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

11
12 In the Matter of the Accusation Against:

Case No. *49/15-113*

13 **SO CAL SMOG**
MANUEL ANTONIO LOPEZ ROJO, OWNER
14 82443 Indio Blvd.
Indio, CA 92201
15 Mailing Address:
16 P.O. Box 362
Palm Desert, CA 92261
17 Automotive Repair Dealer Reg. No. ARD 258087
18 Smog Check-Test Only Station License No. TC 258087

A C C U S A T I O N

19 and

20 **ROBERT BUENROSTRO**
46-720 Clinton Street
21 Indio, CA 92201
22 Advanced Emission Specialist Technician License No.
EA 631318
23 (To be redesignated upon renewal as EI 631318 and/or
E0 631318)

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25 Respondents.
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1 Complainant alleges:

2 PARTIES

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

5 **Automotive Repair Dealer Registration No. ARD 258087**

6 2. On or about May 11, 2009, the Bureau of Automotive Repair (“Bureau”) issued
7 Automotive Repair Dealer Registration Number ARD 258087 to So Cal Smog, with Manuel
8 Antonio Lopez Rojo as owner (“Respondent So Cal Smog”). The Automotive Repair Dealer
9 Registration was in full force and effect at all times relevant to the charges brought herein and
10 expired on May 31, 2014.

11 **Smog Check-Test Only Station License No. TC 258087**

12 3. On or about June 18, 2009, the Bureau issued Smog Check-Test Only Station License
13 Number TC 258087 to Respondent So Cal Smog. The Smog Check-Test Only Station License
14 was in full force and effect at all times relevant to the charges brought herein and expired on
15 May 31, 2014.

16 **Advanced Emission Specialist Technician License No. EA 631318**

17 4. On or about September 8, 2009, the Bureau issued Advanced Emission Specialist
18 Technician License Number EA 631318 to Robert Buenrostro (“Respondent Buenrostro”). The
19 advanced emission specialist technician license expired on December 31, 2013. Upon timely
20 renewal of the license, the license will be redesignated as EO 631318 and/or EI 631318.¹

21 JURISDICTION

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

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26 ¹ 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.

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(4) Any other conduct which constitutes fraud.

....

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

....

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

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

12. Bus. & Prof. Code section 9884.22 states, in pertinent part:

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

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

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

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

....

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

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

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

....

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

....

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

15. Health & Saf. Code section 44012 provides, in pertinent part, that the test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013.

REGULATORY PROVISIONS

16. California Code of Regulations, title 16, section 3340.24(c), states:

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

17. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

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

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

“ . . . ”

18. California Code of Regulations, title 16, section 3340.35, provides, in pertinent part, that a licensed station shall issue a certificate of compliance . . . to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly.

1 19. California Code of Regulations, title 16, section 3340.41(c), states:

2 "No person shall enter into the emissions inspection system any vehicle identification
3 information or emission control system identification data for any vehicle other than the one
4 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
5 information about the vehicle being tested."

6 20. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part,
7 that smog check stations and smog check technicians shall conduct tests and inspections in
8 accordance with the bureau's BAR 97 Emissions Inspection System Specifications referenced in
9 subsections (a) and (b) of Section 3340.17.

10 COST RECOVERY

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

15 FACTUAL BACKGROUND

16 22. In or about June 2014, the Bureau initiated an investigation of Respondent So Cal
17 Smog based on a review of information from the Bureau's Vehicle Information Database ("VID")
18 that indicated that Respondent So Cal Smog and/or its employees were engaging in fraudulent
19 smog inspections. The VID contains data related to a smog inspection, including emission
20 control system data, vehicle profiling data, station and technician data, and smog certificate data.

