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

In the Matter of the Accusation Against:

**PAYLESS SMOG CHECK**  
703 S. Euclid Avenue  
Ontario, CA 91762  
**VICTOR MANUEL GALAVIZ, OWNER**  
Automotive Repair Dealer Registration  
No. ARD 270964  
Smog Check Test Only Station License  
No. TC 270964

And

**VICTOR MANUEL GALAVIZ**  
11045 ½ Roswell Avenue  
Pomona, CA 91766

Advanced Emission Specialist Technician  
License No. EA 634264  
Smog Check Inspector License No. EO 634264

Respondent.

Case No. 79/14-111

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about April 7, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, filed Accusation No. 79/14-111 against Payless Smog Check, Victor Manuel Galaviz (Respondent) before the Bureau. (Accusation attached as Exhibit A.)

1           **Automotive Repair Dealer Registration**

2           2.     On or about November 27, 2012, the Bureau issued Automotive Repair Dealer  
3 Registration No. ARD 270964 to Payless Smog Check, with Victor Manuel Galaviz as Owner  
4 (Respondent Payless). The Automotive Repair Dealer Registration was in full force and effect at  
5 all times relevant to the charges brought in Accusation No. 79/14-111, expired on November 30,  
6 2014, and has not been renewed. This lapse in licensure, however, pursuant to Business and  
7 Professions Code section 118(b) does not deprive the Bureau of its authority to institute or  
8 continue this disciplinary proceeding.

9           **Smog Check Test Only Station License**

10          3.     On or about December 7, 2012, the Bureau issued Smog Check, Test Only, Station  
11 License No. TC 270964 to Respondent Payless. The Smog Check Test Only Station License was  
12 in full force and effect at all times relevant to the charges brought in Accusation No. 79/14-111,  
13 expired on November 30, 2014, and has not been renewed. This lapse in licensure, however,  
14 pursuant to Business and Professions Code section 118(b) does not deprive the Bureau of its  
15 authority to institute or continue this disciplinary proceeding.

16          **Advanced Emission Specialist Technician License**

17          4.     On or about May 14, 2012, the Bureau issued Advanced Emission Specialist  
18 Technician License No. EA 634264<sup>1</sup> to Victor Manuel Galaviz (Respondent Galaviz). The  
19 Advanced Emission Specialist Technician License was due to expire on July 31, 2014, but was  
20 cancelled on July 29, 2014. This lapse in licensure, however, pursuant to Business and  
21 Professions Code section 118(b) does not deprive the Bureau of its authority to institute or  
22 continue this disciplinary proceeding.

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

1           **Smog Check Inspector License**

2           5.     On or about July 31, 2014, the Bureau issued Smog Check Inspector License No. EO  
3 634264 to Respondent Galaviz. The Smog Check Inspector License was in full force and effect  
4 at all times relevant to the charges brought in Accusation No. 79/14-111 and will expire on July  
5 31, 2016, unless renewed.

6           6.     On or about August 27, 2014, Respondents were served by Certified and First Class  
7 Mail copies of the Accusation No. 79/14-111, Statement to Respondent, Notice of Defense,  
8 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
9 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions  
10 Code section 136, is required to be reported and maintained with the Bureau. Respondent's  
11 address of record was and is: 703 S. Euclid Ave., Ontario, CA 91762 and 11045 ½ Roswell  
12 Avenue, Pomona, CA 91766.

13           7.     On or about October 23, 2014, Respondents were served by Certified and First Class  
14 Mail copies of the Accusation No. 79/14-111, Statement to Respondent, Notice of Defense,  
15 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
16 and 11507.7) at Respondent's alternate address of record which, pursuant to Business and  
17 Professions Code section 136, is required to be reported and maintained with the Bureau.  
18 Respondent's address of record was and is: 1722 East G Street, Apt. B, Ontario, CA 91764.

19           8.     Service of the Accusation was effective as a matter of law under the provisions of  
20 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
21 124.

22           9.     In or about August, 2014, the U.S. Postal Service returned the green return receipt,  
23 signed by Ahmad on August 29, 2014, as receiving the aforementioned documents at  
24 Respondent's address of record.

25           10.    On or about October 30, 2014, the U.S. Postal Service returned the green return  
26 receipt, signed by Respondent in or about October, as receiving the aforementioned documents at  
27 Respondent's alternate address of record.

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1 11. Government Code section 11506 states, in pertinent part:

2 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
3 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
4 of the accusation not expressly admitted. Failure to file a notice of defense shall  
5 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
6 may nevertheless grant a hearing.

