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7

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

12
13 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 79/22-5687

14 **ENRIQUE RAMIREZ**
15 **dba HENRY'S AUTO REPAIR**
16 **15 Davis Ave.**
Freedom, CA 95019

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

17 **Automotive Repair Dealer Registration No.**
ARD 293167
18 **Smog Check Station License No. RC 293167,**

19 **ENRIQUE RAMIREZ-ORTIZ**
20 **15 Davis Ave.**
Freedom, CA 95019

21 **Smog Check Inspector License No.**
EO 642542
22 **Smog Check Repair Technician License No.**
EI 642542,

23 Respondents.
24

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26 Complainant Patrick Dorais alleges:

27 **PARTIES**

28 1. Complainant brings this accusation and petition to revoke probation solely in his

1 official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of
2 Consumer Affairs.

3 2. On January 22, 2019, the Bureau issued Automotive Repair Dealer Registration
4 No. ARD 293167 to Enrique Ramirez dba Henry's Auto Repair (Respondent Henry's Auto
5 Repair).¹ This automotive repair dealer registration was in full force and effect at all times
6 relevant to the charges brought in this accusation and petition to revoke probation, and will expire
7 on January 31, 2023, unless renewed.

8 3. On April 29, 2020, the Bureau issued Smog Check Station License No.
9 RC 293167 to Respondent Henry's Auto Repair. This smog check station license was in full
10 force and effect at all times relevant to the charges brought in this accusation and petition to
11 revoke probation, and will expire on January 31, 2023, unless renewed.

12 4. On March 26, 2020, the Bureau issued Smog Check Inspector License No.
13 EO 642542 to Enrique Ramirez-Ortiz (Respondent Ramirez-Ortiz).² This smog check inspector
14 license was in full force and effect at all times relevant to the charges brought in this accusation
15 and petition to revoke probation, and will expire on June 30, 2024, unless renewed.

16 5. On April 27, 2020, the Bureau issued Smog Check Repair Technician License No.
17 EI 642542 to Respondent Ramirez-Ortiz. This smog check repair technician license was in full
18 force and effect at all times relevant to the charges brought in this accusation and petition to
19 revoke probation, and will expire on June 30, 2024, unless renewed.

20 **JURISDICTIONAL PROVISIONS**

21 6. This accusation and petition to revoke probation is brought before the Director of
22 the Department of Consumer Affairs (Director) for the Bureau under the authority of the
23 following laws.

24 7. Business and Professions Code section 118, subdivision (b), states:

25 "The suspension, expiration, or forfeiture by operation of law of a license issued by a
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27 ¹ Respondent Henry's Auto Repair was formerly known as Kike's Auto Repair.

28 ² Respondent Ramirez-Ortiz is the same person as Enrique Ramirez, the owner of
Respondent Henry's Auto Repair.

1 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
2 order of a court of law, or its surrender without the written consent of the board, shall not, during
3 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
4 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
5 provided by law or to enter an order suspending or revoking the license or otherwise taking
6 disciplinary action against the licensee on any such ground.”

7 8. Business and Professions Code section 9882, subdivision (a), states in part:

8 “There is in the Department of Consumer Affairs a Bureau of Automotive Repair under
9 the supervision and control of the director. The duty of enforcing and administering this chapter
10 is vested in the chief who is responsible to the director. The director may adopt and enforce those
11 rules and regulations that he or she determines are reasonably necessary to carry out the purposes
12 of this chapter and declaring the policy of the Bureau, including a system for the issuance of
13 citations for violations of this chapter as specified in Section 125.9.”

14 9. Business and Professions Code section 9884.13 states:

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

18 10. Business and Professions Code section 9884.22, subdivision (a), states:

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

24 11. Health and Safety Code section 44002 states:

25 “The department shall have the sole and exclusive authority within the state for
26 developing and implementing the motor vehicle inspection program in accordance with this
27 chapter.

28 “For the purposes of administration and enforcement of this chapter, the department, and

1 the director and officers and employees thereof, shall have all the powers and authority granted
2 under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475)
3 and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions
4 Code and under Chapter 33 (commencing with Section 3300) of Title 16 of the California Code
5 of Regulations. Inspections and repairs performed pursuant to this chapter, in addition to meeting
6 the specific requirements imposed by this chapter, shall also comply with all requirements
7 imposed pursuant to Division 1 (commencing with Section 1) and Division 1.5 (commencing
8 with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the
9 Business and Professions Code and Chapter 33 (commencing with Section 3300) of Title 16 of
10 the California Code of Regulations.”

11 12. Health and Safety Code section 44072 states:

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

17 13. Health and Safety Code section 44072.6 states:

18 “The expiration or suspension of a license by operation of law or by order or decision of
19 the director or a court of law, or the voluntary surrender of a license by a licensee shall not
20 deprive the director of jurisdiction to proceed with any investigation of, or action or disciplinary
21 proceedings against, the licensee, or to render a decision suspending or revoking the license.”

22 ACCUSATION

23 **STATUTORY PROVISIONS**

24 14. Business and Professions Code section 9884.7, subdivision (a), states in part:

25 “The director, where the automotive repair dealer cannot show there was a bona fide error,
26 may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer
27 for any of the following acts or omissions related to the conduct of the business of the automotive
28 repair dealer, which are done by the automotive repair dealer or any automotive technician,

1 employee, partner, officer, or member of the automotive repair dealer.

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

5 “(4) Any other conduct that constitutes fraud.

6 . . .

7 “(6) Failure in any material respect to comply with the provisions of this chapter or
8 regulations adopted pursuant to it.”

9 15. Business and Professions Code section 9889.22 states:

10 “The willful making of any false statement or entry with regard to a material matter in any
11 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
12 by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the
13 Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.”

14 16. Business and Professions Code section 17200 states:

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

19 17. Business and Professions Code section 17500 states in part:

20 “It is unlawful for any person, firm, corporation or association, or any employee thereof
21 with intent directly or indirectly to dispose of real or personal property or to perform services,
22 professional or otherwise, or anything of any nature whatsoever or to induce the public to enter
23 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated
24 before the public in this state, or to make or disseminate or cause to be made or disseminated
25 from this state before the public in any state, in any newspaper or other publication, or any
26 advertising device, or by public outcry or proclamation, or in any other manner or means
27 whatever, including over the Internet, any statement, concerning that real or personal property or
28 those services, professional or otherwise, or concerning any circumstance or matter of fact

1 connected with the proposed performance or disposition thereof, which is untrue or misleading,
2 and which is known, or which by the exercise of reasonable care should be known, to be untrue or
3 misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so
4 made or disseminated any such statement as part of a plan or scheme with the intent not to sell
5 that personal property or those services, professional or otherwise, so advertised at the price
6 stated therein, or as so advertised.”

7 18. Health and Safety Code section 44012 states in part:

8 “The test at the smog check stations shall be performed in accordance with procedures
9 prescribed by the department and may require loaded mode dynamometer testing in enhanced
10 areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other
11 appropriate test procedures as determined by the department in consultation with the state
12 board. . . . The department shall ensure, as appropriate to the test method, the following:

13 . . .

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

17 . . .

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

22 19. Health and Safety Code section 44015 states in part:

23 “(a) A licensed smog check station shall not issue a certificate of compliance, except as
24 authorized by this chapter

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

27 20. Health and Safety Code section 44032 states in part:

28 “Qualified technicians shall perform tests of emission control devices and systems in

1 accordance with Section 44012.”

2 21. Health and Safety Code section 44059 states:

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

7 22. Health and Safety Code section 44072.2 states in part:

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

11 “(a) Violates any section of this chapter and the regulations adopted pursuant to it, which
12 related to the licensed activities.

13 . . .

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

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

16 . . .

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

19 **REGULATORY PROVISIONS**

20 23. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

21 “The Bureau may suspend or revoke the license of or pursue other legal action against a
22 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
23 certificate of noncompliance.”

24 24. California Code of Regulations, title 16, section 3340.30, states in part:

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

27 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of
28 the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of

1 this article.”

2 25. California Code of Regulations, title 16, section 3340.35, subdivision (c), states in
3 part:

4 “A licensed station shall issue a certificate of compliance or noncompliance to the owner
5 or operator of any vehicle that has been inspected in accordance with the procedures specified in
6 section 3340.42 of this article and has all the required emission control equipment and devices
7 installed and functioning correctly.”

8 26. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

9 “No person shall enter into the emissions inspection system any vehicle identification
10 information or emission control system identification data for any vehicle other than the one
11 being tested. Nor shall any person knowingly enter into the emissions inspection system any
12 false information about the vehicle being tested.”

13 27. California Code of Regulations, title 16, section 3340.42, states in part:

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

16 . . .

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

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

21 28. California Code of Regulations, title 16, section 3340.45, subdivision (a), states in
22 part:

23 “All Smog Check inspections shall be performed in accordance with requirements and
24 procedures prescribed.”

25 29. California Code of Regulations, title 16, section 3371, states in part:

26 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any
27 false or misleading statement or advertisement which is known to be false or misleading, or
28 which by the exercise of reasonable care should be known to be false or misleading.”

1 **FIRST CAUSE FOR DISCIPLINE—RESPONDENT HENRY’S AUTO REPAIR**

2 **(Untrue or Misleading Statements)**

3 35. Respondent Henry’s Auto Repair has subjected its automotive repair dealership
4 registration and smog check station license to discipline for making untrue or misleading
5 statements (Bus. & Prof. Code, § 9884.7, subd. (a)(1); Health & Saf. Code, § 44072.2, subd. (d)).
6 The facts are set forth in paragraphs 32-34 above.

7 **SECOND CAUSE FOR DISCIPLINE—RESPONDENT HENRY’S AUTO REPAIR**

8 **(Fraud)**

9 36. Respondent Henry’s Auto Repair has subjected its automotive repair dealership
10 registration and smog check station license to discipline for fraud (Bus. & Prof. Code, § 9884.7,
11 subd. (a)(4); Health & Saf. Code, § 44072.2, subd. (d)). The facts are set forth in paragraphs 32-
12 34 above.

13 **THIRD CAUSE FOR DISCIPLINE—RESPONDENT HENRY’S AUTO REPAIR**

14 **(Violation of Statutes and Regulations)**

15 37. Respondent Henry’s Auto Repair has subjected its automotive repair dealership
16 registration and smog check station license for violating the Business and Professions Code, the
17 Health and Safety Code, and regulations adopted by the Bureau (Bus. & Prof. Code, § 9884.7,
18 subd. (a)(6); Health & Saf. Code, § 44072.2, subds. (a), (c), (d) & (h)). The facts are set forth in
19 paragraphs 32-34 above.

20 a. Respondent Henry’s Auto Repair committed perjury (Bus. & Prof. Code, §
21 9889.22; Health & Saf. Code, § 44059).

22 b. Respondent Henry’s Auto Repair committed unfair competition (Bus. &
23 Prof. Code, § 17200).

24 c. Respondent Henry’s Auto Repair made untrue or misleading statements
25 (Bus. & Prof. Code, § 17500).

26 d. Respondent Henry’s Auto Repair did not perform the visual portion of a
27 smog test in accordance with department procedures (Health & Saf. Code, § 44012, subd (f)).

28 e. Respondent Henry’s Auto Repair issued a smog certificate of compliance

1 for a vehicle that did not meet the visual portion of the smog test procedure (Health & Saf. Code,
2 § 44015).

3 f. Respondent Henry's Auto Repair issued a false and fraudulent smog
4 certificate of compliance (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)).

5 g. Respondent Henry's Auto Repair issued a false and fraudulent smog
6 certificate of compliance for a vehicle that was not tested in accordance with department
7 procedures (Cal. Code Regs., tit. 16, § 3340.35, subd. (c)).

8 h. Respondent Henry's Auto Repair did not perform a visual inspection of the
9 emission control components and systems of a vehicle (Cal. Code Regs., tit. 16, § 3340.42, subd.
10 (b)(1)).

11 i. Respondent Henry's Auto Repair did not perform a smog test in
12 accordance with department procedures (Cal. Code Regs., tit. 16, § 3340.45, subd. (a)).

13 j. Respondent Henry's Auto Repair made false statements or misleading
14 statements (Cal. Code Regs., tit. 16, § 3371).

15 k. Respondent Henry's Auto Repair made false statements or misleading
16 statements on a record (Cal. Code Regs., tit. 16, § 3373).

17 **FIFTH CAUSE FOR DISCIPLINE—RESPONDENT RAMIREZ-ORTIZ**

18 **(Fraud)**

19 38. Respondent Ramirez-Ortiz has subjected his smog check inspector license and
20 smog check repair technician license to discipline for fraud (Health & Saf. Code, § 44072.2, subd.
21 (d)). The facts are set forth in paragraphs 32-34 above.

22 **SIXTH CAUSE FOR DISCIPLINE—RESPONDENT RAMIREZ-ORTIZ**

23 **(Violation of Statutes and Regulations)**

24 39. Respondent Ramirez-Ortiz has subjected his smog check inspector license and
25 smog check repair technician license to discipline for violating the Business and Professions
26 Code, the Health and Safety Code, and regulations adopted by the Bureau (Health & Saf. Code, §
27 44072.2, subsd. (a), (c), (d) & (h)). The facts are set forth in paragraphs 32-34 above.

28 a. Respondent Ramirez-Ortiz committed unfair competition (Bus. & Prof.

1 Code, § 17200).

2 b. Respondent Ramirez-Ortiz made untrue or misleading statements (Bus. &
3 Prof. Code, § 17500).

4 c. Respondent Ramirez-Ortiz committed perjury (Bus. & Prof. Code, §
5 9889.22; Health & Saf. Code, § 44059).

6 d. Respondent Ramirez-Ortiz did not test a vehicle's crankcase ventilation
7 system in accordance with department procedures (Health & Saf. Code, § 44012, subd (d)).

8 e. Respondent Ramirez-Ortiz did not perform the visual portion of a smog
9 tests in accordance with department procedures (Health & Saf. Code, § 44012, subd (f)).

10 f. Respondent Ramirez-Ortiz did not perform a test of emission control
11 devices and systems in accordance with Section 44012 (Health & Saf. Code, § 44032).

12 g. Respondent Ramirez-Ortiz issued a false and fraudulent smog certificate of
13 compliance (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)).

14 h. Respondent Ramirez-Ortiz did not perform a smog test in accordance with
15 statutes and department procedures (Cal. Code Regs., tit. 16, § 3340.30, subd. (a)).

16 i. Respondent Ramirez-Ortiz entered false information and data into the
17 emission inspection system (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)).

18 j. Respondent Ramirez-Ortiz did not perform a visual inspection of the
19 emission control components and systems of a vehicle (Cal. Code Regs., tit. 16, § 3340.42, subd.
20 (b)(1)).

21 k. Respondent Ramirez-Ortiz did not perform smog tests in accordance with
22 department procedures (Cal. Code Regs., tit. 16, § 3340.45, subd. (a)).

23 l. Respondent Ramirez-Ortiz made false statements or misleading statements
24 on a record (Cal. Code Regs., tit. 16, § 3373).

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1 **PETITION TO REVOKE PROBATION**

2 **PRIOR DISCIPLINARY ACTION**

3 40. In a disciplinary action entitled, “*In the Matter of the Statement of Issues Against*
4 *Enrique Ramirez dba Kike’s Auto Repair, and Enrique Ramirez-Ortiz*,” Case No. 79/19-3838, the
5 Director issued a decision and order effective February 21, 2020, granting Respondent Henry’s
6 Auto Repair’s application for a smog check station license, and Respondent Ramirez-Ortiz’s
7 applications for a smog check inspector and smog check repair technician licenses. The licenses
8 were issued and immediately revoked, the revocations stayed, and the registration and licenses
9 were placed on probation for five years with certain terms and conditions. A copy of that
10 decision and order is attached as exhibit 1.

11 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

12 41. At all times after the effective date of the probation against Respondents’ licenses,
13 the Director’s order stated:

14 “F. Violation of Probation

15 “If respondent violates or fails to comply with the terms and conditions of probation in
16 any respect, the Director of the Department of Consumer Affairs, after giving notice and
17 opportunity to be heard may set aside the stay order and carry out the disciplinary order provided
18 in the decision. Once respondent is served notice of the Bureau’s intent to set aside the stay, the
19 Director shall maintain jurisdiction, and the period of probation shall be extended until final
20 resolution of the matter.”

21 **CAUSE TO REVOKE PROBATION**

22 42. At all times after the effective date of the probation against Respondents’ licenses,
23 the Director’s order stated:

24 “A. Obey All Laws

25 “During the period of probation, respondent shall comply with all federal and state
26 statutes, regulations and rules governing all Bureau registrations and licenses held by
27 respondent.”

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1 issued to Respondent Henry's Auto Repair is revoked or suspended, any additional license issued
2 under division 26, chapter 5, part 5 of the Health and Safety Code in the name of the licensee also
3 may be revoked or suspended by the Director.

4 48. Under Health & Safety Code section 44072.8, if Respondent Ramirez-Ortiz's
5 smog check inspector license or smog check repair technician license is revoked or suspended,
6 any additional license issued under division 26, chapter 5, part 5 of the Health and Safety Code in
7 the name of the licensee also may be revoked or suspended by the Director.

8 **PRAYER**

9 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
10 accusation and petition to revoke probation, and that following the hearing, the Director issues a
11 decision:

12 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 293167
13 issued to Respondent Henry's Auto Repair;

14 2. Revoking or suspending Smog Check Station License No. RC 293167 issued to
15 Respondent Henry's Auto Repair;

16 3. Revoking or suspending Smog Check Inspector License No. EO 642542 issued to
17 Respondent Ramirez-Ortiz;

18 4. Revoking or suspending Smog Check Repair Technician License No. EI 642542
19 issued to Respondent Ramirez-Ortiz;

20 5. Revoking the probation that was granted by the Bureau in Case No. 79/19-3838
21 and imposing the disciplinary order revoking Smog Check Station License No. RC 293167 issued
22 to Respondent Henry's Auto Repair;

23 6. Revoking the probation that was granted by the Bureau in Case No. 79/19-3838
24 and imposing the disciplinary order revoking Smog Check Inspector License No. EO 642542
25 issued to Respondent Ramirez-Ortiz;

26 7. Revoking the probation that was granted by the Bureau in Case No. 79/19-3838
27 and imposing the disciplinary order revoking Smog Check Repair Technician License No.
28 EI 642542 issued to Respondent Ramirez-Ortiz;

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8. Ordering Respondents under Business and Professions Code section 125.3 to pay the Bureau the reasonable costs of the investigation and enforcement of this case, and;

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

DATED: As of Digital Signature Date _____
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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Exhibit 1

Decision and Order

Case No. 79/19-3838