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

12 In the Matter of the Accusation Against:

Case No. 79/14-54

13 **GOMEZ SMOG TEST ONLY**  
14 **JOSE LUIS GOMEZ, OWNER**  
15 **19065 Grand Ave.**  
**Lake Elsinore, CA 92530**

ACCUSATION

(SMOG CHECK)

16 **Automotive Repair Dealer License No. ARD**  
17 **249179**  
18 **Smog Check, Test Only, Station No. TC**  
19 **249179**  
20 **Smog Check Inspector License No. EO**  
21 **142550; Smog Check Repair Technician**  
**License No. EI 142550 (formerly Advanced**  
**Emission Specialist Technician No. EA**  
**142550)**

22 **ALBERTO SOTO**  
23 **19065 Grand Ave.**  
**Lake Elsinore, CA 92530**

24 **Smog Check Inspector License No. EO**  
25 **633604; Smog Check Repair Technician**  
26 **License No. EI 633604 (formerly Advanced**  
**Emission Specialist Technician No. EA**  
**633604)**

27 Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 2. **Jose Luis Gomez, Owner of Gomez Smog Test Only:** In 2007, the Bureau of  
6 Automotive Repair issued Automotive Repair Dealer License Number ARD 249179 to Jose Luis  
7 Gomez, Owner of Gomez Smog Test Only (Gomez Smog Test Only). The Automotive Repair  
8 Dealer License was in full force and effect at all times relevant to the charges brought herein and  
9 will expire on January 31, 2014, unless renewed. On March 16, 2007, the Bureau issued to  
10 Gomez Smog Test Only Smog Check, Test Only, Station License No. TC 249179. The Smog  
11 Check Station License was in full force and effect at all times relevant to the charges brought  
12 herein and will expire on January 31, 2014, unless renewed. On a date uncertain in 2002, the  
13 Bureau issued Advanced Emission Specialist Technician License Number EA 142550 to Gomez.  
14 Gomez's advanced emission specialist technician license was due to expire on December 31,  
15 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the  
16 license was renewed, pursuant to Gomez's election, as Smog Check Inspector License No. EO  
17 142550 and Smog Check Repair Technician License No. EI 142550, effective November 21,  
18 2012. Gomez's smog check inspector license and smog check repair technician license  
19 (technician licenses) will expire on December 31, 2014, unless renewed.<sup>1</sup>

20 3. **Alberto Soto:** On September 12, 2011, the Bureau issued Advanced Emission  
21 Specialist Technician License Number EA 633604 to Alberto Soto. Soto's advanced emission  
22 specialist technician license was due to expire on April 30, 2013. Pursuant to California Code of  
23 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to  
24 Soto's election, as Smog Check Inspector License No. EO 633604 and Smog Check Repair  
25 Technician License No. EI 633604, effective May 10, 2013. Respondent's smog check inspector

26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced  
28 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 license and smog check repair technician license (technician licenses) will expire on April 30,  
2 2015, unless renewed.

### 3 JURISDICTION

4 4. This Accusation is brought before the Director of Consumer Affairs (Director) for the  
5 Bureau of Automotive Repair, under the authority of the following laws. All section references  
6 are to the Business and Professions Code unless otherwise indicated.

7 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
8 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed with  
9 a disciplinary action during the period within which the license may be renewed, restored,  
10 reissued or reinstated.

11 6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid  
12 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
13 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
14 temporarily or permanently.

15 7. Section 9884.20 of the Code states:

16 "All accusations against automotive repair dealers shall be filed within three years after the  
17 performance of the act or omission alleged as the ground for disciplinary action, except that with  
18 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,  
19 the accusation may be filed within two years after the discovery, by the bureau, of the alleged  
20 facts constituting the fraud or misrepresentation."

21 8. Section 9884.22 states

22 "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny  
23 at any time any registration required by this article on any of the grounds for disciplinary action  
24 provided in this article. The proceedings under this article shall be conducted in accordance with  
25 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
26 Code, and the director shall have all the powers granted therein.

27 "..."

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1           9.     Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
2 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
3 the Motor Vehicle Inspection Program.

4           10.    Section 44072 of the Health and Safety Code states:

5           “Any license issued under this chapter and the regulations adopted pursuant to it may be  
6 suspended or revoked by the director. The director may refuse to issue a license to any applicant  
7 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted  
8 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2  
9 of the Government Code, and the director shall have all the powers granted therein.”

10          11.    Section 44072.4 of the Health and Safety Code states:

11          “The director may take disciplinary action against any licensee after a hearing as provided  
12 in this article by any of the following:

13           “(a) Imposing probation upon terms and conditions to be set forth by the director.