7 12. Respondent failed to file a Notice of Defense within 15 days after service upon him  
8 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
9 79/14-111.

10 13. California Government Code section 11520 states, in pertinent part:

11 (a) If the respondent either fails to file a notice of defense or to appear at the  
12 hearing, the agency may take action based upon the respondent's express admissions  
13 or upon other evidence and affidavits may be used as evidence without any notice to  
14 respondent.

15 14. Pursuant to its authority under Government Code section 11520, the Director after  
16 having reviewed the proof of service dated August 27, 2014 and October 23, 2014, signed by  
17 Teresa Sutton, finds Respondent is in default. The Director will take action without further  
18 hearing and, based on Accusation, No. 79/14-111, proof of service and on the Affidavit of Bureau  
19 Representative Steve Koch, finds that the allegations in Accusation are true.

20 **DETERMINATION OF ISSUES**

21 1. Based on the foregoing findings of fact, Respondents have subjected its Automotive  
22 Repair Dealer Registration No. ARD 270964, Smog Check, Test Only, Station License No. TC  
23 270964, Advanced Emission Specialist Technician License No. EA 634264, and Smog Check  
24 Inspector License EO 634264 to discipline.

25 2. The agency has jurisdiction to adjudicate this case by default.

26 3. The Bureau is authorized to revoke Respondent's Automotive Repair Dealer  
27 Registration, Smog Check, Test Only, Station License, Advanced Emission Specialist Technician  
28 License, and Smog Check Inspector License based upon the following violations alleged in the  
29 Accusation which are supported by the evidence contained in the affidavit of Bureau  
30 Representative Steve Koch in this case.

31 ///

1           4.     Business and Professions Code section 9884.7, subdivision (a)(1), in that Respondent  
2 Payless made or authorized statements which it knew or in the exercise of reasonable care should  
3 have known to be untrue or misleading.

4           5.     Business and Professions Code section 9884.7, subdivision (a)(4), in that Respondent  
5 Payless committed an act which constitutes fraud.

6           6.     Health and Safety Code section 44072.2, subdivision (a), in that Respondent Payless  
7 failed to comply with provisions of that Code.

8           7.     Health and Safety Code section 44072.2, subdivision (c), in that Respondent Payless  
9 failed to comply with provisions of California Code of Regulations, title 16.

10          8.     Health and Safety Code section 44072.2, subdivision (d), in that Respondent Payless  
11 committed an act involving dishonesty, fraud, or deceit.

12          9.     Health and Safety Code section 44072.2, subdivision (a), in that Respondent Galaviz  
13 failed to comply with section 44012 of that Code.

14          10.    Health and Safety Code section 44072.2, subdivision (c), in that Respondent Galaviz  
15 failed to comply with provisions of California Code of Regulations, title 16.

16          11.    Health and Safety Code section 44072.2, subdivision (d), in that Respondent Galaviz  
17 committed an act involving dishonesty, fraud, or deceit.

18          12.    Business and Professions Code section 9884.7, subdivision (a)(3), and Business and  
19 Professions Code section 9884.7, subdivision (a)(6), in that Respondent Payless failed to ensure  
20 that the operator was provided with a copy of the initial written estimate as soon as the operator  
21 signed the document.

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1 ORDER

2 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 270964 and  
3 Smog Check, Test Only, Station License No. TC 270964, heretofore issued to Respondent  
4 Payless; and Advanced Emission Specialist Technician License No. EA 634264 and Smog Check  
5 Inspector License EO 634264 issued to Respondent Galaviz are revoked.

6 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
7 written motion requesting that the Decision be vacated and stating the grounds relied on within  
8 seven (7) days after service of the Decision on Respondent. The motion should be sent to the  
9 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 N. Mather Blvd., Rancho  
10 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing  
11 on a showing of good cause, as defined in the statute.

