

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William D. Ferreira, Esq. (SBN: 262495) AUTOMOTIVE DEFENSE SPECIALISTS 582 Market St. Suite 1608 San Francisco, CA 94104 TELEPHONE NO.: 415-392-2886 FAX NO.: 415-366-8429 ATTORNEY FOR (Name): Plaintiff, Hermanos Test Only	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland 94612 BRANCH NAME: County Administration Building	CASE NUMBER: JUDGE: DEPT:
CASE NAME: Hermanos Test Only v. Edmund Gerald Brown, Jr., et al.	CASE NUMBER: JUDGE: DEPT:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

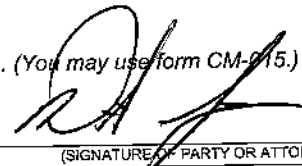
Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/DP/WD (23) Non-PI/DP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/DP/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **Six**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **September 27, 2012**
William D. Ferreira


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

1 William D. Ferreira, Esq. (SBN: 262495)
2 Christopher A. DeWys, Esq. (SBN: 257727)
3 AUTOMOTIVE DEFENSE SPECIALISTS
4 582 Market Street, Suite 1608
5 San Francisco, CA 94104
6 Tel: (415) 392-2888
7 Facsimile: (415) 366-8429

8 Attorneys for Plaintiffs

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF ALAMEDA

11 UNLIMITED JURISDICTION

12 HERMANOS TEST ONLY, Maria Sanchez,)
13 owner, individually, on behalf of all others)
14 similarly situated,)

15 Plaintiff(s),)

16 vs.)

17)
18 EDMUND GERALD BROWN, JR., in his)
19 official capacity as Governor of the State of)
20 California, KAMALA D. HARRIS, in her)
21 official capacity as Attorney General of the)
22 State of California, DENISE BROWN, in her)
23 official capacity as Director of the)
24 Department of Consumer Affairs of the State)
25 of California, JOHN WALLAUCH, in his)
26 official capacity as the Chief of the Bureau of)
27 Automotive Repair of the State of California,)
28 and DOES 1 through 100,)

29 Defendant(s).)

30 **Case No.: TBD**

31 **CLASS ACTION**

32 **COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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COMPLAINT

1. The plaintiffs, Hermanos Test Only and its owner Maria Sanchez (collectively as “Plaintiffs” and individually as “Plaintiff Hermanos” or “Plaintiff Sanchez”) individually, and on behalf of all others similarly situated, brings this action against the defendants Edmund Gerald Brown, Jr., Kamala D. Harris, Denise Brown, John Wallauch, and Does 1-100 (“Defendants”), and hereby aver and allege, on information and belief and their counsel’s investigations, except as to those averments and allegations relating to the Plaintiffs themselves which are asserted on personal knowledge, as follows:

**I.
INTRODUCTION**

2. The Plaintiffs, as well as the class that they represent, are private businesses in the state of California that conduct smog checks on vehicles registered within the state. In order to conduct these tests, pursuant to applicable statutes, these facilities, as well as their technicians, the Plaintiffs must obtain specific licenses from the Bureau of Automotive Repair (“Bureau”) of the state of California. The Bureau is authorized to regulate and issue these licenses through various statutes as well as generally regulate California’s automotive related business industry.

3. The Plaintiffs bring this action pursuant to California Code of Civil Procedure §§ 378, 382, 526 and Civ. Code § 3423 seeking, as a class, declaratory and injunctive relief against enforcement of a new California statute that will significantly infringe upon their constitutionally protected rights of due process.

4. The challenged act, Assembly Bill 2289 (Chapter 258, Statutes of 2010) (“Act” or “STAR Program”), was signed into law on September 23, 2010, operative as of November 1, 2011, and is due to go into effect on January 1, 2013.

5. As further detailed below, portions of the Act violate the California Constitution in that they allow the Bureau to subvert the California Constitution’s due process protections as well as California’s Administrative Procedures Act (“APA”) by providing the Bureau the ability to revoke a certification where the Plaintiffs have obtained a property interest in without the proper formal hearing protections detailed in the APA (which is in place to ensure that the Constitution of the State of California Art. 1 § 7(a) is followed).

II.
PARTIES

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3 6. Plaintiff Hermanos is a Smog Test Only facility located at 27437 5th Street,
4 Suite 2, Highland, CA 92346. Plaintiff Hermanos obtained the Automotive Repair Dealer
5 (“ARD”) registration #267653 from the Bureau in February 2012. Plaintiff Hermanos obtained
6 its Smog Check Station license #TC267653 from the Bureau in February 2012. Plaintiff
7 Hermanos’s smog check station license and ARD have never been subject to discipline from the
8 Bureau. Neither Plaintiff Sanchez nor any of Plaintiff Hermanos’s employees’ licenses have
9 been subject to discipline from the Bureau. Plaintiff Hermanos, through its Bureau licensed
10 technician, currently conducts smog checks on vehicles in the state of California. Plaintiff
11 Hermanos is preparing to apply for the Bureau’s STAR Program as soon as the Bureau begins
12 accepting applications. Plaintiff Sanchez has owned and operated Plaintiff Hermanos since
13 early 2012. Plaintiff Hermanos is a sole proprietorship owned only by Plaintiff Sanchez.
14 Plaintiff Sanchez’s name is used for all the licenses obtained through the Bureau as is required
15 by law for including Plaintiff Hermanos’s ARD registration and Smog Check Station license.
16 The Station employs one technician and one service writer.

