

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**JOSE LUIS GOMEZ, OWNER,
DOING BUSINESS AS GOMEZ SMOG
TEST ONLY**
19065 Grand Avenue
Lake Elsinore, CA 92530

Case No. 79/14-54

OAH No. 2013120359

Automotive Repair Dealer Registration No.
ARD 249179
Smog Check, Test Only, Station No. TC 249179
Smog Check Inspector License No. EO 142550;
Smog Check Repair Technician License
No. EI 142550 (formerly Advanced
Emission Specialist Technician No. EA 142550)

ALBERTO SOTO
19065 Grand Ave.
Lake Elsinore, CA 92530

Smog Check Inspector License No. EO
633604;
Smog Check Repair Technician License
No. EI 633604 (formerly Advanced
Emission Specialist Technician No. EA 633604)

Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order Re: Jose Luis Gomez Only is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Jose Luis Gomez, Automotive Repair Dealer Registration No. ARD 249179, Smog Check, Test Only, Station No. TC 249179, Smog Check Inspector License No. EO 142550, and Smog Check Repair Technician License No. EI 142550 (formerly Advanced Emission Specialist Technician No. EA 142550).

The suspension of Smog Check Inspector License No. EO 142550 and Smog Check Repair Technician License No. EI 142550, issued to Respondent Jose Luis Gomez, shall commence on the effective date of this Decision.

This Decision shall become effective

September 12, 2014.

DATED: August 18, 2014


DOREATHA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

KAMALA D. HARRIS
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JAMES M. LEDAKIS
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Attorneys for Complainant

THEORY OF THE STATE

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

In the Matter of the Accusation Against:

Case No. 79/14-54

**JOSE LUIS GOMEZ, OWNER,
DOING BUSINESS AS GOMEZ SMOG
TEST ONLY
19065 Grand Avenue
Lake Elsinore, CA 92530**

OAH No. 2013120359

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER RE: JOSE LUIS
GOMEZ ONLY**

Automotive Repair Dealer Registration No.

ARD 249179

**Smog Check, Test Only, Station No. TC
249179**

**Smog Check Inspector License No. EO
142550; Smog Check Repair Technician
License No. EI 142550 (formerly Advanced
Emission Specialist Technician No. EA
142550)**

**ALBERTO SOTO
19065 Grand Ave.
Lake Elsinore, CA 92530**

Smog Check Inspector License No. EO 633604; Smog Check Repair Technician License No. EI 633604 (formerly Advanced Emission Specialist Technician No. EA 633604)

Respondents.

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibilities of the Director of Consumer Affairs and the Bureau of Automotive Repair the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Director for the Director's approval and adoption as the final disposition of the Accusation solely with respect to Respondent Jose Luis Gomez, individually and as Owner, doing business as Gomez Smog Test Only (Respondent).

PARTIES

1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Adrian R. Contreras, Deputy Attorney General.

2. Respondent is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. In 2007, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 249179 to Jose Luis Gomez, Owner of Gomez Smog Test Only (Gomez Smog Test Only). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed. On March 16, 2007, the Bureau issued to Gomez Smog Test Only Smog Check, Test Only, Station License No. TC 249179. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

4. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist Technician License Number EA 142550 to Jose Luis Gomez. Gomez's advanced emission specialist technician license was due to expire on December 31, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Gomez's election, as Smog Check Inspector License No. EO 142550 and Smog Check Repair Technician License No. EI 142550, effective November 21, 2012. Gomez's smog check

1 inspector license and smog check repair technician license (technician licenses) will expire on
2 December 31, 2014, unless renewed.

JURISDICTION

4 5. Accusation No. 79/14-54 was filed before the Director of Consumer Affairs
5 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on November 14, 2013. Respondent timely filed a Notice of Defense contesting
8 the Accusation.

9 6. A copy of Accusation No. 79/14-54 is attached as exhibit A and incorporated herein
10 by reference.

ADVISEMENT AND WAIVERS

12 7. Respondent has carefully read, and understands the charges and allegations in
13 Accusation No. 79/14-54. Respondent has also carefully read, and understands the effects of this
14 Stipulated Settlement and Disciplinary Order.

