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

10 In the Matter of the Accusation Against:

Case Number: 79/17-1229

11 **CHEVREM CORPORATION**
12 **d.b.a EL CERRITO TEST ONLY CENTER**
FATIH TEKIN, PRESIDENT/SECRETARY/
13 **TREASURER**
14 **10439 San Pablo Avenue, Unit A**
El Cerrito, CA 94530

A C C U S A T I O N

15 **Mailing address:**
PO Box 3587
16 **Oakland, CA 94601**

17 **Automotive Repair Dealer No. ARD 258902**
Smog Check, Test Only, License No. TC 258902

18 **FATIH TEKIN**
19 **5200 Telegraph Avenue**
Oakland, CA 94609

20 **Mailing address:**
21 **121 Diamond Court**
Hercules, CA 94547

22 **Smog Check Inspector License No. EO 26524**

23 **MICKEY MARCELLUS THOMPSON**
24 **733 Oakwood Avenue**
Vallejo, CA 94591

25 **Mailing address:**
26 **55 Valle Vista Avenue, #613**
Vallejo, CA 94590

27 **Smog Check Inspector License No. EO 634946**
28

1 **LEONARD DAVID INDALECIO**
2 **10439 A San Pablo Avenue**
3 **El Cerrito, CA 94530**

4 **Mailing address:**
5 **2751 Bonhill Lane**
6 **San Pablo, CA 94806**

7 **Smog Check Inspector License No. EO 637641**

8 **JEFFREY EDWARD ORTIZ**
9 **1540 California Avenue**
10 **San Pablo, CA 94806**

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

12 Respondents.

13 Complainant alleges:

14 **PARTIES**

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

17 **Automotive Repair Dealer Registration – Respondent El Cerrito Test Only Center**

18 2. On or about July 28, 2009, the Bureau of Automotive Repair (Bureau) issued
19 Automotive Repair Dealer Registration Number ARD 258902 (Registration) to Chevrem
20 Corporation, Fatih Tekin, President/Secretary/Treasurer d.b.a El Cerrito Test Only Center
(Respondent El Cerrito Test Only Center). The Registration was in full force and effect at all
21 times relevant to the charges brought herein and will expire on March 31, 2019, unless renewed.

22 **Smog Check Test Only Station License – Respondent El Cerrito Test Only Center**

23 3. On or about August 6, 2009, the Bureau issued Smog Check, Test Only, Station
24 License Number TC 258902 to Respondent El Cerrito Test Only Center. The License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on March 31,
26 2019, unless renewed.

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1 4. On or about January 3, 2013, the Bureau issued a STAR Certificate to Respondent El
2 Cerrito Test Only Center. The STAR Certificate was in full force and effect at all times relevant
3 to the charges brought herein and will remain active unless the Automotive Repair Dealer
4 registration and/or Smog Check Station license is revoked, canceled, licenses become delinquent
5 or certification is invalidated.

6 **Smog Check Inspector Licenses**

7 5. In 2003, the Bureau issued Advanced Emission Specialist Technician License
8 Number EA 26524 to Fatih Tekin (Respondent Tekin). The Advanced Emission Specialist
9 Technician License expired on January 30, 2014. Pursuant to California Code of Regulations, title
10 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election,
11 as Smog Check Inspector License Number EO 26524, effective January 30, 2014.¹ The Smog
12 Check Inspector License was in full force and effect at all times relevant to the charges brought
13 herein and will expire on January 31, 2020, unless renewed.

14 6. On or about November 13, 2012, the Bureau issued Smog Check Inspector License
15 Number EO 634946 to Mickey Marcellus Thompson (Respondent Thompson). The Smog Check
16 Inspector License was in full force and effect at all times relevant to the charges brought herein
17 and will expire on June 30, 2020, unless renewed.

18 7. On or about December 15, 2014, the Bureau issued Smog Check Inspector License
19 Number EO 637641 to Leonard David Indalecio (Respondent Indalecio). The Smog Check
20 Inspector License was in full force and effect at all times relevant to the charges brought herein
21 and will expire on July 31, 2020, unless renewed.

