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

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11 In the Matter of the Accusation Against:

Case No. **79/15-107**

12 **ECONOMY TEST ONLY #2,**
FEDERICO HERNANDEZ, Owner
13 1203 N. Maclay St.
San Fernando, CA 91340
14 **Automotive Repair Dealer Registration No. ARD**
269753
15 **Smog Check Station License No. TC 269753,**

ACCUSATION

(SMOG CHECK)

16 and

17 **FEDERICO HERNANDEZ,**
13605 De Garmo Ave.
18 Sylmar, CA 91342
Smog Check Inspector License No. EO 633970 and
19 **Smog Check Repair Technician License No. EI**
633970 (both previously designated as Advanced
20 Emission Specialist Technician License No. EA
633970),
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Respondents.

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23 Complainant alleges:

24 **PARTIES**

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

27 **Economy Test Only #2**

28 2. On or about July 27, 2012 the Director of Consumer Affairs ("Director") issued

1 Automotive Repair Dealer Registration (“registration”) No. ARD 269753 to Federico Hernandez,
2 doing business as Economy Test Only #2 (“Respondent Economy”). The registration was in full
3 force and effect at all times relevant to the charges brought herein and expires on July 31, 2015,
4 unless renewed.

5 3. On or about September 10, 2012, the Director issued Smog Check Station License
6 (“station license”) No. TC 269753 to Respondent Economy. The station license was in full force
7 and effect at all times relevant to the charges brought herein and expires on July 31, 2015, unless
8 renewed.

9 **Federico Hernandez**

10 4. On or about January 23, 2012, the Director issued Advanced Emission Specialist
11 Technician License No. EA 633970 to Federico Hernandez (“Respondent Hernandez”). Upon
12 timely renewal of the license, the license was redesignated as Smog Check Inspector License No.
13 EO 633970 and Smog Check Repair Technician License No. EI 633970 (“smog check
14 licenses”).¹ Both licenses will expire on May 31, 2016, unless renewed.

15 **JURISDICTION**

16 5. Business and Professions Code (“Code”) section 9884.7 provides that the Director
17 may revoke an automotive repair dealer registration.

18 6. Code section 9884.13 provides, in pertinent part: that the expiration of a valid
19 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
20 against an automotive repair dealer or to render a decision temporarily or permanently
21 invalidating (suspending or revoking) a registration.

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

25 8. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30
27 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license
28 and Basic Area Technician (EB) license to Smog Check Inspector (EO) license and/or Smog Check Repair
Technician (EI) license.

1 [u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
2 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
3 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

4 STATUTORY PROVISIONS

5 9. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
6 part:

7 (a) The director, where the automotive repair dealer cannot show there was a bona fide
8 error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an
9 automotive repair dealer for any of the following acts or omissions related to the conduct of the
10 business of the automotive repair dealer, which are done by the automotive repair dealer or any
11 automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

15 (4) Any other conduct which constitutes fraud.

16 (6) Failure in any material respect to comply with the provisions of this chapter [the
17 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted
18 pursuant to it.

19 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates
20 more than one place of business in this state, the director pursuant to subdivision (a) shall
21 only refuse to validate, or shall only invalidate temporarily or permanently the registration
22 of the specific place of business which has violated any of the provisions of this chapter.
23 This violation, or action by the director, shall not affect in any manner the right of the
24 automotive repair dealer to operate his or her other places of business.

25 (c) Notwithstanding subdivision (b), the director may refuse to validate, or may
26 invalidate temporarily or permanently, the registration for all places of business operated in
27 this state by an automotive repair dealer upon a finding that the automotive repair dealer
28 has, or is, engaged in a course of repeated and willful violations of this chapter, or
regulations adopted pursuant to it.

10. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
"commission," "committee," "department," "division," "examining committee," "program,"
and "agency." "License" includes certificate, registration or other means to engage in a
business or profession regulated by the Code.

11. Section 118(b) of the Code states:

The suspension, expiration, or forfeiture by operation of law of a license issued
by a board in the department, or its suspension, forfeiture, or cancellation by order of

1 the board or by order of a court of law, or its surrender without the written consent of
2 the board, shall not, during any period in which it may be renewed, restored, reissued,
3 or reinstated, deprive the board of its authority to institute or continue a disciplinary
4 proceeding against the licensee upon any ground provided by law or to enter an order
5 suspending or revoking the license or otherwise taking disciplinary action against the
6 licensee on any such ground.

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10 12. Section 44012 of the Health and Safety Code states, in pertinent part:

11 The test at the smog check station shall be performed in accordance with procedures
12 prescribed by the department.

13 (f) A visual or functional check is made of emission control devices specified by the
14 department.

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18 13. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

22 (a) Violates any section of this chapter [the Motor Vehicle Inspection Program
23 (Health and Safety Code, § 44000, et seq.)] and the regulations adopted pursuant to it,
24 which related to the licensed activities.

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

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

28 (f) Aids or abets unlicensed persons to evade the provisions of this chapter.

14. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
expiration or suspension of a license by operation of law, or by order or decision of the
Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license
shall not deprive the Director of jurisdiction to proceed with disciplinary action.

15. Section 44072.8 of the Health and Safety Code states:

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

REGULATORY PROVISIONS

16. Section 3340.24 of the California Code of Regulations states, in pertinent part:

(c) The bureau may suspend or revoke the license of or pursue other legal

1 action against a licensee, if the licensee falsely or fraudulently issues or obtains a
2 certificate of compliance or a certificate of noncompliance.

3 17. Section 3340.30 of the California Code of Regulations, states, in pertinent part:

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

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

9 18. Section 3340.35 of the California Code of Regulations, states, in pertinent part:

10 (c) A licensed station shall issue a certificate of compliance or noncompliance
11 to the owner or operator of any vehicle that has been inspected in accordance with the
12 procedures specified in section 3340.42 of this article and has all the required
13 emission control equipment and devices installed and functioning correctly.

14 19. Section 3340.41 of the California Code of Regulations, states, in pertinent part:

15 (c) No person shall enter into the emissions inspection system any vehicle
16 identification information or emission control system identification data for any
17 vehicle other than the one being tested. Nor shall any person knowingly enter into the
18 emissions inspection system any false information about the vehicle being tested.

19 20. Section 3340.42 of the California Code of Regulations, states, in pertinent part
20 that licensed smog check stations and technicians shall conduct tests and inspections in
21 accordance with smog check emissions test methods and standards.

22 COST RECOVERY

23 21. Code section 125.3 provides, in pertinent part, that a Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

27 UNDERCOVER OPERATION

28 22. In August of 2013, a Bureau of Automotive Repair Representative documented the
Bureau's 2001 Honda so that it would not pass the visual portion of a California smog inspection
by removing the vehicle's catalytic converter and other related components.

23 23. On September 24, 2013, another Bureau Representative, working in an undercover
24 capacity, drove the Honda to a smog test station in San Fernando, California and made contact
25 with an individual at the station, Filimon Cervantes, whom he had previously met and whose

1 Smog Check Technician license had been previously revoked by the Bureau. Posing as a
2 customer, the Bureau Representative told Cervantes he had made several modifications to his
3 Honda in order to make it a street racer, including removal of the catalytic converter, without
4 which he knew the vehicle would not pass a smog check inspection. He told Cervantes he needed
5 a smog Certificate of Compliance in order to register the vehicle and asked Cervantes if he could
6 help. Cervantes agreed to perform a smog inspection and provide a Certificate of Compliance for
7 \$300 in cash.

8 24. A few minutes later Cervantes raised the vehicle on a hoist and began installing a
9 catalytic converter, explaining to the Bureau Representative that he would return the vehicle's
10 exhaust system back to the way it was after a Certificate of Compliance was issued. After the
11 catalytic converter was installed, Cervantes informed the Bureau Representative that they needed
12 to take the vehicle to another smog facility in order to get the certificate.

13 25. Cervantes and the Bureau Representative drove a few blocks to Respondent Economy
14 Test Only #2, where Cervantes spoke to a smog technician, Respondent Federico Hernandez. A
15 few minutes later Cervantes drove the vehicle into the inspection bay and assisted Respondent
16 Hernandez perform portions of a smog inspection. The hood of the vehicle was never opened or
17 raised for the required visual and functional portions of a smog check inspection. Cervantes
18 backed the vehicle out of the inspection bay and was handed a Vehicle Inspection Report (VIR)
19 by Respondent Hernandez.

20 26. Cervantes and the Bureau Representative returned to the area of Cervantes' facility
21 and Cervantes removed the catalytic converter from the vehicle. The Representative paid
22 Cervantes \$300 cash and Cervantes handed him the VIR, which had been purposely altered, in
23 that the lower portion where the identifications of the smog station and the licensed smog
24 technician are located had been torn off.

25 27. The Bureau Representative subsequently checked the Bureau's records which
26 indicated electronic smog Certificate of Compliance No. [REDACTED] 8 was issued to the 2001
27 Honda on September 24, 2013, at Respondent Economy Test Only #2 by Respondent Federico
28 Hernandez using his Smog Check Inspector License and personal access code, even though the

1 vehicle would not have passed a properly performed smog inspection.

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Untrue or Misleading Statements)**

4 28. Respondent Economy's registration is subject to disciplinary action pursuant to Code
5 section 9884.7, subdivision (a)(1), in that it made or authorized statements which it knew, or in the
6 exercise of reasonable care should have known, to be untrue or misleading as follows: Respondent
7 Economy certified that the Bureau's 2001 Honda had passed inspection and was in compliance with
8 applicable laws and regulations when in fact, Respondent Economy conducted the inspections on the
9 vehicle without performing the visual and functional portions of a smog check inspection, as required
10 by Health and Safety Code section 44012.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 29. Respondent Economy's registration is subject to disciplinary action pursuant to Code
14 section 9884.7, subdivision (a)(4), in that it committed acts that constitute fraud by issuing an
15 electronic smog Certificate of Compliance for the Bureau's 2001 Honda without performing a
16 bona fide inspection of the emission control devices and systems on the vehicle, thereby
17 depriving the People of the State of California of the protection afforded by the Motor Vehicle
18 Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

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

21 30. Respondent Economy's station license is subject to disciplinary action pursuant to
22 Health & Safety Code section 44072.2, subdivision (a), in that it failed to comply with the
23 following sections of that Code:

24 **a. Section 44012:** Respondent Economy failed to ensure that all emission control devices
25 and systems required by law for the Bureau's 2001 Honda were installed and functioning
26 correctly in accordance with test procedures.

27 **b. Section 44012, subdivision (f):** Respondent Economy failed to ensure that the
28 emission control test was performed on the Bureau's 2001 Honda in accordance with procedures

1 Certificates of Compliance for the Bureau's 2001 Honda without performing a bona fide
2 inspection of the emission control devices and systems on the vehicle, thereby depriving the
3 People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 **OTHER MATTERS**

6 36. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
7 suspend, revoke or place on probation the registration for all places of business operated in this
8 state by Federico Hernandez, upon a finding that he has, or is, engaged in a course of repeated
9 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

10 37. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
11 Number TC 269753, issued to Federico Hernandez doing business as Economy Test Only #2, is
12 revoked or suspended, any additional license issued under the same chapter in the name of said
13 licensee may be likewise revoked or suspended by the Director.

14 38. Pursuant to Health & Safety Code section 44072.8, if Respondent Federico
15 Hernandez's Smog Check Inspector License No. EO 633970 and Smog Check Repair Technician
16 License No. EI 633970 (both previously designated as Advanced Emission Specialist Technician
17 License No. EA 633970) are revoked or suspended, any additional license issued under this
18 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

19 **PRAYER**

20 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
21 alleged, and that following the hearing, the Director issue a decision:

22 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
23 269753, issued to Federico Hernandez doing business as Economy Test Only #2;

24 2. Revoking or suspending Smog Check Station License Number TC 269753, issued to
25 Federico Hernandez doing business as Economy Test Only #2;

26 3. Revoking or suspending any additional license issued under Chapter 5 of the Health
27 and Safety Code in the name of Federico Hernandez;

28 4. Revoking or suspending Federico Hernandez's Smog Check Inspector License No.

1 EO 633970 and Smog Check Repair Technician License No. EI 633970;

2 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
3 and Safety Code in the name of Federico Hernandez;

4 6. Ordering Federico Hernandez and Economy Test Only #2 to pay the Director the
5 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
6 Professions Code section 125.3; and

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

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9 DATED: April 16, 2015



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

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