17 7. Defendant Edmund Gerald Brown, Jr., is the Governor of the State of
18 California. As Governor, he is vested with “the supreme executive power” of the State and
19 “shall see that the law is faithfully executed.” (Cal. Const. art. 5 sec. 1.) This action is brought
20 against Governor Brown in his official capacity. (*Id.*)

21 8. Defendant Kamala D. Harris is the Attorney General of the State of California.
22 She is the “chief law officer” of the State and has the duty to “see that the laws of the State are
23 uniformly and adequately enforced.” (See Cal. Const. art. 5 sec. 13.) Additionally, Attorney
24 General Harris has “direct supervision over every district attorney” in the State. (*Id.*) If, at any
25 point a district attorney of the State fails to enforce adequately “any law of the State,” the
26 Attorney General must “prosecute any violations of the law.” (*Id.*) Finally, the Attorney
27 General “shall assist any district attorney in the discharge” of duties when “required by the
28 public interest or directed by the Governor...” (*Id.*) This action is brought against Attorney
29 General Harris in her official capacity.

30 9. Defendant Denise Brown is the Director of the Department of Consumer Affairs
31 for the State of California. The Director is appointed by the Governor of the State of California
32 and serves under the direction and supervision of the Governor. (Bus. & Prof. Code sec. 151.)

1 The Director has the duty of enforcing and administering applicable laws under the Bus. & Prof.
2 Codes, e.g., supervising, directing, and enforcing actions of the agency the Bureau of
3 Automotive Repair. (Bus. & Prof. Code sec. 305 and 310.) This action is brought against
4 Director Brown in her official capacity.

5 10. Defendant John Wallauch is the Chief of the Bureau of Automotive Repair
6 ("Bureau"), Department of Consumer Affairs, for the State of California. The Chief is
7 appointed by the Governor of the State of California and serves under the direction and
8 supervision of the Governor. (Bus. & Prof. Code § 9882.2.) The Bureau Chief is also under the
9 supervision and control of the Director of Consumer Affairs and has the duty of enforcing and
10 administering applicable laws affecting the codified types of businesses in the State of
11 California under the Bureau's purview, e.g., Smog Testing facilities. (Bus. & Prof. Code §
12 9882.) This action is brought against Bureau Chief Wallauch in his official capacity.

13 11. The true names and capacities, whether individual, corporate, associate,
14 representative or otherwise, of the defendants identified herein as Does 1 through 100,
15 inclusive, are unknown to the Plaintiffs, who therefore sue these defendants by said fictitious
16 names. The Plaintiffs will amend this complaint to allege the true names and capacities of Does
17 1 through 100 when they have been ascertained. Does 1 through 100 are in some manner
18 legally responsible for the wrongs and injuries alleged herein.

19
20 **III.**
21 **JURISDICTION AND VENUE**

22 12. This action arises under the Constitution of the State of California Art. 1 § 7(a).
23 This action is brought as a class action under the provisions of California Code of Civil
24 Procedure §§ 378 and 382. This Court has jurisdiction over this subject matter of this action
25 pursuant to Code of Civil Procedure § 526 and Civ. Code § 3423 (subject to the exception in
26 that this action specifically challenges the constitutionality of a statute (See generally
27 *Merandette v. City and County of San Francisco*, (1979) 88 Cal.App.3d 105)) and Gov. Code
28 §§ 940.6 and 945. This action is also brought against the Defendants in their official capacity.

29 13. Venue is proper in this Court pursuant to Code of Civil Procedure § 401(a) in
30 that the California Attorney General maintains an office in the County of Alameda at 1515 Clay
31 Street, Oakland, CA 94612.

1 14. The Plaintiffs are excused from exhausting any potential administrative remedies
2 in that this action challenges the constitutionality of specific statutes that regulate how the
3 Bureau administers itself and enforces the law. (See generally *Unnamed Physician v. Board of*
4 *Trustees of St. Agnes Med. Ctr.*, (2001) 93 Cal.App.4th 607, 621—claim that organization's
5 bylaws violated due process.)

6
7 **IV.**
8 **CLASS ACTION ALLEGATIONS**

9 15. The Plaintiffs bring this action on their own behalf and on behalf of all persons
10 similarly situated. Such a representative action is necessary to prevent and remedy the potential
11 constitutional violations detailed herein.

12 16. This action is brought and may be properly maintained as a class action pursuant
13 to the provisions of Code of Civil Procedure section 378 and 382. The Plaintiffs bring this
14 action on behalf of themselves and all members of the class, defined as follows: Facilities, that
15 are private business entities in the state of California, that at the date of filing the instant
16 complaint in this action, hold an active or temporarily suspended “Smog Check Station” license
17 (either “Test-Only” or a “Test-and-Repair” license) by the Bureau of Automotive Repair to
18 conduct smog checks on vehicles. Excluded from the proposed class are: (1) similar facilities
19 with similar licenses that have been revoked by the Bureau of Automotive Repair at the date of
20 filing the instant complaint in this action; (2) individual persons who have individual technician
21 licenses from the Bureau of Automotive Repair to conduct smog checks on vehicles; (3) similar
22 facilities who are in the process of obtaining similar licenses from the Bureau of Automotive
23 Repair at the date of filing this complaint.