15 8. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

CULPABILITY

25 10. Respondent understands and agrees that the charges and allegations in Accusation
26 No. 79/14-54, if proven at a hearing, constitute cause for imposing discipline upon his
27 Automotive Repair Dealer Registration, Smog Check Station License, Smog Check Inspector
28 License, and Smog Check Repair Technician License.

1 11. For the purpose of resolving the Accusation without the expense and uncertainty of
2 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
3 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
4 those charges.

5 12. Respondent agrees that his Automotive Repair Dealer Registration, Smog Check
6 Station License, and technician licenses are subject to discipline and he agrees to be bound by the
7 Director's terms as set forth in the Disciplinary Order below.

CONTINGENCY

9 13. This stipulation shall be subject to approval by the Director of Consumer Affairs or
10 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
11 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
12 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
13 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
14 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
15 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision
16 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
17 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
18 Director shall not be disqualified from further action by having considered this matter.

19 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
20 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
21 signatures thereto, shall have the same force and effect as the originals.

22 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
25 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
26 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
27 writing executed by an authorized representative of each of the parties.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 249179 and Smog Check Station License No. TC 249179, issued to Respondent Jose Luis Gomez, Owner, doing business as Gomez Smog Test Only, are revoked.

IT IS HEREBY FURTHER ORDERED that Smog Check Inspector License No. EO 142550 and Smog Check Repair Technician License No. EI 142550, issued to Respondent Jose Luis Gomez, are revoked. However, the revocation of the Smog Check Inspector License and Smog Check Repair Technician License is stayed, and Respondent is placed on probation for three years on the following terms and conditions.

1. **Actual Suspension.** Smog Check Inspector License No. EO 142550 and Smog Check Repair Technician License No. EI 142550 issued to Respondent Jose Luis Gomez are suspended for 20 days.

2. **Obey All Laws.** Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

3. **Reporting.** Respondent must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

4. **Random Inspections.** Respondent shall provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

5. **Jurisdiction.** If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

1 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
2 Respondent has failed to comply with the terms and conditions of probation, the Department may,
3 after giving notice and opportunity to be heard, suspend or revoke all licenses.

4 7. **Continuing Education Courses.** During the period of probation, Respondent shall
5 attend and successfully complete the Bureau-certified 72 hour training course "BAR Specified
6 Diagnostic and Repair Training." Said course shall be completed and proof of completion
7 submitted to the Bureau within 180 days of the effective date of this decision and order. If proof
8 of completion of the course is not furnished to the Bureau within the 180-day period,
9 Respondent's Smog Check Inspector License and Smog Check Repair Technician License shall
10 be immediately suspended until such proof is received.

11 8. **Cost Recovery.** Respondent shall make payment to the Bureau of the full amount of
12 cost recovery of \$3,578.81 in 24 monthly payments of \$149.11 on the first day of each month.
13 The final payment shall be paid to the Bureau no later than 12 months before probation
14 terminates. Failure to complete payment of cost recovery within this timeframe shall constitute a
15 violation of probation which may subject Respondent's licenses to outright revocation; however,
16 the Director or the Director's Bureau of Automotive Repair designee may elect to continue
17 probation until such time as reimbursement of the entire cost recovery amount has been made to
18 the Bureau.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration; Smog Check, Test Only, Station License; Advanced Emission Specialist Technician License; Smog Check Inspector License; and Smog Check Repair Technician License.

I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 8-4-14

JOSE LUIS GOMEZ, INDIVIDUALLY AND AS OWNER, DOING BUSINESS AS GOMEZ SMOG TEST ONLY Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 8/4/2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

Adrien R. Gantner

ADRIAN R. CONTRERAS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/14-54

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3 JAMES M. LEDAKIS
4 Supervising Deputy Attorney General
5 ADRIAN R. CONTRERAS
6 Deputy Attorney General
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14 E-mail: Adrian.Contreras@doj.ca.gov
15 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 74/14-54

**GOMEZ SMOG TEST ONLY
JOSE LUIS GOMEZ, OWNER
19065 Grand Ave.
Lake Elsinore, CA 92530**

16 **Automotive Repair Dealer License No. ARD
249179**

17 Smog Check, Test Only, Station No. TC
18 249179

18 Smog Check Inspector License No. EO
19 142550; Smog Check Repair Technician
20 License No. EI 142550 (formerly Advanced
21 Emission Specialist Technician No. EA
142550)

22 ALBERTO SOTO
19065 Grand Ave.
23 Lake Elsinore, CA 92530

24 Smog Check Inspector License No. EO
25 633604; Smog Check Repair Technician
26 License No. EI 633604 (formerly Advanced
Emission Specialist Technician No. EA
633604)

Respondents.

