

1 XAVIER BECERRA
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KEVIN W. BELL
Deputy Attorney General
4 State Bar No. 192063
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 2105711
Facsimile: (916) 327-8643
7 E-mail: Kevin.Bell@doj.ca.gov
Attorneys for Complainant
8

9
10 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:
14

Case No. 79/16-6197

15 **G & H AUTO REPAIR**
LEONEL HERRERA, PARTNER
GILBERTO HERRERA, PARTNER
16 510 E. Visalia Road
Farmersville, CA 93223-1834
17 **Automotive Repair Dealer Registration**
No. ARD 179202
18 **Smog Check Station License No. RC 179202**

A C C U S A T I O N

19 **LEONEL HERRERA**
29108 Rd. 166
20 Visalia, CA 93292
Smog Check Inspector (EO)
21 License No. 42630
Smog Check Repair Technician (EI)
22 License No. 42630

23 Respondents.
24

25 Patrick Dorais ("Complainant") alleges:

26 **PARTIES**

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

1 **Automotive Repair Dealer Registration/Smog Check Station License**

2 2. On or about January 1, 1994, the Bureau issued Automotive Repair Dealer
3 Registration Number ARD 179202 to G & H Auto Repair ("Respondent G & H"), with Leonel
4 Herrera and Gilberto Herrera, as partners. The Automotive Repair Dealer Registration was in full
5 force and effect at all times relevant to the charges brought herein and will expire on July 31,
6 2018, unless renewed.

7 3. On or about July 13, 1994, the Bureau issued Smog Check Station License Number
8 RC 179202 to Respondent G & H. The Smog Check Station License was in full force and effect
9 at all times relevant to the charges brought herein and will expire on July 31, 2018, unless
10 renewed.

11 **Smog Check Technician Licenses**

12 4. On a date unknown in 2002 the Bureau issued Advanced Emission Specialist (EA)
13 Technician License No. 42630 to Leonel Herrera ("Respondent Leonel Herrera"). The license
14 was due to expire on September 30, 2012; however, it was cancelled on August 15, 2012.
15 Pursuant to California Code of Regulations, title 16 ("CCR"), section 3340.28(e), Respondent
16 Leonel Herrera elected to renew the license as Smog Check Inspector (EO) License No. 42630,
17 and Smog Check Repair Technician (EI) License No. 42630, effective August 15, 2012.¹ The
18 Smog Check Inspector (EO) License and Smog Check Repair Technician (EI) Licenses were in
19 full force and effect at all times relevant to the charges brought herein and will expire on
20 September 30, 2018, unless renewed.

21 **JURISDICTION**

22 5. This Accusation is brought before the Director of the Department of Consumer
23 Affairs ("Director") for the Bureau under the authority of the following laws and regulations:

24 6. Business and Professions Code ("Code") section 9884.7 provides that the Director
25 may revoke an automotive repair dealer registration.

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

1 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
2 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
3 proceeding against an automotive repair dealer or to render a decision invalidating a registration
4 temporarily or permanently.

5 8. Code section 118(b), states:

6 The suspension, expiration, or forfeiture by operation of law of a license issued
7 by a board in the department, or its suspension, forfeiture, or cancellation by order of
8 the board, shall not, during any period in which it may be renewed, restored, reissued,
9 or reinstated, deprive the board of its authority to institute or continue a disciplinary
10 proceeding against the licensee upon any ground provided by law or to enter an order
11 suspending or revoking the license or otherwise taking disciplinary action against the
12 licensee on any such ground.

13 9. Health and Safety Code section 44002 states:

14 The department shall have the sole and exclusive authority within the state
15 for developing and implementing the motor vehicle inspection program in accordance
16 with this chapter.

17 For the purposes of administration and enforcement of this chapter, the
18 department, and the director and officers and employees thereof, shall have all the
19 powers and authority granted under Division 1 (commencing with Section 1) and
20 Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with
21 Section 9880) of Division 3 of the Business and Professions Code and under Chapter
22 33 (commencing with Section 3300) of Title 16 of the California Code of
23 Regulations. Inspections and repairs performed pursuant to this chapter, in addition
24 to meeting the specific requirements imposed by this chapter, shall also comply with
25 all requirements imposed pursuant to Division 1 (commencing with Section 1) and
26 Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with
27 Section 9880) of Division 3 of the Business and Professions Code and Chapter 33
28 (commencing with Section 3300) of Title 16 of the California Code of Regulations.

1 10. Health and Safety Code section 44072.6 states:

2 The expiration or suspension of a license by operation of law or by order or
3 decision of the director or a court of law, or the voluntary surrender of a license by a
4 licensee shall not deprive the director of jurisdiction to proceed with any investigation
5 of, or action or disciplinary proceedings against, the licensee, or to render a decision
6 suspending or revoking the license.

7 STATUTORY AND REGULATORY PROVISIONS

8 11. Code section 9884.7 states, in pertinent part:

9 (a) The director, where the automotive repair dealer cannot show there was a
10 bona fide error, may deny, suspend, revoke, or place on probation the registration of
11 an automotive repair dealer for any of the following acts or omissions related to the

1 conduct of the business of the automotive repair dealer, which are done by the
2 automotive repair dealer or any automotive technician, employee, partner, officer, or
3 member of the automotive repair dealer.

