

1 XAVIER BECERRA
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 BRIAN LEE
Deputy Attorney General
4 State Bar No. 253592
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6621
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/19-5390

13 **ISAAC ISAIAH CONTRERAS DBA CALI**
14 **SMOG TEST ONLY**
15 **1629 California Ave.**
Bakersfield, CA 93304

ACCUSATION

16 **Automotive Repair Dealer Registration No.**
17 **ARD 290881**
18 **Smog Check, Test Only, Station License No.**
19 **TC 290881**

20 Respondent.

21 **PARTIES**

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

24 2. On or about May 16, 2018, the Bureau of Automotive Repair issued Automotive
25 Repair Dealer Registration Number ARD 290881 to Isaac Isaiah Contreras dba Cali Smog Test
26 Only ("Respondent"). The Automotive Repair Dealer Registration was in full force and effect at
27 all times relevant to the charges brought herein and expired on May 31, 2019, and has not been
28 renewed.

3. On or about July 5, 2018, the Bureau of Automotive Repair issued Smog Check, Test Only, Station License Number TC 290881 to Respondent. The Smog Check, Test Only, Station License was in full force and effect at all times relevant to the charges brought herein and expired on May 31, 2019, and has not been renewed.

JURISDICTION

4. This Accusation is brought before the Director of the Department of Consumer Affairs (“Director”) for the Bureau of Automotive Repair, under the authority of the following laws.

5. Business and Professions Code (“Bus. & Prof. Code”) section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

7. Health and Safety Code (“Health & Saf. Code”) section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

9. Section 9884.7 of the Bus. & Prof. Code states, in pertinent part:

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

...

(6) Failure in any material respect to comply with the provisions of this chapter

...

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

10. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

11. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section 44012.

12. Section 44059 of the Health & Saf. Code provides:

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

13. Section 44072.2 of the Health & Saf. Code provides, in pertinent part, that:

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 [the Motor Vehicle Inspection Program (Health and Saf. Code, ' 44000, et seq.)] 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. ...

14. Section 44072.10 of the Health & Saf. Code states, in pertinent part:

....

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

(1) Clean piping, as defined by the department

15. Section 44072.8 of the Health & Saf. Code provides that:

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.

REGULATORY PROVISIONS

16. California Code of Regulations (“CCR”), title 16, section 3340.24, provides, in part, that:

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

17. CCR, title 16, section 3340.35, provides, in part, that:

(c) A licensed station shall issue a certificate of compliance or noncompliance procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. . . .

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

19. CCR, title 16, section 3340, states, in pertinent part, that “[c]lean piping’ for the purposes of Health and Safety Code section 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle”.

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1 **COST RECOVERY**

2 20. Section 125.3, subdivision (a), of the Bus. & Prof. Code provides, in part, that a
3 Board “may request the administrative law judge to direct a licensee found to have committed a
4 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
5 investigation and enforcement of the case.”

6 **FACTUAL ALLEGATIONS**

7 21. In mid-March 2019, the Bureau conducted a detailed review of data gathered during
8 smog check inspections performed at Cali Smog Test Only. The review showed a pattern of
9 vehicles being certified in an abnormal short amount of time, emission readings that were similar
10 for all vehicles being tested, all tests defaulted to Two Speed Idle (TSI) mode (eliminating the use
11 of the dynamometer and allowing for a faster test), abnormal hours of operation, and a much
12 higher than normal volume of vehicles being tested and certified.

13 **Surveillance Operation – March 28, 2019 through March 29, 2019**

14 22. As a result of the data review, the Bureau conducted a simultaneous video
15 surveillance of Cali Smog Test Only.

16 23. The building where Cali Smog Test Only operates has three (3) vehicle bays with six
17 (6) roll up doors, three (3) on the west-facing side and three (3) on the east facing side. This set
18 up allows vehicles to enter from one side and leave through the other. The southern most bay is
19 the smog check inspection testing area and the location where the Emission Inspection System
20 (EIS) is located.

21 24. The Bureau conducted video surveillance at Cali Smog Test Only on the west side
22 entrance commencing on March 28, 2019 at 17:33 hours and ending on March 29, 2019 at 07:05
23 hours. The single camera was focused on all three (3) bay doors. The three (3) west facing doors
24 never opened the entire duration of surveillance.

