

1 XAVIER BECERRA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
4 State Bar No. 209545
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6099
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
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. 79/19-15142

14 **NICHOLAS CARL GIBBONS, DBA**
LATHROP SMOG
15 15151 S. Harlan Road
Lathrop, CA 95330
16 **Automotive Repair Dealer Registration**
17 **No. ARD 289396**
Smog Check Station License
18 **No. RC 289396**

ACCUSATION

19 **NICHOLAS CARL GIBBONS**
846 Sapphire Court
20 Manteca, CA 95336
21 **Smog Check Inspector License No. EO 631964**
Smog Check Repair License No. EI 631964,

22
23 Respondent.

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25
26 **PARTIES**

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

1 “agency.” “License” includes certificate, registration or other means to engage in a business or
2 profession regulated by the Bus. & Prof. Code.

3 8. Section 9884.7 of the Code provides that the Director may revoke an automotive
4 repair dealer registration.

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

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

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

16 12. Section 44072.8 of the Health & Saf. Code states that when a license has been
17 revoked or suspended following a hearing under this article, any additional license issued under
18 this chapter in the name of the licensee may be likewise revoked or suspended by the director.

19 **STATUTORY AND REGULATORY PROVISIONS**

20 13. Section 9884.7 of the Code states, in pertinent part:

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

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

26 ...

27 (4) Any other conduct which constitutes fraud.

28 ...

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

3 ...

4 (b) Except as provided for in subdivision (c), if an automotive repair dealer
5 operates more than one place of business in this state, the director pursuant to
6 subdivision (a) shall only suspend, revoke, or place on probation the registration of
7 the specific place of business which has violated any of the provisions of this chapter.
8 This violation, or action by the director, shall not affect in any manner the right of the
9 automotive repair dealer to operate his or her other places of business.

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

10 14. Section 44012 of the Health & Saf. Code states, in pertinent part:

11 The test at the smog check stations shall be performed in accordance with
12 procedures prescribed by the department and may require loaded mode
13 dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a
14 vehicle's onboard diagnostic system, or other appropriate test procedures as
15 determined by the department in consultation with the state board. The department
16 shall implement testing using onboard diagnostic systems, in lieu of loaded mode
17 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles
only, beginning no earlier than January 1, 2013. However, the department, in
consultation with the state board, may prescribe alternative test procedures that
include loaded mode dynamometer or two-speed idle testing for vehicles with
onboard diagnostic systems that the department and the state board determine
exhibit operational problems. The department shall ensure, as appropriate to the test
method, the following:

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

20 15. Section 44015, subdivision b, of the Health & Saf. Code states, "If a vehicle meets
21 the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a
certificate of compliance or a certificate of noncompliance."

22 16. Section 44072.10 of the Health & Saf. Code states, in pertinent part:

23 ...

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

27 ...

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

1 17. Section 44072.2 of the Health & Saf. Code states, in pertinent part:

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

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

6 ...

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

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

10 18. Section 44024.5, subdivision (a) of the Health & Saf. Code, states:

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

15 19. Section 44037 of the Health & Saf. Code states, in pertinent part:

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

19 (1) The motor vehicle identification information and the test data collected at
the station.

20 ...

21 (5) Data received and compiled through the use of the centralized computer
22 database and computer network to be established pursuant to Section 44037.1, and
23 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 . . .

24 20. Section 44037.1 of the Health & Saf. Code states, in pertinent part:

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

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

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(2) To provide smog check technicians and the department with information as 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 permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair 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 and technicians as potential violators of this chapter.

...

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

(c) After January 1, 1995, each smog check station shall transmit vehicle data 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 after repair . . .

21. Section 3340.17 of the California Code of Regulations, title 16 (CCR), states, in pertinent part:

...

(c) Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted to the bureau's centralized database . . .

