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

In the Matter of the Accusation Against:

Case No. 79/13-23

**SMOG'S TEST ONLY; SUSANA GARCIA,
Owner
8101 S. Main Street., #C
Los Angeles, CA 90003
Automotive Repair Dealer Registration No.
ARD 268465
Smog Check, Test Only, Station License No.
TC 268465,**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

and

**CARLOS H. HERNANDEZRODRIGUEZ
9702 S. Halldale Ave
Los Angeles, CA 90047
Advanced Emission Specialist Technician
License No. EA 632171**

Respondents.

FINDINGS OF FACT

1. On or about November 20, 2012, Complainant John Wallauch, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed

1 Accusation No. 79/13-23 against Smog's Test Only; Susana Garcia, Owner (Respondent Smog's
2 Test Only) and Carlos H. Hernandezrodriguez (Respondent Hernandezrodriguez) before the
3 Director of Consumer Affairs. (Accusation attached as Exhibit A.)

4 2. On or about March 22, 2012, the Bureau of Automotive Repair (Bureau) issued
5 Automotive Repair Dealer Registration No. ARD 268465 to Respondent Smog's Test Only. The
6 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
7 charges brought in Accusation No. 79/13-23 and will expire on March 31, 2013, unless renewed.

8 3. On or about April 16, 2012, the Bureau of Automotive Repair issued Smog Check,
9 Test Only, Station License No. TC 268465 to Respondent Smog's Test Only. The Smog Check,
10 Test Only, Station License was in full force and effect at all times relevant to the charges brought
11 in Accusation No. 79/13-23 and will expire on March 31, 2013, unless renewed.

12 4. On or about June 14, 2010, the Bureau of Automotive Repair issued Advanced
13 Emission Specialist Technician License Number EA 632171 to Carlos H. Hernandezrodriguez
14 (Respondent Hernandezrodriguez). The Advanced Emission Specialist Technician License was
15 in full force and effect at all times relevant to the charges brought herein and will expire on June
16 30, 2014, unless renewed.

17 5. On or about November 20, 2012, Respondent Smog's Test Only was served by
18 Certified and First Class Mail copies of Accusation No. 79/13-23, Statement to Respondent,
19 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
20 11507.5, 11507.6, and 11507.7) at Respondent Smog Test Only's address of record which,
21 pursuant to Business and Professions Code section 136, is required to be reported and maintained
22 with the Bureau. Respondent Smog's Test Only's address of record was and is: 8101 S. Main
23 Street., #C Los Angeles, CA 90003.

24 6. On or about November 20, 2012, Respondent Hernandezrodriguez was served by
25 Certified and First Class Mail copies of the Accusation No. 79/13-23, Statement to Respondent,
26 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
27 11507.5, 11507.6, and 11507.7) at Respondent Hernandezrodriguez's address of record which,
28 pursuant to Business and Professions Code section 136, is required to be reported and maintained

1 with the Bureau. Respondent Hernandezrodriguez's address of record was and is: 9702 S.
2 Halldale Ave Los Angeles, CA 90047.

3 7. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
5 124.

6 8. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts
9 of the accusation not expressly admitted. Failure to file a notice of defense shall
10 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
11 may nevertheless grant a hearing.

12 9. Respondent failed to file a Notice of Defense within 15 days after service upon them
13 of the Accusation and therefore waived her right to a hearing on the merits of Accusation No.
14 79/13-23.

15 10. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the
17 hearing, the agency may take action based upon the respondent's express admissions
18 or upon other evidence and affidavits may be used as evidence without any notice to
19 respondent.

20 11. Pursuant to its authority under Government Code section 11520, the Director after
21 having reviewed the proof of service dated November 20, 2012, signed by Lisa Robinson, finds
22 Respondents are in default. The Director will take action without further hearing and, based on
23 Accusation No. 79/13-23, proof of service and on the Affidavit of Bureau Representative Allen
24 Steele, finds that the allegations in Accusation No. 79/13-23 are true.

25 12. Taking official notice of its own internal records, pursuant to Business and
26 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
27 and Enforcement are \$16,617.92 as of January 9, 2013.

28 DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Smog's Test Only has subjected
her Automotive Repair Dealer Registration and Smog Check, Test Only, Station License to
discipline.

1 2. Based on the foregoing findings of fact, Respondent Hernandezrodriguez has
2 subjected his Advanced Emission Specialist Technician License to discipline.

3 3 The agency has jurisdiction to adjudicate this case by default.

