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

11 In the Matter of the Accusation Against:
12 **ERICK'S SMOG CHECK**
13 **ERICK PULIDO, OWNER**
901 E. Pacific Coast Highway
Long Beach, CA 90806

Case No. 79/16-98

OAH No. 2016050283

A C C U S A T I O N

14 **Automotive Repair Dealer Registration No.**
ARD 280966
15 **Smog Check, Test Only, Station License No.**
TC 280966

16
17 **ERICK PULIDO**
903 ½ E. 49th Street
Los Angeles, CA 90011

18
19 **Smog Check Inspector License No. EO**
637048

20 **Frank Hernandez**
10827 Buford Avenue
21 Lennox, CA 90304

22 **Smog Check Inspector License No. EO**
635837

23
24 Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about July 24, 2015, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 280966 to Erick’s Smog Check, with Erick Pulido as the
7 owner (“Respondent Erick’s Smog”). The Automotive Repair Dealer Registration was in full
8 force and effect at all times relevant to the charges brought herein and will expire on July 31, 2016,
9 unless renewed.

10 3. On or about August 28, 2015, the Bureau of Automotive Repair issued Smog Check
11 Test Only Station License Number TC 280966 to Respondent Erick’s Smog. The Smog Check
12 Test Only Station License was in full force and effect at all times relevant to the charges brought
13 herein and will expire on July 31, 2016, unless renewed.

14 4. On or about June 30, 2014, the Bureau of Automotive Repair issued Smog Check
15 Inspector License Number EO 637048 to Erick Pulido (“Respondent Pulido”). The Smog Check
16 Inspector License was in full force and effect at all times relevant to the charges brought herein
17 and expired on May 31, 2016.

18 5. On or about August 5, 2013, the Bureau of Automotive Repair issued Smog Check
19 Inspector License Number EO 635837 to Frank Hernandez (“Respondent Hernandez”). The
20 Smog Check Inspector License was in full force and effect at all times relevant to the charges
21 brought herein and will expire on September 30, 2017, unless renewed.

22 **JURISDICTION**

23 6. This Accusation is brought before the Director of the Department of Consumer
24 Affairs (“Director”) for the Bureau of Automotive Repair, under the authority of the following
25 laws.

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1 (4) Any other conduct that constitutes fraud.

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3 (6) Failure in any material respect to comply with the provisions of this chapter
4 [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations
5 adopted pursuant to it.

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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,
10 engaged in a course of repeated and willful violations of this chapter, or regulations
11 adopted pursuant to it.

12 13. Health and Safety Code section 44012 states, in pertinent part:

13 The test at the smog check stations shall be performed in accordance with procedures
14 prescribed by the department and may require loaded mode dynamometer testing in
15 enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic
16 system, or other appropriate test procedures as determined by the department in
17 consultation with the state board. The department shall implement testing using
18 onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle
19 testing, on model year 2000 and newer vehicles only, beginning no earlier than January
20 1, 2013. However, the department, in consultation with the state board, may prescribe
21 alternative test procedures that include loaded mode dynamometer or two-speed idle
22 testing for vehicles with onboard diagnostic systems that the department and the state
23 board determine exhibit operational problems. The department shall ensure, as
24 appropriate to the test method, the following:

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

28 14. Health and Safety Code Section 44015 states, in pertinent part:

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

15. Health and Safety Code Section 44059 states:

The willful making of any false statement or entry with regard to a material matter in
any oath, affidavit, certificate of compliance or noncompliance, or application form
which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of
Division 3 of the Business and Professions Code, constitutes perjury and is punishable
as provided in the Penal Code.

16. Health and Safety Code section 44072.2 states:

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:

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

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

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

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8 (h) Violates or attempts to violate the provisions of this chapter relating to the
9 particular activity for which he or she is licensed.

10 17. Health and Safety Code section 44072.8 states:

11 When a license has been revoked or suspended following a hearing under this article,
12 any additional license issued under this chapter in the name of the licensee may be
13 likewise revoked or suspended by the director.

14 **REGULATORY PROVISIONS**

15 18. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides that
16 “[t]he bureau may suspend or revoke the license of or pursue other legal action against a licensee,
17 if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of
18 noncompliance.”

19 19. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides, in
20 pertinent part, that: “[a] licensed station shall issue a certificate of compliance or noncompliance to
21 the owner or operator of any vehicle that has been inspected in accordance with the procedures
22 specified in section 3340.42 of this article and has all the required emission control equipment and
23 devices installed and functioning correctly. The following conditions shall apply:

24 “(1) Customers shall be charged the same price for certificates as that paid by the licensed
25 station; and

26 “(2) Sales tax shall not be assessed on the price of certificates.”