22. Section 3340.30 of the CCR states, in pertinent part:
A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

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

23. Section 3340.35 of the CCR states, in pertinent part:

(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 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. The following conditions shall apply:

24. Section 3340.42 of the CCR states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

1 (a) All vehicles subject to a smog check inspection, shall receive one of the
2 following test methods:

3 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999
4 model-year vehicle, except diesel-powered, registered in the enhanced program
5 areas of the state. The loaded-mode test shall measure hydrocarbon, carbon
6 monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the
7 bureau's specifications referenced in subsection (a) of Section 3340.17 of this
8 article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test
9 equipment, including a chassis dynamometer, certified by the bureau.

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

19 (2) A two-speed idle mode test shall be the test method used to inspect 1976 -
20 1999 model-year vehicles, except diesel-powered, registered in all program areas of
21 the state, except in those areas of the state where the enhanced program has been
22 implemented. The two-speed idle mode test shall measure hydrocarbon, carbon
23 monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as
24 contained in the bureau's specifications referenced in subsection (a) of Section
25 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
26 shall be measured and compared to the emission standards set forth in this section and
27 as shown in Table III. A vehicle passes the two-speed idle mode test if all of its
28 measured emissions are less than or equal to the applicable emissions standards
specified in Table III.

(3) An OBD-focused test, shall be the test method used to inspect gasoline-
powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998
model-year and newer. The OBD test failure criteria are specified in section
3340.42.2.

(b) In addition to subsection (a), all vehicles subject to the smog check
program shall receive the following:

(1) A visual inspection of emission control components and systems to verify
the vehicle's emission control systems are properly installed.

(2) A functional inspection of emission control systems as specified in the
Smog Check Manual, referenced by section 3340.45, which may include an OBD
test, to verify their proper operation.

(c) The bureau may require any combination of the inspection methods in
sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and
Safety Code section 44014.7 as a means of identifying potential operational problems
with vehicle OBD systems.

1 (2) Vehicles identified by the bureau as being operationally or physically
incompatible with inspection equipment.

2 (3) Vehicles with OBD systems that have demonstrated operational problems.

3 (d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter
standards are as follows:

4 (1) A gross polluter means a vehicle with excess hydrocarbon, carbon
5 monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions
standards included in the tables described in subsection (a), as applicable.

6 (2) Vehicles with emission levels exceeding the emission standards for gross
7 polluters during an initial inspection will be considered gross polluters and the
provisions pertaining to gross polluting vehicles will apply, including, but not limited
8 to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

9 (3) A gross polluting vehicle shall not be passed or issued a certificate of
10 compliance until the vehicle's emissions are reduced to or below the applicable
emissions standards for the vehicle included in the tables described in subsection (a),
11 as applicable. However, the provisions described in section 44017 of the Health and
Safety Code may apply.

12 (4) This subsection applies in all program areas statewide to vehicles requiring
13 inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

14 **COST RECOVERY**

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

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

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

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1 27. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the
2 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between
3 the BAR-OIS computer and the vehicle’s diagnostic link connector. The bar code scanner is used
4 to input technician information, the vehicle identification number, and DMV renewal
5 information. The vehicle identification number (VIN) that is physically present on all vehicles is
6 required to be programmed into the vehicle’s On-Board Diagnostics – Generation II (OBD II) on
7 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in
8 earlier model-years. The electronically programmed VIN, referred to as the “eVIN”, is captured
9 by the Bureau during a smog check inspection and should match the physical VIN on the vehicle.
10 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection
11 results and the Smog Check Certificate of Compliance Number for passing vehicles. Data
12 retrieved and recorded during an OIS smog check includes the eVIN, the communication
13 protocol,¹ and the number of Parameter Identifications (PID’s)².

14 28. As with the BAR-97 EIS, the technician also performs a visual and functional test on
15 the vehicle. The visual inspection of the emission control components verifies the required
16 emission control devices are present and properly connected and a functional test is performed of
17 the malfunction indicator light. The OIS software makes the determination whether or not the
18 vehicle passes the inspection based on the results of the OBD, visual, and functional tests.

