

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

In the Matter of the Accusation Against:

**MARCELO VERAZAS ZEPEDA, JR.,
Owner, dba EL VALLE SMOG TEST
ONLY & REGISTRATION**

1047 B Grapefruit Boulevard

Coachella, CA 92236

Mailing address:

51-890 Harrison Street

Coachella, CA 92236

Automotive Repair Dealer Registration No.

ARD 270145

Smog Check, Test Only, Station License No.

TC 270145

and

MARCELO VERAZAS ZEPEDA, JR.

84357 Volare Avenue

Indio, CA 92203

Smog Check Inspector License No.

EO 636063

Case No. 79/17-10750

OAH No.: 2019030873

Respondents.

DECISION

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

This Decision shall become effective at 5:00 PM on November 13, 2019.

DATED: Oct. 2, 2019



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

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MARCELO VERAZAS ZEPEDA, JR., Owner,

DBA EL VALLE SMOG TEST ONLY & Registration

and

MARCELO VERAZAS ZEPEDA, JR.

Respondents

Case No. 79/17-10750

OAH No. 2019030873

PROPOSED DECISION

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter on July 31, 2019, in San Diego, California.

David E. Hausfeld, Deputy Attorney General, represented Patrick Dorais, Chief of
the Bureau of Automotive Repair, Department of Consumer Affairs.

Mario Rivas, Attorney at Law, represented Marcelo Verazas Zepeda, Jr., owner of and doing business as El Valle Smog & Registration, and Marcelo Verazas Zepeda, Jr., individually.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 31, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. Patrick Dorais filed Accusation, Case number 79/17-10750, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

Marcelo Verazas Zepeda, Jr., Owner, dba El Valle Smog Test Only & Registration (Respondent El Valle Smog), and Marcelo Verazas Zepeda Jr. (Respondent Zepeda), individually, filed a timely Notice of Defense, requesting a hearing in this matter.

2. On August 31, 2012, the Bureau issued Automotive Repair Dealer Registration Number ARD 270145 (dealer registration) to Respondent El Valle Smog. At all times relevant to the charges in the Accusation, the dealer registration was in full force and effect and will expire on August 31, 2019, unless renewed or revoked.

3. On October 12, 2012, the Bureau issued Smog Check, Test Only, Station License Number TC 270145 (smog check station license) to Respondent El Valle Smog. At all times relevant to the charges in the Accusation, the smog check station license was in full force and effect and will expire on August 31, 2019, unless renewed or revoked.

4. On September 23, 2013, the Bureau issued Smog Check Inspector License Number EO 636063 (technician license) to Respondent Zepeda, Jr. The technician license was in full force and effect and will expire on November 30, 2019, unless renewed or revoked.

Smog Check Program Background

5. California's Smog Check Program requires owners of most motor vehicles to subject their vehicles to a smog check inspection, pass the smog inspection and receive a Certificate of Compliance every two years when renewing the vehicle registration or transferring the title. The inspection is performed by smog check inspectors at smog check stations, which are licensed by the bureau. The Smog Check Program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles.

Smog Check Program Update

6. Beginning March 9, 2015, the smog check program was updated. The program update required use of an on-board diagnostic inspection system (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of the state when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and 1998 and newer diesel vehicles subject to the program. The system consists of a certified data acquisition device (DAD), computer, bar code scanner and printer. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the California BAR-OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the BAR-OIS software and will be retrieved. The DAD connects between the BAR-OIS computer and the vehicle's diagnostic link connector

DLC. The BAR-OIS uses the BAR-OIS software to communicate with the vehicle information database (VID) through an internet connection.

The bar code scanner is used to input inspector information, the vehicle identification number (VIN) and Department of Motor Vehicle (DMV) renewal information. The printer provides a vehicle inspection report (VIR) containing inspection results for motorists and a smog check Certificate of Compliance number for passing vehicles.

7. Data retrieved, captured and recorded to the VID during a BAR-OIS smog check inspection include: the electronic vehicle identification number (eVIN), which is the digitally stored VIN programmed into the vehicle's powertrain control module (PCM); the communication protocol, which is the specific "language" the PCM uses to relay or communicate information to scan tools and other computers or devices, such as the BAR-OIS; and the number of parameter identifications (PIDs), which is the specific data values each PCM reports related to the emissions control.

The eVIN was required to be programmed into the vehicle's PCM on 2005 and newer vehicles and, in some instances, is on earlier model year vehicles.

The communication protocol is programmed into the vehicle's on-board computer during manufacture and does not change.

PIDs are data points reported by the vehicle's on-board computer to a scan tool or BAR-OIS. The PID count is the number of data points reported by the vehicle's on-board computer and is programmed during manufacture.

Smog technicians perform a visual and functional test on the vehicle. The visual inspection of the emission control components verifies the required emission control

devices are present and properly connected, and a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software determines whether the vehicle passes the inspection based on the results of the OBD, visual and functional tests.

The BAR-OIS prints a VIR, a physical record of the test results and indicates the Certificate of Compliance number that was issued if the vehicle passes the smog check inspection. The smog check inspector must sign the VIR, under penalty of perjury, verifying that the inspection was performed within the Bureau's guidelines.

Licensed smog check inspectors are the only persons authorized by the Bureau to perform official inspections. They are issued a license and a personal access code which are used to gain access to the EIS and to set up a username and password within the BAR-OIS to perform smog check inspections.

8. The VID contains registration data from DMV plus emission standards, vehicle smog check inspections, smog check stations and inspectors, and Certificates of Compliance. The VID has an internal clock that is set to Pacific Standard Time and records the time and date for each inspection. Each Certificate of Compliance has a unique control number so that it can be tracked to determine which smog check station purchased the Certificate of Compliance and to which vehicle it was issued. The VID receives the smog check results immediately following the inspection. The Bureau can access the VID to review test data on smog inspections performed at any smog check station, or search for, retrieve, and print a test record for a particular vehicle which has been tested. If a vehicle passes the smog inspection, the vehicle information and test results are electronically transmitted to DMV.

9. Some smog check stations and some smog check technicians use methods to issue smog certificates to vehicles that will not pass a smog check test, or in some instances, are not present during the time the smog check test is being performed. One of these methods is "clean plugging," the act of using another vehicle's properly functioning OBD II system, or another source, to generate passing data readings or diagnostic information for the purpose of fraudulently issuing Certificates to vehicles that are not in smog compliance and or not present for testing.

Bureau Investigation

10. Ian Evans, a Bureau Program Representative II, initiated an investigation of Respondent El Valle's Smog to determine if Respondent El Valle Smog or its employees engaged in fraudulent smog check inspections.

11. Mr. Evans has worked in various capacities in the automotive industry since 1970 and with the bureau since 2006. He has been licensed as a smog check technician and smog repair technician since 2010. His duties at the bureau include reviewing administrative cases, preparing administrative cases, conducting surveillance, and planning investigations. Mr. Evans has been involved in over 100 investigations.

12. Mr. Evans reviewed Respondent El Valle Smog's certified smog test results in the VID for inspections on the OIS in March, April and May 2017. He determined that Respondent El Valle Smog and, smog technician, Respondent Zepeda, inspected five vehicles (identified below) and issued Certificates of Compliance by using the method known as "clean plugging." The five vehicles had information stored in the VID which did not apply to those vehicles.