4 (1) Making or authorizing in any manner or by any means whatever any
5 statement written or oral which is untrue or misleading, and which is known, or which
6 by the exercise of reasonable care should be known, to be untrue or misleading.

7 (4) Any other conduct that constitutes fraud.

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

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

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

21 12. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
22 "commission," "committee," "department," "division," "examining committee," "program," and
23 "agency." "License" includes certificate, registration or other means to engage in a business or
24 profession regulated by the Code.

25 13. Health & Safety Code section 44072.2 states, in pertinent part:

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

(a) Violates any section of this chapter [the Motor Vehicle Inspection
Program (Health and Safety 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.

14. Health & Safety Code section 44072.8 states:

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.

1 15. Health & Safety Code section 44072.10(c) states, in pertinent part:

2 The department shall revoke the license of any smog check technician or
3 station licensee who fraudulently certifies vehicles or participates in the fraudulent
4 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
the following:

5 (4) Intentional or willful violation of this chapter or any regulation, standard, or
6 procedure of the department implementing this chapter . . .

7 16. Health & Safety Code section 44024.5(a), states:

8 The department shall compile and maintain statistical and emissions profiles
9 and data from motor vehicles that are subject to the motor vehicle inspection
10 program. The department may use data from any source, including remote sensing
11 data, in use data, and other motor vehicle inspection program data, to develop and
confirm the validity of the profiles, to evaluate the program, and to assess the
performance of smog check stations. The department shall undertake these
requirements directly or seek a qualified vendor for these services.

12 17. Health & Safety Code section 44037 states, in pertinent part:

13 (a) The department shall compile and maintain records, using the sampling
14 methodology necessary to ensure their scientific validity and reliability, of tests and
repairs performed by qualified smog check technicians at licensed smog check
stations pursuant to this chapter on all of the following information:

15 (1) The motor vehicle identification information and the test data collected at
16 the station.

17 (5) Data received and compiled through the use of the centralized computer
18 database and computer network to be established pursuant to Section 44037.1, and
any other information determined to be essential by the department for program
enhancement to achieve greater efficiency, consumer protection, cost-effectiveness,
19 convenience, or emission reductions . . .

20 18. Health & Safety Code section 44037.1 states, in pertinent part:

21 (a) On or before January 1, 1995, the department shall design and establish the
22 equipment necessary to operate a centralized computer data base and computer
network that is readily accessible by all licensed smog check technicians on a real
time basis.

23 (b) The centralized computer data base and network shall be designed with all
24 of the following capabilities:

25 (2) To provide smog check technicians and the department with information as
26 to the date and result of prior smog check tests performed on each vehicle to
discourage vehicle owners from shopping for certificates of compliance and to permit
27 the department to identify smog check stations for further investigation as potential
violators of this chapter.

28 (3) To provide the department with data on the failure rates and repair

effectiveness for vehicles of each make and model year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

(8) To be compatible with the department's recordkeeping and compilation requirements established by Section 44037.

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair . . .

19. CCR section 3340.17 states in pertinent part:

(c) Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted to the bureau's centralized database . . .

20. CCR section 3340.24, states in pertinent part:

....
(c) 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.
....

21. CCR section 3340.30 states in pertinent part:

A smog check technician shall comply with the following requirements at all times while licensed.

(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

....
(c) A licensed technician shall notify the bureau in writing within two weeks of any change of employment.

22. CCR section 3340.42, states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide,

1 carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's
2 specifications referenced in subsection (a) of Section 3340.17 of this article. The
loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment,
including a chassis dynamometer, certified by the bureau.

3 On and after March 31, 2010, exhaust emissions from a vehicle subject to this
4 inspection shall be measured and compared to the emissions standards shown in the
Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table,
5 dated March 2010, which is hereby incorporated by reference. If the emissions
standards for a specific vehicle are not included in this table then the exhaust
6 emissions shall be compared to the emissions standards set forth in TABLE I or
TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured
7 emissions are less than or equal to the applicable emission standards specified in the
applicable table.

8 (2) A two-speed idle mode test shall be the test method used to inspect 1976 -
1999 model-year vehicles, except diesel-powered, registered in all program areas of
9 the state, except in those areas of the state where the enhanced program has been
implemented. The two-speed idle mode test shall measure hydrocarbon, carbon
10 monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as
contained in the bureau's specifications referenced in subsection (a) of Section
11 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
shall be measured and compared to the emission standards set forth in this section and
12 as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its
measured emissions are less than or equal to the applicable emissions standards
13 specified in Table III.

14 (3) An OBD-focused test, shall be the test method used to inspect gasoline-
powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998
15 model-year and newer. The OBD test failure criteria are specified in section
3340.42.2.

16 (b) In addition to subsection (a), all vehicles subject to the smog check program
17 shall receive the following:

18 (1) A visual inspection of emission control components and systems to verify
the vehicle's emission control systems are properly installed.

19 (2) A functional inspection of emission control systems as specified in the
20 Smog Check Manual, referenced by section 3340.45, which may include an OBD
test, to verify their proper operation.

21 (c) The bureau may require any combination of the inspection methods in
22 sections (a) and (b) under any of the following circumstances:

23 (1) Vehicles that the department randomly selects pursuant to Health and Safety
Code section 44014.7 as a means of identifying potential operational problems with
24 vehicle OBD systems.

25 (2) Vehicles identified by the bureau as being operationally or physically
incompatible with inspection equipment.

