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

11 In the Matter of the Accusation Against:  
12 **VALLEY SMOG & REPAIR;**  
13 **FIDEL GUTIERREZ, OWNER**  
14 **12736 Avenue 416**  
**Orosi, CA 93647**  
15 **Automotive Repair Dealer Registration No.**  
**ARD 278558**  
16 **Smog Check Station License No. RC 278558**  
17 **and**  
18 **FIDEL GUTIERREZ**  
19 **12257 Avenue 400, Apt B**  
**Cutler, CA 93615**  
20 **and**  
21 **P.O. Box 193**  
**Cutler, CA 93615**  
22 **Smog Check Inspector License No.**  
23 **EO 635803**  
24 Respondents.

Case No. 79/16-3205  
**ACCUSATION**

26 ///  
27 ///  
28 ///

1 Patrick Dorais (“Complainant”) alleges:

2 **PARTIES**

3 1. Complainant brings this Accusation and Petition to Revoke Probation solely in his  
4 official capacity as the Chief of the Bureau of Automotive Repair (“Bureau”), Department of  
5 Consumer Affairs.

6 **Automotive Repair Dealer Registration**

7 2. On or about November 20, 2014, the Director of Consumer Affairs (“Director”)  
8 issued Automotive Repair Dealer Registration Number ARD 278558 (“registration”) to Fidel  
9 Gutierrez (“Respondent”), owner of Valley Smog & Repair. The registration was in full force  
10 and effect at all times relevant to the charges brought herein and will expire on November 30,  
11 2016, unless renewed.

12 **Smog Check Station License**

13 3. On or about December 4, 2014, the Director issued Smog Check Station License  
14 Number RC 278558 to Respondent. The smog check station license was in full force and effect  
15 at all times relevant to the charges brought herein and will expire on November 30, 2016, unless  
16 renewed.

17 **Technician License**

18 4. On or about July 26, 2013, the Director issued Smog Check Inspector License  
19 Number EO 635803 to Respondent. The smog check inspector license was in full force and  
20 effect at all times relevant to the charges brought herein and will expire on August 31, 2017,  
21 unless renewed.

22 **STATUTORY PROVISIONS**

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

26 6. Section 9884.7 of the Business and Professions Code (“Code”) states, in pertinent  
27 part:

1 (a) The director, where the automotive repair dealer cannot show there was a  
2 bona fide error, may deny, suspend, revoke, or place on probation the registration of  
3 an automotive repair dealer for any of the following acts or omissions related to the  
4 conduct of the business of the automotive repair dealer, which are done by the  
5 automotive repair dealer or any automotive technician, employee, partner, officer, or  
6 member of the automotive repair dealer.

7 (1) Making or authorizing in any manner or by any means whatever any  
8 statement written or oral which is untrue or misleading, and which is known, or which  
9 by the exercise of reasonable care should be known, to be untrue or misleading.

10 ...

11 (4) Any other conduct that constitutes fraud.

12 ....

13 (6) Failure in any material respect to comply with the provisions of this chapter  
14 or regulations adopted pursuant to it.

15 ....

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

21 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
22 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
23 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
24 temporarily or permanently.

25 8. Code section 118(b), states:

26 The suspension, expiration, or forfeiture by operation of law of a license issued  
27 by a board in the department, or its suspension, forfeiture, or cancellation by order of  
28 the board or by order of a court of law, or its surrender without the written consent of  
the board, shall not, during any period in which it may be renewed, restored, reissued,  
or reinstated, deprive the board of its authority to institute or continue a disciplinary  
proceeding against the licensee upon any ground provided by law or to enter an order  
suspending or revoking the license or otherwise taking disciplinary action against the  
licensee on any such ground.

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



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

4           11. Health & Saf. Code section 44012 states in pertinent part that smog checks shall be  
5 performed in accordance with procedures prescribed by the department and may require...testing  
6 utilizing a vehicle’s onboard diagnostic system...

7           12. Health & Saf. Code section 44015 states in pertinent part:

8           (b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to  
9 issue certificates shall issue a certificate of compliance or a certificate of noncompliance...

10          13. Health & Saf. Code section 44072.2 states in pertinent part:

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

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

15           ....

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

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

19           ....