All five vehicles were inspected under Respondent Zepeda's smog check technician license number. In all five cases, Respondent's smog technician badge was scanned into OIS, and his password was used.

Regarding all five vehicles, according to the OIS test data, the vehicle tested was the same and was not the vehicle which Respondent Zepeda claimed he had inspected and certified as having passed a smog inspection.

Mr. Evans concluded that all five vehicles had been clean plugged and that the Certificates of Compliance were fraudulently issued. Mr. Evans documented his findings in an investigation report. He testified in this proceeding.

VEHICLE #1

13. OIS test data indicate that, on March 2, 2017, between 11:54 a.m. and 11:59 a.m., a 2004 Honda Odyssey EXL (2004 Honda Odyssey), VIN number 5NRLI8024B051113, California license number 5GCC586, was smog tested at Respondent El Valle Smog. According to the VIR, the 2004 Honda Odyssey passed the smog inspection, was issued Certificate of Compliance number QI110361C, and certified under Smog Check Technician number EO 636063, Respondent Zepeda's smog technician license number. The OIS test details for the 2004 Honda Odyssey showed that the eVIN was not reported, the communication protocol transmitted was JPWM and PID count was 20.

Comparative OIS test data for similar 2004 Honda Odysseys showed that year, make, and model does not report the eVIN, the communication protocol is I914 and the PID count is 16.

The communication protocol and PID count should have matched between the above mentioned OIS test and the comparative OIS test data. The discrepancies in the OIS test data establish that the OIS DAD was not connected to the 2004 Honda Odyssey being certified, causing the issuance of an illegal Certificate of Compliance.

VEHICLE #2

14. OIS test data indicate that, on March 21, 2017, between 3:41 p.m. and 3:45 p.m., a 2001 Acura 3.2CL Type S (2001 Acura), VIN number 19UYA42621A42621A028243, California license number 6JUS861, was smog tested at Respondent El Valle Smog. According to the VIR, the 2001 Acura passed the smog inspection, was issued Certificate of Compliance number ZR480195C, and was certified under Smog Check Technician number EO 636063, Respondent Zepeda's smog technician license number. The OIS test data for the 2001 Acura showed that the eVIN was not reported, the communication protocol was transmitted as JPWM and PID count was 20.

Comparative OIS test data for similar 2001 Acura showed that year, make, and model do not report the eVIN, the communication protocol is I914, and the PID count is 16.

The PID count and the communication protocol should have matched between the above mentioned OIS test and the comparative OIS test data. The discrepancies in the OIS test data establish that the OIS DAD was not connected to the 2001 Acura being certified, causing the issuance of an illegal smog Certificate of Compliance.

The VID reflects that, on May 6, 2015, between 2:08 p.m. and 2:21 p.m., a prior OIS test was performed at another station on the same 2001 Acura, and the vehicle passed that inspection. The eVIN was not reported, and the communication protocol

was I914, and the PID count was 16, consistent with the expected OIS test data transmitted by similar vehicles.

VEHICLE #3

15. OIS test data indicate that, on April 17, 2017, between 10:25 a.m. and 10:28 a.m., a 2000 Dodge Grand Caravan SE (2000 Dodge Caravan), VIN number 1B4GP44R8YB760992, California license number 6RKE322, was smog tested at Respondent El Valle Smog. According to the VIR, the 2000 Dodge Caravan passed the smog inspection, was issued Certificate of Compliance number ZT42681C, and certified under Smog Check Technician number EO 636063, Respondent Zepeda's smog technician license number. The OIS test data shows the eVIN was not reported; communication protocol transmitted was JPWM and the PID count was 20.

Comparative OIS test data for similar 2000 Dodge Caravan showed that year, make, and model does not report the eVIN, the communication protocol is JPWM, and the PID Count is 20.

The PID count and the communication protocol should match between the above mentioned OIS test and the comparative OIS test data. The discrepancies in the OIS test data establish that the OIS DAD was not connected to the 2000 Dodge Grand Caravan being certified, causing the issuance of an illegal Certificate of Compliance.

The VID reflects that on April 15, 2015, between 12:21 p.m. and 12:26 p.m., a prior OIS test was performed at Respondent El Valle Smog on the same 2000 Dodge Caravan, and the vehicle passed the inspection. The eVIN was not reported, and the communication protocol was I914, and the PID count was 15/3, consistent with the expected OIS test data transmitted by similar vehicles. The technician who performed the smog inspection was Carlos Garcia, Respondent Zepeda's employee.

The VID reflects that, on July 4, 2019, between 11:49 a.m. and 11:54 a.m., a subsequent OIS test was performed at another station on the same 2000 Dodge Caravan, and the vehicle passed the inspection. The eVIN was not reported, and the communication protocol was I914, and the PID count was 15/3, consistent with the expected OIS test data transmitted by similar vehicles.

VEHICLE #4

16. BAR-OIS test data indicate that, on May 5, 2017, between 1:21 p.m. and 1:24 p.m., a 2003 Honda Odyssey EX (2003 Honda Odyssey), VIN number 5FNRL18623B099715, California license number 5CGA089, was smog tested at Respondent El Valle Smog. According to the VIR, the 2003 Honda Odyssey passed the smog inspection, was issued Certificate of Compliance number ZV025227G, and certified under Smog Check Technician number EO 636063, Respondent Zepeda's smog technician license number. The OIS test data shows the eVIN was not reported, the communication protocol was JPWM and the PID count was 20.

Comparative BAR-OIS test data for similar 2003 Honda Odyssey vehicles showed that year, make, and model does not report the eVIN, the communication protocol is I914, and the PID count is 16.

The PID count and the communication protocol should match between the above mentioned OIS test and the comparative OIS test data. The discrepancies in the OIS test data prove that the OIS DAD was not connected to the 2003 Honda Odyssey being certified, causing the issuance of an illegal Certificate of Compliance.

The VID reflects that, on May 8, 2015, between 10:29 a.m. and 10:35 a.m., a prior OIS test was performed at another station on this same 2003 Honda Odyssey, and the vehicle passed that inspection. The eVIN was not reported; the communication

protocol was I914, and the PID count was 16, consistent with the expected OIS test transmitted by similar vehicles.

VEHICLE #5

17. OIS test data indicate that, on May 9, 2017, between 5:12 p.m. and 5:15 p.m., a 2000 Honda Odyssey EX (2000 Honda Odyssey), VIN number 2HKRL1874YH559930, California license number 6WGH821, was smog tested at Respondent El Valle Smog. According to the VIR, the 2000 Honda Odyssey passed the smog inspection, was issued Certificate of Compliance number ZV259210C, and certified under Smog Check Technician number EO 636063, Respondent Zepeda's smog technician license number. The OIS test data shows the eVIN was not reported, the communication protocol was JPWM and the PID count was 20.

Comparative OIS test data for similar 2000 Honda Odyssey vehicles showed that year, make, and model does not report the eVIN, the communication protocol is I914 and the PID count is 16.

The PID count and the communication protocol should match between the above mentioned OIS test and the comparative OIS test data. The discrepancies in the OIS test data establish that the OIS DAD was not connected to the 2000 Honda Odyssey being certified, causing the issuance of an illegal Certificate of Compliance.

The VID reflects that, on March 6, 2017, between 5:55 p.m. and 5:59 p.m., a prior OIS test was performed at another station on this same 2000 Honda Odyssey, and the vehicle failed that inspection. The eVIN was not reported, the communication protocol was I914, and the PID count was 16, consistent with the expected OIS test data transmitted by similar vehicles.

Respondent's Testimony and Argument

18. Respondent Zepeda testified as a witness in this proceeding. He has operated Respondent El Valle Smog since October 2012. At that time, he employed one other smog technician. In 2013 he obtained his smog technician license and began performing smog inspections. During the relevant time period (March, April and May 2017), Respondent Zepeda operated his station with the assistance of two employees. One was Carlos Garcia, a smog technician licensed by the Bureau. One of the reasons that he hired Mr. Garcia was because of Mr. Garcia's good reputation as a smog technician. The other employee was Carlos De Lara, who was not licensed as a smog technician. Respondent Zepeda hired both in 2015. These employees worked on a full-time basis at Respondent El Valle Smog in March, April and May 2017. Mr. Garcia was the "main smog technician" and performed smog inspections; Mr. De Lara managed the station, performing tasks such as completing the invoices, bringing the vehicle into the area for the smog inspection and charging the clients. According to Respondent Zepeda, he was present at the station unless he was at DMV performing required tasks at the DMV office because he provided DMV services.

19. Respondent Zepeda did not dispute that the smog inspections for the five vehicles (Findings 13, 14, 15, 16 and 17) were performed at Respondent El Valle Smog, and that the smog inspections were performed scanning Respondent Zepeda's badge and entering his passcode.

20. Respondent Zepeda testified that, on the dates that the smog inspection of the five vehicles were performed, he was present at respondent El Valle Smog, but he was not there during the times that the smog inspections for the five vehicles (Findings 13, 14, 15, 16 and 17) were performed.

21. Respondent Zepeda believes that Mr. Garcia and Mr. De Lara conspired to perform the illegal smog inspections.

Respondent Zepeda testified that, in July 2017 prior to learning of the Bureau's charges, he "fired" Mr. De Lara because he found money missing from Respondent El Valle Smog. He explained how he made the determination; when he confronted Mr. De Lara about the missing money, Mr. De Lara became angry, threw the keys to the station on Respondent Zepeda's desk, left the station and never returned.

Respondent Zepeda believed that his employees (Misters Garcia and De Lara) conspired to perform the "illegal smog inspections." When asked, Mr. Garcia denied knowledge of the issue. Respondent Zepeda fired Mr. Garcia. At the time of hearing, Respondent Zepeda had another technician working at Respondent El Valle Smog.

22. In response to the evidence that, at the time of the smog inspections, his smog technician badge was scanned into the OIS, and his pass code was used, Respondent Zepeda explained that he did not authorize the use of his badge by Mr. Garcia or Mr. De Lara; and he did not give anyone his pass code.

23. When asked how his badge or pass code could have been used, Respondent Zepeda explained that, at the conclusion of his business day, he puts his smog technician badge in his desk. The desk is not locked and is accessible to employees. Also, he testified that one of his employees could have looked over his shoulder and obtained his pass code.

24. Respondent Zepeda offered no evidence to establish that he has changed any practice in the operation of his station. On the date of hearing, Respondent Zepeda employed another smog technician, who was at his station in

Coachella; Respondent Zepeda's technician badge remained in his desk at his station, in an unlocked desk drawer.

25. The Bureau has licensed Respondent El Valle Smog since 2012 and Respondent Zepeda since 2013.

No evidence was offered to establish that the Bureau has previously disciplined Respondent El Valle Smog or Respondent Zepeda.

Costs of Investigation and Enforcement

26. Complainant seeks recovery of the costs of investigation and enforcement. In support of the foregoing, complainant submitted: (1) Certification of Costs of Investigation of \$663.98, and (2) Certification of Prosecution Costs: Declaration of David E. Hausfeld of \$6,937.50. Attached to Mr. Hausfeld's declaration was the Matter Time Activity report which detailed costs in increments of one-quarter hour and described the corresponding tasks performed, in enforcement of the matter.

LEGAL CONCLUSIONS

Purpose of Administrative Disciplinary Proceedings

1. Administrative proceedings to revoke, suspend, or impose discipline on a licensee are noncriminal and nonpenal; they are not intended to punish the licensee, but to protect the public. (*Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

2. Business and Professions Code¹ section 9880.3 states protection of the public is the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions; whenever protection of the public is inconsistent with other interests sought to be promoted, protection of the public is paramount.

Burden and Standard of Proof

3. In administrative disciplinary proceedings, the burden of proving the charges rests upon the party making the charges. The obligation of a party to sustain the burden of proof requires the production of evidence. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

4. Courts draw a distinction between professional licenses (such as those held by doctors and lawyers) and nonprofessional or occupational licenses (such as those held by processors and vehicle salespersons). In proceedings to revoke professional licenses, the clear and convincing standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses, the preponderance of the evidence standard applies. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.)

Disciplinary Statutes and Regulations

5. Business and Professions Code section 9884.7 provides in part:

¹ Hereinafter all reference is to the Business and Professions Code unless otherwise stated.

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may . . . 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.

[11] . . . [11]

(4) Any other conduct that constitutes fraud.

[11] . . . [11]

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

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or 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 engaged in the course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

6. Section 44012 of the Health and Safety Code provides, in part, that the test at a smog check station shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013.

7. Section 44015 of the Health and Safety Code states, in part:

(a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

[1] . . . [1]

(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 certificate of noncompliance. . .

8. Section 44032 of the Health and Safety Code states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station.

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

9. Section 44059 of the Health and Safety Code states:

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

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

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

[¶] . . . [¶]

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

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

11. Section 44072.10 of the Health and Safety Code states, in part:

[¶] . . . [¶]

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

[¶] . . . [¶]

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

12. California Code of Regulations, title 16, section 3340.24, subdivision (c), states: "The bureau may suspend or revoke the license or pursue legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance."

13. California Code of Regulations, title 16, section 3340.30, subdivision (a), states that a licensed smog inspector and/or repair technician shall "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."

14. California Code of Regulations, title 16, section 3340.35, states, in part, "a licensed station shall issue a certificate of compliance . . . to the owner or operator of any vehicle that has been inspected in accordance with the procedure specified in

section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly."

15. California Code of Regulations, title 16, section 3340.41, subdivision (c) states: "No person shall enter into the BAR-97 Emissions Inspection System or the OBD 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 BAR-97 Emissions Inspection System or the OBD Inspection System any false information about the vehicle being tested."

16. California Code of Regulations, title 16, section 3373, states: "No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public."

The Meaning of "Fraud"

17. Code sections 9884 and 9889.3 and Health and Safety Code section 44072.2 authorize discipline for "fraud." Civil Code section 1575 states: "Fraud is either actual or constructive." Actual fraud is defined in Civil Code section 1572 to include "an intent to deceive another party. . ." Constructive fraud is defined in Civil Code section 1573 to include "any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault . . . by misleading another to his prejudice . . ."