22 8. On or about July 16, 2015, the Bureau issued Smog Check Inspector License Number
23 EO 638354 to Jeffrey Edward Ortiz (Respondent Ortiz). The Smog Check Inspector License was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 January 31, 2019, unless renewed.

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

9. “Respondents” shall refer to Respondents Thompson, Indalecio, and Ortiz collectively.

JURISDICTION

10. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

11. Business and Professions Code (Code) section **118**, subdivision(b) states that “the suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

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

STATUTORY AND REGULATORY PROVISIONS

13. Section 9884.7 of the Code states, in pertinent part:

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

(1) Making or authorizing in any manner or by any means whatever any statement written or oral 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.

1 (4) Any other conduct that constitutes fraud.

2 . . .

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

5 . . .

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

10 14. Section **44002** of the Health and Safety Code provides, in pertinent part, that the
11 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
12 the Motor Vehicle Inspection Program.

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

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

18 . . .

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

23 . . . "

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

27 17. Section **44032** of the Health and Safety Code, provides that no person shall perform,
28 for compensation, tests or repairs of emission control devices or systems of motor vehicles

1 required by this chapter unless the person performing the test or repair is a qualified smog check
2 technician and the test or repair is performed at a licensed smog check station. Qualified
3 technicians shall perform tests of emission control devices and systems in accordance with
4 Section 44012.

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

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

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

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

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

17 . . .

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

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

20 . . .

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

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

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1 21. Section **44072.8** of the Health and Safety Code states:

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

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

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

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

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

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

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

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

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

20 . . .

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

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

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

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

1 . . . "

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

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

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

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

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

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

17 . . . "

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

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

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

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

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

26 "No automotive repair dealer or individual in charge shall, in filling out an estimate,
27 invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter,
28 withhold therefrom or insert therein any statement or information which will cause any such

1 document to be false or misleading, or where the tendency or effect thereby would be to mislead
2 or deceive customers, prospective customers, or the public."

3 COSTS

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

10 FACTUAL SUMMARY

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

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

25 33. The inspector also performs visual and functional tests on the vehicle as outlined in
26 the Smog Check Manual. The visual inspection of the emission control components verifies the
27 required emission control devices are present and properly connected. Functional tests are also
28 performed which, depending on the vehicle, may include checking the ignition timing,

1 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test
2 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
3 cap.

4 34. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
5 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
6 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
7 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.

8 35. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
9 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
10 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
11 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
12 vehicle. The bar code scanner is used to input technician information, the vehicle identification
13 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
14 Reports.

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

20 37. As part of the BAR-OIS smog inspections, the technician also performs a visual and
21 functional test on the vehicle being inspected. The visual inspection of the emission control
22 components verifies the required emission control devices are present and properly connected and
23 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
24 makes the determination whether or not the vehicle passes the inspection based on the results of
25 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
26 compliance is issued. The information from the smog inspection is then transmitted to the
27 Vehicle Information Data (VID).

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1 38. The Bureau can access the VID to view test data on smog check inspections
2 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
3 particular vehicle which has been tested.

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

8 40. One method is known as "clean plugging." Clean plugging is the act of using one
9 vehicle's properly functioning OBDII system, or another source, to generate passing data readings
10 or diagnostic information for the purpose or fraudulently issue a smog certificate of compliance to
11 a vehicle that is not in smog compliance and/or not present for testing. The vehicle being tested is
12 not the one being issued the certificate of compliance.

13 41. The Bureau initiated an investigation of Respondent El Cerrito Test Only Center.
14 Beginning on or about November 20, 2014 and continuing until about March 13, 2017,
15 Respondents² were found to have performed six fraudulent smog inspections using clean-
16 plugging methods. Clean-plugging is the practice of testing one OBD II system (a system that
17 would pass the smog inspection), for the purpose of fraudulently issuing a smog certificate of
18 compliance to another vehicle that would not pass the smog inspection and/or is not present for
19 testing. The vehicle receiving the certificate of compliance is not actually tested during the smog
20 inspection.

