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

11
12 In the Matter of the Accusation Against:

Case No. **79/15-123**

13 **FERNANDOS SMOGS**
FERNANDO ARCE, OWNER
14 609 Arizona Street, #B
Chula Vista, CA 91911

ACCUSATION

15 Automotive Repair Dealer Registration No.
16 ARD 220828
Smog Check-Test Only Station License No.
17 TC 220828

18 and

19 **FERNANDO ARCE**
2086 Grove Avenue
20 San Diego, CA 92154
Smog Check Inspector License No.
21 EO 135131
(formerly Advanced Emission Specialist
22 Technician License No. EA 135131)

23 Respondents.

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25 Complainant alleges:

26 **PARTIES**

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

1 "(2) Causing or allowing a customer to sign any work order that does not state the repairs
2 requested by the customer or the automobile's odometer reading at the time of repair.

3 ". . . .

4 "(6) Failure in any material respect to comply with the provisions of this chapter or
5 regulations adopted pursuant to it.

6 ". . . ."

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

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

16 13. Bus. & Prof. Code section 9884.8 states:

17 "All work done by an automotive repair dealer, including all warranty work, shall be
18 recorded on an invoice and shall describe all service work done and parts supplied. Service work
19 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
20 prices for service work and for parts, not including sales tax, and shall state separately the sales
21 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice
22 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
23 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
24 statement indicating whether any crash parts are original equipment manufacturer crash parts or
25 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
26 given to the customer and one copy shall be retained by the automotive repair dealer."

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1 employees without the consent of the customer, unless the customer cannot reasonably be notified.
2 The dealer shall be responsible, in any case, for any service in the same manner as if the dealer or
3 his or her employees had done the service. . .”

4 15. Health & Saf. Code section 44072.2 states:

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

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

11 ". . . .

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

13 ". . . ."

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

15 "The test at the smog check stations shall be performed in accordance with procedures
16 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
17 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
18 and shall ensure all of the following:

19 "(a) Emission control systems required by state and federal law are reducing excess
20 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section
21 44013.

22 "(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
23 the vehicle's emission control system.

24 "(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
25 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
26 mode are tested in accordance with procedures prescribed by the department. In determining how
27 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure
28 that the emission reduction targets for the enhanced program are met.

1 "(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
2 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
3 compound emissions, in accordance with procedures prescribed by the department.

4 "(e) For diesel-powered vehicles, if the department determines that the inclusion of those
5 vehicles is technologically and economically feasible, a visual inspection is made of emission
6 control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in
7 accordance with procedures prescribed by the department. The test may include testing of
8 emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of
9 applicable standards, measurement of emissions of smoke or particulates, or both.

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

14 "(g) A determination as to whether the motor vehicle complies with the emission standards
15 for that vehicle's class and model-year as prescribed by the department.

16 "(h) The test procedures may authorize smog check stations to refuse the testing of a
17 vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the
18 department by regulation. The refusal to test a vehicle for those reasons shall not excuse or
19 exempt the vehicle from compliance with all applicable requirements of this chapter."

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

21 "No person shall perform, for compensation, tests or repairs of emission control devices or
22 systems of motor vehicles required by this chapter unless the person performing the test or repair
23 is a qualified smog check technician and the test or repair is performed at a licensed smog check
24 station. Qualified technicians shall perform tests of emission control devices and systems in
25 accordance with Section 44012."

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1 REGULATIONS

2 18. California Code of Regulations, title 16, section 3340.15, states:

3 "A smog check station shall meet the following requirements for licensure and shall comply
4 with these requirements at all times while licensed.

5 ". . . .

6 "(h) A licensed smog check station shall not sublet inspections or repairs required as part of
7 the Smog Check Program, except for the following:

8 "(1) Repairs of a vehicle's exhaust system which are normally performed by muffler shops,
9 provided that the malfunction has been previously diagnosed by the specific smog check station
10 originally authorized by the customer to perform repairs to the vehicle.

11 "(2) Repairs of those individual components that have been previously diagnosed as being
12 defective and that have been removed by the specific smog check station originally authorized by
13 the customer to perform repairs to the vehicle.

14 "(3) Repairs of diesel-powered vehicles provided the specific smog check station has
15 obtained authorization from the customer to sublet repairs to the vehicle.

16 "(4) Repairs to a vehicle's transmission provided the specific smog check station has
17 obtained authorization from the customer to sublet repairs to the vehicle.

18 "(5) Corrections to the vehicle's on-board computer systems' software provided that the
19 malfunction has been previously diagnosed by the specific smog check station originally authorized
20 by the customer to perform repairs to the vehicle.

21 "(i) With respect to the sublet of repairs, the smog check station originally authorized by the
22 customer to perform the repairs shall be responsible for any repair in the same manner as if station
23 or its employees had done the repair."

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1 19. California Code of Regulations, title 16, section 3340.30, states:

2 "A smog check technician shall comply with the following requirements at all times while
3 licensed.

4 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
5 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
6 3340.42 of this article.

7 "..."

8 20. California Code of Regulations, title 16, section 3356, states:

9 "(a) All invoices for service and repair work performed, and parts supplied, as provided for
10 in Section 9884.8 of the Business and Professions Code, shall comply with the following:

11 "(1) The invoice shall show the automotive repair dealer's registration number and the
12 corresponding business name and address as shown in the Bureau's records. If the automotive
13 repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b)
14 of Section 3371 of this chapter. . ."

15 21. California Code of Regulations, title 16, section 3340.41, states:

16 "..."

17 "(b) No person shall enter into the emissions inspection system any access or qualification
18 number other than as authorized by the bureau, nor in any way tamper with the emissions
19 inspection system.

20 "..."

21 22. California Code of Regulations, title 16, section 3340.45, states:

22 "(a) All Smog Check inspections shall be performed in accordance with requirements and
23 procedures prescribed in the following:

24 "(1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
25 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

26 "(2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
27 manual shall become effective on or after January 1, 2013."

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 33. Respondent Fernandos Smogs' Smog Check-Test Only Station License is subject to
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that said
5 Respondent failed to comply with provisions of California Code of Regulations, title 16, as
6 follows:

7 a. **Section 3340.41, subdivision (b):** On or about July 15, 2014, Respondent Fernandos
8 Smogs' authorized or permitted unlawful access to the station's smog check machine by
9 Respondent Fernando Arce, who used, without his knowledge or permission, the confidential
10 access code of another employee (Smog Check Inspector S.K.) to enter false information
11 concerning the identity of the technician performing the smog inspection tests on a 1999 Chevrolet
12 C1500 Pickup and a 1990 Toyota 4Runner.

13 b. **Section 3340.15, subdivision (h):** On or about June 30, 2014, July 1, 2014, July 9,
14 2014, and July 12, 2014, Respondent Fernandos Smogs, rather than performing the inspections
15 itself, unlawfully sublet to another smog station the smog check inspections for a 2005 Ford
16 Crown Victoria, a 2005 Ford Five Hundred, a 2003 Dodge Caravan, and a 2006 Mitsubishi
17 Raider.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 34. Respondent Fernando Arce's Smog Check Inspector license is subject to disciplinary
21 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply
22 with Sections 44012 and 44032 of that Code, as follows: Respondent Arce used, without his
23 knowledge or permission, the confidential access code of another employee to enter false
24 information into his station's smog machine concerning the identity of the technician performing
25 the smog inspection tests on a 1999 Chevrolet C1500 Pickup and a 1990 Toyota 4Runner, as
26 alleged in paragraph 32 above, which is hereby incorporated by reference.

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1 DISCIPLINE CONSIDERATIONS

2 35. To determine the degree of discipline, if any, to be imposed against Respondent
3 Fernandos Smogs, Complainant alleges that on or about May 4, 2007, February 2, 2010, and
4 June 7, 2013, in three separate prior actions, the Bureau of Automotive Repair issued Citation
5 Nos. C07-0831, C2010-0789 and C2013-0697 against said Respondent. Citation No. C07-0831
6 had a fine of \$500 and charged that Respondent improperly issued a smog certificate to a Bureau
7 undercover vehicle with a missing Exhaust Gas Recirculation (EGR) valve. Citation No. C2010-
8 0789 had a fine of \$500 and charged that Respondent improperly issued a smog certificate to a
9 Bureau undercover vehicle with a missing Positive Crankcase Ventilation System. Citation No.
10 C2013-0697 had a fine of \$2,000 and charged that Respondent, although licensed as a smog test
11 only facility, improperly made repairs to a Bureau undercover vehicle. These Citations are now
12 final and are incorporated by reference as if fully set forth.

13 36. To determine the degree of discipline, if any, to be imposed against Respondent
14 Fernando Arce, Complainant alleges that on or about May 4, 2007, and February 2, 2010, in two
15 separate prior actions, the Bureau of Automotive Repair issued Citation Nos. M07-0832 and
16 M2010-0790 against him. Citation No. M07-0832 required an 8-hour training course and charged
17 that Respondent Arce was the smog technician who improperly issued the smog certificate to a
18 Bureau undercover vehicle with the missing EGR valve, described above. Citation No. M2010-
19 0790 required an 8-hour training course and charged that Respondent Arce was the smog
20 technician who improperly issued the smog certificate to a Bureau undercover vehicle with the
21 missing Positive Crankcase Ventilation System, described above. These Citations are now final
22 and are incorporated by reference as if fully set forth.

23 OTHER MATTERS

24 37. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
25 suspend, revoke, or place on probation the registration for all places of business operated in this
26 state by Respondent Fernandos Smogs, upon a finding that Respondent Fernandos Smogs has, or
27 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
28 an automotive repair dealer.

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

DATED: May 19, 2015


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

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