12 This Decision shall become effective on June 22, 2016.

13 It is so ORDERED May 30, 2016

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17 \_\_\_\_\_  
18 TAMARA COLSON  
19 Assistant General Counsel  
20 Division of Legal Affairs  
21 Department of Consumer Affairs

22  
23 DOJ Matter ID: LA2013510554  
24 jz(10/23/15)

25 Attachment:  
26 Exhibit A: Accusation and Proof of Service  
27 Exhibit B: Affidavit of Steve Koch

# Exhibit A

Accusation and Proof of Service

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
4 State Bar No. 164015  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2520  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/14-111

13 **PAYLESS SMOG CHECK**  
14 **VICTOR MANUEL GALAVIZ, OWNER**  
703 S. Euclid Avenue  
15 Ontario, CA 91762  
Automotive Repair Dealer Reg. No. ARD 270964  
16 Smog Check Test Only Station License No. TC  
270964

**ACCUSATION**

(Smog Check)

17 -and-

18 **VICTOR MANUEL GALAVIZ**  
19 11045 ½ Roswell Avenue  
Pomona, CA 91766  
20 Advanced Emission Specialist Technician  
License No. EA 634264 (to be redesignated upon  
21 renewal as EO 634264 and/or EI 634264)

22 Respondent.

23  
24 Complainant alleges:

25 **PARTIES**

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

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

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

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

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

12                     ....

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

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

17                     ....

18                     (f) Aids or abets unlicensed persons to evade the provisions of this  
19 chapter . . .

20           12. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
21 suspended following a hearing under this article, any additional license issued under this chapter  
22 in the name of the licensee may be likewise revoked or suspended by the director.

23                                     REGULATORY PROVISIONS

24           13. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c),  
25 states: "[T]he bureau may suspend or revoke the license of or pursue other legal action against a  
26 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
27 certificate of noncompliance."

28           14. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician  
shall at all times "[i]nspect, 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."

1 15. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check  
2 station "shall issue a certificate of compliance or noncompliance to the owner or operator of any  
3 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of  
4 this article and has all the required emission control equipment and devices installed and  
5 functioning correctly."

6 16. CCR, title 16, section 3340.41, subdivision (c), provides: "No person shall enter into  
7 the emissions inspection system any vehicle identification information or emission control system  
8 identification data for any vehicle other than the one being tested. Nor shall any person  
9 knowingly enter into the emissions inspection system any false information about the vehicle  
10 being tested."

11 17. CCR, title 16, section 3340.42, sets forth specific emissions test methods and  
12 procedures which apply to all vehicles inspected in the State of California.

13 18. CCR, title 16, section 3340.28, subdivision (e), states that "[u]pon renewal of an  
14 unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license  
15 issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog  
16 Check Inspector, Smog Check Repair Technician, or both."

#### 17 COST RECOVERY

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

#### 22 UNDERCOVER OPERATION #1 1989 Ford

23 20. On or about June 7, 2013, a representative of the Bureau, acting in an undercover  
24 capacity (hereinafter "operator"), took the Bureau's 1989 Ford to Respondent Payless's facility  
25 and requested a smog inspection. The EGR<sup>2</sup> system on the vehicle had been disabled causing the  
26 vehicle to fail the functional portion of a Smog Check Inspection. Upon arrival at Respondent

27 \_\_\_\_\_  
28 <sup>2</sup> The term "EGR" stands for Exhaust Gas Recirculation system.

1 Payless, the operator requested a smog inspection and the operator was given a written estimate  
2 of \$50 for the smog inspection. Later, Respondent Galaviz informed the operator that the vehicle  
3 failed the inspection for ignition timing out of manufacturer's specifications. The operator paid  
4 \$40.00 and received a copy of an unnumbered invoice and the Vehicle Inspection Report  
5 ("VIR").

6 21. On or about June 11, 2013, the operator took the Bureau's 1989 Ford back to  
7 Respondent's shop. When he arrived at the station, he spoke with a younger Hispanic female  
8 later identified as Blanca Barrera ("Blanca"). The operator told Blanca about the 1989 Ford  
9 having failed the earlier smog test for ignition timing. Blanca told the operator that Respondent  
10 Payless could re-test the truck for \$10. He was then given a written estimate.

11 22. After the test was completed, the operator paid Blanca \$10 for the re-test and he  
12 received a copy of an unnumbered invoice and the VIR indicating that the 1989 Ford had passed  
13 the smog test. The second VIR identified Galaviz as the repair technician. That same day,  
14 electronic smog Certificate of Compliance [REDACTED] was issued for the vehicle.

15 23. On or about June 27, 2013, the Bureau re-inspected the vehicle and found that that the  
16 EGR valve and EGR valve position sensor that had been previously marked, remained intact. The  
17 Bureau concluded that the 1989 Ford was not in a condition that would allow it to pass a properly  
18 conducted California Smog Check Vehicle Inspection BAR 97 Two-Speed Idle ("TSI") Test.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 24. Respondent Payless's registration is subject to disciplinary action pursuant to Bus. &  
22 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements  
23 which it knew or in the exercise of reasonable care should have known to be untrue or  
24 misleading, as follows:

25 a. Respondent Galaviz certified under penalty of perjury on the June 11, 2013, VIR that  
26 he performed the smog inspection on the Bureau's 1989 Ford in accordance with all Bureau  
27 requirements. In fact, the vehicle's EGR valve was inoperative, which rendered the vehicle  
28 unable to pass a valid smog inspection.