There is no absolute or fixed rule for determining what facts will constitute fraud; whether or not it is found depends upon the particular facts of the case under

inquiry. Fraud may be proved by direct evidence or it may be inferred from all of the circumstances in the case. (*Ach v. Finkelstein* (1968) 264 Cal.App.2d 667, 674-675.)

The Automotive Repair Act does not limit the term "fraud" to actual fraud, and the limitation of that term would defeat the legislative purpose of the Automotive Repair Act, which is to protect the public.

Causes for Discipline

18. Respondent El Valle Smog certified five vehicles (Findings 13, 14, 15, 16 and 17)) passed smog inspections and were in compliance with applicable laws and regulations by its smog technician, Respondent Zepeda. In fact, Respondent El Valle Smog conducted the inspections on five vehicles (Findings 13, 14, 15, 16 and 17) using clean-plugging methods in order to issue smog certificates of compliance for the vehicles and did not actually test or inspect the vehicles as required by Health and Safety Code section 44012.

Respondent Zepeda did not dispute the foregoing.

Instead he argued that his employees performed the inspections in his absence. Though he testified that he was not present during the inspections on five different days, he offered no testimony or other evidence to establish how he knew that he was not present during the time of the inspections or where he was. His testimony regarding how someone had his badge and access code was not credible. As such, the evidence established that Respondent Zepeda performed the smog inspections at issue in this case that resulted in the issuance of fraudulent Certificates of Compliance.

19. Nevertheless, even if Respondent Zepeda's employees had performed the smog inspections at issue in this case, as the owner of Respondent El Valle Smog, he is liable for the misconduct of his employees.

A licensee can be held responsible for his or her employees' actions even though the licensee has not participated in the wrongful conduct and has no knowledge of them. A non-negligent, licensed employer may be subject to discipline by the licensing agency when his employees perform a licensed activity negligently or in violation of statutes. The employer licensee's liability for the conduct of an employee acting under the employer's license is based on the theory that the employer licensee has a non-delegable duty of compliance. (*Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 799.) The rule of imputed knowledge arises to prevent licensees from staying away from the premises to avoid responsibility for wrongful acts occurring on the premises. The rule also exists to encourage licensees to monitor their employees. (*Santa Ana Food Market v. Alcoholic Beverage Control Bd.* (1999) 76 Cal.App.4th 570, 575-76.)

Even if Respondent Zepeda's employees performed the smog inspections at issue in this case, in his absence and without his knowledge, as the owner of Respondent El Valle Smog, Respondent Zepeda is liable for the misconduct of his employees.

20. Pursuant to Code section 9884.7, subdivision (a)(1), Respondent El Valle Smog's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent El Valle Smog made or authorized statements which respondent Zepeda knew, or in the exercise of reasonable discretion, should have known to be untrue or misleading. Respondent El Valle Smog conducted inspections on the five vehicles (Findings 13, 14, 15, 16 and 17) using clean-plugging

methods in order to issue smog certificates of compliance for vehicles he did not test or inspect as required by Health and Safety Section 44012.

21. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), Respondent El Valle Smog's registration is subject to discipline in that Respondent El Valle Smog committed acts that constitute fraud by issuing electronic smog certificates of compliance for the five vehicles (Findings 13, 14, 15, 16 and 17), without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

22. Pursuant to Health and Safety Code section 44072.2, subdivision (a), Respondent El Valle Smog's smog check station license is subject to discipline in that Respondent El Valle Smog failed to comply with the following sections of that Code:

- Section 44012, subdivision (a): Respondent El Valle Smog failed to ensure that all emission control devices and systems required by law on the five vehicles (Findings 13, 14, 15, 16 and 17) were installed and functioning correctly in accordance with test procedures.
- Section 44012, subdivision (f): Respondent El Valle Smog failed to ensure that emission control tests were performed on the five vehicles (Findings 13, 14, 15, 16 and 17) in accordance with procedures prescribed by the department.
- Section 44015, subdivision (b): Respondent El Valle Smog issued electronic smog certificates for the five vehicles (Findings 13, 14, 15, 16 and 17) without ensuring that the vehicles were properly tested

and inspected to determine if they were in compliance with Health and Safety Code section 44012.

- Section 44059: Respondent El Valle Smog willfully made false entries for the purpose of issuing electronic certificates of compliance for the five vehicles (Findings 13, 14, 15, 16 and 17) by certifying that the vehicles had been inspected as required when, in fact, they had not.

23. Pursuant to Health and Safety Code section 44072.2, subdivision (c), Respondent El Valle Smog's smog check station license is subject to discipline in that Respondent El Valle Smog failed to comply with the provisions of the California Code of Regulations, title 16, as follows:

- Section 3340.24, subdivision (c): Respondent El Valle Smog falsely or fraudulently issued electronic smog certificates of compliance for the five vehicles (Findings 13, 14, 15, 16 and 17).
- Section 3340.35, subdivision (c): Respondent El Valle Smog issued electronic smog certificates of compliance for the five vehicles (Findings 13, 14, 15, 16 and 17) even though the vehicles had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.
- Section 3340.42: Respondent El Valle Smog did not ensure that the required smog tests were conducted on the five vehicles (Findings 13, 14, 15, 16 and 17), in accordance with the Bureau's specifications.

- Section 3373: Respondent El Valle Smog created a false and misleading record by issuing documents that were false and misleading.

24. Pursuant to Health and Safety Code section 44072.2, subdivision (d), Respondent El Valle Smog's smog check station license is subject to discipline in that Respondent El Valle Smog committed dishonest, fraudulent or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance for the five vehicles (Findings 13, 14, 15, 16 and 17), without performing bona fide inspections of the emission control devices and systems on the vehicles, depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

25. Pursuant to Health and Safety Code section 44072.2, subdivision (a), Respondent Zepeda's smog technician license is subject to discipline in that Respondent Zepeda failed to comply with the following sections of that Code:

- Section 44012, subdivision (a): Respondent Zepeda failed to ensure that all emission control devices and systems required by law on the five vehicles (Findings 13, 14, 15, 16 and 17) were installed and functioning correctly in accordance with test procedures.
- Section 44012, subdivision (f): Respondent Zepeda failed to perform the emission control tests on five vehicles (Findings 13, 14, 15, 16 and 17) in accordance with procedures prescribed by the department.
- Section 44015, subdivision (b): Respondent Zepeda issued electronic smog certificates of compliance for five vehicles (Findings 13, 14, 15, 16 and 17) without properly testing and inspecting the vehicles to

determine if they were in compliance with Health and Safety Code section 44012.

- Section 44059: Respondent Zepeda willfully made false entries for the purpose of issuing electronic certificates of compliance for five vehicles (Findings 13, 14, 15, 16 and 17) by certifying that the vehicles had been inspected as required when, in fact, they had not.

