

1  
2  
3  
4  
5 **BEFORE THE**  
6 **DEPARTMENT OF CONSUMER AFFAIRS**  
7 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

10 **TITO SMOG TEST ONLY, JORGE**  
11 **ENILSON PLEITEZ, OWNER,**  
12 **4911 Felspar St. Unit 101**  
13 **Riverside, CA 92509**  
14 **Mailing Address: 9253 Mission Blvd.**  
15 **Riverside CA 92509**  
16 **Automotive Repair Dealer Registration No.**  
17 **ARD 266932**  
18 **Smog Check, Test Only Station License No.**  
19 **TC 266932,**

20 **ANDREW HERRERA**  
21 **10535 Portsmouth Ct.**  
22 **Riverside, CA 92503**  
23 **Advanced Emission Specialist Technician**  
24 **License No. EA 633755 (to be redesignated**  
25 **upon renewal as EO 633755 and/or EI**  
26 **633755),**

27 **JOSE PABEL AGUAYO,**  
28 **290 Wilson Ave Apt 291**  
**Perris, CA 92751**  
**Smog Check Inspector License No. EO**  
**143490 (formerly Advanced Emission**  
**Specialist Technician License No. EA**  
**143490),**

**BENJAMIN CONTRERAS**  
**15541 Buckboard**  
**Moreno Valley, CA 92555**  
**Smog Check Inspector License No. EO**  
**633198**  
**Smog Check Repair Technician License No.**  
**EI 633198 (formerly Advanced Emission**  
**Specialist Technician License No. EA**  
**633198)**

Respondents.

Case No. 79/14-50

**DEFAULT DECISION AND ORDER AS**  
**TO RESPONDENTS PLEITEZ,**  
**AGUAYO, & CONTRERAS**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On November 5, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, filed Accusation No. 79/14-50 against Respondents Jorge Enilson Pleitez, Andrew Herrera, Jose Pabel Aguayo, and Benjamin Contreras before the Director of Consumer Affairs. (Accusation attached as Exhibit A.) Complainant and Respondent Herrera have since settled this matter, and the Stipulated Settlement and Disciplinary Order as to Respondent Herrera is currently under review and awaiting approval by the Director of Consumer Affairs (Director).

2. On October 24, 2011, the Bureau issued Automotive Repair Dealer Registration Number ARD 266932 (ARD) to Jorge Enilson Pleitez, Owner, DBA Tito Smog Test Only (Respondent Pleitez). At all times relevant hereto Respondent Pleitez employed Respondents Herrera, Aguayo, and Contreras at Tito Smog Test Only, as smog check technicians as more fully detailed below. The ARD was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2012. This lapse in licensure, however, pursuant to Business & Professions Code (Code) section 118(b) does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

3. On December 14, 2011, the Bureau issued Smog Check-Test Only Station License Number TC 266932 (station license) to Respondent Pleitez. The station license was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2012. This lapse in licensure, however, pursuant to Code section 118(b) does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

4. On October 25, 2011, the Bureau issued Advanced Emission Specialist Technician License No. EA 633755 (technician license) to Andrew Herrera (Respondent Herrera). The technician license was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2013. This lapse in licensure, however, pursuant to Code section 118(b) does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding. Upon timely renewal of the license, the license will be redesignated as EO 633755 and/or EI 633755.

1           5.     In 2001, the Bureau issued Advanced Emission Specialist Technician License No. EA  
2 143490 (technician license) to Jose Pabel Aguayo (Respondent Aguayo). The technician license  
3 was in full force and effect at all times relevant to the charges brought herein. Respondent's  
4 technician license was due to expire on February 28, 2013. Pursuant to California Code of  
5 Regulations, title 16 (Regulations), section 3340.28, subdivision (e), Respondent Aguayo's  
6 technician license was renewed pursuant to Respondent Aguayo's election as Smog Check  
7 Inspector License No. EO 143490 (inspector license), effective February 28, 2013, and will  
8 expire on February 28, 2015, unless renewed.

9           6.     On May 31, 2011, the BAR issued Advanced Emission Specialist Technician License  
10 No. EA 633198 (technician license) to Benjamin Contreras (Respondent Contreras). The  
11 technician license was in full force and effect at all times relevant to the charges brought herein.  
12 Respondent Contreras' technician license was due to expire on June 30, 2013. Pursuant to  
13 Regulations section 3340.28, subdivision (e), Respondent Contreras' technician license was  
14 renewed pursuant to Respondent Contreras' election as Smog Check Repair Technician License  
15 No. EI 633198 and Smog Check Repair Inspector License No. EO 633198 (technician licenses),  
16 effective June 28, 2013, and will expire on June 30, 2015, unless renewed.

17           7.     On November 5, 2013, Respondents Pleitez, Aguayo, and Contreras were served by  
18 Certified and First Class Mail with copies of Accusation No. 79/14-50, Statement to Respondent,  
19 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections  
20 11507.5, 11507.6, and 11507.7) at Respondents' addresses of record which, pursuant to Code  
21 section 136, are required to be reported and maintained with the Bureau. Said Respondents'  
22 addresses of record were and are:

23 Jorge Enilson Pleitez, Owner, DBA Tito Smog Test Only  
24 4911 Felspar Street, Unit 101  
Riverside, CA 92509

25 Jose Pabel Aguayo  
26 290 Wilson Ave Apt 291  
Perris, CA 92751

27 Benjamin Contreras  
28 15541 Buckboard  
Moreno Valley, CA 92555

1           8.     Service of the Accusation was effective as a matter of law under the provisions of  
2 Government Code section 11505, subdivision (c) and/or Code section 124.

3           9.     On or about November 26, 2013, the aforementioned documents addressed to  
4 Respondent Pleitez and sent by Certified and First Class mail were returned by the U.S. Postal  
5 Service as unclaimed and "unable to forward." On or about December 5, 2013, the  
6 aforementioned documents addressed to Respondents Aguayo and Contreras and sent by certified  
7 mail were returned by the U.S. Postal Service as unclaimed; the documents sent by First Class  
8 mail to these two Respondents were not returned.

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

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

13           11.    Respondents Pleitez, Aguayo, and Contreras failed to file their Notices of Defense  
14 within 15 days after service upon them of the Accusation, and therefore waived their right to a  
15 hearing on the merits of Accusation No. 79/14-50.

16           12.    California Government Code section 11520 states, in pertinent part:

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

20           13.    Pursuant to its authority under Government Code section 11520, the Director after  
21 having reviewed the proof of service dated November 5, 2013, and returned envelopes, finds  
22 Respondents are in default. The Director will take action without further hearing and, based on  
23 Accusation, No. 79/14-50, proof of service and on the Affidavit of Bureau Representative  
24 Program Representative I Steve Koch, finds that the allegations in Accusation are true.

25           14.    Taking official notice of its own internal records, pursuant to Code section 125.3, it is  
26 hereby determined that the reasonable costs for Investigation and Enforcement is \$16,550.69 as of  
27 December 9, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Jorge Enilson Pleitez, owner of Tito Smog Test Only has subjected his Automotive Repair Dealer Registration No. ARD 266932 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive Repair Dealer Registration based upon the following violations alleged in the Accusation to have been committed on April 18, April 19, April 25, and July 25, 2012, which are supported by the evidence contained in the affidavit of Bureau Program Representative I Steve Koch in this case.

a. Respondent's Pleitez's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent Pleitez made statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading he issued electronic certificates of compliance certifying that vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had been clean-piped in violation of H&S Code section 44012.

b. Respondent Pleitez's ARD registration is subject to discipline under Code section 9884.7, subdivision (a)(4), in that Respondent Pleitez committed acts constituting fraud by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

c. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that Respondent Pleitez failed to comply with the following sections of the Regulations:

i. Section 3340.30, subdivision (a): Respondent Pleitez failed to perform tests and inspections of vehicles in accordance with H&S Code sections 44012 and 44035, and Regulations section 3340.42.

1                   ii. Section 3340.35, subdivision (c): Respondent issued electronic certificates  
2 of compliance for vehicles that had not been inspected in accordance with section 3340.42.

3                   iii. Section 3340.41, subdivision (c): Respondent falsely entered into an EIS  
4 unit vehicle identification information or emission control system information for vehicles other  
5 than the ones being tested.