20           (g) Fails to make and keep records showing his or her transactions as a  
21 licensee, or fails to have those records available for inspection by the director or his  
or her duly authorized representative for a period of not less than three years after  
22 completion of any transaction to which the records refer, or refuses to comply with  
a written request of the director to make the records available for inspection.

23          14. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
24 suspension of a license by operation of law, or by order or decision of the Director  
25 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.

26          15. Health & Saf. Code section 44072.8 states:

27           When a license has been revoked or suspended following a hearing under this  
28 article, any additional license issued under this chapter in the name of the licensee  
may be likewise revoked or suspended by the director.

**CALIFORNIA CODE OF REGULATIONS**

1           16.       California Code of Regulations, title 16 (Regulation) Code section 3340.15 states  
2 in pertinent part:

3           A smog check station shall meet the following requirements for licensure and shall comply  
4 with these requirements at all times while licensed.

5           ....

6           (e) The station shall make, keep secure, and have available for inspection on request of the  
7 bureau, or its representative, legible records showing the station's transactions as a licensee for a  
8 period of not less than three years after completion of any transaction to which the records refer.

9 All records shall be open for reasonable inspection and/or reproduction by the bureau or its  
10 representative. Station records required to be maintained shall include copies of:

11           ....

12           (3) Vehicle inspection reports generated either manually or by the emissions inspection  
13 system...

14           17.       Regulation Code section 3340.30 states in pertinent part:

15           A licensed smog check inspector and/or repair technician shall comply with the following  
16 requirements at all times while licensed:

17           (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the  
18 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this  
19 article...

20           18.       Regulation Code section 3340.35 states in pertinent part:

21           (c) A licensed station shall issue a certificate of compliance or noncompliance to the owner  
22 or operator of any vehicle that has been inspected in accordance with the procedures specified in  
23 section 3340.42 of this article and has all the required emission control equipment and devices  
24 installed and functioning correctly

25           19.       Regulation Code section 3340.42 states in pertinent part:

26           Smog check inspection methods are prescribed in the Smog Check Manual, referenced by  
27 section 3340.45.

28



1 (a) All vehicles subject to a smog check inspection, shall receive one of the following test  
2 methods:

3 . . . .

4 (3) An OBD-focused test, shall be the test method used to inspect gasoline-powered  
5 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.  
6 The OBD test failure criteria are specified in section 3340.42.2.

7 (b) In addition to subsection (a), all vehicles subject to the smog check program shall  
8 receive the following:

9 . . . .

10 (2) A functional inspection of emission control systems as specified in the Smog Check  
11 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper  
12 operation.

13 **COST RECOVERY**

14 20. Code section 125.3 provides, in pertinent part, that a Board may request the  
15 administrative law judge to direct a licentiate found to have committed a violation or violations of  
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
17 enforcement of the case.

18 **UPDATED SMOG CHECK PROGRAM - ON BOARD DIAGNOSTIC SYSTEM**

19 21. On March 9, 2015, California's Smog Check Program was updated to keep pace with  
20 ever-advancing technology. The program update requires the use of an On-Board Diagnostic  
21 Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of  
22 the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and  
23 most 1998 and newer diesel vehicles instead of the BAR-97 emission inspection system (EIS)  
24 used for most model year 1999 and older gasoline and hybrid vehicles and 1997 and older diesel  
25 vehicles. The BAR-OIS system consists of a certified Data Acquisition Device (DAD),  
26 computer, bar code scanner, and printer.

27 22. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the  
28 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between

1 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used  
2 to input technician information, the vehicle identification number, and DMV renewal  
3 information. The vehicle identification number (VIN) that is physically present on all vehicles is  
4 required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on  
5 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in  
6 earlier model-years. The electronically programmed VIN is referred to as the "eVIN", is captured  
7 by the Bureau during a smog check inspection, and must match the physical VIN on the vehicle.  
8 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection  
9 results and the Smog Check Certificate of Compliance Number for passing vehicles. Data  
10 retrieved and recorded during an OIS smog check includes the eVIN, the communication  
11 protocol,<sup>1</sup> and the number of Parameter Identifications (PID's)<sup>2</sup>.

12 23. As with the BAR-97 EIS, the technician also performs a visual and functional test on  
13 the vehicle. The visual inspection of the emission control components verifies the required  
14 emission control devices are present and properly connected and a functional test is performed of  
15 the malfunction indicator light. The OIS software makes the determination whether or not the  
16 vehicle passes the inspection based on the results of the OBD, visual, and functional tests.

