

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

In the Matter of the Accusation Against:

**LUIS A. LARIOS AND OLIVER LOPEZ, Partners, dba XPORT SMOG**

1641 Pacific Rim Ct., Suite F

San Diego, CA 92154

Automotive Repair Dealer Registration No. ARD 280599

Smog Check Test Only Station License No. TC 280599

and

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**OLIVER R. LOPEZ GODOY**

4369 44<sup>th</sup> Street, Unit B

San Diego, CA 92115

Smog Check Inspector License No. EO 635301

Respondents.

Case No. 79/18-5886

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OAH No. 2019060404

**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 be effective on June 12, 2020.

IT IS SO ORDERED this 5 day of May, 2020.

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

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**Respondents**

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## **PROPOSED DECISION**

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 10, 2020, in San Diego, California.

Rita M. Lane, Deputy Attorney General, Department of Justice, State of California, represented complainant, Patrick Dorais, Chief, Bureau of Automotive Repair (bureau), Department of Consumer Affairs, State of California.

Michael B. Levin, Attorney at Law, represented respondents Luis A. Larios and Oliver R. Lopez<sup>1</sup> who were present at the hearing.

The matter was submitted on March 10, 2020.

## **FACTUAL FINDINGS**

### **Background**

1. On June 19, 2015, the bureau issued Automotive Repair Dealer Registration License No. ARD 280599 to respondents Luis A. Larios, partner, and Oliver Lopez, partner, doing business as Xport Smog. On October 22, 2015, the bureau issued Smog Check Test-Only Station License No. TC 280599 to respondents. There is no history of discipline imposed against the licenses or registration.

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<sup>1</sup> Mr. Lopez's previous name was Oliver Lopez Godoy, which remains listed on his smog check inspector's license.

2. On March 14, 2013, the bureau issued Smog Check Inspector License No. EO 635301 to Mr. Lopez. There is no history of discipline imposed against the license.

3. On February 22, 2019, complainant filed an accusation against respondents alleging eight causes for discipline stemming from allegations that Xport Smog and Mr. Lopez issued fraudulent smog certificates for six different vehicles. Complainant requested revocation of respondent's licenses and registration and recovery of prosecution costs. Respondents timely filed a Notice of Defense. This hearing ensued.

### **California's Smog Check Program**

4. California's smog check program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. Beginning March 9, 2015, the smog check program was updated to require 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. The BAR-OIS 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 retrieves diagnostic data from the vehicle. The DAD connects between the BAR-OIS computer and the vehicle's on-board computer. Data retrieved and recorded during a BAR-OIS smog check includes the vehicle identification number (VIN), the communication protocol, and the number of parameter identifications.

The bar code scanner is used to input inspector information, the VIN, and DMV renewal information. This information can also be entered manually by a technician.

On all 2005 and newer vehicles (and in some older vehicles), the VIN is programmed into the on-board diagnostics system. This electronically programmed VIN is referred to as the "eVIN" and is captured by BAR-OIS during a smog check, and under normal circumstances matches the physical VIN on the vehicle.

The communication protocol is an electronic "language" that is used by the on-board computer to communicate to scan tools and other devices such as the BAR-OIS. The specific protocols used to access a vehicle's computer are programmed by the manufacturer and are specific to a vehicle's make, model, and year.

Parameter Identifications (PIDs) are data points reported by the on-board computer to the scan tool or the BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other input and output values. The PID count is the number of data points reported by the OBD II system, is programmed during manufacture, and does not change.

The inspector also performs a visual and functional test on the vehicle. The BAR-OIS prints a Vehicle Inspection Report (VIR), which is the physical record of the test results and shows the certificate of compliance number that is issued to a passing vehicle. The smog technician must sign the VIR to indicate the inspection was done within bureau guidelines.

The BAR-OIS transmits the data to the bureau's Vehicle Inspection Database (VID). The database contains information such as registration data, emissions control system data, smog check history, vehicle profiling data, station and technician data, and certificate data. The bureau can access the database to view test data on smog inspections performed at a smog station or retrieve and print records for a particular

smog inspection. The bureau can also access the VIR and the BAR-OIS Test Detail created during the inspection of a vehicle.

If the vehicle passes all tests, a certificate of compliance is issued and transmitted electronically to the VID and Department of Motor Vehicles (DMV). Both the DMV and the bureau can access information stored in the database. In particular, the bureau can access the database to view test data on smog inspections performed at a smog station or retrieve and print records for a particular smog inspection. The bureau can also access the VIR created during the inspection of a vehicle.