14           “(b) Suspending the license.

15           “(c) Revoking the license.”

16          12.    Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
17 expiration or suspension of a license by operation of law, or by order or decision of the Director  
18 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
19 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary  
20 proceedings against the licensee, or to render a decision suspending or revoking the license.

21          13.    Section 44072.7 of the Health and Safety Code states:

22          “All accusations against licensees shall be filed within three years after the act or omission  
23 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a  
24 violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after  
25 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation  
26 prohibited by that section.”

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1 14. Section 44072.8 of the Health and Safety Code states:

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

5 **STATUTORY PROVISIONS**

6 15. Section 22 of the Code states:

7 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the  
8 administration of the provision is vested, and unless otherwise expressly provided, shall include  
9 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and  
10 'agency.'

11 "(b) Whenever the regulatory program of a board that is subject to review by the Joint  
12 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2  
13 (commencing with Section 473), is taken over by the department, that program shall be  
14 designated as a 'bureau.'"

15 16. Section 9884.7 of the Code states:

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

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

24 "...

25 "(4) Any other conduct that constitutes fraud.

26 "...

27 "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on  
28 probation the registration for all places of business operated in this state by an automotive repair

1 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated  
2 and willful violations of this chapter, or regulations adopted pursuant to it."

3 17. Section 44072.2 of the Health and Safety Code states:

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

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

10 "...

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

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

13 "..."

14 18. Section 44072.10 of the Health and Safety Code states:

15 "...

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

19 "...

20 "(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure  
21 of the department implementing this chapter.

22 "..."

### 23 REGULATORY PROVISIONS

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

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1 **COSTS**

2 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **CLEAN PLUGGING**

9 21. The Bureau reviewed the Vehicle Information Database data for smog inspections  
10 that were performed at Gomez Smog Test Only requiring the OBD II test.<sup>2</sup> The purpose was to  
11 determine if Gomez Smog Test Only or its employees had engaged in fraudulent smog check  
12 inspections. The Bureau reviewed inspections performed between January 1, 2013, and April 1,  
13 2013.

14 22. During a Bureau representative's review of this data, nine inspections identified  
15 below had Diagnostic Trouble Codes stored in the Powertrain Control Module that did not apply  
16 to those vehicles for the OBD II test. The Vehicle Information Database data showed that Gomez  
17 Smog Test Only's smog technician, Soto, performed the inspections on these vehicles using a

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19  
20 <sup>2</sup> The On Board Diagnostics, generation II (OBD II) is a functional test and is performed  
21 on most 1996 and newer vehicles. The technician is required to connect a test cable from the  
22 BAR-97 analyzer to a diagnostic link connector, which is located in the vehicle's passenger  
23 compartment. Through the diagnostic link connector, the BAR-97 analyzer retrieves information  
24 from the vehicle's on-board computer about the status of the readiness indicators, trouble codes,  
25 and the malfunction indicator light. The readiness indicators tell whether or not the OBD II  
26 system has run its self-tests on the vehicle's emission and engine control systems to completion.  
27 If a readiness monitor is not set, it means that particular system has not been tested. A trouble  
28 code results when the vehicle fails one of these self-tests and identifies the system and/or  
component which failed. If the trouble code is persistent, the on-board computer will command  
the malfunction indicator light to turn on. The vehicle will fail the OBD II functional test if more  
than the allowable number of readiness monitors have not been set, a trouble code has been set, or  
the malfunction indicator light has been commanded on. It will also fail if the on-board computer  
will not communicate with the BAR 97 through the diagnostic link connector. If the vehicle fails  
any of the applicable visual or functional tests, it will fail the overall inspection.

1 method known as “clean plugging.”<sup>3</sup> This resulted in the issuance of nine fraudulent certificates  
2 of compliance for the vehicles as follows:

3 a. Clean Plug 1 - Honda Civic

4 The BAR97 Test Detail from the Vehicle Information Database shows that on January 14,  
5 2013, from 1007 hours to 1015 hours, Respondents performed a smog check inspection on a 1996  
6 Honda Civic, CA License #5WQM655. The Honda Civic was issued Certificate of Compliance  
7 #XP551840C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in  
8 the Powertrain Control Module memory of the Honda Civic during the time of certification.

9 However, code P1516 does not apply to the Honda Civic.

10 b. Clean Plug 2 – BMW 528i

11 The BAR97 Test Detail from the Vehicle Information Database shows that on February 13,  
12 2013, from 1551 hours to 1556 hours, Respondents performed a smog check inspection on a 2000  
13 BMW 528i, CA License #5WBR496. The BMW 528i was issued Certificate of Compliance  
14 #XR242805C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in  
15 the Powertrain Control Module memory of the BMW 528i during the time of certification.