25 25. Simultaneously, the Bureau conducted video surveillance of Cali Smog Test Only on
26 the east side entrance commencing on March 28, 2019 at 17:38 hours and ending on March 29,
27 2019 at 07:07 hours. The surveillance utilized two (2) cameras, the first camera was focused on
28 all three (3) east facing bay doors. The second camera was focused on the bay door for testing bay

1 (the southern most bay) on the east side where Cali Smog Test Only conducts Smog Check
2 inspections.

3 26. The video surveillance on the east side, showed that a single, vehicle arrived in front
4 of Cali Smog Test Only's east side testing bay door at 22:01:25 hours. The video shows that the
5 east side testing bay door opened once at 22:05:55 hours to allow the vehicle to enter the testing
6 bay of Cali Smog Test Only. The door remained close until it opened a second time, at 05:37:54
7 hours, over five (5) hours later. The opening of the bay door at 05:37:54 hours allowed the
8 vehicle to exit the testing bay. The vehicle exited, and the door closes at 05:39:24 hours.

9 27. The Bureau's database confirmed that ninety (90) tests were conducted and ninety
10 (90) vehicles were certified between March 28, 2019 at 22:25 hours and ending on March 29,
11 2019 at 05:31 hours.

12 28. The video surveillance recording showed that both east and west side doors remained
13 closed during the specific period when the clean piping activity was occurring. The Bay doors
14 never opened between the first clean pipe that commenced at 22:25 hours on March 28, 2019 and
15 the last clean pipe that ended at 05:31 hours on March 29, 2019. The actual vehicles being
16 certified were not present at Cali Smog Test Only's smog testing bay during the vehicle's
17 specified testing time-period, when each vehicle was fraudulently certified.

18 29. Accordingly, ninety (90) smog tests were performed and ninety (90) vehicles were
19 certified by means utilizing the clean piping¹ method. All of these fraudulent certificates were
20 issued by Cali Smog Test Only under the Smog Check License of Brian Lorenzo Nevarez².

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25 ¹ "Clean Piping" is the act of using the emission sample of a known clean vehicle to substitute for
26 the emissions of a vehicle that will not pass a smog inspection or is not present at the time of the test.

27 ² On or about October 14, 2013, the Bureau of Automotive Repair issued Smog Check Inspector
28 License Number EO 636130 to Brian Lorenzo Nevarez. The Smog Check Inspector License was in full
force and effect at all times relevant to the charges brought herein and was revoked on July 17, 2019
pursuant to a Final Decision issued in a separate Accusation matter against Armando Jr Gonzalez dba
Mandos Test Only and Brian Lorenzo Nevarez (Case No. 79/17-4900).

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 30. Respondent has subjected his Automotive Repair Dealer Registration to discipline
4 under Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that on March 28, 2019 and March
5 29, 2019, Respondent made statements which he knew or which by exercise of reasonable care
6 should have known were untrue or misleading when he issued electronic certificates of
7 compliance to 90 vehicles as described in paragraphs 21 through 29, above, certifying those
8 vehicles as being in compliance with applicable laws and regulations when, in fact, those vehicles
9 had not been inspected. Complainant refers to, and by this reference incorporates, the allegations
10 contained in paragraphs 21 through 29, as though set forth fully herein.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 31. Respondent has subjected his Automotive Repair Dealer Registration to discipline
14 under Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that on March 28, 2019 and March
15 29, 2019, Respondent committed acts which constitute fraud by issuing electronic certificates of
16 compliance for 90 vehicles as described in paragraphs 21 through 29, above, without performing
17 a bona fide inspection of the emission control devices and systems on those vehicles, thereby
18 depriving the People of the State of California of the protection afforded by the Motor Vehicle
19 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations
20 contained in paragraph 21 through 29, as though set forth fully herein.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Material Violation of Automotive Repair Act)**

23 32. Respondent has subjected his Automotive Repair Dealer Registration to discipline
24 under Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that on March 28, 2019 and March
25 29, 2019, Respondent failed in a “material respect to comply with the provisions of this chapter or
26 regulations adopted pursuant to it” when Respondent issued electronic certificates of compliance
27 to 90 vehicles as described in paragraphs 21 through 29, above, without performing bona fide
28 inspections of the emission control devices and systems on those vehicles, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
3 paragraph 21 through 29, as though set forth fully herein.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Violation of the Motor Vehicle Inspection Program)**

6 33. Respondent has subjected his Smog Check Test Only Station License to discipline
7 under Health & Saf. Code section 44072.2, subdivision (a), in that on March 28, 2019 and March
8 29, 2019, Respondent violated the following sections of the Health & Saf. Code with respect to
9 the inspection of 90 vehicles as described in paragraphs 21 through 29, above:

10 a. Section 44012: Respondent failed to ensure that the emission control tests were
11 performed on the vehicles in accordance with procedures prescribed by the department.