26 (3) Vehicles with OBD systems that have demonstrated operational problems.

27 (d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter
standards are as follows:
28

1 (1) A gross polluter means a vehicle with excess hydrocarbon, carbon
monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions
standards included in the tables described in subsection (a), as applicable.

2
3 (2) Vehicles with emission levels exceeding the emission standards for gross
polluters during an initial inspection will be considered gross polluters and the
provisions pertaining to gross polluting vehicles will apply, including, but not limited
to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

5 (3) A gross polluting vehicle shall not be passed or issued a certificate of
compliance until the vehicle's emissions are reduced to or below the applicable
emissions standards for the vehicle included in the tables described in subsection (a),
as applicable. However, the provisions described in section 44017 of the Health and
Safety Code may apply.

8 (4) This subsection applies in all program areas statewide to vehicles requiring
inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

10 **COST RECOVERY**

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

15 **UPDATED SMOG CHECK PROGRAM - ON BOARD DIAGNOSTIC SYSTEM**

16 24. On March 9, 2015, California's Smog Check Program was updated to keep pace with
17 ever-advancing technology. The statewide regulatory change requires the use of an On-Board
18 Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in
19 all areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid
20 vehicles and most 1998 and newer diesel vehicles instead of the BAR-97 emission inspection
21 system (EIS) used for most model year 1999 and older gasoline and hybrid vehicles and 1997 and
22 older diesel vehicles. The BAR-OIS system consists of a certified Data Acquisition Device
23 (DAD), computer, bar code scanner, and printer.

24 25. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the
25 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between
26 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used
27 to input technician information, the vehicle identification number, and DMV renewal
28 information. The vehicle identification number (VIN) that is physically present on all vehicles is

1 required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on
2 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in
3 earlier model-years. The electronically programmed VIN, referred to as the “eVIN”, is captured
4 by the Bureau during a smog check inspection and should match the physical VIN on the vehicle.
5 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection
6 results and the Smog Check Certificate of Compliance Number for passing vehicles. Data
7 retrieved and recorded during an OIS smog check includes the eVIN, the communication
8 protocol,² and the number of Parameter Identifications (PID's)³.

9 26. As with the BAR-97 EIS, the technician also performs a visual and functional test on
10 the vehicle. The visual inspection of the emission control components verifies the required
11 emission control devices are present and properly connected and a functional test is performed of
12 the malfunction indicator light. The OIS software makes the determination whether or not the
13 vehicle passes the inspection based on the results of the OBD, visual, and functional tests.

16 **BACKGROUND FACTS**

17 **Improper Certification**

18 27. Bureau Representative “D.B.” reviewed emission tests performed by Respondent
19 Leonel Herrera using the Bureau's Vehicle Information Database. D.B. found that Respondent
20 Leonel Herrera performed a BAR-97 EIS test on Vehicles 1 and 2, as set forth in paragraphs 25
21 and 26 below, when a BAR-OIS was required.

22 **Vehicle #1**

23 ² The OBD II communication protocol describes the specific manufacturer/vehicle
24 communication “language” used by the OBD II computer to communicate to scan tools and other
25 devices such as the BAR-OIS. The communication protocol is programmed into the OBD II
computer during manufacture and does not change.

26 ³ PID's are data points reported by the OBD II computer to the scan tool or BAR-OIS (for
27 example, engine speed (rpm), vehicle speed, engine temperature, etc.) The PID count is the
28 number of data points reported by the OBD II computer and is programmed during manufacture.
Each make and model vehicle reports a specific number of PID counts; i.e., the PID count does
not vary for that make and model vehicle.

1 28. On or about January 8, 2016, Respondent Leonel Herrera performed a smog
2 inspection on a 1999 Dodge Ram 2500 Diesel ("Vehicle 1") using BAR97 EIS, resulting in the
3 issuance of Certificate of Compliance [REDACTED].

4 **Vehicle #2**

5 29. On or about January 13, 2016, Respondent Leonel Herrera performed a smog
6 inspection on a 1999 Ford F350 Diesel ("Vehicle 2") using BAR97 EIS, resulting in the issuance
7 of Certificate of Compliance [REDACTED].

8 **Clean Plugging**

9 30. D.B. reviewed BAR-OIS test data pertaining to smog inspections conducted at
10 Respondent G & H's facility by Respondent Leonel Herrera and found that Respondent Leonel
11 Herrera performed smog inspections on thirteen vehicles using a method known as "clean
12 plugging",⁴ resulting in the issuance of fraudulent certificates of compliance for the vehicles.
13 Those vehicles are identified in paragraphs 28 through 51, below.

14 **Vehicle #1**

15 31. BAR-OIS test data showed that on May 18, 2016, at 12:34 hours, Respondent Leonel
16 Herrera performed a smog inspection on a 2002 GMC Sierra C1500 (Vehicle 1), resulting in the
17 issuance of Certificate of Compliance [REDACTED]. The BAR-OIS test details for Vehicle 1
18 showed that the eVIN recorded during the inspection did not match the VIN for Vehicle 1. D.B.
19 reviewed the Comparative OIS Test Data for 2002 GMC Sierra C1500 vehicles and found that the
20 communication protocol and PID count recorded during the smog inspection on Vehicle 1 were
21 not consistent with the communication protocol and PID count for that make and model. D.B.
22 concluded that the DAD was not connected to Vehicle 1.