4 4 The Director of Consumer Affairs is authorized to revoke Respondent Smog's Test
5 Only's Automotive Repair Dealer Registration and Smog Check, Test Only, Station License as
6 well as Respondent Hernandezrodriguez's Advanced Emission Specialist Technician License
7 based upon the following violations alleged in the Accusation which are supported by the
8 evidence contained in the affidavit of Bureau Representative Allen Steele in this case:

9 **Respondent Smog's Test Only**

- 10 a. Business and Professions Code section 9884.7, subdivision (a)(1) (Misleading
11 Statements.)
- 12 b. Business and Professions Code section 9884.7, subdivision (a)(4) (Fraud.)
- 13 c. Health and Safety Code section 44072.2, subdivision (a) (Violations of the Motor
14 Vehicle Inspection Program.)
- 15 d. Health and Safety Code section 44072.2, subdivision (c) (Violations of Regulations
16 Pursuant to the Motor Vehicle Inspection Program.)
- 17 e. Health and Safety Code section 44072.2, subdivision (d) (Dishonesty, Fraud or
18 Deceit.)

19 **Respondent Hernandezrodriguez**

- 20 a. Health and Safety Code section 44072.2, subdivision (a) (Violations of the Motor
21 Vehicle Inspection Program.)
- 22 b. Health and Safety Code section 44072.2, subdivision (c) (Violations of Regulations
23 Pursuant to the Motor Vehicle Inspection Program.)
- 24 c. Health and Safety Code section 44072.2, subdivision (d) (Dishonesty, Fraud or
25 Deceit.)
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ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 268465, Smog Check, Test Only, Station License No. TC 268465, and Advanced Emission Specialist Technician License No. EA 632171, heretofore issued to Respondents are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on 3/25/13.

It is so ORDERED March 5, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

51209854.DOC
DOJ Matter ID:LA2012507898

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10
11 In the Matter of the Interim Suspension Order
Against:
12 **SMOG'S TEST ONLY; SUSANA GARCIA,**
13 **OWNER**
14 **8101 S. Main Street., #C**
Los Angeles, CA 90003
15 **Automotive Repair Dealer Registration No.**
ARD 268465
16 **Smog Check, Test Only, Station License No.**
TC 268465,
17
18 **LUIS ENRIQUE MACIAS**
1412 W. 96th Street
Los Angeles, CA 90047
19
20 **Smog Check Inspector and Smog Check**
Repair Technician License No. E/E/O
632185,
21
22 **and**
23 **CARLOS H. HERNANDEZ RODRIGUEZ**
9702 S. Halldale Ave
Los Angeles, CA 90047
24
25 **Advanced Emission Specialist Technician**
License No. EA 632171
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Case No. 79/13-23

ACCUSATION

Respondents.

1 Complainant alleges:

2 PARTIES

3 1. John Wallauch (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 March 22, 2012, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 268465 to Smog's Test Only; Susana Garcia, Owner
7 (Respondent Smog's Test Only). The Automotive Repair Dealer Registration was in full force
8 and effect at all times relevant to the charges brought herein and will expire on March 31, 2013,
9 unless renewed.

10 3. On or about April 16, 2012, the Bureau of Automotive Repair issued Smog Check,
11 Test Only, Station License Number TC 268465 to Respondent Smog's Test Only. The Smog
12 Check, Test Only, Station License was in full force and effect at all times relevant to the charges
13 brought herein and will expire on March 31, 2013, unless renewed.

14 4. On or about June 17, 2010, the Bureau of Automotive Repair issued Smog Check
15 Inspector and Smog Check Repair Technician License Number EI/EO 632185 to Luis Enrique
16 Macias (Respondent Macias). The Smog Check Inspector and Smog Check Repair Technician
17 License was in full force and effect at all times relevant to the charges brought herein and will
18 expire on July 31, 2014, unless renewed.

19 5. On or about June 14, 2010, the Bureau of Automotive Repair issued Advanced
20 Emission Specialist Technician License Number EA 632171 to Carlos H. Hernandezrodriguez
21 (Respondent Hernandezrodriguez). The Advanced Emission Specialist Technician License was
22 in full force and effect at all times relevant to the charges brought herein and will expire on June
23 30, 2014, unless renewed.

24 STATUTORY PROVISIONS

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

27 (a) The director, where the automotive repair dealer cannot show there
28 was a bona fide error, may deny, suspend, revoke, or place on probation the
registration of an automotive repair dealer for any of the following acts or omissions

1 related to the conduct of the business of the automotive repair dealer, which are done
2 by the automotive repair dealer or any automotive technician, employee, partner,
3 officer, or member of the automotive repair dealer.

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

7 (4) Any other conduct that constitutes fraud.

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

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

19 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
20 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
21 proceeding against an automotive repair dealer or to render a decision invalidating a registration
22 temporarily or permanently.

23 8. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
24 "commission," "committee," "department," "division," "examining committee," "program," and
25 "agency." "License" includes certificate, registration or other means to engage in a business or
26 profession regulated by the Code.

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

10. Section 44072.2 of the Health and Safety Code 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 [the Motor Vehicle Inspection
Program (Health and Saf. Code, § 44000, et seq.)] 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

1 this chapter.