1 VIR for the previously failed smog test. The operator was never given any written estimate for the  
2 smog test. After the smog test on the 1995 Chevrolet was completed, the operator was given the  
3 VIR for the passing smog test but no final invoice. That same day, electronic smog Certificate of  
4 Compliance [REDACTED] was issued for the vehicle.

5 34. On or about June 19, 2013, the Bureau performed a smog inspection on the vehicle  
6 and found that the vehicle failed and exceeded the limits of oxides of nitrogen at 15 mph and 25  
7 mph as a gross polluter. Further the EGR tamper indicator was intact and the EGR system defect  
8 had not been corrected. The oxygen sensor circuit tamper seal was also intact. The Bureau  
9 concluded that the 1995 Chevrolet could not pass a properly performed smog check inspection  
10 while these two defects were present and that the 1995 Chevrolet was not tested according to  
11 Bureau requirements.

12 **TWELFTH CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 35. Respondent Payless's registration is subject to disciplinary action pursuant to Bus. &  
15 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements  
16 which it knew or in the exercise of reasonable care should have known to be untrue or  
17 misleading, as follows:

18 a. Respondent Payless's technician, Respondent Galaviz, certified under penalty of  
19 perjury on the VIR dated June 18, 2013, that the Bureau's 1995 Chevrolet pickup had passed  
20 inspection and was in compliance with applicable laws and regulations, and that he performed the  
21 inspection in accordance with all Bureau requirements. In fact, the vehicle's EGR system had  
22 previously been disabled and the oxygen sensor circuit had been modified. These defects caused  
23 the 1995 Chevrolet to fail the tail pipe emissions portion of the smog test as a gross polluter.

24 **THIRTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Provide Customer with Copy of Signed Document)**

26 36. Respondent Payless's registration is subject to disciplinary action pursuant to Bus. &  
27 Prof. Code section 9884.7, subdivision (a)(3), and Bus. & Prof. Code section 9884.7, subdivision  
28 (a)(6) in that Respondent failed to ensure that the operator was provided with a copy of the initial

1 written estimate as soon as the operator signed the document, thereby failing to comply with the  
2 provisions of the Automotive Repair Act and the regulations adopted pursuant to it.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 37. Respondent Payless's registration is subject to disciplinary action pursuant to Bus. &  
6 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which  
7 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1995  
8 Chevrolet without performing a bona fide inspection of the emission control devices and systems  
9 on the vehicle, thereby depriving the People of the State of California of the protection afforded  
10 by the Motor Vehicle Inspection Program.

11 **FIFTEENTH CAUSE FOR DISCIPLINE**

12 **(Violations of the Motor Vehicle Inspection Program)**

13 38. Respondent Payless's smog check station license is subject to disciplinary action  
14 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
15 comply with provisions of that Code in the following material respects:

16 a. **Section 44012:** Respondent Payless failed to ensure that the emission control tests  
17 were performed on the Bureau's 1995 Chevrolet in accordance with procedures prescribed by the  
18 department.

19 b. **Section 44015:** Respondent Galaviz issued an electronic smog certificate of  
20 compliance for the Bureau's 1995 Chevrolet pickup without ensuring that the vehicle was  
21 properly tested and inspected to determine if it was in compliance with Health & Saf. Code  
22 section 44012.

23 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

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

1 a. **Section 3340.35, subdivision (c)**: Respondent Galaviz issued an electronic smog  
2 certificate of compliance for the Bureau's 1995 Chevrolet even though the vehicle had not been  
3 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

4 b. **Section 3340.42**: Respondent Payless failed to ensure that the required smog tests  
5 were conducted on the Bureau's 1995 Chevrolet in accordance with the Bureau's specifications.

6 **NINETEENTH CAUSE FOR DISCIPLINE**

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

8 40. Respondent Payless's smog check station license is subject to disciplinary action  
9 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed  
10 an act involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic  
11 smog certificate of compliance for the Bureau's 1995 Chevrolet when, in fact, a bona fide  
12 inspection was not performed of the emission control devices and systems on the vehicle, thereby  
13 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
14 Inspection Program.