26. Pursuant to Health and Safety Code section 44072.2, subdivision (c), Respondent Zepeda's smog technician license is subject to disciplinary action in that Respondent Zepeda failed to comply with the provisions of the California Code of Regulations, Title 16, as follows:

- Section 3340.24, subdivision (c): Respondent Zepeda falsely or fraudulently issued electronic certificates of compliance for five vehicles (Findings 13, 14, 15, 16 and 17).
- Section 3340.30, subdivision (a): Respondent failed to inspect and test the five vehicles (Findings 13, 14, 15, 16 and 17) in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations section 3340.42.
- Section 3340.41, subdivision (c): Respondent Zepeda entered into the emissions inspection system vehicle identification information or emission control system identification data for a vehicle other than the one being tested for the five vehicles (Findings 13, 14, 15, 16 and 17).

- Section 3340.42: Respondent Zepeda failed to conduct the required smog tests on the five vehicles (Findings 13, 14, 15, 16 and 17) in accordance with the Bureau's specifications.

27. Pursuant to Health and Safety Code section 44072.2, subdivision (d), cause exists to discipline Respondent Zepeda's smog technician license in that Respondent Zepeda committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance for the five vehicles (Findings 13, 14, 15, 16 and 17), without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Other Matters

28. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily or permanently or refuse to validate, 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 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

29. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only, Station License number TC 270145, is revoked or suspended, the Director may likewise revoke or suspend any additional license, issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, to Respondent El Valle Smog.

30. Pursuant to Health and Safety Code section 44072.8, if Respondent Zepeda's Smog Check Inspector License number EO636063 is revoked or suspended,

any additional license issued under this chapter in the name of Respondent Zepeda may be likewise revoked or suspended by the Director.

Appropriate Degree of Discipline

31. Respondent Zepeda engaged in numerous acts of fraud in his capacity as a smog check technician and as the owner and operator of a smog check station and automotive repair dealer registration. He denied wrongdoing despite the evidence to the contrary. He did not accept responsibility for his misconduct. Respondent Zepeda offered no evidence to establish that he has learned from the experience or that he had taken steps to avoid similar misconduct in the future. In support of the foregoing, most troubling is the fact that, despite the evidence in this case, on the day of hearing, Respondent Zepeda still had taken no steps to assure the security of his smog technician badge.

Costs of Investigation and Enforcement

32. Complainant has requested that Respondents be ordered to pay to the Bureau the costs of investigation and enforcement of the case. Business and Professions Code section 125.3 provides that Respondents may be ordered to pay the Bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

33. The case of *Zuckerman v. Board of Chiropractic Examiners*, (2002) 29 Cal.4th 32, sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in having charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to

the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. (*Id.* at p. 45.)

34. In this case, the hours of time spent on the investigation were appropriate in accordance with the evidence the Bureau produced in support of the alleged misconduct. Respondent Zepeda presented no evidence regarding his ability to pay costs. The Bureau proved all of the allegations.

35. The Bureau's costs of investigation and the Attorney General's costs of enforcement are reasonable. Combined, these costs total \$7,601.48.

ORDER

1. Automotive Repair Dealer Registration No. ARD270145, issued to Marcelo Verazas Zepeda, Jr., owner, doing business as El Valle Smog Test Only and Registration is revoked.

2. Smog Check Test Only Station License Number TC 270145, issued to Marcelo Verazas Zepeda, Jr., owner, doing business as El Valley Smog Test Only and Registration, is revoked.

3. Smog Check Inspector License No. EO 636063 issued to Marcelo Verazas Zepeda, Jr. is revoked.

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4. Marcelo Verazas Zepeda, Jr. shall pay the Bureau of Automotive Repair's costs of investigation and enforcement in the amount of \$7,601.48.

DATE: August 27, 2019

DocuSigned by:
Vallera Johnson

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VALLERA J. JOHNSON

Administrative Law Judge

Office of Administrative Hearings

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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. 79/17-10750

13 **MARCELO VERAZAS ZEPEDA, JR., OWNER,**
14 **dba EL VALLE SMOG TEST ONLY &**
REGISTRATION;
15 **1047 B Grapefruit Boulevard**
Coachella, CA 92236

A C C U S A T I O N

16 **Mailing Address:**
17 **51-890 Harrison Street**
Coachella, CA 92236

18 **Automotive Repair Dealer Registration No. ARD**
270145
19 **Smog Check, Test Only, Station License No. TC**
270145

20 **and**

21 **MARCELO VERAZAS ZEPEDA, JR.**
22 **84357 Volare Avenue**
23 **Indio, CA 92203**

24 **Smog Check Inspector License No.**
EO 636063

25 Respondents.
26

27 ///

28 ///

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration No. ARD 270145**

6 2. On August 31, 2012, the Bureau issued Automotive Repair Dealer Registration
7 Number ARD 270145 (dealer registration) to Marcelo Verazas Zepeda, Jr., Owner, dba El Valle
8 Smog Test Only & Registration (Respondent El Valle Smog). The dealer registration was in full
9 force and effect at all times relevant to the charges brought herein and will expire on August 31,
10 2018, unless renewed.

11 **Smog Check Station License No. TC 270145**

12 3. On October 12, 2012, the Bureau issued Smog Check, Test Only, Station License
13 Number TC 270145 (smog check station license) to Respondent El Valle Smog. The smog check
14 station license was in full force and effect at all times relevant to the charges brought herein and
15 will expire on August 31, 2018, unless renewed.

16 **Smog Check Inspector License No. EO 636063**

17 4. On September 23, 2013, the Bureau issued Smog Check Inspector License No. EO
18 636063 (technician license) to Marcelo Verazas Zepeda, Jr. (Respondent Zepeda). The technician
19 license was in full force and effect at all times relevant to the charges brought herein and will
20 expire on November 30, 2019, unless renewed.

21 **JURISDICTION**

22 5. This Accusation is brought before the Director of the Department of Consumer
23 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
24 All references are to the Business and Professions Code (Code) unless otherwise stated.

25 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
26 surrender or cancellation of a license shall not deprive the Director of jurisdiction to proceed with
27 a disciplinary action during the period within which the license may be renewed, restored,
28 reissued or reinstated.

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

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

9 9. Section 9884.20 of the Code states:

10 All accusations against automotive repair dealers shall be filed within three
11 years after the performance of the act or omission alleged as the ground for
12 disciplinary action, except that with respect to an accusation alleging fraud or
13 misrepresentation as a ground for disciplinary action, the accusation may be filed
within two years after the discovery, by the bureau, of the alleged facts
constituting the fraud or misrepresentation.

14 10. Section 9884.22, subdivision (a), of the Code states, in pertinent part:

15 (a) Notwithstanding any other provision of law, the director may revoke,
16 suspend, or deny at any time any registration required by this article on any of the
17 grounds for disciplinary action provided in this article. The proceedings under this
18 article shall be conducted in accordance with Chapter 5 (commencing with Section
11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director
shall have all the powers granted therein.

19 11. Section 44002 of the Health and Safety Code (H & S Code) provides, in pertinent
20 part, that the Director has all the powers and authority granted under the Automotive Repair Act
21 for enforcing the Motor Vehicle Inspection Program.

22 12. Section 44072.4 of the H & S Code states:

23 "The director may take disciplinary action against any licensee after a hearing as provided
24 in this article by any of the following:

25 "(a) Imposing probation upon terms and conditions to be set forth by the director.

26 "(b) Suspending the license.

27 "(c) Revoking the license."