24 17. The members of the class are so numerous that joinder of all members is
25 impracticable. While the exact number of class members is unknown to the Plaintiffs at this
26 time and can only be ascertained through discovery, the Plaintiffs believe that there are at least
27 seven thousand (7,000) members of the proposed class.

28 18. There is a well-defined community of interest among the members of the
29 proposed class. The Plaintiffs, like all other members of the class, will be deprived of
30 constitutional due process protections due to the Act. Specifically, the Plaintiffs, like all other
31 members of the class, will all suffer the same injury should the Act be enforced in that, when
32 the Bureau decides to invalidate a station’s STAR certification, the Plaintiffs, like all members

1 of the class, will not be afforded due process protections of the California Constitution nor the
2 APA. Given that the Act allows the Bureau to conduct the revocation similarly for the Plaintiffs
3 as it would for all the members of the class, the current statutory scheme essentially mandates
4 that the Bureau to engage in conduct that will ultimately result in damaging all members of the
5 class exactly the same as the Plaintiffs.

6 19. There are questions of law and fact common to the Plaintiffs and the members
7 of the class and those questions predominate over any questions that may affect individual
8 members of the class.

9 (a) The common questions of fact include, *but are not limited to*, the following: the
10 procedures for Plaintiffs and the members of the class to obtain Smog Check Station licenses,
11 the prerequisites that Plaintiffs and the members of the class must possess or obtain in order to
12 apply for Smog Check Station licenses, the criteria used to determine if a facility can obtain
13 STAR certification, the application process for the Plaintiffs and the members of the class to
14 attempt to obtain STAR certification, the state agency responsible for issuing the Plaintiffs and
15 the members of the class licenses that allow them to perform tests; the state in which the
16 Plaintiffs and the members of the class must be to perform smog tests, and the state agency
17 responsible for regulating the Plaintiffs' and the members of the class's general operations.

18 (b) The common questions of law include, *but are not limited to*, the following: whether
19 the Act is unconstitutional; whether the STAR certification itself is something that the Plaintiffs
20 and the members of the class can have a property interest in; whether the APA is applicable to
21 the STAR certification invalidation process; whether the Plaintiffs and the members of the class
22 would be entitled to an award of attorney's fees and costs when forced to enjoin an
23 unconstitutional law that would abridge their due process rights; and whether the STAR
24 certification invalidation process codified in the Act provides the Plaintiffs and the members of
25 the class adequate due process protections.

26 20. The Plaintiffs' claims are typical of the claims of the other members of the class.
27 The Plaintiffs and all the members of the class's constitutional due process rights will be
28 violated by the Act. The only way that the Plaintiffs and the members of the class can obtain
29 relief is to have the offending portions of the Act declared unconstitutional and the Bureau be
30 enjoined from enforcing the offending statutes. Additionally, the Plaintiffs' claims are part of
31 the same cause of action as would be any claims of any member of the class.
32

1 21. The Plaintiffs will fairly and adequately represent and protect the interests of the
2 class. They have retained counsel with substantial experience in representing their particular
3 industry. The Plaintiffs’ counsel also has significant experience relating to legislative processes
4 and bodies as well as complex civil litigation. Additionally, the Plaintiffs’ counsel has almost
5 solely represented entities similar to the Plaintiffs in their respective legal matters involving the
6 Bureau or other state agencies and law enforcement. Lastly, the Plaintiff’s counsel has also
7 handled novel questions of law in re due process protections of other state of California
8 conferred licenses and certificates specifically related to the Plaintiffs’ industry. The Plaintiffs
9 and their counsel are firmly committed to vigorously prosecuting this action on behalf of the
10 class and have the financial resources necessary to do so. Neither the Plaintiffs nor their
11 counsel has any interests that can be construed as adverse to those of the class. The Plaintiffs
12 are asserting all claims reasonably expected to be raised by any members of the class and
13 thereby seek relief that will affect all members of the class.

14 22. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy since individual joinder of all members of the class is
16 impracticable. Further, as the damages suffered by each individual member of the class may be
17 relatively small, the expense and burden of individual litigation would make it difficult or
18 impossible for individual members of the class to redress the wrongs done to them. The cost to
19 the court system of such individual adjudication would be substantial. Individualized litigation
20 would also present the potential for inconsistent or contradictory judgments and would magnify
21 the delay and expense to all parties and the court system in multiple trials of identical factual
22 issues. By contrast, the conduct of this action as a class action presents fewer management
23 difficulties, conserves the resources of the parties and the court system and protects the rights of
24 each class member.

25
26 **V.**
27 **FACTUAL ALLEGATIONS**

28 **The Act**

29 24. Assembly Bill 2289 (Chapter 258, Statutes of 2010) (again, “Act”), was signed
30 into law on September 23, 2010, operative as of November 1, 2011, and is due to go into effect
31 on January 1, 2013. The Act created the STAR Program to replace the outgoing Gold Shield
32 Program. Essentially, these are statutorily created programs that the Bureau regulates for one of

1 the industries it oversees, i.e., the smog check stations. The STAR Program specifically creates
2 a certification program that the smog check stations can apply for after passing a number of
3 qualifications. If a STAR Program applicant passes the initial application prerequisites, pays
4 the fee, and thereafter passes on site inspections, the station is then issued STAR Certification
5 ("STAR Certificate"). A station that possesses a STAR Certificate may advertise to the public
6 that it holds one. Further, only STAR certified stations may test "directed" vehicles and "gross-
7 polluting" vehicles. Specifically, the Plaintiffs hereby provide the relevant portions of the Act
8 for background information:

9 “(a) Both STAR certified test-only and test-and-repair stations shall
10 provide the following services to the public:

11 (1) The certification of vehicles previously identified as gross
12 polluters.