23 32. The Bureau's VID data showed that on June 12, 2015, a Certificate of Compliance
24 was issued by Respondent G & H's facility for a 2005 Ford F250 Super Duty. The eVIN
25 transmitted to the VID was the same eVIN that was recorded during the smog inspection on
26

27 ⁴ Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another
28 source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog
certificate of compliance to another vehicle that is not in compliance with the Smog Check
Program and/or is not present for testing.

1 Vehicle 1. Further, the communication protocol and PID count recorded during the inspection on
2 the 2005 Ford F250 Super Duty were consistent with the communication protocol and PID count
3 recorded during the inspection on Vehicle 1. D.B. concluded that Respondent Leonel Herrera
4 used the 2005 Ford F250 Super Duty's properly functioning OBD II system during the smog
5 inspection on Vehicle 1, resulting in the issuance of a fraudulent smog certificate of compliance
6 for that vehicle.

7 33. The Bureau's VID data showed that on May 18, 2016, at 09:19 hours, Respondent
8 G & H tested Vehicle 1, which did not pass a smog inspection. The communication protocol and
9 PID count recorded during that inspection were consistent with the expected communication
10 protocol and PID count for 2002 GMC Sierra C1500 vehicles.

11 **Vehicle #2**

12 34. BAR-OIS test data showed that on May 27, 2016, Respondent Leonel Herrera
13 performed a smog inspection on a 2006 Pontiac Grand Prix (Vehicle 2), resulting in the issuance
14 of Certificate of Compliance [REDACTED]. The BAR-OIS test details for Vehicle 2 showed
15 that the eVIN recorded during the inspection did not match the VIN for Vehicle 2. D.B. reviewed
16 the Comparative OIS Test Data for 2006 Pontiac Grand Prix vehicles and found that the PID
17 count recorded during the smog inspection on Vehicle 2 was not consistent with the PID count for
18 that make and model. D.B. concluded that the DAD was not connected to Vehicle 2.

19 35. The Bureau's VID data showed that on May 27, 2016, a Certificate of Compliance
20 was issued by Respondent's facility for a 2001 Chevrolet S10. The eVIN transmitted to the VID
21 was the same eVIN that was recorded during the smog inspection on Vehicle 2. Further, the
22 communication protocol and PID count recorded during the inspection on the 2001 Chevrolet S10
23 was consistent with the communication protocol and PID count recorded during the inspection on
24 Vehicle 2. D.B. concluded that Respondent Leonel Herrera used the 2001 Chevrolet S10's
25 properly functioning OBD II system during the smog inspection on Vehicle 2, resulting in the
26 issuance of a fraudulent smog certificate of compliance for that vehicle.

27 //

28 **Vehicle #3**

1 36. BAR-OIS test data showed that on May 30, 2016, Respondent Leonel Herrera
2 performed a smog inspection on a 2004 Honda Civic DX VP (Vehicle 3), resulting in the issuance
3 of Certificate of Compliance [REDACTED]. The BAR-OIS test details for Vehicle 3 showed
4 that the eVIN recorded during the inspection did not match the VIN for Vehicle 3. D.B. reviewed
5 the Comparative OIS Test Data for 2004 Honda Civic DX VP vehicles and found that the PID
6 count recorded during the smog inspection on Vehicle 3 was not consistent with the PID count for
7 that make and model. D.B. concluded that the DAD was not connected to Vehicle 3.

8 37. The Bureau's VID data showed that on May 30, 2016, a Certificate of Compliance
9 was issued by Respondent's facility for a 2006 Honda Accord LX. The eVIN transmitted to the
10 VID was the same eVIN that was recorded during the smog inspection on Vehicle 3. Further, the
11 communication protocol and PID count recorded during the inspection on the 2006 Honda
12 Accord LX was consistent with the communication protocol and PID count recorded during the
13 inspection on Vehicle 3. D.B. concluded that Respondent Leonel Herrera used the 2006 Honda
14 Accord LX's properly functioning OBD II system during the smog inspection on Vehicle 3,
15 resulting in the issuance of a fraudulent smog certificate of compliance for that vehicle.

16 **Vehicle #4**

17 38. BAR-OIS test data showed that on June 2, 2016, Respondent Leonel Herrera
18 performed a smog inspection on a 2000 Chevrolet Venture (Vehicle 4), resulting in the issuance
19 of Certificate of Compliance [REDACTED]. D.B. reviewed the Comparative OIS Test Data
20 for 2000 Chevrolet Venture vehicles and found that the PID count recorded during the smog
21 inspection on Vehicle 4 was not consistent with the PID count for that make and model. D.B.
22 concluded that the DAD was not connected to Vehicle 4 during the smog inspection.

23 39. The Bureau's VID data showed that on July 2, 2015, a Certificate of Compliance was
24 issued by Respondent G & H's facility for a 2005 Chevrolet Impala L.S. Further, the
25 communication protocol and PID count recorded during the inspection on the 2005 Chevrolet
26 Impala L.S. was consistent with the communication protocol and PID count recorded during the
27 inspection on Vehicle 4. D.B. concluded that Respondent Leonel Herrera used the 2005
28

1 Chevrolet Impala L.S.'s properly functioning OBD II system during the smog inspection on
2 Vehicle 4, resulting in the issuance of a fraudulent smog certificate of compliance for that vehicle.