CUSATION
(SMOG CHECK)

1 Complainant alleges:

2 **PARTIES**

3 1. Patrick Dorais (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. **Jose Luis Gomez, Owner of Gomez Smog Test Only:** In 2007, the Bureau of
6 Automotive Repair issued Automotive Repair Dealer License Number ARD 249179 to Jose Luis
7 Gomez, Owner of Gomez Smog Test Only (Gomez Smog Test Only). The Automotive Repair
8 Dealer License was in full force and effect at all times relevant to the charges brought herein and
9 will expire on January 31, 2014, unless renewed. On March 16, 2007, the Bureau issued to
10 Gomez Smog Test Only Smog Check, Test Only, Station License No. TC 249179. The Smog
11 Check Station License was in full force and effect at all times relevant to the charges brought
12 herein and will expire on January 31, 2014, unless renewed. On a date uncertain in 2002, the
13 Bureau issued Advanced Emission Specialist Technician License Number EA 142550 to Gomez.
14 Gomez's advanced emission specialist technician license was due to expire on December 31,
15 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the
16 license was renewed, pursuant to Gomez's election, as Smog Check Inspector License No. EO
17 142550 and Smog Check Repair Technician License No. EI 142550, effective November 21,
18 2012. Gomez's smog check inspector license and smog check repair technician license
19 (technician licenses) will expire on December 31, 2014, unless renewed.¹

20 3. **Alberto Soto:** On September 12, 2011, the Bureau issued Advanced Emission
21 Specialist Technician License Number EA 633604 to Alberto Soto. Soto's advanced emission
22 specialist technician license was due to expire on April 30, 2013. Pursuant to California Code of
23 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
24 Soto's election, as Smog Check Inspector License No. EO 633604 and Smog Check Repair
25 Technician License No. EI 633604, effective May 10, 2013. Respondent's smog check inspector

26 ¹ 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 license and smog check repair technician license (technician licenses) will expire on April 30,
2 2015, unless renewed.

3 **JURISDICTION**

4 4. This Accusation is brought before the Director of Consumer Affairs (Director) for the
5 Bureau of Automotive Repair, under the authority of the following laws. All section references
6 are to the Business and Professions Code unless otherwise indicated.

7 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
8 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed with
9 a disciplinary action during the period within which the license may be renewed, restored,
10 reissued or reinstated.

11 6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
12 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
13 proceeding against an automotive repair dealer or to render a decision invalidating a registration
14 temporarily or permanently.

15 7. Section 9884.20 of the Code states:

16 “All accusations against automotive repair dealers shall be filed within three years after the
17 performance of the act or omission alleged as the ground for disciplinary action, except that with
18 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,
19 the accusation may be filed within two years after the discovery, by the bureau, of the alleged
20 facts constituting the fraud or misrepresentation.”

21 8. Section 9884.22 states

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

27 “....”

28

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

4 10. Section 44072 of the Health and Safety Code states:

5 "Any license issued under this chapter and the regulations adopted pursuant to it may be
6 suspended or revoked by the director. The director may refuse to issue a license to any applicant
7 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted
8 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
9 of the Government Code, and the director shall have all the powers granted therein."

10 11. Section 44072.4 of the Health and Safety Code states:

11 " The director may take disciplinary action against any licensee after a hearing as provided
12 in this article by any of the following:

13 "(a) Imposing probation upon terms and conditions to be set forth by the director.

14 "(b) Suspending the license.

15 "(c) Revoking the license."

