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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:
13 **TOMAS GOMEZ MACEDO, OWNER,**
14 **DOING BUSINESS AS MAIN STREET**
15 **SMOG CENTER**
1236 S. Main Ave., Unit B
Fallbrook, CA 92028

Case No. 79/15-2

OAH No. 2014060848

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
17 **ARD 260034**

18 **Smog Check Test Only Station License No.**
19 **TC 260034,**

20 **and**

21 **JOEL ANGEL FIGUEROA**
33398 View Crest Dr.
Wildomar, CA 92595

22 **Smog Check Repair Technician License No.**
23 **EI 631429 and Smog Check Inspector**
24 **License No. EO 631429 (formerly Advanced**
Emission Specialist Technician License No.
EA 631429),

25 Respondents.

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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. On or about November 24, 2009, the Bureau issued Automotive Repair Dealer
6 Registration No. ARD 260034 to Respondent Tomas Gomez Macedo, Owner, doing business as
7 Main Street Smog Center (Macedo). The registration was in full force and effect at all times
8 relevant to the charges brought herein and will expire on October 31, 2014, unless renewed.

9 3. On or about December 29, 2009, the Bureau issued Smog Check Test Only Station
10 License No. TC 260034 to Macedo. The license was in full force and effect at all times relevant
11 to the charges brought herein and will expire on October 31, 2014, unless renewed.

12 4. On October 15, 2009, the Bureau issued Advanced Emission Specialist (EA)
13 Technician License No. 631429 to Respondent Joel Angel Figueroa (Figueroa). It was due to
14 expire on July 31 2013. Under California Code of Regulations, title 16, section 3340.28,
15 subdivision (e), the license was renewed, under Figueroa's election, as Smog Check Inspector
16 License No. EO 631429 and Smog Check Repair Technician License No. EI 631429, effective
17 July 25, 2013. The Smog Check Inspector License and Smog Check Repair Technician License
18 (collectively technician licenses) were in full force and effect at all times relevant to the charges
19 brought herein and will expire on July 31, 2015, unless renewed.¹

20 **JURISDICTION**

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

23 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
24 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
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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.

1 disciplinary action during the period within which the license may be renewed, restored, reissued
2 or reinstated.

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

7 8. Section 9884.20 of the Code states:

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

13 9. Section 9884.22 of the Code states:

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

19 "..."

20 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
21 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
22 the Motor Vehicle Inspection Program.

23 11. Section 44072 of the Health and Safety Code states:

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

1 (commencing with Section 473), is taken over by the department, that program shall be
2 designated as a 'bureau.'"

3 17. Section 23.7 of the Code states:

4 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or
5 other means to engage in a business or profession regulated by this code or referred to in Section
6 1000 or 3600."

7 18. Section 9884.7 of the Code states:

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

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

16 "...

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

18 "...

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

23 19. Section 44072.2 of the Health and Safety Code states:

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

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1 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
2 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

3 COSTS

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

10 FACTS

11 24. On February 5 and 20 and April 25, 2014, a Bureau representative conducted video
12 surveillance at Macedo’s smog station. The following is a comparison of the reported data of 6
13 smog inspections that Macedo and Figueroa represented that they performed to the Bureau’s
14 recorded observations of those same 6 inspections.

15 25. Clean Pipe 1 – Honda Civic

16 The BAR97 Test Detail from the Vehicle Information Database shows that on February 5,
17 2014, from 1148 hours to 1201 hours, Macedo and Figueroa performed a smog check inspection
18 on a 1983 Honda Civic CA License #2CPR284, VIN #JHMSR5338DS017462 (“the Civic”). The
19 Civic was issued Certificate of Compliance #PC787099C.

20 26. On the video surveillance of February 5, 2014, at 1132 hours a grey Toyota pickup,
21 CA license # 6VMZ604 (“the Toyota pickup”) drives into the smog bay at the smog station. At
22 1149 hours the Toyota pickup backs off the dynamometer and drives back on. Figueroa inserts
23 the exhaust probe in the tailpipe. At 1151 hours, he removes the exhaust probe from the Toyota
24 pickup’s tailpipe. At 1157 hours, the Toyota pickup drives out of the smog bay and the smog bay
25 remains empty until 1202 hours. During the recorded time of the Civic’s inspection, the Toyota
26 pickup is seen on the dynamometer in the smog bay.

27 27. The Civic is never observed in the smog bay of Macedo’s smog station during the
28 recorded time of the smog check inspection and did not receive the required tailpipe emissions

1 inspection. Macedo and Figueroa clean piped the Civic by using the exhaust sample of the
2 Toyota pickup.

3 28. Clean Pipe 2 – Chevrolet Silverado

4 The BAR97 Test Detail from the Vehicle Information Database shows that on February 5,
5 2014, from 1324 hours to 1336 hours, Macedo and Figueroa performed a smog check inspection
6 on a 2002 Chevrolet Silverado, CA License #6V39318, VIN #2GCEC19VX21229259 (“the
7 Silverado”). The Silverado was issued Certificate of Compliance #YD210852C.

8 29. On the video surveillance of February 5, 2014, at 1312 hours a grey Chevrolet
9 pickup, CA license #8A53723 (“the Chevrolet pickup”) drives into the smog bay. At 1325 hours
10 the Chevrolet pickup backs off of the dynamometer and then drives back on. The exhaust probe
11 was left in the tailpipe from the previous test. At 1327 hours a male removes the exhaust probe
12 from the Chevrolet pickup. At 1328 hours, the Chevrolet pickup drives out of the smog bay and
13 the smog bay remains empty until 1339 hours. The Chevrolet pickup is the only vehicle in the
14 smog bay during the recorded time of the Silverado’s inspection.

15 30. However, the Silverado was never observed in the smog bay during the recorded
16 time of the smog check inspection and did not receive the required tailpipe emissions inspection.
17 Macedo and Figueroa clean piped the Silverado using the exhaust sample of the Chevrolet pickup.

18 31. Clean Pipe 3 – Ford Ranger Super Cab

19 The BAR97 Test Detail from the Vehicle Information Database shows that on February
20 20, 2014, from 1059 hours to 1104 hours, Macedo and Figueroa performed a smog check
21 inspection on a 1994 Ford Ranger Super Cab, CA License #5A43159, VIN
22 #1FTCR15X5RPB45344 (“the Super Cab”). The Super Cab was issued Certificate of
23 Compliance #YD355738C.

24 32. On the video surveillance of February 20, 2014, at 1040 hours the Super Cab
25 drives into the smog bay. At 1041 hours, Figueroa inserts the exhaust probe into the Super Cab’s
26 tailpipe. At 1059 hours, a male removes the exhaust probe. At 1100 hours, the Super Cab is
27 driven out of the smog bay. At 1101 hours, Figueroa drives a Ford Explorer, CA license
28 #5TUN021 on the front bumper and CA “dealer plate” #40237 on the rear bumper (“the

1 Explorer”) into the smog bay. At 1102 hours Figueroa inserts the exhaust probe in the tailpipe of
2 the Explorer. At 1103 hours a male removes the exhaust probe from the tailpipe of the Explorer
3 and reinserts it. The Explorer remains in the smog bay until 1121 hours.

4 33. However, the Super Cab is never observed in the smog bay during the recorded
5 time of the smog check inspection and did not receive the required tailpipe emissions inspection.
6 Macedo and Figueroa clean piped the Super Cab using the exhaust sample of the Explorer.

7 34. Clean Pipe 4 – Ford Ranger Regular Cab Short

8 The BAR97 Test Detail from the Vehicle Information Database shows that on February
9 20, 2014, from 1109 hours to 1113 hours, Macedo and Figueroa performed a smog check
10 inspection on a 1999 Ford Ranger Regular Cab Short, CA License #5Z32884, VIN
11 #1FTYR10V5XUB37268 (“the Regular Cab”). The Regular Cab was issued Certificate of
12 Compliance #YD355739C.

13 35. On the video surveillance of February 20, 2014, at 1101 hours Figueroa drives a
14 Ford Explorer, with CA license #5TUN021 on the front bumper and CA “dealer plate” #40237 on
15 the rear bumper (“the Explorer”) into the smog bay. At 1102 hours Figueroa inserts the exhaust
16 probe in the tailpipe of the Explorer. At 1103 hours a male removes the exhaust probe from the
17 tailpipe of the Explorer and reinserts it. At 1109 hours the Explorer backs off the dynamometer
18 and drives back on at 1110 hours. At 1118 hours the Explorer backs off the dynamometer and
19 drives back on with the exhaust probe still in the tailpipe. At 1120 hours the male removes the
20 exhaust probe from the tailpipe. At 1121 hours the male drives the Explorer out of the smog bay.
21 The Explorer was the only vehicle observed in the smog bay during the recorded time of the
22 Regular Cab’s inspection.

23 36. However, the Regular Cab is never observed in the smog bay during the recorded
24 time of the smog check inspection and did not receive the required tailpipe emissions inspection.
25 Macedo and Figueroa clean piped the Regular Cab using the exhaust sample of the Explorer.

26 37. Clean Pipe 5 – Chevrolet Lumina

27 The BAR97 Test Detail from the Vehicle Information Database shows that on February
28 20, 2014, from 1211 hours to 1219 hours, Macedo and Figueroa performed a smog check

1 inspection on a 1997 Chevrolet Lumina, CA License #6YLR745, VIN #2G1WL52M7V1130540
2 (“the Lumina”). The Lumina was issued Certificate of Compliance #YD355742C.

3 38. On the video surveillance of February 20, 2014, at 1156 hours a male drives a
4 white 1997 Honda Accord, CA license #5GNY932 (“the Honda”) into the smog bay. At 1213
5 hours, Figueroa backs the Honda off of the dynamometer and then drives it back on. At 1215
6 hours, the exhaust probe is inserted into the tailpipe and Figueroa enters the Honda’s driver side
7 door. At 1217 hours a male removes the exhaust probe from the Honda’s tailpipe and Figueroa
8 gets out of the Honda. At 1219 hours, the male drives the Honda out of the smog bay and the
9 smog bay remains empty until 1222 hours.

10 39. However, the Lumina is never observed in the smog bay during the recorded time
11 of the smog check inspection and did not receive the required tailpipe emissions inspection.
12 Macedo and Figueroa clean piped the Lumina using the exhaust sample of the Honda.

13 40. Clean Pipe 6 – Volkswagen Passat

14 The BAR97 Test Detail from the Vehicle Information Database shows that on April 25,
15 2014, from 1117 hours to 1132 hours, Macedo and Figueroa performed a smog check inspection
16 on a 1999 Volkswagen Passat, CA License #4LIH673, VIN #WVWMA63B5XE106696 (“the
17 Volkswagen”). The Volkswagen was issued Certificate of Compliance #YF213782C.

18 41. On the video surveillance of April 25, 2014, at 1108 hours Figueroa drives a blue
19 Honda Civic, CA license #5WKR843 (“the Honda Civic”) into the smog bay. At 1113 hours
20 Figueroa gets into the driver’s seat of the Honda Civic. At 1115 hours Figueroa exits the driver’s
21 door of the Honda Civic. At 1118 hours Figueroa gets back into the driver’s seat of the Honda
22 Civic. At 1124 hours Figueroa exits the driver’s door of the Honda Civic and approaches the rear
23 of the vehicle, picks up the exhaust probe, and hangs it on the post next to the vehicle. At 1126
24 hours the Honda Civic backs out of the smog bay and drives away. At 1127 hours Figueroa
25 drives a red Toyota Corolla, CA license #3JZL721 (hereafter “Toyota Corolla”) into the smog
26 bay. The Toyota Corolla remained in the smog bay until 1151 hours.

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1 42. However, the Volkswagen is never observed in the smog bay during the recorded
 2 time of the smog check inspection and did not receive the required tailpipe emissions inspection.
 3 Macedo and Figueroa clean piped the Volkswagen using the exhaust sample of the Honda Civic.

4 43. The following chart is a summary of the clean piping performed by Macedo and
 5 Figueroa during the time of the surveillance:

	Date & Time of Inspection as Recorded in the VID	Vehicle Information Certificate # Smog Check Inspector	Vehicle certified observed in Smog Bay?	Vehicle Observed in Smog Bay During Time of Inspection
10 11	02/05/2014 1148 hours to 1201 hours	1983 Honda Civic, Lic #2CPR284 Certificate #PC787099C EO631429, Joel Angel Figueroa	No	Toyota pickup, Lic #6VMZ604
12 13 14	02/05/2014 1324 hours to 1336 hours	2002 Chevrolet Silverado Lic #6V39318 Certificate #YD210852C EO631429, Joel Angel Figueroa	No	Chevrolet Pickup, Lic #8A53723
15 16	02/20/2014 1059 hours to 1104 hours	1994 Ford Ranger, Lic #5A43159 Certificate #YD355738C EO631429, Joel Angel Figueroa	No	Ford Explorer, Lic #5TUN021
17 18	02/20/2014 1109 hours to 1113 hours	1999 Ford Ranger, Lic #5Z32884 Certificate #YD355739C EO631429, Joel Angel Figueroa	No	Ford Explorer, Lic #5TUN021
20 21	02/20/2014 1211 hours to 1219 hours	1997 Chevrolet Lumina, Lic# 6YLR745 Certificate #YD355742C EO631429, Joel Angel Figueroa	No	Honda Accord, Lic #5GNY932
22 23	04/25/2014 1117 hours to 1132 hours	1999 Volkswagen Passat, Lic# 4LIH673 Certificate #YF213782C EO631429, Joel Angel Figueroa	No	Honda Civic, Lic #5WKR843 & Toyota Corolla, Lic #3JZL721

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 44. Macedo's Registration is subject to disciplinary action under section 9884.7,
4 subdivision (a)(1), in that Macedo made or authorized statements which Macedo knew or in the
5 exercise of reasonable care should have known to be untrue or misleading as follows: Macedo
6 certified that Macedo inspected the vehicles described in paragraphs 24-43, when in fact and in
7 truth those vehicles were not inspected.

8 **SECOND CAUSE FOR DISCIPLINE**

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

10 45. Macedo's Smog Check Station License is subject to disciplinary action under Health
11 and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that
12 Macedo failed to comply with the following sections of that Code:

13 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
14 on the vehicles in paragraphs 24-43 in accordance with procedures prescribed by the Department.

15 b. **Section 44015**: issued a certificate of compliance for the vehicles in paragraphs 24-43
16 without properly testing and inspecting them to determine if they were in compliance with Health
17 & Safety Code section 44012.

18 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
19 equipment, performance, or conduct by failing to properly perform a smog inspection on the
20 vehicles in paragraphs 24-43 or certifying that such tests had been performed, when in fact they
21 were never performed.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations Under the Motor Vehicle Inspection Program)**

24 46. Macedo's Smog Check Station License is subject to disciplinary action under Health
25 and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that
26 Macedo failed to comply with the following sections of Title 16, California Code of Regulations:

27 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles in paragraphs
28 24-43 in accordance with the procedures specified in section 3340.42 of the Regulations and

1 failed to ensure that these vehicles had all the required emission control equipment and devices
2 installed and functioning correctly.

3 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
4 System false information about the vehicles in paragraphs 24-43, providing results for smog
5 inspections which were not actually performed.

6 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicles in
7 paragraphs 24-43 in accordance with the Bureau's specifications.

8 **FOURTH CAUSE FOR DISCIPLINE**

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

10 47. Macedo's Registration is subject to disciplinary action under Code section 9884.7,
11 subdivision (a)(4), and Macedo's Smog Check Station License is subject to disciplinary action
12 under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision
13 (d), in that Macedo committed dishonest, fraudulent, or deceitful acts whereby another is injured
14 by issuing smog inspection results for the vehicles in paragraphs 24-43 without performing bona
15 fide inspections of the emission control devices and systems on them, thereby depriving the
16 People of the State of California of the protection afforded by the Motor Vehicle Inspection
17 Program.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Clean Piping)**

20 48. Macedo's Smog Check Station license is subject to disciplinary action for clean
21 piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in title 16,
22 California Code of Regulations, section 3340.1, in that Macedo used a substitute exhaust
23 emission sample of one vehicle in place of another vehicle's exhaust emission sample in order to
24 cause the Emissions Inspection System to issue a certificate of compliance for the inspections
25 described in paragraphs 24-43.

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1 c. **Section 3340.42:** failed to conduct the required smog tests on all the vehicles in
2 paragraphs 24-43 in accordance with the Bureau's specifications.

3 **EIGHTH CAUSE FOR DISCIPLINE**

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

5 51. Figueroa's smog technician license(s) is/are subject to disciplinary action under
6 Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d),
7 in that he committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing
8 smog inspection results for the vehicles in paragraphs 24-43 without performing bona fide
9 inspections of the emission control devices and systems on them, thereby depriving the People of
10 the State of California of the protection afforded by the Motor Vehicle Inspection Program.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Clean Piping)**

13 52. Figueroa's smog technician license(s) is/are subject to disciplinary action for clean
14 piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in title 16,
15 California Code of Regulations, section 3340.1, in that he used a substitute exhaust emission
16 sample of one vehicle in place of another vehicle's exhaust emission sample in order to cause the
17 Emissions Inspection System to issue a certificate of compliance for the inspections of the
18 vehicles described in paragraphs 24-43.

19 **OTHER MATTERS**

20 53. Under 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 Macedo upon
22 a finding that Macedo has, or is, engaged in a course of repeated and willful violations of the laws
23 and regulations pertaining to an automotive repair dealer.

24 54. Under Health & Safety Code section 44072.8, if Macedo's Smog Check Station
25 License is revoked or suspended, the Director may likewise revoke or suspend any additional
26 license issued under Chapter 5 of the Health and Safety Code in the name of Macedo.

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

DATED: 7-21-14

Patrick Dorais by Doug Balatti
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
DOUG BALATTI
Asst. Chief

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