5. "Clean Plugging" is an illegal and fraudulent technique used to pass vehicles that should not pass smog check inspections. Clean plugging occurs when a technician plugs the BAR-OIS system into a different vehicle from the one that is being tested, for the purpose of issuing a fraudulent smog certificate of compliance.

### **The Bureau's Investigation**

6. Che Tong is a bureau Program Representative I. Before joining the bureau, he worked in the automotive repair industry for approximately 25 years. Mr. Tong reviewed BAR-OIS test data transmitted from Xport Smog to the bureau's VID and identified the following inspections performed under Mr. Lopez's technician license at Xport Smog where the eVIN, PID counts and/or communication protocols were different than what was expected for the tested vehicles. In determining the PID counts, communication protocols, and whether an eVIN is transmitted, Mr. Tong searched data from past smog inspections for the same year, make, and model vehicles. Mr. Tong then determined the percentage of vehicles where the data was consistent for each vehicle tested. In determining that respondents clean plugged each of the six vehicles identified below, Mr. Tong identified at least two of the parameters

that were different than what was expected for the particular year, make, and model of vehicle.

7. Mr. Tong testified that a smog check technician is permitted to scan the VIR from a barcode on the vehicle. However, it is the technician's responsibility to ensure that the bar code scanned matches the actual VIN on the dashboard of the vehicle. It is possible that a vehicle can have doors salvaged from another vehicle. In this instance, the proper procedure during the repair would be to remove the VIN barcode from the door before placing it on a new vehicle. However, even if a VIN barcode is left on from the donor vehicle, the smog check technician is required to ensure that the VIN scanned matches the vehicle's actual VIN. That is, the inspector must verify that the scanned VIN matches the VIN on the vehicle's dashboard. Mr. Tong does not believe that a vehicle with a replaced computer module would be able to function in newer-year vehicles. There are a number of parameters (such as PID count and communication protocol) that have to match. For some models, such as the Nissan Frontier, there would be significant drivability issues if the computer module were replaced from another vehicle.

### **VEHICLE NO. 1**

8. The BAR-OIS Test Detail from the VID showed that on December 20, 2017, a smog check inspection was performed by Mr. Lopez and certificate of compliance issued for a 2007 Dodge Dakota Quad SLT. The VIN was scanned from the vehicle and an odometer reading of 113,893 was entered into the BAR-OIS. However, the eVIN transmitted to the VID was different than the VIN for the tested vehicle. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the correct eVIN should have been transmitted and the PID count did not match the expected values. The 2007 Dodge Dakota Quad SLT passed a smog check

performed by another station on May 11, 2015, at which time the matching eVIN and expected communications protocol and PID count were transmitted to the VID.

The BAR-OIS test data showed that the eVIN that was transmitted matched the VIN belonging to a 2011 Dodge Dakota SLT, which passed a smog inspection performed by Mr. Lopez at Xport Smog on December 22, 2017, two days later. During that inspection, an odometer reading of 113,900 was entered.

## **VEHICLE No. 2**

9. The BAR-OIS Test Detail from the VID showed that on February 27, 2018, a smog check inspection was performed by Mr. Lopez and a certificate of compliance issued for a 2011 Jeep Grand Cherokee Laredo. The VIN was scanned from the vehicle and an odometer reading of 78,748 was entered into the BAR-OIS. The BAR-OIS Test Detail showed that the eVIN transmitted to the VID was different than the VIN for the tested vehicle. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the correct eVIN should have been transmitted and the PID count did not match the expected value.

The BAR-OIS test data showed that the eVIN that was transmitted matched the VIN belonging to a 2013 Jeep Grand Cherokee Overland, which passed a smog inspection performed by Mr. Lopez on March 5, 2018, several days later. During that inspection, an odometer reading of 78,755 was entered.

## **VEHICLE No. 3**

10. The BAR-OIS Test Detail from the VID showed that on March 12, 2018, at 11:45 a.m., a smog check inspection was performed by Mr. Lopez and certificate of compliance issued for a 2006 Ford Econoline E150 Wagon. The VIN was scanned from

the vehicle and an odometer reading of 214,570 was entered into the BAR-OIS. The BAR-OIS Test Detail showed that the eVIN transmitted to the VID was different than the VIN for the tested vehicle. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the correct eVIN should have been transmitted and the PID count did not match the expected value.