16 12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
17 expiration or suspension of a license by operation of law, or by order or decision of the Director
18 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
19 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
20 proceedings against the licensee, or to render a decision suspending or revoking the license.

21 13. Section 44072.7 of the Health and Safety Code states:

22 "All accusations against licensees shall be filed within three years after the act or omission
23 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a
24 violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after
25 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation
26 prohibited by that section."

27 ///

28 ///

14. Section 44072.8 of the Health and Safety Code states:

"When a license has been revoked or 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."

STATUTORY PROVISIONS

15. Section 22 of the Code states:

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

"(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a 'bureau.'"

16. Section 9884.7 of the Code states:

"(a) The director, where the automotive repair dealer cannot show there 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 related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

66

“(4) Any other conduct that constitutes fraud.

66

"(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair

1 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
2 and willful violations of this chapter, or regulations adopted pursuant to it."

3 17. Section 44072.2 of the Health and Safety Code states:

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

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

10 "...

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

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

13 "..."

14 18. Section 44072.10 of the Health and Safety Code states:

15 "...

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

19 "..."

20 "(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure
21 of the department implementing this chapter.

22 "..."

23 REGULATORY PROVISIONS

24 19. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
25 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
26 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
27 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

28 ///

COSTS

20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

CLEAN PLUGGING

21. The Bureau reviewed the Vehicle Information Database data for smog inspections that were performed at Gomez Smog Test Only requiring the OBD II test.² The purpose was to determine if Gomez Smog Test Only or its employees had engaged in fraudulent smog check inspections. The Bureau reviewed inspections performed between January 1, 2013, and April 1, 2013.

22. During a Bureau representative's review of this data, nine inspections identified below had Diagnostic Trouble Codes stored in the Powertrain Control Module that did not apply to those vehicles for the OBD II test. The Vehicle Information Database data showed that Gomez Smog Test Only's smog technician, Soto, performed the inspections on these vehicles using a

² The On Board Diagnostics, generation II (OBD II) is a functional test and is performed on most 1996 and newer vehicles. The technician is required to connect a test cable from the BAR-97 analyzer to a diagnostic link connector, which is located in the vehicle's passenger compartment. Through the diagnostic link connector, the BAR-97 analyzer retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the malfunction indicator light. The readiness indicators tell whether or not the OBD II system has run its self-tests on the vehicle's emission and engine control systems to completion. If a readiness monitor is not set, it means that particular system has not been tested. A trouble code results when the vehicle fails one of these self-tests and identifies the system and/or component which failed. If the trouble code is persistent, the on-board computer will command the malfunction indicator light to turn on. The vehicle will fail the OBD II functional test if more than the allowable number of readiness monitors have not been set, a trouble code has been set, or the malfunction indicator light has been commanded on. It will also fail if the on-board computer will not communicate with the BAR 97 through the diagnostic link connector. If the vehicle fails any of the applicable visual or functional tests, it will fail the overall inspection.

1 method known as “clean plugging.”³ This resulted in the issuance of nine fraudulent certificates
2 of compliance for the vehicles as follows:

3 a. Clean Plug 1 - Honda Civic

4 The BAR97 Test Detail from the Vehicle Information Database shows that on January 14,
5 2013, from 1007 hours to 1015 hours, Respondents performed a smog check inspection on a 1996
6 Honda Civic, CA License #5WQM655. The Honda Civic was issued Certificate of Compliance
7 #XP551840C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in
8 the Powertrain Control Module memory of the Honda Civic during the time of certification.

9 However, code P1516 does not apply to the Honda Civic.

10 b. Clean Plug 2 – BMW 528i

11 The BAR97 Test Detail from the Vehicle Information Database shows that on February 13,
12 2013, from 1551 hours to 1556 hours, Respondents performed a smog check inspection on a 2000
13 BMW 528i, CA License #5WBR496. The BMW 528i was issued Certificate of Compliance
14 #XR242805C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in
15 the Powertrain Control Module memory of the BMW 528i during the time of certification.

