO 631939 and
22 Smog Check Repair Technician License
No. EI 631939
23 (formerly Advanced Emission Specialist
Technician License No. EA 631939)
24 Brake Adjuster License No. BA631939
25

Respondents.

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1 Complainant alleges:

2 PARTIES

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

5 **Automotive Repair Dealer Registration No. ARD 263149**

6 2. On or about September 1, 2010, the BAR issued Automotive Repair Dealer
7 Registration Number ARD 263149 (registration) to Miguel A. Torres, doing business as Tunes
8 Lubes & Smog II (Respondent Tunes L & S). Respondent's registration was in full force and
9 effect at all times relevant to the charges brought herein and will expire on September 30, 2014,
10 unless renewed.

11 **Smog Check Station License No. RC 263149**

12 3. On or about September 16, 2010, the BAR issued Smog Check Station License
13 Number RC 263149 (smog check station license) to Miguel A. Torres, doing business as Tunes
14 Lubes & Smog II (Respondent Tunes L & S). Respondent's registration was in full force and
15 effect at all times relevant to the charges brought herein and will expire on September 30, 2014,
16 unless renewed.

17 **Brake Station License No. BS 263149**

18 4. On or about November 8, 2010, the BAR issued Brake Station License Number BS
19 263149, class A, to Miguel A. Torres, doing business as Tunes Lubes & Smog II (Respondent
20 Tunes L & S). The registration was in full force and effect at all times relevant to the charges
21 brought herein and will expire on September 30, 2014, unless renewed.

22 **Lamp Station License No. LS 263149**

23 5. On or about November 8, 2010, the BAR issued Lamp Station License Number LS
24 263149, class A, to Miguel A. Torres, doing business as Tunes Lubes & Smog II (Respondent
25 Tunes L & S). The registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on September 30, 2014, unless renewed.

27 ///

28 ///

1 **Advanced Emission Specialist Technician License No. EA 631939**

2 6. On or about April 8, 2010, the BAR issued Advanced Emission Specialist License
3 Number EA 631939 (technician license) to Miguel A. Torres (Respondent Torres). The
4 technician license was due to expire on August 31, 2012, however it was cancelled on August 9,
5 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the
6 technician license was renewed, pursuant to Respondent's election, as Smog Check Inspector
7 License No. EO 631939, and Smog Check Repair Technician License No. EI 631939, effective
8 August 9, 2012. Respondent's smog check inspector license and smog check repair technician
9 license will expire on August 31, 2014, unless renewed.¹

10 **Brake Adjuster License No. BA 631939**

11 7. On or about April 22, 2011, the BAR issued Brake Adjuster License Number BA
12 631939 to Miguel A. Torres (Respondent Torres). The brake adjuster license was in full force
13 and effect at all times relevant to the charges brought herein and will expire on August 31, 2014,
14 unless renewed.

15 **JURISDICTION**

16 8. This Accusation is brought before the Director under the authority of the following
17 laws.

18 9. Business and Professions Code (Bus. & Prof. Code) section 9884.7 provides that the
19 Director may revoke an automotive repair dealer registration.

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

24 ///

25 ///

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
 Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 11. Health and Safety Code (Health & Saf. Code) section 44002 provides, in pertinent
2 part, that the Director has all the powers and authority granted under the Automotive Repair Act
3 for enforcing the Motor Vehicle Inspection Program.

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

8 13. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:
9 "Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission
10 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
11 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

12 STATUTORY PROVISIONS

13 14. Bus. & Prof. Code section 9884.7 states, in pertinent part:

14 (a) The director, where the automotive repair dealer cannot show there was a
15 bona fide error, may deny, suspend, revoke, or place on probation the registration of
16 an automotive repair dealer for any of the following acts or omissions related to the
17 conduct of the business of the automotive repair dealer, which are done by the
18 automotive repair dealer or any automotive technician, employee, partner, officer, or
19 member of the automotive repair dealer.

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

20

21 (4) Any other conduct that constitutes fraud.

21

22 (6) Failure in any material respect to comply with the provisions of this
23 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
24 regulations adopted pursuant to it.

24

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

1 15. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
2 "bureau," "commission," "committee," "department," "division," "examining committee,"
3 "program," and "agency." "License" includes certificate, registration or other means to engage in
4 a business or profession regulated by the Bus. & Prof. Code.

5 16. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

10

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

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

13

14 17. Health & Saf. Code section 44072.8 states:

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

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

19

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

23

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

26 19. Health & Saf. Code section 44012 provides, in pertinent part, that the test at the smog
27 check station shall be performed in accordance with procedures prescribed by the department,
28 pursuant to Section 44013.

