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

In the Matter of the Accusation Against:

Case No. 79/14-59

**SI SE PUEDE SMOG CHECK
GUSTAVO ADOLFO URBINA, OWNER
17294 Valley Blvd. #C
Fontana, CA 92335
Automotive Repair Dealer Reg. No. ARD
264213
Smog Check Test Only Station License No.
TC 264213,**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

**BRIAN SANTOS
125 E. Alru Street
Rialto, CA 92376
Smog Check Inspector License No. EO
633765 Smog Check Repair Technician
License No. EI 633765 (was redesignated
upon renewal from EA 633765 to EO
633765 and EI 633765)**

**JORGE MIGUEL AVALOS
3355 Somis Drive
Riverside, CA 92507
Smog Check Inspector License No. EO
632864, (was redesignated upon renewal
from EA 632864 to EO 632864)**

-and-

**CHARLES GUZMAN ROMAN
3725 Arora Street
Riverside, CA 92509
Advanced Emission Specialist Technician
License No. EA 634710, (to be re-designated
upon renewal as EO 634710 and/or EI
634710)**

Respondents.

FINDINGS OF FACT

1
2 1. On or about November 22, 2013, Complainant Patrick Dorais, in his official capacity
3 as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed
4 Accusation No. 79/14-59 against Si Se Puede Smog Check; Gustavo Adolfo Urbina, Brian
5 Santos, Jose Miguel Avalos and Charles Guzman Roman before the Director of Consumer
6 Affairs. A copy of the Accusation and Declaration of Service are attached as exhibit A, and is
7 incorporated herein by reference.

8 **Si Se Puede Smog Check; Gustavo Adolfo Urbina, Owner**

9 2. On or about February 22, 2011, the Director of Consumer Affairs ("Director") issued
10 Automotive Repair Dealer Registration Number ARD 264213 ("registration") to Gustavo Adolfo
11 Urbina, owner of, and doing business as Si Se Puede Smog Check ("Respondent or Respondent
12 Si Se Puede"). Respondent Si Se Puede's registration was in full force and effect at all times
13 relevant to the charges brought herein. The registration expired on February 28, 2013 and has not
14 been renewed.

15 3. On or about March 17, 2011, the Director issued Smog Check Test Only Station
16 License Number TC 264213 ("smog check station license") to Respondent Si Se Puede.
17 Respondent's smog check station license was in full force and effect at all times relevant to the
18 charges brought herein. The license expired on February 28, 2013 and has not been renewed.

19 4. On or about December 3, 2013, Respondent Si Se Puede was served by Certified Mail
20 copies of the Accusation No. 79/14-59, Statement to Respondent, Notice of Defense, Request for
21 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
22 Respondent Si Se Puede's address of record which, pursuant to Business and Professions Code
23 section 136, is required to be reported and maintained with the Bureau. Respondent's address of
24 record was and is: 17294 Valley Blvd., #C, Fontana, CA 92335.

25 5. Service of the Accusation was effective as a matter of law under the provisions of
26 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
27 124.
28

1 6. On or about December 4, 2013, 2014, the aforementioned documents were received
2 at the address of record. A copy of the United States Postal Service's Track and Confirm No.
3 71969008911189188208 is attached as exhibit B, and is incorporated herein by reference.

4 **Brian Santos**

5 7. On or about October 31, 2011, the Director issued Advanced Emission Specialist
6 Technician License Number EA 633765 ("technician license") to Brian Santos ("Respondent
7 Santos"). Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e)¹,
8 the license was renewed, pursuant to Respondent Santos's election, as Smog Check Inspector
9 License Number EO 633765 ("inspector license") and Smog Check Repair Technician License
10 Number EI 633765 ("repair technician license"), effective April 25, 2013. Respondent Santos'
11 inspector license and repair technician license were in full force and effect at all times relevant to
12 the charges brought herein and will expire on April 13, 2015, unless renewed.

13 **Jorge Miguel Avalos**

14 8. On or about February 18, 2011, the Director issued Advanced Emission Specialist
15 Technician License Number EA 632864 ("technician license") to Jorge Miguel Avalos
16 ("Respondent Avalos"). Pursuant to California Code of Regulations, title 16, section 3340.28,
17 subdivision (e)², the license was renewed, pursuant to Respondent Avalos' election, as Smog
18 Check Inspector License Number EO 632864 ("inspector license"), effective August 31, 2013.
19 Respondent Avalos' inspector license was in full force and effect at all times relevant to the
20 charges brought herein and will expire on August 31, 2014, unless renewed

21 9. On or about December 3, 2013, Respondent Avalos was served by Certified Mail
22 copies of the Accusation No. 79/14-59, Statement to Respondent, Notice of Defense, Request for
23 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

24 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
25 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
26 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
27 Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

28 ² Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 Respondent Avalos's address of record which, pursuant to Business and Professions Code section
2 136, is required to be reported and maintained with the Bureau. Respondent's address of record
3 was and is: 3355 Somis Drive, Riverside, CA 92507.

4 10. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

7 11. On or about January 13, 2014, the aforementioned documents were returned by the
8 U.S. Postal Service marked "Unclaimed." A copy of the United States Postal Service's Track and
9 Confirm No. 71969008911189188222 and a copy of the returned service stamp on a returned
10 envelope are attached as exhibit C, and is incorporated herein by reference.

11 **Charles Guzman Roman**

12 12. On or about August 30, 2012, the Director issued Advanced Emission Specialist
13 Technician License Number EA 634710 ("technician license") to Charles Guzman Roman
14 ("Respondent Roman"). Respondent's technician license was in full force and effect at all times
15 relevant to the charges brought herein and will expire on November 30, 2014, unless renewed.
16 Upon timely renewal of the license, the license will be re-designated as EO 634710 and/or EI
17 634710.