### 17 **BACKGROUND FACTS**

#### 18 **Review of OIS Test Data**

19 24. Bureau Representative "A.L." reviewed BAR-OIS test data pertaining to smog  
20 inspections conducted at Respondent's facility. A.L. found that Respondent performed smog  
21 inspections on seventeen (17) vehicles identified below using a method known as "clean  
22

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23 <sup>1</sup> The OBD II communication protocol describes the specific manufacturer/vehicle  
24 communication "language" used by the OBD II computer to communicate to scan tools and other  
25 devices such as the BAR-OIS. The communication protocol is programmed into the OBD II  
26 computer during manufacture and does not change.

27 <sup>2</sup> PID's are data points reported by the OBD II computer to the scan tool or BAR-OIS (for  
28 example, engine speed (rpm), vehicle speed, engine temperature, etc.) The PID count is the  
number of data points reported by the OBD II computer, is programmed during manufacture, and  
does not change. Each make and model vehicle reports a specific number of PID counts; i.e., the  
PID count does not vary for that make and model vehicle.



1 plugging”,<sup>3</sup> resulting in the issuance of fraudulent certificates of compliance for the vehicles.

2 **Vehicle #1**

3 25. The OIS test data showed that on September 22, 2015, Respondent performed a smog  
4 inspection on a 2001 Nissan Sentra XE/GXE (Vehicle 1), resulting in the issuance of electronic  
5 Smog Certificate of Compliance No. PU994148C. Representative A.L. reviewed the comparative  
6 OIS test data for 2001 Nissan Sentra XE/GXE vehicles and found that the communication  
7 protocol and PID count recorded during the smog check on Vehicle 1 were not consistent with the  
8 communication protocol and PID count for that make and model vehicle. Representative A.L.  
9 concluded that the DAD was not connected to Vehicle 1 during the smog inspection, resulting in  
10 the issuance of a fraudulent smog certificate of compliance for the vehicle.

11 **Vehicle #2**

12 26. The OIS test data showed that on November 6, 2015, Respondent performed a smog  
13 inspection on a 2006 Chevrolet Aveo LT with VIN ending in 692 (Vehicle 2), resulting in the  
14 issuance of electronic Smog Certificate of Compliance No. PY394344C. The OIS test details for  
15 Vehicle 2 showed that the eVIN was not recorded during the inspection. Representative A.L.  
16 reviewed the comparative OIS test data for 2006 Chevrolet Aveo LT vehicles and found that the  
17 eVIN is recorded during the inspection. Further, the communication protocol and PID count  
18 recorded during the smog check on Vehicle 2 were not consistent with the communication  
19 protocol and PID count for that make and model vehicle. Representative A.L. concluded that the  
20 DAD was not connected to Vehicle 2 during the smog inspection, resulting in the issuance of a  
21 fraudulent smog certificate of compliance for the vehicle.

22 **Vehicle #3**

23 27. The OIS test data showed that on November 6, 2015, Respondent performed a smog  
24 inspection on a 2002 Mitsubishi Lancer LS (Vehicle 3), resulting in the issuance of electronic  
25 Smog Certificate of Compliance No. PY394345C. Representative A.L. reviewed the comparative

26 <sup>3</sup> Clean-plugging is the use of a vehicle’s properly functioning OBD II system, or another  
27 source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog  
28 certificate of compliance to another vehicle that is not in compliance with the Smog Check  
Program and/or is not present for testing.



1 OIS test data for 2002 Mitsubishi Lancer LS vehicles and found that the communication protocol  
2 and PID count recorded during the smog check on Vehicle 3 were not consistent with the  
3 communication protocol and PID count for that make and model vehicle. Representative A.L.  
4 concluded that the DAD was not connected to Vehicle 3 during the smog inspection, resulting in  
5 the issuance of a fraudulent smog certificate of compliance for the vehicle.