IMPROPER CERTIFICATION

Vehicle 2:

21 29. The BAR-OIS test data showed that on July 5, 2018, Respondent performed a smog
22 check inspection on a 2008 Toyota Prius (Vehicle 2), resulting in the issuance of electronic Smog
23 Certificate of Compliance No. QK311170C. The BAR-OIS test details for Vehicle 2 showed the

25 ¹ The OBD II communication protocol describes the specific manufacturer/vehicle
26 communication “language” used by the OBD II computer to communicate to scan tools and other
27 devices such as the BAR-OIS. The communication protocol is programmed into the OBD II
28 computer during manufacture.

² PID’s are data points reported by the OBD II computer to the scan tool or BAR-OIS (for
example, engine speed (rpm), vehicle speed, engine temperature, etc.) The PID count is the
number of data points reported by the OBD II computer and is programmed during manufacture.
Each make and model vehicle reports a specific number of PID counts.

1 eVIN recorded during the inspection did not match the physical VIN on Vehicle 2. Bureau
2 representative N.M. reviewed the Comparative OIS Test Data for 2008 Toyota Prius vehicles and
3 found the communication protocol and PID count recorded during the inspection on Vehicle 2
4 were not consistent with the communication protocol and PID count for that make and model
5 vehicle.

6 30. BAR-OIS test data also showed that on July 5, 2018, Respondent performed a smog
7 inspection on a 2006 Toyota Corolla CE. The eVIN transmitted to the VID was the same eVIN
8 that was recorded during the July 5, 2018, smog inspection on Vehicle 2. Further, the
9 communication protocol and PID count that were recorded during the July 5, 2018, smog
10 inspection on the 2006 Toyota Corolla CE were the same as the communication protocol and PID
11 count for the July 5, 2018, smog inspection of Vehicle 2. Department of Motor Vehicle (DMV)
12 records show Vehicle 2 and the 2006 Toyota Corolla CE have a common registered owner.

13 31. N.M. concluded that the DAD was not connected to Vehicle 2 during the July 5,
14 2018, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance
15 for that vehicle.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 32. Respondent's registration is subject to discipline pursuant to Code Section 9884.7,
19 subdivision (a)(1), in that Respondent made or authorized statements which Respondent knew or
20 in the exercise of reasonable care should have known to be untrue or misleading. Specifically,
21 Respondent certified that the Vehicle 2, identified in paragraphs 29 through 31 above, passed
22 inspection and was in compliance with applicable laws and regulations. In fact, Respondent
23 conducted a smog check inspection on a 2006 Toyota Corolla CE in order to issue a smog
24 Certificate of Compliance for Vehicle 2, and did not test or inspect the vehicle as required by
25 Health & Saf. Code section 44012.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 33. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
4 subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing an
5 electronic smog Certificate of Compliance for Vehicle 2, identified in paragraphs 29 through 31
6 above, without ensuring that a bona fide inspection was performed of the emission control device
7 and system on the vehicle, thereby depriving the People of the State of California of the
8 protection afforded by the Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Motor Vehicle Inspection Program – Code Violations)**

11 34. Respondent's smog check station license is subject to discipline pursuant to Health &
12 Saf. Code section 44072.2, subdivision (a), in that regarding Vehicle 2, identified in paragraphs
13 29 through 31 above, Respondent violated sections of that Code, as follows:

14 a. **Section 44012, subdivision (a)**: Respondent failed to ensure that the emission
15 control tests were performed on the vehicle in accordance with procedures prescribed by the
16 department.

17 b. **Section 44015**: Respondent issued an electronic smog Certificate of
18 Compliance without ensuring that the vehicle was properly tested and inspected to determine if it
19 was in compliance with Health & Saf. Code section 44012.

20 **FOURTH CAUSE FOR DISCIPLINE**

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

22 35. Respondent's smog check station license is subject to discipline pursuant to Health &
23 Saf. Code section 44072.2, subdivision (c), in that regarding Vehicle 2, identified in paragraphs
24 29 through 31 above, Respondent failed to comply with provisions of the CCR, as follows:

25 a. **Section 3340.325(c)**: Respondent issued an electronic smog Certificate of
26 Compliance for Vehicle 2 even though the vehicle had not been inspected in accordance with
27 CCR section 3340.42.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 39. Respondent's smog check inspector and smog check repair licenses are subject to
4 discipline pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed
5 dishonest, fraudulent, or deceitful acts whereby another was injured by using false information for
6 electronic smog certificates of compliance issued for Vehicle 2, identified in paragraphs 30
7 through 32 above, thereby failing to perform a bona fide inspection of the emission control device
8 and system on the vehicle and depriving the people of the State of California of the protection
9 afforded by the Motor Vehicle Inspection Program.

