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

In the Matter of the Accusation: **RAFAEL FERREIRA dba GARCES CIRCLE SMOG** **1330 Golden State Ave. #B** **Bakersfield, CA 93301** **Automotive Repair Dealer Registration No. ARD 241368** **Smog Check, Test Only, Station License No. TC 241368,** **and** **RAFAEL FERREIRA** **12100 Flat Iron Court** **Bakersfield, CA 93312** **Smog Check Inspector License No. EO 154147** **Smog Check Repair Technician License No. EI 154147** Respondent.	Case No. 79/15-102 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 8, 2015, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation

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No. 79/15-102 against Rafael Ferreira, individually and dba Garces Circle Smog, before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about October 4, 2005, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 241368 to Rafael Ferreira dba Garces Circle Smog. The Automotive Repair Dealer Registration ("ARD") was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2015, unless renewed. The ARD is currently suspended pursuant to an Order of Interim Suspension issued by the Office of Administrative Hearings on May 1, 2015.

3. On or about October 11, 2005, the Bureau of Automotive Repair issued Smog Check, Test Only, Station License Number TC 241368 to Respondent. The Smog Check, Test Only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2015, unless renewed. The license is currently suspended pursuant to an Order of Interim Suspension issued by the Office of Administrative Hearings on May 1, 2015.

4. In or about 2007, the Director issued Advanced Emission Specialist Technician License Number EA 154147 to Rafael Ferreira. Ferreira's advanced emission specialist technician license was due to expire on October 31, 2013. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Ferreira's election, as Smog Check Inspector License Number EO 154147 and Smog Check Repair Technician License Number EI 154147 ("technician licenses"), effective October 24, 2013. Respondent's technician licenses will expire on October 31, 2015, unless renewed.[1] The licenses are currently suspended pursuant to an Order of Interim Suspension issued by the Office of Administrative Hearings on May 1, 2015.

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[1] Effective August 1, 2012, California Code of Regulations, title 16, section 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 and/or Smog Check Repair Technician (EI) license.

5. On or about May 12, 2015, Respondent was served by Certified and First Class Mail copies of the Accusation No. 79/15-102, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's addresses of record which, pursuant to Business and Professions Code section 136, is required to be reported and maintained with the Bureau. The address of record for Rafael Ferreira dba Garces Circle Smog was and is 1330 Golden State Ave. #B, Bakersfield, CA 93301. The address of record for Rafael Ferreira, individually, was and is 12100 Flat Iron Court, Bakersfield, CA 93312. Service was also effected on the office of attorney William H. Slocumb, located at 1929 Truxton Avenue, Suite C, Bakersfield, CA 93301. Mr. Slocumb was Respondent's attorney of record in the proceedings on the Bureau's Petition for Interim Suspension Order.

6. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

7. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

8. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 79/15-102.

9. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

10. Pursuant to its authority under Government Code section 11520, the Director after having reviewed the proof of service dated May 12, 2015, signed by L.M. Robinson, as well as the Certified Mail Return Receipts from Respondent and attorney Slocumb's office finds

Respondent is in default. The Director will take action without further hearing and, based on Accusation, No. 79/15-102, proof of service and on the Affidavit of Bureau Representative Albert J. Copeland, finds that the allegations in Accusation are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Rafael Ferreira dba Garces Circle Smog has subjected his Automotive Repair Dealer Registration No. ARD 241368 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive Repair Dealer Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the affidavit of Bureau Representative Albert J. Copeland in this case.:

a. Business and Professions Code § 9884.7(a)(1) [Untrue Misleading Statements];

b. Business and Professions Code § 9884.7(a)(4) [Fraud]; and

c. Business and Professions Code § 9884.7(a)(6) [Material Violation of Automotive Repair Act].

4. Based on the foregoing findings of fact, Respondent Rafael Ferreira dba Garces Circle Smog has subjected his Smog Check, Test Only Station License No. TC 241368 to discipline.

