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7

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

12  
13 In the Matter of the Accusation Against:

Case No. 79/17-9192

14 **T.N.B. TEST ONLY, DBA**  
15 **SERGIO CALLES**  
16 4577 W. Adams Boulevard, Suite A  
Los Angeles, CA 90016  
17 **Automotive Repair Dealer Registration**  
**No. ARD 277511**  
18 **Smog Check, Test Only, Station License**  
**No. TC 277511**

**ACCUSATION**

19 **SERGIO CALLES**  
927 E. 52nd Place  
Los Angeles, CA 90047  
20 **Smog Check Inspector License No. EO 635855**

21 **JOSE EDUARDO CALLES**  
927 E. 52nd Place  
Los Angeles, CA 90011  
22 **Smog Check Inspector License No. EO 637171**

23 **ALVARO J. HERRADOR**  
927 E. 52nd Place  
Los Angeles, CA 90011  
24 **Smog Check Inspector License No. EO 153673**  
25 **Smog Check Repair Technician License**  
26 **No. EI 153673**

27 Respondents.  
28

1 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. On or about August 11, 2014, the Bureau issued Automotive Repair Dealere  
7 Registration No. ARD 277511 to Sergio Calles ("Respondent TNB"), doing business as T.N.B.  
8 Test Only. The Automotive Repair Dealer Registration expired on August 31, 2018, and has not  
9 been renewed.

10 **Smog Test Only Station License**

11 3. On or about October 3, 2014, the Bureau issued Smog Check, Test Only, Statione  
12 License No. TC 277511 to Respondent TNB. The Smog Check, Test Only, Station License  
13 expired on August 31, 2018, and has not been renewed.

14 **Technician Licenses**

15 4. On or about August 9, 2013, the Bureau issued Smog Check Inspector License No.e  
16 EO 635855 to Sergio Calles ("Respondent Sergio Calles"). The Smog Check Inspector License  
17 was in full force and effect at all times relevant to the charges brought herein and will expire on  
18 May 31, 2019, unless renewed.

19 5. On or about July 31, 2014, the Bureau issued Smog Check Inspector License No. EOe  
20 637171 to Jose Eduardo Calles ("Respondent Jose Calles"). The Smog Check Inspector License  
21 was in full force and effect at all times relevant to the charges brought herein and will expire on  
22 January 31, 2020, unless renewed.

23 6. On a date unknown in 2006, the Bureau issued Advanced Emission Specialiste  
24 Technician License No. EA 153673 to Alvaro J. Herrador ("Respondent Herrador"). Pursuant to  
25 California Code of Regulations, title 16 ("CCR"), section 3340.28(e), upon Respondent's  
26 election, on December 5, 2012, said license was renewed as Smog Check Inspector

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1 License No. EO 153673 and Smog Check Repair Technician License No. EI 153673.<sup>1</sup> The  
2 Smog Check Repair Technician (EI) license expired on February 28, 2015. The Smog Check  
3 Inspector (EO) License was in full force and effect at all times relevant to the charges brought  
4 herein and will expire on February 28, 2021, unless renewed.

### 5 JURISDICTION

6 7. This Accusation is brought before the Director of the Department of Consumero  
7 Affairs (Director) for the Bureau under the authority of the following laws.

8 8. Business and Professions Code ("Code") section 9884.7 provides that the Directoro  
9 may revoke an automotive repair dealer registration.

10 9. Code section 9884.13 provides, in pertinent part, that the expiration of a valido  
11 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding  
12 against an automotive repair dealer or to render a decision temporarily or permanently  
13 invalidating (suspending or revoking) a registration.

14 10.o Code section 477 provides, in pertinent part, that "Board" includes "bureau,"o  
15 "commission," "committee," "department," "division," "examining committee," "program," and  
16 "agency." "License" includes certificate, registration or other means to engage in a business or  
17 profession regulated by the Code.

18 11.o Health & Safety Code section 44002 provides, in pertinent part, that the Director haso  
19 all the powers and authority granted under the Automotive Repair Act for enforcing the Motor  
20 Vehicle Inspection Program.

21 12.o Health & Safety Code section 44072.6 provides, in pertinent part, that the expirationo  
22 or suspension of a license by operation of law, or by order or decision of the Director of  
23 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the  
24 Director of jurisdiction to proceed with disciplinary action.

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

1 13.e Health & Safety Code section 44072.8 states that when a license has been revoked or  
2 suspended following a hearing under this article, any additional license issued under this chapter  
3 in the name of the licensee may be likewise revoked or suspended by the Director.

#### 4 STATUTORY PROVISIONS

5 14.e Code section 9884.7 states, in pertinent part:e

6 (a)eThe director, where the automotive repair dealer cannot show there was ae  
7 bona fide error, may deny, suspend, revoke, or place on probation the registration of  
8 an automotive repair dealer for any of the following acts or omissions related to the  
9 conduct of the business of the automotive repair dealer, which are done by the  
10 automotive repair dealer or any automotive technician, employee, partner, officer, or  
11 member of the automotive repair dealer.

12 (1)eMaking or authorizing in any manner or by any means whatever anye  
13 statement written or oral which is untrue or misleading, and which is known, or which  
14 by the exercise of reasonable care should be known, to be untrue or misleading.

15 . . . .

16 (4)eAny other conduct that constitutes fraud.e

17 . . . .

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

20 15.e Health & Safety Code section 44072.2 states, in pertinent part:e

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

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

27 . . . .

28 (c)eViolates any of the regulations adopted by the director pursuant to thise  
chapter.

(d)eCommits any act involving dishonesty, fraud, or deceit whereby anothere  
is injured. . . .

16.e Health & Safety Code section 44012(a) states:e

The test at the smog check stations shall be performed in accordance with  
procedures prescribed by the department and may require loaded mode  
dynamometer 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



1 shall implement testing using onboard diagnostic systems, in lieu of loaded mode  
2 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles  
3 only, beginning no earlier than January 1, 2013. However, the department, in  
4 consultation with the state board, may prescribe alternative test procedures that  
5 include loaded mode dynamometer or two-speed idle testing for vehicles with  
6 onboard diagnostic systems that the department and the state board determine  
7 exhibit operational problems. The department shall ensure, as appropriate to the  
8 test method, the following:

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

12 17.e Health & Safety Code section 44015(b) states, "If a vehicle meets the requirements of  
13 Section 44012, a smog check station licensed to issue certificates shall issue a certificate of  
14 compliance or a certificate of noncompliance."

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

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

20 . . . . .  
21 (4) Intentional or willful violation of this chapter or any regulation, standard,  
22 or procedure of the department implementing this chapter.

23 19.e Health & Safety Code section 44024.5(a), states:e

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

31 20.e Health & Safety Code section 44037 states, in pertinent part:e

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

36 (1)eThe motor vehicle identification information and the test data collected at  
37 the station.

38 . . . . .

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

4 21.e Health & Safety Code section 44037.1 states, in pertinent part:

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

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

9 . . . .

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

13 (3) To provide the department with data on the failure rates and repair  
14 effectiveness for vehicles of each make and model year on a statewide basis, and by  
smog check station and technician, to facilitate identification of smog check stations  
15 and technicians as potential violators of this chapter.

16 . . . .

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

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

## 21 REGULATORY PROVISIONS

22 22.e California Code of Regulations, title 16 ("CCR") section 3340.17(c) states, "Vehicle  
23 data and test results from the OBD Inspection System (OIS) shall be transmitted to the bureau's  
24 centralized database."

25 23.e CCR section 3340.30 states, in pertinent part:

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

27 ///

28 ///

1 (a) Inspect, test and repair vehicles, as applicable, in accordance with section  
2 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code,  
and section 3340.42 of this article. . . .

3 **COST RECOVERY**

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

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

9 25.e On March 9, 2015, California's Smog Check Program was updated to keep pace with  
10 ever-advancing technology. The program update requires the use of an On-Board Diagnostic  
11 Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of  
12 the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and  
13 most 1998 and newer diesel vehicles instead of the BAR-97 emission inspection system (EIS)  
14 used for most model year 1999 and older gasoline and hybrid vehicles and 1997 and older diesel  
15 vehicles. The BAR-OIS system consists of a certified Data Acquisition Device (DAD),  
16 computer, bar code scanner, and printer.

17 26.e The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the  
18 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between  
19 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used  
20 to input technician information, the vehicle identification number, and DMV renewal  
21 information. The vehicle identification number (VIN) that is physically present on all vehicles is  
22 required to be programmed into the vehicle's On-Board Diagnostics -- Generation II (OBD II) on  
23 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in  
24 earlier model-years. The electronically programmed VIN, referred to as the "eVIN", is captured  
25 by the Bureau during a smog check inspection and should match the physical VIN on the vehicle.  
26 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection  
27 results and the Smog Check Certificate of Compliance number for passing vehicles. Data

28 ///

1 retrieved and recorded during an OIS smog check includes the eVIN, the communication  
2 protocol,<sup>2</sup> and the number of Parameter Identifications (PID's)<sup>3</sup>.

3 27.e As with the BAR-97 EIS, the technician also performs a visual and functional test on  
4 the vehicle. The visual inspection of the emission control components verifies the required  
5 emission control devices are present and properly connected and a functional test is performed of  
6 the malfunction indicator light. The OIS software makes the determination whether or not the  
7 vehicle passes the inspection based on the results of the OBD, visual, and functional tests.

### 8 **REVIEW OF OIS TEST DATA**

9 28.e Bureau Representative I.E. reviewed BAR-OIS test data pertaining to smog checke  
10 inspections conducted at Respondent TNB's facility. I.E. found that smog check inspections  
11 were performed at Respondent TNB's facility on the fifteen vehicles identified below using a  
12 method known as "clean plugging",<sup>4</sup> resulting in the issuance of fraudulent certificates of  
13 compliance for the vehicles.

#### 14 **Vehicle #1**

15 29.e BAR-OIS test data showed that on June 20, 2016, Respondent Herrador performed a  
16 smog check inspection on a 2004 Ford F250 Super Duty (Vehicle 1), resulting in the issuance of  
17 Certificate of Compliance No. ZF506578C. The BAR-OIS test details for Vehicle 1 showed that  
18 an eVIN was recorded. I.E. reviewed the Comparative OIS Test Data for 2004 Ford F250 Super  
19 Duty vehicles and found that the eVIN is not reported, and the communication protocol and PID  
20 count recorded during the smog check inspection on Vehicle 1 were not consistent with the  
21 communication protocol and PID count for that make and model.

22  
23 <sup>2</sup> The OBD II communication protocol describes the specific manufacturer/vehicle  
24 communication "language" used by the OBD II computer to communicate to scan tools and other  
25 devices such as the BAR-OIS. The communication protocol is programmed into the OBD II  
26 computer during manufacture.

25 <sup>3</sup> PID's are data points reported by the OBD II computer to the scan tool or BAR-OIS (for  
26 example, engine speed [rpm], vehicle speed, engine temperature, etc.) The PID count is the  
27 number of data points reported by the OBD II computer and is programmed during manufacture.  
28 Each make and model vehicle reports a specific number of PID counts.

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

1 30.e I.E. concluded that the DAD was not connected to Vehicle 1 during the June 20,e  
2 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
3 for that vehicle.

4 **Vehicle #2**

5 31.e BAR-OIS test data showed that on June 25, 2016, Respondent Sergio Callese  
6 performed a smog check inspection on a 2003 Chevrolet Impala (Vehicle 2), resulting in the  
7 issuance of Certificate of Compliance No. ZF506585C. I.E. reviewed the Comparative OIS Test  
8 Data for 2003 Chevrolet Impala vehicles and found that the communication protocol and PID  
9 count recorded during the smog check inspection on Vehicle 2 were not consistent with the  
10 communication protocol and PID count for that make and model.

11 32.e I.E. concluded that the DAD was not connected to Vehicle 2 during the June 25,e  
12 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
13 for that vehicle.

14 **Vehicle #3**

15 33.e BAR-OIS test data showed that on June 28, 2016, Respondent Sergio Callese  
16 performed a smog check inspection on a 2007 Chrysler PT Cruiser (Vehicle 3), resulting in the  
17 issuance of Certificate of Compliance No. ZF506589C. I.E. reviewed the Comparative OIS Test  
18 Data for 2007 Chrysler PT Cruiser vehicles and found that the communication protocol and PID  
19 count recorded during the smog check inspection on Vehicle 3 were not consistent with the  
20 communication protocol and PID count for that make and model.

21 34.e I.E. concluded that the DAD was not connected to Vehicle 3 during the June 28,e  
22 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
23 for that vehicle.

24 **Vehicle #4**

25 35.e BAR-OIS test data showed that on July 8, 2016, Respondent Jose Calles performed a  
26 smog check inspection on a 2001 Chevrolet Silverado C1500 (Vehicle 4), resulting in the  
27 issuance of Certificate of Compliance No. ZF713817C. I.E. reviewed the Comparative OIS Test  
28 Data for 2001 Chevrolet Silverado C1500 vehicles and found that the communication protocol

1 and PID count recorded during the smog check inspection on Vehicle 4 were not consistent with  
2 the communication protocol and PID count for that make and model.

3 36.c I.E. concluded that the DAD was not connected to Vehicle 4 during the July 8, 2016,c  
4 smog check inspection, resulting in the issuance of a fraudulent certificate of compliance for that  
5 vehicle.

6 **Vehicle #5**

7 37.c BAR-OIS test data showed that on July 23, 2016, Respondent Jose Calles performedc  
8 a smog check inspection on a 2008 Toyota Scion TC (Vehicle 5), resulting in the issuance of  
9 Certificate of Compliance No. ZF713845C. I.E. reviewed the Comparative OIS Test Data for  
10 2008 Toyota Scion TC vehicles and found that the communication protocol and PID count  
11 recorded during the smog check inspection on Vehicle 5 were not consistent with the  
12 communication protocol and PID count for that make and model.

13 38.c BAR-OIS test data also showed that on May 5, 2017, a smog inspection wasc  
14 performed on Vehicle 5 by another smog check facility and that the eVIN transmitted matched  
15 the physical VIN of Vehicle 5. Further, the communication protocol and PID count transmitted  
16 during Respondent Jose Calles' alleged smog inspection of Vehicle 5 on July 23, 2016, did not  
17 match the communication protocol and PID count recorded for the May 5, 2017, smog inspection  
18 on Vehicle 5.

19 39.c I.E. concluded that the DAD was not connected to Vehicle 5 during the July 23, 2016,c  
20 smog check inspection, resulting in the issuance of a fraudulent certificate of compliance for that  
21 vehicle.

22 **Vehicle #6**

23 40.c BAR-OIS test data showed that on August 1, 2016, Respondent Sergio Callesc  
24 performed a smog check inspection on a 2004 BMW 530i (Vehicle 6), resulting in the issuance of  
25 Certificate of Compliance No. ZH516917C. I.E. reviewed the Comparative OIS Test Data for  
26 2004 BMW 530i vehicles and found that the communication protocol and PID count recorded  
27 during the smog check inspection on Vehicle 6 were not consistent with the communication  
28 protocol and PID count for that make and model.

1 41.e I.E. concluded that the DAD was not connected to Vehicle 6 during the August 1,e  
2 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
3 for that vehicle.

4 **Vehicle #7**

5 42.e BAR-OIS test data showed that on August 4, 2016, Respondent Jose Callese  
6 performed a smog check inspection on a 2004 Chevrolet Avalanche C1500 (Vehicle 7), resulting  
7 in the issuance of Certificate of Compliance No. ZH516922C. I.E. reviewed the Comparative  
8 OIS Test Data for 2004 Chevrolet Avalanche C1500 vehicles and found that the communication  
9 protocol and PID count recorded during the smog check inspection on Vehicle 7 were not  
10 consistent with the communication protocol and PID count for that make and model.

11 43.e I.E. concluded that the DAD was not connected to Vehicle 7 during the August 4,e  
12 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
13 for that vehicle.

14 **Vehicle #8**

15 44.e BAR-OIS test data showed that on August 12, 2016, Respondent Jose Callese  
16 performed a smog check inspection on a 2008 Nissan Versa S/SL (Vehicle 8), resulting in the  
17 issuance of Certificate of Compliance No. ZH516942C. I.E. reviewed the Comparative OIS Test  
18 Data for 2008 Nissan Versa S/SL vehicles and found that the communication protocol and PID  
19 count recorded during the smog check inspection on Vehicle 8 were not consistent with the  
20 communication protocol and PID count for that make and model.

21 45.e I.E. concluded that the DAD was not connected to Vehicle 8 during the August 12,e  
22 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
23 for that vehicle.

24 **Vehicle #9**

25 46.e BAR-OIS test data showed that on August 18, 2016, Respondent Jose Callese  
26 performed a smog check inspection on a 2006 Ford Focus ZX4 (Vehicle 9), resulting in the  
27 issuance of Certificate of Compliance No. ZJ211157C. I.E. reviewed the Comparative OIS Test  
28 Data for 2006 Ford Focus ZX4 vehicles and found that the communication protocol and PID

1 count recorded during the smog check inspection on Vehicle 9 were not consistent with the  
2 communication protocol and PID count for that make and model.

