

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

In the Matter of the Accusation Against:

**FERNANDOS SMOGS**  
**FERNANDO ARCE, OWNER**  
609 Arizona Street, #B  
Chula Vista, CA 91911

Automotive Repair Dealer Registration  
No. ARD 220828  
Smog Check-Test Only Station License  
No. TC 220828

and

**FERNANDO ARCE**  
2086 Grove Avenue  
San Diego, CA 92154  
Smog Check Inspector License No.  
EO 135131 (formerly Advanced  
Emission Specialist Technician  
License No. EA 135131)

Respondents.

Case No. 79/15-123

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective April 12, 2016.

DATED: March 14, 2016



TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 RON ESPINOZA  
Deputy Attorney General  
4 State Bar No. 176908  
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*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**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. 79/15-123

13 **FERNANDOS SMOGS**  
**FERNANDO ARCE, OWNER**  
14 609 Arizona Street, #B  
Chula Vista, CA 91911

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Automotive Repair Dealer Registration No.  
16 ARD 220828  
Smog Check-Test Only Station License No.  
17 TC 220828

18 and

19 **FERNANDO ARCE**  
2086 Grove Avenue  
20 San Diego, CA 92154  
Smog Check Inspector License No.  
21 EO 135131  
(formerly Advanced Emission Specialist  
22 Technician License No. EA 135131)

23 Respondents.

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1 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
2 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of  
3 Automotive Repair the parties hereby agree to the following Stipulated Settlement and  
4 Disciplinary Order which will be submitted to the Director for the Director's approval and  
5 adoption as the final disposition of the Accusation.

6 PARTIES

7 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He  
8 brought this action solely in his official capacity and is represented in this matter by Kamala D.  
9 Harris, Attorney General of the State of California, by Ron Espinoza, Deputy Attorney General.

10 2. Fernando Arce and Fernandos Smogs, Fernando Arce as owner ("Respondents") are  
11 representing themselves in this proceeding and have chosen not to exercise their right to be  
12 represented by counsel.

13 **Automotive Repair Dealer Registration**

14 3. In or about 2002, the Bureau of Automotive Repair ("Bureau") issued Automotive  
15 Repair Dealer Registration Number ARD 220828 to Fernandos Smogs, with Fernando Arce as  
16 owner. The Automotive Repair Dealer Registration was in full force and effect at all times  
17 relevant to the charges brought in Accusation No. 79/15-123 and will expire on March 31, 2016,  
18 unless renewed.

19 **Smog Check-Test Only Station License**

20 4. On or about May 17, 2002, the Bureau issued Smog Check-Test Only Station  
21 License Number TC 220828 to Fernandos Smogs, with Fernando Arce as owner. The Smog  
22 Check-Test Only Station License was in full force and effect at all times relevant to the charges  
23 brought in Accusation No. 79/15-123 and will expire on March 31, 2016, unless renewed.

24 **Smog Check Inspector License**

25 5. In or about 1998, the Bureau issued Advanced Emission Specialist Technician  
26 License Number EA 135131 to Fernando Arce. Pursuant to California Code of Regulations, title  
27 16, section 3340.28, subdivision (e), said technician license was renewed, pursuant to Respondent  
28

1 Arce's election, as Smog Check Inspector License No. EO 135131, effective January 31, 2014.  
2 The smog check inspector license will expire on January 31, 2016, unless renewed.

3 JURISDICTION

4 6. Accusation No. 79/15-123 was filed before the Director of Consumer Affairs  
5 ("Director"), for the Bureau of Automotive Repair, and is currently pending against Respondents.  
6 The Accusation and all other statutorily required documents were properly served on  
7 Respondents on June 10, 2015. Respondents timely filed a Notice of Defense contesting the  
8 Accusation.

9 7. A copy of Accusation No. 79/15-123 is attached as Exhibit A and incorporated herein  
10 by reference.

11 ADVISEMENT AND WAIVERS

12 8. Respondents have carefully read, and understand the charges and allegations in  
13 Accusation No. 79/15-123. Respondents have also carefully read, and understand the effects of  
14 this Stipulated Settlement and Disciplinary Order.