15 **TWENTIETH CAUSE FOR DISCIPLINE**

16 **(Violations of the Motor Vehicle Inspection Program)**

17 41. Respondent Galaviz's technician license is subject to disciplinary action pursuant to  
18 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent Galaviz failed to comply  
19 with section 44012 of that Code, as follows: Respondent Galaviz failed to perform the emission  
20 control tests on the Bureau's 1995 Chevrolet in accordance with procedures prescribed by the  
21 department.

22 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

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

28

1 a. **Section 3340.30, subdivision (a)**: Respondent Galaviz failed to inspect and test the  
2 Bureau's 1995 Chevrolet in accordance with Health & Saf. Code sections 44012 and 44035, and  
3 California Code of Regulations, title 16, section 3340.42.

4 b. **Section 3340.42**: Respondent Galaviz failed to conduct the required smog tests on  
5 the Bureau's 1995 Chevrolet in accordance with the Bureau's specifications.

6 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

8 43. Respondent Galaviz's technician license is subject to disciplinary action pursuant to  
9 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent Galaviz committed an  
10 act involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic  
11 smog certificate of compliance for the Bureau's 1995 Chevrolet when, in fact, a bona fide  
12 inspection was not performed of the emission control devices and systems on the vehicle, thereby  
13 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
14 Inspection Program.

15 **UNDERCOVER OPERATION #3 1999 DODGE**

16 44. On or about July 25, 2013, a representative of the Bureau, acting in an undercover  
17 capacity (hereinafter "operator"), took the Bureau's 1999 Dodge to Respondent Payless facility  
18 and requested a smog inspection on a vehicle purportedly owned by the undercover operator's co-  
19 worker. The vehicle's heated oxygen sensor circuit was modified by the Bureau causing the  
20 vehicle to fail the Smog Check Inspection for high Nitrogen Oxide (NOx) emissions.

21 45. Upon arrival at Respondent's shop, the operator was greeted by Respondent's  
22 employee Blanca who asked the operator if the 1999 Dodge had ever failed a smog test. The  
23 operator told Blanca that the vehicle had failed a smog test two years prior but that the co-worker  
24 had someone take care of the issue. Blanca told the operator that Respondent Payless would have  
25 to fail the vehicle and he could then bring the vehicle back for a re-test and pass the vehicle. The  
26 operator asked Blanca if there was anyway the vehicle could pass today and Blanca agreed to  
27 pass the vehicle the same day if the operator paid her \$180.00. The operator then completed a  
28 blank estimate, and signed the estimate, but was never given a copy of the estimate. After the test

1 was completed, the operator paid Blanca \$180 for the smog test. Blanca subsequently gave the  
2 operator a VIR indicating that the 1999 Dodge had passed the smog test. The operator asked  
3 Blanca for a receipt but she declined and wrote "Paid 18" on the back of the VIR and handed it to  
4 the operator. That same day, electronic smog Certificate of Compliance [REDACTED] was  
5 issued for the vehicle.

6 46. On or about July 25, 2013, the Bureau re-inspected the 1999 Dodge and verified that  
7 the oxygen sensor modification was still installed and intact. On or about July 30, 2013, the  
8 Bureau performed a smog check inspection on the 1999 Dodge. The 1999 Dodge failed the test  
9 due to high NOx emissions. The Bureau concluded that the 1999 Dodge was returned to the  
10 Bureau in the same condition it was released to the operator and not in a condition that would  
11 have allowed it to pass a properly conducted ASM smog check inspection.

12 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 47. Respondent Payless's registration is subject to disciplinary action pursuant to Bus. &  
15 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements  
16 which it knew or in the exercise of reasonable care should have known to be untrue or  
17 misleading, as follows:

18 a. Respondent Galaviz certified under penalty of perjury on the July 25, 2013, VIR that  
19 he performed the smog inspection on the Bureau's 1999 Dodge in accordance with all Bureau  
20 requirements. In fact, the vehicle's oxygen sensor modification was still installed and intact  
21 which rendered the vehicle unable to pass a valid smog inspection.

22 **TWENTY FOURTH CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 48. Respondent Payless's registration is subject to disciplinary action pursuant to Bus. &  
25 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which  
26 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1999  
27 Dodge without performing a bona fide inspection of the emission control devices and systems on  
28

1 the vehicle, thereby depriving the People of the State of California of the protection afforded by  
2 the Motor Vehicle Inspection Program.

