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

12 In the Matter of the Accusation Against:

Case No. *79/13-95*

13 **RUBY MEDINA, DBA**
LEO'S SMOG CHECK ONLY
14 3553 N. Perris Blvd., #A1
Perris, CA 92571

ACCUSATION
(Smog Check)

15 Automotive Repair Dealer Reg. No. ARD 269983
16 Smog Check Test Only Station License No. TC 269983,

17 **EMMANUEL SAUCEDO**
18 18355 Courtney Ct.
Bloomington, CA 92316

19 Advanced Emission Specialist Technician License No.
20 EA 630019 (to be redesignated upon renewal as
EO 630019 and/or EI 630019),

21 Respondents.
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23 Complainant alleges:

24 **PARTIES**

25 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
26 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs,
27 State of California.

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

2 (a) Notwithstanding any other provision of law, the director may revoke,
3 suspend, or deny at any time any registration required by this article on any of the
4 grounds for disciplinary action provided in this article. The proceedings under this
5 article shall be conducted in accordance with Chapter 5 (commencing with Section
6 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director
7 shall have all the powers granted therein. . .

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

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

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

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

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

15 **COST RECOVERY**

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

20 **UNDERCOVER SURVEILLANCE ON NOVEMBER 5, 2012**

21 15. On or about November 5, 2012, the Bureau performed an undercover surveillance
22 operation at Leo’s Smog Check Only. The surveillance operation and information obtained from
23 the Bureau’s Vehicle Information Database (“VID”) revealed that between 1453 hours and 1704
24 hours, Respondent Saucedo performed five smog inspections that resulted in the issuance of
25 electronic certificates of compliance for the vehicles number 1 through 5 in Table 1, below,
26 certifying that he had tested and inspected those vehicles and that those vehicles were in
27 compliance with applicable laws and regulations. In fact, Respondent Saucedo unlawfully
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1 performed the smog inspections using the clean piping method.² Respondent Saucedo unlawfully
2 used the tail pipe emissions of a 1997 Toyota Tacoma Pickup in order to issue the electronic
3 certificates of compliance to vehicles number 1 through 4 in Table 1, below, and a 2000 Mazda
4 626 in order to issue an electronic certificate of compliance to vehicle number 5 in Table 1,
5 below.

6 **UNDERCOVER SURVEILLANCE ON NOVEMBER 8, 2012**

7 16. On or about November 8, 2012, the Bureau performed a second surveillance
8 operation at Leo's Smog Check Only. The surveillance operation and information obtained from
9 the Bureau's Vehicle Information Database ("VID") revealed that between 1503 hours and 1625
10 hours, Respondent Saucedo performed two (2) illegal smog inspections that resulted in the
11 issuance of electronic certificates of compliance for vehicles number 6 and 7 as set forth in
12 Table 1, below, certifying that he had tested and inspected those vehicles and that the vehicles
13 were in compliance with applicable laws and regulations. In fact, Respondent Saucedo
14 unlawfully performed the smog inspections on vehicles number 6 and 7 set forth in Table 1,
15 below, using the clean piping method. Respondent Saucedo unlawfully used the tail pipe
16 emissions of a 1997 Toyota Tacoma Pickup in order to issue the electronic certificates of
17 compliance.

18 **Table 1**

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Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details						
20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 <table border="1"><tbody><tr><td>1. 11/5/2012 1453 to 1503</td><td>2004 Toyota Tacoma (7H117324)</td><td>1997 Toyota Tacoma (5N33547)</td><td>XN543646C</td><td>2004 Toyota Tacoma, not present at the facility</td></tr><tr><td>2. 11/5/2012 1513 to 1521</td><td>2004 Nissan Frontier (7M99914)</td><td>1997 Toyota Tacoma (5N33547)</td><td>XN543647C</td><td>2004 Nissan Frontier, not present at the facility</td></tr></tbody></table>	1. 11/5/2012 1453 to 1503	2004 Toyota Tacoma (7H117324)	1997 Toyota Tacoma (5N33547)	XN543646C	2004 Toyota Tacoma, not present at the facility	2. 11/5/2012 1513 to 1521	2004 Nissan Frontier (7M99914)	1997 Toyota Tacoma (5N33547)	XN543647C	2004 Nissan Frontier, not present at the facility
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2. 11/5/2012 1513 to 1521	2004 Nissan Frontier (7M99914)	1997 Toyota Tacoma (5N33547)	XN543647C	2004 Nissan Frontier, not present at the facility						

² "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in compliance or are not present in the smog check area during the time of the certification.

