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

11
12 In the Matter of the Accusation Against:

Case No. **79/15-6**

13 **AUTOMOTIVE SPEEDY SMOG**
RIGOBERTO CORTEZ, OWNER
14 **1433 West Linden Street, #K**
Riverside, CA 92507

ACCUSATION

15 **Automotive Repair Dealer Registration**
16 **No. ARD 248108**
Smog Check, Test Only, Station License
17 **No. TC 248108**

18 **RIGOBERTO CORTEZ**
19 **798 Kelly Lane**
Riverside, CA 92501

20 **Smog Check Inspector License**
21 **No. EO 147061**
(formerly Advanced Emission Specialist
22 **Technician License No. EA 147061)**

23 Respondents.

24
25 Complainant alleges:

26 **PARTIES**

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

1 the conduct of the business of the automotive repair dealer, which are done by the
2 automotive repair dealer or any automotive technician, employee, partner, officer,
3 or member of the automotive repair dealer.

4

5 (3) Failing or refusing to give to a customer a copy of any document
6 requiring his or her signature, as soon as the customer signs the document.

7

8 (6) Failure in any material respect to comply with the provisions of this
9 chapter or regulations adopted pursuant to it.

10

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

16 13. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

23

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

26

27 14. Section 44072.8 of the Health and Safety Code states:

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

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

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

1 (a) Emission control systems required by state and federal law are reducing
2 excess emissions in accordance with the standards adopted pursuant to
3 subdivisions (a) and (c) of Section 44013.

4 (b) Motor vehicles are preconditioned to ensure representative and
5 stabilized operation of the vehicle's emission control system.

6

7 (e) For diesel-powered vehicles, if the department determines that the
8 inclusion of those vehicles is technologically and economically feasible, a visual
9 inspection is made of emission control devices and the vehicle's exhaust emissions
10 in an idle mode or loaded mode are tested in accordance with procedures
11 prescribed by the department. The test may include testing of emissions of any or
12 all of the pollutants specified in subdivision (c) and, upon the adoption of
13 applicable standards, measurement of emissions of smoke or particulates, or both.

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

19 (g) A determination as to whether the motor vehicle complies with the
20 emission standards for that vehicle's class and model-year as prescribed by the
21 department.

22

23 16. Section 44015, subdivision (b), of the Health and Safety Code states:

24 "(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
25 issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

26 17. Section 44032 of the Health and Safety Code states, in pertinent part:

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

REGULATORY PROVISIONS

18 18. California Code of Regulations, title 16, (CCR) section 3340.30, states, in pertinent
19 part:

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

22 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
23 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
24 3340.42 of this article.

1 vehicle was inspected by Respondent Cortez. Following completion of the inspection the
2 operator received a copy of an unnumbered invoice and the Vehicle Inspection Report (VIR).
3 The VIR indicated the Ford had passed the inspection and was issued Certificate of Compliance
4 No [REDACTED]

5 24. The operator then drove the vehicle and gave custody of it back to a Bureau
6 representative. On December 17, 2013, Respondents Speedy Smog and Cortez issued a
7 Certificate of Compliance for the Ford that should have failed the inspection.

8 **FIRST CAUSE FOR DISCIPLINE**

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

10 25. Respondent Speedy Smog's registration is subject to disciplinary action pursuant to
11 Health and Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply
12 with the following sections of that Code:

13 a. **Section 44012:** Respondent failed to follow emission control systems inspection or
14 test procedures.

15 b. **Section 44012, subdivision (f):** Respondent failed to determine that emission control
16 devices and systems required by the department are installed and functioning correctly in
17 accordance with test procedures.

18 c. **Section 44015, subdivision (b):** Respondent issued an electronic smog certificate,
19 without ensuring that the vehicle was properly tested and inspected to determine if it was in
20 compliance with Health and Safety Code section 44012.

21 **SECOND CAUSE FOR DISCIPLINE**

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

23 26. Respondent Speedy Smog's registration is subject to disciplinary action pursuant to
24 Health and Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply
25 with provisions of California Code of Regulations, title 16, as follows:

26 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
27 of compliance for a vehicle, even though the vehicle had not been inspected in accordance with
28 section 3340.42, and did not have the required emission control devices installed and functioning.

1 issued Citation Number C2011-0919 to Respondent Speedy Smog and Citation Number M2011-
2 0920 to Respondent Cortez, for the issuance of a Certificate of Compliance to an undercover
3 vehicle that had a missing Positive Crankcase Ventilation (PCV) system. The Bureau ordered
4 Respondent Speedy Smog to pay a \$1,000.00 penalty, which was paid on March 14, 2011, and
5 Respondent Cortez complete an 8 hour training course, which was completed on April 27, 2011.
6 Those Citations are now final and are incorporated by reference as if fully set forth.

7 33. To determine the degree of discipline, if any, to be imposed on Respondent Rigoberto
8 Cortez, Complainant alleges that on or about December 5, 2011, in a prior action, the Bureau
9 issued Citation Number C2012-0597 to Respondent Speedy Smog and Citation Number M2012-
10 0598 to Respondent Cortez, for the issuance of a Certificate of Compliance to an undercover
11 vehicle that had a missing Fuel Evaporative Canister. The Bureau ordered Respondent Speedy
12 Smog to pay a \$1,500.00 penalty, which was paid on January 9, 2012, and Respondent Cortez
13 complete a 16 hour training course, which was completed on January 19, 2012. Those Citations
14 are now final and are incorporated by reference as if fully set forth.

15 34. To determine the degree of discipline, if any, to be imposed on Respondent Rigoberto
16 Cortez, Complainant alleges that on or about July 11, 2013, in a prior action, the Bureau issued
17 Citation Number C2014-0020 to Respondent Speedy Smog and Citation Number M2014-0021 to
18 Respondent Cortez, for the issuance of a Certificate of Compliance to an undercover vehicle that
19 had the ignition timing adjusted beyond specifications. The Bureau ordered Respondent Speedy
20 Smog to pay a \$3,000.00 penalty, which was appealed, affirmed, and has not been paid as of July
21 14, 2014. The Bureau ordered Respondent Cortez to complete a 68 hour training course and pay
22 a \$1,000.00 penalty, which was appealed, affirmed, and has not been satisfied by completion of
23 training or payment of penalty as of July 14, 2014. Those Citations are currently on appeal.

24 OTHER MATTERS

25 35. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke
26 or place on probation the registration for all places of business operated in this state by
27 Respondent Rigoberto Cortez, owner of Automotive Speedy Smog, upon a finding that
28

1 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
2 regulations pertaining to an automotive repair dealer.

3 36. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,
4 Station License Number TC 248108, issued to Respondent Rigoberto Cortez, owner of
5 Automotive Speedy Smog, is revoked or suspended, any additional license issued under this
6 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

7 37. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
8 License No. EO 147061, issued to Respondent Rigoberto Cortez, is revoked or suspended, any
9 additional license issued under this chapter in the name of said licensee may be likewise revoked
10 or suspended by the Director.

11 **PRAYER**

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 248108, issued to Rigoberto Cortez, dba Automotive Speedy Smog;

16 2. Revoking or suspending any other automotive repair dealer registration issued to
17 Rigoberto Cortez;

18 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
19 248108, issued to Rigoberto Cortez, dba Automotive Speedy Smog;

20 4. Revoking or suspending Smog Check Inspector License No. EO 147061, issued to
21 Rigoberto Cortez;

22 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of Rigoberto Cortez;

24 6. Ordering Rigoberto Cortez 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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7. Taking such other and further action as deemed necessary and proper.

DATED: 7-15-14

~~Patrick Dorais by [Signature]~~
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Assist. chief
Doug BALATH,

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