16 However, code P1516 does not apply to the BMW 528i.

17 c. Clean Plug 3 – Chevrolet S10 pickup

18 The BAR97 Test Detail from the Vehicle Information Database shows that on February 20,  
19 2013, from 1727 hours to 1737 hours, Respondents performed a smog check inspection on a 1997  
20 Chevrolet S10, CA License #5N41510. The Chevrolet S10 was issued Certificate of Compliance  
21 #XR242833C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in  
22

23 <sup>3</sup> Clean plugging is the use of the OBD II readiness monitor status and stored code status  
24 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is  
25 not in compliance due to the noncompliant vehicle’s failure to complete the minimum number of  
26 self tests, known as monitors, or due to the presence of a stored code that indicates an emission  
27 control system or component failure. Clean plugging occurs during the inspection of a vehicle  
28 that has an OBD II system. To “clean plug” a vehicle, the smog technician enters information  
into the Emissions Inspection System for the vehicle the technician wishes to certify and then  
plugs the OBD II system connection from the Emissions Inspection System into another vehicle  
that has a properly functioning OBD II system, rather than plugging the connection into the  
vehicle that was originally identified for testing.

1 the Powertrain Control Module memory of the Chevrolet S10 during the time of certification.

2 However, code P1516 does not apply to the Chevrolet S10.

3 d. Clean Plug 4 – Honda Civic

4 The BAR97 Test Detail from the Vehicle Information Database shows that on February 22,  
5 2013, from 1711 hours to 1718 hours, Respondents performed a smog check inspection on a 1998  
6 Honda Civic, CA License #5SSJ633. The Honda Civic was issued Certificate of Compliance  
7 #XR411951C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in  
8 the Powertrain Control Module memory of the Honda Civic during the time of certification.

9 However, code P1516 does not apply to the Honda Civic.

10 e. Clean Plug 5 – Kia Sephia/Spectra

11 The BAR97 Test Detail from the Vehicle Information Database shows that on February 25,  
12 2013, from 1642 hours to 1654 hours, Respondents performed a smog check inspection on a 2000  
13 Kia Sephia/Spectra, CA License #4JJY775. The Kia Sephia/Spectra was issued Certificate of  
14 Compliance #XR411975C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516  
15 was stored in the Powertrain Control Module memory of the Kia Sephia/Spectra during the time  
16 of certification. However, code P1516 does not apply to the Kia Sephia/Spectra.

17 f. Clean Plug 6 – Chevrolet Blazer

18 The BAR97 Test Detail from the Vehicle Information Database shows that on February 27,  
19 2013, from 1743 hours to 1749 hours, Respondents performed a smog check inspection on a 1997  
20 Chevrolet Blazer, CA License #6WOA396. The Chevrolet Blazer was issued Certificate of  
21 Compliance #XR411994C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516  
22 was stored in the Powertrain Control Module memory of the Chevrolet Blazer during the time of  
23 certification. However, code P1516 does not apply to the Chevrolet Blazer.

24 g. Clean Plug 7 – BMW 528i

25 The BAR97 Test Detail from the Vehicle Information Database shows that on March 5,  
26 2013, from 1704 hours to 1708 hours, Respondents performed a smog check inspection on the  
27 same 2000 BMW 528i identified in paragraph (b) above. The BMW 528i was issued Certificate  
28 of Compliance #XR519134C. The BAR97 Test Detail shows that Diagnostic Trouble Code

1 P1516 was stored in the Powertrain Control Module memory of the BMW 528i during the time of  
2 certification. However, code P1516 does not apply to the BMW 528i.

3 h. Clean Plug 8 – Toyota Sienna

4 The BAR97 Test Detail from the Vehicle Information Database shows that on March 5,  
5 2013, from 1719 hours to 1728 hours, Respondents performed a smog check inspection on a 1998  
6 Toyota Sienna, CA License #6SQE437. The Toyota Sienna was issued Certificate of Compliance  
7 #XR519135C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in  
8 the Powertrain Control Module memory of the Toyota Sienna during the time of certification.  
9 However, code P1516 does not apply to the Toyota Sienna.

10 i. Clean Plug 9 – Acura Integra

11 The BAR97 Test Detail from the Vehicle Information Database shows that on March 12,  
12 2013, from 1551 hours to 1600 hours, Respondents performed a smog check inspection on a 1996  
13 Acura Integra, UT License #C895HG. The Acura Integra was issued Certificate of Compliance  
14 #XR674880C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in  
15 the Powertrain Control Module memory of the Acura Integra during the time of certification.  
16 However, code P1516 does not apply to the Acura Integra.

17 23. The following chart is a summary of the fraudulent Certificates of Compliance that  
18 Respondents issued by clean plugging:

	Time of Certification as Recorded in Vehicle Information Database	Vehicle Certified	Unsupported Diagnostic Trouble Code
1	1/14/13 from 1007-1015	1996 Honda Civic CA License #5WQM655 Certificate of Compliance #XP551840C	P1516
2	2/13/13 from 1551-1556	2000 BMW 528i CA License #5WBR496	P1516

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		Certificate of Compliance #XR242805C	
3	2/20/13 from 1727-1737	1997 Chevrolet S10 CA License #5N41510 Certificate of Compliance #XR242833C	P1516
4	2/22/13 from 1711-1718	1998 Honda Civic CA License #5SSJ633 Certificate of Compliance #XR411951C.	P1516
5	2/25/13 from 1642-1654	2000 Kia Sephia/Spectra CA License #4JJY775 Certificate of Compliance #XR411975C	P1516
6	2/27/13 from 1743-1749	1997 Chevrolet Blazer CA License #6WOA396 Certificate of Compliance #XR411994C	P1516
7	3/5/13 from 1704-1708	2000 BMW 528i CA License #5WBR496 Certificate of Compliance #XR519134C	P1516
8	3/5/13 from 1719-1728	1998 Toyota Sienna CA License #6SQE437 Certificate of Compliance #XR519135C	P1516
9	3/12/13 from 1551-1600	1996 Acura Integra	P1516

1		UT License #C895HG	
2		Certificate of Compliance	
3		#XR674880C	

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 24. Gomez Smog Test Only's Registration is subject to disciplinary action under section  
7 9884.7, subdivision (a)(1), in that Gomez Smog Test Only made or authorized statements which  
8 Gomez Smog Test Only knew or in the exercise of reasonable care should have known to be  
9 untrue or misleading as follows: Gomez Smog Test Only's smog check technician, Soto, certified  
10 that they inspected the vehicles described in paragraphs 21-23, when in fact those vehicles were  
11 not inspected.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Violations of Motor Vehicle Inspection Program)**

14 25. Gomez Smog Test Only's Smog Check Station License is subject to disciplinary  
15 action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,  
16 subdivision (a), in that Gomez Smog Test Only failed to comply with the following sections of  
17 that Code:

18 a. **Section 44012**: failed to perform the tests of the emission control systems and devices  
19 on the vehicles in paragraphs 21-23 in accordance with procedures prescribed by the Department.

20 b. **Section 44015**: issued a certificate of compliance for the vehicles in paragraphs 21-23  
21 without properly testing and inspecting them to determine if they were in compliance with Health  
22 & Safety Code section 44012.

23 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,  
24 equipment, performance, or conduct by failing to properly perform a smog inspection on the  
25 vehicles in paragraphs 21-23 or certifying that such tests had been performed, when in fact they  
26 were never performed.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 26. Gomez Smog Test Only's Smog Check Station License is subject to disciplinary  
4 action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,  
5 subdivision (a), in that Gomez Smog Test Only failed to comply with the following sections of  
6 Title 16, California Code of Regulations:

7 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles in paragraphs  
8 21-23 in accordance with the procedures specified in section 3340.42 of the Regulations and  
9 failed to ensure that these vehicles had all the required emission control equipment and devices  
10 installed and functioning correctly.

11 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection  
12 System false information about the vehicles in paragraphs 21-23, providing results for smog  
13 inspections which were not actually performed.

14 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicles in  
15 paragraphs 21-23 in accordance with the Bureau's specifications.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

18 27. Gomez Smog Test Only's Registration is subject to disciplinary action under Code  
19 section 9884.7, subdivision (a)(4), and Gomez Smog Test Only's Smog Check Station License is  
20 subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (a)  
21 and (c) and 44072.2, subdivision (d), in that Gomez Smog Test Only committed dishonest,  
22 fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of compliance  
23 for the vehicles in paragraphs 21-23 without performing bona fide inspections of the emission  
24 control devices and systems on them, thereby depriving the People of the State of California of  
25 the protection afforded by the Motor Vehicle Inspection Program.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 28. Soto's smog technician license(s) is/are subject to disciplinary action under Health  
4 and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that  
5 Soto failed to comply with the following sections of that Code:

6 a. **Section 44012**: failed to perform the tests of the emission control systems and devices  
7 on the vehicles in paragraphs 21-23 in accordance with procedures prescribed by the Department.