13 (2) For STAR stations with a complete BAR-certified Emissions
14 Inspection System capable of performing enhanced area ASM inspections
15 on all vehicles subject to Smog Check pursuant to Sections 44003 and
16 44003.5 of the Health and Safety Code, irrespective of their program area
17 location, perform the testing and certification of vehicles requiring
18 inspection pursuant to Sections 44010.5 or 44014.7 of the Health and
19 Safety Code.

20 (3) For STAR stations located in basic or change of ownership
21 program areas that do not perform ASM inspections pursuant to Sections
22 44003 and 44003.5 of the Health and Safety Code, perform the testing and
23 certification of vehicles registered in enhanced areas only if the vehicles
24 were purchased by a licensed Department of Motor Vehicles motor
25 vehicle dealer, as defined in Section 285 of the Vehicle Code, with the
26 intent of offering the vehicles for sale upon the dealer's premises located
27 in a basic or change of ownership area. STAR stations authorized pursuant
28 to this paragraph may not issue a certificate of compliance to a vehicle that
29 is owned by an entity other than a motor vehicle dealer licensed by the
30 Department of Motor Vehicles.

31 (b) STAR certified test-and-repair stations shall do the following:

32 (1) Under the terms and conditions of an agreement executed
 pursuant to Section 3394.2, offer state subsidized emissions-related repairs
 as a component of the Consumer Assistance Program established pursuant
 to Article 11 of this chapter. This paragraph shall apply to those STAR
 certified stations located in basic and enhanced areas.

 (2) Perform all emissions-related repairs in a good and
 workmanlike manner and in accordance with the procedures specified by
 the vehicle manufacturer or by repair standards generally accepted by the
 industry.

 (3) Allow bureau personnel reasonable access to the station for the
 on-site inspection of vehicles while repairs are in progress, or for

1 inspection of repaired vehicles still remaining on the premises. These
2 inspections shall be for the purpose of evaluating the appropriateness and
3 effectiveness of the repairs performed by the station.”

4 (See Cal. Code Regs. tit. 16, § 3392.2.1.)

5 25. The STAR Program’s requirements are quite stringent. An applicant must first
6 possess passing data points for all the various criteria that the Act requires. An applicant must
7 also ensure that its staff has a clean disciplinary history as well. An applicant must pay a fee for
8 the application and be subject to on-site inspections post-application. In order to meet the high
9 standards of the STAR Program, and be able to access the increased revenue that “directed”
10 vehicles and “gross-polluters” would bring in a station must increase its own investment in its
11 staffing, practices, education, and equipment. Specifically, the Plaintiffs hereby provide the
12 relevant portions of the Act for background information:

13 “(a) A licensed Smog Check test-and-repair or test-only station seeking
14 STAR certification shall submit to the bureau a completed STAR Station
15 Certification Application form (STAR-1 07/1/2012), which is hereby incorporated
16 by reference, and shall, as of the date the application is received by the bureau,
17 meet all of the following eligibility/performance standard requirements.
18 Applications for the STAR program that begins January 1, 2013 may be
19 submitted beginning July 1, 2012.

20 (1) The station’s Similar Vehicle Failure Rate (SVFR) in the most
21 recently completed calendar quarter shall be greater than or equal to 75%
22 of the industry-wide failure rate for similar vehicles, as defined in Section
23 3340.1.

24 (2) The station shall have no more than 2% of vehicles tested with
25 Gear Shift Incidents in the most recently completed calendar quarter, as
26 defined in Section 3340.1.

27 (3) The station shall have an Excessive Test Deviation Rate of no
28 more than one in the most recently completed calendar quarter, as defined
29 in Section 3340.1.

30 (4) The station shall employ, for the purpose of performing smog
31 check inspections and/or smog check repairs, licensed technicians whose
32 FPR scores are greater than or equal to 0.4 in the most recently completed
FPR reporting period.

(A) The station is deemed to employ, for the purpose of
performing smog check inspections and/or smog check repairs, a
licensed technician if that technician is listed in the station’s
Technician Information Table(s), as defined in Section 3340.1.

(B) If a station employs, for the purpose of performing
smog check inspections and/or smog check repairs, a licensed
technician who has not received an FPR score in the most recently
completed reporting period, the station may be eligible for STAR

1 certification if the station's FPR score in the most recently
2 completed reporting period is greater than or equal to 0.4 or the
3 station did not receive an FPR score in the most recently
4 completed reporting period and all other eligibility requirements
5 have been met.

6 (5) A station cannot have received a citation which is final and
7 non-appealable, nor can a station employ a licensed Smog Check
8 technician who has received a citation which is final and non-appealable,
9 within the preceding one-year period from the effective date of the citation
10 for violation of any of the following sections: 44012, 44015 (a) and (b),
11 44015.5, 44016, and 44032 of the Health and Safety Code; and 3340.15
12 (a), 3340.16 (a) and (b), 3340.16.5 (a) and (b), 3340.17, 3340.30 (a),
13 3340.35, 3340.41 (b), 3340.41 (c), 3340.42, 3340.42.2, and 3340.45 of
14 Division 33, Title 16, California Code of Regulations.

15 (6) The current or any previous registration or license of the station
16 owner, manager, or licensed Smog Check technicians employed by the
17 station cannot be issued an order of suspension or a probationary order
18 within the preceding three-year period from the effective date of the
19 action. No station owner, officer, manager, licensed Smog Check
20 technician or other employee of the station may currently be subject to an
21 order of suspension or a probationary order.

22 (7) The station owner, manager, licensed Smog Check technicians,
23 or any other employee of the station may not have been convicted of a
24 crime within the preceding three-year period that is substantially related to
25 the duties of an Automotive Repair Dealer, a licensed Smog Check
26 station, or a licensed Smog Check technician. The station owner, manager,
27 licensed Smog Check technicians, or any other employees of the station
28 may not have been found liable in a civil proceeding, excluding small
29 claims matters, within the preceding three-year period, for acts or
30 omissions that are substantially related to the duties of an Automotive
31 Repair Dealer, a licensed Smog Check station, or a licensed Smog Check
32 technician. The station owner, manager, licensed Smog Check technicians,
or any other employees of the station may not be serving a probationary
period as a result of a criminal or civil proceeding substantially related to
the duties of an Automotive Repair Dealer, a licensed Smog Check
station, or a licensed Smog Check technician.

(8) Compliance with all licensure and license posting
requirements.

(9) Compliance with all estimate, repair order, invoice and record-
keeping requirements.

(10) Physical possession of, and/or electronic access to, all
required manuals and publications.

(11) Possession of all required tools and equipment and a
verification of their proper working order.

1 (12) A STAR certified station shall display an exterior sign,
2 directly below the sign described in section 3340.22, which meets the
3 following specifications:

4 (A) The dimensions of the sign shall be 24 inches wide and
5 5 1/4 inches high.

6 (B) The sign shall be made of 0.040-inch aluminum, steel,
7 or plastic.

8 (C) The bureau shall supply a camera-ready design and
9 content of the sign.

10 (13) The station may not have had its STAR certification
11 invalidated within the last six months.

12 (b) A licensed Smog Check test-only or test-and-repair station seeking
13 STAR certification shall be informed, in writing or by electronic mail, of the
14 bureau's decision that the station meets the eligibility requirements for
15 certification or the application is deficient.”

16 (See Cal. Code Regs. tit. 16, § 3392.3.1.)

17 26. After obtaining a STAR Certificate that station is allowed to conduct smog tests
18 on “directed” vehicles and “gross-polluting” vehicles, which are acts that, without the STAR
19 Certificate, would otherwise be unlawful.

20 27. The Act provides the Bureau the ability to “invalidate” a station’s STAR
21 Certificate and puts forth the procedures the Bureau must follow to do so. Specifically, the
22 Plaintiffs hereby provide the relevant portions of the Act for background information:

23 “[...] if the bureau finds cause to invalidate the certification of an existing
24 STAR station, the bureau shall file and serve a notice in writing or by electronic
25 mail to the station. The notice shall contain a summary of the facts and allegations
26 which form the cause or causes for invalidation.

27 (a) Service of the notice may be given in any manner authorized by
28 Business and Professions Code Section 124.

29 (b) If a written or electronic request for a hearing is received within five
30 (5) days from the date of service, a hearing shall be held as provided for in (c)
31 below.

32 (c) The bureau shall hold a hearing within ten (10) days of the date on
which the bureau received a timely request for a hearing. The bureau shall notify
the STAR certified station or representative of the time and place of the hearing.
The hearing shall be limited in scope to the time period, facts, and allegations
specified in the notice prepared by the bureau.

(d) The STAR certified station shall be notified of the determination by
the chief, or the chief's designee, who shall issue a decision and notify the
applicant or STAR station within 10 days of the close of the hearing.

1 (e) The STAR station may request an administrative hearing to contest the
2 decision of the chief within 30 days of the date of the determination by the chief,
3 or the chief's designee."

4 (See Cal. Code Regs. tit. 16, § 3392.6.1.)

5 The APA

6 28. The California Administrative Procedures Act (again "APA") applies to all state
7 agencies, unless specific laws regarding the agency provide otherwise.

8 29. Informal hearings are allowed for certain procedures related to licenses for state
9 agencies but their use is limited by statute. Specifically, the Plaintiffs hereby provide the
10 relevant portions of the APA for background information:

11 "(b) Subject to Section 11445.30, an agency may use an informal hearing
12 procedure in any of the following proceedings, if in the circumstances its use does
13 not violate another statute or the federal or state Constitution

14 (1) [...]

15 (4) *A disciplinary sanction against a licensee that does not involve an
16 actual revocation of a license or an actual suspension of a license for more than
17 five days.*" [emphasis added]

18 (See Gov. C. § 11445.20(b)(4).)

19 The Administrative Adjudication Bill of Rights

20 30. In 1995, the Administrative Adjudication Bill of Rights ("AA Bill of Rights")
21 was added to the APA.

22 31. The AA Bill of Rights outlines the formal hearing procedures that the Bureau
23 should use when an informal procedure would violate the California Constitution and/or Gov.
24 C. § 11445.20(b)(4).

25 32. The AA Bill of Rights' addition to the APA, in order to ensure that a licensee
26 was afforded their constitutional due process protections, imposed the following formal hearing
27 requirements on agencies subject to the APA, among others:

28 • The adjudicative function shall be separated from the investigative,
29 prosecutorial, and advocacy functions within the agency as provided in Section 11425.30. (See
30 Govt. C. § 11425.10(a)(4).)

31 • The presiding officer is subject to disqualification for bias, prejudice, or
32 interest as provided in Section 11425.40. (See Govt. C. § 11425.10(a)(5).)

1 • The decision shall be in writing, be based on the record, and include a
2 statement of the factual and legal basis of the decision as provided in Section §11425.50. (See
3 Govt. C. § 11425.10(a)(6).)

4 • A person may not serve as presiding officer in an adjudicative proceeding
5 if they have served as an investigator, prosecutor, or advocate in the proceeding or its
6 preadjudicative stage, or if the person is subject to the authority, direction or discretion of a
7 person who has served as investigator, prosecutor or advocate in the proceeding or its
8 preadjudicative stage. (See Govt. C. § 11425.30(a)(1)-(2).)

9 Plaintiff Hermanos

10 33. At the date of submission of the instant Complaint, the Plaintiffs plan on
11 applying for the STAR Program when the Bureau begins accepting applications (“Application
12 Date”).

13 34. At the date of submission of this instant Complaint, the Plaintiffs currently
14 average testing eight to ten vehicles per day. The Plaintiffs approximate that half of these
15 vehicles are “directed” or “gross polluting” vehicles that, under the Act, will no longer be
16 allowed to be tested at facilities like Plaintiff Hermanos’s facility if that facility is not STAR
17 certified. If not STAR certified, the Plaintiffs will lose approximately 50% of their business.

18 35. At the date of submission of this instant Complaint, the Plaintiff Hermanos: (1)
19 had not had its STAR Certificate invalidated within the six months prior to the Application
20 Date; (2) had not been issued any Smog Check citations within the prior year to the Application
21 Date; (3) does not employ any technicians who have been issued any Smog Check citations
22 within the prior year to the Application Date; (4) does not have an owner, manager, or
23 technician who have had their respective licenses or registrations suspended, revoked, or put on
24 probation within the three years prior to the Application Date; (5) does not have an owner,
25 manager, employee, or technician who have, or are serving a probationary period from, a
26 conviction of a crime substantially related to the duties associated with their respective licenses
27 and registrations, or found liable in a civil proceeding regarding the same, within the prior three
28 years to the Application Date; (6) has not engaged in conduct that would be cause for discipline
29 of the Plaintiff Hermanos’s ARD registration or Smog Check station license; and (7) is in
30 complete compliance for license posting requirement, signage requirements, estimate-repair
31 order-invoice-record keeping requirements, and in possession of all required manuals,
32 publications, required tools, and its equipment is in proper working order.

1 **FIRST CAUSE OF ACTION**

2 **Declaratory Relief (Against all Defendants)**

3 36. The Plaintiffs incorporate by reference and reallege each and every allegation
4 contained in paragraphs 1 through 35 above as though fully set forth herein.

5 37. There is a real and actual controversy between the Plaintiffs and the Defendants
6 regarding whether the Defendants may undertake enforcement of the Act. The Plaintiffs
7 contend that the Act allows the Defendants to violate the California Constitution by allowing
8 the Defendants to revoke a state conferred benefit (STAR Certificate) that the Plaintiffs have a
9 legitimate property interest within without affording the Plaintiffs the due process protections
10 under the California Constitution and the APA. However, the Defendants believe that the
11 STAR Certificate is not something in which the Plaintiffs can obtain a property interest in and
12 thus they do not have to provide the due process protections of the California Constitution and
13 the APA. Plaintiffs fear that they will be subject to this unconstitutional action and seek a
14 judicial declaration that the Act, as written, will deprive the Plaintiffs of their rights under the
15 California Constitution.

16 38. The Plaintiffs will suffer an irreparable injury, including but not limited to,
17 further violations of their constitutional rights.

18 39. The Plaintiffs have no adequate remedy at law to protect their interest, which
19 will be harmed if the Act is enforced.

20 **SECOND CAUSE OF ACTION**

21 **Violation of Substantive Due Process Article 1, § 7(a) of the California Constitution**
22 **(Against all Defendants)**

23 40. The Plaintiffs incorporate by reference and reallege each and every allegation
24 contained in paragraphs 1 through 39 above as though fully set forth herein.

25 41. The Act described above, as written, will violate the Plaintiffs' rights to not be
26 deprived of due process under Article 1, § 7(a) of the California Constitution.

27 42. The Plaintiffs have a constitutionally protected interest in the STAR Certificate.

28 43. The Act, as written, violates the Plaintiffs' constitutional right to due process by:
29 arbitrarily and unreasonably allowing the Bureau to revoke the STAR Certificate from the
30 Plaintiffs in that the Act provides an informal hearing process for said revocation and/or
31 suspension of the STAR Certificate for more than five days. The Act also provides that this
32 informal hearing is presided over by the same functions of the Bureau that are investigative and

1 prosecutorial. The Act further limits the scope of the informal hearing to whatever the Bureau
2 puts forth in the notice thereby preventing the Plaintiff the ability to present witnesses and
3 evidence that they may deem relevant to their defense or to confront and cross-examine
4 witnesses against them.