6 **Vehicle #4**

7 28. The OIS test data showed that on November 21, 2015, Respondent performed a smog  
8 inspection on a 2006 Chevrolet Aveo LS with VIN ending in 875 (Vehicle 4), resulting in the  
9 issuance of electronic Smog Certificate of Compliance No. QA048686C. The OIS test details for  
10 Vehicle 4 showed that the eVIN was not recorded during the inspection. Representative A.L.  
11 reviewed the comparative OIS test data for 2006 Chevrolet Aveo LT vehicles and found that the  
12 eVIN is recorded during the inspection. Further, the communication protocol and PID count  
13 recorded during the smog check on Vehicle 4 were not consistent with the communication  
14 protocol and PID count for that make and model vehicle. Representative Lee concluded that the  
15 DAD was not connected to Vehicle 4 during the smog inspection, resulting in the issuance of a  
16 fraudulent smog certificate of compliance for the vehicle.

17 **Vehicle #5**

18 29. The OIS test data showed that on November 21, 2015, Respondent performed a smog  
19 inspection on a 2000 Ford Windstar LX (Vehicle 5), resulting in the issuance of electronic Smog  
20 Certificate of Compliance No. QA048688C. Representative A.L. reviewed the comparative OIS  
21 test data for 2000 Ford Windstar LX vehicles and found that the communication protocol and PID  
22 count recorded during the smog check on Vehicle 5 were not consistent with the communication  
23 protocol and PID count for that make and model vehicle. Representative A.L. concluded that the  
24 DAD was not connected to Vehicle 5 during the smog inspection, resulting in the issuance of a  
25 fraudulent smog certificate of compliance for the vehicle.

26 **Vehicle #6**

27 30. The OIS test data showed that on November 25, 2015, Respondent performed a smog  
28 inspection on a 2000 Chevrolet Astro Van (Vehicle 6), resulting in the issuance of electronic

1 Smog Certificate of Compliance No. QA048694C. Representative A.L. reviewed the  
2 comparative OIS test data for 2000 Chevrolet Astro Van vehicles and found that the  
3 communication protocol and PID count recorded during the smog check on Vehicle 6 were not  
4 consistent with the communication protocol and PID count for that make and model vehicle.  
5 Representative A.L. concluded that the DAD was not connected to Vehicle 6 during the smog  
6 inspection, resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

7 **Vehicle #7**

8 31. The OIS test data showed that on December 2, 2015, Respondent performed a smog  
9 inspection on a 2003 Chevrolet Tracker LT (Vehicle 7), resulting in the issuance of electronic  
10 Smog Certificate of Compliance No. QA481406C. Representative A.L. reviewed the  
11 comparative OIS test data for 2003 Chevrolet Tracker LT vehicles and found that the  
12 communication protocol and PID count recorded during the smog check on Vehicle 7 were not  
13 consistent with the communication protocol and PID count for that make and model vehicle.  
14 Representative A.L. concluded that the DAD was not connected to Vehicle 7 during the smog  
15 inspection, resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

16 **Vehicle #8**

17 32. The OIS test data showed that on December 23, 2015, Respondent performed a smog  
18 inspection on a 2005 Chrysler 300 (Vehicle 8), resulting in the issuance of electronic Smog  
19 Certificate of Compliance No. QA481450C. The OIS test details for Vehicle 8 showed that the  
20 eVIN was not recorded during the inspection. Representative A.L. reviewed the comparative OIS  
21 test data for 2005 Chrysler 300 vehicles and found that the eVIN is recorded during the  
22 inspection. Further, the communication protocol and PID count recorded during the smog check  
23 on Vehicle 8 were not consistent with the communication protocol and PID count for that make  
24 and model vehicle. Representative A.L. concluded that the DAD was not connected to Vehicle 8  
25 during the smog inspection, resulting in the issuance of a fraudulent smog certificate of  
26 compliance for the vehicle.

27 ///

28 ///



1           **Vehicle #9**

2           33. The OIS test data showed that on January 9, 2016, Respondent performed a smog  
3 inspection on a 2002 Chevrolet Silverado C2500 HD (diesel) (Vehicle 9), resulting in the  
4 issuance of electronic Smog Certificate of Compliance No. QC134490C. The OIS test details for  
5 Vehicle 9 showed that the eVIN was not recorded during the inspection. Representative A.L.  
6 reviewed the comparative OIS test data for 2002 Chevrolet Silverado C2500 HD (diesel) vehicles  
7 and found that the eVIN is recorded during the inspection. Further, the communication protocol  
8 and PID count recorded during the smog check on Vehicle 9 were not consistent with the  
9 communication protocol and PID count for that make and model vehicle. Representative A.L.  
10 concluded that the DAD was not connected to Vehicle 9 during the smog inspection, resulting in  
11 the issuance of a fraudulent smog certificate of compliance for the vehicle.

