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8 **BEFORE THE**
9 **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. 79/14-22

13 **LORENZO SOLORIO SANCHEZ –**
14 **OWNER, DBA ABC TEST ONLY**
2446 Main Street, Suite D
Chula Vista, CA 91911

A C C U S A T I O N
(SMOG CHECK)

15 **Automotive Repair Dealer Registration No.**
16 **ARD 263213**
Smog Check-Test Only Station License No.
17 **TC 263213**

and

18 **GABINO V. HERNANDEZ**
1035 South 14th Street
El Centro, CA 92243

19 **Smog Check Inspector License No. EO20707**
20 **(formerly Advanced Emission Specialist**
Technician License No. EA20707)

21 **Respondents.**

22
23 Complainant Patrick Dorais alleges:

24 **PARTIES**

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

1 (b) Except as provided for in subdivision (c), if an automotive repair dealer
operates more than one place of business in this state, the director pursuant to
2 subdivision (a) shall only suspend, revoke, or place on probation the registration of
the specific place of business which has violated any of the provisions of this chapter.
3 This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

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

7
8 11. H&S Code section 44012 states:

9 The test at the smog check stations shall be performed in accordance with
10 procedures prescribed by the department and may require loaded mode dynamometer
testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard
11 diagnostic system, or other appropriate test procedures as determined by the
department in consultation with the state board. The department shall implement
12 testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or
two-speed idle testing, on model year 2000 and newer vehicles only, beginning no
13 earlier than January 1, 2013. However, the department, in consultation with the state
board, may prescribe alternative test procedures that include loaded mode
14 dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems
that the department and the state board determine exhibit operational problems. The
department shall ensure, as appropriate to the test method, the following:

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

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

19

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

23

24 12. H&S Code section 44015 states in pertinent part:

25

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

28

1 13. H&S Code section 44032 states:

2 No person shall perform, for compensation, tests or repairs of emission
3 control devices or systems of motor vehicles required by this chapter unless the
4 person performing the test or repair is a qualified smog check technician and the test
5 or repair is performed at a licensed smog check station. Qualified technicians shall
6 perform tests of emission control devices and systems in accordance with Section
7 44012.

8 14. H&S Code section 44072.2 states, in pertinent part:

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

12 (a) Violates any section of this chapter and the regulations adopted pursuant
13 to it, which related to the licensed activities.

14 (b) Is convicted of any crime substantially related to the qualifications,
15 functions, or duties of the license-holder in question.

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

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

20 15. H&S Code, section 44072.8 of the H&S Code states:

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

24 REGULATORY PROVISIONS

25 16. CCR section 3340.30 states in pertinent part:

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

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

....

17. CCR section 3340.35 states in pertinent part:

....

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

correctly.

....

18. CCR section 3340.41 states in pertinent part:

....

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

....

19. CCR section 3340.42 states:

With the exception of diesel-powered vehicles addressed in subsection (f) of this section, the following emissions test methods and standards apply to all vehicles:

(a) A loaded-mode test, except as otherwise specified, shall be the test method used to inspect vehicles registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (b) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the VLT Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle is not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

(b) A two-speed idle mode test, unless a different test is otherwise specified in this article, shall be the test method used to inspect vehicles registered in all program areas of the state, except in those areas of the state where the enhanced program has been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection (b) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emission standards set forth in this section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or equal to the applicable emissions standards specified in Table III.

....

(e) In addition to the test methods prescribed in this section, the following tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog Check inspection:

(1) A visual inspection of the vehicle's emissions control systems. During the visual inspection, the technician shall verify that the following emission control devices, as applicable, are properly installed on the vehicle:

- 1 (A) air injection systems,
2 (B) computer(s) and related sensors and switches,
3 (C) crankcase emissions controls, including positive crankcase ventilation,
4 (D) exhaust gas after treatment systems, including catalytic converters,
5 (E) exhaust gas recirculation (EGR) systems,
6 (F) fuel evaporative emission controls,
7 (G) fuel metering systems, including carburetors and fuel injection,
8 (H) ignition spark controls, and
9 (I) any emissions control systems that are not otherwise prompted by the
Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

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11 20. CCR section 3373 states:

12 No automotive repair dealer or individual in charge shall, in filling out an
13 estimate, invoice, or work order, or record required to be maintained by section
14 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
15 information which will cause any such document to be false or misleading, or where
16 the tendency or effect thereby would be to mislead or deceive customers, prospective
17 customers, or the public.