12 b. Section 44015, subdivision (b): Respondent issued electronic certificates of
13 compliance without properly testing and inspecting the vehicles to determine if they were in
14 compliance with section 44012 of the Health & Saf. Code.

15 c. Section 44059: Respondent willfully made false entries for the electronic certificates
16 of compliance by certifying that the vehicles had been inspected as required when, in fact, they
17 had not.

18 Complainant refers to, and by this reference incorporates, the allegations contained in
19 paragraph 21 through 29, as though set forth fully herein.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

22 34. Respondent has subjected his Smog Check Test Only Station License to discipline
23 under Health & Saf. Code section 44072.2, subdivision (c), in that on March 28, 2019 and March
24 29, 2019, Respondent violated the following sections of title 16 of the CCR with respect to the
25 inspection of 90 vehicles as described in paragraphs 21 through 29, above:

26 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued
27 electronic certificates of compliance without performing bona fide inspections of the emission
28 control devices and systems on the vehicles as required by Health & Saf. Code section 44012.

1 b. Section 3340.35, subdivision (c): Respondent issued electronic certificates of
2 compliance even though the vehicles had not been inspected in accordance with section 3340.42
3 of the Health & Saf. Code.

4 c. Section 3340.42: Respondent failed to conduct the required smog tests and
5 inspections on the vehicles in accordance with the Bureau's specifications.

6 Complainant refers to, and by this reference incorporates, the allegations contained in
7 paragraph 21 through 29 as though set forth fully herein.

8 **SIXTH CAUSE FOR DISCIPLINE**

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

10 35. Respondent has subjected his Smog Check Test Only Station License to discipline
11 under Health & Saf. Code section 44072.2, subdivision (d), in that on March 28, 2019 and March
12 29, 2019, Respondent committed acts involving dishonesty, fraud or deceit whereby another was
13 injured by issuing electronic certificates of compliance for 90 vehicles as described in paragraphs
14 21 through 29, above, without performing bona fide inspections of the emission control devices
15 and systems on those vehicles, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
17 reference incorporates, the allegations contained in paragraph 21 through 29, as though set forth
18 fully herein.

19 **OTHER MATTERS**

20 36. Pursuant Bus. & Prof. Code section 9884.7, subdivision (c), the director may suspend,
21 revoke, or place on probation the registrations for all places of business operated in this state by
22 Respondent upon a finding that he has, or is, engaged in a course of repeated and willful
23 violations of the laws and regulations pertaining to an automotive repair dealer.

24 37. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
25 License Number TC 290881, issued to Respondent is revoked or suspended, any additional
26 license issued under Chapter 5 of Part 5 of Division 26 in the name of said licensee may be
27 likewise revoked or suspended by the director.

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1 **DISCIPLINARY CONSIDERATIONS**

2 38. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about January 31, 2019, the Bureau issued Citation Number
4 C2019-740 to Respondent for violating section 44012 of the Health and Saf. Code, in that
5 Respondent unlawfully Smog Check inspected and certified a Bureau undercover vehicle with a
6 missing or modified Exhaust Gas-Recirculation System Components. The decision became
7 effective on April 5, 2019.

8 **PRAYER**

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

11 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
12 290881, issued to Isaac Isaiah Contreras dba Cali Smog Test Only;

13 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
14 290881, issued to Isaac Isaiah Contreras dba Cali Smog Test Only;

15 3. Revoking or suspending any other Automotive Repair Dealer Registration issued to
16 Isaac Isaiah Contreras;

17 4. Revoking or suspending any additional license under Chapter 5, Part 5, Division 26,
18 issued to Isaac Isaiah Contreras;

19 5. Ordering Isaac Isaiah Contreras to pay the Bureau of Automotive Repair the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3; and,

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

DATED: August 23, 2019

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

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