3 47.e I.E. concluded that the DAD was not connected to Vehicle 9 during the August 18,e  
4 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
5 for that vehicle.

6 **Vehicle #10**

7 48.e BAR-OIS test data showed that on September 3, 2016, Respondent Sergio Callese  
8 performed a smog check inspection on a 2003 Hummer H2 (Vehicle 10), resulting in the issuance  
9 of Certificate of Compliance No. ZJ788251C. I.E. reviewed the Comparative OIS Test Data for  
10 2003 Hummer H2 vehicles and found that the communication protocol and PID count recorded  
11 during the smog check inspection on Vehicle 10 were not consistent with the communication  
12 protocol and PID count for that make and model.

13 49.e BAR-OIS test data also showed that on August 27, 2016, Vehicle 10 failed a smoge  
14 inspection performed by Respondent Sergio Calles at Respondent TNB's facility and that the  
15 eVIN transmitted matched the physical VIN of Vehicle 10. Further, the communication protocol  
16 and PID count transmitted during Respondent Sergio Calles' alleged smog inspection of  
17 Vehicle 10 on September 3, 2016, did not match the communication protocol and PID count  
18 recorded for the August 27, 2016, smog inspection on Vehicle 10.

19 50.e I.E. concluded that the DAD was not connected to Vehicle 10 during thee  
20 September 3, 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of  
21 compliance for that vehicle.

22 **Vehicle #11**

23 51.e BAR-OIS test data showed that on September 3, 2016, Respondent Sergio Callese  
24 performed a smog check inspection on a 2003 Chevrolet Trailblazer (Vehicle 11), resulting in the  
25 issuance of Certificate of Compliance No. ZJ788257C. I.E. reviewed the Comparative OIS Test  
26 Data for 2003 Chevrolet Trailblazer vehicles and found that the communication protocol and PID  
27 count recorded during the smog check inspection on Vehicle 11 were not consistent with the  
28 communication protocol and PID count for that make and model.



1 52.e BAR-OIS test data also showed that on March 30, 2015, a smog inspection wase  
2 performed on Vehicle 11 at another smog check facility and that the eVIN transmitted matched  
3 the physical VIN of Vehicle 11. Further, the communication protocol and PID count transmitted  
4 during Respondent Sergio Calles' alleged smog inspection of Vehicle 11 on September 3, 2016,  
5 did not match the communication protocol and PID count recorded for the March 30, 2015, smog  
6 inspection on Vehicle 11.

7 53.e I.E. concluded that the DAD was not connected to Vehicle 11 during thee  
8 September 3, 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of  
9 compliance for that vehicle.

10 **Vehicle #12**

11 54.e BAR-OIS test data showed that on October 4, 2016, Respondent Herrador performede  
12 a smog check inspection on a 2001 Chevrolet Lumina (Vehicle 12), resulting in the issuance of  
13 Certificate of Compliance No. QE507839C. I.E. reviewed the Comparative OIS Test Data for  
14 2001 Chevrolet Lumina vehicles and found that the communication protocol and PID count  
15 recorded during the smog check inspection on Vehicle 12 were not consistent with the  
16 communication protocol and PID count for that make and model.

17 55.e BAR-OIS test data also showed that on September 19, 2016, Vehicle 12 failed a smoge  
18 inspection performed by Respondent Herrador at Respondent TNB's facility. Further, the  
19 communication protocol and PID count transmitted during Respondent Herrador's alleged smog  
20 inspection of Vehicle 12 on October 4, 2016, did not match the communication protocol and PID  
21 count recorded for the September 19, 2016, smog inspection on Vehicle 12.

22 56.e I.E. concluded that the DAD was not connected to Vehicle 12 during the October 4,e  
23 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
24 for that vehicle.

25 **Vehicle #13**

26 57.e BAR-OIS test data showed that on October 10, 2016, Respondent Herradore  
27 performed a smog check inspection on a 2002 Mercedes-Benz S430 (Vehicle 13), resulting in the  
28 issuance of Certificate of Compliance No. QE939958C. I.E. reviewed the Comparative OIS Test

1 Data for 2002 Mercedes-Benz S430 vehicles and found that the communication protocol and PID  
2 count recorded during the smog check inspection on Vehicle 13 were not consistent with the  
3 communication protocol and PID count for that make and model.

4 58.e I.E. concluded that the DAD was not connected to Vehicle 13 during the October 10,e  
5 2016, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
6 for that vehicle.

