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

12 In the Matter of the Accusation Against:

Case No. 79/14-138

13 **BASELINE SMOG;**  
14 **SILVINO POSADAS, OWNER**  
25784 BASELINE RD.  
HIGHLAND, CA 92410  
15 AUTOMOTIVE REPAIR DEALER REGISTRATION  
No. ARD 274735  
16 SMOG CHECK TEST ONLY STATION LICENSE  
No. TC 274735

**ACCUSATION**

17 AND

18 **ADAM ANDREW GOMEZ**  
18772 VALENCIA ST.  
HESPERIA, CA 92345  
19 SMOG CHECK INSPECTOR LICENSE NO. EO  
636080,

20 RESPONDENTS.

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23 Complainant alleges:

24 **PARTIES**

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

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1 **Automotive Repair Dealer Registration No. ARD 274735**

2 2. On or about November 8, 2013, the Bureau issued Automotive Repair Dealer  
3 Registration ("registration") No. ARD 274735 to Baseline Smog; Silvino Posadas, Owner  
4 ("Respondent Baseline"). The Automotive Repair Dealer Registration was in full force and effect  
5 at all times relevant to the charges brought herein and will expire on November 30, 2014, unless  
6 renewed.

7 **Smog Check Test Only Station License No. TC 274735**

8 3. On or about December 5, 2013, the Bureau issued Smog Check Test Only Station  
9 License ("station license") No. TC 274735 to Baseline Smog; Silvino Posadas, Owner. The Smog  
10 Check Test Only Station License was in full force and effect at all times relevant to the charges  
11 brought herein and will expire on November 30, 2014, unless renewed.

12 **Smog Check Inspector License No. EO 636080**

13 4. On or about September 26, 2013, the Bureau issued Smog Check Inspector License  
14 ("inspector license") No. EO 636080 to Adam Andrew Gomez ("Respondent Gomez"). The  
15 Smog Check Inspector License was in full force and effect at all times relevant to the charges  
16 brought herein and will expire on August 31, 2015, unless renewed.<sup>1</sup>

17 **JURISDICTION**

18 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the  
19 Bureau of Automotive Repair.

20 6. Section 9884.7 of the Business and Professions Code ("Code") provides that the  
21 Director may revoke an automotive repair dealer registration.

22 7. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid  
23 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding  
24 against an automotive repair dealer or to render a decision invalidating a registration temporarily  
25 or permanently.

26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30  
27 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license  
28 and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair  
Technician (EI) license.



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

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

10 15. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

17 . . . .  
18 (c) Violates any of the regulations adopted by the director pursuant to this chapter.

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

### 20 COST RECOVERY

21 16. Section 125.3 of the Code provides, in pertinent part, that a Board may request the  
22 administrative law judge to direct a licensee found to have committed a violation or violations of  
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
24 enforcement of the case.

### 25 FACTUAL BACKGROUND

26 17. The Bureau conducted a review of the Vehicle Information Database (“VID”) from  
27 Respondent Baseline’s facility. The VID showed abnormal OBDII<sup>2</sup> code failure patterns. In  
28 March, 2014, Bureau Representative Alfred Denno reviewed the VID information for the period  
between December 1, 2013 through March 12, 2014. The investigation revealed that nine (9)

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<sup>2</sup> The On Board Diagnostics (OBDII) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

1 vehicles were fraudulently certified with pending or history Diagnostic Trouble Codes (“DTC’s”)  
 2 stored in the Power Train Control Module (“PCM”) memory not supported by the vehicles being  
 3 tested.

4 18. The details of the clean plugging activities, Vehicles 1 through 9, set forth in Table 1  
 5 below, were all certified with trouble code P1250 stored in the PCM memory while the original  
 6 equipment manufacturer (“OEM”) service information shows these vehicles do not support the  
 7 pending codes stored in the PCM memory. The Bureau Representative also consulted the original  
 8 equipment manufacturer service information for these vehicles and industry standard references  
 9 Mitchell On-Demand and Alldata Information Systems and confirmed that none of the clean  
 10 plugged vehicles supported fault code P1250. Furthermore, the access code of Smog Check  
 11 Inspector Respondent Adam Andrew Gomez was used for all the inspections. The vehicles  
 12 receiving smog certificates were not tested during the OBD II functional test and another  
 13 vehicle(s) was used, constituting clean plugging.<sup>3</sup>

