

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

In the Matter of the Accusation Against:

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

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

JOSE PABEL AGUAYO
14930 Meadow Breeze Dr.
Moreno Valley, CA 92553
Smog Check Inspector License No. EO 143490 (formerly
Advanced Emission Specialist Technician License No. EA 143490),
Smog Check Repair Technician License No. EI 143490

and

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

OAH No. 2014031053

DECISION

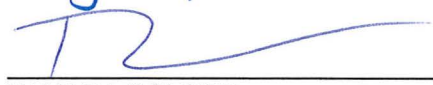
The attached Stipulated Settlement and Disciplinary Order As To Respondent Jose Pabel Aguayo Only is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter, only as to respondent Jose Pabel Aguayo, Smog Check Inspector License No. EO 143490 (formerly Advanced Emission Specialist Technician License No. EA 143490), and Smog Check Repair Technician License No. EI 143490

This Decision shall become effective

January 23, 2015.

DATED:

January 2, 2015


TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 ERIN M. SUNSERI
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Attorneys for Complainant

8
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19 **10535 Portsmouth Ct., Riverside, CA 92503**
20 **Advanced Emission Specialist Technician License No.**
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Smog Check Repair Technician License No. EI 143490
and

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25 **15541 Buckboard, Moreno Valley, CA 92555**
26 **Smog Check Inspector License No. EO 633198**
Smog Check Repair Technician License No. EI 633198
(formerly Advanced Emission Specialist Technician
License No. EA 633198)

27 Respondents.
28

Case No. 79/14-50

OAH No. 2014031053

STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER
AS TO RESPONDENT
JOSE PABEL AGUAYO
ONLY

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He
5 brought this action solely in his official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Erin M. Sunseri, Deputy Attorney General.

7 2. Respondent Jose Pabel Aguayo (Respondent Aguayo) is representing himself in this
8 proceeding and has chosen not to exercise his right to be represented by counsel.

9 3. In 2001, the BAR issued Advanced Emission Specialist Technician License No. EA
10 143490 (technician license) to Respondent Aguayo. The technician license was in full force and
11 effect at all times relevant to the charges brought herein. Respondent's technician license was
12 due to expire on February 28, 2014; however, the license was cancelled on December 5, 2013.
13 Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), Respondent
14 Aguayo's technician license was renewed pursuant to Respondent Aguayo's election as Smog
15 Check Repair Technician License No. EI 143490 (repair license) and Smog Check Inspector
16 License No. EO 143490 (inspector license), effective December 5, 2013, and will expire on
17 February 28, 2015, unless renewed.

18 **JURISDICTION**

19 4. Accusation No. 79/14-50 was filed before the Director of Consumer Affairs
20 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
21 Respondent. The Accusation and all other statutorily required documents were properly served
22 on Respondent on November 5, 2013. Respondent failed to timely file his Notice of Defense, and
23 a default was taken against his licenses with an effective date of February 28, 2014. In March 7,
24 2014, a Petition for Reconsideration was received from Respondent, and an Order Setting Aside
25 the Default was signed on March 25, 2014. Respondent then timely filed his Notice of Defense
26 contesting the Accusation.

27 5. A copy of Accusation No. 79/14-50 is attached as Exhibit A and incorporated herein
28 by reference.

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1 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
2 Director shall not be disqualified from further action by having considered this matter.

3 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
5 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

6 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
7 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
8 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
9 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
10 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
11 writing executed by an authorized representative of each of the parties.

12 14. In consideration of the foregoing admissions and stipulations, the parties agree that
13 the Director may, without further notice or formal proceeding, issue and enter the following
14 Disciplinary Order:

15 **DISCIPLINARY ORDER**

16 IT IS HEREBY ORDERED that Smog Check Inspector License No. EO 143490 and Smog
17 Check Repair Technician License No. EI 143490 issued to Respondent Jose Pabel Aguayo are
18 revoked. However, the revocation is stayed and Respondent is placed on probation for one (1)
19 year on the following terms and conditions.

20 1. **Obey All Laws.** Comply with all statutes, regulations and rules governing
21 automotive inspections, estimates and repairs.

22 2. **Reporting.** Respondent or Respondent's authorized representative must report in
23 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
24 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
25 maintaining compliance with the terms and conditions of probation.

26 ///

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28 ///

3. **Jurisdiction.** If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

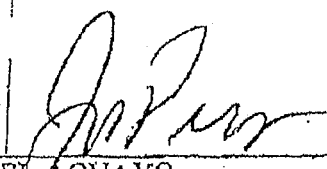
4. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard suspend or revoke the license.

5. **Continuing Education Courses.** During the period of probation, Respondent shall attend and successfully complete a Bureau certified training course in Smog Check Inspector training (Level II, 28 hours) applicable to the class of license held by the Respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, Respondents' license shall be immediately suspended until such proof is received.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Smog Check Inspector License and my Smog Check Repair Technician License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 10-09-14


JOSE PABEL AGUAYO
Respondent

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ENDORSEMENT

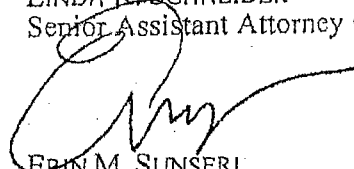
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated:

10/9/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Senior Assistant Attorney General



ERIN M. SUNSERI
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/14-50

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
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Attorneys for Complainant

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19 **EA 633755 (to be redesignated upon renewal as EO**
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20

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290 Wilson Ave Apt 291
Perris, CA 92751
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(formerly Advanced Emission Specialist Technician
23 **License No. EA 143490),**

and

24 **BENJAMIN CONTRERAS**
15541 Buckboard
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(formerly Advanced Emission Specialist Technician
27 **License No. EA 633198)**

28 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 633755.¹

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 ¹ 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

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

24

25 15. H&S Code section 44012 states:

26 The test at the smog check stations shall be performed in accordance with
27 procedures prescribed by the department and may require loaded mode dynamometer
28 testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard
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 (f) A visual or functional check is made of emission control devices
13 specified by the department, including the catalytic converter in those instances in
14 which the department determines it to be necessary to meet the findings of Section
15 44001. The visual or functional check shall be performed in accordance with
16 procedures prescribed by the department.

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

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

21 17. H&S Code section 44032 states:

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

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

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

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

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

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
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 BIS 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.

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24 23. CCR section 3340.35 states in pertinent part:

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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
correctly.

28

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,

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

....

26. CCR section 3373 states:

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

COST RECOVERY

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

I. VIDEO SURVEILLANCE OPERATION OF APRIL 18, 2012

28. On April 18, 2012, a BAR representative conducted a video surveillance operation of Tito Smog Test Only (Tito Smog), Respondent Pleitez's smog check facility, located at 4911 Felspar Street, Unit 101, Riverside, California. The video recording equipment recorded vehicles entering and exiting the station's testing bay from an unmanned camera from approximately 1027 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.

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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.
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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**

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12 TEST TIMES	VEHICLE IN EIS DATA (License or VIN)	VEHICLE ACTUALLY TESTED	CERT. ISSUED/ LICENSE USED	DETAILS
13 1718-1727	1997 Honda Civic (SEDK475)	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.

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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
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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.
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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.

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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
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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.
28

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.

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.

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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.

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OTHER MATTERS

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

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

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

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

84. Pursuant to H&S Code section 44072.8, if 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) issued to Respondent Benjamin Contreras are revoked or suspended, any additional license issued under the chapter in the name of said licensee may be likewise revoked or suspended by the Director.

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

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

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