6                   iv. Section 3340.42: Respondent issued electronic certificates of compliance  
7 for vehicles that had not been inspected in accordance with Bureau specifications.

8                   v. Section 3373: In issuing electronic certificates of compliance for vehicles,  
9 Respondent inserted therein information causing those certificates to be false or misleading, with  
10 the tendency or effect to mislead or deceive customers, prospective customers, or the public.

11           4.     Respondent Jorge Enilson Pleitez, owner of Tito Smog Test Only has also subjected  
12 his Smog Check-Test Only Station License Number TC 266932 to discipline based on the  
13 foregoing findings of fact.

14           5.     The Director is authorized to revoke Respondent Pleitez's Smog Check-Test Only  
15 Station License based upon the following violations alleged in the Accusation to have been  
16 committed on April 18, April 19, April 25, and July 25, 2012, which are supported by the  
17 evidence contained in the affidavit of Bureau Program Representative I Steve Koch in this case.

18           a.     Respondent Pleitez's station license is subject to discipline under H&S Code  
19 section 44072.2, subdivision (a), in that Respondent Pleitez failed to comply with the following  
20 sections of that Code:

21                   i. Section 44012: Respondent failed to ensure that the emission control tests  
22 were performed on vehicles in accordance with procedures prescribed by the department.

23                   ii. Section 44012, subdivision (f): Respondent failed to test and inspect  
24 vehicles in accordance with the procedures prescribed by the Department.

25                   iii. Section 44015, subdivision (b): Respondent issued electronic certificates of  
26 compliance for vehicles without properly testing and inspecting the vehicles to determine if they  
27 were in compliance with section 44012 of that Code.

iv. Section 44032: Respondent failed to perform tests of the emission control devices and systems on vehicles in accordance with H&S Code section 44012.

b. Respondent Pleitez's station license is subject to discipline under H&S Code section 44072.2, subdivision (c), in that Respondent Pleitez failed to materially comply with the following sections of the Regulations:

i. Section 3340.30, subdivision (a): Respondent failed to perform tests and inspections of vehicles in accordance with H&S Code sections 44012 and 44035, and Regulations section 3340.42.

ii. Section 3340.35, subdivision (c): Respondent issued electronic certificates of compliance for vehicles that had not been inspected in accordance with section 3340.42.

iii. Section 3340.41, subdivision (c): Respondent falsely entered into an EIS unit vehicle identification information or emission control system information for vehicles other than the ones being tested.

iv. Section 3340.42: Respondent issued electronic certificates of compliance for vehicles that had not been inspected in accordance with Bureau specifications.

v. Section 3373: In issuing electronic certificates of compliance for vehicles, Respondent inserted therein information causing those certificates to be false or misleading, with the tendency or effect to mislead or deceive customers, prospective customers, or the public.

c. Respondent Pleitez's station license is subject to discipline under H&S Code section 44072.2, subdivision (d), in that Respondent Pleitez committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

6. Respondent Benjamin Contreras has subjected his Smog Check Inspector License No. EO 633198 and Smog Check Repair Technician License No. EI 633198 (formerly Advanced Emission Specialist Technician License No. EA 633198) to discipline based on the foregoing findings of fact.

1           7. The Director is authorized to revoke Respondent Contreras's Smog Check Inspector  
2 License No. EO 633198 and Smog Check Repair Technician License based upon the following  
3 violations alleged in the Accusation to have been committed on April 18, 2012, which is  
4 supported by the evidence contained in the affidavit of Bureau Program Representative I Steve  
5 Koch in this case:

6           a. Respondent Contreras's inspector and repair technician licenses are subject to  
7 discipline under H&S Code section 44072.2, subdivision (a), in that he violated the following  
8 sections of that Code:

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

11           ii. Section 44012, subdivision (f): Respondent failed to perform smog  
12 inspections on vehicles in accordance with procedures prescribed by the department.

13           iii. Section 44015, subdivision (b): Respondent issued electronic certificates of  
14 compliance for vehicles without properly testing and inspecting the vehicles to determine if they  
15 were in compliance with section 44012 of that Code.

16           iv. Section 44032: Respondent failed to perform tests of the emission control  
17 devices and systems on vehicles in accordance with H&S Code section 44012.

18           b. Respondent Contreras's technician license is subject to discipline under H&S  
19 Code section 44072.2, subdivision (c), in that he failed to materially comply with the following  
20 sections of the Regulations:

21           i. Section 3340.30, subdivision (a): Respondent failed to perform tests and  
22 inspections of vehicles in accordance with H&S Code sections 44012 and 44035, and Regulations  
23 section 3340.42.

24           ii. Section 3340.35, subdivision (c): Respondent issued electronic certificates  
25 of compliance for vehicles that had not been inspected in accordance with section 3340.42.

26           iii. Section 3340.41, subdivision (c): Respondent falsely entered into an EIS  
27 unit vehicle identification information or emission control system information for vehicles other  
28 than the ones being tested.



iv. Section 3340.42: Respondent issued electronic certificates of compliance for vehicles that had not been inspected in accordance with Bureau specifications.

v. Section 3373: In issuing electronic certificates of compliance for vehicles, Respondent inserted therein information causing those certificates to be false or misleading, with the tendency or effect to mislead or deceive customers, prospective customers, or the public.

c. Respondent Contreras's inspector and repair technician licenses are subject to discipline under H&S Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud, or deceit, by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

8. Respondent Jose Pabel Aguayo has subjected his Smog Check Inspector License No. EO 143490 (formerly Advanced Emission Specialist Technician License No. EA 143490) to discipline based on the foregoing findings of fact.

7. The Director is authorized to revoke Respondent Aguayo's Smog Check Inspector License No. EO 143490 based upon the following violation alleged in the Accusation to have been committed on July 12, 2012, which is supported by the evidence contained in the affidavit of Bureau Program Representative I Steve Koch in this case:

a. Respondent Aguayo's inspector license is subject to discipline under H&S Code section 44072.2, subdivision (f), in that he used Respondent Herrera's technician license to aid and abet an unlicensed person to evade the provisions of the Motor Vehicle Inspection Program.

#### ORDER

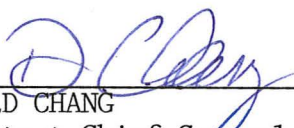
IT IS SO ORDERED that Automotive Repair Dealer Registration Number ARD 266932 and Smog Check, Test Only Station License Number TC 266932, issued to Jorge Enilson Pleitez, owner of Tito Smog Test Only; Smog Check Inspector License No. EO 143490 (formerly Advanced Emission Specialist Technician License No. EA 143490), issued to Jose Pabel Aguayo; and Smog Check Inspector License No. EO 633198 and Smog Check Repair Technician

1 License No. EI 633198 (formerly Advanced Emission Specialist Technician License No. EA  
2 633198), issued to Benjamin Contreras are revoked.

3 Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a  
4 written motion requesting that the Decision be vacated and stating the grounds relied on within  
5 seven days after service of the Decision on Respondents. The motion should be sent to the  
6 Bureau of Automotive Repair, ATTN: William D. Thomas, William D. Thomas, 10949 North  
7 Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the  
8 Decision and grant a hearing on a showing of good cause, as defined in the statute.

9 This Decision shall become effective on February 28, 2014.

10 It is so ORDERED FEB 07 2014

11  
12   
13 \_\_\_\_\_  
14 DONALD CHANG  
15 Assistant Chief Counsel  
16 Department of Consumer Affairs  
17  
18  
19  
20  
21  
22  
23  
24

25 Attachment:  
26 Exhibit A: Accusation

27 70793234.DOC  
28 SD2012704439

# Exhibit A

Accusation No. 79/14-50

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 G. MICHAEL GERMAN  
Deputy Attorney General  
4 State Bar No. 103312  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2617  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

12 **TITO SMOG TEST ONLY, JORGE ENILSON**  
13 **PLEITEZ, OWNER,**  
14 **4911 Felspar St. Unit 101**  
15 **Riverside, CA 92509**  
16 **Mailing Address: 9253 Mission Blvd.**  
17 **Riverside CA 92509**  
18 **Automotive Repair Dealer Registration No. ARD**  
19 **266932**  
20 **Smog Check, Test Only Station License No. TC 266932,**

21 **ANDREW HERRERA**  
22 **10535 Portsmouth Ct.**  
23 **Riverside, CA 92503**  
24 **Advanced Emission Specialist Technician License No.**  
25 **EA 633755 (to be redesignated upon renewal as EO**  
26 **633755 and/or EI 633755),**

27 **JOSE PABEL AGUAYO**  
28 **290 Wilson Ave Apt 291**  
29 **Perris, CA 92751**  
30 **Smog Check Inspector License No. EO 143490**  
31 **(formerly Advanced Emission Specialist Technician**  
32 **License No. EA 143490),**

and

33 **BENJAMIN CONTRERAS**  
34 **15541 Buckboard**  
35 **Moreno Valley, CA 92555**  
36 **Smog Check Inspector License No. EO 633198**  
37 **Smog Check Repair Technician License No. EI 633198**  
38 **(formerly Advanced Emission Specialist Technician**  
39 **License No. EA 633198)**

Respondents.

Case No. 79/14-50

ACCUSATION  
(SMOG CHECK)

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

3        2.    On October 24, 2011, the BAR issued Automotive Repair Dealer Registration  
4 Number ARD 266932 (ARD) to Jorge Enilson Pleitez, Owner, DBA Tito Smog Test Only  
5 (Respondent Pleitez). At all times relevant hereto Respondent Pleitez employed Respondents  
6 Herrera, Aguayo, and Contreras at Tito Smog Test Only, as smog check technicians as more fully  
7 detailed below. The ARD was in full force and effect at all times relevant to the charges brought  
8 herein and expired on October 31, 2012.

9        3.    On December 14, 2011, the BAR issued Smog Check-Test Only Station License  
10 Number TC 266932 (station license) to Respondent Pleitez. The station license was in full force  
11 and effect at all times relevant to the charges brought herein and expired on October 31, 2012.

12       4.    On October 25, 2011, the BAR issued Advanced Emission Specialist Technician  
13 License No. EA 633755 (technician license) to Andrew Herrera (Respondent Herrera). The  
14 technician license was in full force and effect at all times relevant to the charges brought herein  
15 and expired on October 31, 2013. Upon timely renewal of the license, the license will be  
16 redesignated as EO 633755 and/or EI 633755.<sup>1</sup>

17       5.    In 2001, the BAR issued Advanced Emission Specialist Technician License No. EA  
18 143490 (technician license) to Jose Pabel Aguayo (Respondent Aguayo). The technician license  
19 was in full force and effect at all times relevant to the charges brought herein. Respondent's  
20 technician license was due to expire on February 28, 2013. Pursuant to California Code of  
21 Regulations, title 16, section 3340.28, subdivision (e), Respondent Aguayo's technician license  
22 was renewed pursuant to Respondent Aguayo's election as Smog Check Inspector License No.  
23 EO 143490 (inspector license), effective February 28, 2013, and will expire on February 28,  
24 2015, unless renewed.

25  
26       <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced  
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

6. On May 31, 2011, the BAR issued Advanced Emission Specialist Technician License No. EA 633198 (technician license) to Benjamin Contreras (Respondent Contreras). The technician license was in full force and effect at all times relevant to the charges brought herein. Respondent Contreras' technician license was due to expire on June 30, 2013. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), Respondent Contreras' technician license was renewed pursuant to Respondent Contreras' election as Smog Check Repair Technician License No. EI 633198 and Smog Check Repair Inspector License No. EO 633198 (technician licenses), effective June 28, 2013, and will expire on June 30, 2015, unless renewed.

## JURISDICTION

7. Business and Professions Code (Code) section 118, subdivision (b), states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

8. Code section 9884.13 provides that "The expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with any investigation or disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently."

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

10. H&S Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

1 11. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that  
2 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
3 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
4 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

#### 5 STATUTORY PROVISIONS

6 12. Code section 22, subdivision (a), states:

7 "Board" as used in any provision of this Code, refers to the board in which  
8 the administration of the provision is vested, and unless otherwise expressly  
9 provided, shall include "bureau," "commission," "committee," "department,"  
"division," "examining committee," "program," and "agency."

10 13. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes  
11 "registration" and "certificate."

12 14. Code section 9884.7 states, in pertinent part:

13 (a) The director, where the automotive repair dealer cannot show there was a  
14 bona fide error, may deny, suspend, revoke or place on probation the registration of  
15 an automotive repair dealer for any of the following acts or omissions related to the  
16 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.

17 (1) Making or authorizing in any manner or by any means whatever any  
18 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.

19 . . . .

20 (4) Any other conduct that constitutes fraud.

. . . .

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

23 . . . .

24 15. H&S Code section 44012 states:

25 The test at the smog check stations shall be performed in accordance with  
26 procedures prescribed by the department and may require loaded mode dynamometer  
27 testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard  
28 diagnostic system, or other appropriate test procedures as determined by the  
department in consultation with the state board. The department shall implement  
testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or  
two-speed idle testing, on model year 2000 and newer vehicles only, beginning no

1 earlier than January 1, 2013. However, the department, in consultation with the state  
2 board, may prescribe alternative test procedures that include loaded mode  
3 dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems  
4 that the department and the state board determine exhibit operational problems. The  
5 department shall ensure, as appropriate to the test method, the following:

6 (a) Emission control systems required by state and federal law are reducing  
7 excess emissions in accordance with the standards adopted pursuant to subdivisions  
8 (a) and (c) of Section 44013.

9 (b) If a vehicle meets the requirements of Section 44012, a smog check  
10 station licensed to issue certificates shall issue a certificate of compliance or a  
11 certificate of noncompliance.

12 ....

13 (f) A visual or functional check is made of emission control devices  
14 specified by the department, including the catalytic converter in those instances in  
15 which the department determines it to be necessary to meet the findings of Section  
16 44001. The visual or functional check shall be performed in accordance with  
17 procedures prescribed by the department.

18 ....

19 16. H&S Code section 44015 states in pertinent part:

20 ....

21 (b) If a vehicle meets the requirements of Section 44012, a smog check  
22 station licensed to issue certificates shall issue a certificate of compliance or a  
23 certificate of noncompliance.

24 ....

25 17. H&S Code section 44032 states:

26 No person shall perform, for compensation, tests or repairs of emission  
27 control devices or systems of motor vehicles required by this chapter unless the  
28 person performing the test or repair is a qualified smog check technician and the test  
or repair is performed at a licensed smog check station. Qualified technicians shall  
perform tests of emission control devices and systems in accordance with Section  
44012.

18 18. H&S Code section 44072.2 states, in pertinent part:

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

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

25 ....

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



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

2 (f) Aids or abets unlicensed persons to evade the provisions of this chapter.

3  
4 19. H&S Code section 44072.10 states, in pertinent part:

5  
6 (c) The department shall revoke the license of any smog check technician or  
station licensee who fraudulently certifies vehicles or participates in the fraudulent  
7 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of  
the following:

8 (1) Clean piping, as defined by the department.

9  
10 (4) Intentional or willful violation of this chapter or any regulation, standard,  
or procedure of the department implementing this chapter . . .

11 20. H&S Code section 44072.8 states that when a license has been revoked or suspended  
12 following a hearing under this article, any additional license issued under this chapter in the name  
13 of the licensee may be likewise revoked or suspended by the director.

#### 14 REGULATORY PROVISIONS

15 21. California Code of Regulations, title 16 (CCR), section 3340.1 states, in pertinent  
16 part:

17 "Clean piping," for the purposes of Health and Safety Code section  
44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of  
18 the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of  
compliance for the test vehicle . . .

19 22. CCR section 3340.30 states in pertinent part:

20 A licensed smog check inspector and/or repair technician shall comply with  
the following requirements at all times while licensed:

21 (a) Inspect, test and repair vehicles, as applicable, in accordance with  
22 section 44012 of the Health and Safety Code, section 44035 of the Health and Safety  
Code, and section 3340.42 of this article.

23  
24 23. CCR section 3340.35 states in pertinent part:

25  
26 (c) A licensed station shall issue a certificate of compliance or  
noncompliance to the owner or operator of any vehicle that has been inspected in  
27 accordance with the procedures specified in section 3340.42 of this article and has all  
the required emission control equipment and devices installed and functioning  
28 correctly.

