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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:

**FIRST SMOG TEST ONLY; MARTHA  
GABRIELA FLORES  
565 South Greenwood Unit B  
Montebello, CA 90640  
Automotive Repair Dealer Registration No.  
ARD 270363  
Smog Check Test Only Station License No.  
TC270363,**

**and**

**JOSE LUIS FLORES  
1264 S. Augusta Avenue  
Los Angeles, CA 90023  
Smog Check Inspector License No. EO  
153777  
Smog Check Repair Technician License No.  
EI 153777**

Respondents.

Case No. 79/14-16

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 30, 2013, Complainant Patrick Dorais, in his official capacity as the Acting Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed

1 Accusation No. 79/14-16 against First Smog Test Only; Martha Gabriela Flores, Owner and Jose  
2 Luis Flores before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

3 2. On or about September 26, 2012, the Bureau of Automotive Repair (Bureau) issued  
4 Automotive Repair Dealer Registration No. ARD 270363 to First Smog Test Only; Martha  
5 Gabriela Flores, Owner (Respondent First Smog Test Only). The Automotive Repair Dealer  
6 Registration was in full force and effect at all times relevant to the charges brought in Accusation  
7 No. 79/14-16 and expired on September 30, 2013. However, this lapse in licensure, pursuant to  
8 Business and Professions Code section 118(b) does not deprive the Bureau of its authority to  
9 institute or continue this disciplinary proceeding.

10 3. On or about October 24, 2012, the Bureau of Automotive Repair issued Smog Check  
11 Test Only Station License No. TC270363 to Respondent First Smog Test Only. The Smog Check  
12 Test Only Station License was in full force and effect at all times relevant to the charges brought  
13 in Accusation No. 79/14-16 and will expire on September 30, 2014, unless renewed.

14 4. In or about 2006, the Director issued Advanced Emission Specialist Technician  
15 License Number EA 153777 to Jose Luis Fores. (Respondent Flores). Respondent Flores'  
16 Advanced Emission Specialist Technician License was due to expire on July 31, 2012. Pursuant  
17 to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was  
18 renewed, pursuant to Flores' election, as Smog Check Inspector License Number EO 153777 and  
19 Smog Check Repair Technician License Number EI 153777 (technician licenses), effective July  
20 31, 2012. Respondent's technician licenses will expire on July 31, 2014, unless renewed.<sup>1</sup>

21 5. On or about October 1, 2013, Respondent First Smog Test Only was served by  
22 Certified and First Class Mail copies of the Accusation No. 79/14-16, Statement to Respondent,  
23 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections  
24 11507.5, 11507.6, and 11507.7) at her address of record which, pursuant to Business and  
25 Professions Code section 136, is required to be reported and maintained with the Bureau.

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

1 Respondent's address of record was and is: 565 South Greenwood, Unit B, Montebello, CA  
2 90640.

3 6. On or about October 7, 2013, the aforementioned documents were returned by the  
4 U.S. Postal Service marked "No Forwarding Address."

5 7. On or about October 1, 2013, Respondent Flores was served by Certified and First  
6 Class Mail copies of the Accusation No. 79/14-16, Statement to Respondent, Notice of Defense,  
7 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
8 and 11507.7) at her address of record which, pursuant to Business and Professions Code section  
9 136, is required to be reported and maintained with the Bureau. Respondent's address of record  
10 was and is: 1264 S. Augusta Avenue, Los Angeles, CA 90023.

11 8. Service of the Accusations was effective as a matter of law under the provisions of  
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
13 124.

14 9. Government Code section 11506 states, in pertinent part:

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

20 10. Respondents failed to file a Notice of Defense within 15 days after service upon them  
21 of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No.  
22 79/14-16.

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

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

28 12. Pursuant to its authority under Government Code section 11520, the Director after  
having reviewed the proof of service dated October 1, 2013, signed by Lisa M. Robinson, and  
return envelopes finds Respondents are in default. The Director will take action without further  
hearing and, based on Accusation No. 79/14-16, the proof of service and on the Affidavit of

1 Bureau Representative Oliver James, finds that the allegations in Accusation No. 79/14-16 are  
2 true.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent First Smog Test Only has  
5 subjected her Automotive Repair Dealer Registration and Smog Check Test Only Station License  
6 to discipline.

7 2. Based on the foregoing findings of fact, Respondent Flores has subjected his Smog  
8 Check Inspector and Smog Check Repair Technician licenses to discipline.

9 3 The agency has jurisdiction to adjudicate this case by default.

10 4. The Director of Consumer Affairs is authorized to revoke Respondent First Smog  
11 Test Only's Automotive Repair Dealer Registration and Smog Check Test Only Station license as  
12 well as Respondent Flores' Smog Check Inspector and Smog Check Repair Technician licenses  
13 based upon the following violations alleged in the Accusation which are supported by the  
14 evidence contained in the affidavit of Bureau Representative Oliver James in this case:

15 Respondent First Smog Test Only

16 a. Business and Professions Code section 9884.7, subdivision (a)(1) (Misleading  
17 Statements.)

18 b. Business and Professions Code section 9884.7, subdivision (a)(4) (Fraud.)

19 c. Health and Safety Code section 44072.2, subdivision (a) (Violations of the Motor  
20 Vehicle Inspection Program.)

21 d. Health and Safety Code section 44072.2, subdivision (c) (Violations of Regulations  
22 Pursuant to the Motor Vehicle Inspection Program.)

23 e. Health and Safety Code section 44072.2, subdivision (d) (Dishonesty, Fraud or  
24 Deceit.)

25 Respondent Jose Luis Flores

26 a. Health and Safety Code section 44072.2, subdivision (a) (Violations of the Motor  
27 Vehicle Inspection Program.)



# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 THOMAS L. RINALDI  
Deputy Attorney General  
4 State Bar No. 206911  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
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6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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**  
**153777 (formerly Advanced Emission**  
21 **Specialist Technician License No.**  
**EA153777)**

22  
23 **Smog Check Repair Technician License No.**  
**EI 153777 (formerly Advanced Emission**  
24 **Specialist Technician License No.**  
**EA153777)**

25  
26 Respondents.

27 Complainant alleges:  
28

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.<sup>1</sup>

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  
by the automotive repair dealer or any automotive technician, employee, partner,  
officer, or member of the automotive repair dealer.

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

1 (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  
8 place on probation the registration for all places of business operated in this state by  
an automotive repair dealer upon a finding that the automotive repair dealer has, or is,  
9 engaged in a course of repeated and willful violations of this chapter, or regulations  
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  
28

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.  
27  
28

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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