12           **Vehicle #10**

13           34. The OIS test data showed that on February 18, 2016, Respondent performed a smog  
14 inspection on a 2001 Chevrolet Astro Van (Vehicle 10), resulting in the issuance of electronic  
15 Smog Certificate of Compliance No. YX443147C. The OIS test details for Vehicle 9 showed that  
16 the eVIN was not recorded during the inspection. Representative A.L. reviewed the comparative  
17 OIS test data for 2001 Chevrolet Astro Van vehicles and found that the eVIN is recorded during  
18 the inspection. Further, the communication protocol and PID count recorded during the smog  
19 check on Vehicle 10 were not consistent with the communication protocol and PID count for that  
20 make and model vehicle. Representative A.L. concluded that the DAD was not connected to  
21 Vehicle 10 during the smog inspection, resulting in the issuance of a fraudulent smog certificate  
22 of compliance for the vehicle.

23           **Vehicle #11**

24           35. The OIS test data showed that on February 23, 2016, Respondent performed a smog  
25 inspection on a 2000 Hyundai Tiburon (Vehicle 11), resulting in the issuance of electronic Smog  
26 Certificate of Compliance No. YX960260C. Representative A.L. reviewed the comparative OIS  
27 test data for 2000 Hyundai Tiburon vehicles and found that the communication protocol and PID  
28 count recorded during the smog check on Vehicle 11 were not consistent with the communication

1 protocol and PID count for that make and model vehicle. Representative A.L. concluded that the  
2 DAD was not connected to Vehicle 11 during the smog inspection, resulting in the issuance of a  
3 fraudulent smog certificate of compliance for the vehicle.

4 **Vehicle #12**

5 36. The OIS test data showed that on February 25, 2016, Respondent performed a smog  
6 inspection on a 2000 Hyundai Sonata GLS (Vehicle 12), resulting in the issuance of electronic  
7 Smog Certificate of Compliance No. YX960268C. Representative A.L. reviewed the  
8 comparative OIS test data for 2000 Hyundai Sonata GLS vehicles and found that the  
9 communication protocol and PID count recorded during the smog check on Vehicle 12 were not  
10 consistent with the communication protocol and PID count for that make and model vehicle.  
11 Representative A.L. concluded that the DAD was not connected to Vehicle 12 during the smog  
12 inspection, resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

13 **Vehicle #13**

14 37. The OIS test data showed that on February 27, 2016, Respondent performed a smog  
15 inspection on a 2003 Cadillac CTS (Vehicle 13), resulting in the issuance of electronic Smog  
16 Certificate of Compliance No. YX960276C. The OIS test details for Vehicle 13 showed that the  
17 eVIN was not recorded during the inspection. Representative A.L. reviewed the comparative OIS  
18 test data for 2003 Cadillac CTS vehicles and found that the eVIN is recorded during the  
19 inspection. Further, the communication protocol and PID count recorded during the smog check  
20 on Vehicle 13 were not consistent with the communication protocol and PID count for that make  
21 and model vehicle. Representative A.L. concluded that the DAD was not connected to Vehicle  
22 13 during the smog inspection, resulting in the issuance of a fraudulent smog certificate of  
23 compliance for the vehicle.

24 **Vehicle #14**

25 38. The OIS test data showed that on February 29, 2016, Respondent performed a smog  
26 inspection on a 2002 GMC Sierra C2500 (Vehicle 14), resulting in the issuance of electronic  
27 Smog Certificate of Compliance No. YX960282C. The OIS test details for Vehicle 14 showed  
28 that the eVIN was not recorded during the inspection. Representative A.L. reviewed the



1 comparative OIS test data for 2002 GMC Sierra C2500 vehicles and found that the eVIN is  
2 recorded during the inspection. Further, the communication protocol and PID count recorded  
3 during the smog check on Vehicle 14 were not consistent with the communication protocol and  
4 PID count for that make and model vehicle. Representative A.L. concluded that the DAD was  
5 not connected to Vehicle 14 during the smog inspection, resulting in the issuance of a fraudulent  
6 smog certificate of compliance for the vehicle.