5 44. The Plaintiffs will be harmed by the Defendants as a direct and proximate result
6 of the Act's language allowing the Defendants to revoke the STAR Certificate without
7 affording the Plaintiffs the necessary substantive due process protections under the California
8 Constitution and the APA.

9 45. The Plaintiffs will suffer an irreparable injury, including but not limited to,
10 further violations of their constitutional rights.

11 46. The Plaintiffs have no adequate remedy at law to protect their interest, which
12 will be harmed if the Act is enforced. The Plaintiffs therefore seek injunctive relief restraining
13 the Defendants from enforcing the Act.

14 **THIRD CAUSE OF ACTION**

15 **Violation of Procedural Due Process Article 1, § 7(a) of the California Constitution** 16 **(Against all Defendants)**

17 47. The Plaintiffs incorporate by reference and reallege each and every allegation
18 contained in paragraphs 1 through 46 above as though fully set forth herein.

19 48. The Act described above, as written, will violate the Plaintiffs' rights to not be
20 deprived of due process under Article 1, § 7(a) of the California Constitution.

21 49. The Plaintiffs have a constitutionally protected interest in the STAR Certificate.

22 50. The Act, as written, violates the Plaintiffs' constitutional right to due process by:
23 arbitrarily and unreasonably allowing the Bureau to revoke the STAR Certificate from the
24 Plaintiffs in that the Act provides an informal hearing process for said revocation and/or
25 suspension of the STAR Certificate for more than five days. The Act also provides that this
26 informal hearing is presided over by the same functions of the Bureau that are investigative and
27 prosecutorial. The Act further limits the scope of the informal hearing to whatever the Bureau
28 puts forth in the notice thereby preventing the Plaintiff the ability to present witnesses and
29 evidence that they may deem relevant to their defense or to confront and cross-examine
30 witnesses against them.

31 51. The Plaintiffs will be harmed by the Defendants as a direct and proximate result
32 of the Act's language allowing the Defendants to revoke the STAR Certificate without

1 affording the Plaintiffs the necessary procedural due process protections under the California
2 Constitution and the APA.

3 52. The Plaintiffs will suffer an irreparable injury, including but not limited to,
4 further violations of their constitutional rights.

5 53. The Plaintiffs have no adequate remedy at law to protect their interest, which
6 will be harmed if the Act is enforced. The Plaintiffs therefore seek injunctive relief restraining
7 the Defendants from enforcing the Act.

8 **FOURTH CAUSE OF ACTION**

9 **Violation of Substantive Due Process Article 1, § 7(a) of the California Constitution** 10 **(Against all Defendants)**

11 54. The Plaintiffs incorporate by reference and reallege each and every allegation
12 contained in paragraphs 1 through 53 above as though fully set forth herein.

13 55. The Act described above, as written, will violate the Plaintiffs' rights to not be
14 deprived of due process under Article 1, § 7(a) of the California Constitution.

15 56. The Bureau, over the years of its Smog Station licensing program, have
16 conferred a constitutionally protected benefit to Smog "Test Only" facilities in that, as part of
17 their allowable actions under their currently held respective licenses, they have been able to
18 conduct smog tests on "directed" and "gross polluting" vehicles. Plaintiffs are one of these so-
19 called "Test-Only" facilities and these types of facilities have purposefully invested in their
20 business and have expended time, energy, and funds into the procurement and maintenance of
21 their respective station licenses. Further, "directed" and "gross polluting" vehicles comprise a
22 significant amount of these "Test Only" stations' overall revenue Accordingly, the Plaintiffs
23 have a constitutionally protected interest in their current "Test Only" smog station licenses.

24 57. Normally, prior to the effective date of the Act, in order for the state (Bureau) to
25 substantially impair a licensee's ability to operate under that license, e.g., revocation, probation,
26 or suspension, where the state (Bureau) would have the legal ability to diminish or impair a
27 state conferred benefit where the licensee has a legitimate property interest therein, the state
28 (Bureau) must adhere to the statutory construct in place to protect entities and individuals' due
29 process rights in their respective licenses. This is such the case for the facilities, like the
30 Plaintiffs, that currently hold a "Test Only" smog check station license.

31 58. The Act, as written, violates the Plaintiffs' constitutional rights to substantive
32 due process by: arbitrarily and unreasonably allowing the Bureau to essentially deprive the

1 Plaintiffs from the full use of their respective, bargained for, invested in, licenses that allow
2 them to smog test vehicles that are “directed” or “gross polluting.”

3 59. The Plaintiffs will be harmed by the Defendants as a direct and proximate result
4 of the Act’s language allowing the Defendants to impair the Plaintiffs’ ability to use their
5 respective licenses and diminish the value of the state conferred benefit, that the Plaintiffs have
6 a legitimate property interest therein, without affording the Plaintiffs the necessary substantive
7 due process protections under the California Constitution and the APA.

8 60. The Plaintiffs will suffer an irreparable injury, including but not limited to,
9 further violations of their constitutional rights.

10 61. The Plaintiffs have no adequate remedy at law to protect their interest, which
11 will be harmed if the Act is enforced. The Plaintiffs therefore seek injunctive relief restraining
12 the Defendants from enforcing the Act.

