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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 Against:

Case No. 79/14-16

12 **FIRST SMOG TEST ONLY; MARTHA**
13 **GABRIELA FLORES, Owner**
14 **565 South Greenwood Unit B**
Montebello, CA 90640

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
ARD 270363
16 **Smog Check Test Only Station License No.**
TC270363,

17 **and**

18 **JOSE LUIS FLORES**
19 **1264 S. Augusta Avenue**
Los Angeles, CA 90023

20 **Smog Check Inspector License No. EO**
21 **153777 (formerly Advanced Emission**
Specialist Technician License No.
22 **EA153777)**

23 **Smog Check Repair Technician License No.**
24 **EI 153777 (formerly Advanced Emission**
Specialist Technician License No.
EA153777)

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26 Respondents.

27 Complainant alleges:
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1 PARTIES

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

4 2. On or about September 26, 2012, the Bureau of Automotive Repair issued
5 Automotive Repair Dealer Registration Number ARD 270363 to First Smog Test Only; Martha
6 Gabriela Flores, Owner (Respondent First Smog Test Only). The Automotive Repair Dealer
7 Registration was in full force and effect at all times relevant to the charges brought herein and
8 will expire on September 30, 2013, unless renewed.

9 3. On or about October 24, 2012, the Bureau of Automotive Repair issued Smog Check
10 Test Only Station License Number TC270363 to Respondent First Smog Test Only. The Smog
11 Check Test Only Station License was in full force and effect at all times relevant to the charges
12 brought herein and will expire on September 30, 2014, unless renewed.

13 4. In or about 2006, the Director issued Advanced Emission Specialist Technician
14 License Number EA 153777 to Jose Luis Fores. Flores' Advanced Emission Specialist
15 Technician License was due to expire on July 31, 2012. Pursuant to California Code of
16 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
17 Flores' election, as Smog Check Inspector License Number EO 153777 and Smog Check Repair
18 Technician License Number EI 153777 (technician licenses), effective July 31, 2012.
19 Respondent's technician licenses will expire on July 31, 2014, unless renewed.¹

20 STATUTORY PROVISIONS

21 5. Section 9884.7 of the Business and Professions Code (Code) states, in pertinent part:

22 (a) The director, where the automotive repair dealer cannot show there
23 was a bona fide error, may deny, suspend, revoke, or place on probation the
24 registration of an automotive repair dealer for any of the following acts or omissions
25 related to the conduct of the business of the automotive repair dealer, which are done
26 by the automotive repair dealer or any automotive technician, employee, partner,
27 officer, or member of the automotive repair dealer.

28 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
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 (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
2 by the exercise of reasonable care should be known, to be untrue or misleading.

3 (4) Any other conduct that constitutes fraud.

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

7 (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
8 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
engaged in a course of repeated and willful violations of this chapter, or regulations
9 adopted pursuant to it.

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

14 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
15 "commission," "committee," "department," "division," "examining committee," "program," and
16 "agency." "License" includes certificate, registration or other means to engage in a business or
17 profession regulated by the Code.

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

21 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

Test Times	Vehicle in EIS Data (License Plate #)	Vehicle Tested (License Plate #)	Certificate Issued
0843-0852	1998 Toyota Camry (3XRX853)	2002 BMW 7-Series (5SGD998)	XT084490C
0913-0927	1988 Volvo 240 (2LIT325)	2002 BMW 7-Series (5SGD998)	NONE
0946-0958	1990 Toyota Tercel (2SKS906)	2002 BMW 7-Series (5SGD998)	XT084491C
1522-1537	1992 Honda Prelude (6MZS823)	2002 BMW 7-Series (5SGD998)	XT084492C
1558-1610	1996 Toyota Previa (3TAR232)	2002 BMW 7-Series (5SGD998)	XT084493C
1707-1715	1996 Honda Civic (6MPS266)	2002 BMW 7-Series (5SGD998)	XT084494C
1745-1755	1998 Mitsubishi Mirage (4BFR120)	2002 BMW 7-Series (5SGD998)	XT084495C

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

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

16. Respondent First Smog Test Only has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about April 5, 2013, she made statements which she knew or which by exercise of reasonable care she should have known were untrue or misleading when she issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent First Smog Test Only has subjected her registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about April 5, 2013, she committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and

1 systems on those vehicles, thereby depriving the People of the State of California of the
2 protection afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 18. Respondent First Smog Test Only has subjected her station license to discipline under
6 Health and Safety Code section 44072.2, subdivision (a), in that on or about April 5, 2013,
7 regarding the vehicles set forth in Table 1, above, she violated sections of that Code, as follows:

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

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

14 c. **Section 44015, subdivision (b):** Respondent First Smog Test Only issued electronic
15 certificates of compliance without properly testing and inspecting the vehicles to determine if
16 they were in compliance with section 44012 of that Code.

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

20 **FOURTH CAUSE FOR DISCIPLINE**

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

22 19. Respondent First Smog Test Only has subjected her station license to discipline under
23 Health and Safety Code section 44072.2, subdivision (c), in that on or about April 5, 2013,
24 regarding the vehicles set forth in Table 1, above, she violated sections of the California Code of
25 Regulations, title 16, as follows:

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

3 b. **Section 3340.35, subdivision (c):** Respondent First Smog Test Only issued
4 electronic certificates of compliance even though those vehicles had not been inspected in
5 accordance with section 3340.42 of that Code.

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

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 20. Respondent First Smog Test Only subjected her station license to discipline under
11 Health and Safety Code section 44072.2, subdivision (d), in that on or about April 5, 2013,
12 regarding the vehicles set forth in Table 1, above, she committed acts involving dishonesty, fraud
13 or deceit whereby another was injured by issuing electronic certificates of compliance for those
14 vehicles without performing bona fide inspections of the emission control devices and systems on
15 those vehicles, thereby depriving the People of the State of California of the protection afforded
16 by the Motor Vehicle Inspection Program.

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 21. Respondent Flores has subjected his technician licenses to discipline under Health
20 and Safety Code section 44072.2, subdivision (a), in that on or about April 5, 2013, regarding the
21 vehicles set forth in Table 1, he violated sections of that Code, as follows:

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

25 b. **Section 44012, subdivision (f):** Respondent Flores failed to perform emission
26 control tests on those vehicles in accordance with procedures prescribed by the department.
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1 c. **Section 44032:** Respondent Flores failed to perform tests of the emission control
2 devices and systems on those vehicles in accordance with section 44012 of that Code, in that
3 those vehicles had been clean piped.

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

7 **SEVENTH CAUSE FOR DISCIPLINE**

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

9 22. Respondent Flores has subjected his technician licenses to discipline under Health
10 and Safety Code section 44072.2, subdivision (c), in that on or about April 5, 2013, regarding the
11 vehicles set forth in Table 1, he violated sections of the California Code of Regulations, title 16,
12 as follows:

13 a. **Section 3340.24, subdivision (c):** Respondent Flores falsely or fraudulently issued
14 electronic certificates of compliance without performing bona fide inspections of the emission
15 control devices and systems on those vehicles as required by Health and Safety Code section
16 44012.

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

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

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

24 **EIGHTH CAUSE FOR DISCIPLINE**

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

26 23. Respondent Flores has subjected his technician licenses to discipline under Health
27 and Safety Code section 44072.2, subdivision (d), in that on or about April 5, 2013, he committed
28 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic

1 certificates of compliance for the vehicles set forth in Table 1, above, without performing bona
2 fide inspections of the emission control devices and systems on those vehicles, thereby depriving
3 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 **OTHER MATTERS**

6 24. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
7 or permanently or refuse to validate, the registrations for all places of business operated in this
8 state by Martha Gabriela Flores doing business as First Smog Test Only, upon a finding that she
9 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
10 pertaining to an automotive repair dealer.

11 25. Under Health and Safety Code section 44072.8, if Station License Number TC
12 270363, issued to Martha Gabriela Flores doing business as First Smog Test Only is revoked or
13 suspended, any additional license issued under this chapter in the name of said licensee may be
14 likewise revoked or suspended by the director.

15 26. Under Health and Safety Code section 44072.8, if Respondent Flores' Smog Check
16 Inspector License or Smog Check Repair Technician License (formerly Advanced Emission
17 Specialist Technician License No. EA153777) is revoked or suspended, any additional license
18 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
19 the director.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 270363, issued to First Smog Test Only; Martha Gabriela Flores, Owner;

25 2. Revoking or suspending any other automotive repair dealer registration issued in the
26 name Martha Gabriela Flores;

27 3. Revoking or suspending Smog Check Test Only Station License Number TC270363,
28 issued to First Smog Test Only; Martha Gabriela Flores, Owner;

1 4. Revoking or suspending any additional license issued under this chapter in the name
2 of First Smog Test Only; Martha Gabriela Flores, Owner;

3 5. Revoking or suspending Smog Check Inspector License Number EO 153777
4 (formerly Advanced Emission Specialist Technician License No. EA153777), issued to Jose Luis
5 Flores;

6 6. Revoking or suspending Smog Check Repair Technician License Number EI 153777
7 (formerly Advanced Emission Specialist Technician License No. EA153777), issued to Jose Luis
8 Flores;

9 7. Revoking or suspending any additional license issued under this chapter in the name
10 of Jose Luis Flores;

11 8. Ordering Martha Gabriela Flores and Jose Luis Flores to pay the Bureau of
12 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
13 pursuant to Business and Professions Code section 125.3; and

14 9. Taking such other and further action as deemed necessary and proper.

15 DATED: 9-30-13

PAT DORAIS by Doug Balatti

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

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