27 20. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides that
28 no person shall enter into the emissions inspection system any vehicle identification information or
emission control system identification data for any vehicle other than the one being tested. Nor

1 shall any person knowingly enter any false information about the vehicle being tested into the
2 emissions inspection system.

3 21. California Code of Regulations, title 16, section 3340.42 provides, in pertinent part:

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

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7 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
8 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.

9 The OBD test failure criteria are specified in section 3340.42.2.

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

12

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

15 COST RECOVERY

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

20 FACTUAL BACKGROUND

21 23. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
22 the use of the On Board Diagnostic Inspection System (“BAR-OIS”) instead of the Emission
23 Inspection System for the smog testing of 2000 model year and newer gas powered and hybrid
24 vehicles.

25 24. On or about October 8, 2015, the Bureau initiated an investigation into the smog
26 check testing practices of Respondent Erick’s Smog based on a review of information from the
27 BAR-OIS, which indicated that Respondent Erick’s Smog may be engaging in fraudulent smog
28 check activities through the commission of multiple acts of “clean plugging.”

1 25. Clean plugging is a method used to fraudulently certify vehicles that will not pass a
2 smog inspection on their own. To clean plug, a technician uses another vehicle's properly
3 functioning On-Board Diagnostics – Generation II ("OBD II") system, or another source, to
4 generate passing diagnostic readings for the purpose of issuing fraudulent smog certificates of
5 compliance.

6 26. The Bureau's review of BAR-OIS test data for inspections performed at Respondent
7 Erick's Smog included inspections performed by Respondent Pulido and Respondent Hernandez.
8 The representative found that there was a pattern of differences between the Vehicle Identification
9 Number ("VIN") on the certified vehicle and the electronic VIN ("eVIN") that was transmitted as
10 part of the smog inspection, including incorrect vehicle communication protocols and incorrect
11 parameter identification ("PID") counts.

12 27. The communication protocol describes the specified communication 'language' used
13 by the vehicle's OBD II system to communicate with other devices such as the BAR-OIS. The
14 communication protocol is programmed into the OBD II computer during manufacturing and does
15 not change. PIDs are data points reported by the OBD II computer to the BAR- OIS. The PID
16 count is the number of data points reported by the OBD II computer, is programmed during
17 manufacturing and does not change. The data from the vehicles certified by Respondent Erick's
18 Smog showed multiple discrepancies with incorrect communication protocols and incorrect PID
19 counts. This confirms the vehicles receiving smog certificates were fraudulently tested during the
20 smog inspection using the clean plugging method.

21 28. The VID data further indicated that Respondent Pulido performed fraudulent smog
22 inspections using the clean plugging method for the following ten vehicles:

23

24 Vehicle in OIS Data (License Plate #)	Expected Comm. Protocol	Comm. Protocol in OIS Data	Expected PID Count	PID Count in OIS Data	Certificate Issued (Date Issued)
25 Buick Rendezvous (5UQD232)	JVPW	I9140808	40	2	PW082903C (9/1/2015)
26 Mercedes Benz C230K (5ZWB877)	KWPF	I9140808	17 or 20	2	PW082918C (9/9/2015)

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1	GMC Yukon XL (5ZMC214)	ICAN11bt5	I9140808	43/7	2	PW082941C (9/18/2015)
2	Infiniti G37 (6JGF585)	ICAN11bt5	I9140808	43	2	PW082946C (9/21/2015)
3	Mercedes Benz E55 (6GEG011)	KWPF	I9140808	23 or 24	2	PW751922C (9/28/2015)
4	Jeep Wrangler (6EQA319)	ICAN11bt5	I9140808	43	2	PW751923C (9/28/2015)
5	Toyota Tundra Access Cab SR5 (7V58589)	ICAN11bt5	I9140808	44	2	PY305922C (10/17/2015)
6	Chevrolet Silverado K2500 HD LTZ (N)	ICAN11bt5	I9140808	47/8/6	2	PY305928C (10/20/2015)
7	Chrysler 300 Touring (N)	ICAN11bt5	I9140808	43/12	2	PY305943C (10/26/2015)
8	Chevrolet Silverado C1500 (7X02426)	JVPW	I9140808	22	2	PY305948C (10/28/2015)

13 29. The VID data further indicated that Respondent Hernandez performed fraudulent
14 smog inspections using the clean plugging method for the following ten vehicles:

16	Vehicle in OIS Data (License Plate #)	Expected Comm. Protocol	Comm. Protocol in OIS Data	Expected PID Count	PID Count in OIS Data	Certificate Issued (Date Issued)
17	Honda Civic LX (6HFF123)	ICAN29bt5	I9140808	39/19	2	QA670939C (12/17/15)
18	Land Rover (7DUS919)	ICAN29bt5	I9140808	42/5	2	QA670946C (12/19/15)
19	Infiniti G35 (6EDH883)	ICAN11bt5	I9140808	43	2	QA670948C (12/19/15)
20	Chevrolet Corvette (IGI)	ICAN11bt5	I9140808	43	2	QC093402C (12/21/15)
21	Chrysler Sebring (6BAJ226)	ICAN11bt5	I9140808	43	2	QC093437C (1/6/2016)
22	Buick Enclave (6GRD134)	ICAN11bt5	I9140808	45/7/8	2	QC093440C (1/6/2016)
23	Toyota Scion (6JKW056)	ICAN11bt5	I9140808	39	2	QC093441C (1/6/2016)
24	Chevrolet Malibu 1LT (6GCJ212)	ICAN11bt5	I9140808	37/7	2	QC093450C (1/9/2016)

1 2 3	Toyota Tundra Double Cab SR5 (8D60388)	ICAN11bt5	I9140808	45	2	YV721520C (1/15/2016)
4	Honda Fit Sport (7EVG766)	ICAN29bt5	I9140808	38	2	YV721527C (1/16/2016)

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 30. Respondent Erick's Smog's automotive repair dealer registration is subject to
8 discipline pursuant to section 9884.7, subdivision (a)(1), in that Respondent Erick's Smog made or
9 authorized statements which it knew or in the exercise of reasonable care should have known to be
10 untrue or misleading, as follows: Erick's Smog's technicians, Respondent Pulido and Respondent
11 Hernandez, certified that the vehicles identified in the tables following paragraphs 28 and 29
12 above, had passed inspection and were in compliance with applicable laws and regulations. In fact,
13 Respondent Pulido and Respondent Hernandez conducted the inspections on the vehicles using
14 clean-plugging methods by using another vehicle's properly functioning OBD II system, or another
15 source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog
16 certificates of compliance to the vehicles, and did not test or inspect the vehicles as required by
17 Health & Safety Code section 44012.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 31. Respondent Erick's Smog's automotive repair dealer registration is subject to
21 discipline pursuant to section 9884.7, subdivision (a)(4), in that Respondent Erick's Smog,
22 through its technicians Respondent Pulido and Respondent Hernandez, committed acts that
23 constitute fraud by issuing electronic smog certificates of compliance for the vehicles identified in
24 the tables following paragraphs 28 and 29 above, without performing bona fide inspections of the
25 emission control devices and systems on the vehicle, 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 32. Respondent Erick's Smog's smog check test only station license is subject to
4 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
5 Respondent Erick's Smog failed to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent Erick's Smog, through its technicians Respondent Pulido
7 and Respondent Hernandez, failed to ensure that the emission control tests for the vehicles
8 identified in the tables following paragraphs 28 and 29 above, were performed in accordance with
9 procedures prescribed by the department.

10 b. **Section 44015:** Respondent Erick's Smog, through its technicians Respondent Pulido
11 and Respondent Hernandez, issued electronic smog certificates of compliance for the vehicles
12 identified in the tables following paragraphs 28 and 29 above, without ensuring that the vehicles
13 were properly tested and inspected to determine if they were in compliance with Health and Safety
14 Code section 44012.

15 c. **Section 44059:** Respondent Erick's Smog, through its technicians Respondent Pulido
16 and Respondent Hernandez, willfully made false entries to the BAR-OIS, resulting in the issuance
17 of fraudulent certificates of compliance for the vehicles identified in the tables following
18 paragraphs 28 and 29 above.

19 **FOURTH CAUSE FOR DISCIPLINE**

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

21 33. Respondent Erick's Smog's smog check test only station license is subject to
22 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
23 Respondent Erick's Smog failed to comply with provisions of title 16 of the California Code of
24 Regulations, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent Erick's Smog, through its technicians
26 Respondent Pulido and Respondent Hernandez, falsely or fraudulently issued electronic smog
27 certificates of compliance for the vehicles identified in the tables following paragraphs 28 and 29
28 above.

1 emission control tests for the vehicles identified in the table following paragraph 29 above, were
2 performed in accordance with procedures prescribed by the department.

3 b. **Section 44015:** Respondent Pulido issued electronic smog certificates of compliance
4 for the vehicles identified in the table following paragraph 28 above without ensuring that the
5 vehicles were properly tested and inspected to determine if they were in compliance with Health
6 and Safety Code section 44012. Respondent Hernandez issued electronic smog certificates of
7 compliance for the vehicles identified in the table following paragraph 29 above without ensuring
8 that the vehicles were properly tested and inspected to determine if they were in compliance with
9 Health and Safety Code section 44012.

10 c. **Section 44059:** Respondent Pulido willfully made false entries to the BAR-OIS,
11 resulting in the issuance of fraudulent certificates of compliance for the vehicles identified in the
12 tables following paragraph 28 above. Respondent Hernandez willfully made false entries to the
13 BAR-OIS, resulting in the issuance of fraudulent certificates of compliance for the vehicles
14 identified in the table following paragraph 29 above.

15 **SEVENTH CAUSE FOR DISCIPLINE**

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

17 36. Respondent Pulido's smog check inspector license and Respondent Hernandez'
18 smog check inspector license are subject to disciplinary action pursuant to Health and Safety Code
19 section 44072.2, subdivision (c), in that Respondent Pulido and Respondent Hernandez failed to
20 comply with provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.24, subdivision (c):** Respondent Pulido falsely or fraudulently issued
22 electronic smog certificates of compliance for the vehicles identified in the tables following
23 paragraph 28 above and Respondent Hernandez falsely or fraudulently issued electronic smog
24 certificates of compliance for the vehicles identified in the tables following paragraph 29 above.

25 b. **Section 3340.35, subdivision (c):** Respondent Pulido issued electronic smog
26 certificates of compliance for the vehicles identified in the table following paragraph 28 above and
27 Respondent Hernandez issued electronic smog certificates of compliance for the vehicles identified
28

1 in the table following paragraph 29 above, even though the vehicles had not been inspected in
2 accordance with section 3340.42.

3 c. **Section 3340.41, subdivision (c)**: Respondent Pulido and Respondent Hernandez
4 entered false information into the BAR-OIS by entering vehicle identification information or
5 emission control system identification data for vehicles other than those that were being tested.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 37. Respondent Pulido's smog check inspector license and Respondent Hernandez'
9 smog check inspector license are subject to disciplinary action pursuant to Health and Safety Code
10 section 44072.2, subdivision (d), in that Respondent Pulido and Respondent Hernandez committed
11 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
12 certificates of compliance for the vehicles identified in the tables following paragraphs 28 and 29
13 above, without performing bona fide inspections of the emission control devices and systems on
14 the vehicles, thereby depriving the People of the State of California of the protection afforded by
15 the Motor Vehicle Inspection Program.

16 **OTHER MATTERS**

17 38. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the
18 Director may suspend, revoke or place on probation the registration for all places of business
19 operated in this state by Erick Pulido, owner of Respondent Erick's Smog, upon a finding that
20 Respondent Erick's Smog has, or is, engaged in a course of repeated and willful violations of the
21 laws and regulations pertaining to an automotive repair dealer.

22 39. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
23 License Number TC 280966, issued to Erick's Smog Check, with Erick Pulido as the owner, is
24 revoked or suspended, any additional license issued under this chapter in the name of said licensee
25 may be likewise revoked or suspended by the Director.

26 40. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
27 No. EO 637048 issued to Erick Pulido is revoked or suspended, any additional license issued
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1 under this chapter in the name of said licensee may be likewise revoked or suspended by the
2 Director.

3 41. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
4 No. EO 635837 issued to Frank Hernandez is revoked or suspended, any additional license issued
5 under this chapter in the name of said licensee may be likewise revoked or suspended by the
6 Director.

7 **PRAYER**

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

- 10 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
11 280966 issued to Erick's Smog Check, with Erick Pulido as the owner;
- 12 2. Revoking or suspending any other automotive repair dealer registration issued to Erick
13 Pulido;
- 14 3. Revoking or suspending Smog Check Test Only Station License Number TC 280966,
15 issued to Erick's Smog Check, with Erick Pulido as the owner;
- 16 4. Revoking or suspending Smog Check Inspector License No. EO 637048 issued to
17 Erick Pulido;
- 18 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
19 and Safety Code in the name of Erick Pulido;
- 20 6. Revoking or suspending Smog Check Inspector License No. EO 635837 issued to
21 Frank Hernandez;
- 22 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of Frank Hernandez;
- 24 8. Ordering Erick's Smog Check, with Erick Pulido as the owner, Erick Pulido
25 individually, and Frank Hernandez to pay the Bureau of Automotive Repair the reasonable costs of
26 the investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3; and,

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

DATED: 6-22-16

Patrick Dorais by Doug Balatti
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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