28 ///

1 13. Section 44072.6 of the H & S Code provides, in pertinent part, that the expiration or
2 suspension of a license by operation of law, or by order or decision of the Director, or a court of
3 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
4 proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to
5 render a decision suspending or revoking the license.

6 14. Section 44072.7 of the H & S Code states:

7 All accusations against licensees shall be filed within three years after the act
8 or omission alleged as the ground for disciplinary action, except that with respect
9 to an accusation alleging a violation of subdivision (d) of Section 44072.2, the
10 accusation may be filed within two years after the discovery by the bureau of the
11 alleged facts constituting the fraud or misrepresentation prohibited by that section.

12 15. Section 44072.8 of the H & S Code states:

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

16 STATUTORY PROVISIONS

17 16. Section 9884.7 of the Code states:

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

24 (1) Making or authorizing in any manner or by any means whatever any
25 statement written or oral which is untrue or misleading, and which is known, or
26 which by the exercise of reasonable care should be known, to be untrue or
27 misleading.

28

 (4) Any other conduct which constitutes fraud.

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

 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
place on probation the registration for all places of business operated in this state

1 by an automotive repair dealer upon a finding that the automotive repair dealer
2 has, or is, engaged in a course of repeated and willful violations of this chapter, or
regulations adopted pursuant to it.

3 17. Section 44012 of the H & S Code provides, in pertinent part, that the test at the smog
4 check stations shall be performed in accordance with procedures prescribed by the department,
5 pursuant to Section 44013.

6 18. Section 44015 of the H & S Code states, in pertinent part:

7 (a) A licensed smog check station shall not issue a certificate of
8 compliance, except as authorized by this chapter, to any vehicle that meets the
following criteria:

9 (1) A vehicle that has been tampered with.

10

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

13

14 19. Section 44032 of the H & S Code states:

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

19 20. Section 44059 of the H & S Code states:

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

23 21. Section 44072.2 of the H & S Code states, in pertinent part:

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

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

28

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

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

5

6 22. Section 44072.10 of the H & S Code states, in pertinent part:

7

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

12

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

15 REGULATORY PROVISIONS

16 23. California Code of Regulations, title 16, (CCR) section 3340.24, sub-division (c),
17 states:

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

21 24. CCR section 3340.30, sub-division (a), states:

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

24 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
25 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
26 3340.42 of this article."

27 25. CCR section 3340.35, provides, in pertinent part, that a licensed station shall issue a
28 certificate of compliance . . . 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.

///

1 26. CCR section 3340.41, sub-division (c), states:

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

6 27. CCR section 3373, states:

7 No automotive repair dealer or individual in charge shall, in filling out an
8 estimate, invoice, or work order, or record required to be maintained by section
9 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
10 information which will cause any such document to be false or misleading, or
11 where the tendency or effect thereby would be to mislead or deceive customers,
12 prospective customers, or the public.

11 COST RECOVERY

12 28. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
16 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
17 included in a stipulated settlement.

18 CLEAN PLUGGING

19 29. The Bureau initiated an investigation of Respondent El Valle Smog's smog check
20 station based on a review of information from the Bureau's Vehicle Information Database (VID)
21 to determine if Respondent El Valle Smog or their employees had engaged in any fraudulent
22 smog check inspections.

23 30. During a Bureau representative's review of Respondent El Valle Smog's certified test
24 results in the VID for inspections purportedly performed on the Smog Check On-Board
25 Diagnostic Inspection System (OIS)¹ in March, April and May 2017, Respondent El Valle Smog

26 ¹ The On-Board Diagnostic Inspection System (OIS) is a Smog Check testing system to
27 certify 2000 model year vehicles and newer. The OIS consists of a BAR certified Data
28 Acquisition Device (DAD) and other equipment including a computer, bar code scanner, and
printer. The OIS uses the California BAR-OIS software to communicate with the BAR's central

1 and smog check technician, Respondent Zepeda inspected five vehicles, identified below, and
2 issued Certificates of Compliance by using the method known as "Clean Plugging".² This
3 resulted in the issuance of fraudulent Certificates of Compliance for each of the five vehicles.

4 31. The VIN that is physically present on all vehicles is also required to be programmed
5 into the vehicle's OBD-OIS on 2005 and newer vehicles, and on many occasions was
6 programmed into the OBD II system electronic control unit in earlier model-years. This
7 electronically programmed Vehicle Identification Number, also known as the "eVIN," is captured
8 by the Bureau during a Smog Check, and should match the physical Vehicle Identification
9 Number on the vehicle.

10 32. The OBD II communication protocol describes the specified communication
11 "language" used by the OBD II system electronic control unit to communicate to scan tools and
12 other devices such as the OBD-OIS. The communication protocol is programmed into the OBD
13 II system electronic control unit during manufacture and does not change.

14 33. Parameter Identifications (PIDs) are data points reported by the OBD II system
15 electronic control unit (ECU) to the scan tool or On-Board Diagnostic Inspection System.
16 Examples of PIDs are engine speed (rpm), vehicle speed, engine temperature, and other input and
17 output values utilized by the OBD II system electronic control unit. The PIDs count is the number
18 of data points reported by the OBD II system ECU, and is programmed during manufacture.

19 34. The five vehicles that are identified below had information stored in the VID which
20 did not apply to those vehicles. The five fraudulent Certificates of Compliance were issued as
21 follows:

22 database through an Internet connection. The bar code scanner is used to input technician,
23 Vehicle Identification Number (VIN), and DMV renewal information. The printer provides a
24 Vehicle Inspection Report containing inspection results for motorists and a Smog Check
25 Certificate of Compliance number for passing vehicles. The Inspector is required to connect the
26 Data Acquisition Device to the vehicle to be certified. The Data Acquisition Device is an On
27 Board Diagnostic scan tool that, when requested by the California BAR-OIS software, retrieves
28 On Board Diagnostic data from the vehicle. The Data Acquisition Device connects to the
vehicle's on-board computer through the vehicle's diagnostic link connector (DLC). The Data
Acquisition Device is the only BAR-certified component of the OIS.

² To "clean plug" a vehicle, the technician uses another vehicle's properly functioning On
Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing
diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to
vehicles that are not in smog compliance or not present during the certified test.

1 a. **Clean Plug # 1**

2 OIS Test Detail indicates that on March 2, 2017, between 11:54 and 11:59 hours, a 2004
3 Honda Odyssey, VIN "5FNRL18024B051113", California license plate # 5GCC586, passed an
4 OIS inspection. Certificate of Compliance # QI110361C was issued under Respondent El Valle
5 Smog's smog check station license, and certified under Respondent Zepeda's technician license.
6 The Test Detail shows the eVIN was not reported. Stored in the memory during this OIS
7 inspection was a PID count of "20" and a Communication Protocol of "JPWM".

8 Comparative OIS Test Data for 2004 Honda Odyssey vehicles reports the eVIN is not
9 reported, the communication protocol is "I914", and has a PID count of "16".

10 The PID value and the Communication Protocol should match between the above
11 mentioned OIS Test, and the comparative OIS test data. The discrepancies in the OIS Test Data
12 prove that the OIS DAD was not connected to the 2004 Honda Odyssey being certified, causing
13 the issuance of an illegal smog Certificate of Compliance.