1 24. CCR section 3340.41 states in pertinent part:

2 ....

3 (c) No person shall enter into the emissions inspection system any vehicle  
4 identification information or emission control system identification data for any  
5 vehicle other than the one being tested. Nor shall any person knowingly enter into the  
6 emissions inspection system any false information about the vehicle being tested.

7 ....

8 25. CCR section 3340.42 states:

9 With the exception of diesel-powered vehicles addressed in subsection (f) of  
10 this section, the following emissions test methods and standards apply to all vehicles:

11 (a) A loaded-mode test, except as otherwise specified, shall be the test  
12 method used to inspect vehicles registered in the enhanced program areas of the state.  
13 The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide  
14 and oxides of nitrogen emissions, as contained in the bureau's specifications  
15 referenced in subsection (b) of Section 3340.17 of this article. The loaded-mode test  
16 shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis  
17 dynamometer, certified by the bureau.

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

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

29 ....

30 (e) In addition to the test methods prescribed in this section, the following  
31 tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog  
32 Check inspection:

33 (1) A visual inspection of the vehicle's emissions control systems. During  
34 the visual inspection, the technician shall verify that the following emission control  
35 devices, as applicable, are properly installed on the vehicle:

36 (A) air injection systems,

- 1 (B) computer(s) and related sensors and switches,  
2 (C) crankcase emissions controls, including positive crankcase ventilation,  
3 (D) exhaust gas after treatment systems, including catalytic converters,  
4 (E) exhaust gas recirculation (EGR) systems,  
5 (F) fuel evaporative emission controls,  
6 (G) fuel metering systems, including carburetors and fuel injection,  
7 (H) ignition spark controls, and  
8 (I) any emissions control systems that are not otherwise prompted by the  
9 Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

10 ....

11 26. CCR section 3373 states:

12 No automotive repair dealer or individual in charge shall, in filling out an  
13 estimate, invoice, or work order, or record required to be maintained by section  
14 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or  
15 information which will cause any such document to be false or misleading, or where  
16 the tendency or effect thereby would be to mislead or deceive customers, prospective  
17 customers, or the public.

## 18 COST RECOVERY

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

### 23 I. VIDEO SURVEILLANCE OPERATION OF APRIL 18, 2012

24 28. On April 18, 2012, a BAR representative conducted a video surveillance operation of  
25 Tito Smog Test Only (Tito Smog), Respondent Pleitez's smog check facility, located at 4911  
26 Felspar Street, Unit 101, Riverside, California. The video recording equipment recorded vehicles  
27 entering and exiting the station's testing bay from an unmanned camera from approximately 1027  
28 hours until approximately 1815 hours. The BAR representative had a clear view of vehicles  
entering and exiting the testing bay, could identify makes and models of vehicles present, and  
noted that the facility had room for only two vehicles inside it.

29. The representative returned to the BAR's Riverside Field Office after the surveillance, and later downloaded a summary of test data information from the BAR's Vehicle Information Database (VID) for the surveillance period. The summary shows that during the period of surveillance nine inspections were performed on nine different vehicles and eight electronic Smog Check Certificates were issued. The summary shows that Respondents Contreras and Herrera's technician licenses were used to perform the nine inspections. Comparing his surveillance video to the VID summary, the BAR representative noted the following instances of clean-piping attributed to the technician licenses of Respondent Contreras and Herrera, as set forth in the following Table.

**TABLE 1**

TEST TIMES	VEHICLE IN EIS DATA (License or VIN)	VEHICLE ACTUALLY TESTED	CERT. ISSUED/ LICENSE USED	DETAILS
1116-1127	1996 Acura Integra (6CNU608)	Honda Civic	XF775787C Contreras	Acura Integra not present at station.
1252-1304	1991 GMC Safari (3JGG310)	Chevrolet SUV	XF775788C Contreras	GMC Safari not present at station.
1737-1746	2005 Nissan Titan (8L85863)	Chevrolet SUV	XF775791C Herrera	Nissan Titan not present at station.

**FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

30. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent's station certified that the vehicles identified in Table 1 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, the inspections of those vehicles were performed using clean-piping methods using different vehicles in order to issue certificates of compliance for the vehicles, and the vehicles certified to have been tested and inspected were not tested or inspected as required by H&S Code section 44012.



1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 33. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
4 Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following  
5 sections of that Code:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests performed  
7 on the vehicles identified in Table 1 above, were done in accordance with procedures prescribed  
8 by the department.

9 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the vehicles  
10 identified in Table 1 above, were tested and inspected in accordance with the procedures  
11 prescribed by the department.

12 c. **Section 44015, subdivision (b):** Respondent issued electronic certificates of  
13 compliance for the vehicles identified in Table 1 above, without properly testing and inspecting  
14 the vehicles to determine if they were in compliance with section 44012 of that Code.

15 d. **Section 44032:** Respondent failed to perform tests of the emission control devices  
16 and systems on the vehicles identified in Table 1 above, in accordance with H&S Code section  
17 44012.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 34. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
21 Code section 44072.2, subdivision (c), in that Respondent failed to comply with the following  
22 sections of the CCR:

23 a. **Section 3340.30, subdivision (a):** Respondent issued electronic certificates of  
24 compliance for the vehicles identified in Table 1 above, even though those vehicles had not been  
25 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42.

26 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
27 compliance for the vehicles identified in Table 1 above, even though those vehicles had not been  
28 inspected in accordance with section 3340.42.

1 c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
2 for vehicles other than the ones being tested, as detailed in Table 1 above.

3 d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the  
4 vehicles identified in Table 1 above, even though those vehicles had not been inspected in  
5 accordance with BAR specifications.

6 e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
7 in Table 1 above, based upon inaccurate information entered into the EIS, Respondent caused  
8 those certificates to be false or misleading, with the tendency or effect to mislead or deceive  
9 customers, prospective customers, or the public.

10 **SIXTH CAUSE FOR DISCIPLINE**

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

12 35. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
13 Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or  
14 deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for  
15 the vehicles identified in Table 1 above, without ensuring that bona fide inspections were  
16 performed of the emission control devices and systems on the vehicles, thereby depriving the  
17 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
18 Program.

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 36. Respondent Contreras' technician licenses are subject to disciplinary action pursuant  
22 to H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
23 following sections of that Code:

24 a. **Section 44012:** Respondent failed to perform emission control tests on the vehicles  
25 identified in Table 1 above, in accordance with procedures prescribed by the department.

26 b. **Section 44012, subdivision (f):** Respondent failed to test and inspect the vehicles  
27 identified in Table 1 above, in accordance with the procedures prescribed by the department.  
28

1 c. **Section 44015, subdivision (b):** Respondent issued electronic certificates of  
2 compliance for the vehicles identified in Table 1 above, without properly testing and inspecting  
3 the vehicles to determine if they were in compliance with section 44012 of that Code.

4 d. **Section 44032:** Respondent failed to perform tests of the emission control devices  
5 and systems on the vehicles identified in Table 1 above, in accordance with H&S Code section  
6 44012.

7 **EIGHTH CAUSE FOR DISCIPLINE**

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

9 37. Respondent Contreras' technician licenses are subject to disciplinary action pursuant  
10 to H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
11 following sections of the CCR:

12 a. **Section 3340.30, subdivision (a):** Respondent issued electronic certificates of  
13 compliance for the vehicles identified in Table 1 above, even though those vehicles had not been  
14 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42.

15 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
16 compliance for the vehicles identified in Table 1 above, even though those vehicles had not been  
17 inspected in accordance with section 3340.42.

18 c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
19 for vehicles other than the ones being tested, as detailed in Table 1 above.

20 d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the  
21 vehicles identified in Table 1 above, even though those vehicles had not been inspected in  
22 accordance with BAR specifications.

23 e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
24 in Table 1 above, Respondent entered inaccurate information into the EIS causing those  
25 certificates to be false or misleading, with the tendency or effect to mislead or deceive customers,  
26 prospective customers, or the public.



1 **NINTH CAUSE FOR DISCIPLINE**

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

3 38. Respondent Contreras' technician licenses are subject to disciplinary action pursuant  
4 to H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest,  
5 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of  
6 compliance for the vehicles identified in Table 1 above, without performing bona fide inspections  
7 of the emission control devices and systems on the vehicles, thereby depriving the People of the  
8 State of California of the protection afforded by the Motor Vehicle Inspection Program.