18 13. On or about December 3, 2013, Respondent Roman was served by Certified Mail
19 copies of the Accusation No. 79/14-59, Statement to Respondent, Notice of Defense, Request for
20 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
21 Respondent Roman's address of record which, pursuant to Business and Professions Code section
22 136, is required to be reported and maintained with the Bureau. Respondent's address of record
23 was and is: 3725 Arora Street, Riverside, CA 92509.

24 14. Service of the Accusation was effective as a matter of law under the provisions of
25 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
26 124.

1 15. On or about December 5, 2013, the aforementioned documents were received at the
2 address of record. A copy of the United States Postal Service's Track and Confirm No.
3 71969008911189188215 is attached as exhibit D, and is incorporated herein by reference.

4 16. Government Code section 11506 states, in pertinent part:

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

10 17. Respondents failed to file a Notice of Defense within 15 days after service upon them
11 of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No.
12 79/14-59.

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

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

18 19. Pursuant to its authority under Government Code section 11520, the Director after
19 having reviewed the proof of service dated December 3, 2013, signed by Kathy Johnston, return
20 envelope and USPS Track & Confirm Notices, finds Respondents are in default. The Director
21 will take action without further hearing and, based on Accusation, No. 79/14-59, proof of service
22 and on the Affidavit of Bureau Representative Andrew O. Nyborg, finds that the allegations in
23 Accusation are true.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Si Se Puede Smog Check has
26 subjected his Automotive Repair Dealer Registration No. ARD 264213 and Smog Check Test
27 Only Station License No. TC 264213 to discipline.

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2. Based on the foregoing findings of fact, Respondent Avalos has subjected his Smog
Check Inspector License Number EO 632864 to discipline.

1 3. Based on the foregoing findings of fact, Respondent Roman has subjected his
2 Advanced Emission Specialist Technician License Number EA 634710 to discipline. Upon
3 timely renewal of the license, the license will be re-designated as EO 634710 and/or EI 634710.

4 4. The agency has jurisdiction to adjudicate this case by default.

5 5. The Director of Consumer Affairs is authorized to revoke Respondents' Automotive
6 Repair Dealer Registration and Advanced Emission Specialist Technician Licenses based upon
7 the following violations alleged in the Accusation which are supported by the evidence contained
8 in the affidavit of Bureau Representative Andrew O. Nyborg in this case.

9 **VIDEO SURVEILLANCE OPERATION OF NOVEMBER 21, 2012**

10 a. On or about November 21, 2012, representatives of the Bureau conducted a video
11 surveillance operation of Respondent Si Se Puede's smog check facility. The surveillance video
12 and information obtained from the Bureau's vehicle information database ("VID") revealed that
13 Respondent Santos performed six (6) smog inspections, which resulted in the issuance of
14 electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that he
15 had tested and inspected those vehicles and that the vehicles were in compliance with applicable
16 laws and regulations. In fact, Respondent Santos performed the smog inspections using the clean
17 piping method³ by using the tail pipe emissions of vehicles other than the vehicles being certified
18 in order to issue the electronic certificates of compliance. The vehicles certified were not in the
19 test bay at the time of the smog inspections.

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26 ³ "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

Table 1

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
11/21/2012 11:21 hours to 11:30 hours	1990 Toyota Pickup, License # 8T20056	1998 Saturn SC1, License No. 6VIS874	XN842165C
11/21/2012 11:35 hours to 11:49 hours	2005 Chevrolet Tahoe VIN#1GNEC13T65R21 4770	1998 Saturn SC1, License No. 6VIS874	XN842166C
11/21/2012 11:59 hours to 12:09 hours	1998 Dodge Ram 1500, Vin#1D7HA16D04J295 591	1998 Saturn SC1, License No. 6VIS874	XN842167C
11/21/2012 12:16 hours to 12:23 hours	2002 Chevrolet C3500, License #6T85401	1998 Saturn SC1, License No. 6VIS874	XN842168C
11/21/2012 12:35 hours to 12:46 hours	2001 Dodge Intrepid, License#4PHJ284	1998 Saturn SC1, License No. 6VIS874	XN842169C
11/21/2012 12:55 hours to 13:04 hours	1991 GMC Safari, License #2ZAJ633	1998 Saturn SC1, License No. 6VIS874	None ⁴

b. Respondent Si Se Puede has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when its employee issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

⁴ BAR Program Representatives walked into Si Se Puede's facility while this smog check inspection was in progress and interrupted the smog inspection while the inspection was in progress. The 1991 GMC Safari, License #2ZAJ633 was never seen at Si Se Puede Smog Check the day of its certification.

1 c. Respondent Si Se Puede has subjected its registration to discipline under Code section
2 9884.7, subdivision (a)(4), in that on or about the dates listed above in Table 1, it committed acts
3 which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in
4 Table 1, above, without performing bona fide inspections of the emission control devices and
5 systems on those vehicles, thereby depriving the People of the State of California of the
6 protection afforded by the Motor Vehicle Inspection Program.

7 d. Respondent Si Se Puede has subjected its station license to discipline under Health
8 and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth in Table
9 1, above, it violated sections of that Code, as follows:

10 i. **Section 44012, subdivision (a):** Respondent Si Se Puede's smog technician
11 failed to determine that all emission control devices and systems required by law were installed
12 and functioning correctly in accordance with test procedures.

13 ii. **Section 44012, subdivision (f):** Respondent Si Se Puede's smog technician
14 failed to perform emission control tests on those vehicles in accordance with procedures
15 prescribed by the department.

16 iii. **Section 44015, subdivision (b):** Respondent Si Se Puede's smog technician
17 issued electronic certificates of compliance without properly testing and inspecting the vehicles to
18 determine if they were in compliance with section 44012 of that Code.

19 iv. **Section 44059:** Respondent Si Se Puede's smog technician willfully made
20 false entries for the electronic certificates of compliance by certifying that those vehicles had
21 been inspected as required when, in fact, they had not.