5. The agency has jurisdiction to adjudicate this case by default.

6. The Director of Consumer Affairs is authorized to revoke Respondent's Smog Check, Test Only Station License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the affidavit of Bureau Representative Albert J. Copeland in this case:

a. Health and Safety Code § 44072.2(a) [Violation of Motor Vehicle Inspection Program Statute];

b. Health and Safety Code § 44072.2(c) [Violation of Motor Vehicle Inspection Program Regulations]; and

c. Health and Safety Code § 44072.2(d) [Dishonesty, Fraud or Deceit].

7. Based on the foregoing findings of fact, Respondent Rafael Ferreira has subjected his Smog Check Inspector (EO) License No. 154147 and Smog Check Repair Technician (EI) License No. 154147 to discipline.

8. The agency has jurisdiction to adjudicate this case by default.

9. The Director of Consumer Affairs is authorized to revoke Respondent's Smog Check Inspector (EO) License and Smog Check Repair Technician (EI) License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the affidavit of Bureau Representative Albert J. Copeland in this case:

a. Health and Safety Code § 44072.2(a) [Violation of Motor Vehicle Inspection Program Statute];

b. Health and Safety Code § 44072.2(c) [Violation of Motor Vehicle Inspection Program Regulations]; and

c. Health and Safety Code § 44072.2(d) [Dishonesty, Fraud or Deceit].

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ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 241368 and Smog Check, Test Only Station License No. TC 241368, heretofore issued to Respondent Rafael Ferreira dba Garces Circle Smog are revoked.

IT IS FURTHER ORDERED that Smog Check Inspector (EO) License No. 154147 and Smog Check Repair Technician (EI) License No. 154147, heretofore issued to Respondent Rafael Ferreira are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 27, 2016.

It is so ORDERED March 31, 2016

TAMARA COLSON
Assistant General Counsel
Division of Legal Affairs
Department of Consumer Affairs

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DOJ Matter ID:LA2015500448

Attachment:
Exhibit A: Accusation

EXHIBIT A

Accusation No. 79/15-102

(GARCES CIRCLE SMOG; RAFAEL FERREIRA and RAFAEL FERREIRA)

KAMALA D. HARRIS
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ARMANDO ZAMBRANO
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **RAFAEL FERREIRA, dba GARCES CIRCLE SMOG** Respondents.	Case No. 79/15-102 **STATEMENT TO RESPONDENT** [Gov. Code §§ 11504, 11505(b)]

TO RESPONDENT:

Enclosed is a copy of the Accusation that has been filed with the Director of Consumer Affairs, Bureau of Automotive Repair (Bureau), and which is hereby served on you.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Bureau, represented by Deputy Attorney General William D. Gardner, within fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you, you will be deemed to have waived your right to a hearing in this matter and the Bureau may proceed upon the Accusation without a hearing and may take action thereon as provided by law.

The request for hearing may be made by delivering or mailing one of the enclosed forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code, to

William D. Gardner
Deputy Attorney General
Ronald Reagan Building
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

You may, but need not, be represented by counsel at any or all stages of these proceedings.

The enclosed Notice of Defense, if signed and filed with the Bureau, shall be deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any objection to the form of the Accusation unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen (15) days after service of the Accusation on you.

If you file any Notice of Defense within the time permitted, a hearing will be held on the charges made in the Accusation.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013, within ten (10) working days after you discover the good cause. Failure to notify the Office of Administrative Hearings within ten (10) days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are enclosed.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in section 11507.6 of the Government Code in the possession, custody or control of the Bureau you may send a Request for Discovery to the above designated Deputy Attorney General.

NOTICE REGARDING STIPULATED SETTLEMENTS

It may be possible to avoid the time, expense and uncertainties involved in an administrative hearing by disposing of this matter through a stipulated settlement. A stipulated settlement is a binding written agreement between you and the government regarding the matters charged and the discipline to be imposed. Such a stipulation would have to be approved by the Director of Consumer Affairs, Bureau of Automotive Repair but, once approved, it would be incorporated into a final order.

Any stipulation must be consistent with the Bureau's established disciplinary guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the Bureau's Disciplinary Guidelines will be provided to you on your written request to the state agency bringing this action.