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

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

8 12. Section 44072.8 of the Health and Safety Code states:

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

12 COST RECOVERY

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

17 14. On or about July 11, 2012, the BAR performed a video recorded surveillance at
18 Respondent Smog's Test Only's smog check test only facility. The surveillance operation and
19 information obtained from the BAR's Vehicle Information Database ("VID") revealed that
20 Respondent Smog's Test Only, through her technician Respondent Macias as well as Respondent
21 Hernandezrodriguez, performed six (6) smog inspections that resulted in the issuance of
22 electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that
23 they had tested and inspected those vehicles and that the vehicles were in compliance with
24 applicable laws and regulations:

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Table 1

Test Times	Vehicle in EIS Data (License Plate #)	Vehicle Tested (License Plate #)	Certificate Issued
1108-1118	2002 Toyota Tacoma (6Z49735)	1998 Lincoln Navigator (6GLS432)	XJ289741C
1123-1132	1997 Mitsubishi Eclipse (6DEP482)	1998 Lincoln Navigator (6GLS432)	XJ289742C
1139-1153	1983 Mazda RX7 (4PLC833)	1998 Lincoln Navigator (6GLS432) and 1992 Lexus LS400 (2ZIS787)	XJ289743C
1203-1218	1999 Ford Pickup Truck (6A59437)	1998 Lincoln Navigator (6GLS432) and 1992 Lexus LS400 (2ZIS787)	XJ289744C
1245-1259	1990 Lincoln Continental (2TWD957)	1992 Lexus LS400 2ZIS787	XJ289745C
1306-1317	1998 Chevrolet S-10 Pickup (6P66944)	1992 Lexus LS400 (2ZIS787)	XJ289746C

15. In fact, Respondents performed the smog inspections using the clean piping method by utilizing the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

16. Respondent Smog's Test Only has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about July 11, 2012, she made statements which she knew or which by exercise of reasonable care she should have known were untrue or misleading when she issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 19. Respondent Smog's Test Only has subjected her station license to discipline under
4 Health and Safety Code section 44072.2, subdivision (c), in that on or about July 11, 2012,
5 regarding the vehicles set forth in Table 1, above, she violated sections of the California Code of
6 Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent Smog's Test Only falsely or
8 fraudulently issued electronic certificates of compliance without performing bona fide inspections
9 of the emission control devices and systems on those vehicles as required by Health and Safety
10 Code section 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent Smog's Test Only issued electronic
12 certificates of compliance even though those vehicles had not been inspected in accordance with
13 section 3340.42 of that Code.

14 c. **Section 3340.42:** Respondent Smog's Test Only failed to conduct the required smog
15 tests and inspections on those vehicles in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 20. Respondent Smog's Test Only subjected her station license to discipline under Health
19 and Safety Code section 44072.2, subdivision (d), in that on or about July 11, 2012, regarding the
20 vehicles set forth in Table 1, above, she committed acts involving dishonesty, fraud or deceit
21 whereby another was injured by issuing electronic certificates of compliance for those vehicles
22 without performing bona fide inspections of the emission control devices and system on those
23 vehicles, thereby depriving the People of the State of California of the protection afforded by the
24 Motor Vehicle Inspection Program.

1 c. **Section 3340.41, subdivision (c):** Respondent Macias entered false information into
2 the Emission Inspection System ("EIS") for the electronic certificates of compliance by entering
3 vehicle emission control information for vehicles other than the vehicles being certified.

4 d. **Section 3340.42:** Respondent Macias failed to conduct the required smog tests and
5 inspections on those vehicles in accordance with the Bureau's specifications.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 23. Respondent Macias has subjected his technician license to discipline under Health
9 and Safety Code section 44072.2, subdivision (d), in that on or about July 11, 2012, he committed
10 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
11 certificates of compliance for the vehicles set forth in Table 1, above, without performing bona
12 fide inspections of the emission control devices and systems on those vehicles, thereby depriving
13 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program.

15 **NINTH CAUSE FOR DISCIPLINE**

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

17 24.. Respondent Hernandezrodriguez has subjected his technician license to discipline
18 under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 11, 2012,
19 regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

20 a. **Section 44012, subdivision (a):** Respondent Hernandezrodriguez failed to determine
21 that all emission control devices and systems required by law were installed and functioning
22 correctly in accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondent Hernandezrodriguez failed to perform
24 emission control tests on those vehicles in accordance with procedures prescribed by the
25 department.

26 c. **Section 44032:** Respondent Hernandezrodriguez failed to perform tests of the
27 emission control devices and systems on those vehicles in accordance with section 44012 of that
28 Code, in that those vehicles had been clean piped.

1 7. Revoking or suspending Advanced Emission Specialist Technician License Number
2 EA 632171, issued to Carlos H. Hernandezrodriguez;

3 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
4 & Safety Code in the name of Carlos H. Hernandezrodriguez;

5 9. Ordering Susana Garcia, Luis Enrique Macias and Carlos H. Hernandezrodriguez to
6 pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement
7 of this case, pursuant to Business and Professions Code section 125.3; and,

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

9
10 DATED: November 20, 2012

John Wallauch by David Salata
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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