3 **Vehicle #5**

4 40. BAR-OIS test data showed that on June 8, 2016, Respondent Leonel Herrera
5 performed a smog inspection on a 2002 Honda Accord EX/SE (Vehicle 5), resulting in the
6 issuance of Certificate of Compliance [REDACTED]. D.B. reviewed the Comparative OIS Test
7 Data for 2002 Honda Accord EX/SE vehicles and found that the communication protocol and
8 PID count recorded during the smog inspection on Vehicle 5 were not consistent with the
9 communication protocol and PID count for that make and model. D.B. concluded that the DAD
10 was not connected to Vehicle 5 during the smog inspection, resulting in the issuance of a
11 fraudulent smog certificate of compliance for that vehicle.

12 41. The Bureau's VID data showed that on March 20, 2015, Vehicle 5 was tested and
13 certified at another licensed Smog Check station. The communication protocol and PID count
14 recorded during that inspection were consistent with the expected communication protocol and
15 PID count for 2002 Honda Accord Ex/SE vehicles.

16 **Vehicle #6**

17 42. BAR-OIS test data showed that on June 17, 2016, Respondent Leonel Herrera
18 performed a smog inspection on a 2004 Hyundai Elantra GLS/GT (Vehicle 6), resulting in the
19 issuance of Certificate of Compliance [REDACTED]. The BAR-OIS test details for Vehicle 6
20 showed that the eVIN recorded during the inspection did not match the VIN for Vehicle 6. D.B.
21 reviewed the Comparative OIS Test Data for 2004 Hyundai Elantra GLS/GT vehicles and found
22 that the communication protocol recorded during the smog inspection on Vehicle 6 was not
23 consistent with the communication protocol for that make and model. D.B. concluded that the
24 DAD was not connected to Vehicle 6.

25 43. The Bureau's VID data showed that on June 16, 2016, a Certificate of Compliance
26 was issued by Respondent's facility for a 2005 Toyota Scion XB. The eVIN transmitted to the
27 VID was the same eVIN that was recorded during the smog inspection on Vehicle 6. Further, the
28 communication protocol and PID count recorded during the inspection on the 2005 Toyota Scion

1 XB were consistent with the communication protocol and PID count recorded during the
2 inspection on Vehicle 6. D.B. concluded that Respondent Leonel Herrera used the 2005 Toyota
3 Scion XB's properly functioning OBD II system during the smog inspection on Vehicle 6,
4 resulting in the issuance of a fraudulent smog certificate of compliance for that vehicle.

5 **Vehicle #7**

6 44. BAR-OIS test data showed that on June 22, 2016, Respondent Leonel Herrera
7 performed a smog inspection on a 2008 Ford Crown Vic Police Intcptr (Vehicle 7), resulting in
8 the issuance of Certificate of Compliance [REDACTED]. The BAR-OIS test details for
9 Vehicle 7 showed that the eVIN was not recorded for Vehicle 7. D.B. reviewed the Comparative
10 OIS Test Data for 2008 Ford Crown Vic Police Intcptr vehicles and found that the majority
11 transmitted the eVIN during the inspection and that the communication protocol and PID count
12 recorded during the smog inspection on Vehicle 7 were not consistent with the communication
13 protocol and PID count for that make and model. D.B. concluded that the DAD was not
14 connected to Vehicle 7 during the smog inspection, resulting in the issuance of a fraudulent smog
15 certificate of compliance for that vehicle.

16 **Vehicle #8**

17 45. BAR-OIS test data showed that on June 22, 2016, Respondent Leonel Herrera
18 performed a smog inspection on a 2000 Nissan Sentra XE/GXE (Vehicle 8), resulting in the
19 issuance of Certificate of Compliance [REDACTED]. D.B. reviewed the Comparative OIS Test
20 Data for 2000 Nissan Sentra XE/GXE vehicles and found that the communication protocol and
21 PID count recorded during the smog inspection on Vehicle 8 were not consistent with the
22 communication protocol and PID count for that make and model. D.B. concluded that the DAD
23 was not connected to Vehicle 8 during the smog inspection, resulting in the issuance of a
24 fraudulent smog certificate of compliance for that vehicle.

25 **Vehicle #9**

26 46. BAR-OIS test data showed that on June 25, 2016, Respondent Leonel Herrera
27 performed a smog inspection on a 2004 Mercedes-Benz C230K (Vehicle 9), resulting in the
28 issuance of Certificate of Compliance [REDACTED]. D.B. reviewed the Comparative OIS Test

1 Data for 2004 Mercedes-Benz C230K vehicles and found that the communication protocol and
2 PID count recorded during the smog inspection on Vehicle 9 were not consistent with the
3 communication protocol and PID count for that make and model. D.B. concluded that the DAD
4 was not connected to Vehicle 9 during the smog inspection, resulting in the issuance of a
5 fraudulent smog certificate of compliance for that vehicle.

6 47. The Bureau's VID data showed that on August 7, 2014, Vehicle 9 was tested and
7 certified at another licensed Smog Check station. The communication protocol and PID count
8 recorded during that inspection were consistent with the expected communication protocol and
9 PID count for 2004 Mercedes-Benz C230K vehicles.

10 **Vehicle #10**

11 48. BAR-OIS test data showed that on June 29, 2016, Respondent Leonel Herrera
12 performed a smog inspection on a 2006 Nissan Frontier SE/LE/OFF (Vehicle 10), resulting in the
13 issuance of Certificate of Compliance [REDACTED]. The BAR-OIS test details for Vehicle 10
14 showed that the eVIN was not recorded for Vehicle 10. D.B. reviewed the Comparative OIS Test
15 Data for 2006 Nissan Frontier SE/LE/OFF vehicles and found that the majority transmitted the
16 eVIN during the inspection and that the PID count recorded during the smog inspection on
17 Vehicle 10 was not consistent with the PID count for that make and model. D.B. concluded that
18 the DAD was not connected to Vehicle 10 during the smog inspection, resulting in the issuance of
19 a fraudulent smog certificate of compliance.

20 **Vehicle #11**

21 49. BAR-OIS test data showed that on June 29, 2016, Respondent Leonel Herrera
22 performed a smog inspection on a 2000 Toyota Corolla VE/CE/LE (Vehicle 11), resulting in the
23 issuance of Certificate of Compliance [REDACTED]. D.B. reviewed the Comparative OIS
24 Test Data for 2000 Toyota Corolla VE/CE/LE vehicles and found that the communication
25 protocol and PID count recorded during the smog inspection on Vehicle 11 were not consistent
26 with the communication protocol and PID count for that make and model. D.B. concluded that
27 the DAD was not connected to Vehicle 11 during the smog inspection.

28 //

1 50. The Bureau's VID data showed that on February 22, 2016, a Certificate of
2 Compliance was issued by Respondent's facility for a 2004 GMC Sierra C1500. The eVIN
3 transmitted to the VID was the same eVIN that was recorded during the smog inspection on
4 Vehicle 11. Further, the communication protocol and PID count recorded during the inspection
5 on the 2004 GMC Sierra C1500 were consistent with the communication protocol and PID count
6 recorded during the inspection on Vehicle 11. D.B. concluded that Respondent Leonel Herrera
7 used the 2004 GMC Sierra C1500's properly functioning OBD II system during the smog
8 inspection on Vehicle 11, resulting in the issuance of a fraudulent smog certificate of compliance
9 for that vehicle.

10 51. The Bureau's VID data showed that on June 24, 2016, Respondent G & H tested
11 Vehicle 11, which did not pass a smog inspection. The communication protocol and PID count
12 recorded during that inspection were consistent with the expected communication protocol and
13 PID count for 2000 Toyota Corolla VE/CE/LE vehicles.

14 **Vehicle #12**

15 52. BAR-OIS test data showed that on July 5, 2016, Respondent Leonel Herrera
16 performed a smog inspection on a 2000 Ford Expedition XLT (Vehicle 12), resulting in the
17 issuance of Certificate of Compliance [REDACTED]. The BAR-OIS test details for Vehicle 12
18 showed that the eVIN was not recorded for Vehicle 12. D.B. reviewed the Comparative OIS Test
19 Data for 2000 Ford Expedition XLT vehicles and found that the majority transmitted the eVIN
20 during the inspection and that the communication protocol and PID count recorded during the
21 smog inspection on Vehicle 12 were not consistent with the communication protocol and PID
22 count for that make and model. D.B. concluded that the DAD was not connected to Vehicle 12
23 during the smog inspection, resulting in the issuance of a fraudulent smog certificate of
24 compliance for that vehicle.

25 **Vehicle #13**

26 53. BAR-OIS test data showed that on July 11, 2016, Respondent Leonel Herrera
27 performed a smog inspection on a 2004 Ford F150 (Vehicle 13), resulting in the issuance of
28 Certificate of Compliance [REDACTED]. The BAR-OIS test details for Vehicle 13 showed that

1 the eVIN recorded during the inspection did not match the VIN for Vehicle 13. D.B. reviewed
2 the Comparative OIS Test Data for 2004 Ford F150 vehicles and found that the communication
3 protocol and PID count recorded during the smog inspection on Vehicle 13 were not consistent
4 with the communication protocol and PID count for that make and model. D.B. concluded that
5 the DAD was not connected to Vehicle 13 during the smog inspection, resulting in the issuance of
6 a fraudulent smog certificate of compliance for that vehicle.

7 54. The Bureau's VID data showed that on July 11, 2016, a Certificate of Compliance
8 was issued by Respondent's facility for a 2003 GMC Yukon XL K1500. The eVIN transmitted to
9 the VID was the same eVIN that was recorded during the smog inspection on Vehicle 13.
10 Further, the communication protocol and PID count recorded during the inspection on the 2003
11 GMC Yukon XL K1500 were consistent with the communication protocol and PID count
12 recorded during the inspection on Vehicle 13. D.B. concluded that Respondent Leonel Herrera
13 used the 2003 GMC Yukon XL K1500's properly functioning OBD II system during the smog
14 inspection on Vehicle 13, resulting in the issuance of a fraudulent smog certificate of compliance
15 for that vehicle.

16 17 **FIRST CAUSE FOR DISCIPLINE**

18 (Untrue or Misleading Statements)

19 55. Respondent G & H's registration is subject to discipline pursuant to Code
20 section 9884.7(a)(1), in that Respondent G & H made or authorized statements which they knew
21 or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

22 a. Respondent G & H's smog check inspector and partner, Respondent Leonel Herrera,
23 used a BAR-97 EIS inspection for Vehicles 1 and 2, as set forth in paragraphs 24 through 26,
24 above, resulting in the issuance of certificates of compliance for those vehicles when, in fact, a
25 BAR-OIS inspection was required for those vehicles.

