

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 RITA M. LANE
Deputy Attorney General
4 State Bar No. 171352
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9421
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

13
14 In the Matter of the Accusation Against:

Case No. 79/18-5886

15 **LUIS A. LARIOS AND OLIVER LOPEZ,**
16 **PARTNERS DBA XPORT SMOG**
17 **1641 Pacific Rim Ct., Suite F**
18 **San Diego, CA 92154**

A C C U S A T I O N

19 **Automotive Repair Dealer Registration No.**
20 **ARD 280599**
21 **Smog Check-Test Only Station License No.**
22 **TC 280599,**

23 **and**

24 **OLIVER R. LOPEZ GODOY**
25 **4369 44th Street, #B**
26 **San Diego, CA 92115**

27 **Smog Check Inspector License No. EO**
28 **635301**

Respondents.

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, Department of Consumer Affairs.

5 **Automotive Repair Dealer Registration No. ARD 280599**

6 2. On or about June 19, 2015, the Bureau of Automotive Repair issued Automotive
7 Repair Dealer Registration Number ARD 280599 to Luis A. Larios and Oliver Lopez, Partners
8 dba Xport Smog (Respondent Xport Smog). The Automotive Repair Dealer Registration was in
9 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
10 2019, unless renewed.

11 **Smog Check Test-Only Station License No. TC 280599**

12 3. On or about October 22, 2015, the Bureau of Automotive Repair issued Smog Check-
13 Test Only Station License Number TC 280599 to Luis A. Larios and Oliver Lopez, dba Xport
14 Smog (Respondent Xport Smog). The Smog Check-Test Only Station License was in full force
15 and effect at all times relevant to the charges brought herein and will expire on June 30, 2019,
16 unless renewed.

17 **Smog Check Inspector License No. EO 635301**

18 4. On or about March 14, 2013, the Bureau of Automotive Repair issued Smog Check
19 Inspector License Number EO 635301 to Oliver R. Lopez Godoy (Respondent Lopez Godoy).
20 The Smog Check Inspector License was in full force and effect at all times relevant to the charges
21 brought herein and will expire on November 30, 2020, unless renewed.

22 **JURISDICTION**

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

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
14 within two years after the discovery, by the bureau, of the alleged facts
15 constituting the fraud or misrepresentation.

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

17 (a) Notwithstanding any other provision of law, the director may revoke,
18 suspend, or deny at any time any registration required by this article on any of the
19 grounds for disciplinary action provided in this article. The proceedings under this
20 article shall be conducted in accordance with Chapter 5 (commencing with Section
21 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director
22 shall have all the powers granted therein.

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

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

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

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

 "(b) Suspending the license.

 "(c) Revoking the license."

///

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
test or repair is performed at a licensed smog check station. Qualified technicians
18 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
application form which is required by this chapter or Chapter 20.3 (commencing
22 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 Xport 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 Xport Smog or their employees had engaged in any fraudulent smog
22 check inspections.

23 30. During a Bureau representative's review of Respondent Xport 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 from December 2017 to July 2018, Respondent Xport 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 Lopez Godoy inspected six vehicles, identified below,
2 and 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 six 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 six vehicles that are identified below had information stored in the VID which
20 did not apply to those vehicles. The six fraudulent Certificates of Compliance were issued as
21 follows:

22 _____
23 database through an Internet connection. The bar code scanner is used to input technician,
24 Vehicle Identification Number (VIN), and DMV renewal information. The printer provides a
25 Vehicle Inspection Report containing inspection results for motorists and a Smog Check
26 Certificate of Compliance number for passing vehicles. The Inspector is required to connect the
27 Data Acquisition Device to the vehicle to be certified. The Data Acquisition Device is an On
28 Board Diagnostic scan tool that, when requested by the California BAR-OIS software, retrieves
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 December 20, 2017, a 2007 Dodge Dakota Quad SLT,
3 VIN “1D7HE48N27S171915”, passed an OIS inspection. Certificate of Compliance #
4 HL260164C was issued under Respondent Xport Smog’s smog check station license, and
5 certified under Respondent Lopez Godoy’s technician license. The Test Detail shows the eVIN
6 was reported as “1D7RE3BK5BS507661.” Stored in the memory during this OIS inspection was
7 a PID count of “43” and a Communication Protocol of “ICAN11bt5”.

8 Comparative OIS Test Data for 2007 Dodge Dakota Quad SLT vehicles shows the eVIN is
9 accurately reported to match the VIN and a PID count of “39” is reported.