22 e. Respondent Si Se Puede has subjected its station license to discipline under Health
23 and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth in Table
24 1, above, it violated sections of the California Code of Regulations, title 16, as follows:

25 i. **Section 3340.24, subdivision (c):** Respondent Si Se Puede's smog technician
26 falsely or fraudulently issued electronic certificates of compliance without performing bona fide
27 inspections of the emission control devices and systems on those vehicles as required by Health
28 and Safety Code section 44012.

1 ii. **Section 3340.35, subdivision (c):** Respondent Si Se Puede's smog technician
2 issued electronic certificates of compliance even though those vehicles had not been inspected in
3 accordance with section 3340.42 of that Code.

4 iii. **Section 3340.42:** Respondent Si Se Puede's smog technician failed to conduct
5 the required smog tests and inspections on those vehicles in accordance with the Bureau's
6 specifications.

7 f. Respondent Si Se Puede's has subjected its station license to discipline under Health
8 and Safety Code section 44072.2, subdivision (d), in that regarding the vehicles set forth in Table
9 1, above, it committed acts involving dishonesty, fraud or deceit whereby another was injured by
10 issuing electronic certificates of compliance for those vehicles without performing bona fide
11 inspections of the emission control devices and systems on those vehicles, thereby depriving the
12 People of the State of California of the protection afforded by the Motor Vehicle Inspection
13 Program.

14 **VID DATA REVIEW**

15 g. A representative of the Bureau conducted a detailed review of VID data for all smog
16 inspections performed at Respondent Si Se Puede's facility for the period of October 13, 2012,
17 through November 21, 2012. The representative found that the 11 vehicles identified below
18 recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II tests⁵. The
19 representative obtained information indicating that the codes were not applicable to the vehicles.
20 The VID data revealed that Respondent Avalos performed the smog inspections on vehicles 1
21 through 3, Respondent Roman performed the smog inspection on vehicle 4 and that Respondent
22 Santos performed the inspections on vehicles 5 through 11. The Bureau concluded that
23 Respondents Avalos, Roman and Santos performed the smog inspections on the vehicles using a

24 ⁵ The On Board Diagnostics (OBD II) functional test is an automated function of the
25 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
26 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
27 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
28 information from the vehicle's on-board computer about the status of the readiness indicators,
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall inspection.

different vehicle(s) during the OBD II tests, a method known as "clean plugging",⁶ resulting in the issuance of fraudulent certificates of compliance for the vehicles identified in the table below.

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 10/20/2012 13:22-13:34	2000 Ford F150, License #6C76211	XN203548C
2. 10/20/2012 14:04-14:17	1998 Chrysler Sebring, License #5HFU607	XN203550C
3. 10/20/2012 14:24-14:32	1997 Honda Accord, License #4YAH468	XN356901C
4. 11/1/2012 10:50-11:05	1996 Infinity 130, License #6JEA149	XN446396C
5. 11/8/2012 09:45-09:55	1999 Dodge Ram 3500, License #5X30050	XN645616C
6. 11/8/2012 10:06-10:34	2006 Jeep Grand Cherokee, License #6LWF133	XN645617C
7. 11/13/2012 17:12-17:25	2003 Honda Civic, License #6JEU187	XN737751C
8. 11/15/2012 17:42-17:49	2000 Honda Civic, License #4PCE261	XN737771C
9. 11/17/2012 15:31-15:39	1996 Honda Odyssey, License #3NZS081	XN737785C
10. 11/21/2012 08:08-08:16	1996 Honda Civic, License #3SIP707	XN842161C
11. 11/21/2012 08:20-08:27	1997 Honda Civic, License #6PPK662	XN842162C

h. Respondent Si Se Puede's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Si Se Puede's employees certified that the vehicles identified in paragraph 5, subparagraph (g) above, had passed inspection and were in compliance with

⁶ Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

1 applicable laws and regulations. In fact, Respondent Si Se Puede's employees conducted the
2 inspections on the vehicles using clean-plugging methods in that they substituted or used a
3 different vehicle(s) during the OBD II functional tests in order to issue smog certificates of
4 compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf.
5 Code section 44012.

6 i. Respondent Si Se Puede's registration is subject to disciplinary action pursuant to
7 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent's employees committed
8 acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 1
9 through 11, identified in paragraph 5, subparagraph (g) above, without ensuring that bona fide
10 inspections were performed of the emission control devices and systems on the vehicles, thereby
11 depriving the People of the State of California of the protection afforded by the Motor Vehicle
12 Inspection Program.

13 j. Respondent Si Se Puede's smog check station license is subject to disciplinary action
14 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
15 comply with the following sections of that Code:

16 i. **Section 44012:** Respondent failed to ensure that the emission control tests
17 were performed on vehicles 1 through 11, identified in paragraph 5, subparagraph (g) above, in
18 accordance with procedures prescribed by the department.

19 ii. **Section 44015:** Respondent Si Se Puede's employees issued electronic smog
20 certificates of compliance for vehicles 1 through 11, identified in paragraph 5, subparagraph (g)
21 above, without ensuring that the vehicles were properly tested and inspected to determine if they
22 were in compliance with Health & Saf. Code section 44012.

23 k. Respondent Si Se Puede's smog check station license is subject to disciplinary action
24 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
25 comply with provisions of California Code of Regulations, title 16, as follows:

26 i. **Section 3340.24, subdivision (c):** Respondent Si Se Puede's employees falsely
27 or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 11,
28 identified in paragraph 5, subparagraph (g) above.

1 ii. **Section 3340.35, subdivision (c):** Respondent Si Se Puede's employees issued
2 electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 5,
3 subparagraph (g) above, even though the vehicles had not been inspected in accordance with
4 section 3340.42.

5 iii. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
6 performed on vehicles 1 through 11, identified in paragraph 5, subparagraph (g) above, in
7 accordance with the Bureau's specifications.

8 l. Respondent Si Se Puede's smog check station license is subject to disciplinary action
9 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent's employees
10 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
11 smog certificates of compliance for vehicles 1 through 11, identified in paragraph 5, subparagraph
12 (g) above, without ensuring that bona fide inspections were performed of the emission control
13 devices and systems on the vehicles, thereby depriving the People of the State of California of the
14 protection afforded by the Motor Vehicle Inspection Program.

15 m. Respondent Roman's technician license is subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
17 section 44012 of that Code, in a material respect, as follows: Respondent failed to perform the
18 emission control tests on vehicle 4, identified in paragraph 5, subparagraph (g) above, in
19 accordance with procedures prescribed by the department.

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

23 i. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
24 electronic smog certificate of compliance for vehicle 4, identified in paragraph 5, subparagraph
25 (g) above.

26 ii. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicle
27 4, identified in paragraph 5, subparagraph (g) above, in accordance with Health & Saf. Code
28 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

1 iii. **Section 3340.42:** Respondent failed to conduct the required smog tests on
2 vehicle 4, identified in paragraph 5, subparagraph (g) above, in accordance with the Bureau's
3 specifications.

4 o. Respondent Roman's technician license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
6 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
7 compliance for vehicle 4, identified in paragraph 5, subparagraph (g) above, without performing a
8 bona fide inspection of the emission control devices and systems on the vehicle, thereby
9 depriving the People of the State of California of the protection afforded by the Motor Vehicle
10 Inspection Program.

11 p. Respondent Avalos's inspector license is subject to disciplinary action pursuant to
12 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
13 section 44012 of that Code, in a material respect, as follows: Respondent failed to perform the
14 emission control tests on vehicles 1-3, identified in paragraph 5, subparagraph (g) above, in
15 accordance with procedures prescribed by the department.

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

19 i. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
20 electronic smog certificates of compliance for vehicles 1-3, identified in paragraph 5,
21 subparagraph (g) above.

22 ii. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
23 vehicles 1-3, identified in paragraph 5, subparagraph (g) above, in accordance with Health & Saf.
24 Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

25 iii. **Section 3340.42:** Respondent failed to conduct the required smog tests on
26 vehicles 1-3, identified in paragraph 5, subparagraph (g) above, in accordance with the Bureau's
27 specifications.

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r. Respondent Avalos's inspector license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1-3, identified in paragraph 5, subparagraph (g) above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 264213 and Smog Check Test Only Station License No. TC 264213, heretofore issued to Respondent Si Se Puede Smog Check; Gustavo Adolfo Urbina, are revoked.

IT IS SO ORDERED that Smog Check Inspector License No. EO 632864, (was re-designated upon renewal from EA 632864 to EO 632864), heretofore issued to Respondent Jorge Miguel Avalos, is revoked.

AS TO RESPONDENT ROMAN: The Advanced Emission Specialist Technician License No. EA 634710, (to be re-designated upon renewal as EO 634710 and/or EI 634710), heretofore issued to Respondent Charles Guzman Roman, would otherwise be revoked in this order, but this license is addressed in a separate case because Respondent Roman has entered into a Stipulated Surrender of License and Order in Case No. 79/13-53, OAH No. 2013 06 0972, which also results in the revocation of his license. The Decision resulting from that stipulation is accepted and adopted and becomes effective May 28, 2014.

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

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1 This Decision shall become effective on May 28, 2014.

2 It is so ORDERED MAY 02 2014

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6 DONALD CHANG
7 Assistant Chief Counsel
8 Department of Consumer Affairs

9 51461594_3.DOC
10 DOJ Matter ID:LA2013508959

11 Attachments:

12 Exhibit A: Accusation and Declaration of Service

13 Exhibit B: A copy of the United States Postal Service's Track and Confirm No.
14 71969008911189188208

15 Exhibit C: A copy of the United States Postal Service's Track and Confirm No.

16 71969008911189188222 and a copy of the returned service stamp on a returned envelope

17 Exhibit D: A copy of the United States Postal Service's Track and Confirm No.

18 71969008911189188215
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Exhibit A

Accusation and Declaration of Service

1 KAMALA D. HARRIS
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2 KAREN B. CHAPPELLE
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Attorneys for Complainant

7
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. 79/14-59

13 **SI SE PUEDE SMOG CHECK**
14 **GUSTAVO ADOLFO URBINA, OWNER**
15 **17294 Valley Blvd. #C**
16 **Fontana, CA 92335**
17 **Automotive Repair Dealer Reg. No. ARD 264213**
18 **Smog Check Test Only Station License No. TC**
19 **264213,**

ACCUSATION

(Smog Check)

20 **BRIAN SANTOS**
21 **125 E. Alru Street**
22 **Rialto, CA 92376**
23 **Smog Check Inspector License No. EO 633765**
24 **Smog Check Repair Technician License No. EI**
25 **633765 (was redesignated upon renewal from**
26 **EA 633765 to EO 633765 and EI 633765)**

27 **JORGE MIGUEL AVALOS**
28 **3355 Somis Drive**
Riverside, CA 92507
Smog Check Inspector License No. EO 632864,
(was redesignated upon renewal from EA
632864 to EO 632864)

-and-

1 **CHARLES GUZMAN ROMAN**
2 **3725 Arora Street**
3 **Riverside, CA 92509**
4 **Advanced Emission Specialist Technician**
5 **License No. EA 634710, (to be re-designated**
6 **upon renewal as EO 634710 and/or EI 634710)**

Respondents.

Complainant alleges:

PARTIES/LICENSE INFORMATION

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

Si Se Puede Smog Check; Gustavo Adolfo Urbina, Owner

2. On or about February 22, 2011, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 264213 ("registration") to Gustavo Adolfo Urbina, owner of, and doing business as Si Se Puede Smog Check ("Respondent or Respondent Si Se Puede"). Respondent Si Se Puede's registration was in full force and effect at all times relevant to the charges brought herein. The registration expired on February 28, 2013 and has not been renewed.