7 **Vehicle #15**

8 39. The OIS test data showed that on March 14, 2016, Respondent performed a smog  
9 inspection on a 2000 Dodge Neon ES (Vehicle 15), resulting in the issuance of electronic Smog  
10 Certificate of Compliance No. YZ540059C. Representative A.L. reviewed the comparative OIS  
11 test data for 2000 Dodge Neon ES vehicles and found that the communication protocol and PID  
12 count recorded during the smog check on Vehicle 15 were not consistent with the communication  
13 protocol and PID count for that make and model vehicle. Representative A.L. concluded that the  
14 DAD was not connected to Vehicle 15 during the smog inspection, resulting in the issuance of a  
15 fraudulent smog certificate of compliance for the vehicle.

16 **Vehicle #16**

17 40. The OIS test data showed that on March 21, 2016, Respondent performed a smog  
18 inspection on a 2001 Chrysler Town & Country LX (Vehicle 16), resulting in the issuance of  
19 electronic Smog Certificate of Compliance No. YZ540071C. Representative A.L. reviewed the  
20 comparative OIS test data for 2001 Chrysler Town & Country LX vehicles and found that the  
21 communication protocol and PID count recorded during the smog check on Vehicle 16 were not  
22 consistent with the communication protocol and PID count for that make and model vehicle.  
23 Representative A.L. concluded that the DAD was not connected to Vehicle 16 during the smog  
24 inspection, resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

25 **Vehicle #17**

26 41. The OIS test data showed that on July 2, 2016, Respondent performed a smog  
27 inspection on a 2004 Chevrolet Venture (Vehicle 17), resulting in the issuance of electronic Smog  
28 Certificate of Compliance No. QC971810C. The OIS test details for Vehicle 17 showed that the

1 eVIN was not recorded during the inspection. Representative A.L. reviewed the comparative OIS  
2 test data for 2004 Chevrolet Venture vehicles and found that the eVIN is recorded during the  
3 inspection. Further, the communication protocol and PID count recorded during the smog check  
4 on Vehicle 17 were not consistent with the communication protocol and PID count for that make  
5 and model vehicle. Representative A.L. concluded that the DAD was not connected to Vehicle  
6 17 during the smog inspection, resulting in the issuance of a fraudulent smog certificate of  
7 compliance for the vehicle.

8 **Field Visit**

9 42. On or about April 14, 2016, Representative A.L. made a field visit to the facility and  
10 obtained copies of the VIRs pertaining to smog inspections conducted on vehicles 1-7 and 9-16.  
11 The VIRs pertaining to vehicles 1-7, and 9-16 were signed by Respondent under penalty of  
12 perjury. The VIR pertaining to vehicle 8 was unable to be found by Respondent but he stated that  
13 he had signed it under penalty of perjury. The VIR pertaining to vehicle 17 was not obtained.

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Untrue or Misleading Statements)

16 43. Respondent's registration is subject to discipline pursuant to Code section 9884.7,  
17 subdivision (a)(1), in that he made or authorized statements which he knew or in the exercise of  
18 reasonable care should have known to be untrue or misleading. Specifically, Respondent certified  
19 that vehicles 1 through 17, identified in paragraphs 25 through 41, above, had passed inspection  
20 and were in compliance with applicable laws and regulations. In fact, Respondent conducted  
21 smog inspections on the vehicles using clean-plugging methods in that he substituted a different  
22 vehicle during the inspections in order to issue smog certificates of compliance for the seventeen  
23 vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

24 **SECOND CAUSE FOR DISCIPLINE**

25 (Fraud)

26 44. Respondent's registration is subject to discipline pursuant to Code section 9884.7,  
27 subdivision (a)(4), in that he committed acts that constitute fraud by issuing electronic smog  
28 certificates of compliance for vehicles 1 through 17, identified in paragraphs 25 through 41



1 above, without ensuring that bona fide inspections were performed of the emission control  
2 devices and systems on the vehicles, thereby depriving the People of the State of California of the  
3 protection afforded by the Motor Vehicle Inspection Program.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Motor Vehicle Inspection Program – Code Violations)

6 45. Respondent's Station License is subject to discipline pursuant to Health & Saf. Code  
7 section 44072.2(a), in that it failed to comply with the following sections of the Health & Saf.  
8 Code, as follows:

9 a. **Section 44012(a)**: Respondent failed to ensure that the emission control tests were  
10 performed on vehicles 1 through 17, identified in paragraphs 25 through 41 above, in accordance  
11 with procedures prescribed by the department.