3 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program)**

5 49. Respondent Payless's smog check station license is subject to disciplinary action  
6 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
7 comply with provisions of that Code in the following material respects:

8 a. **Section 44012:** Respondent Payless failed to ensure that the emission control tests  
9 were performed on the Bureau's 1999 Dodge in accordance with procedures prescribed by the  
10 department.

11 b. **Section 44015:** Respondent Galaviz issued an electronic smog certificate of  
12 compliance for the Bureau's 1999 Dodge without ensuring that the vehicle was properly tested  
13 and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

14 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

17 50. Respondent Payless's smog check station license is subject to disciplinary action  
18 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to  
19 comply with provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3340.35, subdivision (c):** Respondent Galaviz issued an electronic smog  
21 certificate of compliance for the Bureau's 1999 Dodge even though the vehicle had not been  
22 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

23 b. **Section 3340.42:** Respondent Payless failed to ensure that the required smog tests  
24 were conducted on the Bureau's 1999 Dodge in accordance with the Bureau's specifications.

25 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

27 51. Respondent Payless's smog check station license is subject to disciplinary action  
28 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed

1 an act involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic  
2 smog certificate of compliance for the Bureau's 1999 Dodge when, in fact, a bona fide inspection  
3 was not performed of the emission control devices and systems on the vehicle, thereby depriving  
4 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
5 Program.

6 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Motor Vehicle Inspection Program)**

8 52. Respondent Galaviz's technician license is subject to disciplinary action pursuant to  
9 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent Galaviz failed to comply  
10 with section 44012 of that Code, as follows: Respondent Galaviz failed to perform the emission  
11 control tests on the Bureau's 1999 Dodge in accordance with procedures prescribed by the  
12 department.

13 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

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

19 a. **Section 3340.30, subdivision (a)**: Respondent Galaviz failed to inspect and test the  
20 Bureau's 1999 Dodge in accordance with Health & Saf. Code sections 44012 and 44035, and  
21 California Code of Regulations, title 16, section 3340.42.

22 b. **Section 3340.42**: Respondent Galaviz failed to conduct the required smog tests on  
23 the Bureau's 1999 Dodge in accordance with the Bureau's specifications.

24 **THIRTIETH CAUSE FOR DISCIPLINE**

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

26 54. Respondent Galaviz's technician license is subject to disciplinary action pursuant to  
27 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent Galaviz committed an  
28 act involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic

1 smog certificate of compliance for the Bureau's 1999 Dodge when, in fact, a bona fide inspection  
2 was not performed of the emission control devices and systems on the vehicle, thereby depriving  
3 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
4 Program.

5 **OTHER MATTERS**

6 55. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
7 suspend, revoke, or place on probation the registration for all places of business operated in this  
8 state by Respondent Payless, upon a finding that Respondent has, or is, engaged in a course of  
9 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
10 dealer.

11 56. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
12 License Number TC 270964, issued to Respondent Payless, is revoked or suspended, any  
13 additional license issued under this chapter in the name of said licensee may be likewise revoked  
14 or suspended by the Director.

15 57. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist  
16 Technician License Number EA 634264, (to be re-designated upon renewal as EO 634264 and/or  
17 EI 634264) issued to Respondent Victor Manuel Galaviz, is revoked or suspended, any additional  
18 license issued under this chapter in the name of said licensee may be likewise revoked or  
19 suspended by the Director.

20 **PRAYER**

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

- 23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
24 270964, issued to Payless Smog Check, Victor Manuel Galaviz, owner;
- 25 2. Revoking or suspending any other automotive repair dealer registration issued to  
26 Payless Smog Check and/or Victor Manuel Galaviz;
- 27 3. Revoking or suspending Smog Check, Test Only, Station License Number TC  
28 270964, issued to Payless Smog Check, Victor Manuel Galaviz, owner;

1           4.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
2 and Safety Code in the name of Payless Smog Check and/or Victor Manuel Galaviz;

3           5.    Revoking or suspending Advanced Emission Specialist Technician License Number  
4 EA 634264, (to be designated upon renewal as EO 634264 and/or EI 634264) issued to Victor  
5 Manuel Galaviz;

6           6.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
7 and Safety Code in the name of Victor Manuel Galaviz;

8           7.    Ordering Respondent Payless Smog Check, Victor Manuel Galaviz, owner to pay the  
9 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this  
10 case, pursuant to Business and Professions Code section 125.3;

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

12  
13 DATED: April 7, 2014

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

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