10 **REVIEW OF OIS TEST DATA**

11 40. Bureau Representative N.M. reviewed BAR-OIS test data pertaining to smog
12 inspections conducted at Respondent's facility. N.M. found that Respondent performed smog
13 check inspections on six vehicles identified below using a method known as "clean plugging,"³
14 resulting in the issuance of fraudulent certificates of compliance for the vehicles.

15 **Vehicle 1:**

16 41. The BAR-OIS test data showed that on May 10, 2018, Respondent performed a smog
17 check inspection on a 2003 Honda Pilot EXL (Vehicle 1), resulting in the issuance of electronic
18 Smog Certificate of Compliance No. HT292995C. The BAR-OIS test details for Vehicle 1
19 showed the eVIN recorded during the inspection did not match the physical VIN on Vehicle 1.
20 N.M. reviewed the Comparative OIS Test Data for 2003 Honda Piolet EXL vehicles and found
21 the communication protocol and PID count recorded during the inspection on Vehicle 1 were not
22 consistent with the communication protocol and PID count for that make and model vehicle.

23 42. The Bureau's VIN information also showed that a 2014 BMW 528i matches the OIS
24 test data for the inspection of Vehicle 1 for the eVIN. DMV records show Vehicle 1 and the 2014
25 BMW 528i have a common registered owner.

26 ³ Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another
27 source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog
28 certificate of compliance to another vehicle that is not in compliance with the Smog Check
Program and/or is not present for testing.

1 43. N.M. concluded that the DAD was not connected to Vehicle 1 during the May 10,
2 2018, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance
3 for that vehicle.

4 **Vehicle 3:**

5 44. The BAR-OIS test data showed that on July 31, 2018, Respondent performed a smog
6 check inspection on a 2000 Ford Ranger Super Cab (Vehicle 3), resulting in the issuance of
7 electronic Smog Certificate of Compliance No. QK950016C. The BAR-OIS test details for
8 Vehicle 3 showed the eVIN recorded during the inspection did not match the physical VIN on
9 Vehicle 3. N.M. reviewed the Comparative OIS Test Data for 2000 Ford Ranger Super Cab
10 vehicles and found the communication protocol and PID count recorded during the inspection on
11 Vehicle 3 were not consistent with the communication protocol and PID count for that make and
12 model vehicle.

13 45. The Bureau's VIN information also showed that a 2015 Chevrolet Express G3500
14 matches the OIS test data for the inspection of Vehicle 3 for the eVIN. DMV records show
15 Vehicle 3 and the 2015 Chevrolet Express G3500 do not have a common registered owner.

16 46. N.M. concluded that the DAD was not connected to Vehicle 3 during the July 31,
17 2018, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance
18 for that vehicle.

19 **Vehicle 4:**

20 47. The BAR-OIS test data showed that on September 14, 2018, Respondent performed a
21 smog check inspection on a 2002 Mitsubishi Eclipse GS (Vehicle 4), resulting in the issuance of
22 electronic Smog Certificate of Compliance No. QO284942C. The BAR-OIS test details for
23 Vehicle 4 showed the eVIN recorded during the inspection did not match the physical VIN on
24 Vehicle 4. N.M. reviewed the Comparative OIS Test Data for 2002 Mitsubishi Eclipse GS
25 vehicles and found the communication protocol and PID count recorded during the inspection on
26 Vehicle 4 were not consistent with the communication protocol and PID count for that make and
27 model vehicle.

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1 48. The Bureau's VID data also showed that on April 4, 2019, Respondent performed a
2 smog inspection on a 2001 Ford F150. The eVIN transmitted to the VID was the same eVIN that
3 was recorded during the September 14, 2018, smog inspection on Vehicle 4. Further, the
4 communication protocol and PID count that were recorded during the April 4, 2019, smog
5 inspection on the 2001 Ford F150 were the same as the communication protocol and PID count
6 for the September 14, 2018, smog inspection of Vehicle 4. DMV records show Vehicle 4 and the
7 2001 Ford F150 have a common registered owner.

8 49. N.M. concluded that the DAD was not connected to Vehicle 4 during the September
9 14, 2018, smog check inspection, resulting in the issuance of a fraudulent certificate of
10 compliance for that vehicle.

11 **Vehicle 5:**

12 50. The BAR-OIS test data showed that on July 2, 2019, Respondent performed a smog
13 check inspection on a 2002 Dodge Stratus SE Plus (Vehicle 5), resulting in the issuance of
14 electronic Smog Certificate of Compliance No. QU826027C. The BAR-OIS test details for
15 Vehicle 5 showed the eVIN recorded during the inspection did not match the physical VIN on
16 Vehicle 5. N.M. reviewed the Comparative OIS Test Data for 2002 Dodge Stratus SE Plus
17 vehicles and found the communication protocol and PID count recorded during the inspection on
18 Vehicle 5 were not consistent with the communication protocol and PID count for that make and
19 model vehicle.

20 51. The Bureau's VID data also showed that on August 16, 2017, Respondent performed
21 a smog inspection on a 2012 Chrysler Town & Country Touring. The eVIN transmitted to the
22 VID was the same eVIN that was recorded during the July 2, 2019, smog inspection on Vehicle 5.
23 Further, the communication protocol and PID count that were recorded during the August 16,
24 2017, smog inspection on the 2012 Chrysler Town & Country Touring were the same as the
25 communication protocol and PID count for the July 2, 2019, smog inspection of Vehicle 5. DMV
26 records show Vehicle 5 and the 2012 Chrysler Town & Country Touring have a common
27 registered owner.

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1 52. The BAR-OIS test data showed that on July 2, 2019, Respondent performed a
2 subsequent smog check inspection on Vehicle 5. The BAR-OIS test details for Vehicle 5 showed
3 the eVIN recorded during the inspection did not match the physical VIN on Vehicle 5. N.M.
4 reviewed the Comparative OIS Test Data for 2002 Dodge Stratus SE Plus vehicles and found the
5 PID count recorded during the inspection on Vehicle 5 were not consistent with the PID count for
6 that make and model vehicle.

7 53. The Bureau's VID data also showed that on July 10, 2019, Respondent performed a
8 smog inspection on a 2005 Dodge Stratus SXT. The eVIN transmitted to the VID was the same
9 eVIN that was recorded during the second July 2, 2019, smog inspection on Vehicle 5. Further,
10 the communication protocol and PID count that were recorded during the July 10, 2019, smog
11 inspection on the 2005 Dodge Stratus SXT were the same as the communication protocol and PID
12 count for the second July 2, 2019, smog inspection of Vehicle 5. DMV records show Vehicle 5
13 and the 2012 Chrysler Town & Country Touring have a common registered owner. DMV records
14 show that Vehicle 5 and the 2005 Dodge Stratus SXT do not have a common registered owner.

15 54. N.M. concluded that the DAD was not connected to Vehicle 5 during the July 5,
16 2018, smog check inspections, resulting in the issuance of a fraudulent certificates of compliance
17 for that vehicle.

18 **Vehicle 6:**

19 55. The BAR-OIS test data showed that on July 18, 2019, Respondent performed a smog
20 check inspection on a 2015 Nissan Versa Note S (Vehicle 6), resulting in the issuance of
21 electronic Smog Certificate of Compliance No. IF658384C. The BAR-OIS test details for
22 Vehicle 5 showed the eVIN recorded during the inspection did not match the physical VIN on
23 Vehicle 5. N.M. reviewed the Comparative OIS Test Data for 2015 Nissan Versa Note S vehicles
24 and found the communication protocol and PID count recorded during the inspection on Vehicle
25 6 were not consistent with the communication protocol and PID count for that make and model
26 vehicle.

27 56. The Bureau's VID data also showed that on September 7, 2019, Respondent
28 performed a smog inspection on a 2002 Chevrolet Silverado 1500. The eVIN transmitted to the

1 VID was the same eVIN that was recorded during the July 18, 2019, smog inspection on Vehicle
2 6. Further, the communication protocol and PID count that were recorded during the September 7,
3 2019, smog inspection on the 2002 Chevrolet Silverado 1500 were the same as the
4 communication protocol and PID count for the July 18, 2019, smog inspection of Vehicle 6.
5 Department of Motor Vehicle (DMV) records show Vehicle 6 and the 2002 Chevrolet Silverado
6 1500 do not have a common registered owner.

7 57. N.M. concluded that the DAD was not connected to Vehicle 6 during the July 18,
8 2019, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance
9 for that vehicle.

10 **Vehicle 7:**

11 58. The BAR-OIS test data showed that on September 26, 2019, Respondent performed a
12 smog check inspection on a 2003 Saturn L200 (Vehicle 7), resulting in the issuance of electronic
13 Smog Certificate of Compliance No. QY554471C. The BAR-OIS test details for Vehicle 6
14 showed the eVIN was not recorded the inspection. N.M. reviewed the Comparative OIS Test Data
15 for 2003 Saturn L2000 vehicles and found the PID count recorded during the inspection on
16 Vehicle 7 was not consistent with the PID count for that make and model vehicle.

17 59. N.M. concluded that the DAD was not connected to Vehicle 7 during the September
18 26, 2019, smog check inspection, resulting in the issuance of a fraudulent certificate of
19 compliance for that vehicle.

20 **NINTH CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 60. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
23 subdivision (a)(1), in that Respondent made or authorized statements which Respondent knew or
24 in the exercise of reasonable care should have known to be untrue or misleading. Specifically,
25 Respondent certified that Vehicles 1, and 3 through 7, identified in paragraphs 40 through 59
26 above, passed inspection and were in compliance with applicable laws and regulations. In fact,
27 Respondent conducted, or caused to be conducted, smog check inspections on the vehicles using
28 clean-plugging methods, in that Respondent substituted different vehicles during the inspections

1 in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the
2 vehicles as required by Health & Safety Code section 44012.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 61. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
6 subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic
7 smog certificates of compliance for Vehicles 1, and 3 through 7, identified in paragraphs 40
8 through 59 above, without ensuring that bona fide inspections were performed of the emission
9 control devices and systems on the vehicles, thereby depriving the People of the State of
10 California of the protection afforded by the Motor Vehicle Inspection Program.

11 **ELEVENTH CAUSE FOR DISCIPLINE**

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

13 62. Respondent's smog check station license is subject to discipline pursuant to Health &
14 Safety Code section 44072.2, subdivision (a), in that regarding Vehicles 1, and 3 through 7,
15 identified in paragraphs 40 through 59 above, Respondent failed to comply with that Code, as
16 follows:

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

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

22 **TWELFTH CAUSE FOR DISCIPLINE**

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

24 63. Respondent's smog check station license is subject to discipline pursuant to Health &
25 Safety Code section 44072.2, subdivision (c), in that regarding Vehicles 1, and 3 through 7,
26 identified in paragraphs 40 through 59 above, Respondent failed to comply with Regulations, as
27 follows:

28 ///

1 a. **Section 3340.35(c)**: Respondent issued electronic smog certificates of
2 compliance even though the vehicles had not been inspected in accordance with CCR section
3 3340.42.

4 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
5 conducted in accordance with the Bureau's specifications.

6 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

8 64. Respondent's smog check station license is subject to discipline pursuant to Health &
9 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent,
10 or deceitful acts whereby another was injured by issuing electronic smog certificates of
11 compliance for Vehicles 1, and 3 through 7, identified in paragraphs 40 through 59 above,
12 without ensuring that a bona fide inspection was performed of the emission control devices and
13 systems on the vehicles, thereby depriving the people of the State of California of the protection
14 afforded by the Motor Vehicle Inspection Program.

15 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

17 65. Respondent's smog check inspector and smog check repair technician licenses are
18 subject to discipline pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
19 Respondent violated section 44012 of that Code. Specifically, Respondent failed to perform the
20 emission control tests on Vehicles 1, and 3 through 7, identified in paragraphs 40 through 59
21 above, in accord with procedures prescribed by the department.

22 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

24 66. Respondent's smog check inspector and smog check repair technician licenses are
25 subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (c), in that
26 regarding Vehicles 1, and 3 through 7, identified in paragraphs 40 through 59 above, he failed to
27 comply with provisions of Regulations, as follows:

28 ///

1 a. **Section 3340.30(a)**: Respondent failed to inspect and test Vehicles 1, and 3
2 through 7 in accordance with Health & Safety Code sections 44012 and 44035, and CCR section
3 3340.42.

4 b. **Section 3340.42**: Respondent failed to conduct the required smog tests in
5 accordance with the Bureau's specifications.

6 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

8 67. Respondent's smog check inspector and smog check repair technician licenses are
9 subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (d), in that he
10 committed dishonest, fraudulent, or deceitful acts whereby another was injured by using false
11 information for electronic smog certificates of compliance issued for Vehicles 1, and 3 through 7,
12 identified in paragraphs 40 through 59 above, thereby failing to performing bona fide inspections
13 of the emission control devices and systems on the vehicles and depriving the people of the State
14 of California of the protection afforded by the Motor Vehicle Inspection Program.

15 **MATTERS IN AGGRAVATION**

16 68. To determine the degree of discipline, if any, to be imposed, Complainant alleges as
17 follows:

18 a. On or about December 21, 2011, the Bureau issued Citation No. M2012-653
19 against Respondent for violations of Health & Saf. Code section 44032 (qualified technicians
20 shall perform tests of emission control systems and devices in accordance with Health & Saf.
21 Code 44012). On or about November 16, 2011, Respondent issued a certificate of compliance to a
22 Bureau undercover vehicle with a missing EGR valve. Respondent was directed to complete an
23 8-hour training course and to submit proof of completion to the Bureau within 30 days from
24 receipt of the citation. The Decision became effective March 2, 2012. Respondent completed his
25 training course on February 11, 2012.

26 **OTHER MATTERS**

27 69. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
28 suspend, revoke, or place on probation the registration for all places of business operated in this

1 state by Respondent Nicholas Carl Gibbons, owner of Lathrop Smog, upon finding that
2 Respondent Nicholas Carl Gibbons has, or is, engaged in a course of repeated and willful
3 violations of the laws and regulations pertaining to an automotive repair dealer.

4 70. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
5 Number RC 289396, issued to Respondent Nicholas Carl Gibbons, owner of Lathrop Smog, is
6 revoked or suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in
7 the name of said licensee may be likewise revoked or suspended by the Director.

8 71. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
9 Number EO 631964 and/or Smog Check Repair Technician License Number EI 631964, issued to
10 Nicholas Carl Gibbons are revoked or suspended, any additional license issued under this chapter
11 in the name of said licensee may be likewise revoked or suspended by the Director.

12 **PRAYER**

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

15 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 289396,
16 issued to Nicholas Carl Gibbons, as owner of Lathrop Smog;

17 2. Revoking or suspending any other automotive repair dealer registration issued to
18 Nicholas Carl Gibbons;

19 3. Revoking or suspending Smog Check Station License No. RC 289396, issued to
20 Nicholas Carl Gibbons, as owner of Lathrop Smog;

21 4. Revoking or suspending Smog Check Inspector License No. EO 631964 and Smog
22 Check Repair Technician License No. EI 961964, issued to Nicholas Carl Gibbons;

23 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
24 Division 26 of the Health & Safety Code in the name of Nicholas Carl Gibbons;

25 6. Ordering Nicholas Carl Gibbons to pay the Bureau of Automotive Repair the
26 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 125.3; and,

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

DATED: April 27, 2020

Signature on File

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

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