

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 WILLIAM D. GARDNER  
Deputy Attorney General  
4 State Bar No. 244817  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2114  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
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8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
**STATE OF CALIFORNIA**

10  
11 In the Matter of the Accusation:

Case No. 79/15-102

12 **RAFAEL FERREIRA dba GARCES**  
**CIRCLE SMOG**  
13 **1330 Golden State Ave. #B**  
**Bakersfield, CA 93301**

**ACCUSATION**

14 **Automotive Repair Dealer Registration No.**  
15 **ARD 241368**  
16 **Smog Check, Test Only, Station License No.**  
**TC 241368,**

17 **and**

18 **RAFAEL FERREIRA**  
**12100 Flat Iron Court**  
19 **Bakersfield, CA 93312**

20 **Smog Check Inspector License No. EO**  
**154147**  
21 **Smog Check Repair Technician License No.**  
**EI 154147**

22 Respondent.  
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24 Complainant alleges:

25 **PARTIES**

26 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as  
27 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.  
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In the Matter of the Accusation Against:  
RAFAEL FERREIRA, dba GARCES CIRCLE SMOG;

ACCUSATION





1 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the  
2 director.”

3 12. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations  
4 shall be performed in accordance with procedures prescribed by the department.

5 13. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance  
6 shall be issued if a vehicle meets the requirements of HSC section 40012.

7 14. Section 44032 of the HSC states, in pertinent part, that: (1) no person may perform  
8 tests or repairs of emission control devices or systems of motor vehicles required by the Motor  
9 Vehicle Inspection Program unless the person performing the test or repair is a licensed qualified  
10 smog check technician; and (2) all tests must be conducted in accordance with section 44012 (i.e.  
11 Motor Vehicle Inspection Program Requirements).

12 15. Section 44059 of the HSC provides:

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

17 16. Section 44072.2 of the HSC states, in pertinent part:

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

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

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

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

27 “(e) Has misrepresented a material fact in obtaining a license.

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

1 17. Section 44072.8 of the HSC states that when a license has been revoked or suspended  
2 following a hearing under this article, any additional license issued under this chapter in the name  
3 of the licensee may be likewise revoked or suspended by the director.

4 **REGULATORY PROVISIONS**

5 18. California Code of Regulations, title 16, section 3340.15, subdivision (b), states, in  
6 pertinent part, that “[a] licensed inspector and/or repair technician shall be present during all  
7 hours the station is open for the business.”

8 19. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),  
9 states:

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

13 20. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check  
14 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any  
15 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of  
16 this article and has all the required emission control equipment and devices installed and  
17 functioning correctly.”

18 21. CCR, title 16, section 3340.41, subdivision (b), provides: “No person shall enter into  
19 the emissions inspection system any access or qualification number other than as authorized by  
20 the bureau, nor in any way tamper with the emissions inspection system.”

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

23 **COST RECOVERY**

24 23. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board  
25 “may request the administrative law judge to direct a licentiate found to have committed a  
26 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
27 investigation and enforcement of the case.”

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**STATION SURVEILLANCE: CLEAN PIPING**

24. On or about October 10, 2014, Bureau program representative Albert Copeland performed video-taped surveillance of Respondent's smog check station which revealed that Respondent is involved in extensive illegal "clean piping" activities.<sup>2</sup> Specifically, the surveillance operation and information obtained from the Bureau's VID revealed that over a six-hour period Respondent fraudulently certified a total of six (6) vehicles for an average of one vehicle per hour. The Bureau program representative observed, and the surveillance video confirms, that Respondent used a 2001 Chevrolet Lumina to fraudulently certify five (5) of the vehicles and a 1997 Toyota Tacoma to certify one of the vehicles. In each instance, Respondent engaged in the illegal conduct of clean piping by using the tailpipe emissions from the Lumina and the Tacoma to certify entirely different vehicles.

The following chart ("Table 1") illustrates the clean piping activities observed during the Bureau's surveillance of Respondent's smog check station on October 10, 2014.

**Table 1**

<b>Test Date and Time</b>	<b>Vehicle Certified &amp; License No.</b>	<b>Vehicle Actually Tested &amp; License No.</b>	<b>Certificate Issued</b>	<b>Details</b>
10/10/2014 0936 to 0959 hours	1977 Chevrolet C10 Pickup VIN# CCL447Z161063	2001 Chevrolet Lumina	YL119003C	Vehicle not in test bay at time it was certified. Test performed by and certified by Ferreira.
10/10/2014 1005 to 1023 hours	1997 Mercury Grand Marquis LIC# 6GLW788	2001 Chevrolet Lumina	YL119004C	Vehicle not in test bay at time it was certified. Test performed by and certified by Ferreira.

<sup>2</sup> "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.

1	10/10/2014	2002 Honda Accord	2001 Chevrolet Lumina	YL119005C	Vehicle not in test bay at time it was certified. Test performed by and certified by Ferreira.
2	1112 to	LIC# 4UHH938			
3	1136 hours				
4					
5	10/10/2014	2000 Acura Integra	1997 Toyota Tacoma	YL119007C	Vehicle not in test bay at time it was certified. Test performed by and certified by Ferreira.
6	1203 to	LIC# 5PWN539			
7	1255 hours				
8					
9					
10	10/10/2014	1997 Chevrolet Astro Van	2001 Chevrolet Lumina	YL119008C	Vehicle not in test bay at time it was certified. Test performed by and certified by Ferreira.
11	1308 to	LIC# 105497Y			
12	1402 hours				
13					
14	10/10/2014	1994 Honda Accord	2001 Chevrolet Lumina	YL119010C	Vehicle not in test bay at time it was certified. Test performed by and certified by Ferreira.
15	1515 to	LIC# 4WUJ375			
16	1527 hours				
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18					

**FIRST CAUSE FOR DISCIPLINE**

**(Misleading Statements)**

25. Respondent has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading when he 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, those vehicles had not been so inspected.

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**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

26. Respondent has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Tables 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**THIRD CAUSE FOR DISCIPLINE**

**(Material Violation of Automotive Repair Act)**

27. Respondent has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(6), in that he failed in a "material respect to comply with the provisions of this chapter or regulations adopted pursuant to it" when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**FOURTH CAUSE FOR DISCIPLINE**

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

28. Respondent has subjected his station license to discipline under HSC section 44072.2, subdivision (a), in that, with respect to the vehicles set forth in Table 1, above, Respondent violated the following sections of the HSC:

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

b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of compliance without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of the HSC.

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1 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates  
2 of compliance by certifying that those vehicles had been inspected as required when, in fact, they  
3 had not.

4 **FIFTH CAUSE FOR DISCIPLINE**

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

6 29. Respondent has subjected his station license to discipline under HSC section 44072.2,  
7 subdivision (c), in that, with respect to the vehicles set forth in Table 1, above, Respondent  
8 violated the following sections of title 16 of the CCR:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
10 electronic certificates of compliance without performing bona fide inspections of the emission  
11 control devices and systems on those vehicles as required by HSC section 44012.

12 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
13 compliance even though those vehicles had not been inspected in accordance with section  
14 3340.42 of the HSC.

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

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 30. Respondent has subjected his station license to discipline under HSC section 44072.2,  
20 subdivision (d), in that, with respect to the vehicles set forth in Table 1, above, Respondent  
21 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing  
22 electronic certificates of compliance for those vehicles without performing bona fide inspections  
23 of the emission control devices and systems on those vehicles, thereby depriving the People of the  
24 State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 31. Respondent has subjected his smog check inspector and smog check repair technician  
4 licenses to discipline under HSC section 44072.2, subdivision (a), in that he violated the  
5 following sections of the HSC with respect to the vehicles set forth in Table, 1 above:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
7 performed on those vehicles in accordance with procedures prescribed by the department.

8 b. **Section 44032:** Respondent failed to perform tests of the emission control devices  
9 and systems on those vehicles in accordance with section 44012 of the HSC, in that the vehicles  
10 had been clean piped.

11 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates  
12 of compliance by certifying that those vehicles had been inspected as required when, in fact, they  
13 had not.

14 EIGHTH CAUSE FOR DISCIPLINE

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

16 32. Respondent has subjected his smog check inspector and smog check repair technician  
17 licenses to discipline under HSC section 44072.2, subdivision (c), in that he violated the  
18 following sections of the CCR, title 16, with respect to the vehicles set forth in Table 1, above:

19 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
20 electronic certificates of compliance without performing bona fide inspections of the emission  
21 control devices and systems on those vehicles as required by HSC section 44012.

22 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those  
23 vehicles in accordance with HSC section 44012.

24 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS  
25 for the electronic certificates of compliance by entering vehicle emission control information for  
26 vehicles other than the vehicles being certified.

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

1 **NINTH CAUSE FOR DISCIPLINE**

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

3 33. Respondent has subjected his smog check inspector and smog check repair technician  
4 licenses to discipline under HSC section 44072.2, subdivision (d), in that he committed acts  
5 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
6 certificates of compliance for the vehicles set forth in Table 1, above, without performing bona  
7 fide inspections of the emission control devices and systems on those vehicles, thereby depriving  
8 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
9 Program.

10 **PRAYER**

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

- 13 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
14 241368, issued to Rafael Ferreira dba Garces Circle Smog;
- 15 2. Revoking or suspending Smog Check, Test Only, Station License Number TC  
16 241368, issued to Rafael Ferreira dba Garces Circle Smog;
- 17 3. Revoking or suspending Smog Check Inspector License No. EO 154147, issued to  
18 Rafael Ferreira;
- 19 4. Revoking or suspending Smog Check Repair Technician License No. EI 154147,  
20 issued to Rafael Ferreira;
- 21 5. Revoking or suspending any and all licenses issued under Articles 5 and 6 of the  
22 Automotive Repair Act in the name of Rafael Ferreira pursuant to section 9889.9 of the Business  
23 and Professions Code;
- 24 6. Revoking or suspending any and all licenses issued under the Motor Vehicle  
25 Inspection Program in the name of Rafael Ferreira pursuant to section 44072.8 of the Health and  
26 Safety Code;

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1           7.     Ordering Rafael Ferreira 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;

4           8.     Taking such other and further action as deemed necessary and proper.  
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6  
7 DATED: May 8, 2015

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

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