If you are interested in pursuing this alternative to a formal administrative hearing, or if you have any questions, you or your attorney should contact Deputy Attorney General William D. Gardner at the earliest opportunity.

Dated: May 12, 2015

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General

WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Complainant

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Attorneys for Complainant

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

In the Matter of the Accusation: **RAFAEL FERREIRA dba GARCES CIRCLE SMOG** **1330 Golden State Ave. #B** **Bakersfield, CA 93301** **Automotive Repair Dealer Registration No. ARD 241368** **Smog Check, Test Only, Station License No. TC 241368,** **and** **RAFAEL FERREIRA** **12100 Flat Iron Court** **Bakersfield, CA 93312** **Smog Check Inspector License No. EO 154147** **Smog Check Repair Technician License No. EI 154147** Respondent.	Case No. 79/15-102 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about October 4, 2005, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 241368 to Rafael Ferreira dba Garces Circle Smog ("Respondent"). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2015, unless renewed.

3. On or about October 11, 2005, the Bureau of Automotive Repair issued Smog Check, Test Only, Station License Number TC 241368 to Respondent. The Smog Check, Test Only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2015, unless renewed.

4. In or about 2007, the Director issued Advanced Emission Specialist Technician License Number EA 154147 to Rafael Ferreira. Ferreira's advanced emission specialist technician license was due to expire on October 31, 2013. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Ferreira's election, as Smog Check Inspector License Number EO 154147 and Smog Check Repair Technician License Number EI 154147 ("technician licenses"), effective October 24, 2013. Respondent's technician licenses will expire on October 31, 2015, unless renewed.[1]

JURISDICTION

5. Business and Professions Code ("BPC") section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

6. Section 9889.1 of the BPC provides, in pertinent part, that the Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the Automotive Repair Act.

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[1] Effective August 1, 2012, California Code of Regulations, title 16, section 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 and/or Smog Check Repair Technician (EI) license.

7. Section 9889.7 of the BPC provides, in pertinent part, that the expiration or suspension of a license by operation of law or by order or decision of the Director or a court of law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any disciplinary proceedings.

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

9. Section 44072.6 of the HSC provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

10. Section 9884.7 of the BPC states, in pertinent part:

"(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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 . . . .

(4) Any other conduct which constitutes fraud.

. . . .

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

11. Section 9889.9 of the BPC states that "[w]hen any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and

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

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

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

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

15. Section 44059 of the HSC provides:

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

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

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

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

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

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

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

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

17. Section 44072.8 of the HSC states that 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.

REGULATORY PROVISIONS

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

19. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c), states:

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

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

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

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

COST RECOVERY

23. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a 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."

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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.[2] 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

Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
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.

[2] "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.

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

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

FIFTH CAUSE FOR DISCIPLINE

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

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

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

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

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

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

30. Respondent has subjected his station license to discipline under HSC section 44072.2, subdivision (d), in that, with respect to the vehicles set forth in Table 1, above, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles 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.

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SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

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

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

EIGHTH CAUSE FOR DISCIPLINE

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

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

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

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

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

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

NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

33. Respondent has subjected his smog check inspector and smog check repair technician licenses to discipline under HSC section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit whereby another was injured 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 systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 241368, issued to Rafael Ferreira dba Garces Circle Smog;

2. Revoking or suspending Smog Check, Test Only, Station License Number TC 241368, issued to Rafael Ferreira dba Garces Circle Smog;

3. Revoking or suspending Smog Check Inspector License No. EO 154147, issued to Rafael Ferreira;

4. Revoking or suspending Smog Check Repair Technician License No. EI 154147, issued to Rafael Ferreira;

5. Revoking or suspending any and all licenses issued under Articles 5 and 6 of the Automotive Repair Act in the name of Rafael Ferreira pursuant to section 9889.9 of the Business and Professions Code;

6. Revoking or suspending any and all licenses issued under the Motor Vehicle Inspection Program in the name of Rafael Ferreira pursuant to section 44072.8 of the Health and Safety Code;

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7. Ordering Rafael Ferreira to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: May 8, 2015