12 b. **Section 44015**: Respondent issued electronic smog certificates of compliance for  
13 vehicles 1 through 17, identified in paragraphs 25 through 41 above, without ensuring that the  
14 vehicles were properly tested and inspected to determine if they were in compliance with Health  
15 & Saf. Code section 44012.

16 c. **Section 44072.2(g)**: Respondent failed to make, keep, or have available for  
17 inspection, records showing his transactions as a licensee in that he failed to keep or retain a copy  
18 of the VIR for vehicle #8, as set forth in paragraph 42, above.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 (Failure to Comply with Regulations)

21 46. Respondent's Station License is subject to discipline pursuant to Health & Saf. Code  
22 section 44072.2(c), in that it failed to comply with provisions of the Regulations, as follows:

23 a. **Section 3340.35(c)**: Respondent issued electronic smog certificates of compliance  
24 for vehicles 1 through 17, identified in paragraphs 25 through 41 above, even though the vehicles  
25 had not been inspected in accordance with Regulation section 3340.42.

26 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were  
27 conducted on vehicles 1 through 17, identified in paragraphs 25 through 41 above, in accordance  
28 with the Bureau's specifications.

1 c. **Section 3340.15(e)**: Respondent failed to make, keep secure, or have available for  
2 inspection, the vehicle inspection report for vehicle 8, identified in paragraph 32 above, for no  
3 less than three years.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 (Dishonesty, Fraud or Deceit)

6 47. Respondent's Station License is subject to discipline pursuant to Health & Saf. Code  
7 section 44072.2(d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby  
8 another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 17,  
9 identified in paragraphs 25 through 41 above, without ensuring that a bona fide inspection was  
10 performed of the emission control devices and systems on the vehicles, thereby depriving the  
11 people of the State of California of the protection afforded by the Motor Vehicle Inspection  
12 Program.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 (Motor Vehicle Inspection Program - Code Violations)

15 48. Respondent's smog check inspector license is subject to discipline pursuant to Health  
16 & Saf. Code section 44072.2(a), in that he violated Health & Saf. Code section 44012 by failing  
17 to perform the emission control tests on vehicles 1 through 17, identified in paragraphs 25  
18 through 41 above, in accord with procedures prescribed by the department.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 (Failure to Comply with Regulations)

21 49. Respondent's smog check inspector license is subject to discipline pursuant to  
22 Health & Saf. Code section 44072.2(c), in that he failed to comply with provisions of the  
23 Regulations, as follows:

24 a. **Section 3340.30(a)**: Respondent failed to inspect and test vehicles 1 through 17,  
25 identified in paragraphs 25 through 41 above, in accordance with Health & Saf. Code sections  
26 44012 and 44035, and Regulations, section 3340.42.

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- 1           1.     Revoking or suspending Automotive Repair Dealer Registration Number  
2     ARD 278558, issued to Fidel Gutierrez, as owner of Valley Smog & Repair;
- 3           2.     Revoking or suspending any other automotive repair dealer registration issued to  
4     Fidel Gutierrez;
- 5           3.     Revoking or suspending Smog Check Station License Number RC 278558, issued to  
6     Fidel Gutierrez, as owner of Valley Smog & Repair;
- 7           4.     Revoking or suspending any additional license issued under Chapter 5 of the Health  
8     and Safety Code in the name of Fidel Gutierrez;
- 9           5.     Revoking or suspending Smog Check Inspector (EO) License No. 635803 issued to  
10    Fidel Gutierrez;
- 11          6.     Revoking or suspending any additional license issued under Chapter 5 of the Health  
12    and Safety Code in the name of Fidel Gutierrez;
- 13          7.     Ordering Fidel Gutierrez to pay the Bureau of Automotive Repair the reasonable  
14    costs of the investigation and enforcement of this case, pursuant to Business and Professions  
15    Code section 125.3; and,
- 16          8.     Taking such other and further action as deemed necessary and proper.

17  
18    DATED: November 21, 2016     *Patrick Dorais*

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

28    SA2016104319