15 9. Respondents are fully aware of their legal rights in this matter, including the right to a  
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
17 their own expense; the right to confront and cross-examine the witnesses against them; the right  
18 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to  
19 compel the attendance of witnesses and the production of documents; the right to reconsideration  
20 and court review of an adverse decision; and all other rights accorded by the California  
21 Administrative Procedure Act and other applicable laws.

22 10. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
23 every right set forth above.

24 CULPABILITY

25 11. Respondents admit the truth of each and every charge and allegation in Accusation  
26 No. 79/15-123.

27 12. Respondents agree that their respective Automotive Repair Dealer Registration, Smog  
28 Check-Test Only Station License, and Smog Check Inspector License are subject to discipline

1 and agree to be bound by the Director's imposition of discipline as set forth in the Disciplinary  
2 Order below.

3 RESERVATION

4 13. The admissions made by Respondents herein are only for the purposes of this  
5 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of  
6 Automotive Repair, or other professional licensing agency is involved, and shall not be  
7 admissible in any other criminal or civil proceeding.

8 CONTINGENCY

9 14. This stipulation shall be subject to approval by the Director of Consumer Affairs or  
10 the Director's designee. Respondents understand and agree that counsel for Complainant and the  
11 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of  
12 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to  
13 or participation by Respondents. By signing the stipulation, Respondents understand and agree  
14 that they may not withdraw this agreement or seek to rescind the stipulation prior to the time the  
15 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision  
16 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except  
17 for this paragraph, it shall be inadmissible in any legal action between the parties, and the  
18 Director shall not be disqualified from further action by having considered this matter.

19 15. The parties understand and agree that copies of this Stipulated Settlement and  
20 Disciplinary Order, including the signatures thereto, shall have the same force and effect as the  
21 originals.

22 16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
25 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
26 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
27 writing executed by an authorized representative of each of the parties.



1           6.    **Random Inspections.** Fernandos Smogs and Fernando Arce shall provide Bureau  
2 representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up  
3 to and including the point of completion.

4           7.    **Jurisdiction.** If an accusation and/or petition to revoke probation is filed against  
5 Fernandos Smogs or Fernando Arce during the term of probation, the Director of Consumer  
6 Affairs shall have continuing jurisdiction over the matter until the final decision on the accusation  
7 and/or petition to revoke probation, and the period of probation shall be extended until such  
8 decision.

9           8.    **Violation of Probation.** Should the Director of Consumer Affairs determine that  
10 Fernandos Smogs and/or Fernando Arce have failed to comply with the terms and conditions of  
11 probation, the Department may, after giving notice and opportunity to be heard, temporarily or  
12 permanently invalidate their registration and/or suspend or revoke their license(s).

13           9.    **Restrictions.** During the period of probation, Fernandos Smogs shall not perform  
14 any form of smog inspection, or emission system diagnosis or repair, until it has purchased,  
15 installed, and maintained the diagnostic and repair equipment prescribed by the Bureau necessary  
16 to properly perform such work, and the Bureau has been given ten (10) days notice of the  
17 availability of the equipment for inspection by a Bureau representative.


18           10. **Cost Recovery.** Fernandos Smogs and Fernando Arce shall pay to the Bureau its  
19 costs of investigation and enforcement of this matter in the amount of \$6,035.56, as follows:  
20 twenty-four (24) consecutive minimum monthly payments to the Bureau of \$251.48 per month,  
21 due by the fifth of each month, and starting the month of the effective date of the Decision and  
22 Order. Payment to the Bureau of the full amount of cost recovery shall be received no later than  
23 twelve (12) months before probation terminates. All payments shall be in the form of a certified  
24 check, cashier's check or money order, and payable to the Bureau of Automotive Repair. Failure  
25 to complete payment of cost recovery within this time frame shall constitute a violation of  
26 probation which may subject Automotive Repair Dealer Registration No. ARD 220828 and Smog  
27 Check-Test Only Station License No. TC 220828 to outright revocation; however, the Director or  
28 the Director's Bureau of Automotive Repair designee may elect to continue probation until such

1 time as reimbursement of the entire cost recovery amount has been made to the Bureau.

2 ACCEPTANCE

3 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
4 stipulation and the effect it will have on Smog Check Inspector License No. EO 135131,  
5 Automotive Repair Dealer Registration No. ARD 220828 and Smog Check-Test Only Station  
6 License No. TC 220828. I enter into this Stipulated Settlement and Disciplinary Order  
7 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
8 Director of Consumer Affairs.

9  
10 DATED: 10-16-15

  
11 FERNANDO ARCE, individually, and on behalf of  
12 and as sole owner of,  
13 FERNANDOS SMOGS  
14 Respondents

14 ENDORSEMENT

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
16 submitted for consideration by the Director of Consumer Affairs.

17 Dated: Respectfully submitted,  
18 KAMALA D. HARRIS  
19 Attorney General of California  
20 JAMES M. LEDAKIS  
21 Supervising Deputy Attorney General

22 RON ESPINOZA  
23 Deputy Attorney General  
24 *Attorneys for Complainant*

25  
26 SD2014708167  
27 Stipulation.rtf



1 time as reimbursement of the entire cost recovery amount has been made to the Bureau.

2 ACCEPTANCE

3 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
4 stipulation and the effect it will have on Smog Check Inspector License No. EO 135131,  
5 Automotive Repair Dealer Registration No. ARD 220828 and Smog Check-Test Only Station  
6 License No. TC 220828. I enter into this Stipulated Settlement and Disciplinary Order  
7 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
8 Director of Consumer Affairs.

9  
10 DATED: \_\_\_\_\_

11 FERNANDO ARCE, Individually, and on behalf of  
12 and as sole owner of,  
13 FERNANDOS SMOGS  
14 Respondents

15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
17 submitted for consideration by the Director of Consumer Affairs.

18 Dated: 11/9/2015

19 Respectfully submitted,

20 KAMALA D. HARRIS  
21 Attorney General of California  
22 JAMES M. LEDAKIS  
23 Supervising Deputy Attorney General



24 RON ESPINOZA  
25 Deputy Attorney General  
26 *Attorneys for Complainant*

27 SD2014708167  
28 Stipulation.rtf

**Exhibit A**

**Accusation No. 79/15-123**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 RON ESPINOZA  
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9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation Against:

Case No. *79/15-123*  
**ACCUSATION**

13 **FERNANDOS SMOGS**  
**FERNANDO ARCE, OWNER**  
14 609 Arizona Street, #B  
Chula Vista, CA 91911

15 Automotive Repair Dealer Registration No.  
16 ARD 220828  
Smog Check-Test Only Station License No.  
17 TC 220828

18 and

19 **FERNANDO ARCE**  
2086 Grove Avenue  
20 San Diego, CA 92154  
Smog Check Inspector License No.  
21 EO 135131  
(formerly Advanced Emission Specialist  
22 Technician License No. EA 135131)

23 Respondents.  
24

25 Complainant alleges:

26 **PARTIES**

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

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**Automotive Repair Dealer Registration**

2. In or about 2002, the Bureau of Automotive Repair ("Bureau") issued Automotive Repair Dealer Registration Number ARD 220828 to Fernandos Smogs, with Fernando Arce as owner ("Respondent Fernandos Smogs"). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2016, unless renewed.

**Smog Check-Test Only Station License**

3. On or about May 17, 2002, the Bureau issued Smog Check-Test Only Station License Number TC 220828 to Respondent Fernandos Smogs. The Smog Check-Test Only Station License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2016, unless renewed.

**Smog Check Inspector License**

4. In or about 1998, the Bureau issued Advanced Emission Specialist Technician License Number EA 135131 to Fernando Arce ("Respondent Arce"). The advanced emission specialist technician license was due to expire on January 31, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), said license was renewed, pursuant to Respondent Arce's election, as Smog Check Inspector License No. EO 135131, effective January 31, 2014.<sup>1</sup> The smog check inspector license will expire on January 31, 2016, unless renewed.