14 b. **Clean Plug # 2**

15 OIS Test Detail indicates that on March 21, 2017, between 03:41 and 03:45 hours, a 2001
16 Acura 3.2CL, VIN "19UYA42621A028243", California license plate # 6JUS861, passed an OIS
17 inspection. Certificate of Compliance # ZR480195C was issued under Respondent El Valle
18 Smog's smog check station license, and certified under Respondent Zepeda's technician license.
19 The Test Detail shows the eVIN was not reported. Stored in the memory during this OIS
20 inspection was a PID count of "20" and a Communication Protocol of "JPWM".

21 Comparative OIS Test Data for 2001 Acura 3.2CL vehicles reports the eVIN is not
22 reported, the communication protocol is "I914", and has a PID count of "16".

23 The PID value and the Communication Protocol should match between the above
24 mentioned OIS Test, and the comparative OIS test data. The discrepancies in the OIS Test Data
25 prove that the OIS DAD was not connected to the 2001 Acura 3.2CL being certified, causing the
26 issuance of an illegal smog Certificate of Compliance.

27 The Vehicle Information Database reflects that on May 6, 2015, between 02:08 and 02:21
28 hours, a prior OIS test was performed at another station on this same 2001 Acura 3.2CL and the

1 vehicle passed that inspection. The eVIN was not reported, the certified PID count was "16", and
2 the Communication Protocol was "I914", consistent with the expected OIS Test Data and Similar
3 Vehicle OIS Test Data.

4 c. **Clean Plug # 3**

5 OIS Test Detail indicates that on April 17, 2017, between 10:25 and 10:28 hours, a 2000
6 Dodge Grand Caravan, VIN "1B4GP44R8YB760992", California license plate # 6RKE322,
7 passed an OIS inspection. Certificate of Compliance # ZT426281C was issued under Respondent
8 El Valle Smog's smog check station license, and certified under Respondent Zepeda's technician
9 license. The Test Detail shows the eVIN was not reported. Stored in the memory during this OIS
10 inspection was a PID count of "20" and a Communication Protocol of "JPWM".

11 Comparative OIS Test Data for 2000 Dodge Grand Caravan vehicles reports the eVIN is
12 not reported, the communication protocol is "I914", and has a PID count of "15/3".

13 The PID value and the Communication Protocol should match between the above
14 mentioned OIS Test, and the comparative OIS test data. The discrepancies in the OIS Test Data
15 prove that the OIS DAD was not connected to the 2000 Dodge Grand Caravan being certified,
16 causing the issuance of an illegal smog Certificate of Compliance.

17 The Vehicle Information Database reflects that on April 15, 2015, between 12:21 and 12:26
18 hours, a prior OIS test was performed at this station on this same 2000 Dodge Grand Caravan and
19 the vehicle passed that inspection. The eVIN was not reported, the certified PID count was
20 "15/3", and the Communication Protocol was "I914", consistent with the expected OIS Test Data
21 and Similar Vehicle OIS Test Data.

22 d. **Clean Plug # 4**

23 OIS Test Detail indicates that on May 5, 2017, between 01:21 and 01:24 hours, a 2003
24 Honda Odyssey, VIN "5FNRL18623B099715", California license plate # 5CGA089, passed an
25 OIS inspection. Certificate of Compliance # ZV025227C was issued under Respondent El Valle
26 Smog's smog check station license, and certified under Respondent Zepeda's technician license.
27 The Test Detail shows the eVIN was not reported. Stored in the memory during this OIS
28 inspection was a PID count of "20" and a Communication Protocol of "JPWM".

1 Comparative OIS Test Data for 2003 Honda Odyssey vehicles reports the eVIN is not
2 reported, the communication protocol is "I914", and has a PID count of "16".

3 The PID value and the Communication Protocol should match between the above
4 mentioned OIS Test, and the comparative OIS test data. The discrepancies in the OIS Test Data
5 prove that the OIS DAD was not connected to the 2003 Honda Odyssey being certified, causing
6 the issuance of an illegal smog Certificate of Compliance.

7 The Vehicle Information Database reflects that on May 8, 2015, between 10:29 and 10:35
8 hours, a prior OIS test was performed at another station on this same 2003 Honda Odyssey and
9 the vehicle passed that inspection. The eVIN was not reported, the certified PID count was "16",
10 and the Communication Protocol was "I914", consistent with the expected OIS Test Data and
11 Similar Vehicle OIS Test Data.

12 e. **Clean Plug # 5**

13 OIS Test Detail indicates that on May 9, 2017, between 05:12 and 05:15 hours, a 2000
14 Honda Odyssey, VIN "2HKRL1874YH559930", California license plate # 6WGH821, passed an
15 OIS inspection. Certificate of Compliance # ZV259210C was issued under Respondent El Valle
16 Smog's smog check station license, and certified under Respondent Zepeda's technician license.
17 The Test Detail shows the eVIN was not reported. Stored in the memory during this OIS
18 inspection was a PID count of "20" and a Communication Protocol of "JPWM".

19 Comparative OIS Test Data for 2000 Honda Odyssey vehicles reports the eVIN is not
20 reported, the communication protocol is "I914", and has a PID count of "16".

21 The PID value and the Communication Protocol should match between the above
22 mentioned OIS Test, and the comparative OIS test data. The discrepancies in the OIS Test Data
23 prove that the OIS DAD was not connected to the 2000 Honda Odyssey being certified, causing
24 the issuance of an illegal smog Certificate of Compliance.

25 The Vehicle Information Database reflects that on March 6, 2017, between 05:55 and 05:59
26 hours, a prior OIS test was performed at another station on this same 2000 Honda Odyssey and
27 the vehicle failed that inspection. The eVIN was not reported, the certified PID count was "16",
28

1 and the Communication Protocol was "I914", consistent with the expected OIS Test Data and
2 Similar Vehicle OIS Test Data.

3 35. The following table summarizes the fraudulent Certificates of Compliance issued by
4 Respondent El Valle Smog and Respondent Zepeda by clean plugging. The eVINs were not
5 reported on any of the five vehicles and were not expected to be reported.

6 **TABLE 1**

#	Veh Year	Make	Model	Lic #	Cert #	Insp PID	Exp PID	Insp Protocol	Exp Protocol
1	2004	Honda	Odyssey	5GCC586	QI110361C	20	16	JPWM	I914
2	2001	Acura	3.2 CL	6JUS861	ZR480195C	20	16	JPWM	I914
3	2000	Dodge	Caravan	6RKE322	ZT426281C	20	15/3	JPWM	I914
4	2003	Honda	Odyssey	5CGA089	ZV025227C	20	16	JPWM	I914
5	2000	Honda	Odyssey	6WGH821	ZV259210C	20	16	JPWM	I914

14
15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 36. Complainant re-alleges and incorporates by reference the allegations set forth above
18 in paragraphs 29-35.

19 37. Respondent El Valle Smog's dealer registration is subject to disciplinary action
20 pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent El Valle Smog made or
21 authorized statements which he knew or in the exercise of reasonable care should have known to
22 be untrue or misleading, as follows: Respondent El Valle Smog certified that vehicles 1 through
23 5, identified in Table 1 above, had passed inspection and were in compliance with applicable laws
24 and regulations. In fact, Respondent El Valle Smog conducted the inspections on the vehicles
25 using clean-plugging methods in order to issue smog certificates of compliance for the vehicles,
26 and did not actually test or inspect the vehicles as required by H & S Code section 44012.

