

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 JULIANNE MOSSLER
Deputy Attorney General
4 State Bar No. 243749
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-1349
Facsimile: (510) 622-2270
7 E-mail: Julianne.Mossler@doj.ca.gov
Attorneys for Complainant
8

9
10 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
11 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA
12
13

14 In the Matter of the Accusation Against:

Case No. 77/19-5307

15 **HARRY'S AUTOMOTIVE INC. dba**
HARRY'S AUTO REPAIR, INC.;
16 **SCOTT BOLLENGIER, PRESIDENT;**
183 Wyoming Street
17 **Pleasanton, CA 94566**
Automotive Repair Dealer Registration No.
18 **ARD 213389**
Smog Check Station License No. RC 213389
19 **Brake Station License No. 213389, class C**
Lamp Station License No. 213389, class A

ACCUSATION

20 **and**

21 **KEVIN TODD McGILBRA**
22 **38870 Adcock Drive**
Fremont, CA 94536
23 **Smog Check Inspector (EO) License No.**
639121
24 **Smog Check Repair Technician (EI) License**
No. 639121
25 **Brake Adjuster (BA) License No. 639121,**
class C
26 **Lamp Adjuster (LA) License No. 639121,**
class A

27 **and**
28

1 **JUSTIN MICHAEL NOFCHISSEY**
2 **1103 Johnson Ct.**
3 **Tracy, CA 95376**
4 **Smog Check Inspector (EO) License No.**
5 **151217**
6 **Smog Check Repair Technician (EI) License**
7 **No. 151217**
8 **Brake Adjuster (BA) License No. 151217,**
9 **class A**
10 **Lamp Adjuster (LA) License No. 151217,**
11 **class A**

Respondents.

PARTIES

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

HARRY'S AUTOMOTIVE INC.

Automotive Repair Dealer Registration

2. In 2000, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 213389 to Harry's Automotive Inc. dba Harry's Auto Repair Inc., Scott Bollengier, President (Respondent Harry's Automotive Inc.) The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in this Accusation, and will expire on October 31, 2020, unless renewed.

Smog Check Station License

3. On or about October 27, 2000, the Bureau of Automotive Repair issued Smog Check Station License Number RC 213389 to Respondent Harry's Automotive Inc. The Smog Check Station License was in full force and effect at all times relevant to the charges brought in this Accusation, and will expire on October 31, 2020, unless renewed.

Brake Station License

4. On or about December 11, 2000, the Bureau of Automotive Repair issued Brake Station License Number BS 213389, class C, to Respondent Harry's Automotive Inc. The Brake Station License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on October 31, 2020, unless renewed.

///

1 **Lamp Station License**

2 5. On or about December 11, 2000, the Bureau of Automotive Repair issued Lamp
3 Station License Number LS 213389, class A, to Respondent Harry's Automotive Inc. The Lamp
4 Station License was in full force and effect at all times relevant to the charges brought in this
5 Accusation and will expire on October 31, 2020, unless renewed.

6 **JUSTIN MICHAEL NOFCHISSEY**

7 **Smog Check Inspector (EO) License**

8 6. On or about October 26, 2012, the Bureau of Automotive Repair issued Smog Check
9 Inspector License Number EO 151217 to Respondent Justin Michael Nofchissey (Respondent
10 Nofchissey.) The Smog Check Inspector License was in full force and effect at all times relevant
11 to the charges brought in this Accusation and will expire on November 30, 2020, unless renewed.

12 **Smog Check Repair Technician (EI) License**

13 7. On or about October 26, 2012, the Bureau of Automotive Repair issued Smog Check
14 Repair Technician Number EI 151217 to Respondent Nofchissey. The Smog Check Repair
15 Technician was in full force and effect at all times relevant to the charges brought in this
16 Accusation and will expire on November 30, 2020, unless renewed.

17 **Brake Adjuster (BA) License**

18 8. On or about November 12, 2015, the Bureau of Automotive Repair issued Brake
19 Adjuster License Number BA 151217, class A, to Respondent Nofchissey. The Brake Adjuster
20 License expired on November 30, 2019, and was not renewed.

21 **Lamp Adjuster (LA) License**

22 9. On or about March 16, 2016, the Bureau of Automotive Repair issued Lamp Adjuster
23 License Number LA 151217, class A, to Respondent Nofchissey. The Lamp Adjuster License
24 expired on November 30, 2019, and was not renewed.

25 **KEVIN TODD MCGILBRA**

26 **Smog Check Inspector (EO) License**

27 10. On or about March 25, 2016, the Bureau of Automotive Repair issued Smog Check
28 Inspector License Number EO 639121 to Kevin Todd McGilbra (Respondent McGilbra). The

1 Smog Check Inspector License was in full force and effect at all times relevant to the charges
2 brought in this Accusation and will expire on October 31, 2021, unless renewed.

3 **Smog Check Repair Technician (EI) License**

4 11. On or about December 29, 2017, the Bureau of Automotive Repair issued Smog
5 Check Repair Technician Number EI 639121 to Respondent McGilbra. The Smog Check Repair
6 Technician was in full force and effect at all times relevant to the charges brought in this
7 Accusation and will expire on October 31, 2021, unless renewed.

8 **Brake Adjuster (BA) License**

9 12. On or about July 8, 2016, the Bureau of Automotive Repair issued Brake Adjuster
10 License Number BA 639121, class C, to Respondent McGilbra. The Brake Adjuster License
11 expired on October 31, 2019, and was not renewed.

12 **Lamp Adjuster (LA) License**

13 13. On or about September 19, 2016, the Bureau of Automotive Repair issued Lamp
14 Adjuster License Number LA 639121, class A, to Respondent McGilbra. The Lamp Adjuster
15 License expired on October 31, 2019, and was not renewed.

16 **JURISDICTION**

17 14. This Accusation is brought before the Director of the Department of Consumer
18 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
19 All section references are to the Business and Professions Code (Code) unless otherwise
20 indicated.

21 15. Section 477 of the Business and Professions Code provides, in pertinent part, that
22 Board includes bureau, commission, committee, department, division, examining committee,
23 program, and agency. License includes certificate, registration or other means to engage in a
24 business or profession regulated by the code.

25 16. Section 9882, subdivision (a), states in relevant part:

26 There is in the Department of Consumer Affairs a Bureau of Automotive Repair
27 under the supervision and control of the director. The duty of enforcing and
28 administering this chapter is vested in the chief who is responsible to the director.
The director may adopt and enforce those rules and regulations that he or she
determines are reasonably necessary to carry out the purposes of this chapter and

declaring the policy of the bureau, including a system for the issuance of citations for violations of this chapter as specified in Section 125.9.

17. Section 9884.13 states:

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

18. Section 9884.22, subdivision (a), states:

Notwithstanding any other provision of law, the director may revoke, suspend, or deny at any time any registration required by this article on any of the grounds for disciplinary action provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

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

20. Health and Safety Code section 44072 states:

Any license issued under this chapter and the regulations adopted pursuant to it may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

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

STATUTORY PROVISIONS

22. Section 9884.7 of the Code states in relevant part:

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

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

1 ...

2 (3) Failing or refusing to give to a customer a copy of any document requiring

3 his or her signature, as soon as the customer signs the document.

4 (4) Any other conduct which constitutes fraud.

5 ...

6 (6) Failure in any material respect to comply with the provisions of this or

7 regulations adopted pursuant to it.

8 23. Section 9884.8 of the Code states:

9 All work done by an automotive repair dealer, including all warranty work, shall be

10 recorded on an invoice and shall describe all service work done and parts supplied.

11 Service work and parts shall be listed separately on the invoice, which shall also state

12 separately the subtotal prices for service work and for parts, not including sales tax,

13 and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt,

14 or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of

15 a component system is composed of new and used, rebuilt or reconditioned parts, that

16 invoice shall clearly state that fact. The invoice shall include a statement indicating

17 whether any crash parts are original equipment manufacturer crash parts or

18 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice

19 shall be given to the customer and one copy shall be retained by the automotive repair

20 dealer.

21 24. Section 9884.9 of the Code states in relevant part:

22 (a) The automotive repair dealer shall give to the customer a written estimated price

23 for labor and parts necessary for a specific job. No work shall be done and no charges

24 shall accrue before authorization to proceed is obtained from the customer. No charge

25 shall be made for work done or parts supplied in excess of the estimated price without

26 the oral or written consent of the customer that shall be obtained at some time after it

27 is determined that the estimated price is insufficient and before the work not

28 estimated is done or the parts not estimated are supplied. Written consent or

 authorization for an increase in the original estimated price may be provided by

 electronic mail or facsimile transmission from the customer. The bureau may specify

 in regulation the procedures to be followed by an automotive repair dealer if an

 authorization or consent for an increase in the original estimated price is provided by

 electronic mail or facsimile transmission. If that consent is oral, the dealer shall make

 a notation on the work order of the date, time, name of person authorizing the

 additional repairs and telephone number called, if any, together with a specification of

 the additional parts and labor and the total additional cost, and shall do either of the

 following:

 (1) Make a notation on the invoice of the same facts set forth in the notation on

 the work order .

 (2) Upon completion of the repairs, obtain the customer's signature or initials

 to an acknowledgment of notice and consent, if there is an oral consent of the

 customer to additional repairs, in the following language:

 I acknowledge notice and oral approval of an increase in the original estimated

 price.

(signature or initials)

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

25. Section 9889.3 of the Code states in relevant part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

(a) Violates any section of the Business and Professions Code which relates to his or her licensed activities.

...

(c) Violates any of the regulations promulgated by the director pursuant to this chapter [the Automotive Repair Act].

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

...

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

26. Section 9889.16 of the Code states:

Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, the adjuster shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station.

27. Section 9889.20 of the Code states:

Except as otherwise provided in Section 9889.21, any person who fails to comply in any respect with the provisions of this chapter is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment not exceeding six months, or by both that fine and imprisonment.

28. Section 9889.22 of the Code 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 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

1 29. Section 17200 of the Code states:

2 As used in this chapter, unfair competition shall mean and include any unlawful,
3 unfair or fraudulent business act or practice and unfair, deceptive, untrue or
4 misleading advertising and any act prohibited by Chapter 1 (commencing with
5 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

6 30. Section 17500 of the Code states:

7 It is unlawful for any person, firm, corporation or association, or any employee thereof
8 with intent directly or indirectly to dispose of real or personal property or to perform
9 services, professional or otherwise, or anything of any nature whatsoever or to induce
10 the public to enter into any obligation relating thereto, to make or disseminate or cause
11 to be made or disseminated before the public in this state, or to make or disseminate or
12 cause to be made or disseminated from this state before the public in any state, in any
13 newspaper or other publication, or any advertising device, or by public outcry or
14 proclamation, or in any other manner or means whatever, including over the Internet,
15 any statement, concerning that real or personal property or those services, professional
16 or otherwise, or concerning any circumstance or matter of fact connected with the
17 proposed performance or disposition thereof, which is untrue or misleading, and which
18 is known, or which by the exercise of reasonable care should be known, to be untrue or
19 misleading, or for any person, firm, or corporation to so make or disseminate or cause
20 to be so made or disseminated any such statement as part of a plan or scheme with the
21 intent not to sell that personal property or those services, professional or otherwise, so
22 advertised at the price stated therein, or as so advertised. Any violation of the
23 provisions of this section is a misdemeanor punishable by imprisonment in the county
24 jail not exceeding six months, or by a fine not exceeding two thousand five hundred
25 dollars (\$2,500), or by both that imprisonment and fine.

26 31. Section 20 of the Vehicle Code states:

27 It is unlawful to use a false or fictitious name, or to knowingly make any false statement or
28 knowingly conceal any material fact in any document filed with the Department of Motor
29 Vehicles or the Department of the California Highway Patrol.

30 32. Section 4463 (a)(1), (2) of the Vehicle Code states in relevant part:

31 (a) A person who, with intent to prejudice, damage, or defraud, commits any of the
32 following acts is guilty of a felony and upon conviction thereof shall be punished by
33 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months,
34 or two or three years, or by imprisonment in a county jail for not more than one year:

35 (1) Alters, forges, counterfeits, or falsifies a certificate of ownership, registration
36 card, certificate, license, license plate, temporary license plate, device issued pursuant to
37 Section 4853, special plate, or permit provided for by this code or a comparable certificate
38 of ownership, registration card, certificate, license, license plate, temporary license plate,
39 device comparable to that issued pursuant to Section 4853, special plate, or permit
40 provided for by a foreign jurisdiction, or alters, forges, counterfeits, or falsifies the
41 document, device, or plate with intent to represent it as issued by the department, or alters,
42 forges, counterfeits, or falsifies with fraudulent intent an endorsement of transfer on a
43 certificate of ownership or other document evidencing ownership, or with fraudulent intent
44 displays or causes or permits to be displayed or have in his or her possession a blank,
45 incomplete, canceled, suspended, revoked, altered, forged, counterfeit, or false certificate
46 of ownership, registration card, certificate, license, license plate, temporary license plate,
47 device issued pursuant to Section 4853, special plate, or permit.

(2) Utters, publishes, passes, or attempts to pass, as true and genuine, a false, altered, forged, or counterfeited matter listed in paragraph (1) knowing it to be false, altered, forged, or counterfeited.

REGULATORY PROVISIONS

33. California Code of Regulations, title 16, section 3305 states in relevant part:

(a) All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable:

(1) Vehicle Manufacturers' current standards, specifications and recommended procedures, as published in the manufacturers' vehicle service and repair manuals.

(2) Current standards, specifications, procedures, directives, manuals, bulletins and instructions issued by vehicle and equipment or device manufacturers.

(3) Standards, specifications and recommended procedures found in current industry-standard reference manuals and periodicals published by nationally recognized repair information providers.

...

(5) The bureau's Handbook for Lamp Adjusters and Stations, May 2015, which is hereby incorporated by reference.

34. California Code of Regulations, title 16, section 3307(d), states in relevant part:

Official stations shall comply with the following provisions governing display of licenses, maintenance of equipment, and record keeping.

...

(d) Each official station, except a fleet owner station, may make a reasonable charge for the work performed and shall post conspicuously, in an area frequented by customers, a list of prices for the specific activities for which it is licensed. Prices may be stated either as a fixed fee or an hourly rate on a time-and-material basis. No added charge shall be imposed for the issuance of official lamp adjustment or official brake adjustment certificates, or certifications on enforcement documents of the correction of lamp or brake violations. No charge relating to repair, replacement of parts, or adjustment of lamps or brakes shall be imposed in addition to the posted price for such adjustment or inspection unless such additional work and added charges are authorized in advance by the vehicle owner or operator.

35. California Code of Regulations, title 16, section 3353, states in relevant part:

No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:

(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written estimated price for labor and parts for a specific job.

...

(c) Additional Authorization. The dealer shall obtain the customer's authorization before any additional work not estimated is done or parts not estimated are supplied. This authorization shall be in written, oral, or electronic form, and shall describe additional repairs, parts, labor and the total additional cost.

(1) If the authorization from the customer for additional repairs, parts, or labor in excess of the written estimated price is obtained orally, the dealer shall also make a notation on the work order and on the invoice of the date, time, name of the person authorizing the additional repairs, and the telephone number called, if any, together with the specification of the additional repairs, parts, labor and the total additional costs.

...

(g) Definitions. As used in this section, "written" shall mean the communication of information or information in writing, other than by electronic means; "oral" shall mean the oral communication of information either in person or telephonically; "electronic" shall mean the communication of information by facsimile transmission (fax) or electronic mail (e-mail).

36. California Code of Regulations, title 16, section 3353.1, states:

(a) No diagnosis or repair, including no-charge and warranty repairs, shall commence and no charges shall accrue without specific authorization from the customer. Any estimate or revised work order provided to the customer shall be authorized by the customer or the customer's designee in written, oral, or electronic form.

(b) If the customer provides a written authorization, the automotive repair dealer shall capture his or her signature and record the date of signature on the estimate or on documents that supplement the estimate.

(c) If the customer provides an oral authorization, the automotive repair dealer shall record the authorization by documenting on the estimate the date, time, name of the person authorizing the repairs, and the telephone number called, if any, or produce this information on documents relating to the authorization that supplement the estimate.

(d) If the customer provides an electronic authorization, the automotive repair dealer shall record the authorization by documenting on the estimate the date, time, name of the person authorizing the repairs, and the telephone number or electronic mail address contacted, if any, or produce this information on documents relating to the authorization that supplement the estimate.

(e) Documents supplementing the estimate, including but not limited to a series of electronic communications between the automotive repair dealer and the customer, shall be uniquely identified and maintained as part of the same transaction in accordance with section 3358 of this Article.

37. California Code of Regulations, title 16, section 3356, states in relevant part:

...

(b) The invoice shall show the automotive repair dealer's registration number and

the corresponding business name and address as shown in the Bureau's records.

(c) The invoice shall separately list, describe and identify all of the following:

(1) All services and repairs performed, including any diagnosis or warranty repairs, and the prices for each.

(2) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part. The description of each part shall state whether the part was new, used, reconditioned, rebuilt, an OEM crash part, or a non-OEM aftermarket crash part. Part kits containing several components may be listed as a single part on the invoice and identified by brand name and corresponding part number or similar designation.

(d) If a vehicle was delivered to the automotive repair dealer under unusual circumstances per section 3353.2, the automotive repair dealer shall also record the following additional information on the invoice:

(1) The date and time of the authorization of the estimate;

(2) The name of the person who gave the authorization; and

(3) The telephone number or electronic mail address contacted, if any, to obtain the authorization.

38. California Code of Regulations, title 16, section 3373, states:

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

COST RECOVERY

39. Business and Professions Code section 125.3 states that:

Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceedings, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL ALLEGATIONS

40. On December 3, 2018, the BAR received information that Respondent Harry's Automotive, Inc., was issuing Lamp Certificates of Compliance without performing inspections. The Bureau conducted three undercover operations using three Bureau documented vehicles to audit Respondent's business practices.

1 **Undercover Vehicle Operation No. 1, May 1, 2019**

2 41. The BAR initiated an undercover operation on May 1, 2019, using a 2003 Honda that
3 was documented to fail a California Lamp inspection.

4 42. BAR Program Representative Noel Monterrey (Monterrey) created a lighting system
5 condition in the 2003 Honda to make it fail the Lamp inspection. Monterrey adjusted the left
6 headlight up and the right headlight down. Both headlights were adjusted out of specification.
7 With both headlamps adjusted out of specification, the 2003 Honda could not legally pass a Lamp
8 inspection.

9 43. BAR Program Representative Jesus Mora (Mora) drove the 2003 Honda to
10 Respondent Harry's Automotive, Inc.'s location and requested a smog, brake, and lamp
11 inspection from an unidentified male employee. The employee prepared the paperwork, and
12 asked Mora to sign it. Mora signed the paperwork, but did not receive a copy. Mora paid the
13 employee \$190 and received a copy of the Brake Certificate, Lamp Certificate, Smog Check
14 Vehicle Inspection Report, and invoice number 93256.

15 44. Mora returned the 2003 Honda to BAR's storage facility where it was re-inspected by
16 Monterrey. Monterrey discovered that the headlights were still out of adjustment, and the tamper
17 indicators that he installed on the headlight adjusters were still intact, indicating that the
18 headlights had not been adjusted. Monterrey concluded that the 2003 Honda should have failed a
19 lamp inspection because of the misadjusted headlights.

20 45. The Lamp Certificate shows that it was issued to the 2003 Honda by Station License
21 Number LS213389 belonging to Harry's Auto Repair Inc., and Adjuster Number LA639121
22 belonging to Kevin McGilbra.

23 46. Invoice number 93256 does not list the individual price for the brake inspection and
24 lamp inspection. The ARD number on invoice number 93256 is incorrect. Invoice number
25 93256 shows charges for a Brake Certificate and a Lamp Certificate when the cost of the
26 certificates is required to be included in the price of the brake and lamp inspections.

27 **Undercover Vehicle Operation No. 2, June 18, 2019**

28 47. The BAR initiated an undercover operation on June 18, 2019, using a 2007 Pontiac

(Pontiac) that was documented to fail a California Lamp inspection.

48. BAR Program Representative Christopher Norris (Norris) created a lighting system condition in the Pontiac to make it fail the Lamp inspection. Norris adjusted the left headlight down and the right headlight up. Both headlights were adjusted out of specification. With both headlamps adjusted out of specification, the Pontiac could not legally pass a Lamp inspection.

49. BAR Program Representative Mora drove the Pontiac to Respondent Harry's Automotive, Inc.'s location and requested a smog, brake, and lamp inspection from an unidentified male employee. Mora was not asked to sign a work order, and did not receive an estimate. Mora signed the paperwork, but did not receive a copy. Mora paid the employee \$190 and received a copy of the Brake Certificate, Lamp Certificate, Smog Check Vehicle Inspection Report, and invoice number 93986.

50. Mora returned the Pontiac to BAR's storage facility where it was re-inspected by Norris. Norris discovered that the headlights were still out of adjustment, and the tamper indicators that he installed on the headlight adjusters were still intact, indicating that the headlights had not been adjusted. Norris concluded that the Pontiac should have failed a lamp inspection because of the misadjusted headlights.

51. The Lamp Certificate shows that it was issued to the Pontiac by Station License Number LS213389 belonging to Harry's Auto Repair Inc., and Adjuster Number LA639121 belonging to Kevin McGilbra.

52. Invoice number 93986 does not list the individual price for the brake inspection and lamp inspection. The ARD number on invoice number 93986 is incorrect. Invoice number 93986 shows charges for a Brake Certificate and a Lamp Certificate when the cost of the certificates is required to be included in the price of the brake and lamp inspections.

Undercover Vehicle Operation No. 3, August 13, 2019

53. The BAR initiated an undercover operation on August 13, 2019, using a 2002 Honda that was documented to fail a California Lamp inspection.

54. BAR Program Representative Monterrey created a lighting system condition in the 2002 Honda to make it fail a Lamp inspection. Monterrey adjusted the left headlight up and the

1 right headlight down. Both headlights were adjusted out of specification. With both headlamps
2 adjusted out of specification, the 2002 Honda could not legally pass a Lamp inspection.

3 55. BAR Program Representative Mora drove the 2002 Honda to Respondent Harry's
4 Automotive, Inc.'s location and requested a smog, brake, and lamp inspection from an
5 unidentified male employee. The employee told Mora that they would not be able to perform the
6 inspections while Mora waited, and he would need to leave the 2002 Honda. Mora agreed to
7 leave the 2002 Honda. Mora did not sign a work order, and did not receive an estimate.

8 56. Mora returned to Respondent Harry's Automotive, Inc.'s location on August 16,
9 2019, to pick up the 2002 Honda. Mora paid a female employee \$190 and received a copy of the
10 Brake Certificate, Lamp Certificate, Smog Check Vehicle Inspection Report, and two copies of
11 invoice number 94856.

12 57. Mora returned the 2002 Honda to BAR's storage facility where it was re-inspected by
13 Monterrey. Monterrey discovered that the headlights were still out of adjustment, and the tamper
14 indicators that he installed on the headlight adjusters were still intact, indicating that the
15 headlights had not been adjusted. Monterrey concluded that the 2002 Honda should have failed a
16 lamp inspection because of the misadjusted headlights.

17 58. The Lamp Certificate shows that it was issued to the 2002 Honda by Station License
18 Number LS213389 belonging to Harry's Auto Repair Inc., and Adjuster Number LA151217
19 belonging to Justin Nofchissey.

20 59. Invoice number 94856 does not list the individual price for the brake inspection and
21 lamp inspection. The ARD number on invoice number 94856 is incorrect. Invoice number
22 94856 shows charges for a Brake Certificate and a Lamp Certificate when the cost of the
23 certificates is required to be included in the price of the brake and lamp inspections.

24 **AS TO HARRY'S AUTOMOTIVE INC. DBA HARRY'S AUTO REPAIR INC.**

25 **FIRST CAUSE FOR DISCIPLINE**
26 **(Untrue or Misleading Statements)**

27 60. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
28 Registration, Brake Station License, and Lamp Station License are subject to disciplinary action

1 in that it made or authorized statements that it knew or in the exercise of reasonable care should
2 have known to be untrue or misleading. (Bus. & Prof. Code, §§ 9884.7, subd. (a)(1), 9889.3,
3 subd. (a), 17500.) The circumstances are more fully set forth in paragraphs 40 through 59, above.

4 **SECOND CAUSE FOR DISCIPLINE**
5 **(Dishonesty, Fraud and Deceit)**

6 61. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
7 Registration, Smog Check Station License, Brake Station License, and Lamp Station License are
8 subject to disciplinary action in that it committed acts that constitute dishonesty, fraud and deceit.
9 (Bus. & Prof. Code, §§ 9884.7, subd. (a)(4), 9889.3, subd. (d); Health & Saf. Code, § 44072.2,
10 subd (d).) The circumstances are more fully set forth in paragraphs 40 through 59, above.

11 **THIRD CAUSE FOR DISCIPLINE**
12 **(False and Misleading Records)**

13 62. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
14 Registration, Brake Station License, and Lamp Station License are subject to disciplinary action
15 for violating the Automotive Repair Act by creating false or misleading records. (Bus. & Prof.
16 Code, §§ 9884.7, subd. (a)(6), 9889.3, subd (c), 17500; Cal. Code Regs., tit. 16, § 3373.) The
17 circumstances are more fully set forth in paragraphs 40 through 42, 44 through 48, 50 through 54,
18 and 56 through 59, above.

19 63. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
20 Registration and Lamp Station License are subject to disciplinary action for making false
21 statements on Lamp Certificates of Compliance issued to the 2003 Honda, Pontiac, and 2002
22 Honda when they did not meet standards and/or specifications for registration of a reconstructed
23 vehicle. (Veh. Code, § 20; Cal. Code Regs., tit. 16, § 3373.) The circumstances are more fully
24 set forth in paragraphs 40 through 42, 44 through 48, 50 through 54, and 56 through 59, above.

25 64. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
26 Registration and Lamp Station License are subject to disciplinary action for issuing false Lamp
27 Certificates of Compliance to the 2003 Honda, Pontiac, and 2002 Honda when they did not meet
28 standards and/or specifications for registration of a reconstructed vehicle. (Veh. Code, § 4463,

1 subds. (a)(1), (2); Cal. Code Regs., tit. 16, § 3373.) The circumstances are more fully set forth in
2 paragraphs 40 through 42, 44 through 48, 50 through 54, and 56 through 59, above.

3 **FOURTH CAUSE FOR DISCIPLINE**
4 **(Failure to Comply with Estimate Requirements)**

5 65. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
6 Registration, Brake Station License, and Lamp Station License are subject to disciplinary action
7 for failing to provide a copy of the estimate for parts and labor for the 2003 Honda, the Pontiac,
8 and the 2002 Honda. (Bus. & Prof. Code, §§ 9884.9, subd. (a), 9889.3, subd (c); Cal. Code
9 Regs., tit. 16, § 3353, subd. (a).) The circumstances are more fully set forth in paragraphs 43, 49,
10 and 55, above.

11 66. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
12 Registration, Brake Station License, and Lamp Station License are subject to disciplinary action
13 for failing to provide a copy of the signed estimate for repairs to the 2003 Honda. (Bus. & Prof.
14 Code, §§ 9884.7, subd. (a)(3), 9889.3, subd. (c); Cal. Code Regs., tit. 16, § 3353, subd. (a).) The
15 circumstances are more fully set forth in paragraph 43, above.

16 **FIFTH CAUSE FOR DISCIPLINE**
17 **(Failure to Comply with Invoice Requirements)**

18 67. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
19 Registration, Brake Station License, and Lamp Station License are subject to disciplinary action
20 because the invoices did not show the correct ARD number or subtotals for labor prices for the
21 brake and lamp inspections. (Bus. & Prof. Code, §§ 9884.8, 9889.3, subd. (c); Cal. Code Regs.,
22 tit. 16, § 3356, subds. (b), (c)(1).) The circumstances are more fully set forth in paragraphs 46,
23 52, and 59, above.

24 **SIXTH CAUSE FOR DISCIPLINE**
25 **(Perjury)**

26 68. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
27 Registration and Lamp Station License are subject to disciplinary action for making false
28 statements on Lamp Certificates of Compliance issued to the 2003 Honda, Pontiac, and 2002

1 Honda indicating that the headlights on those vehicles were properly adjusted and in compliance,
2 when the headlights were actually misadjusted and out of compliance. (Bus. & Prof. Code, §
3 9889.22.) The circumstances are more fully set forth in paragraphs 40 through 59, above.

4 **SEVENTH CAUSE FOR DISCIPLINE**
5 **(Unfair Business Practices)**

6 69. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
7 Registration and Lamp Station License are subject to disciplinary action for engaging in unfair
8 business practices by issuing fraudulent Lamp Certificates of Compliance on the 2003 Honda,
9 Pontiac, and 2002 Honda when they did not meet standards and/or specifications. (Bus. & Prof.
10 Code, § 17200.) The circumstances are more fully set forth in paragraphs 40 through 59, above.

11 **EIGHTH CAUSE FOR DISCIPLINE**
12 **(Failure to Obtain Customer Authorization)**

13 70. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
14 Registration, Brake Station License, and Lamp Station License are subject to disciplinary action
15 for failing to obtain customer authorization before performing the smog, brake, and lamp
16 inspections on the Pontiac and 2003 Honda. (Cal. Code Regs., tit.16, § 3353.1.) The
17 circumstances are more fully set forth in paragraphs 49, and 55, above.

18 **NINTH CAUSE FOR DISCIPLINE**
19 **(Added Charges)**

20 71. Harry's Automotive Inc. dba Harry's Auto Repair Inc.'s Automotive Repair Dealer
21 Registration, Brake Station License, and Lamp Station License are subject to disciplinary action
22 for adding charges for Brake and Lamp Certificates of Compliance issued to the 2002 Honda,
23 Pontiac, and 2003 Honda. (Cal. Code Regs., tit.16, § 3307, subd. (d).) The circumstances are
24 more fully set forth in paragraphs 46, 52, and 59, above.

25 **AS TO KEVIN TODD MCGILBRA**

26 **TENTH CAUSE FOR DISCIPLINE**
27 **(Failure to Perform Proper Lamp Inspection)**

28 72. Kevin Todd McGibra's Lamp Adjuster License is subject to discipline for failure to

1 perform a proper lamp inspection in conformity with BAR regulations before issuing a Certificate
2 of Adjustment. (Bus. & Prof. Code, § 9889.16; Cal. Code Reg., tit. 16, §§ 3305, subds. (a)(1),
3 (2), (3), (5).) The circumstances are more fully set forth in paragraphs 41 through 52, above.

4 **ELEVENTH CAUSE FOR DISCIPLINE**
5 **(False and Misleading Records)**

6 73. Kevin Todd McGibra's Lamp Adjuster License subject is to disciplinary action for
7 making false statements on the Lamp Certificate of Compliance issued to the 2003 Honda and the
8 Pontiac when they did not meet standards and/or specifications for registration of a reconstructed
9 vehicle. (Veh. Code, § 20.) The circumstances are more fully set forth in paragraphs 41 through
10 52, above.

11 74. Kevin Todd McGibra's Lamp Adjuster License is subject to disciplinary action for
12 issuing a false Lamp Certificate of Compliance for the 2003 Honda and the Pontiac when they did
13 not meet standards and/or specifications for registration of a reconstructed vehicle. (Veh. Code, §
14 4463, subds. (a)(1), (2).) The circumstances are more fully set forth in paragraphs 41 through 52,
15 above.

16 **TWELFTH CAUSE FOR DISCIPLINE**
17 **(Perjury)**

18 75. Kevin Todd McGibra's Smog Check Inspector License, Smog Check Repair Tech
19 License, Brake Adjuster License, and Lamp Adjuster License are subject to disciplinary action for
20 making false statements on the Lamp Certificates of Compliance issued to the 2003 Honda and
21 the Pontiac indicating that the headlights on those vehicles were properly adjusted and in
22 compliance, when the headlights were actually misadjusted and out of compliance. (Bus. & Prof.
23 Code, § 9889.22.) The circumstances are more fully set forth in paragraphs 41 through 52, above.

24 **AS TO JUSTIN MICHAEL NOFCHISSEY**

25 **THIRTEENTH CAUSE FOR DISCIPLINE**
26 **(Failure to Perform Proper Lamp Inspection)**

27 76. Justin Michael Nofchissey's Lamp Adjuster License is subject to discipline for failure
28 to perform a proper lamp inspection in conformity with BAR regulations before issuing a

1 Certificate of Adjustment. (Bus. & Prof. Code, § 9889.16; Cal. Code Reg., tit. 16, §§ 3305,
2 subds. (a)(1), (2), (3), (5).) The circumstances are more fully set forth in paragraphs 53 through
3 59, above.

4 **FOURTEENTH CAUSE FOR DISCIPLINE**
5 **(False and Misleading Records)**

6 77. Justin Michael Nofchissey's Lamp Adjuster License subject is to disciplinary action
7 for making false statements on the Lamp Certificate of Compliance issued to the 2002 Honda
8 when it did not meet standards and/or specifications for registration of a reconstructed vehicle.
9 (Veh. Code, § 20.) The circumstances are more fully set forth in paragraphs 53 through 59,
10 above.

11 78. Justin Michael Nofchissey's Lamp Adjuster License is subject to disciplinary action
12 for issuing a false Lamp Certificate of Compliance for the 2002 Honda when it did not meet
13 standards and/or specifications for registration of a reconstructed vehicle. (Veh. Code, § 4463,
14 subds. (a)(1), (2).) The circumstances are more fully set forth in paragraphs 53 through 59,
15 above.

16 **FIFTEENTH CAUSE FOR DISCIPLINE**
17 **(Perjury)**

18 79. Justin Michael Nofchissey's Smog Check Inspector License, Smog Check Repair
19 Tech License, Brake Adjuster License, and Lamp Adjuster License are subject to disciplinary
20 action for making false statements on the Lamp Certificate of Compliance issued to the 2002
21 Honda indicating that the headlights on that vehicle were properly adjusted and in compliance,
22 when the headlights were actually misadjusted and out of compliance. (Bus. & Prof. Code, §
23 9889.22.) The circumstances are more fully set forth in paragraphs 53 through 59, above.

24 **OTHER MATTERS**

25 80. Under Business and Professions Code section 9884.7, subdivision (c), the Director
26 may suspend, revoke, or place on probation the registrations for all places of business operated in
27 this state by Harry's Automotive Inc., on a finding that Harry's Automotive Inc., has, or is,
28 engaged in a course of repeated and willful violation of the laws and regulations pertaining to an

1 automotive repair dealer.

2 **PRAYER**

3 WHEREFORE, Complainant requests a hearing on the matters alleged in this Accusation,
4 and that following the hearing, the Director of Consumer Affairs issue a decision:

5 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
6 213389, issued to Harry's Automotive Inc. dba Harry's Auto Repair Inc.;

7 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
8 Harry's Automotive, Inc.;

9 3 Revoking or suspending Smog Check Station License Number RC 213389, issued to
10 Harry's Automotive Inc. dba Harry's Auto Repair Inc.;

11 4. Revoking or suspending any additional licenses issued under Chapter 5 of Part 5 of
12 Division 26 of the Health and Safety Code in the name of Harry's Automotive, Inc.;

13 5 Revoking or suspending Lamp Station License Number LS 213389, issued to Harry's
14 Automotive Inc. dba Harry's Auto Repair Inc.;

15 6. Revoking or suspending Brake Station License Number BS 213389, issued to Harry's
16 Automotive Inc. dba Harry's Auto Repair Inc.;

17 7. Revoking or suspending any additional licenses issued under Articles 5 and 6 of
18 Chapter 20.3 of Division 3 of the Code in the name of Harry's Auto Repair, Inc.;

19 8. Revoking or suspending Smog Check Inspector License Number EO 639121, issued
20 to Kevin Todd McGilbra;

21 9. Revoking or suspending Smog Check Repair Technician Number EI 639121, issued
22 to Kevin Todd McGilbra;

23 10. Revoking or suspending any additional licenses issued under Chapter 5 of Part 5 of
24 Division 26 of the Health and Safety Code in the name of Kevin Todd McGilbra;

25 11. Revoking or suspending Brake Adjuster License Number BA 639121, issued to
26 Kevin Todd McGilbra;

27 12. Revoking or suspending Lamp Adjuster License Number LA 639121, issued to Kevin
28 Todd McGilbra;

13. Revoking or suspending any additional licenses issued under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Code in the name of Kevin Todd McGilbra;
14. Revoking or suspending Smog Check Inspector License Number EO 151217, issued to Justin Michael Nofchissey;
15. Revoking or suspending Smog Check Repair Technician Number EI 151217, issued to Justin Michael Nofchissey;
16. Revoking or suspending any additional licenses issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Justin Michael Nofchissey;
17. Revoking or suspending Brake Adjuster License Number BA 151217, issued to Justin Michael Nofchissey;
18. Revoking or suspending Lamp Adjuster License Number LA 151217, issued to Justin Michael Nofchissey;
19. Revoking or suspending any additional licenses issued under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Code in the name of Justin Michael Nofchissey;
20. Ordering Harry's Automotive Inc. dba Harry's Auto Repair Inc., Kevin Todd McGilbra, and Justin Michael Nofchissey to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
21. Taking such other and further action as deemed necessary and proper.

DATED: April 17, 2020

Signature on File

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

OK2020900040
91239019.docx