**JURISDICTION**

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

6. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that the Director may suspend, revoke, or place on probation an automotive repair dealer registration.

<sup>1</sup> 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 7. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a  
2 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary  
3 proceeding against an automotive repair dealer or to render a decision temporarily or permanently  
4 invalidating (suspending or revoking) a registration.

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

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

12 10. Health & Saf. Code section 44072.8 provides that when a license has been revoked or  
13 suspended following a hearing under this article, any additional license issued under this chapter in  
14 the name of the licensee may be likewise revoked or suspended by the Director.

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

19 STATUTORY PROVISIONS

20 12. Bus. & Prof. Code section 9884.7 states:

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

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

1           "(2) Causing or allowing a customer to sign any work order that does not state the repairs  
2 requested by the customer or the automobile's odometer reading at the time of repair.

3           ". . . .

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

6           ". . . . "

7           "(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more  
8 than one place of business in this state, the director pursuant to subdivision (a) shall only suspend,  
9 revoke, or place on probation the registration of the specific place of business which has violated  
10 any of the provisions of this chapter. This violation, or action by the director, shall not affect in  
11 any manner the right of the automotive repair dealer to operate his or her other places of business.

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

16           13. Bus. & Prof. Code section 9884.8 states:

17           "All work done by an automotive repair dealer, including all warranty work, shall be  
18 recorded on an invoice and shall describe all service work done and parts supplied. Service work  
19 and parts shall be listed separately on the invoice, which shall also state separately the subtotal  
20 prices for service work and for parts, not including sales tax, and shall state separately the sales  
21 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice  
22 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt  
23 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a  
24 statement indicating whether any crash parts are original equipment manufacturer crash parts or  
25 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be  
26 given to the customer and one copy shall be retained by the automotive repair dealer."

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1           14. Bus. & Prof. Code section 9884.9, states, in pertinent part:

2           “(a) The automotive repair dealer shall give to the customer a written estimated price for  
3 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue  
4 before authorization to proceed is obtained from the customer. No charge shall be made for work  
5 done or parts supplied in excess of the estimated price without the oral or written consent of the  
6 customer that shall be obtained at some time after it is determined that the estimated price is  
7 insufficient and before the work not estimated is done or the parts not estimated are supplied.  
8 Written consent or authorization for an increase in the original estimated price may be provided by  
9 electronic mail or facsimile transmission from the customer. The bureau may specify in regulation  
10 the procedures to be followed by an automotive repair dealer if an authorization or consent for an  
11 increase in the original estimated price is provided by electronic mail or facsimile transmission. If  
12 that consent is oral, the dealer shall make a notation on the work order of the date, time, name of  
13 person authorizing the additional repairs, and telephone number called, if any, together with a  
14 specification of the additional parts and labor and the total additional cost, and shall do either of  
15 the following:

16           “(1) Make a notation on the invoice of the same facts set forth in the notation on the work  
17 order.

18           “(2) Upon completion of the repairs, obtain the customer's signature or initials to an  
19 acknowledgment of notice and consent, if there is an oral consent of the customer to additional  
20 repairs, in the following language:

21           “I acknowledge notice and oral approval of an increase in the original estimated price.

22

\_\_\_\_\_  
(signature or initials)

23

24           “Nothing in this section shall be construed as requiring an automotive repair dealer to give a  
25 written estimated price if the dealer does not agree to perform the requested repair.

26           “(b) The automotive repair dealer shall include with the written estimated price a statement  
27 of any automotive repair service that, if required to be done, will be done by someone other than  
28 the dealer or his or her employees. No service shall be done by other than the dealer or his or her

1 employees without the consent of the customer, unless the customer cannot reasonably be notified.  
2 The dealer shall be responsible, in any case, for any service in the same manner as if the dealer or  
3 his or her employees had done the service. . .”

4 15. Health & Saf. Code section 44072.2 states:

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

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

11 “. . . .

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

13 “. . . .”

14 16. Health & Saf. Code section 44012 states:

15 “The test at the smog check stations shall be performed in accordance with procedures  
16 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded  
17 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,  
18 and shall ensure all of the following:

19 “(a) Emission control systems required by state and federal law are reducing excess  
20 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section  
21 44013.

22 “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of  
23 the vehicle's emission control system.

24 “(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of  
25 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded  
26 mode are tested in accordance with procedures prescribed by the department. In determining how  
27 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure  
28 that the emission reduction targets for the enhanced program are met.



1           "(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and  
2 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic  
3 compound emissions, in accordance with procedures prescribed by the department.

4           "(e) For diesel-powered vehicles, if the department determines that the inclusion of those  
5 vehicles is technologically and economically feasible, a visual inspection is made of emission  
6 control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in  
7 accordance with procedures prescribed by the department. The test may include testing of  
8 emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of  
9 applicable standards, measurement of emissions of smoke or particulates, or both.

10           "(f) A visual or functional check is made of emission control devices specified by the  
11 department, including the catalytic converter in those instances in which the department determines  
12 it to be necessary to meet the findings of Section 44001. The visual or functional check shall be  
13 performed in accordance with procedures prescribed by the department.

14           "(g) A determination as to whether the motor vehicle complies with the emission standards  
15 for that vehicle's class and model-year as prescribed by the department.

16           "(h) The test procedures may authorize smog check stations to refuse the testing of a  
17 vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the  
18 department by regulation. The refusal to test a vehicle for those reasons shall not excuse or  
19 exempt the vehicle from compliance with all applicable requirements of this chapter."

20           17. Health & Saf. Code section 44032 states:

21           "No person shall perform, for compensation, tests or repairs of emission control devices or  
22 systems of motor vehicles required by this chapter unless the person performing the test or repair  
23 is a qualified smog check technician and the test or repair is performed at a licensed smog check  
24 station. Qualified technicians shall perform tests of emission control devices and systems in  
25 accordance with Section 44012."

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REGULATIONS

18. California Code of Regulations, title 16, section 3340.15, states:

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

....

"(h) A licensed smog check station shall not sublet inspections or repairs required as part of the Smog Check Program, except for the following:

"(1) Repairs of a vehicle's exhaust system which are normally performed by muffler shops, provided that the malfunction has been previously diagnosed by the specific smog check station originally authorized by the customer to perform repairs to the vehicle.

"(2) Repairs of those individual components that have been previously diagnosed as being defective and that have been removed by the specific smog check station originally authorized by the customer to perform repairs to the vehicle.

"(3) Repairs of diesel-powered vehicles provided the specific smog check station has obtained authorization from the customer to sublet repairs to the vehicle.

"(4) Repairs to a vehicle's transmission provided the specific smog check station has obtained authorization from the customer to sublet repairs to the vehicle.

"(5) Corrections to the vehicle's on-board computer systems' software provided that the malfunction has been previously diagnosed by the specific smog check station originally authorized by the customer to perform repairs to the vehicle.

"(i) With respect to the sublet of repairs, the smog check station originally authorized by the customer to perform the repairs shall be responsible for any repair in the same manner as if station or its employees had done the repair."

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1 19. California Code of Regulations, title 16, section 3340.30, states:

2 "A smog check technician shall comply with the following requirements at all times while  
3 licensed.

4 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
5 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
6 3340.42 of this article.

7 "..."

8 20. California Code of Regulations, title 16, section 3356, states:

9 "(a) All invoices for service and repair work performed, and parts supplied, as provided for  
10 in Section 9884.8 of the Business and Professions Code, shall comply with the following:

11 "(1) The invoice shall show the automotive repair dealer's registration number and the  
12 corresponding business name and address as shown in the Bureau's records. If the automotive  
13 repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b)  
14 of Section 3371 of this chapter. . ."

15 21. California Code of Regulations, title 16, section 3340.41, states:

16 "..."

17 "(b) No person shall enter into the emissions inspection system any access or qualification  
18 number other than as authorized by the bureau, nor in any way tamper with the emissions  
19 inspection system.

20 "..."

21 22. California Code of Regulations, title 16, section 3340.45, states:

22 "(a) All Smog Check inspections shall be performed in accordance with requirements and  
23 procedures prescribed in the following:

24 "(1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby  
25 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

26 "(2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This  
27 manual shall become effective on or after January 1, 2013."

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1 b. On or about July 15, 2014, Respondent Fernandos Smogs generated and issued a  
2 Smog Check Vehicle Inspection Report (VIR) falsely stating that its Smog Check Inspector, S.K.,  
3 had conducted a smog inspection of a 1990 Toyota 4Runner. In fact, station owner Respondent  
4 Fernando Arce had accessed the station's smog check machine using S.K.'s confidential access  
5 code, without S.K.'s knowledge or permission, to enable himself to conduct the smog inspection  
6 on the vehicle.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Failure to Record Odometer Reading on Signed Work Orders)**

9 26. Respondent Fernandos Smogs' Automotive Repair Dealer Registration is subject to  
10 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(2), in that said  
11 Respondent caused or allowed a customer to sign a work order that did not state the automobile's  
12 odometer reading at the time of repair. The circumstances are as follows:

13 27. On or about July 15, 2014, Respondent Fernandos Smogs failed to have vehicles'  
14 odometer readings recorded at the time its customers signed the following work orders: #049928,  
15 #049931, #049941 and #049945.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Failure to Provide Written Estimates Disclosing the Subletting of Services)**

18 28. Respondent Fernandos Smogs' Automotive Repair Dealer Registration is subject to  
19 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in  
20 conjunction with Section 9884.9, subdivision (b), in that said Respondent failed to provide written  
21 estimates to its customers notifying them that it was subletting their smog check inspections to a  
22 different smog station. The circumstances are as follows:

23 29. On or about June 30, 2014, July 1, 2014, July 9, 2014, and July 12, 2014, Respondent  
24 Fernandos Smogs sublet to another smog station the smog check inspections for a 2005 Ford  
25 Crown Victoria, a 2005 Ford Five Hundred, a 2003 Dodge Caravan, and a 2006 Mitsubishi  
26 Raider. However, Respondent Fernandos Smogs failed to provide written estimates to its  
27 customers for these vehicles that included a statement notifying them that it was actually subletting  
28 their smog check inspections to a different smog station.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Provide Written Invoices Showing Correct Business Name)**

3 30. Respondent Fernandos Smogs' Automotive Repair Dealer Registration is subject to  
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in  
5 conjunction with Section 9884.8 and California Code of Regulations, title 16, section 3356,  
6 subdivision (a)(1), in that said Respondent failed to provide written invoices to its customers that  
7 included its correct business name as shown in the Bureau's records. The circumstances are as  
8 follows:

9 31. On or about July 5, 2014, and July 15, 2014, Respondent Fernandos Smogs had  
10 invoices for its customers that promoted a wrong business name. On these invoices, Respondent  
11 Fernandos Smogs showed its business name as "Fernandos Smogs Star Station", when its correct  
12 name as registered in Bureau records was just "Fernandos Smogs".

13 **FIFTH CAUSE FOR DISCIPLINE**

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

15 32. Respondent Fernandos Smogs' Smog Check-Test Only Station License is subject to  
16 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that said  
17 Respondent failed to comply with the following section of that Code:

18 a. **Section 44012:** Respondent Fernandos Smogs' failed to ensure that its emission  
19 control tests were performed in accordance with the procedures prescribed by the Department.  
20 Specifically, on or about July 15, 2014, Respondent Fernandos Smogs' authorized or permitted  
21 unlawful access to the station's smog check machine by Respondent Fernando Arce, who used,  
22 without his knowledge or permission, the confidential access code of another employee (Smog  
23 Check Inspector S.K.) to enter false information concerning the identity of the technician  
24 performing the smog inspection tests on a 1999 Chevrolet C1500 Pickup and a 1990 Toyota  
25 4Runner. Pursuant to the Bureau's 2013 Smog Check Manual, Section 1.1.0, the access code  
26 assigned by the Bureau is unique to each smog technician. Each technician must maintain the  
27 security of his or her access code. Disclosure of one's access code or the use of another  
28 technician's access code or license information is not permitted.