The BAR-OIS test data showed that the eVIN that was transmitted matched the VIN belonging to a 2010 Ford Econoline E350 Super Duty Wagon, which passed a smog inspection performed by Mr. Larios at Xport Smog on March 12, 2018, at 2:53 p.m. During that inspection, an odometer reading of 214,580 was entered.

#### **VEHICLE NO. 4**

11. The BAR-OIS Test Detail from the VID showed that on March 23, 2018, at 3:55 p.m., a smog check inspection was performed by Mr. Lopez and certificate of compliance issued for a 2016 Dodge Dart SE. The VIN was scanned from the vehicle and an odometer reading of 113,545 was entered into the BAR-OIS. The BAR-OIS Test Detail showed the eVIN transmitted to the VID was different than the VIN for the tested vehicle. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the correct eVIN should have been transmitted and the PID count did not match the expected value.

The BAR-OIS test data showed that the eVIN that was transmitted matched the VIN belonging to a 2013 Dodge Dart SXT, which passed a smog inspection performed by Mr. Lopez on March 23, 2018, at 4:04 pm., minutes after the previous inspection 2016 Dodge Dart SE was inspected. During that inspection, an odometer reading of 113,845 and the VIN were both manually entered.

## **VEHICLE No. 5**

12. The BAR-OIS Test Detail from the VID showed that on June 29, 2018, a smog check inspection was performed by Mr. Lopez and certificate of compliance issued for a 2010 Volkswagen Jetta Limited. An odometer reading of 84,399 was entered. The BAR-OIS Test Detail showed the eVIN transmitted to the VID was different than the VIN for the tested vehicle. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the correct eVIN should have been transmitted and the PID count did not match the expected value. The 2010 Volkswagen Jetta Limited passed a smog check performed by another station on June 13, 2016, at which time the matching eVIN and expected communications protocol and PID count were transmitted to the VID.

The BAR-OIS test data showed that the eVIN that was transmitted matched the VIN belonging to a 2009 Volkswagen Jetta SE/SEL which passed a smog inspection performed at another station on January 29, 2015. At that time, an odometer reading of 89,276 was recorded.

## **VEHICLE No. 6**

13. The BAR-OIS Test Detail from the VID showed that on July 17, 2018, a smog check inspection was performed and certificate of compliance issued for a 2008 Nissan Frontier King Cab XE. The BAR-OIS Test Detail showed that the eVIN transmitted to the VID was different than the VIN for the tested vehicle. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the correct eVIN should have been transmitted and the communications protocol and PID count did not match the expected values. No additional information was submitted regarding the vehicle matching the eVIN that was transmitted.

## **STATION INSPECTION**

14. Mr. Tong performed a station inspection on May 17, 2018, to retrieve VIRs and invoices for the first four identified vehicles. Mr. Tong met with both respondents. Mr. Lopez reviewed the VIRs and confirmed that he had signed the reports under penalty of perjury. Mr. Tong did not question respondents about the inspections.

15. The vehicle information on all of the invoices matched the information listed in the VIR. On the invoice for the Dodge Dart (Vehicle No. 4), the words "VIN Correction" was printed on the invoice. The amount of the inspection had also been written-over to reflect that zero dollars were charged.

## **Respondents' Evidence**

### **MR. LOPEZ'S TESTIMONY**

16. Mr. Lopez is a partner for Xport Smog and a licensed smog check technician. Xport Smog is located close to the international border. Ninety percent of their business is performing smog check inspections for salvaged vehicles that are exported to Mexico. These vehicles are required to have smog check inspections in order to cross the border. Xport Smog is located next to a salvage yard and auto auction, which are the primary sources of their business. During the period of the above inspections, they were performing approximately 80 to 90 inspections per day.

17. Mr. Lopez denied that any of the vehicles were clean plugged or that he issued fraudulent inspections. Mr. Lopez testified it was his practice to scan the VIN from a barcode located on the vehicle's door. He believes that the first four vehicles tested above had salvaged doors containing VIN barcodes from their previous vehicle.

Thus, when he scanned the bar code from the door, the wrong vehicle information was transmitted to the BAR-OIS. This is why the eVIN and other parameters did not match the vehicle that was identified.