3. On or about March 17, 2011, the Director issued Smog Check Test Only Station License Number TC 264213 ("smog check station license") to Respondent Si Se Puede. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein. The license expired on February 28, 2013 and has not been renewed.

Brian Santos

4. On or about October 31, 2011, the Director issued Advanced Emission Specialist Technician License Number EA 633765 ("technician license") to Brian Santos ("Respondent Santos"). Upon timely renewal of the license, the licenses were re-designated as EO 633765 and EI 633765¹ ("technician licenses"). Respondent Santos's technician licenses were in full force and

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

(continued...)

1 effect at all times relevant to the charges brought herein and will expire on April 30, 2015, unless
2 renewed.

3 **Jorge Miguel Avalos**

4 5. On or about February 18, 2011, the Director issued Advanced Emission Specialist
5 Technician License Number EA 632864 ("technician license") to Jorge Miguel Avalos
6 ("Respondent Avalos"). Upon timely renewal of the license, the license was re-designated as EO
7 632864 ("inspector license"). Respondent Avalos's inspector license was in full force and effect at
8 all times relevant to the charges brought herein and will expire on August 31, 2014, unless
9 renewed.

10 **Charles Guzman Roman**

11 6. On or about August 30, 2012, the Director issued Advanced Emission Specialist
12 Technician License Number EA 634710 ("technician license") to Charles Guzman Roman
13 ("Respondent Roman"). Respondent's technician license was in full force and effect at all times
14 relevant to the charges brought herein and will expire on November 30, 2014, unless renewed.
15 Upon timely renewal of the license, the license will be re-designated as EO 634710 and/or EI
16 634710.

17 **JURISDICTION**

18 7. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
19 the Director may revoke an automotive repair dealer registration.

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

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

10. 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

11. Bus. & Prof. Code section 9884.7 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.

(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.

12. Bus. & Prof. Code section 22, subdivision (a), states:

"Board" as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes "registration" and "certificate."

14. Health & Saf. Code section 44072.2 states, in pertinent 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:

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

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

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

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

10 15. Health & Saf. Code section 44072.10 states, in pertinent part:

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

15 (1) Clean piping, as defined by the department.

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

18 REGULATORY PROVISIONS

19 16. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c),
20 states:

21 "The bureau may suspend or revoke the license of or pursue other legal action against a
22 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
23 certificate of noncompliance."

24 17. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
25 shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section
26 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
27 3340.42 of this article."
28

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

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

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

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

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

20 COST RECOVERY

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

25 VIDEO SURVEILLANCE OPERATION OF NOVEMBER 21, 2012

26 24. On or about November 21, 2012, representatives of the Bureau conducted a video
27 surveillance operation of Respondent Si Se Puede's smog check facility. The surveillance video
28 and information obtained from the Bureau's vehicle information database ("VID") revealed that

Respondent Santos performed six (6) smog inspections, which resulted in the issuance of electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Santos performed the smog inspections using the clean piping method² by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

Table 1

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
11/21/2012 11:21 hours to 11:30 hours	1990 Toyota Pickup, License # 8T20056	1998 Saturn SC1, License No. 6VIS874	XN842165C
11/21/2012 11:35 hours to 11:49 hours	2005 Chevrolet Tahoe VIN#1GNEC13T65R21 4770	1998 Saturn SC1, License No. 6VIS874	XN842166C
11/21/2012 11:59 hours to 12:09 hours	1998 Dodge Ram 1500, Vin#1D7HA16D04J295 591	1998 Saturn SC1, License No. 6VIS874	XN842167C
11/21/2012 12:16 hours to 12:23 hours	2002 Chevrolet C3500, License #6T85401	1998 Saturn SC1, License No. 6VIS874	XN842168C
11/21/2012 12:35 hours to 12:46 hours	2001 Dodge Intrepid, License #4PHJ284	1998 Saturn SC1, License No. 6VIS874	XN842169C

² "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in compliance or are not present in the smog check area during the time of the certification.

11/21/2012 12:55 hours to 13:04 hours	1991 GMC Safari, License #2ZAJ633	1998 Saturn SC1, License No. 6VIS874	None ³
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FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

25. Respondent Si Se Puede has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about the dates specified in Table 1 above, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when its employee issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

26. Respondent Si Se Puede has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about the dates listed above in Table 1, it committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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³ BAR Program Representatives walked into Si Se Puede's facility while this smog check inspection was in progress and interrupted the smog inspection while the inspection was in progress. The 1991 GMC Safari, License #2ZAJ633 was never seen at Si Se Puede Smog Check the day of its certification.

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 27. Respondent Si Se Puede has subjected its station license to discipline under Health
4 and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth in Table
5 1, above, it violated sections of that Code, as follows:

6 a. Section 44012, subdivision (a): Respondent Si Se Puede's smog technician failed to
7 determine that all emission control devices and systems required by law were installed and
8 functioning correctly in accordance with test procedures.

9 b. Section 44012, subdivision (f): Respondent Si Se Puede's smog technician failed to
10 perform emission control tests on those vehicles in accordance with procedures prescribed by the
11 department.

12 c. Section 44015, subdivision (b): Respondent Si Se Puede's smog technician issued
13 electronic certificates of compliance without properly testing and inspecting the vehicles to
14 determine if they were in compliance with section 44012 of that Code.