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 33. Respondent Fernandos Smogs' Smog Check-Test Only Station License is subject to  
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that said  
5 Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
6 follows:

7 a. **Section 3340.41, subdivision (b):** On or about July 15, 2014, Respondent Fernandos  
8 Smogs' authorized or permitted unlawful access to the station's smog check machine by  
9 Respondent Fernando Arce, who used, without his knowledge or permission, the confidential  
10 access code of another employee (Smog Check Inspector S.K.) to enter false information  
11 concerning the identity of the technician performing the smog inspection tests on a 1999 Chevrolet  
12 C1500 Pickup and a 1990 Toyota 4Runner.

13 b. **Section 3340.15, subdivision (h):** On or about June 30, 2014, July 1, 2014, July 9,  
14 2014, and July 12, 2014, Respondent Fernandos Smogs, rather than performing the inspections  
15 itself, unlawfully sublet to another smog station the smog check inspections for a 2005 Ford  
16 Crown Victoria, a 2005 Ford Five Hundred, a 2003 Dodge Caravan, and a 2006 Mitsubishi  
17 Raider.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 (Violations of the Motor Vehicle Inspection Program)

20 34. Respondent Fernando Arce's Smog Check Inspector license is subject to disciplinary  
21 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply  
22 with Sections 44012 and 44032 of that Code, as follows: Respondent Arce used, without his  
23 knowledge or permission, the confidential access code of another employee to enter false  
24 information into his station's smog machine concerning the identity of the technician performing  
25 the smog inspection tests on a 1999 Chevrolet C1500 Pickup and a 1990 Toyota 4Runner, as  
26 alleged in paragraph 32 above, which is hereby incorporated by reference.

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1 DISCIPLINE CONSIDERATIONS

2 35. To determine the degree of discipline, if any, to be imposed against Respondent  
3 Fernandos Smogs, Complainant alleges that on or about May 4, 2007, February 2, 2010, and  
4 June 7, 2013, in three separate prior actions, the Bureau of Automotive Repair issued Citation  
5 Nos. C07-0831, C2010-0789 and C2013-0697 against said Respondent. Citation No. C07-0831  
6 had a fine of \$500 and charged that Respondent improperly issued a smog certificate to a Bureau  
7 undercover vehicle with a missing Exhaust Gas Recirculation (EGR) valve. Citation No. [REDACTED]  
8 [REDACTED] had a fine of \$500 and charged that Respondent improperly issued a smog certificate to a  
9 Bureau undercover vehicle with a missing Positive Crankcase Ventilation System. Citation No.  
10 [REDACTED] had a fine of \$2,000 and charged that Respondent, although licensed as a smog test  
11 only facility, improperly made repairs to a Bureau undercover vehicle. These Citations are now  
12 final and are incorporated by reference as if fully set forth.

13 36. To determine the degree of discipline, if any, to be imposed against Respondent  
14 Fernando Arce, Complainant alleges that on or about May 4, 2007, and February 2, 2010, in two  
15 separate prior actions, the Bureau of Automotive Repair issued Citation Nos. M07-0832 and  
16 M2010-0790 against him. Citation No. M07-0832 required an 8-hour training course and charged  
17 that Respondent Arce was the smog technician who improperly issued the smog certificate to a  
18 Bureau undercover vehicle with the missing EGR valve, described above. Citation No. M2010-  
19 0790 required an 8-hour training course and charged that Respondent Arce was the smog  
20 technician who improperly issued the smog certificate to a Bureau undercover vehicle with the  
21 missing Positive Crankcase Ventilation System, described above. These Citations are now final  
22 and are incorporated by reference as if fully set forth.

23 OTHER MATTERS

24 37. 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 Fernandos Smogs, upon a finding that Respondent Fernandos Smogs has, or  
27 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to  
28 an automotive repair dealer.





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

DATED: May 19, 2015



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

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