For Vehicle No. 1, Mr. Lopez actually tested a 2011 Dodge Dakota, not the 2007 Dodge Dakota indicated in the VIR. Several days later, the customer returned to Xport Smog because the VIN on the VIR did not match the vehicle's VIN and authorities would not permit it to cross the border. Mr. Lopez re-inspected the vehicle, this time entering the proper VIN. Respondents submitted the invoice and VIR for this inspection. The invoice contained the notation "VIN correction" and there was no charge for the inspection.

For Vehicle No. 2, Mr. Lopez actually tested a 2013 Jeep Cherokee, not the 2011 Jeep indicated in the VIR. Like the previous vehicle, the customer returned several days later because the vehicle identified in the VIR did not match his vehicle. Mr. Lopez re-inspected the vehicle and issued a new VIR. Respondents submitted the invoice and VIR for this inspection. The invoice contained the notation "VIN correction" and there was no charge for the inspection. The customer name also matched the name on the original invoice obtained by Mr. Tong.

Vehicle No. 3 was similar in that Mr. Lopez inspected a 2010 Ford Econoline, but the VIN scanned from the door was for a 2006 Ford Econoline, the vehicle identified in the VIR. For this vehicle, the customer returned the same day because of the mismatch between the VIR and the actual vehicle. Mr. Larios re-inspected the vehicle and issued a new VIR. Respondents submitted the invoice and VIR for this inspection. The invoice contained the notation "VIN [illegible] correction" and there was no charge for the inspection. The customer name also matched the name on the original invoice obtained by Mr. Tong.

For Vehicle No. 4, Mr. Lopez inspected a 2013 Dodge Dart, but the VIN scanned from the door was for a 2016 Dodge Dart, the vehicle identified in the VIR. For this vehicle, Mr. Lopez realized his mistake immediately after inspecting the vehicle. He then re-inspected the vehicle entering the correct VIN manually. He annotated "VIN correction" on the invoice for the 2016 Dodge Dart obtained by Mr. Tong, which had \$0 listed. Respondents submitted the invoice and VIR for the inspection on the 2013 Dodge Dart. This invoice contained a charge of \$30. The customer name also matched the name on the invoice obtained by Mr. Tong.

18. Regarding the remaining two vehicles, Mr. Lopez believes that the computer modules in both vehicles had been replaced from salvaged vehicles, which is why the incorrect eVIN and PID counts were transmitted. In Mr. Lopez's experience, it is possible for a vehicle to run with a replacement computer that is not from the exact year, make, and model.

For Vehicle No. 5, Mr. Lopez had no knowledge if the computer module had been replaced. However, for Vehicle No. 6, after Mr. Lopez received the Accusation, he asked the owner of the vehicle, who was an auto dealer, about the vehicle. The owner told him that the computer module had been replaced.

19. Respondents' business has slowed due to a decrease in exported vehicles. The station now inspects approximately 8 to 19 cars per day. Mr. Lopez testified that there is no way for a technician who makes a mistake to invalidate a test. He documented "VIN correction" on the invoice as his way of documenting a vehicle was re-inspected. Mr. Lopez understands that it was his responsibility to correctly input the VIN for a vehicle and verify that the VIN scanned matched the VIN on the dashboard. He admitted that because of the high number of inspections, he would just

scan the barcode on the door. Now, he always verifies the VIN scanned matches the VIN on the dashboard.

### **TESTIMONY OF MR. LARIOS**

20. Mr. Larios is also a smog check inspector. His testimony was similar to that of Mr. Lopez's. Like Mr. Lopez, he now appreciates the importance of verifying that the VIN entered matches the VIN of the vehicle being tested.

### **Evaluation**

21. The central issue in this case is whether respondents clean plugged the vehicles or issued fraudulent inspections. Fraud cannot be presumed, and complainant has the burden of proving that the inspections were fraudulent. Respondents dispute that they clean plugged any of the six vehicles or issued fraudulent certificates of compliance.

Respondents contend that the first four vehicles were salvage vehicles that contained VIN barcodes from other vehicles. Thus, when Mr. Lopez scanned these barcodes, and failed to verify they matched the vehicle being tested, a VIR was issued for a different vehicle than the one tested.