21 42. A Bureau representative reviewed data for six clean plugged vehicles inspected by
22 Respondents Thompson, Indalecio, and Ortiz and certified by Respondent El Cerrito Test Only
23 Center. The data revealed that the six vehicles that were purportedly tested by Respondents were
24 not and could not have been connected to the DAD when they were being certified because the
25 OBD-II data purportedly transmitted by those vehicles could not have been transmitted by those
26 vehicles.

27
28 ² Respondents Thompson, Indalecio, and Ortiz performed the smog tests on behalf of
Respondent El Cerrito Test Only Center.

43. Respondents clean plugged and issued fraudulent certificates of compliance to the following six vehicles:

a) Clean Plug# 1 - 2009 BMW 328I SULEV, VIN: WBAWV13591P122232 CA license number 6GTJ461, performed by Respondent Thompson on November 20, 2014:

Certificate #	eVIN	Protocol	PID count
YL695084C			
Fraudulent Passing Inspection (11/20/2014)	Not Reported	I914	<u>23/1</u>
Expected OBDII Value	WBAWV13591P122232	ICAN11bt5	<u>46 or 46/11</u>

b) Clean Plug #2 – 2007 Lexus ES 350, VIN: JTHBJ46G672125289, CA license number 7BEM351, performed by Respondent Indalecio on June 5, 2015:

Certificate #	eVIN	Protocol	PID count
YR890025C			
Fraudulent Passing Inspection (06/05/2015)	Not Reported	I914	<u>20</u>
Expected OBDII Value	JTHBJ46G672125289	ICAN11bt5	<u>44/10 or 46/17</u>

c) Clean Plug #3 – 2007 Acura RDX, VIN: 5J8TB18247A006859, CA license number 5XQL707, performed by Respondent Indalecio on October 24, 2015:

Certificate #	eVIN	Protocol	PID count
PY479092C			
Fraudulent Passing Inspection (10/24/2015)	Not Reported	I914	<u>18/7</u>
Expected OBDII Value	5J8TB18247A006859	ICAN29bt5	<u>37/19</u>

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d) Clean Plug #4 – 2010 Toyota Tacoma Prerunner Long Bed, VIN: 3TMKU4HN2AM026201, CA license number 8Y16102, performed by Respondent Ortiz on April 30, 2016:

Certificate #	eVIN	Protocol	PID count
ZD202031C			
Fraudulent Passing Inspection (4/30/2016)	Not Reported	I914	<u>20</u>
Expected OBDII Value	3TMKU4HN2AM026201	ICAN11bt5	<u>46</u>

e) Clean Plug #5 – 2001 Chevrolet Suburban K 1500 VIN: 3GNFK16T61G175448, CA license number 4PTF381, performed by Respondent Indalecio on November 30, 2016:

Certificate #	eVIN	Protocol	PID count
ZL332919C			
Fraudulent Passing Inspection (11/30/2016)	JTEDW21A470019501	ICAN11bt5	<u>44/20</u>
Expected OBDII Value	3GNFK16T61G175448	JVPW	<u>22</u>

f) Clean Plug #6 – 2007 Toyota Tacoma Double Cab Prerunner Long Bed, VIN: 5TEKU72N07Z422522, CA license number 8G37173, performed by Respondent Indalecio on March 13, 2017:

Certificate #	eVIN	Protocol	PID count
ZR322219C			
Fraudulent Passing Inspection (3/13/2017)	JTMZF4DVOA5018117	ICAN11bt5	<u>40</u>
Expected OBDII Value	5TEKU72N07Z422522	ICAN11bt5	<u>44 or 46</u>

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FIRST CAUSE FOR DISCIPLINE
(Misleading Statements - Registration)

44. Respondent El Cerrito Test Only Center has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading, as set forth above in paragraphs 41-43, above. Respondents fraudulently purported to test the six vehicles, and certified that the six vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using clean-plugging methods.

SECOND CAUSE FOR DISCIPLINE
(Fraud - Registration)

45. Respondent El Cerrito Test Only Center has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that it committed acts which constitute fraud, as set forth above in paragraphs 41-43, above.

THIRD CAUSE FOR DISCIPLINE
(Failure to Comply with the Provisions of the Automotive Repair Act)

46. Respondent El Cerrito Test Only Center has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that it failed in a material respect to comply with the provisions of this chapter or regulations adopted, as set forth above in paragraphs 41-43, above.

FOURTH CAUSE FOR DISCIPLINE
(Violations of the Motor Vehicle Inspection Program – Smog Check Station License)

47. Respondent El Cerrito Test Only Center has subjected its station license to discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that it violated sections of that Code and applicable regulations, as set forth above in paragraphs 41-43, as follows:

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

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1 b. **Section 44012, subdivision (f):** Respondent El Cerrito Test Only Center failed to
2 perform a visual or functional check of emission control devices on those vehicles in accordance
3 with procedures prescribed by the department.

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

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

11 e. **Section 3340.35(c):** Respondent El Cerrito Test Only Center failed to ensure that the
12 emission control tests were performed on those vehicles in accordance with procedures prescribed
13 by the department.

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

17 g. **Section 3340.45, subdivision(a)(2):** Respondent El Cerrito Test Only Center failed to
18 perform smog check inspections in accordance with requirements and procedures prescribed in
19 the Smog Check Inspection Manual.

20 h. **Section 3373:** Respondent El Cerrito Test Only Center created false or misleading
21 work orders by issuing the fraudulent certificates of compliance for the six vehicles.

22 **FIFTH CAUSE FOR DISCIPLINE**
23 **(Dishonesty, Fraud or Deceit – Smog Check Station License)**

24 48. Respondent El Cerrito Test Only Center subjected its station license to discipline
25 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that it
26 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing
27 electronic certificates of compliance for vehicles without performing bona fide inspections of the
28 emission control devices and systems on the vehicles, thereby depriving the People of the State of

1 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
2 in paragraphs 41-43, above.

3 **SIXTH CAUSE FOR DISCIPLINE**
4 **(Violations of the Motor Vehicle Inspection Program:**
5 **Smog Check Inspector - Thompson)**

6 49. Respondent Thompson has subjected his Smog Check Inspector license to discipline
7 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
8 violated sections of that Code and applicable regulations, as set forth above in paragraphs 41-43,
9 as follows:

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

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

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

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

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

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

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28 ///

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

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

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

9 50. Respondent Thompson subjected his Smog Check Inspector License to discipline
10 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he
11 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing
12 electronic certificates of compliance for vehicles without performing bona fide inspections of the
13 emission control devices and systems on the vehicles, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
15 in paragraphs 41-43.

16 **EIGHTH CAUSE FOR DISCIPLINE**
17 **(Violations of the Motor Vehicle Inspection Program:**
18 **Smog Check Inspector License - Indalecio)**

19 51. Respondent Indalecio has subjected his Smog Check Inspector license to discipline
20 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
21 violated sections of that Code and applicable regulations, as set forth above in paragraphs 41-43,
22 as follows:

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

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

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

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

4 e. **Section 3340.30, subdivision (a):** Respondent Indalecio failed to inspect and test
5 those vehicles in accordance with Health and Safety Code section 44012 and California Code of
6 Regulations title 16, section 3340.42.

7 f. **Section 3340.41, subdivision (c):** Respondent Indalecio entered vehicle identification
8 information for a vehicle other than the one being tested into the emissions inspection system.
9 Respondent Indalecio knowingly entered false information about the vehicle being tested into the
10 emissions inspection system.

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

14 h. **Section 3340.45, subdivision(a)(2):** Respondent Indalecio failed to perform smog
15 check inspections in accordance with requirements and procedures prescribed in the Smog Check
16 Inspection Manual.

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

19 52. Respondent Indalecio subjected his Smog Check Inspector License to discipline
20 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he
21 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing
22 electronic certificates of compliance for vehicles without performing bona fide inspections of the
23 emission control devices and systems on the vehicles, thereby depriving the People of the State of
24 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
in paragraphs 41-43.

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

53. Respondent Ortiz has subjected his Smog Check Inspector license to discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations, as set forth above in paragraphs 41-43, as follows:

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

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

c. **Section 44032:** Respondent Ortiz failed to perform tests of emission control devices and systems a vehicle in accordance with Section 44012.

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

e. **Section 3340.24, subdivision (c):** Respondent Ortiz falsely or fraudulently issued electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles as required by Health and Safety Code section 44012.

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

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

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

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

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

9 54. Respondent Ortiz subjected his Smog Check Inspector License to discipline under
10 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
11 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
12 certificates of compliance for vehicles without performing bona fide inspections of the emission
13 control devices and systems on the vehicles, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
15 in paragraphs 41-43.

16 **OTHER MATTERS**

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

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

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

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

7 59. Pursuant to Health & Safety Code section 44072.8, if Respondent Ortiz's Smog
8 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
9 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
10 likewise revoked or suspended by the director.

11 **DISCIPLINE CONSIDERATIONS**

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

22 61. To determine the degree of discipline, if any, to be imposed on Respondent El Cerrito
23 Test Only Center, Complainant alleges that on or about September 15, 2008, in a prior action, an
24 accusation was filed on Chevrem Corporation and its President, Fatih Tekin, d.b.a. Clear Blue
25 Test Only Smog Station, Clear Blue Test Only Smog Station 2, Clear Blue Test Only Station 3,
26 Test Only Smog Station II, and GIC Smog Station for causing the issuance of 13 fraudulent Smog
27 Check Inspection Certificates of Compliance. On April 6, 2009, the Department of Consumer
28 Affairs adopted a decision in the matter of Accusation 79/09-21 which revoked all Smog Check

1 Station licenses and Automotive Repair Dealer registrations for each facility. However, the
2 revocations were stayed and the stations were placed on five years probation. In addition, each
3 station was suspended anywhere from 5 to 45 days.

4 62. To determine the degree of discipline, if any, to be imposed on Respondent El Cerrito
5 Test Only Center, Complainant alleges that on or about September 12, 2014, in a prior action, the
6 Bureau of Automotive Repair issued Citation Number C2014-1194 and ordered Respondent to
7 pay a \$1,000.00 fine. The citation was based on its failure to perform a smog check inspection in
8 accordance with the Bureau of Automotive Repair and/or manufacturer prescribed testing
9 procedures. That Citation is now final and is incorporated by reference as if fully set forth.

10 63. To determine the degree of discipline, if any, to be imposed on Respondent
11 Thompson, Complainant alleges that on or about June 26, 2015, in a prior action, the Bureau of
12 Automotive Repair issued Citation Number M2015-1549. The citation was based on his failure to
13 perform a smog check inspection in accordance with Bureau of Automotive Repair and/or
14 manufacturer testing procedures. The citation was affirmed on October 7, 2015 with the training
15 requirement removed. The decision became effective on November 6, 2015. That Citation is now
16 final and is incorporated by reference as if fully set forth.

17
18 **PRAYER**

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

21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 258902, issued to Chevrem Corporation, Fatih Tekin, President, doing business as El Cerrito Test
23 Only Center;

24 2. Revoking or suspending Smog Check Test Only Station License Number TC
25 258902, issued to Chevrem Corporation, Fatih Tekin, President, doing business as El Cerrito Test
26 Only Center;

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

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

7 5. Revoking or suspending Smog Check Inspector License EO 26524 issued to Fatih
8 Tekin;

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

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

14 8. Revoking or suspending Smog Check Inspector License EO 634946 issued to
15 Mickey Marcellus Thompson;

16 9. Revoking or suspending any additional Smog Check Station License, Smog Check
17 Inspector License, or Smog Check Repair Technician License, issued to Mickey Marcellus
18 Thompson;

19 10. Ordering Mickey Marcellus Thompson to pay the Bureau of Automotive Repair
20 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3;

22 11. Revoking or suspending Smog Check Inspector License EO 637641 issued to
23 Leonard David Indalecio;

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

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

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


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

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

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

12
13 DATED:

February 19, 2019



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