3.	11/5/2012 1525 to 1533	1989 Nissan Pickup (3X51580)	1997 Toyota Tacoma (5N33547)	XN543648C	1989 Nissan Pickup, not present at the facility
4.	11/5/2012 1537 to 1543	1993 Lexus ES300 (6SHS439)	1997 Toyota Tacoma (5N33547)	XN543649C	1993 Lexus ES300, not present at the facility
5.	11/5/2012 1655 to 1704	2005 Mitsubishi Lancer (5VIH380)	2000 Mazda 626 (6RJL046)	XN616302C	2005 Mitsubishi Lancer, not present at the facility
6.	11/8/2012 1503 to 1513	1993 Toyota Tercel 919809X	1997 Toyota Tacoma (5N33547)	XN616332C	1993 Toyota Tercel, not present at the facility
7.	11/8/2012 1617 to 1625	1995 Honda Civic Del Sol (5GNZ468)	1997 Toyota Tacoma (5N33547)	XN616334C	1995 Honda Civic Del Sol, not present at the facility

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

17. Respondent Leo's Smog Check Only ARD registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that on or about November 5, 2012, and November 8, 2012, Respondent made or authorized statements which it knew, or in the exercise of reasonable care should have known, to be untrue or misleading, as follows: Respondent certified that vehicles 1 through 7, identified in Table 1 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, the inspections on the vehicles were unlawfully conducted using the clean piping method.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent Leo's Smog Check Only ARD registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that on or about November 5, 2012, and November 8, 2012, Respondent committed acts which constitute fraud, by issuing electronic smog certificates of compliance for vehicles 1 through 7, identified in Table 1 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
2 inspections on vehicles 1 through 7, identified in Table 1 above, in accordance with the Bureau's
3 specifications.

4 **FIFTH CAUSE FOR DISCIPLINE**

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

6 21. Respondent Leo's Smog Check Only station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that on or about November 5,
8 2012, and November 8, 2012, Respondent committed dishonest, fraudulent or deceitful acts
9 whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1
10 through 7, identified in Table 1 above, without performing bona fide inspections of the emission
11 control devices and systems on the vehicles, thereby depriving the People of the State of
12 California of the protection afforded by the Motor Vehicle Inspection Program.

13 **SIXTH CAUSE FOR DISCIPLINE**

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

15 22. Respondent Saucedo's technician license(s) is/are subject to disciplinary action
16 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that on or about November 5,
17 2012, and November 8, 2012, regarding the vehicles set forth in Table 1 above, he violated
18 sections of that Code, as follows:

19 a. **Section 44012:** Respondent failed to ensure that the emission control tests
20 were performed on the vehicles in accordance with procedures prescribed by the Department.

21 b. **Section 44032:** Respondent failed to perform tests of the emission control
22 devices and systems on the vehicles in accordance with section 44012 of that Code, in that the
23 vehicles had been clean piped.

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1 **OTHER MATTERS**

2 25. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may deny,
3 suspend, revoke, or place on probation the registration for all places of business operated in this
4 state by Ruby Medina, upon a finding that she has, or is, engaged in a course of repeated and
5 willful violations of the laws and regulations pertaining to an automotive repair dealer.

6 26. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
7 License No. TC 269983 issued to Ruby Medina, doing business as Leo's Smog Check Only, is
8 revoked or suspended, any additional license issued under Chapter 5 of the Health and Safety
9 Code (Motor Vehicle Inspection Program) in the name of said licensee may be likewise revoked
10 or suspended by the Director.

11 27. Pursuant to Health and Safety Code section 44072.8, if Respondent Saucedo's
12 technician license(s), currently designated as EA 630019 and as redesignated upon timely renewal
13 as EO 630019 and/or EI 630019, is/are revoked or suspended, any additional license issued under
14 this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

15 **PRAYER**

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

18 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 269983
19 issued to Ruby Medina, doing business as Leo's Smog Check Only;

20 2. Revoking or suspending any other automotive repair dealer registration issued to
21 Ruby Medina;

22 3. Revoking or suspending Smog Check Test Only Station License No. TC 269983
23 issued to Ruby Medina, doing business as Leo's Smog Check Only;

24 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
25 and Safety Code in the name of Ruby Medina;

26 5. Revoking or suspending Emmanuel Saucedo's smog technician license(s), currently
27 designated as EA 630019 and as redesignated upon his timely renewal as EO 630019 and/or EI
28 630019;

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6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Emmanuel Saucedo;

7. Ordering Ruby Medina and Emmanuel Saucedo to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: June 4 2013



JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant