

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

SHERRY MEHL, CHIEF, BUREAU OF
AUTOMOTIVE REPAIR, DEPARTMENT
OF CONSUMER AFFAIRS, STATE OF
CALIFORNIA,

Petitioner,

vs.

CONTRERAZ BUDGET SMOG CENTER
LARRY M. CONTRERAZ, OWNER
4444 N. Blackstone Avenue
Fresno, California 93726
Automotive Repair Dealer Registration
No. ARD 253392
Smog Check Station License No. RC 253392
Brake Station License No. BS 253392

and

KULBIR S. BRAR
4569 North State Avenue
Fresno, California 93722
Advanced Emission Specialist Technician
License No. EA 144594,

Respondents.

BAR Inv. No. 201001526

OAH No. 2011050442

**DECISION ON PETITION FOR
INTERIM SUSPENSION ORDER**

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on June 17, 2011.

Sterling A. Smith, Deputy Attorney General, represented petitioner Sherry Mehl, in her official capacity as Chief of the Bureau of Automotive Repair (BAR or bureau), Department of Consumer Affairs.

Marc J. Cardinal, Attorney at Law, specially appeared on behalf of William D. Ferreira, Attorney at Law, Automotive Defense Specialists. Mr. Ferreira is the attorney for both Larry Contreras, Owner, doing business as Contreras Budget Smog Center (hereafter, respondent), and Kulbir S. Brar (hereafter, respondent Brar). Both Mr. Contreras and Mr. Brar (hereafter, respondents) were present.

Oral argument and documentary evidence was presented. The record was then closed, and the matter submitted for decision on June 17, 2011.

ISSUE

Under Business and Professions Code section 494, has complainant established by a preponderance of the evidence that an interim suspension order (ISO) should issue suspending respondents' licenses or imposing license restrictions on them because: (1) respondents have engaged in acts or omissions that constitute a violation of the code,¹ and (2) permitting respondents to continue to engage in licensed activity would endanger the public health, safety, or welfare?

FACTUAL FINDINGS

1. *Respondent*: On January 28, 2008, the bureau issued respondent Automotive Repair Dealer (ARD) registration No. ARD 253392 and Smog Check Station License No. RC 253392. On June 16, 2010, the bureau issued respondent Lamp Station No. LS 253392, and Brake Station License No. BS 253392. Each of respondent's licenses is current through December 31, 2011. On August 24, 2009, respondent was certified by the bureau as a Gold Shield Station.

2. *Respondent Brar*: In 2002, the bureau issued to respondent Brar Advanced Emission Specialist Technician License No. EA 144594. This license is current through May 31, 2012.

3. *ISO Petition*: On May 23, 2011, OAH received petitioner's Petition for ISO with supporting Memorandum of Points and Authorities, Notice of Hearing, Declaration of Service, and the Declarations of Jack D. Lewis and Jerry A. Esmay with exhibits.

¹ All subsequent undesignated statutory references are to the Business and Professions Code.

Section 494 provides a separate statutory basis for issuance an ISO where a licensee has been convicted of a crime substantially related to the licensed activity. This basis is not at issue.

Petitioner requested an order immediately suspending respondent's ARD, Smog Check Station License, Lamp Station License, Brake Station License, and Gold Shield certification based on respondent's "demonstrated practice of misleading the public into purchasing automotive repair materials and services under [Consumer Assistance Program] CAP that are not needed on vehicles, committing fraud or deceit, making false and misleading statements, and violating other provisions of the Automotive Repair Act and the Motor Vehicle Inspection Program." In addition, an ISO was requested against respondent Brar's Advanced Emission Specialist Technician License "for a demonstrated pattern of fraud, or at a minimum gross incompetence, in violation of established procedures and specifications for diagnosis of emission repairs." As indicated in its moving papers, the Petition is based upon alleged violations of the Automotive Repair Act, section 9880 et seq., the Motor Vehicle Inspection Program, Health and Safety Code section 44000, et seq., and related regulations that occurred in the context of three undercover operations and five consumer complaints during the last half of 2010.

Petitioner also filed a Request for Official Notice of the certified license history of respondents as set forth in Factual Findings 1 and 2. The request for official notice was not opposed and was granted.

4. There was no dispute that the matter was properly noticed.

5. *Opposition to ISO:* Section 494 authorizes licensees who are the focus of the ISO petition to present affidavits and other documentary evidence as well as oral argument.

At the hearing, Mr. Cardinal presented the following documents in opposition to the ISO Petition on behalf of the respondents: Mr. Ferreira's written opposition to the Petition; records regarding each of the eight vehicles at issue (Exhibits A through H); three Declarations of Dr. Kulbir Brar pertaining to each of the three undercover vehicles (Exhibits I, J, K); Declarations of Bryan Patterson pertaining to each of the three undercover vehicles (Exhibits L, M, N); a June 9, 2010 Letter from Manuel Morado of M & M Transmission; respondent's Gold Shield History (Exhibit P); and copies of the Bureau's Declarations of Jack D. Lewis and Jerry A. Esmay (Exhibits Q and R).

No declarations or affidavits were filed on respondent's behalf regarding any of the eight transactions. None of respondent Brar's declarations addressed any of the five consumer complaints.

6. *Petitioner's Motion to Strike Patterson Declarations:* Petitioner made an oral motion to strike Mr. Patterson's declarations as incompetent expert testimony. Mr. Patterson's declarations failed to provide any explanation about his background, training, or experience. Mr. Cardinal stated that he might have Mr.

Patterson's resume, but he failed to produce the resume at the hearing. The motion was taken under submission and is addressed at Factual Finding 56.

Statutory Scheme

7. *Automotive Repair Act:* The Automotive Repair Act (Act) governs the registration, licensing and discipline of Automotive Repair Dealers [ARDs], Lamp Stations and Brake Stations. The Legislature has expressly declared that protection of the public "shall be the highest priority" of the Bureau exercising these functions and that, "whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (§ 9880.3.)

8. *Motor Vehicle Inspection Program:* The Legislature has declared that California's Motor Vehicle Inspection Program (Program), also known as the Smog Check Program, requires an "enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven." (Health & Saf. Code § 44001, subd. (b)(5)(E).) The Director of Consumer Affairs has all of the powers and authority granted under the Act for enforcing the Program; the Program is enforced and administered by the chief of the Bureau of Automotive Repairs. (Health & Saf. Code §§ 44001.5, 44002.) The Program provides for privately operated Smog Check Stations which issue certificates of compliance or noncompliance to vehicles which meet the requirements of this chapter. (Health & Saf. Code, § 44010.)

9. *ARDs:* Section 9884.7, subdivision (a) provides that, where an ARD cannot show there was a "bona fide error," the bureau may suspend, revoke or place an ARD registration on probation for 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. These acts include: (1) making or authorizing 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 that constitutes fraud; (6) failure in any material respect to comply with the Act or its regulations; and/or (9) having repair work done by someone other than the dealer or his or her employees without the knowledge or consent of the customer unless the dealer can demonstrate that the customer could not reasonably have been notified.

10. *Brake and Lamp Stations:* Section 9889.3, subdivisions (a), (c) and (d), authorizes the bureau to take disciplinary action against a license if the licensee or any partner, officer, or director has violated any section of the Business and Professions Code that relates to his or her licensed activities, its regulation, or has

committed “any act involving dishonesty, fraud, or deceit whereby another is injured.”

11. *Smog Check Stations:* The director may suspend, revoke, or take other disciplinary action against a license if the licensee violates any statute relating to the Program or any regulations which relate to the licensed activities; or if the licensee “commits any act involving dishonesty, fraud, or deceit whereby another is injured. (Health & Saf. Code, § 44072.2, subs. (a), (c), (d).)

12. Both licensed repair stations and qualified mechanics “shall perform all repairs in accordance with specifications and procedures so established” under the Program. (Health & Saf. Code, § 44016.) Implementing regulations provide that the specifications and procedures required by Health and Safety Code section 44016 “shall be the vehicle manufacturer’s recommended procedures for emission problem diagnosis and repair or the emission diagnosis and repair procedures found in industry-standard reference manuals and periodicals published by nationally recognized repair information providers. Smog check stations and smog check technicians shall, at a minimum, follow the applicable specifications and procedures when diagnosing defects or performing repairs for vehicles that fail a smog check test.” A smog check station “shall give a copy of the test report printed from the emissions inspection system to the customer. The report shall be attached to the customer’s invoice.” (16 CCR 3340.41, subd. (a).)

13. *Gold Shield Stations and the Consumer Assistance Program:* The Gold Shield Program is designed, *inter alia*, to “reduce the complexity of the Smog Check Program by allowing Smog Check stations certified as Gold Shield stations to offer consumers a wider array of inspection and repair services,” and to “encourage consumer confidence in the required emissions inspections and repairs by the establishment of inspection and repair standards that stations must meet or exceed to receive and retain certification from the Bureau.” (Cal. Code Regs., tit. 16, § 3392.1, subd. (a)(1) & (2).)

The Bureau may invalidate the Gold Shield Station’s Certification, temporarily or permanently, for various reasons, including where: (1) the Gold Shield station’s manager or Smog Check technicians “engage in any conduct which violates any provision of this article or which would be cause for discipline of, or which would be cause for issuance of a citation to the station’s Automotive Repair Dealer registration or Smog Check station license, or the license of a technician employed by the station;” and/or (2) the Bureau “disciplines the Gold Shield station’s Automotive Repair Dealer registration or Smog Check station license in any form or manner.” (Cal. Code Regs., tit. 16, § 3392.5, subd. (a)(1), (3).)

As a Gold Shield Station, respondent participates in the Consumer Assistance Program (CAP), which is administered by BAR. Under CAP, the BAR contracts with Gold Shield Stations to repair the vehicles of financially eligible,

low-income consumers whose vehicles have failed a smog inspection. For car owners who qualify, BAR will pay the Gold Shield Station up to \$500 toward emission repairs. The consumer must pay for repair costs over \$500; they must also pay \$20 in co-pay for repairs, \$100 in co-pay if their car failed a smog check inspection conducted at a "test only" station, and \$8.25 for a smog certificate after repairs if the car passes the smog check inspection. To obtain the \$500 payment for approved repairs, the Gold Shield Station that performs the emission related repairs under the CAP program must submit a claim to CAP with supporting documentation.

I. *Alleged Violations*

14. *CONSUMER COMPLAINTS*: As indicated in his Declaration, Jerry Esmay is a Program Representative II with the Bureau's Fresno Field Office. He has worked with the Bureau for 21 years. Before this position, Mr. Esmay worked in the automobile repair industry for 22 years. Mr. Esmay holds a valid Smog Check technician license and is a BAR certified Advanced Smog Check Instructor.

The five consumer complaints at issue are described in Mr. Esmay's declaration and attached exhibits. In opposition, respondents filed their service records pertaining to each of these vehicles. No declarations were filed by or on behalf of either of the respondents to refute the alleged violations regarding these five consumer complaints. As described below, petitioner's allegations regarding these consumer complaints are established by a preponderance of the evidence.

A. *1998 Honda Accord, License No. 5VRV954*

15. On June 29, 2010, Mr. De La Cruz was approved for financial assistance through CAP for emission-related repair services on his 1998 Honda Accord after it failed a smog inspection. He took his car to respondent for repairs. Respondent Brar diagnosed the car for emission problems and informed Mr. De La Cruz that an oxygen sensor and the catalytic converter needed to be replaced, at a cost of more than \$900. Due to lack of funds, Mr. De La Cruz authorized respondent to replace the oxygen sensor, but not the catalytic converter. On July 2, 2010, Mr. De La Cruz filed a complaint with the BAR about repairs respondent made to his 1998 Honda Accord.

Respondent's Repair Order #104248 indicated that respondent replaced the front oxygen sensor for \$221.32. It further indicated that the "cat converter" failed a snap 02 test and that a new converter was needed. Respondent charged Mr. De La Cruz \$422.31, which included a diagnosis charge of \$184, for which he made a \$20 co-payment. The balance of \$402.31 was paid by CAP.

16. Mr. Esmay inspected the Honda after respondent had completed this work, and concluded that both the front and rear oxygen sensors were not new but

were the original sensors. The malfunction indicator lamp (MIL) was illuminated. At Mr. Esmay's request, Mr. De La Cruz took the Honda to Gold Shield Station, The Auto Works (TAW). Mr. Esmay observed the work of TAW's smog technician. The Honda initially failed a smog test because the MIL light was illuminated and a code that indicated "cat inefficiency" was logged. TAW's technician replaced the Honda's air fuel sensor and catalytic converter and the vehicle then passed the smog inspection.

Based upon Mr. Esmay's observation of tests on the Honda's oxygen sensor, he concluded that respondent billed Mr. De La Cruz for replacement of an oxygen sensor that was not actually replaced on the Honda. Further, the oxygen sensor that respondent falsely claimed it had replaced was actually in good operating condition and did not need to be replaced for the vehicle to pass a smog inspection.

17. Respondent made false or misleading statements regarding the need to replace the oxygen sensor and engaged in fraud, deceit, and dishonesty by falsely representing that he had replaced the front oxygen sensor. Further, by diagnosing the need to replace the front oxygen sensor and telling Mr. De La Cruz that the sensor needed to be replaced, respondent Brar violated H/S 44016 and 3340.41(c).

18. Petitioner established by a preponderance of the evidence that respondent's conduct violated section 9884.7, subdivision (a)(1) and (a)(4), and 9889.3, subdivision (d); Health and Safety Code section 44072.2, subdivision (d); and California Code of Regulations, title 16, section 3392.5, subdivision (a)(1).

19. Petitioner established by a preponderance of the evidence that respondent Brar's conduct violated Health and Safety Code sections 44016 and 44072.2, subdivision (a), and California Code of Regulations, title 16, section 3340.41, subdivision (c).

B. *2000 Mitsubishi Galant, License No. 5EYD934*

20. On August 5, 2010, consumer Ofelia Rendon was approved for financial assistance through CAP for emission-related repair services. On August 30, 2010, Ms. Rendon filed a complaint with the Bureau regarding repairs respondent performed to her 2000 Mitsubishi Galant.

Ms. Rendon's car failed smog inspection by respondent on August 4, 2010, based on high NOx emissions and because the "check engine light was on (MIL) showing trouble codes P0421 (warm up cat efficiency), P0403 (ERG circuit malfunction), and P0304 (cylinder #4 misfire). When she returned her car to respondent for diagnosis and repairs on August 24, 2010, she was told that the car might pass inspection if her spark plugs were replaced. Ms. Rendon authorized this work; however, she was then told that the MIL continued to illuminate after the spark plugs were changed. Respondent advised Ms. Rendon that her car needed a

new engine because a gasket would break at any time. Respondent offered to purchase her car for \$150, but she declined.

Respondents Repair Order 105687 showed that the spark plugs were replaced, that an exhaust gas recirculation (EGR) solenoid was replaced and that further repairs were declined. Ms. Rendon was billed \$561. The Repair Order gives a part number for the EGR solenoid of "MD353689" at a cost of \$199.44. The part number listed is not the part number for an EGR solenoid. It is actually a part number for an EGR valve.

On inspection, Mr. Esmay determined that the EGR solenoid was new, but that its valve and hoses were not new. Respondent billed CAP for an EGR valve, which was twice the price of the EGR solenoid. Respondent's bill was false because respondent did not replace the EGR valve.

21. In early September 2010, respondent Brar provided the Bureau with a letter describing his diagnosis of the emission repairs Mr. Rendon's vehicle needed and his recommendations. Respondent Brar recommended that the spark plugs, EGR solenoid and catalytic converter be replaced and indicated that a compression test had indicated a sealing issue that required a head inspection of the cylinders by a machine shop.

22. On September 2, 2010, Mr. Esmay observed a smog technician at Rasmusen Auto Repair, another Gold Shield smog station test, inspect Mr. Rendon's vehicle. The inspection confirmed that respondent had replaced the spark plugs and EGR solenoid, but that the catalytic converter did not require replacement for the car to pass smog inspection. After the car again failed inspection, it was discovered that the MIL illuminated because the car needed two of its ignition coil boots (spark plug wires) replaced for \$22.07 each. There were no problems with the head gasket or need to replace the engine. Once these wires were replaced, Ms. Rendon's car successfully passed the smog test.

23. Respondent made false or misleading statements and engaged in fraud, deceit, and dishonesty by representing to CAP and to Ms. Rendon that he had replaced the EGR value, when it had not been replaced, and by billing CAP for this amount.

24. Respondent Brar failed to comply with applicable procedures and specifications in diagnosing emission problems in Ms. Rendon's vehicle.

25. Petitioner established by a preponderance of the evidence that respondent's conduct violated section 9884.7, subdivision (a)(1) and (a)(4), and (9889.3, subdivision (d); Health and Safety Code section 44072.2, subdivision (d); and California Code of Regulations, title 16, section 3392.5, subdivision (a)(1).

26. Petitioner established by a preponderance of the evidence that respondent Brar's conduct violated Health and Safety Code section 44072.2, subdivision (c).

C. *1996 Chevrolet S-10 Truck, License No. SU03976*

27. On May 10, 2010, respondent inspected consumer Gerri Garcia's 1996 Chevrolet S-10 truck. The vehicle failed the smog test when the MIL, or Check Engine Light, illuminated and a Diagnostic Trouble Code (DTC or trouble code) of P1870 (transmission torque converter clutch slip), was recorded.

On May 11, 2010, Ms. Garcia was approved for financial assistance through CAP for emission-related repair services; she later returned her vehicle to respondent for repairs. Respondent's June 30, 2010 Repair Order #104257 itemized total costs of \$2,894.51, which included a charge of \$1,899.99 for an "automatic transmission/ transaxle-rebuilt kit automatic transmission/transaxle with new 36M TCC," part number 24210675, and \$640 in labor. Respondent also charged \$184 for diagnosis. Ms. Garcia entered into a payment plan with respondent on July 14, 2010, with a balance due of \$1,394.51. On September 13, 2010, Gerri Garcia filed a complaint with the CAP because her MIL came back on after respondent had completed repairs and because she was overcharged for repairs, including a transmission overhaul.

28. Mr. Esmay inspected the vehicle and found that the transmission was recently removed. He also determined that the following trouble codes were present: P0137 (O2 Sensor bank 1 sensor 2), P0463 (Fuel level sensor), P1632 (theft system) and P1870 (transmission torque converter clutch slip). Respondent's Repair Order #104257 referenced part number 24210675 for the "automatic transmission/transaxle-rebuilt kit automatic transmission/transaxle with new 36M TCC." Mr. Esmay determined from the Alldata manual that part number 24210675 was for an original equipment manufacturer-factory (OEM) transmission with a suggested price of \$1,857.31. On inspection, the transmission was obviously not new.

29. On September 16, 2010, Mr. Esmay met with respondent, his son, and respondent Brar and obtained copies of the work performed on Ms. Garcia's truck. Respondent admitted that no one at his business rebuilds transmissions and that transmission work is sent out to M & M Transmission (M & M). Respondent's July 7, 2010 Repair Notification Form (invoice) to CAP listed the cost of the automatic transmission/transaxle as \$1,899.99 and did not indicate that this work was performed by an entity other than respondent. Repair Order #104257 does not indicate that the transmission work would be performed by another entity or that Ms. Garcia was advised or consented to subletting this work.

30. Respondent's Repair Order #104257 falsely states that Ms. Garcia's vehicle needed a transmission overhaul to pass smog inspection. The only repair needed for the vehicle to pass smog inspection was the replacement of the valve body. Respondent's Repair Order #104257 contains additional materially false and misleading statements. Respondent placed a rebuilt transmission into Ms. Garcia's vehicle rather than an OEM transmission, part number 24210675, as reflected in its repair order. M & M billed respondent \$700 for the rebuilt transmission on Ms. Garcia's truck. When questioned about the part number for a new versus a rebuilt transmission, respondent told Mr. Esmay that he made an error. Respondent also told Mr. Esmay that \$1,899.99 was the correct price, even though he only paid M & M \$700.²

31. Respondent Brar violated established procedures and specifications for diagnosis of trouble code P1870 by ignoring the applicable Alldata diagnosis guidelines and failing to refer to applicable technical bulletins. During the September 16, 2010 meeting, respondent Brar informed Mr. Esmay that he was familiar with trouble code P1870 and that he follows Alldata to diagnose the code. Further:

Mr. Brar told me that 21 of the 22 vehicles that he had repaired in the last year or so that generated trouble code P1870 had their transmissions' rebuilt. At my request, Mr. Brar printed the on-line Alldata chart for diagnosis of trouble code P1870. When he reviewed the print out of seven pages, Mr. Brar admitted that he did not follow Alldata's steps for diagnosis of trouble code P1870 because it "would take all day to do all of that." He also told me that he did not test drive Ms. Garcia's vehicle to see if its transmission was slipping, did not remove its transmission pan to see if there was excessive clutch material indicating clutch wear, and that he was unaware of the technical service bulletins for the vehicle regarding trouble code P1870. Mr. Brar admitted that the only reason he recommended a transmission overhaul was that the MIL was lit and trouble code P1870 was generated.

32. Technical Bulletin No. 01-07-30-023B is applicable to Ms. Garcia's vehicle. It provides that if trouble code P1870 is generated but there is no noticeable clutch slippage during a road test, then a worn TCC isolator bore in the valve body is the likely cause of code P1870. Mr. Esmay declared that it is "common knowledge amongst the transmission rebuilders that a code P1870 is usually caused by a worn valve body." Respondents informed Mr. Esmay that Ms.

² Respondents submitted June 9, 2011 letter from certified mechanic Manuel Morado of M&M. Mr. Morado indicated that M & M does subcontract work for respondent, including rebuilding transmissions and that he provides a 1 year warranty. This letter did not address the Garcia complaint.

Garcia's vehicle would be taken back to M&M for warranty work because the MIL light and trouble code 1870 were still being generated.

33. On October 1, 2010, Mr. Esmay again met with respondent, his son, and respondent Brar. During this meeting, respondents informed Mr. Esmay that M&M had replaced the valve body and that this had eliminated trouble code 1870. This was confirmed by Repair Order 106729.

34. Petitioner established by a preponderance of the evidence that respondent's conduct violated section 9884.7, subdivision (a)(1), (a)(4), and (a)(9), and 9889.3, subdivisions (c) and (d); Health and Safety Code sections 44016 and 44072.2, subdivisions (a) and (d); and California Code of Regulations, title 16, sections 3340.41, subdivision (d), and 3392.5, subdivision (a)(1).

35. Petitioner established by a preponderance of the evidence that respondent Brar's conduct violated Health and Safety Code sections 44016 and 44072.2, subdivision (c); and California Code of Regulations, title 16, section 3340.41, subdivision (d).

D. *1999 Mitsubishi Montero, License No. 4GKU157*

36. On July 13, 2010, consumer Michelle Phillips was determined to be eligible for CAP repair assistance for emission-related repair services. Ms. Phillips took her 1999 Mitsubishi Montero to respondent for repairs. On September 9, 2010, Ms. Phillips filed a complaint against respondent with CAP.

On August 14, 2010, Ms. Phillip's vehicle failed a smog inspection conducted by respondent because the MIL light was lit, trouble code P0300 (random misfire) was recorded, and the NOx emissions were just at the passing level. Respondent told her that the starter needed to be replaced before she could use her CAP money for repairs. On August 16, 2010, Ms. Phillips had her car towed to respondent because it would not start. She authorized respondent to replace the starter and diagnose emission repairs.

37. Respondent's August 26, 2010 Repair Order # 105468 shows that respondent replaced the starter and recommended that an intake manifold gasket, spark plugs, and spark plug wires be replaced. Ms. Phillips initially questioned the need for a new gasket and spark plugs because they were replaced six months earlier; she then authorized the work. As indicated in this Repair Order, respondent charged Ms. Phillips \$1,070.78 for these repairs, including a \$184 diagnosis fee, and advised her that CPA would not cover the starter replacement. After CAP's portion, Ms. Phillips owed respondent \$570.78.

Respondent falsely represented to Ms. Phillips that she had to replace the starter at her own expense before CAP would pay for any of the emission-related

repairs. CAP will pay up to \$500.00 for approved emission-related repairs needed for a vehicle to pass a smog inspection.

38. On August 27, 2010, following these repairs, Ms. Phillips' vehicle again failed smog inspection for the same misfire trouble code of P0300. Additional trouble codes of P0110 (intake air temp sensor), P0115 (coolant sensor), P0335 (cam position sensor) were also generated with high NOx emissions. In her declaration, Ms. Phillips stated that respondent informed her that the "engine was blown" and that it "would not pass [a smog inspection] ever."

When Ms. Phillips went to pick up her car from respondent, her car would not start. Respondent had to jump start it so she could drive home. Once she shut the engine off at home, the car would not start. Ms. Phillips applied for BAR's vehicle retirement program because respondent told her the engine was blown. Ms. Phillips "later went and got a new battery and the vehicle has started since."

39. On September 21, 2010, Mr. Esmay inspected Ms. Phillips's vehicle and confirmed that the spark plugs were new and that the starter was replaced as indicated in respondent's invoice. When he started the car, "the MIL illuminated and a definite misfire of the engine occurred." Mr. Esmay then had the car inspected by Alltech Automotive (Alltech), a Gold Shield station, for a second diagnosis.

40. Alltech's mechanic and smog technician Jesse Gutierrez tested the engine compression and found it to be within specification. Engine compression did not cause trouble code P0300 (misfire). The misfire code and misfires were caused by a defective ignition coil control module that supplies a spark to cylinders #2 and #5. At Mr. Esmay's request, Alltech performed those repairs at a cost of \$212.79 for the new control module and \$44.00 labor. Once those repairs were completed, trouble code P0300 (misfire) disappeared. Other costly repairs were determined to be necessary. Ms. Phillips declined these and decided to go to the CAP Referee for a cost waiver.³

41. On October 6, 2010, Mr. Esmay met with respondent, his son, and respondent Brar and obtained copies of the work performed on Ms. Phillips' vehicle. Respondent Brar's diagnosis notes for the Mitsubishi Montero stated that the "Starter gets stuck. Battery in poor condition." Mr. Esmay declared:

When I asked Respondent Brar how he could diagnose the condition of the starter when the vehicle had a bad battery, he claimed that he used a "high power battery charger" to

³ After Ms. Phillips' vehicle generated trouble code P0125 (insufficient coolant temperature), it was determined that it needed three of its four oxygen sensors replaced at a cost of \$891.00.

diagnose it. I explained that "basic electricity 101" requires that steps be taken to ensure that the battery was in good condition before diagnosing a possible starter problem, and that using a high power battery charger cannot provide the necessary voltage to operate the starter if the battery is dead. I told Mr. Brar that his starter diagnosis was improper and the starter could have tested in good condition had the battery been replaced first. I pointed out that even after the starter was replaced Respondent had to jump start the vehicle . . .

42. Respondents falsely represented to Ms. Phillips that her vehicle's engine was blown and that it would never pass a smog test. Mr. Esmay declared that the "minimal difference between the compression specification of 15 PSI and the as tested compression of 14.5 PSI of the vehicle called for further inspection and testing; not for Respondent's conclusion that the engine was blown."

43. By his improper diagnosis and failure to perform further testing, respondent Brar violated established procedures and specifications for diagnosis of emission problems. Respondent Brar knew and documented the poor condition of the car's battery; however, he did nothing to test the battery to determine if it was the reason that the vehicle would not start. The car started once the battery was replaced.

44. Respondent's Repair Order # 105468 includes false or misleading statements that the vehicle required a new starter, spark plugs, spark plug wires and a manifold gasket. The repairs respondent recommended and performed were not needed for the car to pass a smog inspection, trouble code P0300 persisted after respondent's repairs, and new trouble codes were generated after these repairs. At the time the vehicle was presented to respondent for inspection and repairs, the only repairs needed were replacement of a dead battery and a defective ignition coil control module.

45. Petitioner established by a preponderance of the evidence that respondent's conduct violated section 9884.7(a)(1); Health and Safety Code sections 44016 and 44072.2, subdivisions (a), (c); and California Code of Regulations, title 16, section 3340.41, subdivision (d).

46. Petitioner established by a preponderance of the evidence that respondent Brar's conduct violated Health and Safety Code sections 44016 and 44072.2, subdivisions (a), (c); and California Code of Regulations, title 16, section 3340.41, subdivision (d).

E. *1996 Ford Explorer, License No. 4XZW036*

47. On October 26, 2010, consumer Jordan Ortiz was determined to be eligible for CAP assistance for emission-related repair services on his vehicle. On October 27, 2010, the vehicle failed respondent's smog inspection. On October 27, 2010, Mr. Ortiz filed a complaint with the Bureau. He asserted that, after respondent completed a diagnosis for CAP, respondent informed him that his car needed over \$2,000 in repairs before it would pass a smog inspection. Mr. Ortiz declined further work.

48. Respondent's Repair Order 107120 shows that the vehicle failed its smog inspection because the MIL light was lit and trouble codes P0125 (excessive time to enter closed loop-slow to warm up), P0153 (oxygen sensor response rate) and P0304 (cylinder #4 misfire) were present. Respondent's repair order indicates respondent Brar's diagnosis and states that the compression on #4 cylinder (100psi) when compared to cylinder #5 (150psi) shows more than a 25 percent variance. For that reason, the car's engine head should be removed and the cylinders inspected by a machine shop. The needed repairs listed include: "Remove head assembly for inspection; Valve job and resurface if heads turn out OK from pressure test; Oxygen sensor B2S1; Gas cap; and thermostat." Respondent did not provide a written estimated cost for the recommended repairs.

49. Mr. Esmay declared:

Established procedures and specifications for evaluating engine compression, including those published by Alldata, require that all six (6) cylinders of a six cylinder engine be tested for compression and then compared to one another. If the compression of each of the six cylinders shows that the cylinder having the lowest compression is not within 75% of the compression of cylinder having the highest compression, then an engine compression problem may exist. Respondent Brar tested only three of the six cylinders of the 1996 Ford Explorer before making his comparison, in violation of the established procedures and specifications.

50. By tested only three of the six cylinders of the 1996 Ford Explorer before making his comparison, respondent Brar violated established procedures and specifications for diagnosis of emission problems.

51. At the Bureau's request, Mr. Ortiz took his car to TAW for a second diagnosis regarding needed emission repairs. The car was inspected by TAW's licensed automotive and smog technician Richard Ballinger. As indicated in his declaration and that of Mr. Esmay, the car failed TAW's smog inspection "because of a burnt spark plug wire to the #4 cylinder, generating the P0304 (misfire) trouble

code. Trouble code P0125 was due by [sic] a missing thermostat and trouble code P0153 was due to a defective oxygen sensor. After replacing the oxygen sensor, thermostat and installing new spark plug wires, all trouble codes were cleared and the vehicle passed a smog inspection with very low emission readings.”

52. The only repair the 1996 Ford Explorer needed to address trouble code P0304 (misfire) was replacement of a burnt spark plug wire. Respondent’s Repair Order # 10712 includes false or misleading statements because it shows that Mr. Ortiz’s vehicle needed to have its head removed and its cylinders inspected by a machine shop due to an engine compression problem based solely upon a compression test that was performed in violation of established procedures requiring that all cylinders be tested for compression.

53. Petitioner established by a preponderance of the evidence that respondent’s conduct violated section 9884.7(a)(1); Health and Safety Code sections 44016 and 44072.2, subdivisions (a), (c); and California Code of Regulations, title 16, section 3340.41, subdivision (d).

54. Petitioner established by a preponderance of the evidence that respondent Brar’s conduct violated Health and Safety Code sections 44016 and 44072.2, subdivisions (a), (c); and California Code of Regulations, title 16, section 3340.41, subdivision (d).

55. *UNDERCOVER OPERATIONS*: As indicated in his Declaration, Jack Lewis is a Program Representative I with the Bureau’s Fresno Field Office. He has worked with the Bureau for 11 years where he has performed over 700 complaint investigations. Mr. Lewis has 13 years experience in the field of automotive repair and diagnosis, including motor vehicle emissions. He holds a valid Smog Check Technician license. Mr. Lewis’s declaration incorporates the declarations of Paul Stump, Kyle Tetlow and Richard Lebens, who prepared and documented each vehicle for undercover operation, as well as other declarations and exhibits. Mr. Lewis’s declaration describes the work performed by respondents in light of each vehicle’s condition when presented to them for service, and the conclusions drawn about respondents’ work after they made repairs.

56. In opposition, respondents filed three declarations by respondent Brar and three declarations by Bryan Patterson.

As indicated in Factual Finding 6, petitioner made an oral motion to strike Mr. Patterson’s declarations (Exhibits L, M, and N) as incompetent expert testimony for lack of foundation of his knowledge, training, or experience. After the hearing on June 17, 2010, OAH received a facsimile transmittal from Automotive Defense Specialists, attaching two-page “List of Qualifications for Bryan Patterson,” which was marked for identification as respondents’ Exhibit S. This document is unsworn, with no indication who prepared it. Exhibit S does not

provide any employment history for Mr. Patterson, but indicates that Mr. Patterson is a licensed smog technician. His license number is not provided. It also indicates various trainings and apparent awards received in the automotive field.

The motion to strike Exhibits L, M, and N is denied. Given the extraordinary remedy being requested, Exhibit S was reviewed and is considered to provide some evidence regarding Mr. Patterson's competence to express opinions on the undercover operations. Regarding each of the undercover vehicles, Mr. Patterson asserted that he reviewed the records of both parties and concluded that the repairs respondents performed on the vehicles "were deemed necessary" or were appropriate. Because Exhibit S is unsworn and contains no employment history for Mr. Patterson, however, it is entitled to much less weight than the opinions and conclusions expressed by Mr. Lewis in his declaration.

A. *1992 Toyota Corolla, License No. 3ARK484*

57. Paul Stump is an automotive technician certified by Automotive Service Excellence (ASE). As indicated in his Declaration, Mr. Stump is the bureau automobile technician who prepared the 1992 Toyota Corolla so that it would fail a smog check inspection due to a defective vacuum hose.

On June 10, 2010, undercover operator Denice Chambers took the vehicle to Smog 4 Less, where it failed the smog check inspection due to excessive tail pipe emissions. On June 16, 2010, Ms. Chambers took the Corolla to respondent and requested CAP repairs because the vehicle had failed a smog check inspection. On June 21, 2010, Ms. Chambers picked up the vehicle after respondent completed repairs and returned it to Mr. Lewis with all related documentation.

58. Respondent's Repair Order No. 103959 shows that respondent replaced the car's catalytic converter, spark plugs, an oxygen sensor, and adjusted the car's timing for a total invoiced amount of \$962.45, including a diagnostic charge of \$184. Mr. Lewis then checked the BAR's Vehicle Information Database (VID) where he found four smog check inspections performed by respondent. The VIDs show that the vehicle failed three inspections on June 17 and 18, 2010, initially as a Gross Polluter for excessive hydrocarbons and then for hydrocarbon emissions. On June 19, 2010, the vehicle passed the smog check inspection and smog certificate No. NS729842C was issued. The repair data Respondent Brar entered in the VID for the June 19, 2010, passing smog inspection shows the 1992 Toyota Corolla's spark plugs were replaced, its ignition timing adjusted, an oxygen sensor was replaced, a catalytic converter replaced. These repairs were billed to CAP.

59. The only repair needed for 1992 Toyota Corolla to pass a smog inspection was replacement of the defective vacuum hose. Although respondent made that repair, it was not listed on its Repair Order No. 103959. When Paul

Stump re-inspected the vehicle after respondent's repairs, he found that the vehicle's spark plugs, an oxygen sensor and its catalytic converter had been replaced as billed by respondent. Each of these components was in good working order when the car was first presented to respondents, however, and did not need to be replaced for the vehicle to pass a smog inspection. The car's ignition timing was unnecessarily adjusted without Ms. Chambers' authorization.

60. Respondent Brar's declaration indicated that licensed smog technician Steven Leal conducted several baseline tests before he began to work on the vehicle. Respondent Brar described his work on the Corolla and indicated that, at one point, his hand tool slipped and caused the vacuum line to the MAP sensor to break into two pieces. Because he believed he had caused this problem, respondent Brar replaced this hose at no cost. Respondent Brar's declaration does not persuasively refute the finding that the repairs actually billed for were unnecessary.

As indicated above, based upon the present record, Mr. Lewis's opinions and conclusions are entitled to greater weight than those of Mr. Patterson.

61. Respondent committed acts of dishonesty, deceit, and fraud by replacing the 1992 Toyota Corolla's front oxygen sensor, catalytic converter and spark plugs when these components were in good working order and did not require replacement and by claiming that these emission components were defective and required replacement or adjustment. Repair Order No. 103959 contains false or misleading statements as indicated above. Respondent violated trade standards by replacing emission components that were in good working order and failed to identify that he replaced the defective vacuum hose and adjusted the ignition timing of the vehicle in Repair Order No. 103959. Respondent did not obtain Ms. Chambers' consent to adjust the car's ignition timing and this repair was unnecessary.

62. By diagnosing the need to replace emission components that were in good working order, respondent Brar violated established procedures and specifications for diagnosis of emission related repairs.

63. Petitioner established by a preponderance of the evidence that respondent's conduct violated sections 9884.7, subdivisions (a)(1), (a)(4) and (a)(6), and 9889.3, subdivision (d); and Health and Safety Code section 44072.2, subdivision (d).

64. Petitioner established by a preponderance of the evidence that respondent Brar's conduct violated Health and Safety Code sections 44016 and

44072.2, subdivisions (a) and (c) ⁴, and California Code of Regulations, title 16, section 3340.41, subdivision (d).

B. *1995 Nissan 240SX, License No. 3MAV472*

65. Bureau Program Representative I Kyle Tetlow is an automotive technician certified by ASE. As indicated in his Declaration, Mr. Tetlow prepared the 1995 Nissan 240SX so that it would fail a smog check inspection because its intake air temperature sensor was defective.

On October 20, 2010, undercover operator Pam Konstanze took the vehicle to Smog 4 Less, where it failed the smog check inspection because the MIL light was lit.

On October 26, 2010, at Mr. Tetlow's request, Ms. Konstanzer took the vehicle to respondent and requested CAP repairs. That same day, Ms. Konstanzer picked up the vehicle after respondent completed repairs and returned it to Mr. Lewis with all related documentation.

66. Respondent's Repair Order #107117 shows that the 1995 Nissan 240SX was assigned to Respondent Brar for diagnosis, and that his diagnosis was, in part, that the "air temperature sensor was defective, fuel pressure low causing p0171, clogged fuel filter." The repair order shows that respondent charged CAP \$184.00 to diagnose the emission problems, \$122.67 to replace the Intake Air Temperature sensor and \$105.85 to replace the fuel filter.

67. Replacement of the intake temperature sensor was the only repair needed in order for the car to pass a smog inspection. On re-examination following respondent's repairs, Mr. Tetlow found that the intake air temperature sensor and the fuel filter had been replaced as invoiced by respondent; however, the fuel filter was in good working order and did not need to be replaced. The car's fuel pressure was within specification when Ms. Konstanzer took the vehicle to Respondent for emission repairs. Kyle Tetlow also determined that "p0171" stated in respondent's Repair Order #107117 is a trouble code that a 1995 Nissan 240XS is not capable of generating.

68. In his declaration, respondent Brar indicated that after the trouble code p0171 was recorded, he "determined that the partially clogged fuel filter was causing the problem." In replacing the fuel filter, respondent Brar's intent was to "gain additional fuel volume and increase the combustion efficiency. . ." Mr.

⁴ Petitioner alleged that respondent Brar violated Health and Safety Code section "44072c" rather than 44072.2(c) regarding the Toyota and the Nissan vehicles. This appears to be typographical error; section 44072 does not have a subdivision (c).

Patterson declared that the P0170 code means the fuel mixture is either too much (too rich) or too lean (too little). In his opinion, there could have been many reasons why the fuel filter was clogged that were not determined by the bureau.

As indicated above, based upon the present record, Mr. Lewis's opinions and conclusions are entitled to greater weight than those of Mr. Patterson.

69. Respondent's conduct constituted acts of dishonesty, deceit and fraud, by replacing the vehicle's fuel filter when it was in good working order and did not require replacement. Respondent falsely claimed in Repair Order No. 107117 that the car's fuel pressure was low, that it produced trouble code P0171 and that the fuel filter was clogged. The vehicle is incapable of generating trouble code P0171. These statements in Repair Order #107300 are untrue, and respondent knew or should have known they were untrue. Respondent violated trade standards by replacing a fuel filter that was in good working order.

70. Respondent Brar violated established procedures and specifications by diagnosing the need to replace a fuel filter, finding that the vehicle's fuel pressure was low, and listing P0171 as a trouble code for the 1995 Nissan SX.

71. Petitioner established by a preponderance of the evidence that respondent's conduct violated sections 9884.7, subdivisions (a)(1), (a)(4) and (a)(6), and 9889.3, subdivision (d); Health and Safety Code section 44072.2, subdivisions (c) and (d); and California Code of Regulations, title 16, section 3340.41, subdivision (a).

72. Petitioner established by a preponderance of the evidence that respondent Brar's conduct violated Health and Safety Code sections 44016 and 44072.2, subdivisions (a) and (c); and California Code of Regulations, title 16, section 3340.41, subdivision (d).

C. *1991 Honda Accord LX, License No. 3TPM935*

73. Bureau Program Representative I Richard Lebens is an automotive technician certified by ASE. As indicated in his Declaration, Mr. Lebens prepared a BAR-owned 1991 Honda Accord LX so that it would fail a smog check inspection because its fuel injection resistor was defective. Mr. Lebens installed indicators on the vehicle to detect tampering with the car's fuel system, air filter and inlet ducting, ignition system distributor, EGR system and ECM.

74. On November 2, 2010 undercover operator Ms. Konstanze took the vehicle to respondents for a smog check inspection. That same day, Ms. Konstanzer did so and returned the vehicle to Mr. Lewis with all related documentation. The documents indicated that respondent Brar failed the Honda Accord because its MIL

light was lit, the NOx emissions were at gross polluter levels and for an unspecified mechanical condition (M) in its ignition timing.

On November 3, 2010, Ms. Konstanze brought the Honda Accord LX to respondent for emission repairs under the CAP. Respondent's smog technician Steven Leal performed a smog inspection test on November 4, 2010, and failed the car because the ignition timing was at 12 degrees BTDC. When technician Leal performed two "after repairs" smog inspection tests on November 9, 2010, he passed the ignition timing as being 15 degrees BTDC.

75. Following repairs, respondent's November 10, 2010 Invoice No. 107300 indicated that respondent Brar had diagnosed that the fuel injector resistor of the vehicle was defective and that respondent replaced it for \$193.00. The Invoice also includes a charge of \$40.00 for adjustment of the vehicle's ignition timing, which Ms. Konstanze did not authorize.

76. On re-inspection, Mr. Lebens found that the fuel injector resistor was replaced as invoiced by respondent, but that the vehicle's ignition timing was the same as it was when he prepared the vehicle and before Ms. Konstanzer took it to respondent. Mr. Lebens also found that the indicators he installed to detect tampering with the car's ignition system were intact, undisturbed and that respondent did not adjust the vehicle's ignition timing as invoiced.

The only repair needed for the 1991 Honda Accord LX to pass a smog inspection was replacement of its defective fuel injector resistor. The ignition timing adjustment for which respondent charged \$40.00 was not needed because it was set to specification and was not necessary for the car to pass a smog inspection, and in fact, respondent did not adjust the ignition timing as invoiced.

77. In his declaration, respondent Brar asserted that he did not diagnosis an ignition timing problem and that he did not recommend any ignition timing repairs. Mr. Patterson declared that the bureau's conduct of tampering with the fuel injector resistor cause a misfiring of the cylinder because no fuel was being injected into the cylinder. This will cause the timing to jump and be inconsistent and will prevent a technician from obtaining an accurate timing reading. The technician entered Mechanical Defect "M" into the analyzer which prevented him from checking the Ignition Timing.

As indicated above, based upon the present record, Mr. Lewis's opinions and conclusions are entitled to greater weight than those of Mr. Patterson.

78. Respondent committed acts of dishonesty, deceit and fraud, because Invoice No. 107300 states that the car's ignition timing was adjusted when, in fact, it was not. The car's ignition timing did not require adjustment for the vehicle to pass a smog inspection. The only repair needed for the vehicle to pass inspection

was replacement of the defective fuel injector resistor. Respondent made untrue or misleading statements in Invoice No. 107300 by representing that he adjusted the car's ignition timing, which indicated that the ignition timing needed to be adjusted and that the repair was made. Respondent knew or should have known that its statement was untrue or misleading.

Petitioner established by a preponderance of the evidence that respondent's conduct violated sections 9884.7, subdivisions (a)(1), (a)(4) and (a)(6), and 9889.3, subdivision (d); Health and Safety Code section 44072.2, subdivisions (c) and (d); and California Code of Regulations, title 16, section 3340.41, subdivision (a).

79. In summary, the record as a whole supports the conclusion that respondent and respondent Brar have engaged in acts or omissions that constitute a violation of the code. Thus, petitioner has established the first requirement for an ISO by a preponderance of the evidence.

II. *Alleged Endangerment of Public Health, Safety, or Welfare*

80. Petitioner has met its burden of demonstrating, by a preponderance of the evidence, that permitting respondents to continue to engage in licensed activity would endanger the public health, safety, or welfare.

This is not a case involving a few and/or minor violations. The allegations regarding the five consumer complaints are uncontroverted. Petitioner has demonstrated that respondents have violated laws and regulations governing their respective licenses and registrations repeatedly over a period of six months, in transactions involving eight separate vehicles. There is no persuasive evidence that the violations were due to bona fide errors. It is particularly noteworthy that Mr. Esmay met with respondents to discuss consumer complaints on three separate occasions: on September 16 and October 1, 2010 regarding Ms. Garcia's complaint (Factual Findings 29 and 33), and on October 6, 2010 regarding Ms. Phillip's complaint (Factual Finding 41). Despite these meetings, respondent continued violating applicable laws in two undercover operations (1995 Nissan 240SX and 1991 Honda Accord LX) that took place after these meetings, at a time when respondents were aware that the bureau was investigating their practices.

The purpose of the CAP program is "to improve California air quality." It does so by providing eligible consumers financial assistance to obtain emissions-related repairs to cars that have failed smog check inspections. (Cal. Code Regs., tit. 16, § 3394.1.) Injury to CAP constitutes injury to the public, both as taxpayers and as intended beneficiaries of the improved air quality the laws are designed to accomplish. The Gold Shield Program is designed, *inter alia*, to "reduce the complexity of the Smog Check Program by allowing Smog Check stations certified as Gold Shield stations to offer consumers a wider array of inspection and repair services," and to "*encourage consumer confidence* in the required emissions

inspections and repairs by the establishment of inspection and repair standards that stations *must meet or exceed* to receive and retain certification from the Bureau.” [Italics supplied.] (Cal. Code Regs., tit. 16, § 3392.1, subd. (a)(1) & (2).) The CAP program draws consumers to respondents and Gold Shield station status cloaks respondents’ activities with the bureau’s imprimatur of their competence. Respondents’ pattern of serious violations over an extended period of time persuasively establishes that they will continue to harm the public health, safety, or welfare unless the requested interim suspension orders are issued.

LEGAL CONCLUSIONS

1. Business and Professions Code section 494, subdivision (a), provides that an interim order may be issued suspending a licensee upon a showing that: (1) the licensee “has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity”; and (2) permitting the licensee to continue to engage in the licensed activity “would endanger the public health, safety, or welfare.”

2. As set forth in the Factual Findings as a whole, and particularly Factual Findings 7 through 13, and 79 and 80, respondent has engaged in acts or omissions in violation of the Act, the Program, and related regulations governing his Automotive Repair Dealer registration, his Smog Check Station License, his Lamp Station, his Brake Station License, and his Gold Shield Station certification. Permitting respondent to continue to engage in licensed activity would endanger the public health, safety, or welfare.

3. *Respondent Brar*: As set forth in the Factual Findings as a whole, and particularly Factual Findings 7 through 13, and 79 and 80, respondent has engaged in acts or omissions in violation of the Act, the Program, and related regulations governing his Advanced Emission Specialist Technician License. Permitting respondent to continue to engage in licensed activity would endanger the public health, safety, or welfare.

ORDER

1. The Petition for Interim Suspension Order is GRANTED.

2. An Interim Suspension Order is issued prohibiting respondent Larry M. Contreras, Owner, doing business as Contreras Budget Smog Center, from operating under Automotive Repair Dealer registration No. ARD 253392, Smog Check Station License No. RC 253392, Lamp Station No. LS 253392, Brake Station License No. BS 253392, and/or as a certified Gold Shield Station.

3. An Interim Suspension Order is issued prohibiting respondent Kulbir S. Brar from operating under Advanced Emission Specialist Technician License No. EA 144594.

4. The Bureau shall file an Accusation within 15 days of the issuance of this interim suspension order. If respondents file a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense.

5. Failure to comply with any of the requirements of section 494, subdivision (f), shall dissolve this interim order by operation of law.

DATED: June 22, 2011


MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

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

11 SHERRY MEHL, CHIEF, BUREAU OF
AUTOMOTIVE REPAIR, DEPARTMENT OF
12 CONSUMER AFFAIRS, STATE OF
CALIFORNIA,

13 Petitioner,

14 v.

15 CONTRERAZ BUDGET SMOG CENTER
LARRY M. CONTRERAZ, OWNER
16 4444 N. Blackstone Avenue
Fresno, California 93726
17 Automobile Repair Dealer Reg. No. ARD 253392
Smog Check Station License No. RC 253392
18 Lamp Station License No. LS 253392
Brake Station License No. BS 253392

19 And

20 KULBIR S. BRAR
21 4569 North State Avenue
Fresno, California 93722
22 Advanced Emission Specialist Technician
License No. EA 144594

23 Respondents.
24

OAH Case No. _____

BAR Inv. No. 201001526

**PETITION AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF INTERIM
SUSPENSION ORDER**

Date: June 17, 2011
Time: 1:30 p.m.
Location: Office of Administrative
Hearings, 2349 Gateway
Oaks, #200, Sacramento,
CA 95833

25 Petitioner alleges:

26 **PARTIES**

27 Sherry Mehl, (Petitioner) brings this Petition for an Interim Suspension Order (ISO) solely
28 in her official capacity as the Chief, Bureau of Automotive Repair, Department of Consumer

1 Affairs, State of California (BAR). Petitioner requests an order suspending the Automotive
2 Repair Dealer Registration, Smog Check Station License, Lamp Station License, Brake Station
3 License and Gold Shield certification issued to Respondent Larry M. Contreras individually and
4 doing business as Contreras Budget Smog Center (Respondent) as authorized by Business &
5 Professions Code section 494 on the ground that permitting him to continue to engage in licensed
6 activities would endanger the public health, safety or welfare. Petitioner further requests that an
7 order suspending the Advanced Emission Specialist Technician License issued to Respondent
8 Kulbir S. Brar (Respondent Brar) be granted on the same grounds.

9 The facts described herein and the attached Declarations demonstrate a pattern of fraud,
10 false or misleading statements, departures from trade standards, violations of established
11 procedures and specifications and other wrongful conduct by Respondent in diagnosing and
12 repairing motor vehicles under the Consumer Assistance Program (CAP) administered by BAR.
13 Respondent Brar has repeatedly violated established procedures and specifications in diagnosing
14 emission repairs.

15 This Petition is based upon the Request for Official Notice, the Declaration of Jack D.
16 Lewis (Lewis Decl.) and the Declaration of Jerry A. Esmay (Esmay Decl.) filed concurrently
17 herewith. For multi-page exhibits to the Lewis and Esmay Declarations, pertinent pages will be
18 referred to by Bates number. The facts set forth herein and the causes for discipline identified are
19 without prejudice to filing of an Accusation alleging additional causes for discipline against
20 Respondents.

21 The Request for Official Notice shows that Automotive Repair Dealer Registration (ARD)
22 No. 253392, Smog Check Station License No. RC 253392, Lamp Station License No. LS 253392
23 and Brake Station License No. BS 253392 are issued to Respondent Larry M. Contreras
24 individually and doing business as Contreras Budget Smog Center, 4444 N. Blackstone Avenue,
25 Fresno, California 93726, and will expire on December 31, 2011. Respondent Larry M. Contreras
26 also holds a certification as a Gold Shield smog check station. Respondent Kulbir S. Brar holds
27 an Advanced Emission Specialist Technician License No. EA 144594.

28

1 The Request for Official Notice also shows that Respondent is currently certified by BAR
2 as a Gold Shield station under sections 3392.1 and 3392.2 of title 16, California Code of
3 Regulations. Respondent's certification authorizes him to provide the public with State
4 subsidized emission-related repairs of motor vehicles owned by consumers under the Consumer
5 Assistance Program (CAP) under a contract between Respondent and BAR (Lewis Decl., #3).
6 BAR administers CAP as authorized by sections 3394.1 et seq. of title 16, California Code of
7 Regulations (Id. at #4). Consumers eligible for CAP receive financial assistance from CAP of up
8 to \$500.00 in payment of emission-related diagnostic and repair services performed by the
9 certified Gold Shield station (Id.) The Gold Shield station performing CAP services is paid up to
10 the \$500.00 limit directly by CAP upon CAP's receipt of a Repair Notification, copies of invoices
11 and other pertinent documents from the Gold Shield station (Id.)

12 **PETITION FOR INTERIM SUSPENSION ORDER**

13 The Bureau of Automotive Repair (BAR) regulates the automotive repair marketplace
14 through its Licensing and Enforcement Divisions. (Lewis Decl. #1.) Automotive Repair Dealers
15 (ARDs) are issued a registration, also known as a license as defined under Business and
16 Professions Code section 23.7, which entitles them to perform compensated automotive repairs
17 and services as defined under Business and Professions Code section 9880.1. (Id., #2)
18 Automotive Repair Dealers may also be issued Smog Check Station licenses, Lamp Station
19 licenses and/or Brake Station licenses and may be certified as Gold Shield stations, all of which
20 are "licenses" under Business & Professions Code section 23.7(Id., #2).

21 BAR's Enforcement division monitors all of the licenses it issues primarily through the
22 intake and investigation of consumer complaints, to detect fraudulent, unlawful or otherwise
23 unfair business practices. Business and Professions Code section 9884.7 provides the grounds to
24 refuse validation or to invalidate Automobile Repair Dealer Registration, hereinafter "ARD".
25 Those grounds include, but are not limited to, the following acts done by an ARD or any
26 employee of an ARD: making any written or oral statement which is untrue or misleading, fraud,
27 the willful departure from or disregard of accepted trade standards for good and workmanlike
28 repair in any material respect, having repair work done by someone other than the dealer or his or

1 her employees without the knowledge or consent of the customer, or failure in any material
2 respect to comply with the provisions of this chapter or regulations adopted pursuant to it. (Id.)

3 A Smog Station license may be revoked or suspended on grounds which include
4 commission of any act involving dishonesty, fraud or deceit whereby another is injured, or
5 violates of any section of the Motor Vehicle Inspection Program (Health & Safety Code sections
6 44000, et seq.) or violates any of the regulations adopted by the director pursuant to the Motor
7 Vehicle Inspection Program (Health & Safety Code section 44072.2). A Lamp Station License or
8 a Brake Station license may be revoked or suspended on grounds that include commission of acts
9 involving dishonesty, fraud, or deceit whereby another is injured (See, Business & Professions
10 Code section 9889.3(d)).

11 BAR may invalidate the Gold shield certification, temporarily or permanently, on several
12 grounds, including if the Gold Shield station, manager or Smog check technicians employed by
13 the station engage in any conduct which would be cause for discipline of, or which would be
14 cause for issuance of a citation to the station's ARD or Smog Check Station license, or if BAR
15 discipline's the Gold shield station's ARD or Smog Check station license in any form or manner
16 (See, section 3392.5, title 16, California Code of Regulations).

17 BAR's highest priority is the protection of the public (Business and Professions Code
18 ("Code") section 9880.3). Code section 494 provides a board or Administrative Law Judge the
19 authority to issue an interim order suspending any licentiate, where permitting the licentiate to
20 continue to engage in the licensed activity would endanger the public health, safety, or welfare.
21 Petitioner, Sherry Mehl, Chief of BAR, hereby files this Petition and Memorandum of Points and
22 Authorities in support of an Interim Suspension Order pursuant to Code section 494, requesting
23 that this court immediately suspend Respondent's ARD, Smog Check Station License, Lamp
24 Station License, Brake Station License and Gold Shield certification based on Respondent's
25 demonstrated practice of misleading the public into purchasing automotive repair materials and
26 services under CAP that are not needed on vehicles, committing fraud or deceit, making false and
27 misleading statements, and violating other provisions of the Automotive Repair Act and the
28 Motor Vehicle Inspection Program. Petitioner also requests an Interim Suspension Order to

1 immediately suspend the Advanced Emission Specialist Technician License issued to Respondent
2 Kulbir S. Brar (Respondent Brar) for a demonstrated pattern of fraud, or at a minimum gross
3 incompetence, in violation of established procedures and specifications for diagnosis of emission
4 repairs.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **STATEMENT OF FACTS**

7 On early 2010, BAR commenced its investigation of Respondents after it received several
8 consumer complaints. BAR investigated several consumer complaints, some of which are before
9 the Court by this Petition, followed by three (3) undercover operations administered by BAR
10 (Lewis Decl. #6, Esmay Decl., #2). BAR's investigation showed that Respondents repeatedly
11 violated the Automotive Repair Act and the Motor Vehicle Inspection Program in providing
12 services under CAP to consumers and undercover operators posing as consumers.

13 The Declaration of Richard D. Lewis (Lewis Decl.) includes facts pertaining to BAR's
14 Consumer Assistance Program (CAP), smog inspection procedures and its Gold Shield program
15 (Id. at ##3-12). It also describes the BAR's three (3) undercover operations to Respondent, and
16 includes as exhibits the Declarations of Paul Stump, Denice Chambers, Kyle Tetlow, Richard
17 Lebens and Pam Konstanzer (two declarations). The Declaration of Jerry A. Esmay sets forth facts
18 gathered during his investigation of five (5) of the consumer complaints, and includes among its
19 exhibits the Declarations of Richard De La Cruz, Ofelia Rendon, Michelle Phillips, Alfonso
20 Garcia, and Jesse Gutierrez.

21 **Undercover Operation with 1992 Toyota Corolla.**

22 Shortly before June 10, 2010, BAR Program Representative Paul Stump, a technician
23 certified by Automotive Service Excellence (ASE), prepared a 1992 Toyota Corolla owned by
24 BAR so that it would fail a smog inspection because of a defective vacuum hose (Lewis Decl.,
25 #13, Exh. 1, AGO 0531-0533). Replacement of the defective vacuum hose was the only repair
26 needed for the vehicle to pass a smog inspection (Id.)

27 BAR's undercover operator Denice Chambers (using the assumed name Rosa Garcia) took
28 the car to Smog 4 Less and obtained a smog inspection of the vehicle. (Lewis Decl. #14,

1 Declaration of Denice Chambers, Exh. 2.) The car failed the smog inspection because its
2 hydrocarbon and other tailpipe emissions were excessive. (Lewis Decl. #14). Ms. Chambers paid
3 for the inspection and was given a Vehicle Inspection Report (VIR) showing that the car failed
4 inspection. (Id., Exh. 2)

5 On June 16, 2010, Ms. Chambers drove the car to Respondent and requested repairs under
6 CAP because it had failed a smog inspection (Lewis Decl. #15, Exh. 2, AGO 0548). After
7 diagnosing the vehicle, Respondent replaced its catalytic converter, spark plugs, an oxygen sensor
8 and adjusted the car's timing for \$970.70, including the diagnostic charge of \$184.00. (Lewis
9 Decl., # 16, Exh. 4). Ms. Chambers paid the bill and returned the car to Mr. Lewis along with
10 Respondent's estimate, Repair Order # 103959 and a VIR dated June 19, 2010 (Lewis Decl. #16,
11 Exhs. 2, 4).

12 BAR Program Representative Paul Stump re-evaluated the vehicle after Ms. Chambers
13 returned it to BAR (Lewis Decl. #18, Exh. 1). He found that the spark plugs, oxygen sensor and
14 catalytic converter were replaced as invoiced by Respondent, but none of those repairs was
15 needed in order for the vehicle to pass a smog inspection (Id.). Mr. Stump also found that the
16 vacuum hose was replaced and the car's timing adjusted, but those repairs were not listed on
17 Respondent's repair order # 103959. (Id., Exhs. 1, 4). No timing adjustment was needed and no
18 such repair was authorized by Denice Chambers (Lewis Decl. #18, Exh. 2).

19 BAR's Vehicle Inspection Database (VID) for the vehicle includes four (4) smog check
20 inspections performed by Respondent (Id. #17, Exh. 5). The repair data entered for Respondent's
21 smog inspection of June 19, 2010, shows that Respondent Brar as Respondent's smog technician
22 replaced the car's spark plugs, adjusted its timing, replaced an oxygen sensor and replaced its
23 catalytic converter, to be paid for by CAP (Id. #17, Exh. 5, AGO 0599-0662).

24 Respondent's conduct violates Business and Professions Code ("Code") section
25 9884.7(a)(1) [ARD], Code section 9884. 7(a)(4) [ARD], Code section 9889.3(d) [lamp and brake
26 station] and Health & Safety Code section 44072.2 (d) [ARD and smog check station] because he
27 committed acts of fraud, deceit and dishonesty whereby CAP was injured by diagnosing and
28 making repairs on the BAR vehicle that were neither needed nor necessary for the vehicle to pass

1 a smog inspection (Lewis Decl., #19). Respondent committed those violations replacing the car's
2 spark plugs, an oxygen sensor and its catalytic converter when those components were in good
3 working condition and not in need of replacement. (Id.) By stating in its Repair Order # 103959
4 that "spark plugs fouled, front O2 sensor is defective and cat converter may have damage",
5 Respondent made statements that are untrue or misleading, and which Respondent knew or
6 should have known are untrue or misleading, because none of those components was defective or
7 needed replacement (Lewis Decl. #19, Exh 4, AGO 0545-AGO 0446A). Moreover, Respondent
8 violated Code section 9884.7(a)(6) [ARD] by not identifying in its Repair Order that the car's
9 timing was adjusted and the defective vacuum hose replaced as required by section
10 3356(a)(2)(A), title 16, California Code of Regulations. (Id.) Finally, Respondent violated Code
11 section 9884.7(a)(6) [ARD] by failing to obtain Ms. Chamber's authorization to adjust the timing
12 and replace the defective vacuum hose as required by Code section 9884.9(a) (Lewis Decl. #19).
13 These violations constitute cause for invalidation of Respondent's certification as a Gold Shield
14 station under section 3392.5(a)(1) because Respondent engaged in conduct that is cause for
15 discipline under his ARD or smog check station license.

16 Respondent Brar violated Health & Safety Code section 44072.2(a) in conjunction with
17 Health & Safety Code section 44016, and Health & Safety Code section 44072(c) in conjunction
18 with section 3340.41 (d), title 16, California Code of Regulations, by diagnosing that the
19 vehicle's spark plugs, catalytic converter and an oxygen sensor were defective and required
20 replacement in violation of established procedures and specifications (Lewis Decl., #20, Exh 4 at
21 AGO 0545 and Exh 5 at AGO 0562). These emission components were in good working order
22 and not in need of replacement (Lewis Decl. #20, Exh 1).

23 **Undercover Operation with 1995 Nissan 240SX.**

24 Shortly before October 20, 2010, BAR Program Representative Kyle Tetlow, a technician
25 certified by Automotive Service Excellence (ASE), prepared a 1995 Nissan 240SX owned by
26 BAR so that it would fail a smog inspection because its intake air temperature sensor was
27 defective and needed replacement (Lewis Decl. #21, Declaration of Kyle Tetlow, Exh. 6).

28

1 Replacement of the defective air temperature sensor was the only repair needed for the vehicle to
2 pass a smog inspection. (Id.).

3 On October 20, 2010, BAR's undercover operator Pam Konstanzer took the car to Smog 4
4 Less and obtained a smog inspection of the vehicle (Id. # 23; Declaration of Pam Konstanzer,
5 Exh. 7). The car failed the smog inspection because its MIL (check engine) light was illuminated
6 (Id: #24). Ms. Konstanzer paid for the inspection and was given a Vehicle Inspection Report
7 (VIR) showing that the car failed inspection (Lewis Decl. #24, Exhs. 7, 8).

8 On October 26, 2010, Ms. Konstanzer drove the car to Respondent and requested repairs
9 because it had failed a smog inspection under CAP (Lewis Decl. #25, Exh. 7). On October 27,
10 2010, Respondent's representative Junior informed Ms. Konstanzer that the car's air intake
11 temperature sensor and fuel filter needed to be replaced and that all costs would be taken care of
12 by CAP (Declaration of Pam Konstanzer, Exh. 7). On October 28, 2010, Ms Konstanzer picked
13 up the car at Respondent and was given Respondent's Repair Order # 107117 for \$426.57, a VIR,
14 DMV paperwork and the paperwork from Smog 4 Less (Lewis Decl.#26, Exhs. 7, 9). She paid
15 Respondent \$8.25 for the smog certificate, and then returned the vehicle to Jack Lewis at BAR
16 (Lewis Decl. #26, Exh. 7). Ms. Konstanzer gave Mr. Lewis copies of the documents she was
17 given by Respondent, including Repair Order #107117, after she had initialed and dated them
18 (Lewis Decl. #26, Exh. 7, 9).

19 BAR Program Representative Kyle Tetlow re-evaluated the vehicle after Ms. Konstanzer
20 returned it to BAR (Lewis Decl. #28, Exh. 6). He found that the air intake temperature sensor and
21 the fuel filter were replaced as invoiced (Id.). Mr. Tetlow noted that Respondent's Repair Order #
22 107117 states, among other things, that "fuel pressure low, causing p0171, clogged fuel filter".
23 The fuel filter did not require replacement and the vehicle's fuel pressure was within specification
24 when Ms. Konstanzer took the car to Respondent for diagnosis and repairs (Lewis Decl.# 27,
25 Exhs. 6,7, 9) Mr. Tetlow also determined that "p0171" is not a trouble code that a Nissan 240SX
26 is capable of generating (Lewis Decl. #28, Exh. 6, 9).

27 BAR's VID for the 1995 Nissan 240SX shows that Respondent performed two smog
28 inspections on the vehicle, one on October 26, 2010, and the other on October 28, 2010 (Lewis

1 Decl. #29, Exh. 10). Respondent provided Ms. Konstanzer with the VIR of October 28, 2010, but
2 not the VIR of October 26, 2010 (Lewis Decl. #29, Exhs. 7 and 9).

3 Respondent's conduct violates Code section 9884.7(a)(1) [ARD], Code section 9884.
4 7(a)(4) [ARD], Code section 9889.3(d) [lamp and brake station] and Health & Safety Code
5 section 44072.2 (d) [smog check station] because he committed acts of fraud, deceit and
6 dishonesty whereby CAP was injured by diagnosing the need to replace and replacing the fuel
7 filter on the BAR vehicle when that repair was neither needed nor necessary for the vehicle to
8 pass a smog inspection (Lewis Decl. #30). Respondent violated Code section 9884.7(a)(1) [ARD]
9 by stating in its Repair Order # 107117 that "fuel pressure low, causing p0171, clogged fuel
10 filter", statements that are untrue or misleading, and which Respondent knew or should have
11 known are untrue or misleading (Lewis Decl #30, Exh. 9). Moreover, Respondent violated Code
12 section 9884.7(a)(6) [ARD] by not identifying in its Repair Order that a charge of \$8.25 for a
13 smog certificate was billed as required by section 3356(a)(2)(A), title 16, California Code of
14 Regulations. (Id.) Finally, Respondent violated Health & Safety Code section 44072.2(c) in
15 conjunction with section 3340.41(a), title 16, California Code of Regulations [smog check
16 station] by failing to provide Ms. Konstanzer with copies of each of the VIRs for the two (2)
17 smog inspections that Respondent performed on the vehicle (Id. , Exhs. 7, 9). These violations
18 are cause for invalidation of Respondent's certification as a Gold shield station under section
19 3392.5(a)(1) because Respondent engaged in conduct that is cause for discipline under his ARD
20 or smog check station license.

21 Respondent Brar violated Health & Safety Code section 44072.2(a) in conjunction with
22 Health & Safety Code section 44016, and Health & Safety Code section 44072(c) in conjunction
23 with section 3340.41 (d), title 16, California Code of Regulations by diagnosing the need to
24 replace the fuel filter of BAR's Nissan 240SX that were neither necessary nor required in order
25 for the vehicle to pass a smog inspection in violation of established procedures and specifications
26 (Lewis Decl. #31, Exh. 9, AGO 0576).

27 ///

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1 **Undercover Operation with 1991 Honda Accord LX.**

2 Shortly before November 2, 2010, BAR Program Representative I Richard Lebens, a
3 technician certified by Automotive Service Excellence (ASE), prepared a 1991 Honda Accord LX
4 owned by BAR so that it would fail a smog inspection because its fuel injector resistor was
5 defective and needed replacement (Lewis Decl., #32, Declaration of Richard Lebens, Exh. 11).
6 Replacement of the defective fuel injector resistor was the only repair needed for the vehicle to
7 pass a smog inspection (Id.). Mr. Lebens installed indicators to detect tampering of the car's fuel
8 system, air filter and inlet ducting, ignition system distributor, EGR system and ECM (Id.)

9 On November 2, 2010, BAR's undercover operator Pam Konstanzer took the car to
10 Respondent and obtained a smog inspection of the vehicle (Lewis Decl. #33; Declaration of Pam
11 Konstanzer, Exh. 12). The car failed the smog inspection because its MIL (check engine) light
12 was illuminated, the NOx emissions were at gross polluter levels and there was an undisclosed
13 mechanical condition with the car's ignition timing (Lewis Decl. #35; Exh. 13). Ms. Chambers
14 paid for the inspection and was given a Vehicle Inspection Report (VIR) (Lewis Decl. #34, Exh.
15 12). That same day, she returned the vehicle to Richard Lewis at BAR, initialed the copies of the
16 VIR, Respondent's estimate # 15498 and Respondent's Repair Order #107279 and gave them to
17 Mr. Lewis (Id.).

18 On November 3, 2010, Ms. Konstanzer drove the car to Respondent and requested repairs
19 under CAP because it had failed a smog inspection. She provided Respondent with a copy of her
20 letter of CAP eligibility (Lewis Decl. #36, Exh. 12). On November 4, 2010, Kulbir Brar spoke by
21 telephone with Ms. Konstanzer, informing her that only three of the four injectors were operating
22 and that a fuel injector resistor needed to be replaced (Declaration of Pam Konstanzer, Exh. 12).

23 On November 10, 2010, Ms. Konstanzer picked up the vehicle at Respondent after repairs
24 were completed, paying the \$8.25 charge for the smog certificate and that day returned the
25 vehicle to Jack Lewis at BAR (Lewis Decl. #37, Exh. 12). She also initialed Respondent's
26 estimate #15498 dated 11/02/2010, Respondent's Repair Order 107279 dated 11/02/2010,
27 Respondent's Repair Order #107300 dated 11/03/2010 and a VIR dated 11/10/2010 with smog
28 certificate #NY4062427 on it, and gave them to Mr. Lewis (Lewis Decl. # 37; Exhs. 12, 14).

1 Richard Lebens re-evaluated the vehicle after Ms. Konstanzer returned it to BAR on
2 November 10, 2010 (Lewis Decl. #40, Exh. 11). He found that the fuel injector resistor was
3 replaced as invoiced by Respondent, but also found that the car's ignition timing was the same as
4 it was when he first documented the vehicle before Ms. Konstanzer took it to Respondent for
5 smog inspection on November 2, 2010 (Lewis Decl. # 40, Exh. 11). Mr. Lebens checked the
6 indicators he had installed on the vehicle to detect tampering with the car's ignition system and
7 found that they were intact, undisturbed and that no timing adjustment was made to the vehicle by
8 Respondent as invoiced (Id.)

9 BAR's VID for the 1991 Honda Accord LX includes two BAR97 Test Details showing that
10 Respondent performed two smog inspections of the vehicle on November 9, 2010 (Lewis Decl.
11 #42, Exh. 15). When Ms. Konstanzer picked up the vehicle from Respondent on November 10,
12 2010, Respondent provided Ms. Konstanzer with only one of the VIRs for the two smog
13 inspections (Lewis Decl. #42; Exhs. 12, 14).

14 Respondent's Invoice #107300 states that Respondent billed Ms. Konstanzer not only for
15 replacement of the defective fuel injector resistor, but also for adjustment of the car's ignition
16 timing at a cost of \$40.00 (Lewis Decl. # 38, Exh. 14, AGO.0609-0610). Respondent did not
17 inform Ms. Konstanzer that the car's ignition timing needed adjustment, nor does Invoice #
18 107300 and any of the other documents that she was given by Respondent show that she knew the
19 repair was needed, would be made or that she authorizes Respondent to perform that work (Lewis
20 Decl. #43, Exhs. 12, 14). Moreover, no adjustment of the car's ignition timing was needed and in
21 fact, Respondent did not adjust the timing as invoiced (Lewis Decl. #41, Exh. 11).

22 Respondent's conduct violates Code section 9884.7(a)(1) [ARD], Code section 9884.
23 7(a)(4) [ARD], Code section 9889.3(d) [lamp and brake station] and Health & Safety Code
24 section 44072.2 (d) [smog check station] because he committed acts of fraud, deceit and
25 dishonesty whereby CAP was injured by diagnosing the need to adjust the vehicle's ignition
26 timing and invoicing for performance of that service when, in fact, adjustment of the car's
27 ignition timing was not necessary, not needed for the vehicle to pass a smog inspection, and not
28 performed by Respondent in any event (Lewis Decl. #44). Respondent violated Code section

1 9884.7(a)(1) [ARD] by falsely stating in its Repair Order # 107300 that Respondent adjusted the
2 ignition timing of BAR's vehicle when, in fact, that service was not performed (Lewis Decl. #44,
3 Exh 11). Respondent knew or should have known that the statement was untrue or misleading.
4 (Id.) Moreover, Respondent violated Health & Safety Code section 44072.2(c) in conjunction
5 with section 3340.41(a), title 16, California Code of Regulations [smog check station] by failing
6 to provide Ms. Konstanzer with copies of each of the VIRs for the two (2) smog inspections that
7 Respondent performed on the vehicle (Id.). Any one of the aforesaid violations is cause for
8 invalidation of Respondent's certification as a Gold shield station under section 3392.5(a)(1), title
9 16, California Code of Regulations, because Respondent engaged in conduct that is cause for
10 discipline of his ARD and smog check station license.

11 **Consumer Complaint by Richard De La Cruz.**

12 BAR Program Representative I Jerry A. Esmay, a technician certified by Automotive
13 Service Excellence (ASE) and holder of a smog technician license, investigated the complaint to
14 BAR made on July 2, 2010, by consumer Richard De La Cruz regarding Respondent's repairs to
15 his 1998 Honda Accord. (Esmay Decl. ## 1-3). As set forth in the Declaration of Richard De La
16 Cruz (Exhibit 1), his car failed a smog inspection and he took it to Respondent for repairs under
17 CAP (Esmay Decl., #3, Exh. 1). Respondent Kulbir Brar (KB) diagnosed the car for emission
18 problems and informed Mr. De La Cruz that an oxygen sensor and the catalytic converter needed
19 to be replaced at a cost of more than \$900.00 (Esmay Decl. #4, Exh. 1). Mr. De La Cruz
20 authorized Respondent to replace the oxygen sensor but not the catalytic converter for lack of
21 funds (Id.). When he picked up his car at Respondent, he received Respondent's Repair Order #
22 104248 and then made his BAR complaint (Esmay Decl. #4, Exh 2).

23 Mr. Esmay inspected the 1998 Honda Accord and reviewed Respondent's Repair Order
24 #104248 (Esmay Decl., ##4 and 5). The repair order states, in part, that "oxygen sensor range
25 issue present. Oxygen sensor is not responding to changing A/F condition with max and min
26 voltage range of 800 mV and 175mV. O2 sensor replacement needed" (Esmay Decl. #4, Exh. 2).
27 Although the repair order states that Respondent replaced the front oxygen sensor, neither the
28 front oxygen sensor nor the rear oxygen sensor in the vehicle was new (Esmay Decl. #5). The

1 car's MIL (check engine) was illuminated (Id.). As BAR requested. Mr. Del La Cruz took his car
2 to Gold Shield station "The Auto Works" for inspection (Esmay Decl. #5)

3 Mr. Esmay observed as Richard Ballinger, smog technician for The Auto Works, as
4 Ballinger inspected and tested the vehicle (Id. at #6). The tests run on the front oxygen sensor
5 showed that the voltage diagnosis described in Respondent's Repair Order #102248 did not apply
6 to the front oxygen sensor at all because it was an "A/F Sensor" that measured amperage and not
7 voltage (Id.). Moreover, the front oxygen sensor installed in the consumer's car did not need
8 replacement (Id.)

9 Respondent's conduct violates Code section 9884.7(a)(4) [ARD], Health & Safety Code
10 section 44072.2 (d) [smog check station], Code section 9889.3(d) [lamp and brake station] and
11 section 3392.5(a)(1) [Gold Shield certification] for acts of fraud, deceit and dishonesty whereby
12 CAP was injured by billing Mr. De La Cruz and CAP for replacement of a front oxygen sensor
13 that Respondent did not, in fact, replace. (Esmay Decl. #8). Respondent also violated Code
14 section 9884.7(a)(1) because Respondent's Repair Order states that the car's front oxygen sensor
15 required replacement and that Respondent replaced the front oxygen sensor, false or misleading
16 statements that Respondent knew or should have known were false or misleading (Id.). In fact,
17 Respondent did not replace the front oxygen sensor and the sensor did not need to be replaced in
18 any event (Id.).

19 Respondent Brar's conduct violates Health & Safety Code section 44072.2(a) because he
20 diagnosed the "need" to replace the front oxygen sensor as stated in Repair Order #104248, and
21 informed the consumer that the sensor needed to be replaced, in violation of established
22 specifications and procedures as required by Health & Safety Code section 44016 and section
23 3340.41(c), title 16, California Code of Regulations (Id.)

24 **Consumer Complaint by Ofelia Rendon.**

25 Mr. Esmay investigated a BAR complaint made by consumer Ofelia Rendon on August 30,
26 2010, regarding Respondent's repairs to her 2000 Mitsubishi Galant (Esmay Decl. #9). As set
27 forth in her complaint and the Declaration of Ofelia Rendon, her car failed a smog inspection and
28 she took it to Respondent for repairs under CAP (Esmay Decl. ## 9, 11; Exh. 3). After Ms.

1 Rendon authorized Respondent to replace the car's spark plugs, Respondent informed her that the
2 car needed a new engine and that the car could become disabled at any time (Esmay Decl. #11,
3 Exh 3). When she declined a new engine, Respondent offered to purchase her car from her for
4 \$150.00. Ms. Rendon refused and made her BAR complaint (Id.)

5 Mr. Esmay inspected the 2000 Mitsubishi Galant and was given Respondent's Repair Order
6 # 105687 dated August 27, 2010, by Ms. Rendon (Esmay Decl. ##9, 13, Exh, 4). He also
7 obtained a BAR97 Test Detail for the vehicle from BAR's VID showing that the car failed
8 Respondent's smog test of August 4, 2010 for high NOx emissions and the MIL lit recording
9 trouble codes P0421 (warm up cat efficiency), P0403 (EFG circuit malfunction) and P0304
10 (cylinder #4 misfire) (Esmay Decl. #10, Exh. 5). Mr. Esmay later received a memorandum from
11 Respondent Brar describing his diagnosis of the emission problems with Ms. Rendon's vehicle
12 (Esmay Decl. #17, Exh. 8).

13 Respondent's Repair Order # 105687 that Ms Rendon provided to Mr. Esmay states that
14 Respondent diagnosed the car, replaced the spark plugs, replaced the exhaust gas recirculation
15 solenoid (EGR solenoid) and that the customer declined further repairs (Esmay Decl. #12, Exh.
16 4). The repair order gives Part # MD 353689 as the part number of the new EGR solenoid at a
17 cost of \$199.44 when, in fact, the part number listed is for an EGR valve and not an EGR
18 solenoid (Esmay Decl. ##14, 16, Exh. 7). The manufacturer's suggested retail price for an EGR
19 valve is \$103.40 and the manufacturers suggested retail price for an EGR solenoid is \$51.64 (Id.)

20 When he inspected the vehicle, Mr. Esmay found that the EGR solenoid was new but that
21 the EGR valve and hoses were not new (Esmay Decl. #13). The MIL illuminated when the car
22 was running and manifested a distinctive misfire when Esmay put the car into gear (Id.).

23 Mr. Esmay obtained copies of the Repair Notification and supporting documentation that
24 Respondent submitted to CAP to obtain payment for repairs of Ms. Rendon's Vehicle (Esmay
25 Decl. #15, Exh 6). Respondent's Repair Notification states that Respondent replaced the "EGR
26 valve" and includes a copy of Repair Order # 105687 that is different than the copy of Repair
27 Order # 105687 that Ms. Rendon received from Respondent and provided to Mr. Esmay (Esmay
28 Decl. # 15, Exhs. 4, 6 at AGO 0333-0335). Repair Order #105687 that Respondent provided to

1 CAP states that Respondent replaced the EGR valve of Ms. Rendon's vehicle for \$199.44 (Esmay
2 # 15, Exh. 6, AGO 0334-0335).

3 At BAR's request, Ms. Rendon took her 2000 Mitsubishi Galant to Rasmussen Auto
4 Repair, another Gold Shield smog station, for inspection and testing (Esmay Decl., #18). Mr.
5 Esmay observed as smog technician Alfonso Garcia inspected and tested the vehicle (Id.). They
6 found that the EGR solenoid was replaced as stated in the version of Repair Order # 105687 that
7 Ms. Rendon received from Respondent (Exhibit 4), but that the EGR valve was not replaced as
8 stated in the version of Repair Order #105687 (Exhibit 6) that CAP received from Respondent
9 (Esmay Decl. #18).

10 Technician Garcia's testing of the vehicle showed that the car's MIL was illuminated and
11 trouble codes P0304, P0421 and P0403 were present because the car needed two of its ignition
12 coil boots (spark plug wires) replaced at a cost of \$22.07 each (Esmay Decl. #19). The catalytic
13 converter did not require replacement for the car to pass a smog test (Esmay Decl. #18). No
14 repair of the car's head gasket was needed, and no cause for replacement of the car's engine was
15 found (Esmay Decl. #19). The only repair needed for the car to pass a smog inspection was
16 replacement of the spark plug wires (Id.).

17 Respondent's conduct violates Code section 9884. 7(a)(4) [ARD] , Health & Safety Code
18 section 44072.2 (d) [smog check station], Code section 9889.3(d) [lamp and brake station] and
19 section 3392.5(a)(1) [Gold Shield certification] for acts of fraud, deceit and dishonesty whereby
20 CAP was injured because Respondent billed CAP for replacement of an EGR valve when, in fact,
21 it was not replaced (Esmay Decl. #20). Respondent submitted a fraudulent repair order to CAP,
22 one that materially differs from the repair order that Respondent provided to Ms. Rendon.
23 Respondent also violated Code section 9884.7(a)(1) because the version of Respondent's Repair
24 Order #105687 given to Ms. Rendon (Exh. 4) falsely lists a part number for an EGR valve instead
25 of the EGR solenoid that her repair order states Respondent replaced (Esmay Decl. ## 15, 20).
26 The version of Respondent's Repair Order # 105687 that Respondent provided to CAP (Exh. 6,
27 AGO 0334-0335) falsely states that Respondent replaced the EGR valve when, in fact,
28 Respondent did not perform that repair (Esmay Decl.#20). These statements in Respondent's two

1 versions of Repair Order # 105687 are false or misleading statements that Respondent knew or
2 should have known were false or misleading.

3 Respondent Brar violated Health & Safety Code section 44072.2(c) because he failed to
4 comply with applicable procedures and specifications in diagnosing emission problems with Ms.
5 Rendon's vehicle. Respondent Brar found that the vehicle had an engine compression leak
6 requiring a head inspection and head gasket job by a machine shop when, in fact, the car did not
7 require that work. The only repair needed was replacement of two of the car's ignition coil boots
8 (spark plug wires) at a cost of less than \$50.00 (Esmay Decl., ## 19, 21). Moreover, Respondent
9 Bara's diagnosis that the catalytic converter needed replacement was incorrect as that repair was
10 not needed for the car to pass a smog inspection (Esmay # 21, Exh 8).

11 **Consumer Complaint by Gerri Garcia.**

12 Mr. Esmay investigated a CAP complaint made on September 13, 2010, by consumer Gerri
13 Garcia, regarding Respondent's repairs to her 1996 Chevrolet S-10 truck (Esmay Decl. #22, Exh.
14 9). As set forth in her complaint, after Respondent billed Ms. Garcia for a transmission overhaul,
15 the truck's MIL (check engine) light again illuminated (Esmay Decl. #22, Exh. 9). Respondent
16 informed Ms. Garcia that she would lose her CAP money if Respondent did not perform the
17 repairs on her car (Esmay Decl. #23). Ms. Garcia still owes Respondent \$1,300.00 for the repair
18 work (Id.) When Mr. Esmay inspected Ms. Garcia's vehicle, he found that its transmission was
19 recently removed and that trouble codes P0137 (O2 sensor bank 1 sensor 2), P0463 (Fuel level
20 sensor), P1632 (theft system) and P1870 (transmission torque converter clutch slip) were present
21 (Esmay Decl. #23).

22 Mr. Esmay obtained copies of the Repair Notification Form with supporting documentation
23 that Respondent submitted to CAP to receive payment for emission related work performed upon
24 Ms. Garcia's vehicle, including Respondent's Repair Order # 104257 for \$2,894.51 (Esmay Decl.
25 #23). The Repair Order includes a charge of \$1,899.99 for "automatic transmission/transaxle-
26 rebuilt master kit automatic transmission/transaxle with new 36M TCC, part #24210675", plus
27 labor (Esmay Decl. #23, Exh. 10).

28

1 BAR's VID for the vehicle includes a BAR97 Test Detail showing that on May 10, 2010, it
2 failed Respondent's smog inspection because the MIL was illuminated and trouble code P1870
3 (transmission torque converter clutch slip) was present (Esmay Decl. #24, Exh. 11). Neither
4 Respondent's Repair Order #104257 nor the Repair Notification form describe Respondent's
5 diagnosis of the emission problems with Ms. Garcia's vehicle; merely stating that a diagnosis was
6 performed for \$184.00 and referring to an automatic transmission transaxle for \$1,899.99 (Esmay
7 Decl. #25, Exh. 10, AGO 0370-0372). Respondent's Repair Order gives part number 24210675
8 for the transmission. (Esmay Decl. # 26, Exh. 10). Alldata shows that the part number given is for
9 an original equipment manufacturer (OEM) transmission with a suggested retail price of
10 \$1,857.31 (Esmay Decl. # 26, Exh. 12). When Mr. Esmay inspected Ms. Garcia's vehicle, it was
11 obvious that the transmission was not an OEM or certified (Goodwrench) transmission (Esmay
12 Decl. ##23, 26).

13 When Mr. Esmay met with Larry Contreras, his son Larry Contreras Jr., and Respondent
14 Brar at Respondent, Respondent admitted that no one at Respondent rebuilds transmissions and
15 that transmission work is sent out by Respondent to M & M Transmission (Esmay Decl. #27).
16 Respondent provided Esmay with copies of his documentation pertaining to the work done on
17 Ms. Garcia's vehicle, which includes a M & M Transmission invoice for \$700.00 to Respondent
18 (Esmay Decl. #27, Exh. 13, AGO 0397).

19 Respondent's Repair Order #104257 (Exh. 13, AGO 0385-0386) does not disclose that the
20 transmission work was performed by anyone other than Respondent, does not show that Ms.
21 Garcia knew that the transmission work was going to be done by M & M Transmission or that she
22 authorized Respondent to sublet that work (Esmay Decl. #28, Exh. 13). Although Respondent
23 admitted that the part number given for the transmission in Repair Order # 104257 was incorrect,
24 he informed Mr. Esmay that the price charged of \$1,899.99 was the correct price (Esmay Decl.
25 #28). Respondent's statement in its Repair Order #104257 listing the part number for an OEM
26 transmission indicates that an OEM transmission was installed in Ms. Garcia's truck is false or
27 misleading because in fact, no such transmission was installed by Respondent (Esmay Decl. ##
28

1 28, 33, Exh. 10). Instead, the transmission was removed, repaired with an overhaul kit and then
2 reinstalled in Ms. Garcia's truck (Esmay Decl. #28).

3 During Mr. Esmay's meeting at Respondent, Respondent Brar professed to be familiar
4 with trouble code P1870, that he follows Alldata to diagnose the code and that 21 of the 22
5 vehicles that he repaired in the past year that generated that trouble code had their transmissions
6 rebuilt (Esmay Decl. # 29). When we reviewed the Alldata diagnosis chart for trouble code
7 P1870, Respondent Brar admitted that he did not follow the steps given to diagnose trouble code
8 P1870 because "it would take all day to do that" (Esmay Decl. # 29). Respondent Brar also
9 admitted that he did not test drive the vehicle to see if its clutch was slipping, did not remove its
10 transmission pan to see if it contained excessive clutch material indicating clutch wear and was
11 not aware of Technical Bulletin No. 01-07-03-23B explaining that if trouble code P1870
12 generates but there is no noticeable clutch slippage during a road test, then a worn TCC isolator
13 bore in the valve body is the likely cause of P1870 (Esmay Decl. ##29, 30 and Exh. 14). It is
14 common knowledge among transmission rebuilders that trouble code P1870 is usually caused by
15 a worn valve body (Esmay Decl. #30). Respondent Brar admitted that the only reason he
16 recommended a transmission overhaul was that trouble code P1870 was present in the vehicle
17 (Esmay Decl. #29).

18 Respondent had Ms. Garcia's vehicle taken back to M & M Transmission for warranty
19 work because the MIL was illuminated and trouble code P1870 still being generated. (Esmay
20 Decl. # 31.) Respondent Brar, Larry Contreras and Larry Contreras Jr. later admitted that when
21 M & M Transmission replaced the valve body, trouble code P1870 was eliminated (Esmay Decl.
22 #31; Exh. 15).

23 Respondent's conduct violates Code section 9884. 7(a)(4) [ARD], Health & Safety Code
24 section 44072.2 (d) [smog check station], Code section 9889.3(d) [lamp and brake station] and
25 section 3392.5(a)(1) [Gold Shield certification] for acts of fraud, deceit and dishonesty whereby
26 CAP was injured because Respondent billed CAP for installing an OEM transmission in Ms.
27 Garcia's vehicle when, in fact, the transmission was removed, repaired with an overhaul kit and
28 reinstalled in Ms. Garcia's truck (Esmay Decl. ## 28, 32). Respondent also violated Code section

1 9884.7(a)(1) [ARD] because Respondent's Repair Order states that the car's transmission
2 required overhaul and that an OEM transmission was installed, statements that are false or
3 misleading and that Respondent either knew or should have known were false or misleading. (Id.)
4 In fact, the transmission removed and repaired with an overhaul kit, and the transmission did not
5 need to be overhauled at all or in order for Ms. Garcia's vehicle to pass a smog inspection. (Id.)
6 The only repair needed for the truck to pass a smog inspection was replacement of the car's valve
7 body (Esmay Decl. #31). Respondent also violated Code section 9884.7(a)(9) by subletting the
8 transmission overhaul to M & M Transmission without Ms. Garcia's knowledge or consent
9 (Esmay Decl., #32). Respondent also violated Health & Safety Code section 44072.2(c) in
10 conjunction with section 3340.41(d), title 16, California Code of Regulations [smog check
11 station] and Health & Safety Code section 44072.2(a) in conjunction with Health & Safety Code
12 section 44016 [smog check station] by failing to follow established specifications and procedures
13 for diagnosis of trouble code P1870 (Esmay Decl. ## 29, 33).

14 Respondent Brar violated Health & Safety Code section 44072.2(c) in conjunction with
15 Health & Safety Code section 44016 and Health & Safety Code section 44072(c) in conjunction
16 with section 3340.41 (d) by failing to diagnose and repair Ms. Garcia's vehicle in accord with
17 established specifications and procedures. Indeed, Respondent Brar recklessly and deliberately
18 ignored such procedures, including the diagnostic steps published by Alldata that he knew were
19 available, in diagnosing the cause of trouble code P1870 (Esmay Decl. ## 29,33).

20 **Consumer Complaint by Michelle Phillips.**

21 Mr. Esmay investigated a CAP complaint made on September 9, 2010, by consumer
22 Michelle Phillips regarding Respondent's repairs to her 1999 Mitsubishi Montero (Esmay Decl.
23 #34, Exh. 16). The VIR attached to her Complaint shows that her vehicle failed Respondent's
24 smog inspection of August 14, 2010, because the MIL was illuminated, trouble code P0300
25 (random misfire) was recorded and NOx emissions were just at the passing level (Esmay Decl.
26 #35, Exh. 16). Respondent told Ms. Phillips that the car's starter needed to be replaced before she
27 could use her CAP money for repairs (Esmay Decl. #35, Exh. 16, AGO 0428).

28

1 On August 16, 2010, Ms. Phillips had her vehicle towed to Respondent because it would
2 not start, authorizing Respondent to replace the starter (Esmay Decl., #36, Ex 16, AGO 0428).
3 After the starter was replaced, Respondent Brar diagnosed emission problems, recommending
4 that an intake manifold gasket, spark plugs and spark plug wires be replaced (Esmay Decl. #36,
5 Exh. 16, AGO 0429). Although she protested that this work was performed only within the past
6 six months, Ms. Phillips authorized Respondent to do the work (Id.). Respondent's Repair Order
7 #105468 charged Respondent \$1,070.78 for the repairs (Exhibit 16, AGO 0430).

8 On August 27, 2010, after repairs, the vehicle failed Respondent's smog inspection for the
9 same trouble code P0300 (random misfire) and additional trouble codes of P0110 (intake
10 temperature sensor), P0115 (coolant sensor), P0335 (cam position sensor and generated high NOx
11 emissions (Esmay Decl., #37, Exh. 16, AGO 0434). Respondent informed Ms. Phillips that the
12 car's engine was blown and it would never pass a smog inspection (Esmay Decl. #37, Exh. 16,
13 AGO 0428, 0455). Her vehicle had to be jump started by Respondent when she tried to take it
14 home from Respondent (Id.) Although she applied to BAR's vehicle retirement program because
15 Respondent told her that her car's engine was blown, she later replaced the car's battery and the
16 car started fine thereafter. (Id.)