16 However, code P1516 does not apply to the BMW 528i.

17 c. Clean Plug 3 – Chevrolet S10 pickup

18 The BAR97 Test Detail from the Vehicle Information Database shows that on February 20,
19 2013, from 1727 hours to 1737 hours, Respondents performed a smog check inspection on a 1997
20 Chevrolet S10, CA License #5N41510. The Chevrolet S10 was issued Certificate of Compliance
21 #XR242833C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in
22

23 ³ Clean plugging is the use of the OBD II readiness monitor status and stored code status
24 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is
25 not in compliance due to the noncompliant vehicle’s failure to complete the minimum number of
26 self tests, known as monitors, or due to the presence of a stored code that indicates an emission
27 control system or component failure. Clean plugging occurs during the inspection of a vehicle
28 that has an OBD II system. To “clean plug” a vehicle, the smog technician enters information
into the Emissions Inspection System for the vehicle the technician wishes to certify and then
plugs the OBD II system connection from the Emissions Inspection System into another vehicle
that has a properly functioning OBD II system, rather than plugging the connection into the
vehicle that was originally identified for testing.

1 the Powertrain Control Module memory of the Chevrolet S10 during the time of certification.
2 However, code P1516 does not apply to the Chevrolet S10.

3 d. Clean Plug 4 – Honda Civic

4 The BAR97 Test Detail from the Vehicle Information Database shows that on February 22,
5 2013, from 1711 hours to 1718 hours, Respondents performed a smog check inspection on a 1998
6 Honda Civic, CA License #5SSJ633. The Honda Civic was issued Certificate of Compliance
7 #XR411951C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in
8 the Powertrain Control Module memory of the Honda Civic during the time of certification.

9 However, code P1516 does not apply to the Honda Civic.

10 e. Clean Plug 5 – Kia Sephia/Spectra

11 The BAR97 Test Detail from the Vehicle Information Database shows that on February 25,
12 2013, from 1642 hours to 1654 hours, Respondents performed a smog check inspection on a 2000
13 Kia Sephia/Spectra, CA License #4JJY775. The Kia Sephia/Spectra was issued Certificate of
14 Compliance #XR411975C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516
15 was stored in the Powertrain Control Module memory of the Kia Sephia/Spectra during the time
16 of certification. However, code P1516 does not apply to the Kia Sephia/Spectra.

17 f. Clean Plug 6 – Chevrolet Blazer

18 The BAR97 Test Detail from the Vehicle Information Database shows that on February 27,
19 2013, from 1743 hours to 1749 hours, Respondents performed a smog check inspection on a 1997
20 Chevrolet Blazer, CA License #6WOA396. The Chevrolet Blazer was issued Certificate of
21 Compliance #XR411994C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516
22 was stored in the Powertrain Control Module memory of the Chevrolet Blazer during the time of
23 certification. However, code P1516 does not apply to the Chevrolet Blazer.

24 g. Clean Plug 7 – BMW 528i

25 The BAR97 Test Detail from the Vehicle Information Database shows that on March 5,
26 2013, from 1704 hours to 1708 hours, Respondents performed a smog check inspection on the
27 same 2000 BMW 528i identified in paragraph (b) above. The BMW 528i was issued Certificate
28 of Compliance #XR519134C. The BAR97 Test Detail shows that Diagnostic Trouble Code

1 P1516 was stored in the Powertrain Control Module memory of the BMW 528i during the time of
2 certification. However, code P1516 does not apply to the BMW 528i.

3 h. Clean Plug 8 – Toyota Sienna

4 The BAR97 Test Detail from the Vehicle Information Database shows that on March 5,
5 2013, from 1719 hours to 1728 hours, Respondents performed a smog check inspection on a 1998
6 Toyota Sienna, CA License #6SQE437. The Toyota Sienna was issued Certificate of Compliance
7 #XR519135C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in
8 the Powertrain Control Module memory of the Toyota Sienna during the time of certification.

9 However, code P1516 does not apply to the Toyota Sienna.

10 i. Clean Plug 9 – Acura Integra

11 The BAR97 Test Detail from the Vehicle Information Database shows that on March 12,
12 2013, from 1551 hours to 1600 hours, Respondents performed a smog check inspection on a 1996
13 Acura Integra, UT License #C895HG. The Acura Integra was issued Certificate of Compliance
14 #XR674880C. The BAR97 Test Detail shows that Diagnostic Trouble Code P1516 was stored in
15 the Powertrain Control Module memory of the Acura Integra during the time of certification.
16 However, code P1516 does not apply to the Acura Integra.

17 23. The following chart is a summary of the fraudulent Certificates of Compliance that
18 Respondents issued by clean plugging:

	Time of Certification as Recorded in Vehicle Information Database	Vehicle Certified	Unsupported Diagnostic Trouble Code
23 1	1/14/13 from 1007-1015	1996 Honda Civic CA License #5WQM655 Certificate of Compliance #XP551840C	P1516
27 2	2/13/13 from 1551-1556	2000 BMW 528i CA License #5WBR496	P1516

1		Certificate of Compliance #XR242805C	
2			
3	3	2/20/13 from 1727-1737 1997 Chevrolet S10 CA License #5N41510 Certificate of Compliance #XR242833C	P1516
4	4	2/22/13 from 1711-1718 1998 Honda Civic CA License #5SSJ633 Certificate of Compliance #XR411951C.	P1516
5	5	2/25/13 from 1642-1654 2000 Kia Sephia/Spectra CA License #4JJY775 Certificate of Compliance #XR411975C	P1516
6	6	2/27/13 from 1743-1749 1997 Chevrolet Blazer CA License #6WOA396 Certificate of Compliance #XR411994C	P1516
7	7	3/5/13 from 1704-1708 2000 BMW 528i CA License #5WBR496 Certificate of Compliance #XR519134C	P1516
8	8	3/5/13 from 1719-1728 1998 Toyota Sienna CA License #6SQE437 Certificate of Compliance #XR519135C	P1516
9	9	3/12/13 from 1551-1600 1996 Acura Integra	P1516
28			

	UT License #C895HG Certificate of Compliance #XR674880C	
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FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

6 24. Gomez Smog Test Only's Registration is subject to disciplinary action under section
7 9884.7, subdivision (a)(1), in that Gomez Smog Test Only made or authorized statements which
8 Gomez Smog Test Only knew or in the exercise of reasonable care should have known to be
9 untrue or misleading as follows: Gomez Smog Test Only's smog check technician, Soto, certified
10 that they inspected the vehicles described in paragraphs 21-23, when in fact those vehicles were
11 not inspected.

SECOND CAUSE FOR DISCIPLINE

(Violations of Motor Vehicle Inspection Program)

14 25. Gomez Smog Test Only's Smog Check Station License is subject to disciplinary
15 action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
16 subdivision (a), in that Gomez Smog Test Only failed to comply with the following sections of
17 that Code:

18 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
19 on the vehicles in paragraphs 21-23 in accordance with procedures prescribed by the Department.

20 b. Section 44015: issued a certificate of compliance for the vehicles in paragraphs 21-23
21 without properly testing and inspecting them to determine if they were in compliance with Health
22 & Safety Code section 44012.

23 c. Section 44035: failed to meet or maintain the standards prescribed for qualification,
24 equipment, performance, or conduct by failing to properly perform a smog inspection on the
25 vehicles in paragraphs 21-23 or certifying that such tests had been performed, when in fact they
26 were never performed.

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THIRD CAUSE FOR DISCIPLINE

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

26. Gomez Smog Test Only's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that Gomez Smog Test Only failed to comply with the following sections of Title 16, California Code of Regulations:

a. **Section 3340.35, subdivision (c):** failed to inspect and test the vehicles in paragraphs 21-23 in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that these vehicles had all the required emission control equipment and devices installed and functioning correctly.

b. Section 3340.41, subdivision (c): knowingly entered into the Emissions Inspection System false information about the vehicles in paragraphs 21-23, providing results for smog inspections which were not actually performed.

c. **Section 3340.42:** failed to conduct the required smog tests on the vehicles in paragraphs 21-23 in accordance with the Bureau's specifications.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

27. Gomez Smog Test Only's Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(4), and Gomez Smog Test Only's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), in that Gomez Smog Test Only committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of compliance for the vehicles in paragraphs 21-23 without performing bona fide inspections of the emission control devices and systems on them, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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FIFTH CAUSE FOR DISCIPLINE