10 The PID value and the eVIN should match between the above mentioned OIS Test, and the
11 comparative OIS test data. The discrepancies in the OIS Test Data show that the OIS DAD was
12 not connected to the 2007 Dodge Dakota Quad SLT being certified, causing the issuance of an
13 illegal smog Certificate of Compliance.

14 In addition, the OIS Test Data shows that that a 2011 Dodge Dakota SLT, VIN
15 #1D7RE3BK5BS507661 was the vehicle used to generate the fraudulent Smog Certificate of
16 Compliance for the 2007 Dodge Dakota Quad SLT VIN #1D7HE48N27S171915. In fact, just
17 two days after the fraudulent inspection, on December 22, 2017, an OIS test was performed at
18 Respondent Xport Smog on the 2011 Dodge Dakota SLT, VIN # 1D7RE3BK5BS507661. The
19 OIS Test Data transmitted for the 2011 Dodge Dakota SLT matches the OIS Test Data for the
20 fraudulent inspection of the 2007 Dodge Dakota Quad SLT.

21 b. **Clean Plug #2**

22 OIS Test Detail indicates that on February 27, 2018, a 2011 Jeep Grand Cherokee Laredo,
23 “VIN 1J4RR4GT6BC534488,” passed an OIS inspection. Certificate of Compliance #
24 HP401089C was issued under Respondent Xport Smog’s smog check station license, and
25 certified under Respondent Lopez Godoy’s technician license. The Test Detail shows the eVIN
26 was reported as “1C4RJFCT0DC646270.” Stored in the memory during this OIS inspection was
27 a PID count of “42” and a Communication Protocol of “ICAN11bt5”.

28 ///

1 Comparative OIS Test Data for 2011 Jeep Grand Cherokee Laredo vehicles shows the
2 eVIN is accurately reported to match the VIN and a PID count of “41” or “43” is reported.

3 The PID value and the eVIN should match between the above mentioned OIS Test, and the
4 comparative OIS test data. The discrepancies in the OIS Test Data show that the OIS DAD was
5 not connected to the 2011 Jeep Grand Cherokee Laredo being certified, causing the issuance of an
6 illegal smog Certificate of Compliance.

7 In addition, the OIS Test Data shows that a 2013 Jeep Grand Cherokee Overland, VIN #
8 1C4RJFCT0DC646270 was the vehicle used to generate the fraudulent Smog Certificate of
9 Compliance for the 2011 Jeep Grand Cherokee Laredo VIN # 1J4RR4GT6BC534488. In fact,
10 just a few days after the fraudulent inspection, on March 5, 2018, an OIS test was performed at
11 Respondent Xport Smog on the 2013 Jeep Grand Cherokee Overland, VIN #
12 1C4RJFCT0DC646270. The OIS Test Data transmitted for the 2013 Jeep Grand Cherokee
13 Overland matches the OIS Test Data for the fraudulent inspection of the 2011 Jeep Grand
14 Cherokee Laredo.

15 **c. Clean Plug #3**

16 OIS Test Detail indicates that on March 12, 2018, a 2006 Ford Econoline E150 Wagon,
17 reported as “1FMRE11W06DA53229,” passed an OIS inspection. Certificate of Compliance #
18 HP843322C was issued under Respondent Xport Smog’s smog check station license, and
19 certified under Respondent Lopez Godoy’s technician license. The Test Detail shows the eVIN
20 was reported as “VIN 1FBNE3BL1ADA65244.” Stored in the memory during this OIS
21 inspection was a PID count of “44” and a Communication Protocol of “ICAN11bt5”.

22 Comparative OIS Test Data for 2006 Ford Econoline E150 Wagon vehicles shows the
23 eVIN is accurately reported to match the VIN and a PID count of “47” is reported.

24 The PID value and the eVIN should match between the above mentioned OIS Test, and the
25 comparative OIS test data. The discrepancies in the OIS Test Data show that the OIS DAD was
26 not connected to the 2006 Ford Econoline E150 Wagon being certified, causing the issuance of an
27 illegal smog Certificate of Compliance.

28 ///

1 In addition, the OIS Test Data shows that a 2010 Ford Econoline E350 Super Duty Wagon,
2 VIN # 1FBNE3BL1ADA65244 was the vehicle used to generate the fraudulent Smog Certificate
3 of Compliance for the 2006 Ford Econoline E150 Wagon, VIN 1FMRE11W06DA53229. In fact,
4 on the same day that the fraudulent inspection occurred, on March 12, 2018, an OIS test was
5 performed at Respondent Xport Smog on the 2010 Ford Econoline E350 Super Duty Wagon, VIN
6 # 1FBNE3BL1ADA65244. The OIS Test Data transmitted for the 2010 Ford Econoline E350
7 Super Duty Wagon matches the OIS Test Data for the fraudulent inspection of the 2006 Ford
8 Econoline E150 Wagon