26 b. Respondent G & H certified that Vehicles 1 through 13, identified in paragraphs 28
27 through 51, above, passed inspection and were in compliance with applicable laws and
28 regulations. In fact, Respondent Leonel Herrera conducted, or caused to be conducted, smog

1 inspections on the vehicles using clean-plugging methods in that he substituted different vehicles
2 during the inspections in order to issue smog certificates of compliance for the vehicles, and did
3 not test or inspect the vehicles as required by Health & Safety Code section 44012.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Fraud)

6 56. Respondent G & H's registration is subject to discipline pursuant to Code
7 section 9884.7(a)(4), in that Respondent G & H committed acts that constitute fraud by issuing
8 electronic smog certificates of compliance for Vehicles 1 and 2, identified in paragraphs 24
9 through 26, and Vehicles 1 through 13, identified in paragraphs 28 through 51, above, without
10 ensuring that bona fide inspections were performed of the emission control devices and systems
11 on the vehicles, thereby depriving the People of the State of California of the protection afforded
12 by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

14 (Motor Vehicle Inspection Program - Code Violations)

15 57. Respondent G & H's smog check station license is subject to discipline pursuant to
16 Health & Safety Code section 44072.2(a), in that regarding Vehicles 1 and 2, identified in
17 paragraphs 24 through 26, and Vehicles 1 through 13, identified in paragraphs 28 through 51,
18 above, Respondent G & H failed to comply with the following sections of that Code, as follows:

19 a. **Section 44012(a)**: Respondent G & H's smog check inspector and partner,
20 Respondent Leonel Herrera, failed to ensure that the emission control tests were performed on the
21 vehicles in accordance with procedures prescribed by the department.

22 b. **Section 44015**: Respondent G & H issued electronic smog certificates of compliance
23 for the vehicles without ensuring that the vehicles were properly tested and inspected to
24 determine if they were in compliance with Health & Safety Code section 44012.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 (Failure to Comply with Regulations)

27 58. Respondent G & H's smog check station license is subject to discipline pursuant to
28 Health & Safety Code section 44072.2(c), in that regarding Vehicles 1 and 2, identified in

1 paragraphs 24 through 26, and Vehicles 1 through 13, identified in paragraphs 28 through 51,
2 above, Respondent G & H failed to comply with Regulations, as follows:

3 a. **Section 3340.35(c)**: Respondent G & H's partner and smog check inspector,
4 Respondent Leonel Herrera, issued electronic smog certificates of compliance for the vehicles
5 even though the vehicles had not been inspected in accordance with Regulation section 3340.42.

6 b. **Section 3340.42**: Respondent Leonel Herrera failed to ensure that the required smog
7 tests were conducted in accordance with the Bureau's specifications.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 (Dishonesty, Fraud or Deceit)

10 59. Respondent G & H's smog check station license is subject to discipline pursuant to
11 Health & Safety Code section 44072.2(d), in that Respondent G & H committed dishonest,
12 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
13 compliance for Vehicles 1 and 2, identified in paragraphs 24 through 26, and Vehicles 1 through
14 13, identified in paragraphs 28 through 51, above, without ensuring that a bona fide inspection
15 was performed of the emission control devices and systems on the vehicles, thereby depriving the
16 people of the State of California of the protection afforded by the Motor Vehicle Inspection
17 Program.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 (Dishonesty, Fraud or Deceit)

20 60. Respondent Leonel Herrera's Smog Check Inspector and Smog Check Repair
21 Technician licenses are subject to discipline pursuant to Health & Safety Code section
22 44072.2(d), in that Respondent Leonel Herrera committed dishonest, fraudulent, or deceitful acts
23 whereby another was injured by issuing electronic smog certificates of compliance for Vehicles 1
24 and 2, identified in paragraphs 24 through 26, and Vehicles 1 through 13, identified in paragraphs
25 28 through 51, above, without ensuring that a bona fide inspection was performed of the emission
26 control devices and systems on the vehicles, thereby depriving the people of the State of
27 California of the protection afforded by the Motor Vehicle Inspection Program.

28 //

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 (Motor Vehicle Inspection Program - Code Violations)

3 61. Respondent Leonel Herrera's smog check inspector and smog check repair technician
4 licenses are subject to discipline pursuant to Health & Safety Code section 44072.2(a), in that he
5 violated sections of that Code. Specifically, Respondent Leonel Herrera failed to perform the
6 emission control tests on Vehicles 1 and 2, identified in paragraphs 24 through 26, and Vehicles 1
7 through 13, identified in paragraphs 28 through 51, above, in accord with procedures prescribed
8 by the department.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 (Failure to Comply with Regulations)

11 62. Respondent Leonel Herrera's smog check inspector and smog check repair technician
12 licenses are subject to discipline pursuant to Health & Safety Code section 44072.2(c), in that
13 regarding Vehicles 1 and 2, identified in paragraphs 24 through 26, and Vehicles 1 through 13,
14 identified in paragraphs 28 through 51, above, he failed to comply with provisions of the
15 Regulations, as follows:

16 a. **Section 3340.30(a)**: Respondent Leonel Herrera failed to inspect and test Vehicles 1
17 through 13 in accordance with Health & Safety Code sections 44012 and 44035, and Regulations,
18 section 3340.42.