15 d. Section 44059: Respondent Si Se Puede's smog technician willfully made false
16 entries for the electronic certificates of compliance by certifying that those vehicles had been
17 inspected as required when, in fact, they had not.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 28. Respondent Si Se Puede has subjected its station license to discipline under Health
21 and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth in Table
22 1, above, it violated sections of the California Code of Regulations, title 16, as follows:

23 a. Section 3340.24, subdivision (c): Respondent Si Se Puede's smog technician falsely
24 or fraudulently issued electronic certificates of compliance without performing bona fide
25 inspections of the emission control devices and systems on those vehicles as required by Health
26 and Safety Code section 44012.

1 b. Section 3340.35, subdivision (c): Respondent Si Se Puede's smog technician issued
2 electronic certificates of compliance even though those vehicles had not been inspected in
3 accordance with section 3340.42 of that Code.

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

7 **FIFTH CAUSE FOR DISCIPLINE**

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

9 29. Respondent Si Se Puede's has subjected its station license to discipline under Health
10 and Safety Code section 44072.2, subdivision (d), in that regarding the vehicles set forth in Table
11 1, above, it committed acts involving dishonesty, fraud or deceit whereby another was injured by
12 issuing electronic certificates of compliance for those vehicles without performing bona fide
13 inspections of the emission control devices and systems on those vehicles, thereby depriving the
14 People of the State of California of the protection afforded by the Motor Vehicle Inspection
15 Program.

16 **SIXTH CAUSE FOR DISCIPLINE**

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

18 30. Respondent Santos has subjected his technician licenses to discipline under Health
19 and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth in Table
20 1, above, he violated sections of that Code, as follows:

21 a. Section 44012, subdivision (a): Respondent Santos failed to determine that all
22 emission control devices and systems required by law were installed and functioning correctly in
23 accordance with test procedures.

24 b. Section 44012, subdivision (f): Respondent Santos failed to perform emission
25 control tests on those vehicles in accordance with procedures prescribed by the department.

26 c. Section 44032: Respondent Santos failed to perform tests of the emission control
27 devices and systems on those vehicles in accordance with section 44012 of that Code, in that the
28 vehicles had been clean piped.

1 d. Section 44059: Respondent Santos willfully made false entries for the electronic
2 certificates of compliance by certifying that those vehicles had been inspected as required when,
3 in fact, they had not.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 31. Respondent Santos has subjected his technician licenses to discipline under Health
7 and Safety Code section 44072.2, subdivision (c), in that, regarding the vehicles set forth in Table
8 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

9 a. Section 3340.24, subdivision (c): Respondent Santos falsely or fraudulently issued
10 electronic certificates of compliance without performing bona fide inspections of the emission
11 control devices and systems on those vehicles as required by Health and Safety Code section
12 44012.

13 b. Section 3340.30, subdivision (a): Respondent Santos failed to inspect and test those
14 vehicles in accordance with Health and Safety Code section 44012.

15 c. Section 3340.41, subdivision (c): Respondent Santos entered false information into
16 the Emission Inspection System for the electronic certificates of compliance by entering vehicle
17 emission control information for vehicles other than the vehicles being certified.

18 d. Section 3340.42: Respondent Santos failed to conduct the required smog tests and
19 inspections on those vehicles in accordance with the Bureau's specifications.

20 **EIGHTH CAUSE FOR DISCIPLINE**

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

22 32. Respondent Santos has subjected his technician licenses to discipline under Health
23 and Safety Code section 44072.2, subdivision (d), in that regarding the vehicles set forth above in
24 Table 1, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
25 issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without
26 performing bona fide inspections of the emission control devices and systems on those vehicles,
27 thereby depriving the People of the State of California of the protection afforded by the Motor
28 Vehicle Inspection Program.

VID DATA REVIEW

33. A representative of the Bureau conducted a detailed review of VID data for all smog inspections performed at Respondent Si Se Puede's facility for the period of October 13, 2012, through November 21, 2012. The representative found that the 11 vehicles identified below recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II tests⁴. The representative obtained information indicating that the codes were not applicable to the vehicles. The VID data revealed that Respondent Avalos performed the smog inspections on vehicles 1 through 3, Respondent Roman performed the smog inspection on vehicle 4 and that Respondent Santos performed the inspections on vehicles 5 through 11. The Bureau concluded that Respondents Avalos, Roman and Santos performed the smog inspections on the vehicles using a different vehicle(s) during the OBD II tests, a method known as "clean plugging",⁵ resulting in the issuance of fraudulent certificates of compliance for the vehicles identified in the table below:

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 10/20/2012 13:22-13:34	2000 Ford F150, License #6C76211	XN203548C
2. 10/20/2012 14:04-14:17	1998 Chrysler Sebring, License #5HFU607	XN203550C
3. 10/20/2012 14:24-14:32	1997 Honda Accord, License #4YAH468	XN356901C
4. 11/1/2012 10:50-11:05	1996 Infinity 130, License #6JEA149	XN446396C
5. 11/8/2012 09:45-09:55	1999 Dodge Ram 3500, License #5X30050	XN645616C

⁴ The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

⁵ Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

6. 11/8/2012 10:06-10:34	2006 Jeep Grand Cherokee, License #6LWF133	XN645617C
7. 11/13/2012 17:12-17:25	2003 Honda Civic, License #6JEU187	XN737751C
8. 11/15/2012 17:42-17:49	2000 Honda Civic, License #4PCE261	XN737771C
9. 11/17/2012 15:31-15:39	1996 Honda Odyssey, License #3NZS081	XN737785C
10. 11/21/2012 08:08-08:16	1996 Honda Civic, License #3SIP707	XN842161C
11. 11/21/2012 08:20-08:27	1997 Honda Civic, License #6PPK662	XN842162C

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

34. Respondent Si Se Puede's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Si Se Puede's employees certified that the vehicles identified in paragraph 33 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Si Se Puede's employees conducted the inspections on the vehicles using clean-plugging methods in that they substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

35. Respondent Si Se Puede's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent's employees committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 33 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **ELEVENTH CAUSE FOR DISCIPLINE**

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

5 36. Respondent Si Se Puede's smog check station license is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
7 comply with the following sections of that Code:

8 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
9 performed on vehicles 1 through 11, identified in paragraph 33 above, in accordance with
10 procedures prescribed by the department.