9 d. **Clean Plug #4**

10 OIS Test Detail indicates that on March 23, 2018, a 2016 Dodge Dart SE, VIN
11 "1C3CDFAA3GD607402," passed an OIS inspection. Certificate of Compliance # HR233066C
12 was issued under Respondent Xport Smog's smog check station license, and certified under
13 Respondent Lopez Godoy's technician license. The Test Detail shows the eVIN was reported as
14 "1C3CDFBH9DD290474." Stored in the memory during this OIS inspection was a PID count of
15 "37/12" and a Communication Protocol of "ICAN29bt5".

16 Comparative OIS Test Data for 2016 Dodge Dart SE vehicles shows the eVIN is accurately
17 reported to match the VIN and a PID count of "38" or "39/12" is reported.

18 The PID value and the eVIN should match between the above mentioned OIS Test, and the
19 comparative OIS test data. The discrepancies in the OIS Test Data show that the OIS DAD was
20 not connected to the 2016 Dodge Dart SE being certified, causing the issuance of an illegal smog
21 Certificate of Compliance.

22 In addition, the OIS Test Data shows that a 2013 Dodge Dart SXT, VIN
23 #1C3CDFBH9DD290474 was the vehicle used to generate the fraudulent Smog Certificate of
24 Compliance for the 2016 Dodge Dart SE, VIN 1C3CDFAA3GD607402. In fact, on the same day
25 that the fraudulent inspection occurred, on March 23, 2018, an OIS test was performed at Xport
26 Smog on the 2013 Dodge Dart SXT, VIN # 1C3CDFBH9DD290474. The OIS Test Data
27 transmitted for the 2013 Dodge Dart SXT matches the OIS Test Data for the fraudulent inspection
28 of the 2016 Dodge Dart SE.

1 **e. Clean Plug #5**

2 OIS Test Detail indicates that on June 29, 2018, a 2010 Volkswagen Jetta Limited, VIN
3 “3VWAZ7AJ1AM105703,” passed an OIS inspection. Certificate of Compliance # QK202532C
4 was issued under Respondent Xport Smog’s smog check station license, and certified under
5 Respondent Lopez Godoy’s technician license. The Test Detail shows the eVIN was reported as
6 “3VWRZ71K59M090405.” Stored in the memory during this OIS inspection was a PID count of
7 “38/14” and a Communication Protocol of “ICAN11bt5”.

8 Comparative OIS Test Data for 2010 Volkswagen Jetta Limited vehicles shows the eVIN is
9 accurately reported to match the VIN and a PID count of “40” or “40/14” is reported. Moreover,
10 a previous OIS test from June 13, 2016 that was performed at another station on the 2010
11 Volkswagen Jetta Limited, VIN 3VWAZ7AJ1AM105703 showed the vehicle transmits the
12 correct eVIN, had the expected Communication Protocol ICAN11bt5, and a PID count of 40/14.

13 The PID value and the eVIN should match between the above mentioned OIS Test, and the
14 comparative OIS test data. The discrepancies in the OIS Test Data show that the OIS DAD was
15 not connected to the 2010 Volkswagen Jetta Limited being certified, causing the issuance of an
16 illegal smog Certificate of Compliance.

17 In addition, the OIS Test Data shows that a 2009 Volkswagen Jetta SE/SEL, VIN
18 #3VWRZ71K59M090405 was the vehicle used to generate the fraudulent Smog Certificate of
19 Compliance for the 2010 Volkswagen Jetta Limited, VIN 3VWAZ7AJ1AM105703. In fact, on
20 January 29, 2015, an OIS test was performed at another station on the 2009 Volkswagen Jetta
21 SE/SEL, VIN # 3VWRZ71K59M090405 and the OIS Test Data transmitted for that vehicle
22 matched the OIS Test Data for the fraudulent inspection of the 2010 Volkswagen Jetta Limited.

23 **f. Clean Plug #6**

24 OIS Test Detail indicates that on July 17, 2018, a 2008 Nissan Frontier King Cab XE, VIN
25 “1N6BD06T28C419876” passed an OIS inspection. Certificate of Compliance # HV559583C
26 was issued under Respondent Xport Smog’s smog check station license, and certified under
27 Respondent Lopez Godoy’s technician license. The Test Detail shows the eVIN was reported as

28 ///

1 “1N6BD06T07C458769.” Stored in the memory during this OIS inspection was a PID count of
2 “18” and a Communication Protocol of “I914”.