8 b. **Section 44015**: issued a certificate of compliance for the vehicles in paragraphs 21-23  
9 without properly testing and inspecting them to determine if they were in compliance with Health  
10 & Safety Code section 44012.

11 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,  
12 equipment, performance, or conduct by failing to properly perform a smog inspection on the  
13 vehicles in paragraphs 21-23 or certifying that such tests had been performed, when in fact they  
14 were never performed.

15 **SIXTH CAUSE FOR DISCIPLINE**

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

17 29. Soto's smog technician license(s) is/are subject to disciplinary action under Health  
18 and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a) in that  
19 Soto failed to comply with the following sections of Title 16, California Code of Regulations:

20 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles in paragraphs  
21 21-23 in accordance with the procedures specified in section 3340.42 of the Regulations and  
22 failed to ensure that these vehicles had all the required emission control equipment and devices  
23 installed and functioning correctly.

24 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection  
25 System false information about the vehicles in paragraphs 21-23, providing results for smog  
26 inspections which were not actually performed.

27 c. **Section 3340.42**: failed to conduct the required smog tests on all the vehicles in  
28 paragraphs 21-23 in accordance with the Bureau's specifications.

1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 30. Soto's smog technician license(s) is/are subject to disciplinary action under Health  
4 and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), in that  
5 Soto committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing  
6 smog certificates of compliance for the vehicles in paragraphs 21-23 without performing bona  
7 fide inspections of the emission control devices and systems on them, thereby depriving the  
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
9 Program.

10 **DISCIPLINE CONSIDERATIONS**

11 31. To determine the degree of discipline, if any, to be imposed on Gomez Smog Test  
12 Only, Complainant alleges that on or about November 8, 2010, in a prior action, the Bureau of  
13 Automotive Repair issued Citation Number C2011-0604 and assessed a civil penalty of \$1,000.00  
14 for issuing a certificate of compliance to a Bureau undercover vehicle with the fuel evaporative  
15 emissions control canister (EVAP canister) removed, a violation of Health and Safety Code  
16 section 44012, subdivision (f) and Code of Regulations section 3340.35, subdivision (c). On  
17 December 22, 2010, Gomez Smog Test Only paid the civil penalty. That Citation is now final  
18 and is incorporated by reference as if fully set forth.

19 **OTHER MATTERS**

20 32. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or  
21 place on probation the registration for all places of business operated in this state by Gomez Smog  
22 Test Only upon a finding that Gomez Smog Test Only has, or is, engaged in a course of repeated  
23 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

24 33. Pursuant to Health & Safety Code section 44072.8, if Gomez Smog Test Only's Smog  
25 Check Station License is revoked or suspended, the Director may likewise revoke or suspend any  
26 additional license issued under Chapter 5 of the Health and Safety Code in the name of Gomez  
27 Smog Test Only or Jose Luis Gomez, including Smog Check Inspector License No. EO 142550

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1 and Smog Check Repair Technician License No. EI 142550 (formerly Advanced Emission  
2 Specialist Technician No. EA 142550).

3 34. Under Health and Safety Code section 44072.8, if Smog Check Inspector License No.  
4 EO 633604 and Smog Check Repair Technician License No. EI 633604, issued to Soto, is/are  
5 revoked or suspended, any additional license issued under Chapter 5 of the Health and Safety  
6 Code in the name of said licensee may be likewise revoked or suspended by the director.

7 **PRAYER**

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

10 1. Revoking or suspending Automotive Repair Dealer License Number ARD 249179,  
11 issued to Gomez Smog Test Only;

12 2. Revoking or suspending Smog Check, Test Only, Station License No. TC 249179,  
13 issued to Gomez Smog Test Only;

14 3. Revoking or suspending Smog Check Inspector License No. EO 633604 and Smog  
15 Check Repair Technician License No. EI 633604, issued to Soto;

16 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
17 and Safety Code in the name of Gomez Smog Test Only and/or Jose Luiz Gomez, including  
18 Smog Check Inspector License No. EO 142550 and Smog Check Repair Technician License No.  
19 EI 142550 (formerly Advanced Emission Specialist Technician No. EA 142550);

20 5. Revoking or suspending any additional license issued under Chapter 5 of the Health  
21 and Safety Code in the name of Soto;

22 6. Ordering Gomez Smog Test Only and Soto to pay the Bureau of Automotive Repair  
23 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
24 Professions Code section 125.3; and

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

DATED: 11-14-13

*Pat Dorais by*   
PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Doyle BALATTI*  
*Complainant*

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