7 **Vehicle #14**

8 59.e BAR-OIS test data showed that on February 13, 2017, Respondent Herradore  
9 performed a smog check inspection on a 2001 Toyota Tacoma Double Cab Prerunner (Vehicle  
10 14), resulting in the issuance of Certificate of Compliance No. ZP324679C. I.E. reviewed the  
11 Comparative OIS Test Data for 2001 Toyota Tacoma Double Cab Prerunner vehicles and found  
12 that the PID count recorded during the smog check inspection on Vehicle 14 was not consistent  
13 with the PID count for that make and model.

14 60.e BAR-OIS test data also showed that on April 29, 2015, a smog inspection wase  
15 performed on Vehicle 14 by another smog check facility, and that the PID count transmitted  
16 during Respondent Herrador's alleged smog inspection of Vehicle 14 on February 13, 2017, did  
17 not match the PID count recorded for the April 29, 2015, smog inspection on Vehicle 14.

18 61.e I.E. concluded that the DAD was not connected to Vehicle 14 during the February 13,e  
19 2017, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
20 for that vehicle.

21 **Vehicle #15**

22 62.e BAR-OIS test data showed that on June 6, 2017, Respondent Herrador performed ae  
23 smog check inspection on a 2001 Honda Accord EX (Vehicle 15), resulting in the issuance of  
24 Certificate of Compliance No. ZX164202C. I.E. reviewed the Comparative OIS Test Data for  
25 2001 Honda Accord EX vehicles and found that the PID count recorded during the smog check  
26 inspection on Vehicle 15 was not consistent with the PID count for that make and model.

27 63.e BAR-OIS test data also showed that on May 31, 2017, Vehicle 15 failed a smoge  
28 inspection performed on by Respondent Herrador at Respondent TNB's facility. Further, the PID

1 count transmitted during Respondent Herrador's alleged smog inspection of Vehicle 15 on  
2 June 6, 2017, did not match the PID count recorded for the May 31, 2017, smog inspection on  
3 Vehicle 15.

4 64.e I.E. concluded that the DAD was not connected to Vehicle 15 during the June 6,e  
5 2017, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance  
6 for that vehicle.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 65.e Respondent TNB's registration is subject to discipline pursuant to Codee  
10 section 9884.7(a)(1), in that Respondent TNB made or authorized statements which  
11 Respondent TNB knew or in the exercise of reasonable care should have known to be untrue or  
12 misleading. Specifically, Respondent TNB certified that Vehicles 1 through 15, identified in  
13 paragraphs 29 through 64, above, passed inspection and were in compliance with applicable laws  
14 and regulations. In fact, Respondent TNB conducted, or caused to be conducted, smog check  
15 inspections on the vehicles using clean-plugging methods, in that Respondent TNB substituted  
16 different vehicles during the inspections in order to issue smog certificates of compliance for the  
17 vehicles, and did not test or inspect the vehicles as required by Health & Safety Code section  
18 44012.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 66.e Respondent TNB's registration is subject to discipline pursuant to Codee  
22 section 9884.7(a)(4), in that Respondent TNB committed acts that constitute fraud by issuing  
23 electronic smog certificates of compliance for Vehicles 1 through 15, identified in paragraphs 29  
24 through 64, above, without ensuring that bona fide inspections were performed of the emission  
25 control devices and systems on the vehicles, thereby depriving the People of the State of  
26 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 67.e Respondent TNB's smog check station license is subject to discipline pursuant to  
4 Health & Safety Code section 44072.2(a), in that regarding Vehicles 1 through 15, identified in  
5 paragraphs 29 through 64, above, Respondent TNB failed to comply with that Code, as follows:

6e a. **Section 44012(a)**: Respondent TNB failed to ensure that the emission control tests  
7 were performed on the vehicles in accordance with procedures prescribed by the department.

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

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations)**

13 68.e Respondent TNB's smog check station license is subject to discipline pursuant to  
14 Health & Safety Code section 44072.2(c), in that Respondent TNB failed to comply with  
15 Regulations, as follows:

16 a. **Section 3340.35(c)**: Respondent TNB issued electronic smog certificates of  
17 compliance for Vehicles 1 through 15, identified in paragraphs 29 through 64, above, even though  
18 the vehicles had not been inspected in accordance with CCR section 3340.42.

19 b.e **Section 3340.42**: Respondent TNB failed to ensure that the required smog tests were  
20 conducted on Vehicles 1 through 15, identified in paragraphs 29 through 64, above, in accordance  
21 with the Bureau's specifications.

22 **FIFTH CAUSE FOR DISCIPLINE**

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

24 69.e Respondent TNB's smog check station license is subject to discipline pursuant to  
25 Health & Safety Code section 44072.2(d), in that Respondent TNB committed dishonest,  
26 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates  
27 of compliance for Vehicles 1 through 15, identified in paragraphs 29 through 64, above, without  
28 ensuring that a bona fide inspection was performed of the emission control devices and systems

1 on the vehicles, thereby depriving the people of the State of California of the protection afforded  
2 by the Motor Vehicle Inspection Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 70.e Respondent Sergio Calles' smog check inspector license is subject to discipline  
6 pursuant to Health & Safety Code section 44072.2(a), in that Respondent Sergio Calles violated  
7 section 44012 of that Code. Specifically, Respondent Sergio Calles failed to perform the  
8 emission control tests on Vehicles 2, 3, 6, 10, and 11, identified in paragraphs 31-34, 40, 41, and  
9 48-53, above, in accordance with procedures prescribed by the department.e

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations)**

12 71.e Respondent Sergio Calles' smog check inspector license is subject to discipline  
13 pursuant to Health & Safety Code section 44072.2(c), in that regarding Vehicles 2, 3, 6, 10, and  
14 11, identified in paragraphs 31-34, 40, 41, and 48-53, above, he failed to comply with provisions  
15 of Regulations, as follows:

16 a. **Section 3340.30(a)**: Respondent Sergio Calles failed to inspect and test the vehicle  
17 in accordance with Health & Safety Code sections 44012 and 44035, and CCR section 3340.42.

18 b.e **Section 3340.42**: Respondent Sergio Calles failed to conduct the required smog tests  
19 on the vehicles in accordance with the Bureau's specifications.

20 **EIGHTH CAUSE FOR DISCIPLINE**

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

22 72.e Respondent Sergio Calles' smog check inspector license is subject to discipline  
23 pursuant to Health & Safety Code section 44072.2(d), in that he committed dishonest, fraudulent,  
24 or deceitful acts whereby another was injured by using false information for electronic smog  
25 certificates of compliance issued for Vehicles 2, 3, 6, 10, and 11, identified in paragraphs 31-34,  
26 40, 41, and 48-53, above, thereby failing to perform bona fide inspections of the emission control  
27 devices and systems on the vehicles and depriving the people of the State of California of the  
28 protection afforded by the Motor Vehicle Inspection Program.

1 **NINTH CAUSE FOR DISCIPLINE**

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

3 73.e Respondent Jose Calles' smog check inspector license is subject to discipline  
4 pursuant to Health & Safety Code section 44072.2(a), in that Respondent Jose Calles violated  
5 section 44012 of that Code. Specifically, Respondent Jose Calles failed to perform the emission  
6 control tests on Vehicles 4, 5, 7, 8, and 9, identified in paragraphs 35-39, and 42-47, above, in  
7 accordance with procedures prescribed by the department.

8 **TENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations)**

10 74.e Respondent Jose Calles' smog check inspector license is subject to discipline  
11 pursuant to Health & Safety Code section 44072.2(c), in that regarding Vehicles 4, 5, 7, 8, and 9,  
12 identified in paragraphs 35-39, and 42-47, above, he failed to comply with provisions of  
13 Regulations, as follows:

14 a. **Section 3340.30(a)**: Respondent Jose Calles failed to inspect and test the vehicles in  
15 accordance with Health & Safety Code sections 44012 and 44035, and CCR section 3340.42.

16 b. **Section 3340.42**: Respondent Jose Calles failed to conduct the required smog tests on  
17 the vehicles in accordance with the Bureau's specifications.

18 **ELEVENTH CAUSE FOR DISCIPLINE**

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

20 75.e Respondent Jose Calles' smog check inspector license is subject to discipline  
21 pursuant to Health & Safety Code section 44072.2(d), in that he committed dishonest, fraudulent,  
22 or deceitful acts whereby another was injured by using false information for electronic smog  
23 certificates of compliance issued for Vehicles 4, 5, 7, 8, and 9, identified in paragraphs 35-39, and  
24 42-47, above, thereby failing to perform bona fide inspections of the emission control devices and  
25 systems on the vehicles and depriving the people of the State of California of the protection  
26 afforded by the Motor Vehicle Inspection Program.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

3 76.e Respondent Herrador's smog check inspector license is subject to discipline pursuant  
4 to Health & Safety Code section 44072.2(a), in that Respondent Herrador violated section 44012  
5 of that Code. Specifically, Respondent Herrador failed to perform the emission control tests on  
6 Vehicles 1, 12, 13, 14, and 15, identified in paragraphs 29, 30, and 54-64, above, in accordance  
7 with procedures prescribed by the department.

8 **THIRTEENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations)**

10 77.e Respondent Herrdor's smog check inspector license is subject to discipline pursuant  
11 to Health & Safety Code section 44072.2(c), in that regarding Vehicles 1, 12, 13, 14, and 15,  
12 identified in paragraphs 29, 30, and 54-64, above, he failed to comply with provisions of  
13 Regulations, as follows:

14 a. **Section 3340.30(a)**: Respondent Herrador failed to inspect and test the vehicles in  
15 accordance with Health & Safety Code sections 44012 and 44035, and CCR section 3340.42.

16 b.e **Section 3340.42**: Respondent Herrador failed to conduct the required smog tests on  
17 the vehicles in accordance with the Bureau's specifications.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

20 78.e Respondent Herrador's smog check inspector and smog check repair technician  
21 licenses are subject to discipline pursuant to Health & Safety Code section 44072.2(d), in that he  
22 committed dishonest, fraudulent, or deceitful acts whereby another was injured by using false  
23 information for electronic smog certificates of compliance issued for Vehicles 1, 12, 13, 14, and  
24 15, identified in paragraphs 29, 30, and 54-64, above, thereby failing to perform bona fide  
25 inspections of the emission control devices and systems on the vehicles and depriving the people  
26 of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **MATTERS IN AGGRAVATION**

2 79.e To determine the degree of discipline, if any, to be imposed, Complainant alleges ase  
3 follows:

4 80.e On or about November 9, 2011, the Bureau issued Citation No. M2012-0433 againste  
5 Respondent Herrador for violating Health & Safety Code section 44012. On or about October 10,  
6 2011, Respondent Herrador issued a certificate of compliance for a Bureau undercover vehicle  
7 with a missing EVAP canister. The Bureau directed Respondent Herrador to complete an eight-  
8 hour training course. Respondent Herrador complied with the citation on or about December 23,  
9 2011.

10 81.e On or about May 31, 2012, the Bureau issued Citation No. M2012-1677 againste  
11 Respondent Herrador for violating Health & Safety Code section 44032. On or about April 24,  
12 2012, Respondent Herrador issued a certificate of compliance for a Bureau undercover vehicle  
13 with a positive crankcase ventilation (PCV) that was missing the valve and hose. The Bureau  
14 directed Respondent Herrador to complete a sixteen-hour training course. Respondent Herrador  
15 appealed the citation, withdrew his appeal to the citation, and complied with the citation on or  
16 about April 1, 2013.

17 **OTHER MATTERS**

18 82.e Under Code section 9884.7(c), the Director may invalidate temporarily ore  
19 permanently or refuse to validate, the registrations for all places of business operated in this state  
20 by Respondent Sergio Calles, Automotive Repair Dealer Registration No. ARD 277511, upon a  
21 finding that he has, or is, engaged in a course of repeated and willful violations of the laws and  
22 regulations pertaining to an automotive repair dealer.

23 83.e Under Health & Safety Code section 44072.8, if Smog Check, Test Only, Statione  
24 License No. TC 277511, issued to Sergio Calles, doing business as T.N.B. Test Only, is revoked  
25 or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health  
26 & Safety Code in the name of said licensee may be likewise revoked or suspended by the  
27 director.

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1        7.    Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
2 Division 26 of the Health & Safety Code in the name of Jose Calles;

3        8.    Revoking or suspending Smog Check Inspector License No. EO 153673 and Smog  
4 Check Repair Technician License No. EI 153673, issued to Alvaro J. Herrador;

5        9.    Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
6 Division 26 of the Health & Safety Code in the name of Alvaro J. Herrador;

7        10.   Ordering Sergio Calles, doing business as TNB, Jose Eduardo Calles, and Alvaro J.  
8 Herrador, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and  
9 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

10       11.   Taking such other and further action as deemed necessary and proper.

11  
12 DATED:

May 9, 2019



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

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