3 Comparative OIS Test Data for 2008 Nissan Frontier King Cab XE vehicles shows the
4 eVIN is accurately reported to match the VIN, a PID count of “38” is reported and a
5 communication protocol of “ICAN11bt5” is reported.

6 The PID value, communication protocol and the eVIN should match between the above
7 mentioned OIS Test, and the comparative OIS test data. The discrepancies in the OIS Test Data
8 show that the OIS DAD was not connected to the 2008 Nissan Frontier King Cab XE being
9 certified, causing the issuance of an illegal smog Certificate of Compliance.

10 35. Two of the six clean plugs occurred after the BAR representative made a field visit on
11 May 17, 2018 to Respondent Xport Smog. The following table summarizes the six clean plug
12 inspections:

13 **TABLE 1**

#	Date	Vehicle	Inspection VIN	eVIN transmitted	Received Protocol	Expected Protocol	Received PID	Expected PID
14 1	12/20/17	2007 Dodge Dakota Quad SLT	1D7HE48N27S171915	1D7RE3BK5BS507661	ICAN11bt5	ICAN11bt5	43	39
15 2	2/27/18	2011 Jeep Grand Cherokee	1J4RR4GT6BC534488	1C4RJFCT0DC646270	ICAN11bt5	ICAN11bt5	42	41 or 43
16 3	3/12/18	2006 Ford Econoline E150 Wagon	1FMRE11W06DA53229	1FBNE3BL1ADA65244	ICAN11bt5	ICAN11bt5	44	47
17 4	3/23/18	2016 Dodge Dart SE	1C3CDFAA3GD607402	1C3CDFBH9DD290474	ICAN29bt5	ICAN29bt5	37/12	38 or 39/12
18 5	6/29/18	2010 Volkswagen Jetta Limited	3VWAZ7AJ1AM105703	3VWRZ71K59M090405	ICAN11bt5	ICAN11bt5	38/14	40 or 40/14
19 6	7/17/18	2008 Nissan Frontier King Cab XE	1N6BD06T28C419876	1N6BD06T07C458769	I914	ICAN11bt5	18	38

22
23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

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

27 37. Respondent Xport Smog’s automotive repair dealer registration is subject to
28 disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent Xport

1 Smog made or authorized statements which he knew or in the exercise of reasonable care should
2 have known to be untrue or misleading, as follows: Respondent Xport Smog certified that
3 vehicles 1 through 6, identified in Table 1 above, had passed inspection and were in compliance
4 with applicable laws and regulations. In fact, Respondent Xport Smog conducted the inspections
5 on the vehicles using clean-plugging methods in order to issue smog certificates of compliance
6 for the vehicles, and did not actually test or inspect the vehicles as required by H & S Code
7 section 44012.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 38. Complainant re-alleges and incorporates by reference the allegations set forth above
11 in paragraphs 29-35.

12 39. Respondent Xport Smog's automotive repair dealer registration is subject to
13 disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent Xport
14 Smog committed acts that constitute fraud by issuing electronic smog certificates of compliance
15 for vehicles 1 through 6, identified in Table 1 above, without performing bona fide inspections of
16 the emission control devices and systems on the vehicles, thereby depriving the People of the
17 State of California of the protection afforded by the Motor Vehicle Inspection Program.

18 **THIRD CAUSE FOR DISCIPLINE**

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

20 40. Complainant re-alleges and incorporates by reference the allegations set forth above
21 in paragraphs 29-35.

22 41. Respondent Xport Smog's smog check station license is subject to disciplinary action
23 pursuant to H & S Code section 44072.2, subdivision (a)(6), in that Respondent Xport Smog
24 failed to comply with the following sections of that Code:

- 25 a. **Section 44012, subdivision (a):** Respondent Xport Smog failed to ensure that
26 all emission control devices and systems required by law for vehicles 1 through 6,
27 identified in Table 1 above, were installed and functioning correctly in accordance
28 with test procedures.

1 d. **Section 3373:** Respondent Xport Smog created a false and misleading record
2 by issuing documents that were false and misleading.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

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

7 45. Respondent Xport Smog's smog check station license is subject to disciplinary action
8 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent Xport Smog
9 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
10 smog certificates of compliance for vehicles 1 through 6, identified in Table 1 above, without
11 performing bona fide inspections of the emission control devices and systems on the vehicles,
12 thereby depriving the People of the State of California of the protection afforded by the Motor
13 Vehicle Inspection Program.

14 **SIXTH CAUSE FOR DISCIPLINE**

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

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

18 47. Respondent Lopez Godoy's Inspector license is subject to disciplinary action
19 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent Lopez Godoy failed
20 to comply with the following sections of that Code:

21 a. **Section 44012, subdivision (a):** Respondent Lopez Godoy failed to ensure that
22 all emission control devices and systems required by law for vehicles 1 through 6,
23 identified in Table 1 above, were installed and functioning correctly in accordance
24 with test procedures.