The best evidence that could have been produced to support respondents' claim would be a commercial vehicle report for each of the four vehicles the accusation alleges to have been clean plugged. If the vehicle had its day of reckoning at a junk yard before the date of the smog check inspection, this would have been conclusive evidence that it was not somehow resurrected such that it found its way to respondents' station in order to undergo a smog test. It would also support the claim that the vehicle's parts were cannibalized for other vehicles. Although this would have

been the best evidence to support respondents' position, their failure to produce it is not fatal to their case.

For each of the four vehicles identified above, Xport Smog generated a VIR for a vehicle where the eVIN did not match that of the vehicle reportedly tested. Xport Smog then tested the vehicle matching the eVIN that was generated in the previous inspection. But this occurred *after* performing the first inspection. If the first vehicles were in fact clean plugged, it would make more sense for the vehicle plugged into the BAR-OIS (donor vehicle) to be tested *before* the clean plugged vehicle. Otherwise, the inspector would have no way of knowing if the donor vehicle would in fact pass the inspection.

For each of the four vehicles, the odometer readings entered for the initial test were consistent with the odometer readings for the subsequent test. Of course it is possible that in clean plugging a vehicle, the inspector could enter the odometer reading for the donor vehicle – but what purpose would this serve? If the inspector were clean plugging a vehicle, there would be no reason not to enter the clean plugged vehicle's actual odometer reading. This is especially true if the owner were registering the vehicle, in which case the odometer reading would need to match the bill of sale.

The invoices obtained by Mr. Tong and produced by respondents are consistent with their claim. For each re-inspection, no charge is indicated and a notation of "VIN correction" was notated. For three of the re-inspections, the customer name matches that of the original inspection. Again, it is possible that the invoices were fabricated, but the fact that the invoices appeared to be hastily done, with missing information, and with the mere notation of "VIN correction," makes this possibility highly unlikely.

Finally, respondents' claim is consistent with the volume and type of business they were running. Based on its physical location, it is much more likely Xport Smog, as opposed to other smog stations, would encounter salvaged vehicles containing a VIN barcode on a part salvaged from another vehicle. Thus, the fact that this occurred on four separate occasions is not improbable considering Xport was testing approximately 2,000 vehicles per month, most of which were salvaged.

Taking all of these considerations, and the fact that Mr. Lopez was otherwise a credible witness, it is found that Vehicles No. 1 through 4 were not clean plugged, but instead, the VINs were entered for the wrong vehicle. Although the inspections were not done in accordance with law or regulation because Mr. Lopez failed to verify the correct VIN, he did not commit a dishonest or corrupt act in performing the inspections.

22. As for the remaining two vehicles, respondents contend that the computer modules had been replaced such that the eVIN and PID counts that were transmitted from the OBD did not correspond to the tested vehicle. Respondents' contention is largely based on speculation without any concrete evidence. On the other hand, the evidence submitted by complainant only shows that the eVIN and PID counts did not match. Unlike the four vehicles above, respondents never tested the vehicles corresponding to the transmitted eVIN. Complainant did not produce any evidence that the vehicles matching the transmitted eVIN have since been inspected. Ultimately, considering that the first four vehicles were found not to be fraudulently inspected, and Mr. Lopez's testimony was otherwise credible, it was not established that Mr. Lopez committed any error in inspecting Vehicle Nos. 5 and 6.

## **Enforcement and Prosecution Costs**

23. Complainant submitted three declarations of costs and requested cost recovery under Business and Professions Code section 125.3. Mr. Winkowski, Program Representative III, certified that he incurred \$177.86 in costs; Pete Kaliszewski, Program Representative II, certified that he incurred \$164.30 in costs; and Mr. Tong certified that he incurred \$3,571.67 in costs related to his investigation into the allegations in the accusation against respondents.

A certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution in the amount of \$5,510. All of the certifications complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

## **LEGAL CONCLUSIONS**

1. Control and elimination of air pollutants is necessary to protect the public health and well-being, and to protect property and vegetation. (Health & Saf. Code, § 43000, subd. (b).) Reduction of vehicle emissions is important to the public health and welfare. The Automotive Repair Act and the Motor Vehicle Inspection Program are designed to protect the public. 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.)