11 b. **Section 44015:** Respondent Si Se Puede's employees issued electronic smog
12 certificates of compliance for vehicles 1 through 11, identified in paragraph 33 above, without
13 ensuring that the vehicles were properly tested and inspected to determine if they were in
14 compliance with Health & Saf. Code section 44012.

15 **TWELFTH CAUSE FOR DISCIPLINE**

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

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

21 a. **Section 3340.24, subdivision (c):** Respondent Si Se Puede's employees falsely or
22 fraudulently issued electronic smog certificates of compliance for vehicles 1 through 11,
23 identified in paragraph 33 above.

24 b. **Section 3340.35, subdivision (c):** Respondent Si Se Puede's employees issued
25 electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 33
26 above, even though the vehicles had not been inspected in accordance with section 3340.42.

1 c. Section 3340.42: Respondent failed to ensure that the required smog tests were
2 performed on vehicles 1 through 11, identified in paragraph 33 above, in accordance with the
3 Bureau's specifications.

4 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

6 38. Respondent Si Se Puede's smog check station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent's employees
8 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
9 smog certificates of compliance for vehicles 1 through 11, identified in paragraph 33 above,
10 without ensuring that bona fide inspections were performed of the emission control devices and
11 systems on the vehicles, thereby depriving the People of the State of California of the protection
12 afforded by the Motor Vehicle Inspection Program.

13 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

15 39. Respondent Santos's technician licenses are subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
17 section 44012 of that Code, in a material respect, as follows: Respondent failed to perform the
18 emission control tests on vehicles 5-11, identified in paragraph 33 above, in accordance with
19 procedures prescribed by the department.

20 **FIFTEENTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant**
22 **to the Motor Vehicle Inspection Program)**

23 40. Respondent Santos's technician licenses are subject to disciplinary action pursuant to
24 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
25 provisions of California Code of Regulations, title 16, as follows:

26 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued
27 electronic smog certificates of compliance for vehicles 5-11, identified in paragraph 33 above.
28

1 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test vehicles 5-
2 11, identified in paragraph 33 above, in accordance with Health & Saf. Code sections 44012 and
3 44035, and California Code of Regulations, title 16, section 3340.42.

4 c. Section 3340.42: Respondent failed to conduct the required smog tests on vehicles 5-
5 11 identified in paragraph 33 above, in accordance with the Bureau's specifications.

6 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

8 41. Respondent Santos's technician licenses are subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
10 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
11 compliance for vehicles 5-11, identified in paragraph 33 above, without performing bona fide
12 inspections of the emission control devices and systems on the vehicles, thereby depriving the
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program.

15 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

17 42. Respondent Roman's technician license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
19 section 44012 of that Code, in a material respect, as follows: Respondent failed to perform the
20 emission control tests on vehicle 4, identified in paragraph 33 above, in accordance with
21 procedures prescribed by the department.

22 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

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

1 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued an
2 electronic smog certificate of compliance for vehicle 4, identified in paragraph 33 above.

3 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test vehicle 4,
4 identified in paragraph 33 above, in accordance with Health & Saf. Code sections 44012 and
5 44035, and California Code of Regulations, title 16, section 3340.42.

6 c. Section 3340.42: Respondent failed to conduct the required smog tests on vehicle 4,
7 identified in paragraph 33 above, in accordance with the Bureau's specifications.

8 **NINETEENTH CAUSE FOR DISCIPLINE**

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

10 44. Respondent Roman's technician license is subject to disciplinary action pursuant to
11 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
12 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
13 compliance for vehicle 4, identified in paragraph 33 above, without performing a bona fide
14 inspection of the emission control devices and systems on the vehicle, thereby depriving the
15 People of the State of California of the protection afforded by the Motor Vehicle Inspection
16 Program.

17 **TWENTIETH CAUSE FOR DISCIPLINE**

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

19 45. Respondent Avalos's inspector license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
21 section 44012 of that Code, in a material respect, as follows: Respondent failed to perform the
22 emission control tests on vehicles 1-3, identified in paragraph 33 above, in accordance with
23 procedures prescribed by the department.

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1 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 46. Respondent Avalos's inspector license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for vehicles 1-3, identified in paragraph 33 above.

9 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1-3,
10 identified in paragraph 33 above, in accordance with Health & Saf. Code sections 44012 and
11 44035, and California Code of Regulations, title 16, section 3340.42.

12 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 1-
13 3, identified in paragraph 33 above, in accordance with the Bureau's specifications.

14 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

16 47. Respondent Avalos's inspector license is subject to disciplinary action pursuant to
17 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
18 fraudulent, or deceitful act whereby another is injured by issuing electronic smog certificates of
19 compliance for vehicles 1-3, identified in paragraph 33 above, without performing a bona fide
20 inspection of the emission control devices and systems on the vehicle, thereby depriving the
21 People of the State of California of the protection afforded by the Motor Vehicle Inspection
22 Program.

23 **OTHER MATTERS**

24 48. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
25 suspend, revoke or place on probation the registration for all places of business operated in this
26 state by Respondent Gustavo Adolfo Urbina, owner of Si Se Puede Smog Check, upon a finding
27 that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
28 regulations pertaining to an automotive repair dealer.

49. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station License Number TC 264213, issued to Respondent Gustavo Adolfo Urbina, owner of Si Se Puede Smog Check, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

50. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License No. EO 633765 and Smog Check Repair Technician License No. EI 633765 (was redesignated upon renewal from EA 633765 to EO 633765 and EI 633765) issued to Respondent Brian Santos, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

51. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License No. EO 632864, (was re-designated upon renewal from EA 632864 to EO 632864) issued to Respondent Jorge Miguel Avalos, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

52. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License No. EA 634710, (to be re-designated upon renewal as EO 634710 and/or EI 634710) issued to Respondent Charles Guzman Roman, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 264213, issued to Gustavo Adolfo Urbina, owner of Si Se Puede Smog Check;

2. Revoking or suspending any other automotive repair dealer registration issued to:
Gustavo Adolfo Urbina;

3. Revoking or suspending Smog Check Test Only Station License Number TC 264213, issued to Gustavo Adolfo Urbina, owner of Si Se Puede Smog Check;

1 4. Revoking or suspending Smog Check Inspector License No. EO 633765 and Smog
2 Check Repair Technician License No. EI 633765 (was redesignated upon renewal from EA
3 633765 to EO 633765 and EI 633765) issued to Respondent Brian Santos;

4 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
5 and Safety Code issued to Brian Santos;

6 6. Revoking or suspending Smog Check Inspector License No. EO 632864, (was re-
7 designated upon renewal from EA 632864 to EO 632864) issued to Respondent Jorge Miguel
8 Avalos;

9 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
10 and Safety Code issued to Jorge Miguel Avalos;

11 8. Revoking or suspending Advanced Emission Specialist Technician License No. EA
12 634710, (to be re-designated upon renewal as EO 634710 and/or EI 634710) issued to
13 Respondent Charles Guzman Roman;

14 9. Revoking or suspending any additional license issued under Chapter 5 of the Health
15 and Safety Code issued to Charles Guzman Roman;

16 10. Ordering Gustavo Adolfo Urbina, individually, and as owner of Si Se Puede Smog
17 Check, Brian Santos, Jorge Miguel Avalos, and Charles Guzman Roman to pay the Bureau of
18 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
19 pursuant to Business and Professions Code section 125.3;

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

21
22 DATED: November 22, 2013


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

23
24
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26 LA2013508959
27
28

DECLARATION OF SERVICE BY CERTIFIED MAIL

Case Name: **Si Se Puede Smog Check; Gustavo Adolfo Urbina; Brian Santos; Jorge Miguel Avalos; Charles Guzman Roman**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 3, 2013, I served the attached **STATEMENT TO RESPONDENTS; ACCUSATION; NOTICE OF DEFENSE x 2; REQUEST FOR DISCOVERY; GOVERNMENT CODE SECTIONS** by placing a true copy thereof enclosed in a sealed envelope as certified mail and return receipt requested, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Gustavo Adolfo Urbina, Owner
Si Se Puede Smog Check
17294 Valley Blvd., #C
Fontana, CA 92335

Certified Article Number

7156 9008 9111 8918 8208

SENDERS RECORD

Brian Santos
Smog Technician
125 E. Alru Street
Rialto, CA 92376

Certified Article Number

7156 9008 9111 8918 8239

SENDERS RECORD

Charles Guzman Roman
Smog Technician
3725 Arora Street
Riverside, CA 92509

Certified Article Number

7156 9008 9111 8918 8215

SENDERS RECORD

Jorge Miguel Avalos
Smog Technician
3355 Somis Drive
Riverside, CA 92507

Certified Article Number

7156 9008 9111 8918 8222

SENDERS RECORD

I declare under penalty of perjury under the law of the State of California the foregoing is true and correct and that this declaration was executed on December 3, 2013, at Los Angeles, California.

Kathy Johnston

Declarant

Signature

LA2013508959

Exhibit B

A copy of the United States Postal Service's Track and Confirm No. 71969008911189188208

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Features:

Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
December 4, 2013 , 4:38 pm	Processed through USPS Sort Facility	SAN BERNARDINO, CA 92403

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Exhibit C

A copy of the United States Postal Service's Track and Confirm No. 71969008911189188222
and a copy of the returned service stamp on a returned envelope

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Tracking Number: 71969008911189188222

Your item was returned to the sender on January 13, 2014 at 2:32 pm in RIVERSIDE, CA 92507 because it was not claimed by the addressee. Additional information for this item is stored in files offline.

Requested label is archived.

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Product & Tracking Information

Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
January 13, 2014, 2:32 pm	Unclaimed	RIVERSIDE, CA 92507

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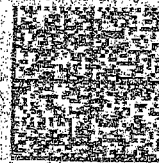
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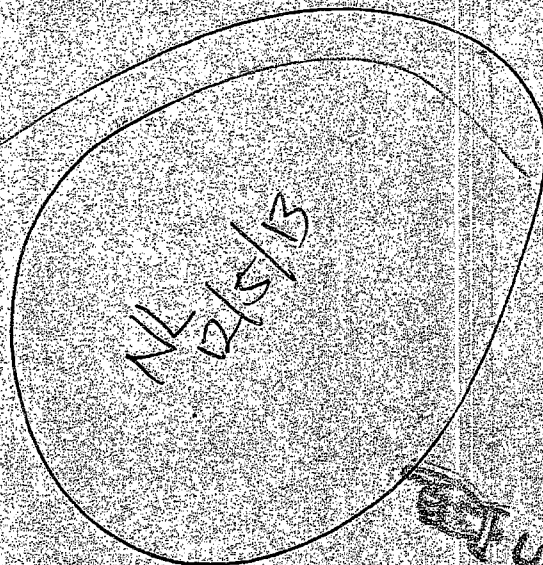
7196 9008 9111 8918 8222



U.S. POSTAGE PITNEY BOWES



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02 17
0001369250 DEC 02



UNCLAIMED

Jorge Miguel Avalos
3355 Somis Drive
Riverside, CA 92507

Exhibit D

A copy of the United States Postal Service's Track and Confirm No. 71969008911189188215

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Product & Tracking Information

Available Actions

Postal Product:

Features:

Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
December 5, 2013 , 3:07 pm	Delivered	RIVERSIDE, CA 92509

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