25 b. **Section 44012, subdivision (f):** Respondent Lopez Godoy failed to perform
26 the emission control tests on vehicles 1 through 6, identified in Table 1 above, in
27 accordance with procedures prescribed by the department.

28 ///

1 c. **Section 44015, subdivision (b):** Respondent Lopez Godoy issued electronic
2 smog certificates of compliance for vehicles 1 through 6, identified in Table 1 above,
3 without properly testing and inspecting the vehicles to determine if they were in
4 compliance with H & S Code section 44012.

5 d. **Section 44059:** Respondent Lopez Godoy willfully made false entries for
6 electronic certificates of compliance for vehicles 1 through 6, identified in Table 1
7 above, by certifying that the vehicles had been inspected as required when, in fact,
8 they had not.

9 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

13 49. Respondent Lopez Godoy's Inspector license is subject to disciplinary action
14 pursuant to H & S Code section 44072.2, subdivision (c), in that Respondent Lopez Godoy failed
15 to comply with provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent Lopez Godoy falsely or
17 fraudulently issued electronic smog certificates of compliance for vehicles 1 through
18 6, identified in Table 1 above.

19 b. **Section 3340.30, subdivision (a):** Respondent Lopez Godoy failed to inspect
20 and test vehicles 1 through 6, identified in Table 1 above, in accordance with H & S
21 Code sections 44012 and 44035, and CCR section 3340.42.

22 c. **Section 3340.41, subdivision (c):** Respondent Lopez Godoy entered into the
23 emissions inspection system vehicle identification information or emission control
24 system identification data for a vehicle other than the one being tested for vehicles 1
25 through 6, identified in Table 1 above.

26 d. **Section 3340.42:** Respondent Lopez Godoy failed to conduct the required
27 smog tests on vehicles 1 through 6, identified in Table 1 above, in accordance with
28 the Bureau's specifications.

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

5 51. Respondent Lopez Godoy's Inspector license is subject to disciplinary action
6 pursuant to H & S Code section 44072.2, subdivision (d), in that Respondent Lopez Godoy
7 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic
8 smog certificates of compliance for vehicles 1 through 6, identified in Table 1 above, without
9 performing bona fide inspections of the emission control devices and systems on the vehicles,
10 thereby depriving the People of the State of California of the protection afforded by the Motor
11 Vehicle Inspection Program.

12 **OTHER MATTERS**

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

18 53. Pursuant to H & S Code section 44072.8, if issued Smog Check-Test Only Station
19 License Number TC 280599, is revoked or suspended, the Director may likewise revoke or
20 suspend any additional license, issued under Chapter 5 of Part 5 of Division 26 of the Health and
21 Safety Code, to Respondent Xport Smog.

22 54. Under H & S Code section 44072.8, if Respondent Lopez Godoy's Smog Check
23 Inspector License No. EO 635301 is revoked or suspended, any additional license issued under
24 this chapter in the name of Respondent Lopez Godoy, may be likewise revoked or suspended by
25 the Director.

26 **PRAYER**

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

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 280599, issued to Luis A. Larios and Oliver Lopez, dba Xport Smog;
- 3 2. Revoking or suspending any additional Automotive Repair Dealer Registration
4 License issued to Luis A. Larios or Oliver Lopez;
- 5 3. Revoking or suspending Smog Check-Test Only Station License Number TC 280599,
6 issued to Luis A. Larios and Oliver Lopez, dba Xport Smog;
- 7 4. Revoking or suspending Smog Check Inspector License Number EO 635301, issued
8 to Oliver R. Lopez Godoy;
- 9 5. Revoking or suspending any additional license issued under Chapter 5, Part 5 of
10 Division 26 of the Health and Safety Code in the names of Luis A. Larios, Oliver Lopez, and
11 Oliver R. Lopez Godoy;
- 12 6. Ordering Luis A. Larios, Oliver Lopez, and Oliver R. Lopez Godoy to pay the Bureau
13 of Automotive Repair the reasonable costs of the investigation and enforcement of this case,
14 pursuant to Business and Professions Code section 125.3; and,
- 15 7. Taking such other and further action as deemed necessary and proper.

16
17 DATED: February 22, 2019


18 PATRICK DORAIS
19 Chief
20 Bureau of Automotive Repair
21 Department of Consumer Affairs
22 State of California
23 *Complainant*

24 SD2018701537
25 71709095.docx