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

12 In the Matter of the Accusation Against:

Case No. 79/16-105

13 **GABRIEL JAIME, OWNER, DBA**  
14 **HESPERIA AUTO REPAIR,**  
11435 E. Santa Fe Avenue, #A  
Hesperia, CA 92345  
15 **Automotive Repair Dealer Registration No.**  
**ARD 232282**  
16 **Smog Check Station License No. RC 232282**

ACCUSATION

Smog Check

17 and

18 **GABRIEL JAIME**  
12239 Pawnee Rd. Avenue  
Apple Valley, CA 92308  
19 **Smog Check Inspector License No. EO**  
**145262**  
20 **Smog Check Repair Technician License**  
**Number EI 145262 (formerly Advanced**  
21 **Emission Specialist Technician License No.**  
**EA 145262)**

22 Respondents.

23  
24 Complainant alleges:

25 **PARTIES**

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

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1 **Gabriel Jaime, Owner, dba Hesperia Auto Repair**

2 **Automotive Repair Dealer Registration**

3 2. On or about April 26, 2004, the Bureau issued Automotive Repair Dealer Registration  
4 No. ARD 232282 ("registration") to Gabriel Jaime, doing business as Hesperia Auto Repair  
5 (Respondent Auto Repair). The registration was in full force and effect at all times relevant to the  
6 charges brought herein and will expire on February 28, 2017, unless renewed.

7 **Smog Check Station License**

8 3. On or about August 31, 2004, the Bureau issued Smog Check Station License No.  
9 RC 232282 to Respondent Auto Repair. The Smog Check Station License was in full force and  
10 effect at all times relevant to the charges brought herein and will expire on February 28, 2017,  
11 unless renewed.

12 **Gabriel Jaime**

13 **Technician License/Inspector License**  
14 **(formerly Advanced Emission Specialist Technician License Number EA 145262)**

15 4. In or about 2003, the Bureau issued Advanced Emission Specialist Technician  
16 License Number EA 145262 to Gabriel Jaime ("Respondent Jaime"). Respondent Jaime's  
17 Advanced Emission Specialist Technician License was due to expire on January 31, 2013,  
18 however, was cancelled on December 6, 2012. Pursuant to California Code of Regulations, title  
19 16, section 3340.28, subdivision (e) <sup>1</sup>, the license was renewed, pursuant to Respondent Jaime's  
20 election, as Smog Check Inspector License Number EO 145262 ("inspector license") and Smog  
21 Check Repair Technician License Number EI 145262 ("repair technician license"), effective  
22 December 6, 2012. Respondent Jaime's inspector license and repair technician license were in  
23 full force and effect at all times relevant to the charges brought herein and will expire on January  
24 31, 2017, unless renewed.

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

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**JURISDICTION**

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

6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

7. 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.

8. Section 44072.6 of the Health and Safety Code 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**

9. Section 9884.7 of the Code states:

"(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.

...

"(4) Any other conduct which constitutes fraud.

...

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

5           10. Section 44012 of the Health and Safety Code states:

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

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

20           “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of  
21 the vehicle's emission control system.

22           “(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of  
23 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded  
24 mode are tested in accordance with procedures prescribed by the department. In determining how  
25 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure  
26 that the emission reduction targets for the enhanced program are met.

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1           “(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and  
2 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic  
3 compound emissions, in accordance with procedures prescribed by the department.

4           “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices  
5 and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the  
6 department, that may include, but are not limited to, onboard diagnostic testing. The test may  
7 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon  
8 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

9           “(f) A visual or functional check is made of emission control devices specified by the  
10 department, including the catalytic converter in those instances in which the department  
11 determines it to be necessary to meet the findings of Section 44001. The visual or functional  
12 check shall be performed in accordance with procedures prescribed by the department.

13           “(g) A determination as to whether the motor vehicle complies with the emission standards  
14 for that vehicle's class and model-year as prescribed by the department.

15           “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a  
16 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would  
17 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or  
18 would have passed a tailpipe test.

19           “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle  
20 that would be unsafe to test, or that cannot physically be inspected, as specified by the department  
21 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the  
22 vehicle from compliance with all applicable requirements of this chapter.”

23           11. Section 44015 of the Health and Safety Code states:

24           ...

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

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1 vehicle(s) was used, constituting clean plugging<sup>3</sup>. All of the following inspections were  
2 performed by Respondent Jaime.

3 **TABLE 1**

<b>Date and Time of Inspection</b>	<b>Vehicle Certified License No.</b>	<b>Certificate No.</b>
4 1. 09/13/14 1126 - 1153	1996 Ford Mustang License No. 5ADK092	YJ070682C
5 2. 09/13/14 1158 - 1213	1999 Chevrolet C2500 License No. 5Z06573	YJ070683C
6 3. 09/20/14 1121 - 1129	2004 Toyota Corolla License No. 6BWR395	YJ070690C
7 4. 09/26/14 1009 - 1017	2000 Toyota Echo License No. 5YRT907	YJ070698C
8 5. 09/27/14 1410 - 1458	1998 Acura Integra License No. 7CID752	YJ870851C
9 6. 09/30/14 1244 - 1250	2001 Mitsubishi Montero License No. 4VDP495	YJ870854C
10 7. 10/02/14 1600 - 1607	2003 Ford Expedition License No. 6DML394	YJ870857C
11 8. 10/11/14 1114 - 1125	2002 Ford E-350 Van License No. 7A54687	YJ870866C
12 9. 10/11/14 1133 - 1141	1996 Ford Aerostar License No. 3SVG978	YJ870867C
13 10. 11/01/14 1150 - 1202	2001 Mitsubishi Eclipse License No. 6EKU827	YJ870882C
14 11. 11/01/14 1221 - 1228	1997 Toyota Camry License No. 3TPH032	YJ870883C
15 12. 11/01/14 1311 - 1318	2000 Dodge Ram 1500 License No. 77503C1	YJ870884C
16 13. 11/08/14 1450 - 1507	1998 Ford Mustang License No. 5RVV707	YJ870890C

17 \* Test times are in military time.

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19 (...continued)

20 from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

21 <sup>3</sup> Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self test, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 20. Respondent Auto Repair's registration is subject to discipline pursuant to Code  
4 section 9884.7, subdivision (a)(1), in that between September 12, 2014, through January 12, 2015,  
5 Respondent Auto Repair made or authorized statements which he knew or in the exercise of  
6 reasonable care should have known to be untrue or misleading, as follows: Respondent Auto  
7 Repair certified that vehicles 1 through 13, set forth above in Table 1, had passed inspection and  
8 were in compliance with applicable laws and regulations. In fact, Respondent Auto Repair  
9 conducted the inspections on the vehicles using the clean plugging method by substituting or  
10 using different vehicles during the OBD II functional tests in order to issue smog certificates of  
11 compliance for the 13 vehicles, and did not test or inspect the 13 vehicles as required by Health  
12 and Safety Code section 44012.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 21. Respondent Auto Repair's registration is subject to discipline pursuant to Code  
16 section 9884.7, subdivision (a)(4), in that between September 12, 2014, through January 12, 2015,  
17 Respondent Auto Repair committed acts which constitute fraud by issuing electronic certificates  
18 of compliance for vehicles 1 through 13, set forth above in Table 1, without performing bona fide  
19 inspections of the emission control devices and systems on those vehicles, thereby depriving the  
20 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
21 Program.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with the Motor Vehicle Inspection Program)**

24 22. Respondent Auto Repair's station license is subject to discipline pursuant to Health  
25 and Safety Code section 44072.2, subdivision (a), in that between September 12, 2014, through  
26 January 12, 2015, regarding vehicles 1 through 13, set forth above in Table 1, Respondent failed  
27 to comply with the following sections of that Code:

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1 a. **Section 44012:** Respondent Auto Repair failed to ensure that the emission control tests  
2 were performed on vehicles 1 through 13, in accordance with procedures prescribed by the  
3 department.

4 b. **Section 44015:** Respondent Auto Repair issued electronic certificates of compliance for  
5 vehicles 1 through 13, without ensuring that the vehicles were properly tested and inspected to  
6 determine if they were in compliance with Health and Safety Code section 44012.

7 c. **Section 44059:** Respondent Auto Repair willfully made false entries for the electronic  
8 certificates of compliance by certifying that those vehicles had been inspected as required when,  
9 in fact, they had not.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant to the**  
12 **Motor Vehicle Inspection Program)**

13 23. Respondent Auto Repair's station license is subject to discipline pursuant to Health  
14 and Safety Code section 44072.2, subdivision (c), in that between September 12, 2014, through  
15 January 12, 2015, regarding vehicles 1 through 13, set forth above in Table 1, Respondent failed  
16 to comply with provisions of California Code of Regulations, title 16, as follows:

17 a. **Section 3340.24, subdivision (c):** Respondent Auto Repair falsely or fraudulently  
18 issued electronic certificates of compliance for those vehicles without performing bona fide  
19 inspections of the emission control devices and systems on the vehicles as required by Health and  
20 Safety Code section 44012.

21 b. **Section 3340.35, subdivision (c):** Respondent Auto Repair issued electronic certificates  
22 of compliance even though those vehicles had not been inspected in accordance with section  
23 3340.42 of that Code.

24 c. **Section 3340.42:** Respondent Auto Repair failed to conduct the required smog tests and  
25 inspections on those vehicles in accordance with the Bureau's specifications.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 24. Respondent Auto Repair's station license is subject to discipline pursuant to Health  
4 and Safety Code section 44072.2, subdivision (d), in that between September 12, 2014, through  
5 January 12, 2015, regarding vehicles 1 through 13, set forth above in Table 1, Respondent Auto  
6 Repair committed acts involving dishonesty, fraud or deceit whereby another was injured by  
7 issuing electronic certificates of compliance for those vehicles without performing bona fide  
8 inspections of the emission control devices and systems on the vehicles, thereby depriving the  
9 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
10 Program.

11 **SIXTH CAUSE FOR DISCIPLINE**

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

13 25. Respondent Jaime's inspector license is subject to discipline pursuant to Health  
14 and Safety Code section 44072.2, subdivision (a), in that between September 12, 2014, through  
15 January 12, 2015, regarding vehicles 1 through 13, set forth above in Table 1, he failed to comply  
16 with section 44012 of that Code in a material respect, as follows: Respondent Jaime failed to  
17 perform the emission control tests on those vehicles in accordance with procedures prescribed by  
18 the department.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations Pursuant to the**  
21 **Motor Vehicle Inspection Program)**

22 26. Respondent Jaime's inspector license is subject to discipline pursuant to Health and  
23 Safety Code section 44072.2, subdivision (c), in that between September 12, 2014, through  
24 January 12, 2015, regarding vehicles 1 through 13, set forth above in Table 1, he failed to comply  
25 with provisions of California Code of Regulations, title 16, as follows:

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1 a. **Section 3340.24, subdivision (c)**: Respondent Jaime falsely or fraudulently issued  
2 electronic certificates of compliance without performing bona fide inspections of the emission  
3 control devices and systems on those vehicles as required by Health and Safety Code section  
4 44012.

5 b. **Section 3340.30 subdivision (a)**: Respondent Jaime failed to inspect and test those  
6 vehicles in accordance with Health and Safety Code sections 44012.

7 c. **Section 3340.42**: Respondent Jaime failed to conduct the required smog tests and  
8 inspections on those vehicles in accordance with the Bureau's specifications.

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

11 27. Respondent Jaime's inspector license is subject to discipline pursuant to Health and  
12 Safety Code section 44072.2, subdivision (d), in that between September 12, 2014, through  
13 January 12, 2015, regarding vehicles 1 through 13, set forth above in Table 1, he committed acts  
14 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
15 certificates of compliance without performing bona fide inspections of the emission control  
16 devices and systems on those vehicles, thereby depriving the People of the State of California of  
17 the protection afforded by the Motor Vehicle Inspection Program.

18 **OTHER MATTERS**

19 28. Pursuant to Code section 9884.7, subdivision (c), the director may suspend,  
20 revoke, or place on probation the registrations for all places of business operated in this state by  
21 Gabriel Jaime, doing business as Hesperia Auto Repair, upon a finding that he has, or is, engaged  
22 in a course of repeated and willful violation of the laws and regulations pertaining to an  
23 automotive repair dealer.

24 29. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only  
25 Station License Number RC 232282, issued to Gabriel Jaime, doing business as Hesperia Auto  
26 Repair, is revoked or suspended, any additional license issued under this chapter in the name of  
27 said licensee may be likewise revoked or suspended by the director.

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5. Revoking or suspending Smog Check Repair Technician License Number EI 145262 (formerly Advanced Emission Specialist Technician License Number EA 145262), issued to Gabriel Jaime;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Gabriel Jaime;

7. Ordering Gabriel Jaime, doing business as Hesperia Auto Repair and Gabriel Jaime 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

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

DATED: April 29, 2016

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

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