## **Burden and Standard of Proof**

2. Although a smog check inspector or technician must complete training, coursework, and pass an examination (Cal. Code Regs., tit. 16, §§ 3340.28 & 3340.29), these requirements are not similar to the extensive education, training, and testing requirements that are necessary to obtain a professional license. A smog check inspector and technician license is therefore considered a nonprofessional or occupational license and proceedings to revoke such a license are governed by the preponderance of evidence standard. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-17.) Likewise, obtaining a smog check station license (Health & Saf. Code, §§ 44014 and 44072.2) and an automotive repair dealer registration (Bus. & Prof. Code, §§ 9884 and 9884.7) require fees and forms to be submitted and the absence of specified misconduct; registration and licensure do not require extensive education, training, or testing. Smog check station licenses and automotive repair dealer registrations are therefore nonprofessional or occupational licenses and proceedings to revoke them are governed by the preponderance of the evidence standard. (Evid. Code, § 115; *Imports Performance, supra*, at p. 916-17.)

## **Relevant Statutes**

3. Business and Professions Code section 9884.7 provides in part:
  - (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.

[¶] . . . [¶]

(4) Any other conduct that constitutes fraud. . . .

4. Health and Safety Code section 44072.2 provides 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.

5. Health and Safety Code section 44072.8 provides: "When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

6. Health and Safety Code section 44012 requires a smog check inspection be performed in accordance with procedures prescribed by the department, including:

(a) Emission control systems required by state and federal law are reducing excess emissions . . .

[¶] . . . [¶]

(f) A visual or functional check is made of emission control devices specified by the department . . .

7. Health and Safety Code section 44015 provides that if a vehicle meets the requirements of Section 44012, a smog check station shall issue a certificate of compliance.

8. Health and Safety Code section 44035, subdivision (a), provides that the department may discipline a license for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. Subdivision (b), authorizes bureau representatives access to licensed stations for the purpose of examining property, station equipment, repair orders, emissions equipment maintenance records, and any emission inspection items, as defined by the department.

9. Health and Safety Code section 44059 makes it a criminal offense to willful make a false statement or entry with regard to a material matter in any certificate of compliance.

## **Relevant Regulations**

10. California Code of Regulations, title 16, section 3340.24, subdivision (c), prohibits the issuance of a false or fraudulent certificate of compliance.

11. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides that a smog check inspector or repair technician must inspect and test vehicles in accordance with Health and Safety Code sections 44012 and 44035.

12. California Code of Regulations, title 16, section 3340.35, subdivision (c), prohibits the issuance of a certificate of compliance when a vehicle has not been inspected as required.

13. California Code of Regulations, title 16, section 3340.41, subdivision (c), prohibits the entry of false information into an inspection system.

14. California Code of Regulations, title 16, section 3340.42, requires that a smog check inspection be conducted in accordance with the bureau's specifications.

15. California Code of Regulations, title 16, section 3373 prohibits an automotive repair dealer from producing a document containing false or misleading information.

16. California Code of Regulations, title 16, section 3340.45 requires smog check inspections prior to August 2, 2018, to be performed in accordance with the 2013 Smog Check Manual.

## **Cause Exists to Discipline Respondents' Smog Check Station License**

### **FIRST CAUSE FOR DISCIPLINE**

17. Cause does not exist to discipline respondents' automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1). Mr. Lopez entered incorrect VINs for four vehicles that caused erroneous VIRs and Certificates of Compliance to be issued. Although Xport Smog made or authorized statements that Mr. Lopez should have known were untrue (entering the incorrect VIN), respondents established that this was a "bona fide error" such that there is no cause to discipline their registration.

### **SECOND AND FIFTH CAUSES FOR DISCIPLINE**

18. Cause does not exist to discipline respondents' automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), or their smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (d). In entering erroneous VINs for four vehicles, Xport Smog did not commit dishonest, fraudulent, or deceitful acts or fail to conduct bona fide inspections.

### **THIRD AND FOURTH CAUSES FOR DISCIPLINE**

19. Cause exists to discipline respondents' smog check station license pursuant to Health and Safety Code section 44072.2, subdivisions (a) and (c). Xport Smog failed to comply with the Motor Vehicle Inspection Program laws (Health & Saf.

Code, §§ 44012<sup>2</sup>; 44015, subd. (b); & 44059) and regulations (Cal. Code Regs., tit. 16, §§ 3340.24, subd. (c); 3340.35, subd. (c); 3340.42; & 3373) in failing to conduct four inspections in accordance with bureau specifications and entering false information for electronic certificates of compliance.