16 COST RECOVERY

17 21. Code section 125.3 provides, in pertinent part, that a Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 I. DECEMBER 15, 2012 – JULY 30, 2013 VID REVIEW

22 22. From December 15, 2012, and continuing through July 30, 2013, a BAR Program
23 Representative (representative) reviewed the VID data for all smog check inspections requiring
24 the OBD II functional test performed at ABC Test Only.² That review, as well as Respondents'

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26 ² The On Board Diagnostic, generation II ("OBD II"), functional test is an automated
27 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a
28 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
(continued...)

records, revealed that ABC Test Only, through Respondent Hernandez, issued 11 fraudulent electronic certificates of compliance using clean-plugging methods. "Clean-plugging" means using the on-board computer from a vehicle known to be in compliance with California's smog testing standards or an outside source to substitute for the on-board computer of a vehicle known not to pass a California smog inspection.³ All 11 smog check inspections were performed by Respondent Hernandez. None of the 11 vehicles should have been issued certificates of compliance because all 11 of them had OBD II fault codes that did not apply to them, as shown in the table below. In fact, the first ten of the 11 unsupported codes were identical.

#	Time of Certification			Vehicle Certified					Certificate #
	Date	Start	End	Year	Make	Model	VIN	Unsupported Code(s) / Monitor(s)	
1	12/15/2012	1337	1349	2002	Nissan	Maxima	JN1DA31A42T303679	P0325	XP249303C
2	12/27/2012	1736	1746	2003	Volvo	S40	YV1VS29543F932756	P0325	XP353770C
3	01/07/2013	1714	1721	2000	Hyundai	Accent	KMHCF35G4YU044389	P0325	XP456825C
4	01/11/2013	1659	1712	2002	Nissan	Sentra	3N1AB51D62L701423	P0325	XP675551C
5	02/07/2013	1607	1616	2001	Hyundai	Tiburon	KMHJG25F81U222509	P0325	XR133859C
6	03/01/2013	1742	1754	2002	Nissan	XTerra 2WD	5N1ED28T82C600217	P0325	XR514909C
7	03/21/2013	1837	1844	2004	Nissan	Sentra	3N1CB51A74L562047	P0325	XR897768C
8	04/01/2013	1737	1749	2002	Subaru	Impreza AWD	JF1GG68572G800114	P0325	XT034832C
9	04/23/2013	1627	1646	2001	Kia	Sportage 2WD	KNDJB723815052897	P0325	XT336395C
10	04/27/2013	1125	1133	2003	Subaru	Impreza AWD	JF1GD29693G506479	P0325	XT536309C
11	07/16/2013	1623	1631	2002	Volkswagen	Jetta Wagon	WVWSK61J62W573627	P0735	XV900072C

23. After completing his review of the VID data for the first ten fraudulently issued certificates of compliance, on June 5, 2013, the representative went to ABC Test Only, met with

Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically 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.

³More specifically, clean-plugging is the use of the OBD II readiness monitor status and stored code status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to the noncompliant vehicle's failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure. Clean-plugging occurs during the inspection of a vehicle that has an OBD II system. To clean-plug a vehicle, the smog technician enters information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD II system connector from the EIS into another vehicle that has a properly functioning OBD II system in order to obtain a "Passing" OBD II functional test result.

1 Respondent Hernandez, and asked him to provide all invoices and VIRs from December 15,
2 2012, to the date of his visit. Respondent Hernandez did so and the representative reviewed the
3 first ten records and their compilation with him, and explained to Respondent Hernandez that the
4 ten OBD II fault codes were not supported by the vehicles tested. Respondent Hernandez could
5 not explain why the ten vehicles tested contained fault codes unsupported by them.

6 24. On July 30, 2013, the representative reviewed the VID data for all smog check
7 inspections requiring the OBD II functional test performed at ABC Test Only for the period from
8 July 12, 2013, through July 20, 2013. That review revealed that on July 16, 2013, between 1623
9 and 1631 hours, ABC Test Only, through Respondent Hernandez, issued one more fraudulent
10 electronic certificate of compliance using clean-plugging methods, as detailed in item 11 of the
11 table above.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

14 25. Respondent ABC's registration is subject to discipline under Code section 9884.7,
15 subdivision (a)(1), in that its employee Respondent Hernandez made statements which he knew
16 or which by exercise of reasonable care should have been known to be untrue or misleading when
17 he issued electronic certificates of compliance for the vehicles set forth in paragraphs 22—24
18 above, certifying that those vehicles were in compliance with applicable laws and regulations
19 when, in fact, those vehicles had been clean-plugged.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

22 26. Respondent ABC's registration is subject to discipline under Code section 9884.7,
23 subdivision (a)(4), in that its employee committed acts constituting fraud by issuing electronic
24 certificates of compliance for the vehicles set forth in paragraphs 22—24 above, without
25 performing bona fide inspections of the emission control devices and systems on the vehicles,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 27. Respondent ABC's registration is subject to disciplinary action pursuant to Code
4 section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that said
5 Respondent failed to comply with the following sections of the CCR:

6 a. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
7 compliance for the vehicles set forth in paragraphs 22—24 above, even though the vehicles had
8 not been inspected in accordance with section 3340.42.

9 b. **Section 3340.42:** Respondent issued electronic certificates of compliance for the
10 vehicles set forth in paragraphs 22—24 above, even though the vehicles had not been inspected in
11 accordance with BAR specifications.

12 c. **Section 3373:** In issuing electronic certificates of compliance for the vehicles set forth
13 in paragraphs 22—24 above, Respondent inserted therein information causing those certificates to
14 be false or misleading, with the tendency or effect to mislead or deceive customers, prospective
15 customers, or the public.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Chapter Requirements)**

18 28. Respondent ABC's station license is subject to discipline under H&S Code section
19 44072.2, subdivision (a), in that said Respondent failed to comply with the following sections of
20 that Code

21 a. **Section 44012, subdivision (f):** Respondent failed to test and inspect the vehicles set
22 forth in paragraphs 22—24 above, in accordance with the procedures prescribed by the
23 department.

24 b. **Section 44015, subdivision (b).** Respondent issued electronic certificates of
25 compliance for the vehicles set forth in paragraphs 22—24 above, without properly testing and
26 inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 29. Respondent ABC's station license is subject to discipline under H&S Code section
4 44072.2, subdivision (c), in that said Respondent failed to materially comply with the following
5 sections of the CCR:

6 a. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
7 compliance for the vehicles set forth in paragraphs 22—24 above, even though the vehicles had
8 not been tested and inspected in accordance with the procedures specified in section 3340.42 of
9 that Code.

10 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections
11 on the vehicles set forth in paragraphs 22—24 above, in accordance with the Bureau's
12 specifications.

13 **SIXTH CAUSE FOR DISCIPLINE**

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

15 30. Respondent ABC's station license is subject to discipline under H&S Code section
16 44072.2, subdivision (d), in that said Respondent committed acts involving dishonesty, fraud, or
17 deceit whereby another was injured by issuing electronic certificates of compliance for the
18 vehicles set forth in paragraphs 22—24 above, without performing bona fide inspections of the
19 emission control devices and systems on those vehicles, thereby depriving the People of the State
20 of California of the protection afforded by the Motor Vehicle Inspection Program.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Chapter Requirements)**

23 31. Respondent Hernandez's inspector license is subject to discipline under H&S Code
24 section 44072.2, subdivision (a), in that he violated the following sections of that Code:

25 a. **Section 44012, subdivision (f):** Respondent failed to perform the smog inspections
26 on the vehicles set forth in paragraphs 22—24 above, in accordance with procedures prescribed
27 by the department.
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1 Sanchez upon a finding that he has, or is, engaged in a course of repeated and willful violation of
2 the laws and regulations pertaining to an automotive repair dealer.

3 35. Pursuant to H&S Code section 44072.8, if Smog Check Test Only Station License
4 Number TC 263213 issued to Lorenzo Solorio Sanchez, is revoked or suspended, any additional
5 license issued under this chapter in the name of said licensee may be likewise revoked or
6 suspended by the director.

7 36. Pursuant to H&S code section 44072.8, if Smog Check Inspector License Number EO
8 20707 (formerly Advanced Emission Specialist Technician License No. EA20707), issued to
9 Respondent Hernandez is revoked or suspended, any additional license issued under this chapter
10 in the name of said licensee may be likewise revoked 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, suspending or placing on probation Automotive Repair Dealer Registration
15 No. ARD 263213, issued to Lorenzo Solorio Sanchez – Owner, DBA ABC Test Only;

16 2. Revoking, suspending or placing on probation any other automotive repair dealer
17 registration issued to Lorenzo Solorio Sanchez – Owner, DBA ABC Test Only;

18 3. Revoking, suspending or placing on probation Smog Check Test Only Station
19 License Number TC 263213, issued to Lorenzo Solorio Sanchez – Owner, DBA ABC Test Only;

20 4. Revoking, suspending or placing on probation any additional license issued under
21 Chapter 5 of the Health and Safety Code in the name of Lorenzo Solorio Sanchez;

22 5. Revoking or suspending Smog Check Inspector License Number EO 20707 (formerly
23 Advanced Emission Specialist Technician License No. EA20707) issued to Gabino V.
24 Hernandez;

25 6. Revoking, suspending or placing on probation any additional license issued under
26 Chapter 5 of the Health and Safety Code in the name of Gabino V. Hernandez;

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7. Ordering Lorenzo Solorio Sanchez and Gabino V. Hernandez, jointly and severally, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: September 17, 2013



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

SD2013705872