9 **TENTH CAUSE FOR DISCIPLINE**

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

11 39. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
12 H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
13 following sections of that Code:

14 a. **Section 44012:** Respondent failed to perform emission control tests on the vehicle  
15 identified in Table 1 above, in accordance with procedures prescribed by the department.

16 b. **Section 44012, subdivision (f):** Respondent failed to test and inspect the vehicle  
17 identified in Table 1 above, in accordance with the procedures prescribed by the department.

18 c. **Section 44015, subdivision (b):** Respondent issued an electronic certificate of  
19 compliance for the vehicle identified in Table 1 above, without properly testing and inspecting the  
20 vehicle to determine if it was in compliance with section 44012 of that Code.

21 d. **Section 44032:** Respondent failed to perform tests of the emission control devices  
22 and systems on the vehicle identified in Table 1 above, in accordance with H&S Code section  
23 44012.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

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

26 40. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
27 H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
28 following sections of the CCR:

1 a. **Section 3340.30, subdivision (a):** Respondent issued an electronic certificate of  
2 compliance for the vehicle identified in Table 1 above, even though that vehicle had not been  
3 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42.

4 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of  
5 compliance for the vehicle identified in Table 1 above, even though that vehicle had not been  
6 inspected in accordance with section 3340.42.

7 c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
8 for a vehicle other than the one being tested, as detailed in Table 1 above.

9 d. **Section 3340.42:** Respondent issued an electronic certificate of compliance for the  
10 vehicle identified in Table 1 above, even though that vehicle had not been inspected in  
11 accordance with BAR specifications.

12 e. **Section 3373:** In issuing an electronic certificate of compliance for the vehicle  
13 identified in Table 1 above, Respondent entered inaccurate information into the EIS, causing that  
14 certificate to be false or misleading, with the tendency or effect to mislead or deceive customers,  
15 prospective customers, or the public.

## 16 **TWELFTH CAUSE FOR DISCIPLINE**

### 17 **(Dishonesty, Fraud or Deceit)**

18 41. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
19 H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent  
20 or deceitful acts whereby another is injured by issuing an electronic smog certificate of  
21 compliance for the vehicle identified in Table 1 above, without performing a bona fide inspection  
22 of the emission control devices and systems on the vehicle, thereby depriving the People of the  
23 State of California of the protection afforded by the Motor Vehicle Inspection Program.

## 24 **II. VIDEO SURVEILLANCE OPERATION OF APRIL 19, 2012**

25 42. On April 19, 2012, a BAR representative conducted a video surveillance operation of  
26 Tito Smog. The video recording equipment recorded vehicles entering and exiting the station's  
27 testing bay from approximately 0753 hours until approximately 1812 hours. The BAR  
28 representative had a clear view of vehicles entering and exiting the testing bay, and could identify

1 makes and models of vehicles present.

2 43. The BAR representative returned to the BAR's Riverside Field Office after the  
3 surveillance, and later downloaded a summary of test data information from the BAR's VID for  
4 the surveillance period. The summary shows that during the period of surveillance 17 inspections  
5 were performed on 17 different vehicles and 14 electronic Smog Check Certificate numbers were  
6 issued. The summary shows that Respondents Contreras and Herrera's technician licenses were  
7 used again to perform the 17 inspections. Comparing his surveillance video to the VID summary,  
8 the BAR representative noted the following instances of clean-piping attributed to the technician  
9 license of Respondent Herrera, as set forth in the following Table.

10 **TABLE 2**

11

12 TEST TIMES	VEHICLE IN EIS DATA (License or VIN)	VEHICLE ACTUALLY TESTED	CERT. ISSUED/ LICENSE USED	DETAILS
13 1718-1727	1997 Honda Civic (5EDK475)	Different Honda Civic	XF801005C Herrera	Honda in testing bay was black. Actual car certified is white with black front end. Honda Civic, CA license SEDK475 not present at the station.
14 1733-1746	2000 Chevrolet Silverado 1500 (6F31053)	Chevrolet SUV	XF801006C Herrera	Chevrolet Silverado not present at the station.
15 1752-1805	1992 Nissan 240SX (JN1MS36P4NW103561)	Honda Civic or Mazda van.	XF801007C Herrera	Nissan 240SX not present at the station.

16  
17  
18  
19

20 **THIRTEENTH CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 44. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to  
23 Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or in  
24 the exercise of reasonable care should have known to be untrue or misleading, as follows:

25 a. Respondent's station certified that the vehicles identified in Table 2 above had passed  
26 inspection and were in compliance with applicable laws and regulations. In fact, the inspections  
27 of those vehicles were performed using clean-piping methods using different vehicles in order to  
28

1 issue certificates of compliance for the vehicles, and the vehicles certified to have been tested and  
2 inspected were not tested and inspected as required by H&S Code section 44012.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 45. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to  
6 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud  
7 by issuing electronic smog certificates of compliance for the vehicles identified in Table 2 above  
8 without ensuring that bona fide inspections were performed of the emission control devices and  
9 systems on those vehicles, thereby depriving the People of the State of California of the  
10 protection afforded by the Motor Vehicle Inspection Program.

11 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

13 46. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to  
14 Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that  
15 said Respondent failed to comply with the following sections of the CCR:

16 a. **Section 3340.30, subdivision (a):** Respondent issued electronic certificates of  
17 compliance for the vehicles identified in Table 2 above, even though those vehicles had not been  
18 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42.

19 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
20 compliance for the vehicles identified in Table 2 above, even though those vehicles had not been  
21 inspected in accordance with section 3340.42.

22 c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
23 for vehicles other than the ones being tested, as detailed in Table 2 above.

24 d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the  
25 vehicles identified in Table 2 above, even though those vehicles had not been inspected in  
26 accordance with BAR specifications.

27 e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
28 in Table 2 above, based upon inaccurate information entered into the EIS, Respondent caused

1 those certificates to be false or misleading, with the tendency or effect to mislead or deceive  
2 customers, prospective customers, or the public.

3 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

5 47. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
6 Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following  
7 sections of that Code:

8 a. **Section 44012:** Respondent failed to ensure that the emission control tests performed  
9 on the vehicles identified in Table 2 above, were done in accordance with procedures prescribed  
10 by the department.

11 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the vehicles  
12 identified in Table 2 above, were tested and inspected in accordance with the procedures  
13 prescribed by the department.

14 c. **Section 44015, subdivision (b):** Respondent issued electronic certificates of  
15 compliance for the vehicles identified in Table 2 above, without properly testing and inspecting  
16 the vehicles to determine if they were in compliance with section 44012 of that Code.

17 d. **Section 44032:** Respondent failed to perform tests of the emission control devices  
18 and systems on the vehicles identified in Table 2 above, in accordance with H&S Code section  
19 44012.

20 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

22 48. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
23 Code section 44072.2, subdivision (c), in that Respondent failed to comply with the following  
24 sections of the CCR:

25 a. **Section 3340.30, subdivision (a):** Respondent issued electronic certificates of  
26 compliance for the vehicles identified in Table 2 above, even though those vehicles had not been  
27 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42.  
28

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

4       c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
5 for vehicles other than the ones being tested, as detailed in Table 2 above.

6       d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the  
7 vehicles identified in Table 2 above, even though those vehicles had not been inspected in  
8 accordance with BAR specifications.

9       e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
10 in Table 2 above, based upon inaccurate information entered into the EIS, Respondent caused  
11 those certificates to be false or misleading, with the tendency or effect to mislead or deceive  
12 customers, prospective customers, or the public.

13                               **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

15       49. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
16 Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or  
17 deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for  
18 the vehicles identified in Table 2 above, without ensuring that bona fide inspections were  
19 performed of the emission control devices and systems on the vehicles, thereby depriving the  
20 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
21 Program.

22                               **NINETEENTH CAUSE FOR DISCIPLINE**

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

24       50. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
25 H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
26 following sections of that Code:

27       a. **Section 44012:** Respondent failed to perform emission control tests on the vehicles  
28 identified in Table 2 above, in accordance with procedures prescribed by the department.

1       b. **Section 44012, subdivision (f):** Respondent failed to test and inspect the vehicles  
2 identified in Table 2 above, in accordance with the procedures prescribed by the department.

