

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**JEOVANNI GUTIERREZ, DBA
SMOG FOR LESS**
3062 Main Street
San Diego, CA 92113

Automotive Repair Dealer Reg. No.
ARD 264106
Smog Check Test Only Station License No.
TC 264106

JEOVANNI GUTIERREZ
31771 Biagio Way
Winchester, CA 92596

Advanced Emission Specialist Technician License
No. EA 631768

JOSE MANUEL PARRA
P.O. Box 1798
Perris, CA 92572

Advanced Emission Specialist Technician License
No. EA 632671

**JOSE MANUEL PARRA, DBA SMOG FOR
LESS**
3062 Main Street
San Diego, CA 92113

Automotive Repair Dealer Reg. No. ARD 268232

Case No. 79/12-139

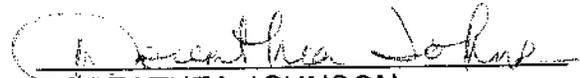
Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order as to Jeovanni Gutierrez Only is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Jeovanni Gutierrez, dba Smog For Less, Automotive Repair Dealer Registration No. ARD 246106, Smog Check Test Only Station License No. TC 264106, and Advanced Emission Specialist Technician License No. EA 631768.

This Decision shall become effective 11/8/12.

DATED: October 22, 2012


DORÉATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/12-139

13 **JEOVANNI GUTIERREZ, DBA**
SMOG FOR LESS

14 3062 Main Street
San Diego, CA 92113

15 Automotive Repair Dealer Reg. No. ARD 264106
16 Smog Check Test Only Station License No. TC 264106,

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER AS
TO JEOVANNI GUTIERREZ
ONLY**

17 **JEOVANNI GUTIERREZ**

18 31771 Biagio Way
Winchester, CA 92596

19 Advanced Emission Specialist Technician License No.
20 EA 631768,

21 **JOSE MANUEL PARRA**

22 P.O. Box 1798
Perris, CA 92572

23 Advanced Emission Specialist Technician License No.
24 EA 632671,

25 **JOSE MANUEL PARRA, DBA**
SMOG FOR LESS

26 3062 Main Street
San Diego, CA 92113

27 Automotive Repair Dealer Reg. No. ARD 268232,

28 Respondents.

1 In the interest of a prompt and speedy settlement of this matter, consistent with the public
2 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of
3 Automotive Repair (Bureau), the parties hereby agree to the following Stipulated Settlement and
4 Disciplinary Order which will be submitted to the Director for his approval and adoption as the
5 final disposition of the Accusation solely with respect to Jeovanni Gutierrez.

6 PARTIES

7 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He
8 brought this action solely in his official capacity and is represented in this matter by Kamala D.
9 Harris, Attorney General of the State of California, by Ron Espinoza, Deputy Attorney General.

10 2. Jeovanni Gutierrez (Respondent) is represented in this proceeding by attorney
11 William Dean Ferreira, Esq., whose address is: Automotive Defense Specialists, 582 Market
12 Street, Suite 1608, San Francisco, CA 94104.

13 **Automotive Repair Dealer Registration No. ARD 264106**

14 3. On or about February 8, 2011, the Bureau issued Automotive Repair Dealer
15 Registration No. ARD 264106 to Respondent Jeovanni Gutierrez, doing business as Smog For
16 Less. The Automotive Repair Dealer (ARD) registration was in full force and effect at all times
17 relevant to the charges in Accusation No. 79/12-139, and will expire on February 28, 2013, unless
18 renewed.

19 **Smog Check Test Only Station License No. TC 264106**

20 4. On or about February 9, 2011, the Bureau also issued Smog Check Test Only Station
21 License No. TC 264106 to Respondent. The Smog Check Test Only Station License was in full
22 force and effect at all times relevant to the charges in Accusation No. 79/12-139, and will expire
23 on February 28, 2013, unless renewed.

24 **Advanced Emission Specialist Technician License No. EA 631768**

25 5. On or about February 16, 2010, the Bureau issued Advanced Emission Specialist
26 Technician License No. EA 631768 to Respondent. The technician license was in full force and
27 effect at all times relevant to the charges in Accusation No. 79/12-139, will expire on August 31,
28 2013, unless renewed.

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

3 17. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Director may, without further notice or formal proceeding, issue and enter the following
5 Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 **IT IS HEREBY ORDERED** that Automotive Repair Dealer Registration No. ARD
8 264106 and Smog Check Test Only Station License No. TC 264106 issued to Respondent
9 Jeovanni Gutierrez are revoked.

10 **IT IS HEREBY FURTHER ORDERED** that Advanced Emission Specialist Technician
11 License No. EA 631768 issued to Respondent Jeovanni Gutierrez is revoked. However, the
12 revocation is stayed and the license is placed on probation for three (3) years on the following
13 terms and conditions.

14 1. **Obey All Laws.** Respondent shall comply with all statutes, regulations and rules
15 governing automotive inspections, estimates and repairs.

16 2. **Reporting.** Respondent must report in person or in writing as prescribed by the
17 Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each
18 quarter, on the methods used and success achieved in maintaining compliance with the terms and
19 conditions of probation.

20 3. **Report Financial Interest.** Within 30 days of the effective date of this action,
21 Respondent shall report any financial interest which he might have in any business required to be
22 registered pursuant to Section 9884.6 of the Business and Professions Code.

23 4. **Jurisdiction.** If an accusation or petition to revoke probation is filed against
24 Respondent during the term of probation, the Director of Consumer Affairs shall have continuing
25 jurisdiction over this matter until the final decision on the accusation or petition to revoke
26 probation, and the period of probation shall be extended until such decision.

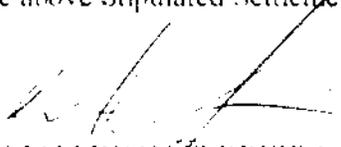
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1 I have read and fully discussed with Respondent Jeovanni Gutierrez the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

3 I approve its form and content.

4 DATED: 7/16/12


5 WILLIAM DEAN FERREIRA, ESQ.
6 Attorney for Respondent

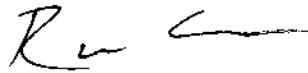
7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Director of Consumer Affairs.

10 Dated: 7-18-12

11 Respectfully submitted,

12 KAMALA D. HARRIS
13 Attorney General of California
14 JAMES M. LEDAKIS
15 Supervising Deputy Attorney General


16 RON ESPINOZA
17 Deputy Attorney General
18 *Attorneys for Complainant*

19 SI02012703082
20 Stipulation.rtf

Exhibit A

Accusation No. 79/12-139

1 KAMALA D. HARRIS
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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
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9 **BEFORE THE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 79/12-139

13 **JEOVANNI GUTIERREZ, DBA**
14 **SMOG FOR LESS**
3062 Main Street
San Diego, CA 92113

ACCUSATION

(Smog Check)

15 Automotive Repair Dealer Reg. No. ARD 264106
16 Smog Check Test Only Station License No. TC 264106,

17 **JEOVANNI GUTIERREZ**
31771 Biagio Way
18 Winchester, CA 92596

19 Advanced Emission Specialist Technician License No.
20 EA 631768,

21 **JOSE MANUEL PARRA**
P.O. Box 1798
22 Perris, CA 92572

23 Advanced Emission Specialist Technician License No.
24 EA 632671,

25 **JOSE MANUEL PARRA, DBA**
26 **SMOG FOR LESS**
3062 Main Street
San Diego, CA 92113

27 Automotive Repair Dealer Reg. No. ARD 268232,

28 Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration No. ARD 264106**

6 2. On or about February 8, 2011, the Bureau issued Automotive Repair Dealer
7 Registration No. ARD 264106 to Jeovanni Gutierrez, doing business as Smog For Less
8 (Respondent Smog For Less). The Automotive Repair Dealer (ARD) registration was in full
9 force and effect at all times relevant to the charges specified herein, and will expire on February
10 28, 2013, unless renewed.

11 **Smog Check Test Only Station License No. TC 264106**

12 3. On or about February 9, 2011, the Bureau also issued Smog Check Test Only Station
13 License No. TC 264106 to Respondent Smog For Less. The Smog Check Test Only Station
14 license (smog check station license) was in full force and effect at all times relevant to the charges
15 specified herein, and will expire on February 28, 2013, unless renewed.

16 **Advanced Emission Specialist Technician License No. EA 631768**

17 4. On or about February 16, 2010, the Bureau issued Advanced Emission Specialist
18 Technician License No. EA 631768 to Jeovanni Gutierrez. The technician license will expire on
19 August 31, 2013, unless renewed.

20 **Advanced Emission Specialist Technician License No. EA 632671**

21 5. On or about November 22, 2010, the Bureau issued Advanced Emission Specialist
22 Technician License No. EA 632671 to Jose Manuel Parra (Respondent Parra). The technician
23 license was in full force and effect at all times relevant to the charges specified herein, and will
24 expire on October 31, 2012, unless renewed.

25 **Automotive Repair Dealer Registration No. ARD 268232**

26 6. On or about March 5, 2012, the Bureau issued Automotive Repair Dealer Registration
27 No. ARD 268232 to Respondent Parra, doing business as Smog For Less. The ARD registration
28 will expire on March 31, 2013, unless renewed.

1 JURISDICTION

2 7. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
3 the Director may revoke an automotive repair dealer registration.

4 8. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
5 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
6 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
7 invalidating (revoking or suspending) a registration.

8 9. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
9 part, that the Director has all the powers and authority granted under the Automotive Repair Act
10 for enforcing the Motor Vehicle Inspection Program.

11 10. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
12 suspension of a license by operation of law, or by order or decision of the Director of Consumer
13 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
14 of jurisdiction to proceed with disciplinary action.

15 STATUTORY PROVISIONS

16 11. Bus. & Prof. Code section 9884.7 states, in pertinent part:

17 (a) The director, where the automotive repair dealer cannot show there
18 was a bona fide error, may deny, suspend, revoke, or place on probation the
19 registration of an automotive repair dealer for any of the following acts or omissions
20 related to the conduct of the business of the automotive repair dealer, which are done
21 by the automotive repair dealer or any automotive technician, employee, partner,
22 officer, or member of the automotive repair dealer.

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

26

27 (4) Any other conduct which constitutes fraud.

28

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

. . . .

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

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12. Bus. & Prof. Code section 9884.22 states, in pertinent part:

(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny at any time any registration required by this article on any of the grounds for disciplinary action provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein. . .

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

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

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

. . . .

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

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

14. Health & Saf. Code section 44036, subdivision (h), states, in pertinent part:

(1) All licensed smog check stations shall utilize original equipment and replacement parts that are certified by the department. . .

15. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under Chapter 5 of the Health and Safety Code (Motor Vehicle Inspection Program) in the name of the licensee may be likewise revoked or suspended by the director.

COST RECOVERY

16. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 **UNDERCOVER SURVEILLANCE OF SMOG FOR LESS ON DECEMBER 20, 2011**

2 17. On December 20, 2011, between approximately 10:58 a.m. and 4:44 p.m., Bureau
3 representative David Winkowski conducted an undercover video surveillance of smog inspections
4 performed at Smog For Less. Respondent Parra was seen performing all the smog inspections for
5 that day. During this time, the Bureau representative observed five (5) smog inspections that
6 required an OBDII functional test.¹ For this test, the smog technician is required to connect an
7 OBDII cable from the smog shop's BAR-97 emissions analyzer, to the tested car's Diagnostic
8 Link Connector (DLC), which is located inside the passenger compartment of the vehicle. The
9 Bureau representative observed that four (4) out of the five (5) vehicles tested, were tested
10 *without connecting* the OBDII cable from the emissions analyzer to the cars, yet smog certificates
11 were issued to all of them. Instead, the Bureau representative saw an unlicensed person (later
12 identified as Gilberto Leon) connecting the OBDII cable from the BAR-97 emissions analyzer to
13 something other than the vehicle being tested, while Respondent Parra performed the smog test.

14 18. Following the undercover surveillance, the Bureau representative reviewed smog test
15 data from the Bureau's Vehicle Information Database (VID) for the entire surveillance period.
16 The VID data provides pertinent information related to each smog inspection conducted at Smog
17 For Less, including emission control system data, smog check history, vehicle profiling data,
18 station and technician data, and certificate data.

19 19. The VID data was then compared to the videotapes, as well as the personal
20 observations of the Bureau representative conducting the undercover surveillance. The test data
21 revealed the exact same diagnostic trouble code (P0325) for all four (4) vehicles tested that were
22 not connected to the smog station's BAR-97 emissions analyzer. Vehicles 1 through 4, set forth
23 in Table I below, were all certified with the same trouble code, but the original equipment

24 ¹ The On Board Diagnostics (OBDII) functional test is a test function of the BAR-97
25 analyzer (the analyzer is the machine used to measure emissions from the car being tested during
26 the smog inspection). During the OBDII functional test, the technician is required to connect an
27 interface cable from the BAR-97 analyzer, to a Diagnostic Link Connector (DLC) which is
28 located inside the tested vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
information from the vehicle's on-board computer about the status of the readiness indicators,
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall smog inspection.

1 manufacturer (OEM) service information for two of these vehicles shows that *they do not support*
 2 *that trouble code*. Instead, the P0325 trouble code belongs to a different make and/or model of
 3 vehicle. Accordingly, these two vehicles (and the other two vehicles that were not connected to
 4 the emissions analyzer) could not have been tested during the OBDII functional test, and another
 5 "clean" vehicle that had the P0325 trouble code was used, constituting "clean plugging,"² and
 6 resulting in the issuance of fraudulent certificates of compliance for the vehicles.

7 20. Based on the VID data, and the undercover surveillance that showed the vehicles not
 8 connected to the BAR-97 emissions analyzer, four (4) illegal smog inspections were performed
 9 by Respondent Parra at Smog For Less on December 20, 2011, using the "clean plugging"
 10 method as follows:

11 Time of Smog Inspection	12 Vehicle Certified and License No. or VIN	13 Unsupported Trouble Code	14 Certificate No.
15 1. 11:02-11:36 hours	16 1997 Honda Accord #6GOJ360	17 P0325	18 XB671238C
19 2. 12:47-1343 hours	20 2003 Chevy Impala VIN 2G1WF52E039319836		21 XB671240C
22 3. 14:55-15:18 hours	23 2002 Ford F150 #8J61902		24 XB671241
25 4. 16:27-16:41 hours	26 2001 Audi A4 Quattro # 6GBY632	27 P0325	28 XB671244C

29 **FIRST CAUSE FOR DISCIPLINE**

30 **(Untrue or Misleading Statements)**

31 21. Respondent Smog For Less' ARD registration is subject to disciplinary action
 32 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or

33 ² "Clean plugging" is the use of the OBDII readiness monitor status and stored fault code
 34 (trouble code) status of a passing vehicle, for the purpose of illegally issuing a smog certificate to
 35 another vehicle that is not in compliance, due to a failure to complete the minimum number of
 36 self tests, known as monitors, or due to the presence of a stored trouble code that indicates an
 37 emission control system or component failure.
 38

1 authorized statements which it knew, or in the exercise of reasonable care should have known, to
2 be untrue or misleading, as follows: Respondent certified that vehicles 1 through 4, identified in
3 paragraph 20 above, had passed inspection and were in compliance with applicable laws and
4 regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging
5 methods in that it substituted or used a different vehicle(s) during the OBDII functional tests in
6 order to issue smog certificates of compliance for the vehicles, and did not test or inspect the
7 vehicles as required by Health & Saf. Code section 44012.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 22. Respondent Smog For Less' ARD registration is subject to disciplinary action
11 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
12 acts which constitute fraud, by issuing electronic smog certificates of compliance for vehicles 1
13 through 4, identified in paragraph 20 above, without performing bona fide inspections of the
14 emission control devices and systems on the vehicles, thereby depriving the People of the State of
15 California of the protection afforded by the Motor Vehicle Inspection Program.

16 **THIRD CAUSE FOR DISCIPLINE**

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

18 23. Respondent Smog For Less' smog check station license is subject to disciplinary
19 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
20 to comply with the following sections of that Code:

21 a. **Section 44012:** Respondent failed to perform the emission control tests on vehicles 1
22 through 4, identified in paragraph 20 above, in accordance with procedures prescribed by the
23 Department.

24 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
25 vehicles 1 through 4, identified in paragraph 20 above, without ensuring that the vehicles were
26 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
27 section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 24. Respondent Smog For Less' smog check station license is subject to disciplinary
5 action pursuant to Health & Saf. Code section 44072.2, subdivision (e), in that Respondent failed
6 to comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 20
9 above.

10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
11 compliance for vehicles 1 through 4, identified in paragraph 20 above, even though the vehicles
12 had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
14 through 4, identified in paragraph 20 above, in accordance with the Bureau's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 25. Respondent Smog For Less' smog check station license is subject to disciplinary
18 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
19 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
20 smog certificates of compliance for vehicles 1 through 4, identified in paragraph 20 above,
21 without performing bona fide inspections of the emission control devices and systems on the
22 vehicles, thereby depriving the People of the State of California of the protection afforded by the
23 Motor Vehicle Inspection Program.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 26. Respondent Parra's technician license is subject to disciplinary action pursuant to
27 Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with section
28 44012 of that Code, in a material respect, as follows: Respondent Parra failed to perform the

1 emission control tests on vehicles 1 through 4, identified in paragraph 20 above, in accordance
2 with procedures prescribed by the Department.

3 **SEVENTH CAUSE FOR DISCIPLINE**
4 **(Failure to Comply with Regulations Pursuant**
5 **to the Motor Vehicle Inspection Program)**

6 27. Respondent Parra's technician license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions
8 of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued
10 electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 20
11 above.

12 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1
13 through 4, identified in paragraph 20 above, in accordance with Health & Saf. Code sections
14 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

15 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 1
16 through 4, identified in paragraph 20 above, in accordance with the Bureau's specifications.

17 **EIGHTH CAUSE FOR DISCIPLINE**
18 **(Dishonesty, Fraud or Deceit)**

19 28. Respondent Parra's technician license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest, fraudulent,
21 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
22 for vehicles 1 through 4, identified in paragraph 20 above, without performing bona fide
23 inspections of the emission control devices and systems on the vehicles, thereby depriving the
24 People of the State of California of the protection afforded by the Motor Vehicle Inspection
25 Program.

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1 **STATION INSPECTION OF SMOG FOR LESS ON JANUARY 12, 2012**

2 29. On January 12, 2012, Bureau representative David Winkowski conducted a
3 subsequent detailed review of the VID data for all smog inspections at Smog For Less requiring
4 the OBDII functional test. The review revealed a pattern of the exact same OBDII trouble code
5 for eighteen (18) vehicles that were all issued smog certificates between January 6, 2012, and
6 January 12, 2012. This time the common trouble code was P1494.

7 30. On this same date, several Bureau representatives went to and conducted a station
8 inspection of Smog For Less. When they arrived at Smog For Less, the representatives identified
9 Respondent Parra, as well as the previously unidentified person who had assisted him during the
10 smog inspections detailed above on December 20, 2011. Respondent's "assistant" was Gilberto
11 Leon.

12 31. During their station inspection, the Bureau representatives discovered that hidden in
13 another car bay behind the smog shop was a 1999 Dodge Neon to which an illegally modified
14 OBDII extension cable was connected to its Diagnostic Link Connector (DLC). The modified
15 cable was routed from the Neon, along the side of the building, and then *through the wall of the*
16 *smog shop*, to the desk next to the BAR-97 emissions analyzer used for smog testing. Respondent
17 Parra admitted to a Bureau representative that he installed the cable, and that the cable previously
18 ran from a vehicle to the window located next to the BAR-97 analyzer. This is same area that
19 Gilberto Leon was previously seen connecting the OBDII cable from the BAR-97 analyzer to
20 something other than the four (4) vehicles tested on December 20, 2011, during the Bureau's
21 undercover video surveillance.

22 32. Bureau representative David Winkowski checked the 1999 Dodge Neon to see what
23 trouble code, if any, it had in the vehicle's on-board computer (stored in the power train control
24 module (PCM) memory). Representative Winkowski connected an OBDII scan tool to the
25 vehicle's DLC. The scan tool indicated that there was only one trouble code: P1494. This is the
26 same trouble code discovered during Winkowski's review of the VID data for Smog For Less on
27 January 12, 2012.

28 ///

1 33. Of the eighteen (18) vehicles that had trouble code P1494 and were issued smog
 2 certificates between January 6, 2012, and January 12, 2012, the OEM service information for
 3 eight (8) of them shows that they *do not support that trouble code*. Accordingly, these eight (8)
 4 vehicles could not have been tested during the OBDII functional test, and another "clean" vehicle
 5 that had the P1494 trouble code was used, constituting "clean plugging" and resulting in the
 6 issuance of fraudulent certificates of compliance for the vehicles. The smog inspections for all
 7 eight (8) of these vehicles were done by Respondent Parra.

8 34. Based on the station inspection, and the review of the VID data, at least eight (8)
 9 illegal smog inspections were performed by Respondent Parra at Smog For Less between January
 10 6, 2012, and January 12, 2012, using the "clean plugging" method as follows:

11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Time of Smog Inspection	Date	Vehicle Certified and License No. or VIN	Unsupported Trouble Code	Certificate No.												
1. 13:15-13:56 hours	1/12/12	1998 Land Rover Discovery #4VIC092	P1494	XD027985C												
2. 10:33-10:59 hours	1/12/12	2005 Nissan Armada #6GJK118	P1494	XD027982C												
3. 14:41-15:00 hours	1/11/12	2002 Nissao Altima VIN IN4BL11E82C123147	P1494	XD027979C												
4. 12:25-12:49 hours	1/11/12	1999 Chevrolet C1500 #4JPX434	P1494	XD027976C												
5. 11:31-12:07 hours	1/11/12	2000 Volkswagen Jetta #5LID463	P1494	XD027975C												
6. 14:44-15:17 hours	1/10/12	2001 Honda Civic VIN 1HGEM22901L111473	P1494	XD027969C												
7. 14:02-14:28 hours	1/10/12	2003 Mazda Protege VIN JM1BJ227530642715	P1494	XD027968C												
8. 10:49-11:13 hours	1/10/12	2005 Mitsubishi Lancer #5UKS016	P1494	XD027964C												

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1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

4 **(Use of Illegal Smog Check Equipment)**

5 43. Respondent Parra's technician license is subject to disciplinary action pursuant to
6 Health & Saf. Code sections 44072.2 and 44036, subdivision (b), in that he used and installed a
7 modified OBDII extension cable, not authorized by the Department, to "clean plug" vehicles
8 while performing smog inspections at Smog For Less.

9 **BUREAU'S REVIEW OF VID DATA FOR SMOG FOR LESS ON MARCH 18, 2012**

10 44. On March 18, 2012, Bureau representative David Winkowski performed another
11 detailed review of the VID data for Smog For Less and found that the pattern of the P1494
12 trouble code had stopped for eleven days since the Bureau performed its station inspection of the
13 facility on January 12, 2012. However, representative Winkowski discovered the pattern of that
14 same OBDII trouble code *started again* on January 24, 2012, and continued through February 27,
15 2012. His VID data review showed a pattern of OBDII code P1494 being stored in the PCM
16 memory of 74 different vehicles that received smog certificates from Smog For Less during this
17 34-day period. Respondent Parra was the only licensed Smog Check Technician with access to
18 the BAR-97 analyzer at Smog For Less during this time.

19 45. Bureau representative David Winkowski selected five (5) of the most recent vehicles
20 smog inspected during this 34-day period and determined that they did not support the P1494
21 trouble code. The five (5) vehicles analyzed were all certified with pending trouble code P1494
22 stored in their PCM memory, while the OEM service information for these vehicles shows that
23 they *do not support* the P1494 trouble code. As such, these five (5) vehicles could not have been
24 tested during the OBDII functional test, and another "clean" vehicle that had the P1494 trouble
25 code was used, constituting "clean plugging" and resulting in the issuance of fraudulent
26 certificates of compliance for the vehicles. The smog inspections for all five (5) of these vehicles
27 were done by Respondent Parra.

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1 46. Based on this review of the VID data, at least five (5) illegal smog inspections were
2 performed by Respondent Parra at Smog For Less between January 24, 2012, and February 27,
3 2012, using the "clean plugging" method as follows:

4 Time of 5 Smog 6 Inspection	7 Date	8 Vehicle Certified and 9 License No. or VIN	10 Unsupported 11 Trouble Code	12 Certificate No.
13 1. 15:42- 14 16:03 hours	2/27/12	2001 Chevrolet Silverado #6P36901,	P1494	XD881464C
15 2. 14:29- 16 14:50 hours	2/27/12	1997 Chevrolet Tahoe #6NKW656,	P1494	XD881463C
17 3. 13:51- 18 14:18 hours	2/27/12	1998 Oldsmobile Silhouette #3XLA729,	P1494	XD881462C
19 4. 11:42- 20 12:00 hours	2/27/12	2001 Toyota Camry #4SZZ555,	P1494	XD881459C
21 5. 16:01- 22 16:25 hours	2/24/12	2001 Cadillac Deville #4XMB658	P1494	XD881458C

23 **EIGHTEENTH CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 47. Respondent Smog For Less' ARD registration is subject to disciplinary action
26 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
27 authorized statements which it knew, or in the exercise of reasonable care should have known, to
28 be untrue or misleading, as follows: Respondent certified that vehicles 1 through 5, identified in
paragraph 46 above, had passed inspection and were in compliance with applicable laws and
regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging
methods in that it substituted or used a different vehicle(s) during the OBDII functional tests in
order to issue smog certificates of compliance for the vehicles, and did not test or inspect the
vehicles as required by Health & Saf. Code section 44012.

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1 **NINETEENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 48. Respondent Smog For Less' ARD registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
5 acts which constitute fraud, by issuing electronic smog certificates of compliance for vehicles 1
6 through 5, identified in paragraph 46 above, without performing bona fide inspections of the
7 emission control devices and systems on the vehicles, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 **TWENTIETH CAUSE FOR DISCIPLINE**

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

11 49. Respondent Smog For Less' smog check station license is subject to disciplinary
12 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
13 to comply with the following sections of that Code:

14 a. **Section 44012:** Respondent failed to perform the emission control tests on vehicles 1
15 through 5, identified in paragraph 46 above, in accordance with procedures prescribed by the
16 Department.

17 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
18 vehicles 1 through 5, identified in paragraph 46 above, without ensuring that the vehicles were
19 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
20 section 44012.

21 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations Pursuant**
23 **to the Motor Vehicle Inspection Program)**

24 50. Respondent Smog For Less' smog check station license is subject to disciplinary
25 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
26 to comply with provisions of California Code of Regulations, title 16, as follows:

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1 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued
2 electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 46
3 above.

4 b. **Section 3340.35, subdivision (c)**: Respondent issued electronic smog certificates of
5 compliance for vehicles 1 through 5, identified in paragraph 46 above, even though the vehicles
6 had not been inspected in accordance with section 3340.42.

7 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles
8 1 through 5, identified in paragraph 46 above, in accordance with the Bureau's specifications.

9 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

11 51. Respondent Smog For Less' smog check station license is subject to disciplinary
12 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
13 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
14 smog certificates of compliance for vehicles 1 through 5, identified in paragraph 46 above,
15 without performing bona fide inspections of the emission control devices and systems on the
16 vehicles, thereby depriving the People of the State of California of the protection afforded by the
17 Motor Vehicle Inspection Program.

18 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

20 52. Respondent Parra's technician license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with section
22 44012 of that Code, in a material respect, as follows: Respondent Parra failed to perform the
23 emission control tests on vehicles 1 through 5, identified in paragraph 46 above, in accordance
24 with procedures prescribed by the Department.

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1 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

4 53. Respondent Parra's technician license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions
6 of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 46
9 above.

10 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1
11 through 5, identified in paragraph 46 above, in accordance with Health & Saf. Code sections
12 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 1
14 through 5, identified in paragraph 46 above, in accordance with the Bureau's specifications.

15 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

17 54. Respondent Parra's technician license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest, fraudulent,
19 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
20 for vehicles 1 through 5, identified in paragraph 46 above, without performing bona fide
21 inspections of the emission control devices and systems on the vehicles, thereby depriving the
22 People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program.

24 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

25 **(Untrue or Misleading Statements)**

26 55. Respondent Parra's ARD registration is subject to disciplinary action pursuant to Bus.
27 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
28 statements which he knew, or in the exercise of reasonable care should have known, to be untrue

1 or misleading, as follows: Respondent certified that the vehicles, identified in paragraphs 20, 34,
2 and 46 above, had passed inspection and were in compliance with applicable laws and
3 regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging
4 methods in that he substituted or used a different vehicle(s) during the OBDII functional tests in
5 order to issue smog certificates of compliance for the vehicles, and did not test or inspect the
6 vehicles as required by Health & Saf. Code section 44012.

7 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 56. Respondent Parra's ARD registration is subject to disciplinary action pursuant to Bus.
10 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
11 constitute fraud, by issuing electronic smog certificates of compliance for vehicles, identified in
12 paragraphs 20, 34, and 46 above, without performing bona fide inspections of the emission
13 control devices and systems on the vehicles, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program.

15 **OTHER MATTERS**

16 57. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may deny,
17 suspend, revoke, or place on probation the registration for all places of business operated in this
18 state by Jeovanni Gutierrez, doing business as Smog For Less, upon a finding that he has, or is,
19 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
20 automotive repair dealer.

21 58. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may deny,
22 suspend, revoke, or place on probation the registration for all places of business operated in this
23 state by Respondent Parra, doing business as Smog For Less, upon a finding that he has, or is,
24 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
25 automotive repair dealer.

26 59. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
27 License No. TC 264106 issued to Jeovanni Gutierrez, doing business as Smog For Less, is
28 revoked or suspended, any additional license issued under Chapter 5 of the Health and Safety

1 Code (Motor Vehicle Inspection Program) in the name of said licensee may be likewise revoked
2 or suspended by the director, including but not limited to, his Advanced Emission Specialist
3 Technician License No. EA 631768.

4 60. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
5 Technician License Number EA 632671 to Jose Manuel Parra is revoked or suspended, any
6 additional license issued under Chapter 5 of the Health and Safety Code (Motor Vehicle
7 Inspection Program) in the name of said licensee may be likewise revoked or suspended by the
8 director.

9 PRAYER

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

12 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 264106
13 issued to Jeovanni Gutierrez, doing business as Smog For Less;

14 2. Revoking or suspending any other automotive repair dealer registration issued to
15 Jeovanni Gutierrez;

16 3. Revoking or suspending Smog Check Test Only Station License No. TC 264106
17 issued to Jeovanni Gutierrez, doing business as Smog For Less;

18 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
19 and Safety Code in the name of Jeovanni Gutierrez, including but not limited to, Advanced
20 Emission Specialist Technician License No. EA 631768;

21 5. Revoking or suspending Advanced Emission Specialist Technician License Number
22 EA 632671 issued to Jose Manuel Parra;

23 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
24 and Safety Code in the name of Jose Manuel Parra;

25 7. Revoking or suspending Automotive Repair Dealer Registration No. ARD 268232
26 issued to Jose Manuel Parra, doing business as Smog For Less;

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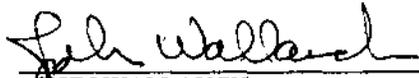
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8. Ordering Jeovanni Gutierrez and Jose Manual Parra to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: May 4, 2017



JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant