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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. 79/16-86

13 **DAVID RENE SANCHEZ and EDER**
14 **PLASENCIA (aka EDER DE JESUS**
15 **PLASENCIA), PARTNERS, dba SMOG**
16 **TEST CENTER;**
17 **250 S. Towne Ave.**
18 **Pomona, CA 91766**

ACCUSATION

Smog check

19 **Automotive Repair Dealer Registration No.**
20 **ARD 276231**
21 **Smog Check, Test Only, Station License No.**
22 **TC 276231,**

23 and

24 **EDER DE JESUS PLASENCIA**
25 **1665 Burma Ct.**
26 **Pomona, CA 91766**

27 **Smog Check Inspector License No. EO**
28 **632822**

Smog Check Repair Technician License No.
EI 632822 (formerly Advanced Emission
Specialist Technician EA 632822)

Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about April 14, 2014, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 276231 to David Rene Sanchez and Eder Plasencia (aka
7 Eder de Jesus Plasencia), partners, dba Smog Test Center. The Automotive Repair Dealer
8 Registration was in full force and effect at all times relevant to the charges brought herein and
9 will expire on April 30, 2016, unless renewed.

10 3. On or about April 21, 2014, the Bureau of Automotive Repair issued Smog Check,
11 Test Only, Station License Number TC 276231 to David Rene Sanchez and Eder Plasencia (aka
12 Eder de Jesus Plasencia), partners, dba Smog Test Center (hereinafter, "Respondent Smog Test
13 Center"). The Smog Check, Test Only, Station License was in full force and effect at all times
14 relevant to the charges brought herein and will expire on April 30, 2016, unless renewed.

15 4. On January 31, 2011, the Bureau of Automotive Repair issued Advanced Emission
16 Specialist Technician License EA 632822 to Eder de Jesus Plasencia (hereinafter, "Respondent
17 Plasencia"). Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision
18 (e), upon Respondent's election, said license was renewed as Smog Check Inspector License EO
19 632822 and Smog Check Repair Technician License No. EI 632822, effective January 18, 2013.
20 The licenses were in full force and effect at all times relevant to the charges brought herein and
21 will expire on January 31, 2017, unless renewed.

22 **JURISDICTION**

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

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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.

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."

1 11. Section 9884.9, subdivision (a), of the BPC mandates that an “automotive repair
2 dealer shall give to the customer a written estimated price for labor and parts necessary for a
3 specific job.”

4 12. Section 9889.9 of the BPC states that “[w]hen any license has been revoked or
5 suspended following a hearing under the provisions of this article [Article 7 (commencing with
6 section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and
7 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the
8 director.”

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

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

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

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

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

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

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

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

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

1 17. Section 44072.8 of the HSC states that when a license has been revoked or suspended
2 following a hearing under this article, any additional license issued under this chapter in the name
3 of the licensee may be likewise revoked or suspended by the director.

4 **REGULATORY PROVISIONS**

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

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

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

15 20. CCR, title 16, section 3340.41, subdivision (c), states:

16 "No person shall enter into the emissions inspection system any vehicle identification
17 information or emission control system identification data for any vehicle other than the one being
18 tested. Nor shall any person knowingly enter into the emissions inspection system any false
19 information about the vehicle being tested."

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

22 22. CCR, title 16, section 3353, states, in pertinent part:

23 "No work for compensation shall be commenced and no charges shall accrue without
24 specific authorization from the customer in accordance with the following requirements:

25 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
26 estimated price for parts and labor for a specific job."

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1 **COST RECOVERY**

2 23. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board
3 "may request the administrative law judge to direct a licensee found to have committed a
4 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
5 investigation and enforcement of the case."

6 **SUMMARY OF LOW PRESSURE FUEL EVAPORATIVE TEST (LPFET)**

7 24. State law requires that smog inspections on vehicles of model year 1995 and older
8 include a Low Pressure Fuel Evaporative Test ("LPFET"). The test is designed to ensure that the
9 vehicle's fuel evaporative system is not leaking impermissible amounts of gas fumes into the
10 atmosphere. To perform a LPFET, the inspector must install an adapter and hose to the vehicle's
11 fuel fill pipe in order to pressurize the fuel compartment with nitrogen. The LPFET test
12 equipment then measures the pressurized fuel compartment to determine whether there are any
13 impermissible leaks. Once the LPFET is performed, the inspector manually enters the test results
14 into the Bureau's Emission Inspection System ("EIS"), also known as BAR 97. If a vehicle is
15 unable to pass the LPFET, it fails the functional portion of the smog inspection, causing an
16 overall failure of the smog inspection and preventing the issuance of a certificate compliance.

17 **UNDERCOVER VEHICLE #1**

18 25. On April 8, 2015, a Bureau program representative working in one of the Bureau's
19 Forensic Documentation Laboratories inspected and documented the condition of the emissions
20 control systems on a 1991 Jeep used by the Bureau for undercover operations. After documenting
21 that the emissions control systems were properly functioning such that the vehicle would pass a
22 California smog inspection, the program representative replaced the vehicle's fuel tank vent hose
23 with a defective hose that was unable to maintain proper fuel evaporative pressure. As a result of
24 this introduced defect, the vehicle was no longer able to pass the LPFET, meaning that it would
25 fail the functional portion of a smog inspection and be unable to obtain a certificate of
26 compliance.

27 26. On May 16, 2015, an undercover Bureau program representative took the
28 documented 1991 Jeep to Respondent Smog Test Center's station to obtain a smog inspection.

1 Respondent Plasencia agreed to perform the inspection and asked the undercover program
2 representative to sign a work order. The program representative signed the work order but was
3 not provided with a copy of it. The program representative witnessed Respondent Plasencia
4 perform the smog inspection and observed that at no time during the inspection did Respondent
5 Plasencia connect the LPFET test equipment to the vehicle. Nonetheless, Respondent Plasencia
6 manually entered passing test results for the LPFET into the BAR 97 and, ultimately, issued a
7 certificate of compliance for the vehicle. Thereafter, the Bureau program representative who
8 originally documented the 1991 Jeep re-inspected the vehicle and further confirmed that
9 Respondents had issued the certificate of compliance in violation of state law.

10 UNDERCOVER VEHICLE #2

11 27. On June 25, 2015, a Bureau program representative working in one of the Bureau's
12 Forensic Documentation Laboratories inspected and documented the condition of the emissions
13 control systems on a 1990 Toyota used by the Bureau for undercover operations. After
14 documenting that the emissions control systems were properly functioning such that the vehicle
15 would pass a California smog inspection, the program representative replaced the vehicle's fuel
16 tank vent hose with a defective hose that was unable to maintain proper fuel evaporative pressure.
17 As a result of this introduced defect, the vehicle was no longer able to pass the LPFET, meaning
18 that it would fail the functional portion of a smog inspection and be unable to obtain a certificate
19 of compliance.

20 28. On June 30, 2015, an undercover Bureau program representative took the
21 documented 1990 Toyota to Respondent Smog Test Center's station to obtain a smog inspection.
22 Respondent Plasencia agreed to perform the inspection and asked the undercover program
23 representative to sign a work order. The program representative signed the work order but was
24 not provided with a copy of it. During the inspection, the program representative observed that
25 when the LPFET test equipment was connected to the vehicle it "beeped" and a red light was
26 illuminated on the control panel. The program representative then witnessed Respondent
27 Plasencia disconnect the LPFET hose from the vehicle and connect it to a "test port" on the
28 LPFET itself. The program representative then observed another "beep" and saw that now a

1 green light was illuminated on LPFET control panel. Respondent Plasencia manually entered
2 passing test results for the LPFET into the BAR 97 and, ultimately, issued a certificate of
3 compliance for the vehicle. Thereafter, the Bureau program representative who originally
4 documented the 1990 Toyota re-inspected the vehicle and further confirmed that Respondents had
5 issued the certificate of compliance in violation of state law.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Misleading Statements)**

8 29. The Automotive Repair Dealer Registration of Respondent Smog Test Center is
9 subject to discipline under BPC section 9884.7, subdivision (a)(1), in that Respondent made
10 statements that were known, or which by exercise of reasonable care should have been known, to
11 be untrue or misleading in that Respondent issued electronic certificates of compliance for the
12 Bureau's 1991 Jeep and 1990 Toyota, certifying that those vehicles were in compliance with
13 applicable laws and regulations when, in fact, those vehicles had not been so inspected.
14 Complainant refers to, and by this reference incorporates, the allegations set forth above in
15 paragraphs 24 through 28, inclusive, as though fully set forth herein.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 30. The Automotive Repair Dealer Registration of Respondent Smog Test Center is
19 subject to discipline under BPC section 9884.7, subdivision (a)(4), in that Respondent committed
20 acts which constitute fraud by issuing electronic certificates of compliance for the Bureau's 1991
21 Jeep and 1990 Toyota, without performing bona fide inspections of the emission control devices
22 and systems on those vehicles, thereby depriving the People of the State of California of the
23 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
24 reference incorporates, the allegations set forth above in paragraphs 24 through 28, inclusive, as
25 though fully set forth herein.

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1 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
2 compliance even though those vehicles had not been inspected in accordance with section
3 3340.42 of the HSC.

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

6 **SIXTH CAUSE FOR DISCIPLINE**

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

8 34. The station license of Respondent Smog Test Center is subject discipline under HSC
9 section 44072.2, subdivision (d), in that, with respect to the Bureau's 1991 Jeep and 1990 Toyota,
10 Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by
11 issuing electronic certificates of compliance for those vehicles without performing bona fide
12 inspections of the emission control devices and systems on those vehicles, thereby depriving the
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program. Complainant refers to, and by this reference incorporates, the allegations set forth
15 above in paragraphs 24 through 28, inclusive, as though fully set forth herein.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(Failure to Give Customer Copy of Signed Document)**

18 35. The Automotive Repair Dealer Registration license of Respondent Smog Test
19 Center is subject discipline pursuant to Code section 9884.7, subdivision (a)(3), in that
20 Respondent failed to give to a customer a copy of a document requiring the customer's signature
21 as soon as the customer signed the document. Complainant refers to, and by this reference
22 incorporates, the allegations contained in paragraphs 26 and 28, inclusive, as though set forth fully
23 herein.

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 **(Violation of Automotive Repair Act Provisions and Regulations)**

26 36. Res The Automotive Repair Dealer Registration license of Respondent Smog Test
27 Center is subject discipline pursuant to Code section 9884.7, subdivision (a)(6), in that
28 Respondent failed to comply with the requirement of Code section 9884.9, subdivision (a), and

1 California Code of Regulations, title 16, section 3353, subdivisions (a) and (c). Complainant
2 refers to, and by this reference incorporates, the allegations contained in paragraphs 25 and 27,
3 inclusive, as though set forth fully herein.

4 **NINTH CAUSE FOR DISCIPLINE**

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

6 37. Respondent Plasencia has subjected his smog check inspector and smog check repair
7 technician licenses to discipline under HSC section 44072.2, subdivision (a), in that he violated
8 the following sections of the HSC with respect to his inspections of the Bureau's 1991 Jeep and
9 1990 Toyota:

10 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
11 performed on those vehicles in accordance with procedures prescribed by the department.

12 b. **Section 44032:** Respondent failed to perform tests of the emission control devices
13 and systems on those vehicles in accordance with section 44012 of the HSC, in that LPFET tests
14 on the vehicles were not properly performed.

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

18 **TENTH CAUSE FOR DISCIPLINE**

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

20 38. Respondent Plasencia has subjected his smog check inspector and smog check repair
21 technician licenses to discipline under HSC section 44072.2, subdivision (c), in that he violated
22 the following sections of the CCR, title 16, with respect to his inspections of the Bureau's 1991
23 Jeep and 1990 Toyota:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely and/or fraudulently issued
25 certificates of compliance;

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

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1 c. Section 3340.41, subdivision (c): Respondent entered false information into the EIS
2 about the vehicles being tested.

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

5 **ELEVENTH CAUSE FOR DISCIPLINE**

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

7 39. Respondent Plasencia has subjected his smog check inspector and smog check
8 repair technician licenses to discipline under HSC section 44072.2, subdivision (d), in that he
9 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
10 electronic certificates of compliance for the Bureau's 1991 Jeep and 1990 Toyota without
11 performing bona fide inspections of the emission control devices and systems on those vehicles,
12 thereby depriving the People of the State of California of the protection afforded by the Motor
13 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
14 allegations set forth above in paragraphs 24 through 28, inclusive, as though fully set forth herein.

15 **PRAAYER**

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

18 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
19 276231, issued to David Rene Sanchez and Eder Plasencia (aka Eder de Jesus Plasencia),
20 partners, dba Smog Test Center;

21 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
22 276231, issued to David Rene Sanchez and Eder Plasencia (aka Eder de Jesus Plasencia),
23 partners, dba Smog Test Center;

24 3. Revoking or suspending Smog Check Inspector License Number EO 632822, issued
25 to Eder de Jesus Plasencia

26 4. Revoking or suspending Smog Check Repair Technician License Number EI 632822,
27 issued to Eder de Jesus Plasencia;

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1 5. Ordering David Rene Sanchez and Eder De Jesus Plasencia to pay the Bureau of
2 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

4 6. Taking such other and further action as deemed necessary and proper.

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6 DATED: 3-11-16

Patrick Dora
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Doug Blah
Complainant

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