14 19. The specific details of Respondents’ clean plugging activities are set forth below:

15 **Table 1**

Time of Certification			Vehicle Certified					Technician	
Date	Start Time	End Time	Year	Make	Model	License Plate #	Unsup-ported Code	Inspector License #	Certificate of Compliance #
12/14/13	1137	1144	2005	Dodge	Magnum	5KKV387	P1250	EO636080	YB251125C
12/18/13	1303	1310	2002	Mitsubishi	Eclipse	4VND690	P1250	EO636080	YB251132C
1/21/14	1245	1251	2002	Honda	Accord	5MHT618	P1250	EO636080	YB630948C
2/8/14	1215	1221	1997	Nissan	Sentra	4LWR291	P1250	EO636080	YD154575C
2/13/14	1618	1624	1998	Toyota	Avalon	3XNZ872	P1250	EO636080	PE091512C
3/3/14	1052	1101	2000	Honda	Accord	6UIT014	P1250	EO636080	YD612166C
3/4/14	0907	0918	2000	Nissan	Altima	6FHP194	P1250	EO636080	YD612174C
3/7/14	1451	1459	1998	Toyota	Avalon	4KSB614	P1250	EO636080	YD612194C
3/7/14	1628	1635	2000	Nissan	Sentra	5POZ336	P1250	EO636080	YD612196C

22 \*All times are military times.

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 26 <sup>3</sup> Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code)  
 27 status of a passing vehicle for the purposes of illegally issuing a smog certificate to another vehicle that is not in  
 28 compliance due to a failure to complete the minimum number of self test, known as monitors, or due to the presence  
 of a stored fault code that indicates an emission control system or component failure.

1 **Fraudulent Inspection No. 1**

2 a. BAR 97 test detail data shows that between 1137 and 1144 hours on December  
3 14, 2013, a 2005 Dodge Magnum, California License No.#5KKV387 was inspected. Certificate  
4 of Compliance # YB251125C was issued by Respondent Baseline using Smog Check Inspector  
5 License EO 636080 belonging to Respondent Gomez. The BAR97 Inspection Detail shows DTC  
6 P1250 was stored in the PCM memory at the time of certification. Service information shows  
7 DTC P1250 is not supported by a 2005 Dodge Magnum.

8 **Fraudulent Inspection No. 2**

9 b. BAR 97 test detail data shows that between 1303 and 1310 hours on December  
10 18, 2013, a 2002 Mitsubishi Eclipse (Calif. License No. 4VND690) was inspected. Certificate of  
11 Compliance No. YB251132C was issued by Respondent Baseline using Smog Check Inspector  
12 License EO 636080 belonging to Respondent Gomez. The BAR97 Inspection Detail shows DTC  
13 P1250 was stored in the PCM memory at the time of certification. Service information shows  
14 DTC P1250 is not supported by a 2002 Mitsubishi Eclipse.

15 **Fraudulent Inspection No. 3**

16 c. BAR 97 test detail data shows that between 1245 and 1251 hours on January  
17 21, 2014, a 2002 Honda Accord (Calif. License No. 5MHT618) was inspected. Certificate of  
18 Compliance No. YB630948C was issued by Respondent Baseline using Smog Check Inspector  
19 License EO 636080 belonging to Respondent Gomez. The BAR97 Inspection Detail shows DTC  
20 P1250 was stored in the PCM memory at the time of certification. Service information shows  
21 DTC P1250 is not supported by a 2002 Honda Accord.

22 **Fraudulent Inspection No. 4**

23 d. BAR 97 test detail data shows that between 1215 and 1221 hours on February  
24 8, 2014, a 1997 Nissan Sentra (Calif. License No. 4LWR291) was inspected. Certificate of  
25 Compliance No. YD154575C was issued by Respondent Baseline using Smog Check Inspector  
26 License EO 636080 belonging to Respondent Gomez. The BAR97 Inspection Detail shows DTC  
27 P1250 was stored in the PCM memory at the time of certification. Service information shows  
28 DTC P1250 is not supported by a 1997 Nissan Sentra.

1 **Fraudulent Inspection No. 5**

2 e. BAR 97 test detail data shows that between 1618 and 1624 hours on February  
3 13, 2014, a 1998 Toyota Avalon (Calif. License No. 3XNZ872) was inspected. Certificate of  
4 Compliance No. PE091512C was issued by Respondent Baseline using Smog Check Inspector  
5 License EO 636080 belonging to Respondent Gomez. The BAR97 Inspection Detail shows DTC  
6 P1250 was stored in the PCM memory at the time of certification. Service information shows  
7 DTC P1250 is not supported by a 1998 Toyota Avalon.

8 **Fraudulent Inspection No. 6**

9 f. BAR 97 test detail data shows that between 1052 and 1101 hours on March 3,  
10 2014, a 2000 Honda Accord (Calif. License No. 6UIT014) was inspected. Certificate of  
11 Compliance No. YD612166C was issued by Respondent Baseline using Smog Check Inspector  
12 License EO 636080 belonging to Respondent Gomez. The BAR97 Inspection Detail shows DTC  
13 P1250 was stored in the PCM memory at the time of certification. Service information shows  
14 DTC P1250 is not supported by a 2000 Honda Accord.

15 **Fraudulent Inspection No. 7**

16 g. BAR 97 test detail data shows that between 0907 and 0918 hours on March 4,  
17 2014, a 2000 Nissan Altima (Calif. License No. 6FHP194) was inspected. Certificate of  
18 Compliance No. YD612174C was issued by Respondent Baseline using Smog Check Inspector  
19 License EO 636080 belonging to Respondent Gomez. The BAR97 Inspection Detail shows DTC  
20 P1250 was stored in the PCM memory at the time of certification. Service information shows  
21 DTC P1250 is not supported by a 2000 Nissan Altima.

22 **Fraudulent Inspection No. 8**

23 h. BAR 97 test detail data shows that between 1451 and 1459 hours on March 7,  
24 2014, a 1998 Toyota Avalon (Calif. License No. 4KSB614) was inspected. Certificate of  
25 Compliance No. YD612194C was issued by Respondent Baseline using Smog Check Inspector  
26 License EO 636080 belonging to Respondent Gomez. The BAR97 Inspection Detail shows DTC  
27 P1250 was stored in the PCM memory at the time of certification. Service information shows  
28 DTC P1250 is not supported by a 1998 Totota Avalon.

1 **Fraudulent Inspection No. 9**

2 i. BAR 97 test detail data shows that between 1628 and 1635 hours on March 7,  
3 2014, a 2000 Nissan Sentra (Calif. License No. 5POZ336) was inspected. Certificate of  
4 Compliance No. YD612196C was issued by Respondent Baseline using Smog Check Inspector  
5 License EO 636080 belonging to Respondent Gomez. The BAR97 Inspection Detail shows DTC  
6 P1250 was stored in the PCM memory at the time of certification. Service information shows  
7 DTC P1250 is not supported by a 2000 Nissan Sentra.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

10 20. Respondent Baseline's registration is subject to discipline pursuant to Code section  
11 9884.7(a)(1), in that from December 14, 2013 through March 7, 2014, Respondent made or  
12 authorized statements which he knew or in the exercise of reasonable care should have known to  
13 be untrue or misleading, as follows: Respondent certified that the vehicles set forth above in  
14 Table 1, had passed inspection and were in compliance with applicable laws and regulations. In  
15 fact, Respondent conducted the inspections on those vehicles using the clean plugging method by  
16 substituting or using different vehicles during the OBD II functional tests in order to issue smog  
17 certificates of compliance, and did not test or inspect the vehicles as required by Health and  
18 Safety Code section 44012.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 21. Respondent Baseline's registration is subject to discipline pursuant to Code section  
22 9884.7(a)(4), in that from December 14, 2013 through March 7, 2014, Respondent committed  
23 acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set  
24 forth above in Table 1, without performing bona fide inspections of the emission control devices  
25 and systems on those vehicles, thereby depriving the People of the State of California of the  
26 protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 22. Respondent Baseline's station license is subject to discipline pursuant to Health and  
4 Safety Code section 44072.2(a), in that from December 14, 2013 through March 7, 2014,  
5 regarding the vehicles set forth above in Table 1, Respondent failed to comply with the following  
6 sections of that Code:

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

9 b. Section 44015: Respondent issued electronic certificates of compliance for the vehicles,  
10 without ensuring that the vehicles were properly tested and inspected to determine if they were in  
11 compliance with Health and Safety Code section 44012.

12 **FOURTH CAUSE FOR DISCIPLINE**

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

15 23. Respondent Baseline's station license is subject to discipline pursuant to Health and  
16 Safety Code section 44072.2(c), in that from December 14, 2013 through March 7, 2014,  
17 regarding the vehicles set forth above in Table 1, Respondent failed to comply with provisions of  
18 California Code of Regulations, title 16, as follows:

19 a. Section 3340.35(c): Respondent issued electronic certificates of compliance even  
20 though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

23 **FIFTH CAUSE FOR DISCIPLINE**

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

25 24. Respondent Baseline's station license is subject to discipline pursuant to Health and  
26 Safety Code section 44072.2(d), in that from December 14, 2013 through March 7, 2014,  
27 regarding the vehicles set forth above in Table 1, Respondent committed acts involving  
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1 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of  
2 compliance for those vehicles without performing bona fide inspections of the emission control  
3 devices and systems on the vehicles, thereby depriving the People of the State of California of the  
4 protection afforded by the Motor Vehicle Inspection Program.

5 **SIXTH CAUSE FOR DISCIPLINE**

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

7 25. Respondent Gomez's inspector license is subject to discipline pursuant to Health and  
8 Safety Code section 44072.2(a), in that from December 14, 2013 through March 7, 2014,  
9 regarding the vehicles set forth above in Table 1, he failed to comply with section 44012 of that  
10 Code in a material respect, as follows: Respondent Gomez failed to perform the emission control  
11 tests on those vehicles in accordance with procedures prescribed by the department.

12 **SEVENTH CAUSE FOR DISCIPLINE**

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

15 26. Respondent Gomez's inspector license is subject to discipline pursuant to Health and  
16 Safety Code section 44072.2(c), in that from December 14, 2013 through March 7, 2014,  
17 regarding the vehicles set forth above in Table 1, he failed to comply with provisions of  
18 California Code of Regulations, title 16, as follows:

19 a. Section 3340.30(a): Respondent Gomez failed to inspect and test those vehicles in  
20 accordance with Health and Safety Code sections 44012.

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

23 **EIGHTH CAUSE FOR DISCIPLINE**

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

25 27. Respondent Gomez's inspector license is subject to discipline pursuant to Health and  
26 Safety Code section 44072.2(d), in that from December 14, 2013 through March 7, 2014,  
27 regarding the vehicles set forth above in Table 1, he committed acts involving dishonesty, fraud  
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1 or deceit whereby another was injured by issuing electronic certificates of compliance without  
2 performing bona fide inspections of the emission control devices and systems on those vehicles,  
3 thereby depriving the People of the State of California of the protection afforded by the Motor  
4 Vehicle Inspection Program.

5 **OTHER MATTERS**

6 28. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on  
7 probation the registrations for all places of business operated in this state by Silvino Posadas,  
8 doing business as Baseline Smog, upon a finding that he has, or is, engaged in a course of  
9 repeated and willful violation of the laws and regulations pertaining to an automotive repair  
10 dealer.

11 29. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only  
12 Station License Number TC 274735, issued to Silvino Posadas, doing business as Baseline Smog,  
13 is revoked or suspended, any additional license issued under this chapter in the name of said  
14 licensee may be likewise revoked or suspended by the director.

15 30. Pursuant to Health and Safety Code section 44072.8, if Adam Andrew Gomez's  
16 inspector license, currently designated as EO 636080 is revoked or suspended, any additional  
17 license issued under this chapter in the name of said licensee may be likewise revoked or  
18 suspended by the Director.

19 **PRAYER**

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

22 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD  
23 274735, issued to Silvino Posadas, doing business as Baseline Smog;

24 2. Revoking or suspending any other automotive repair dealer registration issued  
25 to Silvino Posadas;

26 3. Revoking or suspending Smog Check Test Only Station License Number TC  
27 274735, issued to Silvino Posadas, doing business as baseline Smog;

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- 4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Silvino Posadas;
- 5. Revoking or suspending Adam Andrew Gomez's smog check inspector license EO 636080;
- 6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Adam Andrew Gomez;
- 7. Ordering Silvino Posadas and Adam Andrew Gomez to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 8. Taking such other and further action as deemed necessary and proper.

DATED: 7-22-14

*Patrick Dorais by Doug Balatti*  
PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*  
Doug BALATTI  
Assist. Chief

(rev.7/22/14)