17 On September 21, 2010, Mr. Esmay inspected Ms. Phillips's Mitsubishi Montero and found
18 that the starter and spark plugs were replaced as billed by Respondent (Esmay Decl. #38). When
19 the engine was started, the MIL light illuminated and a definite misfire of the engine occurred
20 (Id.) At BAR's request, Ms. Phillips took her vehicle to Alltech Automotive, another Gold Shield
21 station, for a second diagnosis (Esmay Decl. #39).

22 As set forth in the Declaration of Jesse Gutierrez (Exhibit 17), smog technician for Alltech
23 Automotive, tests of the engine compression showed that Ms. Phillips vehicle was within
24 specification and that engine compression did not cause trouble code P0300 (random misfire)
25 (Esmay Decl. #40, Exh. 17). Instead, the trouble code was caused by a defective ignition coil
26 control module that supplies a spark to cylinder #2 and cylinder #5 (Id.). After completing that
27 repair, trouble code P0300 was eliminated (Id.). Although the car thereafter generated trouble
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1 code P0125 (insufficient coolant temperature) requiring that three of its four oxygen sensors be
2 replaced, that work was not performed (Esmay Decl. #41, Exh. 17).

3 On October 6, 2010, Mr. Esmay met with Larry Contreras, Larry Contreras Jr. and
4 Respondent Brar at Respondent, receiving copies of all repair records pertaining to Respondent's
5 diagnosis and repair of the Mitsubishi Montero, including Diagnosis Notes made by Respondent
6 Brar (Esmay Decl. #42, Exh. 18). Respondent Brar's diagnosis notes state "starter gets stuck.
7 Battery in poor condition" (Esmay Decl. # 43, Exh. 18, AGO 0469). When asked how he could
8 diagnose the starter when the vehicle had a bad battery, Respondent Brar claimed to have used a
9 "high power battery charger" (Esmay Decl. #43). A "high power battery charger" cannot provide
10 the necessary voltage to operate a starter if the battery is dead, and for that reason, Respondent
11 Brar's diagnosis that the starter needed replacement violated established specifications and
12 procedures requiring that the battery be tested before a starter can be evaluated. (Esmay Decl.
13 #43). Indeed, after Respondent replaced the starter and made all other repairs, Respondent had to
14 jump start the vehicle so that Ms. Phillips could drive it home (Esmay Decl. #43, Exh. #16, AGO
15 0428, 0455).

16 When questioned about his diagnosis that the car's spark plugs and spark plug wires
17 required replacement to address trouble code P0300 (random misfire), Respondent Brar claimed
18 that the spark plugs were misrouted and the firing order was incorrect. (Esmay Decl. #44, Exh.
19 18, AGO 0469). Although Respondent Brar admitted that he understood that the spark plugs were
20 recently replaced by the consumer, he claimed that they had to be replaced because they were
21 "Autolite" spark plugs. (Esmay Decl. #44). Respondent Brar violated established procedures and
22 specifications for diagnosis of emission problems because Autolite spark plugs are entirely
23 appropriate for use in a Mitsubishi Montero (Id.).

24 When Respondent Brar tested the engine compression of Ms. Phillips's vehicle, he found
25 that it measured a variance of 14.5 PSI when specification requires a variance to be no more than
26 15.0 PSI, and it was for that reason that he concluded that the car's engine was blown (Esmay
27 Decl. #46). The miniscule variance from specification did not support Respondent Brar's
28 conclusion that the car's engine was blown and moreover, Alltech Automotive found that there

1 was no problem with engine compression and that misfire trouble code P0300 was caused by a
2 defective ignition coil control module supplying spark to cylinders. (Esmay Decl. #46, Exh. 17).

3 Respondent's conduct violates Code section 9884.7(a)(1) [ARD] because Respondent
4 stated that the car's starter, spark plugs and spark plug wires needed to be replaced, and later
5 stated to Respondent that the car's engine was blown, statements that are false or misleading and
6 which Respondent either knew or should have known were false or misleading (Esmay Decl.
7 #49). In fact, the condition of the starter could not be evaluated without an adequate battery to
8 operate it, replacement of the car's spark plugs, spark plug wires and manifold gasket were
9 unnecessary for the car to pass a smog inspection, and the vehicle did not have a blown engine
10 (Id.) Respondent ignored the condition of the battery that he knew was poor, and replaced
11 Autolite spark plugs recently replaced by Ms. Phillips when they are entirely appropriate for use
12 in a Mitsubishi Montero (Id.) Moreover, the miniscule deviation from specification that
13 Respondent claimed to have found did not justify Respondent's statement that the car's engine
14 was blown (Id.). Instead, the only repair needed to remove the trouble code P0300 (random
15 misfire) and allow the vehicle to pass a smog inspection was replacement of an ignition coil
16 control module (Id.). Respondent's conduct also violates Health & Safety Code section
17 44072.2(a) in conjunction with Health & Safety Code section 44016 as well as Health & Safety
18 Code section 44072.2(c) in conjunction with section 3340.41(d), title 16, California Code of
19 Regulations [smog check station] because Respondent did not diagnose the Mitsubishi Montero
20 in accord with established procedures and specifications (Esmay Decl. ## 43, 44, 49).

21 Respondent Brar violated Health & Safety Code section 44072.2(a) in conjunction with
22 Health & Safety Code section 44016, and Health & Safety Code section 44072(c) in conjunction
23 with section 3340.41 (d), title 16, California Code of Regulations by failing to diagnose and
24 repair Ms. Phillips vehicle in accord with established specifications and procedures (Esmay Decl.
25 ## 48, 49 and 50). Indeed, Respondent Brar recklessly purported to evaluate the condition of the
26 car's starter when he knew that the battery was in poor condition, and recklessly diagnosed the
27 need for new spark plugs merely because the relatively new spark plugs installed in the vehicle
28 were "Autolite" spark plugs (Id.). Moreover, Respondent Brar's conclusion that the car's engine

1 was blown and caused trouble code P0300 (misfire) was based upon a miniscule variance from
2 specification. Had Respondent Brar performed other testing of potential causes for the trouble
3 code, he would have discovered that the only repair needed to eliminate the trouble code was
4 replacement of a defective ignition coil control module (Id.).

5 **Consumer complaint by Jordan Ortiz.**

6 On October 27, 2010, Jordan Ortiz made a complaint to BAR about Respondent's diagnosis
7 that his 1996 Ford Explorer needed approximately \$2,000.00 in repairs before it could pass a
8 smog inspection (Esmay Decl. #51, Exh. 19). Mr. Ortiz provided BAR representative Jerry
9 Esmay with copies of Respondent's VIR of October 27, 2010, and Repair Order # 107120
10 showing that Respondent recommended that the car's cylinder heads be removed and inspected
11 by a machine shop (Id., Exh. 20).

12 BAR's VID for the vehicle includes a BAR97 Test Detail showing that on October 27,
13 2010, the car failed Respondent's smog inspection because the MIL was lit and trouble codes
14 P0125, P0153 and a new code P0304 (cylinder #4 misfire) were generated. (Esmay Decl. #52,
15 Exh. 21). It also shows that monitors D, F, I and J were not run to completion during
16 Respondent's inspection (Id.). The incomplete monitors were either caused by the battery
17 becoming disconnected or cleared by a scan tool. The Ford Explorer's tailpipe emissions were
18 very low. (Id.)

19 Respondent's Repair Order #107120 shows that Respondent Brar diagnosed trouble code
20 P0304 (misfire) by performing an engine compression test (Esmay Decl., #53, Exh. 20, AGO
21 0497-0498). The diagnosis given is that compression for cylinder #4 was 100 PSI, which when
22 compared to compression of 150 PSI for cylinder #5, showed more than a 25% variance. (Id.).
23 For that reason, Respondent recommended that removal of the engine head and inspection of the
24 cylinders by a machine shop. (Id.) Specifically, Respondent recommended: remove head
25 assembly for inspection; valve job and resurface if head turns out OK from pressure test; Oxygen
26 sensor B2S1; gas cap; and thermostat" (Id.). No estimate cost of recommended repairs is given,
27 and the customer declined repairs. (Id.) At BAR's request, Mr. Ortiz took his vehicle to The Auto
28

1 Works, another Gold Shield station, for a second diagnosis of needed emission repairs. (Esmay
2 Decl. #55).

3 As stated in the Declaration of Richard Ballinger, smog technician for The Auto Works, the
4 vehicle failed his smog inspection because of a burnt spark plug wire to cylinder #4, generating
5 trouble code P0304 (misfire) (Esmay Decl #56, Exh. 22). Trouble code P0125 was caused by a
6 missing thermostat and trouble code P0153 was caused by a defective oxygen sensor (Id.) After
7 replacing the oxygen sensor, thermostat and installing new spark plug wires, all trouble codes
8 were cleared and the car passed a smog inspection. (Id.)

9 Established procedures and specifications for evaluating engine compression published by
10 Alldata require that all six (6) cylinders of a six cylinder engine be tested for compression and
11 then compared to one another (Esmay Decl. # 54). If the compression of each of the six cylinders
12 shows that the cylinder having the lowest compression is not within 75% of the compression of
13 cylinder having the highest compression, then an engine compression problem may exist (Id.)

14 Respondent's conduct violates Code section 9884.7(a)(1) [ARD] because Respondent
15 stated in his Repair Order # 107120 that the car's cylinder heads needed to be removed and
16 inspected by a machine shop. This statement is false or misleading, and Respondent either knew
17 or should have known it was false or misleading. In fact, there was nothing wrong with the engine
18 compression of Mr. Ortiz's vehicle and the only repair needed to remove trouble code P0304
19 (misfire) was to replace the burnt spark plug wire to #4 cylinder of the vehicle (Esmay Decl. #57).
20 Respondent knew or should have known that he did not perform his engine compression test in
21 accord with established procedures and specifications (Esmay Decl. ##54, 57). Respondent's
22 conduct also violates Health & Safety Code section 44072.2(a) in conjunction with Health &
23 Safety Code section 44016 as well as Health & Safety Code section 44072.2(c) in conjunction
24 with section 3340.41(d), title 16, California Code of Regulations [smog check station] because
25 Respondent did not diagnose the cause of trouble code P0304 (misfire) as required by established
26 procedures and specifications. Respondent found that the car's engine compression was below
27 specification by testing only three of its six cylinders in violation of those procedures and
28 specifications (Esmay Decl. #54).

1 Respondent Brar violated Health & Safety Code section 44072.2(a) in conjunction with
2 Health & Safety Code section 44016, and Health & Safety Code section 44072(c) in conjunction
3 with section 3340.41 (d), title 16, California Code of Regulations by failing to diagnose Mr.
4 Ortiz's vehicle in accord with established specifications and procedures. Respondent Brar tested
5 only three of the car's six cylinders before recommending that a machine shop remove the engine
6 head and inspect the car's cylinders (Esmay Decl. ##54, 57).

7 CONCLUSION

8 An administrative law judge has authority pursuant to Business and Professions Code
9 (hereinafter "Code") section 494 to issue an interim suspension order. Code section 494 states, in
10 relevant part:

11 (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may,
12 upon petition, issue an interim order suspending any licentiate or imposing license restrictions,
13 including, but not limited to, mandatory biological fluid testing, supervision, or remedial training.
14 The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the
15 following:

16 (1) The licentiate has engaged in acts or omissions constituting a violation of this code or
17 has been convicted of a crime substantially related to the licensed activity.

18 (2) Permitting the licentiate to continue to engage in the licensed activity, or permitting
19 the licentiate to continue in the licensed activity without restrictions, would endanger the public
20 health, safety, or welfare.

21 The Declarations of Jack D. Lewis, Jerry A. Esmay and their attached exhibits
22 demonstrate that Respondents engaged in repeated acts of fraud, dishonesty and deceit,
23 misleading statements, violation of established procedures and other violations, including
24 repeated selling parts and services to consumers that were not needed for their vehicles to pass a
25 smog inspection, billing for parts/services that Respondent did not provide and recommending
26 costly and un-needed repairs. There is no reason to believe that the pattern of fraud, dishonesty,
27 misleading statements and other violations of the Automobile Repair Act, the Motor Vehicle
28 Inspection Program and Gold Shield certification will not continue unabated. The Interim

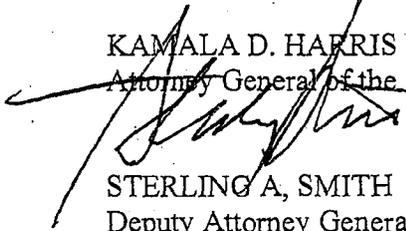
1 Suspension Order requested is necessary to bring Respondent's unlawful activities and the
2 injuries to consumers therefrom to a halt.

3 Petitioner has shown that permitting Respondent Larry M. Contreras to continue to
4 engage in the licensed activities, specifically those authorized by his automobile repair dealer
5 registration, smog check station, lamp station, brake station and Gold Shield certification would
6 endanger the public health, safety, or welfare. Permitting Respondent Kulbir Brar to engage in
7 the activities authorized by his advanced emission specialist license would also endanger the
8 public health. The evidence provided demonstrates a pattern of violations of the most serious
9 kinds that must not continue. The Interim Suspension Order requested should be granted so that
10 the public health and welfare is protected until a full administrative hearing is held to determine
11 whether or not Respondents should be permitted to continue licensed activities and if so, on what
12 conditions.

13 Dated: May 5, 2011

Respectfully submitted,

14 KAMALA D. HARRIS
15 *Attorney General of the State of California*

16 
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19 *Attorneys for Petitioner*

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