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

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

In the Matter of the Accusation Against: **RAFAEL FERREIRA, dba GARCES CIRCLE SMOG** Respondents.	Case No. 79/15-102 **NOTICE OF DEFENSE** [Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

Dated: _____

Respondent's Name: _____

Respondent's Signature: _____

Respondent's Mailing Address: _____

City, State and Zip Code: _____

Respondent's Telephone: _____

Respondent's Fax: _____

Respondent's E-mail _____

Check appropriate box:

☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone: _____

Counsel's Fax: _____

Counsel's E-mail: _____

☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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

In the Matter of the Accusation Against: **RAFAEL FERREIRA, dba GARCES CIRCLE SMOG** Respondents.	Case No. 79/15-102 **NOTICE OF DEFENSE** [Gov. Code §§ 11505 and 11506]

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Check appropriate box:

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City, State and Zip Code _____

Counsel's Telephone: _____

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The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General
WILLIAM D. GARDNER
Deputy Attorney General
State Bar No. 244817
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2114
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **RAFAEL FERREIRA, dba GARCES CIRCLE SMOG** Respondents.	Case No. 79/15-102 **REQUEST FOR DISCOVERY**

TO RESPONDENT:

Under section 11507.6 of the Government Code of the State of California, parties to an administrative hearing, including the Complainant, are entitled to certain information concerning the opposing party's case. A copy of the provisions of section 11507.6 of the Government Code concerning such rights is included among the papers served.

PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU ARE HEREBY REQUESTED TO:

1. Provide the names and addresses of witnesses to the extent known to the Respondent, including, but not limited to, those intended to be called to testify at the hearing, and

2. Provide an opportunity for the Complainant to inspect and make a copy of any of the following in the possession or custody or under control of the Respondent:

a. A statement of a person, other than the Respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that

the act or omission of the Respondent as to this person is the basis for the administrative proceeding;

b. A statement pertaining to the subject matter of the proceeding made by any party to another party or persons;

c. Statements of witnesses then proposed to be called by the Respondent and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

d. All writings, including but not limited to reports of mental, physical and blood examinations and things which the Respondent now proposes to offer in evidence;

e. Any other writing or thing which is relevant and which would be admissible in evidence, including but not limited to, any patient or hospital records pertaining to the persons named in the pleading;

f. Investigative reports made by or on behalf of the Respondent pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this Request for Discovery, "statements" include written statements by the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery should be deemed to authorize the inspection or copying of any writing or thing which is

privileged from disclosure by law or otherwise made confidential or protected as attorney's work product.

Your response to this Request for Discovery should be directed to the undersigned attorney for the Complainant at the address on the first page of this Request for Discovery within 30 days after service of the Accusation.

Failure without substantial justification to comply with this Request for Discovery may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the Government Code.

Dated: May 12, 2015

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General

WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Complainant

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COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7 PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

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DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **In the Matter of the Accusation Against: Rafael Ferreira, dba Garces Circle Smog**
Case No.: **79/15-102**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On May 12, 2015, I served the attached **STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE (Two copies), REQUEST FOR DISCOVERY and GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7 PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 and 1150** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE (Two copies), REQUEST FOR DISCOVERY and GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7 PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 and 1150** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Attorney for Respondent:
William H. Slocumb
Law Office of William H. Slocumb
1929 Truxton Avenue, Suite C
Bakersfield, CA 93301

Certified Article Number
9414 7266 9904 2013 5766 21
SENDERS RECORD

Respondent:
Rafael Ferreira
Garces Circle Smog
1330 Golden State Ave. #B
Bakersfield, CA 93301

Certified Article Number
9414 7266 9904 2013 5784 03
SENDERS RECORD

Rafael Ferreira
12100 Flat Iron Court
Bakersfield, CA 93312

Certified Article Number
9414 7266 9904 2013 5766 14
SENDERS RECORD

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 12, 2015, at Los Angeles, California.