## **Cause Exists to Revoke Mr. Lopez's Smog Check Inspector License**

### **SIXTH AND SEVENTH CAUSES FOR DISCIPLINE**

20. Cause exists to discipline Mr. Lopez's smog check inspector pursuant to Health and Safety Code section 44072.2, subdivisions (a) and (c). Mr. Lopez failed to comply with the Motor Vehicle Inspection Program laws (Health & Saf. Code, §§ 44012; 44015<sup>3</sup>; 44015, subd. (b); & 44059) and regulations (Cal. Code Regs., tit. 16, §§ 3340.24, subd (c); 3340.30, subd. (a); 3340.41, subd. (c); & 3340.42) in failing to conduct four inspections in accordance with bureau specifications and entering false information for electronic certificates of compliance.

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<sup>2</sup> The Accusation specifically cites Section 44012 subdivisions (a) and (f), which require the inspection to determine all emission control devices are installed and functioning and to conduct a visual and functional test of these system. Respondents did not violate these subdivisions, but Section 44012 requires the inspection be performed "in accordance with procedures prescribed by the department." In this case, by entering the wrong vehicle information for the vehicle being tested, respondents did not comply with department procedures, which is a violation of the statute.

<sup>3</sup> See footnote 2.

## **EIGHTH CAUSE FOR DISCIPLINE**

21. Cause does not exist to discipline Mr. Lopez's smog check inspector license pursuant to Health and Safety Code section 44072.2, subdivision (d). In entering false VINs for four vehicles, Mr. Lopez did not commit dishonest, fraudulent, or deceitful acts or fail to conduct bona fide inspections.

### **Appropriate Level of Discipline**

22. California Code of Regulations, title 16, section 3395.4, provides that in reaching a decision on a disciplinary action, the bureau must consider the disciplinary guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Rev. March 2016]. These guidelines provide the recommended sanctions for various violations. The recommended discipline for violating laws and regulations (Health & Saf. Code, § 44072.2, subds. (a) & (c)) is two years' probation.

Factors in aggravation for consideration include: prior warnings from the bureau; prior Office Conference(s) with the bureau; prior history of citations; prior history of formal disciplinary action; failure to permit the bureau inspection of records; evidence of abuse of mechanic's lien; evidence of attempts to intimidate consumer; evidence of negligent or willful improper repair work that endangers consumers; evidence that the unlawful act was part of a pattern of practice; failure to comply with the bureau's request for corrective action/retraining; currently on probation for improper acts; failure to successfully complete prior probation; failure to pay court judgment to victim; violation of previous court order; and evidence of any other conduct which constitutes fraud or gross negligence.

Most of these factors do not apply to respondents. Although there were four vehicles at issue in this case, based on the volume and type of business at the shop,

they do not indicate any specific pattern of conducting smog checks in an improper manner. Instead, the evidence indicated that Mr. Lopez was repeatedly negligent.

Factors in mitigation for consideration include: evidence that respondent implemented the bureau's suggested resolution to a consumer complaint; evidence of restitution to the consumer and/or correct repair of the consumer's vehicle; evidence of voluntary participation in retraining for self or employees; evidence of voluntary purchase of proper diagnostic equipment and manuals; evidence of a medical condition that temporarily prevented respondent from exercising supervision and control over employees or others at the time of the violation; absence of prior disciplinary action; evidence that the violation was not part of a pattern or practice; evidence of no loss to consumer and no damage to consumer's property; evidence of retraining and that respondent has initiated steps to minimize recurrence; evidence of resolution of all consumer complaints with a subsequent change in business practice; evidence of substantial measures to correct its business practices and/or business operations so as to minimize the likelihood of recurrence of the violation; evidence of any other conduct which would constitute a factor in mitigation.

Here, there was no evidence of a pattern or practice. Respondents have no prior discipline against any license or registration, and they have been in operation for almost five years. Mr. Lopez admitted culpability for repeatedly not verifying the VIN as required. Mr. Lopez has changed his practices since these incidents occurred, and now verifies the scanned VIN to ensure that it matches the vehicle's VIN

On this record, therefore, revocation is not appropriate. Protection of the public will be served by placing the licenses and registrations at issue on a three-year probation, subject to standard terms and conditions. As one of the terms, Mr. Lopez will be required to attend a bureau-approved training course.

