

**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
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2100
7 Facsimile: (619) 645-2061
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.

24
25 ///

26 ///

27 ///

28 ///

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.

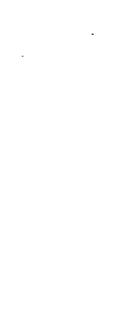
18 10. **Cost Recovery.** Fernandos Smogs and Fernando Arce shall pay to the Bureau its
19 costs of investigation and enforcement of this matter in the amount of \$6,035.56, as follows:
20 twenty-four (24) consecutive minimum monthly payments to the Bureau of \$251.48 per month,
21 due by the fifth of 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

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

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

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

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: 11/9/2015

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

21 

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

24

25

26 SD2014708167
27 Stipulation.rtf

27

28

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
Deputy Attorney General
4 State Bar No. 176908
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2100
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
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
16 Automotive Repair Dealer Registration No.
ARD 220828
17 Smog Check-Test Only Station License No.
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.

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."

27 ///

28 ///

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."

26 ///

27 ///

28 ///

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."

///

///

///

///

///

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."

28 ///

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.

27 ///

28 ///

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.

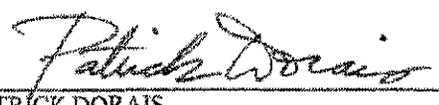
23 OTHER MATTERS

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

SD2014708167
71062940.doc