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1 d. **Section 44059:** Respondent El Valle Smog willfully made false entries for
2 electronic certificates of compliance for vehicles 1 through 5, identified in Table 1
3 above, by certifying that the vehicles had been inspected as required when, in fact,
4 they had not.

5 **FOURTH CAUSE FOR DISCIPLINE**

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

7 42. Complainant re-alleges and incorporates by reference the allegations set forth above
8 in paragraphs 29-35.

9 43. Respondent El Valle Smog's smog check station license is subject to disciplinary
10 action pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent El Valle
11 Smog failed to comply with provisions of California Code of Regulations, title 16, as follows:

- 12 a. **Section 3340.24, subdivision (c):** Respondent El Valle Smog falsely or
13 fraudulently issued electronic smog certificates of compliance for vehicles 1 through
14 5, identified in Table 1 above.
- 15 b. **Section 3340.35, subdivision (c):** Respondent El Valle Smog issued electronic
16 smog certificates of compliance for vehicles 1 through 5, identified in Table 1 above,
17 even though the vehicles had not been inspected in accordance with section 3340.42.
- 18 c. **Section 3340.42:** Respondent El Valle Smog failed to ensure that the required
19 smog tests were conducted on vehicles 1 through 5, identified in Table 1 above, in
20 accordance with the Bureau's specifications.
- 21 d. **Section 3373:** Respondent El Valle Smog created a false and misleading record
22 by issuing documents that were false and misleading.

23 **FIFTH CAUSE FOR DISCIPLINE**

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

25 44. Complainant re-alleges and incorporates by reference the allegations set forth above
26 in paragraphs 29-35.

27 45. Respondent El Valle Smog's smog check station license is subject to disciplinary
28 action pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent El Valle

1 Smog committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing
2 electronic smog certificates of compliance for vehicles 1 through 5, identified in Table 1 above,
3 without performing bona fide inspections of the emission control devices and systems on the
4 vehicles, thereby depriving the People of the State of California of the protection afforded by the
5 Motor Vehicle Inspection Program.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Violation of Motor Vehicle Inspection Program)**

8 46. Complainant re-alleges and incorporates by reference the allegations set forth above
9 in paragraphs 29-35.

10 47. Respondent Zepeda's technician license is subject to disciplinary action pursuant to
11 H & S Code section 44072.2, subdivision (a), in that Respondent Zepeda failed to comply with
12 the following sections of that Code:

13 a. **Section 44012, subdivision (a):** Respondent Zepeda failed to ensure that all
14 emission control devices and systems required by law for vehicles 1 through 5,
15 identified in Table 1 above, were installed and functioning correctly in accordance
16 with test procedures.

17 b. **Section 44012, subdivision (f):** Respondent Zepeda failed to perform the
18 emission control tests on vehicles 1 through 5, identified in Table 1 above, in
19 accordance with procedures prescribed by the department.

20 c. **Section 44015, subdivision (b):** Respondent Zepeda issued electronic smog
21 certificates of compliance for vehicles 1 through 5, identified in Table 1 above,
22 without properly testing and inspecting the vehicles to determine if they were in
23 compliance with H & S Code section 44012.

24 d. **Section 44059:** Respondent Zepeda willfully made false entries for electronic
25 certificates of compliance for vehicles 1 through 5, identified in Table 1 above, by
26 certifying that the vehicles had been inspected as required when, in fact, they had not.

27 ///

28 ///

1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 48. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in paragraphs 29-35.

5 49. Respondent Zepeda's technician license is subject to disciplinary action pursuant to
6 H & S Code section 44072.2, subdivision (c), in that Respondent Zepeda failed to comply with
7 provisions of California Code of Regulations, title 16, as follows:

8 a. **Section 3340.24, subdivision (c):** Respondent Zepeda falsely or fraudulently
9 issued electronic smog certificates of compliance for vehicles 1 through 5, identified
10 in Table 1 above.

11 b. **Section 3340.30, subdivision (a):** Respondent Zepeda failed to inspect and test
12 vehicles 1 through 5, identified in Table 1 above, in accordance with H & S Code
13 sections 44012 and 44035, and CCR section 3340.42.

14 c. **Section 3340.41, subdivision (c):** Respondent Zepeda entered into the
15 emissions inspection system vehicle identification information or emission control
16 system identification data for a vehicle other than the one being tested for vehicles 1
17 through 5, identified in Table 1 above.

18 d. **Section 3340.42:** Respondent Zepeda failed to conduct the required smog tests
19 on vehicles 1 through 5, identified in Table 1 above, in accordance with the Bureau's
20 specifications.

21 **EIGHTH CAUSE FOR DISCIPLINE**

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

23 50. Complainant re-alleges and incorporates by reference the allegations set forth above
24 in paragraphs 29-35.

25 51. Respondent Zepeda's technician license is subject to disciplinary action pursuant to
26 H & S Code section 44072.2, subdivision (d), in that Respondent Zepeda committed dishonest,
27 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
28 compliance for vehicles 1 through 5, identified in Table 1 above, without performing bona fide

1 inspections of the emission control devices and systems on the vehicles, thereby depriving the
2 People of the State of California of the protection afforded by the Motor Vehicle Inspection
3 Program.

4 **OTHER MATTERS**

5 52. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily
6 or permanently or refuse to validate, the registrations for all places of business operated in this
7 state by an automotive repair dealer upon a finding that the automotive repair dealer has engaged
8 in a course of repeated and willful violations of the laws and regulations pertaining to an
9 automotive repair dealer.

10 53. Pursuant to H & S Code section 44072.8, if Smog Check, Test Only, Station License
11 No. TC 270145, is revoked or suspended, the Director may likewise revoke or suspend any
12 additional license, issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code,
13 to Respondent El Valle Smog.

14 54. Under H & S Code section 44072.8, if Respondent Marcelo Verazas Zepeda, Jr.'s
15 Smog Check Inspector License No. EO636063 is revoked or suspended, any additional license
16 issued under this chapter in the name of Respondent Marcelo Verazas Zepeda, Jr. may be
17 likewise revoked or suspended by the Director.

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 270145, issued to Marcelo Verazas Zepeda, Jr., Owner, dba El Valle Smog Test Only &
23 Registration;

24 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
25 270145, issued to Marcelo Verazas Zepeda, Jr., Owner, dba El Valle Smog Test Only &
26 Registration;

27 3. Revoking or suspending the registrations for all places of business operated in this
28 state by Marcelo Verazas Zepeda, Jr.;

1 4. Revoking or suspending Smog Check Inspector License Number EO 636063, issued
2 to Marcelo Verazas Zepeda Jr.;

3 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
4 Division 26 of the Health and Safety Code in the name of Marcelo Verazas Zepeda Jr.;

5 6. Ordering Marcelo Verazas Zepeda Jr. to pay the Bureau of Automotive Repair the
6 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
7 Professions Code section 125.3; and,

8 7. Taking such other and further action as deemed necessary and proper.
9
10

11
12 DATED:

January 30, 2018



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

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