## **Costs of Investigation and Enforcement**

23. Complainant is seeking recovery of the reasonable costs of prosecution, which were determined to be \$9,423.83. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. The court further held in *Zuckerman* that it was incumbent on the board to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." (*Ibid.*)

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable challenge" to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

24. Applying the *Zuckerman* criteria, respondents received a reduction in the severity of the discipline imposed based on a "colorable challenge" to the proposed discipline. Additionally, the charges of fraud were dismissed and two vehicles were determined to be properly inspected. The total costs in this matter are therefore reduced to \$4,000 and shall be permitted to be paid over time, if desired.

## ORDER

Smog Check Station License No. TC 280599 issued to respondents Luis A. Larios and Oliver Lopez, doing business as Xport Smog, and Smog Check Inspector License No. EO 635301 issued to respondent Oliver Lopez, are revoked. However, the revocation is stayed and all licenses are placed on probation for three years on the following terms and conditions.

1. Obey All Laws

During the period of probation, respondents shall comply with all federal and state statutes, regulations and rules governing all bureau registrations and licenses held by respondents.

2. Quarterly Reporting

During the period of probation, respondents shall report either by personal appearance or in writing as determined by the bureau on a schedule set by the bureau, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Report Financial Interests

Respondents shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the bureau during the period of probation, report any financial interest which any respondent or any partners, officers, or owners of any of respondents' facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

#### 4. Access to Examine Vehicles and Records

Respondents shall provide bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondents shall also provide bureau representatives unrestricted access to all records pursuant to bureau laws and regulations.

#### 5. Tolling of Probation

If, during probation, respondents leave the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondents shall notify the bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

#### 6. Abeyance

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondents obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondents is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondents are not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

7. Violation of Probation

If respondents violate or fail to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondents are served notice of the bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

8. Maintain Valid License

Respondents shall, at all times while on probation, maintain a current and active registration and licenses with the bureau, including any period during which suspension or probation is tolled. If respondents' licenses are expired at the time the decision becomes effective, the licenses must be renewed by respondents within 30 days of that date. If respondents' licenses expire during a term of probation, by operation of law or otherwise, then upon renewal respondents' licenses shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

9. Cost Recovery

Respondents shall pay the Bureau of Automotive Repair \$4,000 for the reasonable costs of the investigation and enforcement of case no 79/18-5886. Respondents shall make payment or installment payments as directed by the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondents shall make payment by check or money order payable to the Bureau of Automotive Repair

and shall indicate on the check or money order that it is for cost recovery payment for case no. 79/18-5886. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

#### 10. Completion of Probation

Upon successful completion of probation, respondent's affected licenses will be fully restored or issued without restriction, if respondents meet all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

#### 11. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondents cease business operations or are otherwise unable to satisfy the terms and conditions of probation, respondents may request that the stay be vacated. Such request shall be made in writing to the bureau. The Director and the bureau Chief reserve the right to evaluate respondents' request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.


#### 12. Submission of Application

Respondents may not petition the Director for reinstatement of the surrendered registration or licenses, or apply for a new registration or licenses under the jurisdiction of the bureau at any time before the date of the originally scheduled completion of probation. If respondents apply to the bureau for a registration or license at any time after that date, respondents must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to the bureau and left outstanding at the time of surrender.

### 13. Training Course

During the period of probation, respondent Lopez shall attend and successfully complete a bureau-specified and approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Respondent Lopez shall provide to the bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the bureau within the timeframes specified shall constitute a violation of probation, and respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

DATE: April 1, 2020

DocuSigned by:  
  
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ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings

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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**  
16 **1641 Pacific Rim Ct., Suite F**  
17 **San Diego, CA 92154**

**A C C U S A T I O N**

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

20 **and**

21 **OLIVER R. LOPEZ GODOY**  
21 **4369 44th Street, #B**  
22 **San Diego, CA 92115**

23 **Smog Check Inspector License No. EO**  
24 **635301**

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, 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 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”.<sup>2</sup> 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.

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

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.

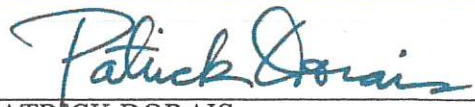
18 53. Pursuant to H & S Code section 44072.8, if issued Smog Check-Test Only Station  
19 License Number TC 280599, is revoked or suspended, the Director may likewise revoke or  
20 suspend any additional license, issued under Chapter 5 of Part 5 of Division 26 of the Health and  
21 Safety Code, to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

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