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

12 In the Matter of the First Amended Accusation  
Against:

Case No.79/14-59

13 **BRIAN SANTOS**  
14 **125 E. Alru Street**  
**Rialto, CA 92376**  
15 **Smog Check Inspector License No. EO 633765**  
**Smog Check Repair Technician License No. EI**  
16 **633765 (was redesignated upon renewal from**  
**EA 633765 to EO 633765 and EI 633765)**

OAH No. 2014040815

**FIRST AMENDED**  
**ACCUSATION**

(Smog Check)

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES/LICENSE INFORMATION**

21 1. Patrick Dorais ("Complainant") brings this First Amended Accusation solely in his  
22 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of  
23 Consumer Affairs.  
24 2. On or about October 31, 2011, the Director issued Advanced Emission Specialist  
25 Technician License Number EA 633765 ("technician license") to Brian Santos ("Respondent  
26 Santos"). Respondent Santos' technician license EA 633765 was due to expire on April 30, 2013,  
27 however was cancelled on April 24, 2013. Pursuant to California Code of Regulations, title 16,  
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1 section 3340.28, subdivision (e)<sup>1</sup>, the license was renewed, pursuant to Respondent Santos'  
2 election, as Smog Check Inspector License Number EO 633765 ("inspector license") and Smog  
3 Check Repair Technician License Number EI 633765 ("repair technician license"), effective April  
4 24, 2013. Respondent Santos' inspector license and repair technician license were in full force  
5 and effect at all times relevant to the charges brought herein and will expire on April 30, 2015,  
6 unless renewed.

### 7 JURISDICTION

8 3. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that  
9 the Director may revoke an automotive repair dealer registration.

10 4. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a  
11 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary  
12 proceeding against an automotive repair dealer or to render a decision temporarily or permanently  
13 invalidating (suspending or revoking) a registration.

14 5. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent  
15 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
16 for enforcing the Motor Vehicle Inspection Program.

17 6. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
18 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
19 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
20 of jurisdiction to proceed with disciplinary action.

### 21 STATUTORY PROVISIONS

22 7. Section 490 of the Code states:

23 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
24 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
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26 <sup>1</sup> 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 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
4 discipline a licensee for conviction of a crime that is independent of the authority granted under  
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
11 made suspending the imposition of sentence, irrespective of a subsequent order under the  
12 provisions of Section 1203.4 of the Penal Code."

13 8. Bus. & Prof. Code section 9889.3 of the Code states, in pertinent part:

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

16 ...

17 (b) Is convicted of any crime substantially related to the qualifications, functions and duties  
18 of the licenseholder in question."

19 9. Bus. & Prof. Code section 22, subdivision (a), states:

20 "Board" as used in any provision of this Code, refers to the board in  
21 which the administration of the provision is vested, and unless otherwise expressly  
22 provided, shall include "bureau," "commission," "committee," "department,"  
"division," "examining committee," "program," and "agency."

23 10. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a  
24 "license" includes "registration" and "certificate."

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),  
3 states:

4 “The bureau may suspend or revoke the license of or pursue other legal action against a  
5 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
6 certificate of noncompliance.”

7 12. CCR, title 16, section 3340.28, subdivision (e), states that “[u]pon renewal of an  
8 unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license  
9 issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog  
10 Check Inspector, Smog Check Repair Technician, or both.”

11 13. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician  
12 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section  
13 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
14 3340.42 of this article.”

15 14. CCR, title 16, section 3340.41, subdivision (c), provides: “No person shall enter into  
16 the emissions inspection system any vehicle identification information or emission control system  
17 identification data for any vehicle other than the one being tested. Nor shall any person  
18 knowingly enter into the emissions inspection system any false information about the vehicle  
19 being tested.”

20 15. CCR, title 16, section 3340.42, sets forth specific emissions test methods and  
21 procedures which apply to all vehicles inspected in the State of California.

22 **HEALTH AND SAFETY CODES**

23 16. Health & Saf. Code section 44012 states:

24 “The test at the smog check stations shall be performed in accordance with procedures  
25 prescribed by the department and may require loaded mode dynamometer testing in enhanced  
26 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other  
27 appropriate test procedures as determined by the department in consultation with the state board.  
28 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode

1 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning  
2 no earlier than January 1, 2013. However, the department, in consultation with the state board,  
3 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed  
4 idle testing for vehicles with onboard diagnostic systems that the department and the state board  
5 determine exhibit operational problems. The department shall ensure, as appropriate to the test  
6 method, the following:

7 “(a) Emission control systems required by state and federal law are reducing excess  
8 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of  
9 Section 44013.

10 . . . .

11 “(f) A visual or functional check is made of emission control devices specified by the  
12 department, including the catalytic converter in those instances in which the department  
13 determines it to be necessary to meet the findings of Section 44001. The visual or functional  
14 check shall be performed in accordance with procedures prescribed by the department.”

15 17. Health & Saf. Code section 44032 states:

16 “No person shall perform, for compensation, tests or repairs of emission control devices or  
17 systems of motor vehicles required by this chapter unless the person performing the test or repair  
18 is a qualified smog check technician and the test or repair is performed at a licensed smog check  
19 station. Qualified technicians shall perform tests of emission control devices and systems in  
20 accordance with Section 44012.”

21 18. Health & Saf. Code section 44059 states:

22 “The willful making of any false statement or entry with regard to a material matter in any  
23 oath, affidavit, certificate of compliance or noncompliance, or application form which is required  
24 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business  
25 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

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

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

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

3                   “(b) Is convicted of any crime substantially related to the qualifications,  
4 functions, or duties of the licenseholder in question.

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

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

9                   20. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
10 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.

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

12                   .....

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

16                   “(1) Clean piping, as defined by the department.

17                   .....

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

#### 20                   **COST RECOVERY**

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

#### 25                   **VIDEO SURVEILLANCE OPERATION OF NOVEMBER 21, 2012**

26                   23. On or about November 21, 2012, representatives of the Bureau conducted a video  
27 surveillance operation of Si Se Puede Smog Check's facility. The surveillance video and  
28 information obtained from the Bureau's vehicle information database (“VID”) revealed that

1 Respondent Santos performed six (6) smog inspections, which resulted in the issuance of  
 2 electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that he  
 3 had tested and inspected those vehicles and that the vehicles were in compliance with applicable  
 4 laws and regulations. In fact, Respondent Santos performed the smog inspections using the clean  
 5 piping method<sup>2</sup> by using the tail pipe emissions of vehicles other than the vehicles being certified  
 6 in order to issue the electronic certificates of compliance. The vehicles certified were not in the  
 7 test bay at the time of the smog inspections.

8 **Table 1**

9

<b>Date and Test Times</b>	<b>Vehicle Certified</b>	<b>Vehicle Actually Tested</b>	<b>Certificate Issued</b>
11/21/2012 11:21 hours to 11:30 hours	1990 Toyota Pickup, License # 8T20056	1998 Saturn SC1, License No. 6VIS874	XN842165C
11/21/2012 11:35 hours to 11:49 hours	2005 Chevrolet Tahoe VIN#1GNEC13T65R21 4770	1998 Saturn SC1, License No. 6VIS874	XN842166C
11/21/2012 11:59 hours to 12:09 hours	1998 Dodge Ram 1500, Vin#1D7HA16D04J295 591	1998 Saturn SC1, License No. 6VIS874	XN842167C
11/21/2012 12:16 hours to 12:23 hours	2002 Chevrolet C3500, License #6T85401	1998 Saturn SC1, License No. 6VIS874	XN842168C
11/21/2012 12:35 hours to 12:46 hours	2001 Dodge Intrepid, License#4PHJ284	1998 Saturn SC1, License No. 6VIS874	XN842169C

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

1 2 3	11/21/2012 12:55 hours to 13:04 hours	1991 GMC Safari, License #2ZAJ633	1998 Saturn SC1, License No. 6VIS874	None <sup>3</sup>
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4 **FIRST CAUSE FOR DISCIPLINE**

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

6 24. Respondent Santos has subjected his technician licenses to discipline under Health  
7 and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth in Table  
8 1, above, he violated sections of that Code, as follows:

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

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

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

17 d. **Section 44059:** Respondent Santos willfully made false entries for the electronic  
18 certificates of compliance by certifying that those vehicles had been inspected as required when,  
19 in fact, they had not.

20 **SECOND CAUSE FOR DISCIPLINE**

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

22 25. Respondent Santos has subjected his technician licenses to discipline under Health  
23 and Safety Code section 44072.2, subdivision (c), in that, regarding the vehicles set forth in Table  
24 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

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26 <sup>3</sup> BAR Program Representatives walked into Si Se Puede Smog Check's facility while this  
27 smog check inspection was in progress and interrupted the smog inspection while the inspection  
28 was in progress. The 1991 GMC Safari, License #2ZAJ633 was never seen at Si Se Puede Smog  
Check the day of its certification.

1 a. **Section 3340.24, subdivision (c):** Respondent Santos falsely or fraudulently issued  
2 electronic certificates of compliance without performing bona fide inspections of the emission  
3 control devices and systems on those vehicles as required by Health and Safety Code section  
4 44012.

5 b. **Section 3340.30, subdivision (a):** Respondent Santos failed to inspect and test those  
6 vehicles in accordance with Health and Safety Code section 44012.

7 c. **Section 3340.41, subdivision (c):** Respondent Santos entered false information into  
8 the Emission Inspection System for the electronic certificates of compliance by entering vehicle  
9 emission control information for vehicles other than the vehicles being certified.

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

12 **THIRD CAUSE FOR DISCIPLINE**

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

14 26. Respondent Santos has subjected his technician licenses to discipline under Health  
15 and Safety Code section 44072.2, subdivision (d), in that regarding the vehicles set forth above in  
16 Table 1, he committed acts involving dishonesty, fraud or deceit whereby another was injured by  
17 issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without  
18 performing bona fide inspections of the emission control devices and systems on those vehicles,  
19 thereby depriving the People of the State of California of the protection afforded by the Motor  
20 Vehicle Inspection Program.

21 **VID DATA REVIEW**

22 27. A representative of the Bureau conducted a detailed review of VID data for all smog  
23 inspections performed at Si Se Puede Smog Check's facility for the period of October 13, 2012,  
24 through November 21, 2012. The representative found that the 7 vehicles identified below  
25 recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II tests<sup>4</sup>. The

26 <sup>4</sup> The On Board Diagnostics (OBD II) functional test is an automated function of the  
27 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an  
28 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is  
located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves  
(continued...)

1 representative obtained information indicating that the codes were not applicable to the vehicles.  
 2 The VID data revealed that Respondent Santos performed the inspections on vehicles 1 through 7.  
 3 The Bureau concluded that Respondent Santos performed the smog inspections on the vehicles  
 4 using a different vehicle(s) during the OBD II tests, a method known as "clean plugging",<sup>5</sup>  
 5 resulting in the issuance of fraudulent certificates of compliance for the vehicles identified in the  
 6 table below:

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 11/8/2012 09:45-09:55	1999 Dodge Ram 3500, License #5X30050	XN645616C
2. 11/8/2012 10:06-10:34	2006 Jeep Grand Cherokee, License #6LWF133	XN645617C
3. 11/13/2012 17:12-17:25	2003 Honda Civic, License #6JEU187	XN737751C
4. 11/15/2012 17:42-17:49	2000 Honda Civic, License #4PCE261	XN737771C
5. 11/17/2012 15:31-15:39	1996 Honda Odyssey, License #3NZS081	XN737785C
6. 11/21/2012 08:08-08:16	1996 Honda Civic, License #3SIP707	XN842161C
7. 11/21/2012 08:20-08:27	1997 Honda Civic, License #6PPK662	XN842162C

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23 information from the vehicle's on-board computer about the status of the readiness indicators,  
 24 trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II  
 functional test, it will fail the overall inspection.

25 <sup>5</sup> Clean-plugging is the use of the OBD II readiness monitor status and stored fault code  
 26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to  
 27 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 fault code that indicates an emission  
 control system or component failure.

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**FOURTH CAUSE FOR DISCIPLINE**

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

28. Respondent Santos's technician licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, in a material respect, as follows: Respondent failed to perform the emission control tests on vehicles 1-7, identified in paragraph 27 above, in accordance with procedures prescribed by the department.

**FIFTH CAUSE FOR DISCIPLINE**

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

29. Respondent Santos's technician licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

- a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1-7, identified in paragraph 27 above.
- b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1-7, identified in paragraph 27 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.
- c. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 1-7 identified in paragraph 27 above, in accordance with the Bureau's specifications.

**SIXTH CAUSE FOR DISCIPLINE**

**(Dishonesty, Fraud or Deceit)**

30. Respondent Santos's technician licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1-7, identified in paragraph 27 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
2 Program.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Conviction of Substantially Related Crime)**

5 31. Respondent Santos is subject to disciplinary action under sections 490 and 9889.3  
6 subdivision (b) of the Code and section 44072.2 subdivision (b) of the Health & Saf. Code in that  
7 Respondent Santos was convicted of a crime substantially related to the qualifications, functions,  
8 and duties of a smog check inspector and smog check technician. On or about March 6, 2014,  
9 after pleading nolo contendere, Respondent was convicted of one felony count of violating Penal  
10 Code 115, subdivision (a) [procuring or offering false or forged instrument for record] in the  
11 criminal proceeding entitled *The People of the State of California vs. Brian Santos* (Super. Ct. of  
12 San Bernardino, Case No. FVA1300908). The Court sentenced Respondent to thirty-six months  
13 of probation, serve two days in the San Bernardino County Jail and other terms and conditions.  
14 The circumstances of the crime are set forth in paragraphs 23 through 30 above.

15 **OTHER MATTERS**

16 32. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
17 No. EO 633765 and Smog Check Repair Technician License No. EI 633765 (was redesignated  
18 upon renewal from EA 633765 to EO 633765 and EI 633765) issued to Respondent Brian  
19 Santos, is revoked or suspended, any additional license issued under this chapter in the name of  
20 said licensee may be likewise revoked or suspended by the Director.

21 **PRAYER**

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

24 1. Revoking or suspending Smog Check Inspector License No. EO 633765 and Smog  
25 Check Repair Technician License No. EI 633765 (was redesignated upon renewal from EA  
26 633765 to EO 633765 and EI 633765) issued to Respondent Brian Santos;

27 2. Revoking or suspending any additional license issued under Chapter 5 of the Health  
28 and Safety Code issued to Brian Santos;

1           3.    Ordering Brian Santos to pay the Bureau of Automotive Repair the reasonable costs  
2 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
3 section 125.3; and

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

5  
6 DATED: January 12, 2015                      

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

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