3       c. **Section 44015, subdivision (b):** Respondent issued electronic certificates of  
4 compliance for the vehicles identified in Table 2 above, without properly testing and inspecting  
5 the vehicles to determine if they were in compliance with section 44012 of that Code.

6       d. **Section 44032:** Respondent failed to perform tests of the emission control devices  
7 and systems on the vehicles identified in Table 2 above, in accordance with H&S Code section  
8 44012.

9                                   **TWENTIETH CAUSE FOR DISCIPLINE**

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

11       51. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
12 H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
13 following sections of the CCR:

14       a. **Section 3340.30, subdivision (a):** Respondent issued electronic certificates of  
15 compliance for the vehicles identified in Table 2 above, even though the vehicles had not been  
16 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42.

17       b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
18 compliance for the vehicles identified in Table 2 above, even though the vehicles had not been  
19 inspected in accordance with section 3340.42.

20       c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
21 for vehicles other than the ones being tested, as detailed in Table 2 above.

22       d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the  
23 vehicles identified in Table 2 above, even though the vehicles had not been inspected in  
24 accordance with BAR specifications.

25       e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
26 in Table 2 above, Respondent entered inaccurate information into the EIS causing those  
27 certificates to be false or misleading, with the tendency or effect to mislead or deceive customers,  
28 prospective customers, or the public.

1 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

3 52. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
4 H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent  
5 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance  
6 for the vehicles identified in Table 2 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 **III. VIDEO SURVEILLANCE OPERATION OF APRIL 25, 2012**

10 53. On April 25, 2012, a BAR representative conducted a video surveillance operation of  
11 Tito Smog. The video recording equipment recorded vehicles entering and exiting the station's  
12 testing bay from approximately 1607 hours until approximately 1736 hours. The representative  
13 had a clear view of vehicles entering and exiting the testing bay, and could identify makes and  
14 models of vehicles present, as well as Respondent Contreras and an unlicensed individual,  
15 Manuel Hernandez-Sotelo, who was subsequently charged and convicted of violating Penal Code  
16 section 502, subdivision (c) (3), as detailed in paragraph 67, below. The representative did not  
17 observe Respondent Herrera at the station.

18 54. The BAR representative returned to the BAR's Riverside Field Office after the  
19 surveillance, and later downloaded a summary of test data information from the BAR's VID for  
20 the surveillance period. The summary shows that during the period of surveillance five  
21 inspections were performed on five different vehicles and five electronic Smog Check Certificate  
22 numbers were issued. The summary shows that Respondents Contreras and Herrera's technician  
23 licenses were used again to perform the five inspections. Comparing his surveillance video to the  
24 VID summary, the BAR representative noted the following instances of clean-piping attributed to  
25 the technician license of Respondent Herrera, as set forth in the following Table.



TABLE 3

TEST TIMES	VEHICLE IN EIS DATA (License or VIN)	VEHICLE ACTUALLY TESTED	CERT. ISSUED/ LICENSE USED	DETAILS
1705-1710	1991 Chevrolet Camaro (DPP3493)	Mazda MPV or Chevrolet S10 Pickup	XF881622C/ Herrera	Chevrolet Camaro not present at the station.
1715-1721	1987 Mazda B-series pickup (6N71543)	Mazda MPV or Chevrolet X10 pickup	XF881623C Herrera	Mazda B-series pickup not present at the station.

**TWENTY-SECOND CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

55. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent's station license was used to certify that the vehicles identified in Table 3 above had passed inspection and were in compliance with applicable laws and regulations. In fact, the inspections of those vehicles were performed using clean-piping methods using different vehicles in order to issue certificates of compliance for the vehicles, and the vehicles certified to have been tested and inspected were not tested and inspected as required by H&S Code section 44012.

**TWENTY-THIRD CAUSE FOR DISCIPLINE**

**(Fraud)**

56. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for the vehicles identified in Table 3 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

1 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

3 57. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to  
4 Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that  
5 said Respondent failed to comply with the following sections of the CCR:

6 a. **Section 3340.30, subdivision (a):** Respondent issued electronic certificates of  
7 compliance for the vehicles identified in Table 3 above, even though the vehicles had not been  
8 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42.

9 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
10 compliance for the vehicles identified in Table 3 above, even though the vehicles had not been  
11 inspected in accordance with section 3340.42.

12 c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
13 for vehicles other than those being tested, as detailed in Table 3 above.

14 d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the  
15 vehicle identified in Table 3 above, even though those vehicles had not been inspected in  
16 accordance with BAR specifications.

17 e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
18 in Table 3 above, based upon inaccurate information entered into the EIS, Respondent caused  
19 those certificates to be false or misleading, with the tendency or effect to mislead or deceive  
20 customers, prospective customers, or the public.

21 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

23 58. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
24 Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following  
25 sections of that Code:

26 a. **Section 44012:** Respondent failed to ensure that the emission control tests performed  
27 on the vehicles identified in Table 3 above, were done in accordance with procedures prescribed  
28 by the department.

1           b. **Section 44012, subdivision (f)**: Respondent failed to ensure that the vehicles  
2 identified in Table 3 above, were tested and inspected in accordance with the procedures  
3 prescribed by the department.

4           c. **Section 44015, subdivision (b)**: Respondent issued electronic certificates of  
5 compliance for the vehicles identified in Table 3 above, without properly testing and inspecting  
6 the vehicles to determine if they were in compliance with section 44012 of that Code.

7           d. **Section 44032**: Respondent failed to perform tests of the emission control devices  
8 and systems on the vehicles identified in paragraphs Table 3 above, in accordance with H&S  
9 Code section 44012.

10                                   **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

12           59. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
13 Code section 44072.2, subdivision (c), in that Respondent failed to comply with the following  
14 sections of the CCR:

15           a. **Section 3340.30, subdivision (a)**: Respondent issued electronic certificates of  
16 compliance for the vehicles identified in Table 3 above, even though the vehicles had not been  
17 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42.

18           b. **Section 3340.35, subdivision (c)**: Respondent issued electronic certificates of  
19 compliance for the vehicles identified in Table 3 above, even though the vehicles had not been  
20 inspected in accordance with section 3340.42.

21           c. **Section 3340.41, subdivision (c)**: Respondent entered into the EIS information and data  
22 for vehicles other than those being tested, as detailed in Table 3 above.

23           d. **Section 3340.42**: Respondent issued electronic certificates of compliance for the  
24 vehicles identified in Table 3 above, even though those vehicles had not been inspected in  
25 accordance with BAR specifications.

26           e. **Section 3373**: In issuing electronic certificates of compliance for the vehicles identified  
27 in Table 3 above, based upon inaccurate information entered into the EIS, Respondent caused  
28

1 those certificates to be false or misleading, with the tendency or effect to mislead or deceive  
2 customers, prospective customers, or the public.

3 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

5 60. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
6 Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or  
7 deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for  
8 the vehicles identified in Table 3 above, without ensuring that bona fide inspections were  
9 performed of the emission control devices and systems on the vehicles, thereby depriving the  
10 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
11 Program.

12 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

14 61. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
15 H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
16 following sections of that Code:

17 a. **Section 44012:** Respondent failed to perform emission control tests on the vehicles  
18 identified in Table 3 above, in accordance with procedures prescribed by the department.

19 b. **Section 44012, subdivision (f):** Respondent failed to test and inspect the vehicles  
20 identified in Table 3 above, in accordance with the procedures prescribed by the department.

21 c. **Section 44015, subdivision (b):** Respondent's technician license was used to issue  
22 electronic certificates of compliance for the vehicles identified in Table 3 above, without properly  
23 testing and inspecting the vehicles to determine if they were in compliance with section 44012 of  
24 that Code.

25 d. **Section 44032:** Respondent failed to perform tests of the emission control devices  
26 and systems on the vehicles identified in Table 3 above, in accordance with H&S Code section  
27 44012.

1 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

3 62. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
4 H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
5 following sections of the CCR:

6 a. **Section 3340.30, subdivision (a):** Respondent's technician license was used to issue  
7 electronic certificates of compliance for the vehicles identified in Table 3 above, even though  
8 those vehicles had not been inspected in accordance with H&S Code sections 44012 and 44035,  
9 and CCR section 3340.42.

10 b. **Section 3340.35, subdivision (c):** Respondent's technician license was used to issue  
11 electronic certificates of compliance for the vehicles identified in Table 3 above, even though  
12 those vehicles had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.41, subdivision (c):** Respondent's technician license was used to enter  
14 into the EIS information and data for vehicles other than the ones being tested, as detailed in  
15 Table 3 above.

16 d. **Section 3340.42:** Respondent's technician license was used to issue electronic  
17 certificates of compliance for the vehicles identified in Table 3 above, even though those vehicles  
18 had not been inspected in accordance with BAR specifications.

19 e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
20 in Table 3 above, Respondent entered inaccurate information into the EIS causing the certificates  
21 to be false or misleading, with the tendency or effect to mislead or deceive customers, prospective  
22 customers, or the public.

23 **THIRTIETH CAUSE FOR DISCIPLINE**

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

25 63. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
26 H&S Code section 44072.2, subdivision (d), in that it was used to commit dishonest, fraudulent  
27 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance  
28 for the vehicles identified in Table 3 above, without performing bona fide inspections of the

1 emission control devices and systems on the vehicles, thereby depriving the People of the State of  
2 California of the protection afforded by the Motor Vehicle Inspection Program.

#### 3 IV. VIDEO SURVEILLANCE OPERATION OF JULY 12, 2012

4 64. On July 12, 2012, a BAR representative conducted a video surveillance operation of  
5 Tito Smog. The video recording equipment recorded vehicles entering and exiting the station's  
6 testing bay from approximately 1613 hours until approximately 1813 hours. The representative  
7 had a clear view of vehicles entering and exiting the testing bay, and could identify makes and  
8 models of vehicles present, as well as Respondent Aguayo walking in and out of the facility and  
9 driving in and out of the facility. The representative did not observe Respondent Herrera at the  
10 facility. Throughout the surveillance, the representative was able to monitor Tito Smog's testing  
11 activity using the BAR's database.

12 65. At approximately 1751, the BAR representative observed a black Honda Accord in  
13 Tito Smog's testing bay. At approximately 1802 hours, the representative observed the black  
14 Honda Accord exit the facility's testing bay, and at approximately 1805 hours, the representative  
15 observed a black Chevrolet S-10 pickup enter the testing bay. At approximately 1809 hours, the  
16 BAR representative entered Tito Smog. The Chevrolet S-10 pickup was on the dynamometer in  
17 the testing bay, replacing the black Honda Accord that the representative had observed there  
18 earlier, and a Ford F150 pickup was in the rear corner of the testing area. The representative  
19 observed two Hispanic males in the testing bay near the analyzer, and identified them as Manuel  
20 Hernandez-Sotelo and Abraham Mauricio. The representative questioned Sotelo and Mauricio  
21 about the station activity, and they told him that Respondent Aguayo had left Tito Smog just prior  
22 to the representative's arrival. Sotello stated that Aguayo started to test a 1988 Nissan Sentra  
23 before leaving Tito Smog, and that Aguayo told Sotelo to complete that test, even though the  
24 1988 Nissan Sentra was not seen in or near Tito Smog that day. Sotelo admitted entering  
25 information into the analyzer and driving the vehicle onto the dynamometer. Sotelo also admitted  
26 that he did not have a technician license to perform inspections and claimed that he did not know  
27 that what he was doing required a license.

28

66. The BAR representative returned to the BAR's Riverside Field Office after the surveillance, and later downloaded a summary of test data information from the BAR's VID for the surveillance period. The summary shows that during the period of surveillance six inspections were performed on six different vehicles and five electronic Smog Check Certificate numbers were issued. The summary shows that Respondent Herrera's technician license was used to perform five inspections and Respondent Aguayo's technician license was used to perform one inspection. Comparing his surveillance video to the VID summary, the BAR representative noted the following instances of clean-piping attributed to the technician license of Respondent Herrera, as set forth in the following Table.

TABLE 4

TEST TIMES	VEHICLE IN EIS DATA (License or VIN)	VEHICLE ACTUALLY TESTED	CERT. ISSUED/ LICENSE USED	DETAILS
1708-1716	1977 GMC C1500 pickup (8F53862)	Chevrolet C10 pickup	XJ212028C Herrera	GMC C1500 pickup not present at the station.
1732-1739	1992 Volkswagen Fox (3BCM880)	Volkswagen Jetta	XJ212029C Herrera	Volkswagen Fox not present at the station.
1756-1802	1988 Nissan Sentra (2KGY039)	Honda Accord	XJ212031C Herrera	Nissan Sentra not present at the station.

67. As a result of the BAR's July 12, 2012 investigation, on August 16, 2013, in the case of *People v. Manuel Hernandez Sotelo*, Riverside County Superior Court Case No. RIF1210289, Manuel Hernandez Sotelo was convicted by his plea of guilty of violating Penal Code (PC) section 502, subdivision (c)(3) (knowingly and without permission using computer services), a misdemeanor.

**THIRTY-FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

68. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent's station certified that the vehicles identified in Table 4 above had passed inspection and were in compliance with applicable laws and regulations. In fact, the inspections

1 of those vehicles were preformed using clean-piping methods using different vehicles in order to  
2 issue certificates of compliance for the vehicles, and the vehicles certified to have been tested and  
3 inspected were not tested and inspected as required by H&S Code section 44012, as detailed in  
4 paragraphs 64 through 66 and Table 4 above.

5 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 69. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to  
8 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud  
9 by issuing electronic smog certificates of compliance for the vehicles identified in Table 4 above  
10 without ensuring that bona fide inspections were performed of the emission control devices and  
11 systems on those vehicles, thereby depriving the People of the State of California of the  
12 protection afforded by the Motor Vehicle Inspection Program, as detailed in paragraphs 64  
13 through 66 and Table 4 above.

14 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

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

16 70. Respondent Pleitez's ARD registration is subject to disciplinary action pursuant to  
17 Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that  
18 said Respondent failed to comply with the following sections of the CCR:

19 a. **Section 3340.30, subdivision (a):** Respondent issued electronic certificates of  
20 compliance for the vehicles identified in Table 4 above, even though those vehicles had not been  
21 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42, as  
22 detailed in paragraphs 64 through 66 and Table 4 above.

23 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
24 compliance for the vehicles identified in Table 4 above, even though those vehicles had not been  
25 inspected in accordance with section 3340.42, as detailed in paragraphs 64 through 66 and Table  
26 4 above.



1 c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
2 for vehicles other than the ones being tested, as detailed in paragraphs 64 through 66 and Table 4  
3 above.

4 d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the  
5 vehicles as detailed in paragraphs 64 through 66 and Table 4 above, even though those vehicles  
6 had not been inspected in accordance with BAR specifications.

7 e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
8 in Table 4 above, based upon inaccurate information entered into the EIS, Respondent caused  
9 those certificates to be false or misleading, with the tendency or effect to mislead or deceive  
10 customers, prospective customers, or the public, as detailed in paragraphs 64 through 66 and  
11 Table 4 above.

### 12 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

#### 13 **(Violations of the Motor Vehicle Inspection Program)**

14 71. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
15 Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following  
16 sections of that Code:

17 a. **Section 44012:** Respondent failed to ensure that the emission control tests performed  
18 on the vehicles identified in Table 4 above, were done in accordance with procedures prescribed  
19 by the department, as detailed in paragraphs 64 through 66 and Table 4 above.

20 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the vehicles  
21 identified in Table 4 above, were tested and inspected in accordance with the procedures  
22 prescribed by the department, as detailed in paragraphs 64 through 66 and Table 4 above.

23 c. **Section 44015, subdivision (b):** Respondent issued electronic certificates of  
24 compliance for the vehicles identified in Table 4 above, without properly testing and inspecting  
25 the vehicles to determine if they were in compliance with section 44012 of that Code, as detailed  
26 in paragraphs 64 through 66 and Table 4 above.

1       d. **Section 44032:** Respondent failed to perform tests of the emission control devices  
2 and systems on the vehicles identified in Table 4 above, in accordance with H&S Code section  
3 44012, as detailed in paragraphs 64 through 66 and Table 4 above.

4                               **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

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

6       72. Respondent Pleitez's station license is subject to disciplinary action pursuant to H&S  
7 Code section 44072.2, subdivision (c), in that Respondent failed to comply with the following  
8 sections of the CCR:

9       a. **Section 3340.30, subdivision (a):** Respondent issued electronic certificates of  
10 compliance for the vehicles identified in Table 4 above, even though those vehicles had not been  
11 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42, as  
12 detailed in paragraphs 64 through 66 and Table 4 above.

13       b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
14 compliance for the vehicles identified in Table 4 above, even though those vehicles had not been  
15 inspected in accordance with section 3340.42, as detailed in paragraphs 64 through 66 and Table  
16 4 above.

17       c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
18 for vehicles other than the ones being tested, as detailed in paragraphs 64 through 66 and Table 4  
19 above.

20       d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the  
21 vehicles identified in Table 4 above, even though those vehicles had not been inspected in  
22 accordance with BAR specifications, as detailed in paragraphs 64 through 66 and Table 4 above.

23       e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
24 in Table 4 above, based upon inaccurate information entered into the EIS, Respondent caused  
25 those certificates to be false or misleading, with the tendency or effect to mislead or deceive  
26 customers, prospective customers, or the public, as detailed in paragraphs 64 through 66 and  
27 Table 4 above.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

## 2

3  
4  
5  
6  
7  
8  
9

## 10

## 11

12  
13  
14

15  
16  
17

18  
19  
20

21  
22  
23  
24

25  
26  
27

1 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

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

3 75. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
4 H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
5 following sections of the CCR:

6 a. **Section 3340.30, subdivision (a):** Respondent issued electronic certificates of  
7 compliance for the vehicles identified in Table 4 above, even though the vehicles had not been  
8 inspected in accordance with H&S Code sections 44012 and 44035, and CCR section 3340.42, as  
9 detailed in paragraphs 64 through 66 and Table 4 above.

10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
11 compliance for the vehicles identified in Table 4 above, even though the vehicles had not been  
12 inspected in accordance with section 3340.42, as detailed in paragraphs 64 through 66 and Table  
13 4 above.

14 c. **Section 3340.41, subdivision (c):** Respondent entered into the EIS information and data  
15 for vehicles other than the ones being tested, as detailed in paragraphs 64 through 66 and Table 4  
16 above.

17 d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the  
18 vehicles identified in Table 4 above, even though the vehicles had not been inspected in  
19 accordance with BAR specifications, as detailed in paragraphs 64 through 66 and Table 4 above.

20 e. **Section 3373:** In issuing electronic certificates of compliance for the vehicles identified  
21 in Table 4 above, Respondent entered inaccurate information into the EIS causing those  
22 certificates to be false or misleading, with the tendency or effect to mislead or deceive customers,  
23 prospective customers, or the public, as detailed in paragraphs 64 through 66 and Table 4 above.

24 **THIRTY-NINTH CAUSE FOR DISCIPLINE**

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

26 76. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
27 H&S Code section 44072.2, subdivision (d), in that it was used to commit dishonest, fraudulent  
28 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance

1 for the vehicles identified in Table 4 above, without performing bona fide inspections of the  
2 emission control devices and systems on the vehicles, thereby depriving the People of the State of  
3 California of the protection afforded by the Motor Vehicle Inspection Program, as detailed in  
4 paragraphs 64 through 66 and Table 4 above.

5 **FORTIETH CAUSE FOR DISCIPLINE**

6 **(Aiding & Abetting Unlicensed Person)**

7 77. Respondent Aguayo's inspector license is subject to disciplinary action pursuant to  
8 H&S Code section 44072.2, subdivision (f), in that he used Respondent Herrera's license to aid  
9 and abet an unlicensed person, Manuel Hernandez Sotelo, to evade the provisions of the Motor  
10 Vehicle Inspection Program, as detailed in paragraphs 64 through 66 and Table 4 above.

11 **FORTY-FIRST CAUSE FOR DISCIPLINE**

12 **(Aiding & Abetting Unlicensed Person)**

13 78. Respondent Herrera's technician license is subject to disciplinary action pursuant to  
14 H&S Code section 44072.2, subdivision (f), in that he allowed his license to aid and abet an  
15 unlicensed person, Manuel Hernandez Sotelo, to evade the provisions of the Motor Vehicle  
16 Inspection Program, as detailed in paragraphs 64 through 66 and Table 4 above.

17 **PRIOR CITATION**

18 79. To determine the degree of discipline, if any, Complainant alleges that Respondent  
19 Aguayo's Advanced Emission Specialist Technician License No. EA 143490 was previously  
20 cited on March 1, 2002, when the BAR issued Citation No. M02-0664 against Respondent  
21 Aguayo's technician license for violations of H&S Code section 44032 (failure to perform tests of  
22 emission control systems and devices in accordance with H&S Code section 44012); and CCR  
23 section 3340.30(a) (failure to inspect, test, and repair vehicles in accordance with H&S Code  
24 sections 44012 and 44035, and CCR section 3340.42) for issuing a certificate of compliance to a  
25 Bureau undercover vehicle documented to fail a smog test. Respondent was required to attend an  
26 8-hour training course. On March 19, 2002, Respondent Aguayo completed the required training  
27 course.  
28

1 **OTHER MATTERS**

2 80. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or  
3 place on probation the registration for all places of business operated in this state by Respondent,  
4 Jorge Enilson Pleitez, Owner, Tito Smog Test Only, upon a finding that said Respondent has, or  
5 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to  
6 automotive repair dealers.

7 81. Pursuant to H&S Code section 44072.8, if Smog Check, Test Only, Station License  
8 Number TC 266932, issued to Jorge Enilson Pleitez, Owner, Tito Smog Test Only, is revoked or  
9 suspended, any additional license issued under the chapter in the name of said licensee may be  
10 likewise revoked or suspended by the Director.

11 82. Pursuant to H&S Code section 44072.8, if Advanced Emission Specialist Technician  
12 License EA 633755 (to be redesignated upon renewal as EO 633755 and/or EI 633755), issued to  
13 Respondent Andrew Herrera is revoked or suspended, any additional license issued under the  
14 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

15 83. Pursuant to H&S Code section 44072.8, if Smog Check Inspector License No. EO  
16 143490 (formerly Advanced Emission Specialist Technician License No. EA 143490), issued to  
17 Respondent Jose Pabel Aguayo is revoked or suspended, any additional license issued under the  
18 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

19 84. Pursuant to H&S Code section 44072.8, if Smog Check Inspector License No. EO  
20 633198 and Smog Check Repair Technician License No. EI 633198 (formerly Advanced  
21 Emission Specialist Technician License No. EA 633198) issued to Respondent Benjamin  
22 Contreras are revoked or suspended, any additional license issued under the chapter in the name  
23 of said licensee may be likewise revoked or suspended by the Director.

24 **PRAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
28 266932, issued to Jorge Enilson Pleitez, owner of Tito Smog Test Only;

- 1           2.     Revoking or suspending Smog Check, Test Only Station License Number TC  
2 266932, issued to Jorge Enilson Pleitez, owner of Tito Smog Test Only;
- 3           3.     Revoking or suspending Advanced Emission Specialist Technician License Number  
4 EA 633755 (to be redesignated upon renewal as EO 633755 and/or EI 633755), issued to Andrew  
5 Herrera;
- 6           4.     Revoking or suspending Smog Check Inspector License No. EO 143490 (formerly  
7 Advanced Emission Specialist Technician License No. EA 143490), issued to Jose Pabel  
8 Aguayo;
- 9           5.     Revoking or suspending Smog Check Inspector License No. EO 633198 and Smog  
10 Check Repair Technician License No. EI 633198 (formerly Advanced Emission Specialist  
11 Technician License No. EA 633198), issued to Benjamin Contreras;
- 12          6.     Ordering Jorge Enilson Pleitez, Andrew Herrera, Jose Pabel Aguayo, and Benjamin  
13 Contreras to pay the Bureau of Automotive Repair the reasonable costs of the investigation and  
14 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 15          7.     Taking such other and further action as deemed necessary and proper.

16  
17 DATED: November 5, 2013 Patrick Dorais  
18 PATRICK DORAIS  
19 Acting Chief  
20 Bureau of Automotive Repair  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant

24 SD2012704439  
25 70774050.doc  
26  
27  
28