L M. Robinson
Declarant

Signature

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9414 7266 9904 2013 5766 21

TO: William H. Slocumb, Esq.
Law Office of William H. Slocumb
1929 Truxton Avenue, Suite C
Bakersfield, CA 93301

SENDER: William D. Gardner, DAG
REFERENCE: ACC Pckt
LA2015500448

PS Form 3800, January 2005

RETURN RECEIPT SERVICE		
	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®
Receipt for Certified Mail®
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE
5/12/15

9414 7266 9904 2013 5784 03

TO: Rafael Ferreira
dba Garces Circle Smog
1330 Golden State Ave. #B
Bakersfield, CA 93301

SENDER: William D. Gardner, DAG
REFERENCE: Acc Pckt
LA2015500448

PS Form 3800, January 2005

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	Postage	
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9414 7266 9904 2013 5766 14

TO: Rafael Ferreira
12100 Flat Iron Court
Bakersfield, CA 93312

SENDER: William D. Gardner, DAG
REFERENCE: ACC Pckt
LA2015500448

PS Form 3800, January 2005

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Receipt for Certified Mail®
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE
5/12/15

2. Article Number

9414 7266 9904 2013 5766 21

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Teresa Lauzer

B. Date of Delivery 5/14/15

C. Signature

X Teresa Lauzer

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

3. Service Type **CERTIFIED MAIL®**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

William H. Slocumb, Esq.
Law Office of William H. Slocumb
1929 Truxton Avenue, Suite C
Bakersfield, CA 93301

LA2015500448
ACC Pckt
William D. Gardner, DAG

PS Form 3811, January 2005 Domestic Return Receipt

2. Article Number

9414 7266 9904 2013 5766 14

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery 5/14/15

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

3. Service Type **CERTIFIED MAIL®**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Rafael Ferreira
12100 Flat Iron Court
Bakersfield, CA 93312

LA2015500448
ACC Pckt
William D. Gardner, DAG

PS Form 3811, January 2005 Domestic Return Receipt

AFFIDAVIT OF ALBERT J. COPELAND

I, Albert J. Copeland, Program Representative I, Bureau of Automotive Repair, hereby affirm the following facts regarding Garces Circle Smog, Automotive Repair Dealer registration # ARD241368, and licensed Smog Check Test Only Station # TC241368, located at 1330 Golden State Ave. #B, Bakersfield, CA 93301, and licensed Smog technician, Rafael Ferreira, license numbers EO154147 & EI154147; Accusation Case No. 79/15-102:

In the course and scope of my duties as Program Representative I in the Bakersfield Field Office, I investigated Garces Circle Smog (Respondent).This investigation determined that on October 10, 2014:

Respondent made false and misleading statements when they issued fraudulent electronic Certificates of Compliance. This conduct fails to comply with Business and Professions Code (B&P) 9884.7(a)(1).

Respondent fraudulently issued electronic Certificates of Compliance to vehicles without performing bona fide inspections of emission control devices. This conduct fails to comply with B&P 9884.7(a)(4), B&P 9884.7(a)(6), Health and Safety Code (H&S) 44072.2(a), H&S 44072.2(c) and H&S 44072.2(d).

Respondent did not perform emission control tests/inspections in accordance with procedures prescribed by the department and vehicle manufacturer. This conduct fails to comply with H&S 44012, H&S 44015(b), H&S 44032, H&S 44059, California Code of Regulations (CCR) 3340.42 and CCR 3340.30(a).

Respondent issued Certificates of Compliance to motor vehicles without ensuring those vehicles were properly tested and inspected. This conduct fails to comply with H&S 44015(b), CCR 3340.24(c) and CCR 3340.41(c).

Respondent willfully made false entries for the electronic Certificates of Compliance by certifying those vehicles had been inspected as required when, in fact, they had not. This conduct fails to comply with H&S 44059 and CCR 3340.35(c).

//

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AFFIDAVIT OF ALBERT J. COPELAND

I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently to those facts and to the facts, evidence, and information contained within the investigation report supporting the violations asserted in the Accusation and mentioned herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on the 1st day of December, 2015, at Bakersfield, California.

Albert J. Copeland PRI
Bureau of Automotive Repair