21 23. In or about June 2014, a representative of the Bureau conducted a detailed review of
22 the VID data for all smog inspections performed at Respondent So Cal Smog for the period of
23 August 1, 2013, through November 2, 2013. The review showed a pattern of the same OBD II²

24 ² The On Board Diagnostic, generation II (OBD II) functional test is an automated
25 function of the BAR-97 analyzer (the machine used to measure emissions from the car being
26 tested during the smog inspection). During the OBD II functional test, the smog technician is
27 required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector
28 (DLC) which is located inside the tested vehicle. Through the DLC, the BAR-97 analyzer
automatically retrieves information from the vehicle's on-board computer about the status of the
readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails
the OBD II functional test, it will fail the overall smog inspection.

1 diagnostic trouble code stored in the memory of the power train control module (“PCM”) of the
 2 vehicles regardless of make or model of the vehicle. The Bureau representative obtained
 3 information indicating that this code was not applicable to the vehicles. Vehicles 1 through 5, set
 4 forth in Table 1 below, were all certified with the same pending diagnostic trouble code (P1518)
 5 stored in the PCM memory, while the service information for those vehicles shows that all five of
 6 them do not support this code. Instead, the code belongs to a different make and/or model of
 7 vehicle. The VID data also showed that Respondent Robert Buenrostro performed the smog
 8 inspections on all five vehicles. Accordingly, the smog inspections performed on these five
 9 vehicles were done using a method known as “clean plugging,”³ resulting in the issuance of
 10 fraudulent certificates of compliance for the vehicles, as outlined in the following table.

Time of Smog Inspection	Date	Vehicle Certified and License No. or VIN No.	Certificate No.
1. 1316- 1331 hours	8/5/13	2002 Chevrolet Malibu 1G1ND52J82M504233	XP458528C
2. 1115- 1146 hours	8/31/13	2002 Honda Accord 5HCR489	XX640158C
3. 1320- 1333 hours	10/8/13	2003 Land Rover Freelander 5DEW848	XZ201075C
4. 1503- 1515 hours	10/10/13	1997 Chevrolet Lumina 5UUU071	XZ201080C
5. 1648- 1658 hours	10/11/13	2000 Mazda Millenia 6KXA842	XZ201085C

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 26 ³ “Clean plugging” is the use of the OBD II readiness monitor status and stored fault code
 27 (trouble code) status of a passing vehicle, for the purpose of illegally issuing a smog certificate to
 28 another vehicle that is not in compliance, due to a failure to complete the minimum number of
 self tests, known as monitors, or due to the presence of a stored trouble code that indicates an
 emission control system or component failure.

1 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
2 performed on vehicles 1 through 5, identified in paragraph 23 above, in accordance with
3 procedures prescribed by the Department.

4 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
5 vehicles 1 through 5, identified in paragraph 23 above, without ensuring that the vehicles were
6 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
7 section 44012.

8 **FOURTH CAUSE FOR DISCIPLINE**
9 **(Failure to Comply with Regulations Pursuant**
10 **to the Motor Vehicle Inspection Program)**

11 28. Respondent So Cal Smog's Smog Check-Test Only Station License is subject to
12 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
13 Respondent failed to comply with provisions of California Code of Regulations, title 16, as
14 follows:

15 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
16 electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 23
17 above.

18 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
19 compliance for vehicles 1 through 5, identified in paragraph 23 above, even though the vehicles
20 had not been inspected in accordance with section 3340.42.

21 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles
22 1 through 5, identified in paragraph 23 above, in accordance with the Bureau's specifications.

23 **FIFTH CAUSE FOR DISCIPLINE**

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

25 29. Respondent So Cal Smog's Smog Check-Test Only Station License is subject to
26 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
27 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by
28 issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in

1 paragraph 23 above, without performing bona fide inspections of the emission control devices
2 and systems on the vehicles, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program.

4 **SIXTH CAUSE FOR DISCIPLINE**

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

6 30. Respondent Buenrostro's technician license(s) is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with
8 section 44012 of that Code, in a material respect, as follows: Respondent Buenrostro failed to
9 perform the emission control tests on vehicles 1 through 5, identified in paragraph 23 above, in
10 accordance with procedures prescribed by the Department.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

14 31. Respondent Buenrostro's technician license(s) is subject to disciplinary action
15 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with
16 provisions of California Code of Regulations, title 16, as follows:

17 a. **Section 3340.24, subdivision (c)**: Respondent Buenrostro falsely or fraudulently
18 issued electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph
19 23 above.

20 b. **Section 3340.30, subdivision (a)**: Respondent Buenrostro failed to inspect and test
21 vehicles 1 through 5, identified in paragraph 23 above, in accordance with Health & Saf. Code
22 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

23 c. **Section 3340.41, subdivision (c)**: Respondent Buenrostro entered into the emissions
24 inspection system vehicle identification information or emission control system identification
25 data for a vehicle other than the one being tested for vehicles 1 through 5, identified in paragraph
26 23 above.

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1 d. **Section 3340.42:** Respondent Buenrostro failed to conduct the required smog tests
2 on vehicles 1 through 5, identified in paragraph 23 above, in accordance with the Bureau's
3 specifications.

4 **EIGHTH CAUSE FOR DISCIPLINE**

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

6 32. Respondent Buenrostro's technician license(s) is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest,
8 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
9 compliance for vehicles 1 through 5, identified in paragraph 23 above, without performing bona
10 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
11 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
12 Program.

13 **DISCIPLINE CONSIDERATIONS**

14 33. To determine the degree of discipline, if any, to be imposed against Respondent So
15 Cal Smog, Complainant alleges that on or about March 8, 2011, in a separate prior action, the
16 Bureau of Automotive Repair issued Citation No. C2011-1031 against said Respondent. The
17 Citation had a fine of \$1,000 and charged that Respondent improperly issued a smog certificate to
18 a Bureau undercover vehicle with its ignition timing adjusted beyond specification. The Citation
19 was paid on May 2, 2011. That Citation is now final and is incorporated by reference as if fully
20 set forth.

21 **OTHER MATTERS**

22 34. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
23 suspend, revoke, or place on probation the registration for all places of business operated in this
24 state by Respondent So Cal Smog, upon a finding that said Respondent has, or is, engaged in a
25 course of repeated and willful violations of the laws and regulations pertaining to an automotive
26 repair dealer.

27 35. Pursuant to Health & Saf. Code section 44072.8, if Smog Check-Test Only Station
28 License Number TC 258087 issued to Respondent So Cal Smog is revoked or suspended, any

1 additional license issued under Chapter 5 of the Health and Safety Code (Motor Vehicle
2 Inspection Program) in the name of said licensee may be likewise revoked or suspended by the
3 Director.

4 36. Pursuant to Health & Saf. Code section 44072.8, if Respondent Buenrostro's
5 technician license(s), currently designated as EA 631318 and as redesignated upon timely renewal
6 as EO 631318 and/or EI 631318, is/are revoked or suspended, any additional license issued under
7 Chapter 5 of the Health and Safety Code (Motor Vehicle Inspection Program) in the name of said
8 licensee may be likewise revoked or suspended by the Director.

9 PRAYER

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

- 12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
13 258087 issued to So Cal Smog, Manuel Antonio Lopez Rojo, Owner;
- 14 2. Revoking or suspending any other automotive repair dealer registration issued to So
15 Cal Smog, Manuel Antonio Lopez Rojo, Owner;
- 16 3. Revoking or suspending Smog Check-Test Only Station License Number TC 258087
17 issued to So Cal Smog, Manuel Antonio Lopez Rojo, Owner;
- 18 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
19 and Safety Code in the name of So Cal Smog, Manuel Antonio Lopez Rojo, Owner;
- 20 5. Revoking or suspending Robert Buenrostro's smog technician license(s), currently
21 designated as EA 631318 and as redesignated upon his timely renewal as EO 631318 and/or
22 EI 631318;
- 23 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
24 and Safety Code in the name of Robert Buenrostro;
- 25 7. Ordering Manuel Antonio Lopez Rojo and/or Robert Buenrostro to pay the Bureau of
26 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
27 pursuant to Business and Professions Code section 125.3;

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

DATED: May 1, 2015

Patrick Dorais

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

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