19 b. **Section 3340.42**: Respondent Leonel Herrera failed to conduct the required smog
20 tests on vehicles 1 through 13 in accordance with the Bureau's specifications.

21 **MATTERS IN AGGRAVATION**

22 63. To determine the degree of discipline, if any, to be imposed on Respondents,
23 Complainant alleges as follows:

24 **G & H Auto Repair**

25 a. On or about November 2, 2010, the Bureau issued Citation No. C2011-0558 against
26 Respondent G & H for violation of Health & Safety Code section 44012(f), (failure to perform a
27 visual/functional check of emission control devices according to procedures prescribed by the
28 department) and CCR section 3340.35(c), (issuing a certificate of compliance to a vehicle that

1 was improperly tested). On or about October 5, 2010, Respondent G & H issued a certificate of
2 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
3 specifications. The Bureau assessed civil penalties totaling \$1,500 against Respondent for the
4 violation. Respondent G & H appealed the citation and the Citation was affirmed. Respondent
5 paid the fine on January 5, 2012.

6 b. On or about January 11, 2012, the Bureau issued Citation No. C2012-0700 against
7 Respondent G & H for violation of Health & Safety Code sections 44012(f). On December 7
8 2011, Respondent G & H issued a certificate of compliance to a Bureau undercover vehicle with a
9 missing air exhaust gas recirculation valve (EGR). The Bureau assessed a civil penalty totaling
10 \$1,500 against Respondent G & H for the violation. Respondent paid the fine on February 7,
11 2012.

12 **Leonel Herrera**

13 c. On or about November 2, 2010, the Bureau issued Citation No. M2011-0559 against
14 Respondent Leonel Herrera for a violation of Health & Safety Code section 44032 (qualified
15 technicians shall perform tests of emission control systems and devices in accordance with Health
16 & Safety Code section 44012, and CCR 3340.30(a) (qualified technicians shall inspect, test, and
17 repair vehicles in accordance with Health & Safety Code sections 44012 and 44035, and CCR
18 3340.42). On October 5, 2010, Respondent Leonel Herrera issued a certificate of compliance to a
19 Bureau undercover vehicle with the ignition timing adjusted beyond specifications. Respondent
20 Leonel Herrera was directed to complete an 8 hour training course and to submit proof of
21 completion to the Bureau within 30 days from receipt of the citation. Respondent Leonel Herrera
22 appealed the Citation , and the citation was affirmed on September 6, 2011. Respondent Leonel
23 Herrera completed the training on May 18, 2011.

24 d. On or about January 11, 2012, the Bureau issued Citation No. M2012-0701 against
25 Respondent Leonel Herrera for a violation of Health & Safety Code section 44032 (qualified
26 technicians shall perform tests of emission control systems and devices in accordance with Health
27 & Safety Code section 44012, and CCR 3340.30(a) (qualified technicians shall inspect, test, and
28 repair vehicles in accordance with Health & Safety Code sections 44012 and 44035, and CCR

1 3340.42). On December 7, 2011, Respondent Leonel Herrera issued a certificate of compliance to
2 a Bureau undercover vehicle with a missing exhaust gas recirculation valve (EGR). Respondent
3 Leonel Herrera was directed to complete a 16 hour training course and to submit proof of
4 completion to the Bureau within 30 days from receipt of the citation. Respondent completed the
5 training on March 2, 2012.

6 **OTHER MATTERS**

7 64. Pursuant to Bus. & Prof. Code section 9884.7(c), the Director may suspend, revoke,
8 or place on probation the registration for all places of business operated in this state by
9 Respondent G & H, upon a finding that Respondent G & H has, or is, engaged in a course of
10 repeated and willful violations of the laws and regulations pertaining to an automotive repair
11 dealer.

12 65. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
13 Number RC 179202 issued to Respondent G & H is revoked or suspended, any additional license
14 issued under Chapter 5 of Part 5, Division 26 of the Health and Safety Code in the name of said
15 licensee may be likewise revoked or suspended by the Director.

16 66. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector (EO)
17 License No. 42630, or Smog Check Repair Technician (EI) License No. 42630, issued to
18 Respondent Leonel Herrera, is revoked or suspended, any additional license issued under Chapter
19 5 of Part 5, Division 26 of the Health and Safety Code in the name of Leonel Herrera may be
20 likewise revoked or suspended by the Director.

21 **PRAYER**

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

24 1. Revoking or suspending Automotive Repair Dealer Registration Number

25 ARD 179202, to G & H Auto Repair, with Leonel Herrera and Gilberto Herrera, as partners;

26 2. Revoking or suspending any other automotive repair dealer registration issued to
27 Leonel Herrera and Gilberto Herrera;

28 3. Revoking or suspending Smog Check Station License Number RC 179202, issued to

1 G & H Auto Repair;

2 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5,
3 Division 26 of the Health and Safety Code in the name of G & H Auto Repair;

4 5. Revoking or suspending Smog Check Inspector (EO) License No. 42630 and Smog
5 Check Repair Technician (EI) License No. 42630, issued to Leonel Herrera;

6 6. Ordering Respondents G & H Auto Repair and Leonel Herrera to pay the Director of
7 Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant
8 to Business and Professions Code section 125.3; and,

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

10
11 DATED:

December 15, 2017 

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

12
13
14
15
16 SA2017105056
G&H Acc.docx
17
18
19
20
21
22
23
24
25
26
27
28