(Violation of Motor Vehicle Inspection Program)

28. Soto's smog technician license(s) is/are subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that Soto failed to comply with the following sections of that Code:

a. Section 44012: failed to perform the tests of the emission control systems and devices on the vehicles in paragraphs 21-23 in accordance with procedures prescribed by the Department.

b. Section 44015: issued a certificate of compliance for the vehicles in paragraphs 21-23 without properly testing and inspecting them to determine if they were in compliance with Health & Safety Code section 44012.

c. **Section 44035:** failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicles in paragraphs 21-23 or certifying that such tests had been performed, when in fact they were never performed.

SIXTH CAUSE FOR DISCIPLINE

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

29. Soto's smog technician license(s) is/are subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a) in that Soto failed to comply with the following sections of Title 16, California Code of Regulations:

a. **Section 3340.35, subdivision (c):** failed to inspect and test the vehicles in paragraphs 21-23 in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that these vehicles had all the required emission control equipment and devices installed and functioning correctly.

b. Section 3340.41, subdivision (c): knowingly entered into the Emissions Inspection System false information about the vehicles in paragraphs 21-23, providing results for smog inspections which were not actually performed.

c. Section 3340.42: failed to conduct the required smog tests on all the vehicles in paragraphs 21-23 in accordance with the Bureau's specifications.

SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

30. Soto's smog technician license(s) is/are subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), in that Soto committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of compliance for the vehicles in paragraphs 21-23 without performing bona fide inspections of the emission control devices and systems on them, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

DISCIPLINE CONSIDERATIONS

31. To determine the degree of discipline, if any, to be imposed on Gomez Smog Test Only, Complainant alleges that on or about November 8, 2010, in a prior action, the Bureau of Automotive Repair issued Citation Number C2011-0604 and assessed a civil penalty of \$1,000.00 for issuing a certificate of compliance to a Bureau undercover vehicle with the fuel evaporative emissions control canister (EVAP canister) removed, a violation of Health and Safety Code section 44012, subdivision (f) and Code of Regulations section 3340.35, subdivision (c). On December 22, 2010, Gomez Smog Test Only paid the civil penalty. That Citation is now final and is incorporated by reference as if fully set forth.

OTHER MATTERS

32. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the registration for all places of business operated in this state by Gomez Smog Test Only upon a finding that Gomez Smog Test Only has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

33. Pursuant to Health & Safety Code section 44072.8, if Gomez Smog Test Only's Smog Check Station License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of the Health and Safety Code in the name of Gomez Smog Test Only or Jose Luis Gomez, including Smog Check Inspector License No. EO 142550

1 and Smog Check Repair Technician License No. EI 142550 (formerly Advanced Emission
2 Specialist Technician No. EA 142550).

3 34. Under Health and Safety Code section 44072.8, if Smog Check Inspector License No.
4 EO 633604 and Smog Check Repair Technician License No. EI 633604, issued to Soto, is/are
5 revoked or suspended, any additional license issued under Chapter 5 of the Health and Safety
6 Code in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

10 1. Revoking or suspending Automotive Repair Dealer License Number ARD 249179,
11 issued to Gomez Smog Test Only;

12 2. Revoking or suspending Smog Check, Test Only, Station License No. TC 249179,
13 issued to Gomez Smog Test Only;

3. Revoking or suspending Smog Check Inspector License No. EO 633604 and Smog Check Repair Technician License No. EI 633604, issued to Soto;

16 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Gomez Smog Test Only and/or Jose Luiz Gomez, including
18 Smog Check Inspector License No. EO 142550 and Smog Check Repair Technician License No.
19 EI 142550 (formerly Advanced Emission Specialist Technician No. EA 142550);

20 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Soto;

22 6. Ordering Gomez Smog Test Only and Soto to pay the Bureau of Automotive Repair
23 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
24 Professions Code section 125.3; and

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1 7. Taking such other and further action as deemed necessary and proper.
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DATED: 11-14-13

PAT DORAI by Dale BALATTI
PAT DORAI
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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