1 20. Health & Saf. Code section 44037 states, in pertinent part:

2 "....

3 "Qualified technicians shall perform tests of emission control devices and systems in
4 accordance with Section 44012."

5 **REGULATORY PROVISIONS**

6 21. California Code of Regulations, title 16, section 3340.24 (c), states:

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

10 22. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

11 "A smog check technician shall comply with the following requirements at all times while
12 licensed.

13 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
14 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
15 3340.42 of this article.

16 "...."

17 23. California Code of Regulations, title 16, section 3340.35, provides, in pertinent part,
18 that a licensed station shall issue a certificate of compliance . . . to the owner or operator of any
19 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
20 this article and has all the required emission control equipment and devices installed and
21 functioning correctly.

22 24. California Code of Regulations, title 16, section 3340.41 (c), states:

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

27 25. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part,
28 that smog check stations and smog check technicians shall conduct tests and inspections in

1 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in
2 subsections (a) and (b) of Section 3340.17.

3 COST RECOVERY

4 26. Section 125.3 of the Code provides, in pertinent part, that the Director may request
5 the administrative law judge to direct a licentiate found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 VID DATA REVIEW

9 27. In or about May 2013, the BAR initiated an investigation of Respondents based on a
10 review of information from the BAR's vehicle information database (VID), which indicated that
11 they may be engaging in fraudulent smog check inspections.

12 28. Beginning in May of 2013, a representative of the BAR conducted a detailed review
13 of VID data for all smog inspections performed at Respondent's automotive repair dealership
14 facility for the period of March 15, 2013 through May 15, 2013. The review showed a pattern of
15 OBD II² code P0332 being reported to the VID as if it was stored in the power train control
16 module (PCM) memory of 35 different vehicles that received smog certificates in the two (2)
17 month period. The BAR specifically examined the VID data, in detail, for ten (10) of the vehicles
18 that were certified from April 5, 2013 to May 7, 2013 and it was determined that none of them
19 support the OBD II code. Vehicles 1 through 10, set forth in Table 1, below, were all certified
20 with the same pending code P0332 stored in the PCM memory, while the original equipment
21 manufacturer (OEM) service information shows these vehicles did not support the P0332 code.

22 29. In August of 2013 the BAR conducted an additional review of the VID data for smog
23 check inspections requiring the OBD II functional test performed at Respondent Tunes L & S for

24 ² The On Board Diagnostic, generation II (OBD II) functional test is an automated
25 function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to
26 connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC)
27 which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically
28 retrieves information from the vehicle's on-board computer about the status of the readiness
indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
II functional test, it will fail the overall inspection.

1 the period June 4, 2013 through August 4, 2013. On July 10, 2013 vehicle 11, in Table 1, below,
 2 was certified with codes P0327 and P0328 stored in the PCM memory. The OEM service
 3 information shows this vehicle did not support the P0327 and P0328 codes.

4 30. The representative obtained information indicating that none of these codes were
 5 applicable to the eleven vehicles. The VID data also showed that the inspections on all of the
 6 vehicles were performed under the technician license of Respondent Torres. The BAR concluded
 7 that Respondent performed the smog inspections on the vehicles using a different vehicle(s)
 8 during the OBD II tests, a method known as clean-plugging,³ resulting in the issuance of
 9 fraudulent certificates of compliance for the vehicles.

10 **TABLE 1**

Date & Time of Inspection	Vehicle Certified & License or Vin No.	Certificate No.
1. 4/5/2013 17:07 – 17:13 hours	1999 Suzuki Grand Vitara, 6XVR254	XT142308C
2. 4/13/2013 10:52 – 10:58 hours	2002 Ford Explorer, 6VLH094	XT142328C
3. 4/13/2013 13:28 – 13:39 hours	1999 Buick Century, 4EEA964	XT142329C
4. 4/15/2013 16:53 – 16:59 hours	2005 Chevrolet Astro, 7U26013	XT142334C
5. 5/1/2013 16:23 – 16:28 hours	2002 Chevrolet Silverado 1500, 7Z41677	XT433644C
6. 5/2/2013 9:44 – 10:09 hours	1998 Ford Expedition, 4VDC877	XT433646C
7. 5/2/2013 13:11 – 13:16 hours	2004 Dodge Ram 1500, 8T94586	XT433649C
8. 5/6/2013 9:45 – 9:53 hours	1999 Ford F150, 8X46755	XT664716C
9. 5/7/2013 11:41 – 11:48 hours	2000 Ford E350, 7T97115	XT664724C
10. 5/7/2013 14:59 – 15:03 hours	2001 Ford Expedition, 4SMC505	XT664725C
11. 7/10/13 13:37 – 13:46 hours	2000 Honda Odyssey, 4MXF896	XV842707C

23
 24
 25 ³ Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
 26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
 27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
 28 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
 control system or component failure.

1 compliance for vehicles 1 through 11, identified in Table 1 above, without performing bona fide
2 inspections of the emission control devices and systems on the vehicles, thereby depriving the
3 People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 **SIXTH CAUSE FOR DISCIPLINE**

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

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

10 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
11 devices and systems required by law for vehicles 1 through 11, identified in Table 1 above, were
12 installed and functioning correctly in accordance with test procedures.

13 b. **Section 44012, subdivision (f):** Respondent failed to perform the emission control
14 tests on vehicles 1 through 11, identified in Table 1 above, in accordance with procedures
15 prescribed by the department.

16 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
17 compliance for vehicles 1 through 11, identified in Table 1 above, without properly testing and
18 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section
19 44012.

20 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of
21 compliance for vehicles 1 through 11, identified in Table 1 above, by certifying that the vehicles
22 had been inspected as required when, in fact, they had not.

23 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

1 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
2 electronic smog certificates of compliance for vehicles 1 through 11, identified in Table I above.

3 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
4 through 11, identified in Table I above, in accordance with Health & Saf. Code sections 44012
5 and 44035, and California Code of Regulations, title 16, section 3340.42.

6 c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection
7 system vehicle identification information or emission control system identification data for a
8 vehicle other than the one being tested for vehicles 1 through 11, identified in Table I above.

9 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
10 through 11, identified in Table I above, in accordance with the Bureau's specifications.

11 **EIGHTH CAUSE FOR DISCIPLINE**

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

13 38. Respondent's technician license is subject to disciplinary action pursuant to Health &
14 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent,
15 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
16 for vehicles 1 through 11, identified in Table I above, without performing bona fide inspections
17 of the emission control devices and systems on the vehicles, thereby depriving the People of the
18 State of California of the protection afforded by the Motor Vehicle Inspection Program.

19 **OTHER MATTERS**

20 39. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
21 suspend, revoke or place on probation the registration for all places of business operated in this
22 state by Respondent Miguel A. Torres, owner of Tunes Lubes & Smog II, upon a finding that
23 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
24 regulations pertaining to an automotive repair dealer.

25 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
26 Number RC 263149, issued to Respondent Miguel A. Torres, owner of Tunes Lubes & Smog II,
27 is revoked or suspended, any additional license issued under this chapter in the name of said
28 licensee may he likewise revoked or suspended by the Director.

1 41. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
2 No. FO 631939; Smog Check Repair Technician License No. EI 631939, issued to Respondent
3 Miguel A. Torres, is revoked or suspended, any additional license issued under this chapter in the
4 name of said licensee may be likewise revoked or suspended by the Director.

5 PRAYER

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

8 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
9 263149, issued to Miguel A. Torres, owner of Tunes Lubes & Smog II;

10 2. Revoking or suspending any other automotive repair dealer registration issued to
11 Miguel A. Torres;

12 3. Revoking or suspending Smog Check Station License Number RC 263149, issued to
13 Miguel A. Torres, owner of Tunes Lubes & Smog II;

14 4. Revoking or suspending Brake Station License Number BS 263149, issued to Miguel
15 A. Torres, owner of Tunes Lubes & Smog II;

16 5. Revoking or suspending Lamp Station License Number LS 263149, issued to Miguel
17 A. Torres, owner of Tunes Lubes & Smog II;

18 6. Revoking or suspending Smog Check Inspector License No. EO 631939 and Smog
19 Check Repair Technician License No. EI 631939, issued to Miguel A. Torres;

20 7. Revoking or suspending Brake Adjuster License Number BA 631939, issued to
21 Miguel A. Torres;

22 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of Miguel A. Torres;

24 9. Ordering Miguel A. Torres to pay the Bureau of Automotive Repair the reasonable
25 costs of the investigation and enforcement of this case, pursuant to Business and Professions
26 Code section 125.3;

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

DATED: 10-1-13

Pat Dorais by Doug Balatti
PATRICK DORAIS
Acting Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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

In the Matter of the Statement of Issues
Against:

Case No. 79/14-075

**BEN VICTOR SHIMEK, Owner,
PETROLEUM SALES INC., dba LUCKY
DRIVE SMOG SHOP
36-B Industrial Way
Greenbrae, CA 94904**

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Director of Consumer Affairs and the Bureau of Automotive Repair as the Decision and Order in the above entitled matter.

This Decision shall become effective on _____.

It is so ORDERED _____.

FOR THE BUREAU AUTOMOTIVE REPAIR