13 **FIFTH CAUSE OF ACTION**

14 **Violation of Procedural Due Process Article 1, § 7(a) of the California Constitution** 15 **(Against all Defendants)**

16 62. The Plaintiffs incorporate by reference and reallege each and every allegation
17 contained in paragraphs 1 through 61 above as though fully set forth herein.

18 63. The Act described above, as written, will violate the Plaintiffs’ rights to not be
19 deprived of due process under Article 1, § 7(a) of the California Constitution.

20 64. The Plaintiffs have a constitutionally protected interest in their current “Test
21 Only” smog station licenses.

22 65. Normally, prior to the effective date of the Act, in order for the state (Bureau) to
23 substantially impair a licensee’s ability to operate under that license, e.g., revocation, probation,
24 or suspension, where the state (Bureau) would have the legal ability to diminish or impair a
25 state conferred benefit where the licensee has a legitimate property interest therein, the state
26 (Bureau) must adhere to the statutory procedural construct in place to protect entities and
27 individuals’ due process rights in their respective licenses. This is such the case for the
28 facilities, like the Plaintiffs, that currently hold a “Test Only” smog check station license.

29 66. The Act, as written, violates the Plaintiffs’ constitutional rights to procedural due
30 process by: arbitrarily and unreasonably allowing the Bureau to essentially deprive the Plaintiffs
31 from the full use of their respective, bargained for, invested in, licenses that allow them to smog
32 test vehicles that are “directed” or “gross polluting” without the hearing process, or other

1 procedures, that are statutorily required for such an impairment or diminution in value of a state
2 conferred benefit where one has a legitimate property interest therein.

3 67. The Plaintiffs will be harmed by the Defendants as a direct and proximate result
4 of the Act's language allowing the Defendants to impair the Plaintiffs' ability to use their
5 respective licenses and diminish the value of the state conferred benefit, that the Plaintiffs have
6 a legitimate property interest therein, without affording the Plaintiffs the necessary substantive
7 due process protections under the California Constitution and the APA.

8 68. The Plaintiffs will suffer an irreparable injury, including but not limited to,
9 further violations of their constitutional rights.

10 69. The Plaintiffs have no adequate remedy at law to protect their interest, which
11 will be harmed if the Act is enforced. The Plaintiffs therefore seek injunctive relief restraining
12 the Defendants from enforcing the Act.

13 SIXTH CAUSE OF ACTION

14 **Declaratory Relief (Against all Defendants)**

15 70. The Plaintiffs incorporate by reference and reallege each and every allegation
16 contained in paragraphs 1 through 69 above as though fully set forth herein.

17 71. There is a real and actual controversy between the Plaintiffs and the Defendants
18 regarding whether the Defendants may undertake enforcement of the Act. The Plaintiffs
19 contend that the Act allows the Defendants to violate the California Constitution and the APA
20 by allowing the Defendants to revoke, impair, or otherwise diminish the value of a state
21 conferred benefit (Smog Check Test-Only Station License) that the Plaintiffs have a legitimate
22 property interest within without affording the Plaintiffs the due process protections under the
23 California Constitution and the APA. The Plaintiffs further specifically contend that the "Test
24 Only" license is a proprietary interest/benefit conferred or obtained from the state of California
25 which permits or grants the licensee to operate and perform special duties or functions to which
26 an economic benefit is derived in that the Plaintiffs currently have the ability to perform smog
27 check inspections on "directed" vehicles in enhanced areas which comprises a significant
28 portion of their business. The Plaintiffs further contend that the removal of this right or benefit
29 requires notice and opportunity to be heard before a tribunal before such a conferred benefit can
30 be removed, impaired, diminished in value, or revoked. The Plaintiffs further contend that the
31 Bureau, by way of the state legislature with the Act, subverted this constitutional requirement of
32 due process required by the California Constitution and the APA before the de facto revocation,

1 impairment, or diminution in value, of the "Test Only" license held by the Plaintiffs. However,
2 the Defendants believe that the Act does not deprive the Plaintiffs rights to due process
3 protections afforded by the APA of their "Test Only" licenses. The Plaintiffs fear that they will
4 be subject to this unconstitutional action and seek a judicial declaration that the Act, as written,
5 will deprive the Plaintiffs of their rights under the California Constitution.

6 72. The Plaintiffs will suffer an irreparable injury, including but not limited to,
7 further violations of their constitutional rights.

8 73. The Plaintiffs have no adequate remedy at law to protect their interest, which
9 will be harmed if the Act is enforced.

10 WHEREFORE, the Plaintiffs on behalf of themselves and all others similarly situated,
11 demand judgment as set forth hereinafter.

12 **PRAYER FOR RELIEF**

- 13 1. For certification of this action as a plaintiff class action as set forth hereinabove;
14 2. For preliminary and permanent injunctive relief prohibiting Defendants from
15 engaging in the wrongful practices alleged in this Complaint;
16 3. For an issuance of a declaratory judgment that the Act, as written, violates the
17 Plaintiffs' due process protections under the California Constitution;
18 4. For an award of costs and attorney fees as permitted by law; and
19 5. For such other and further relief as the Court deems just and proper.

20
21 DATED: September 27, 2012

Respectfully submitted,

22 AUTOMOTIVE DEFENSE SPECIALISTS

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25 BY: 

26 WILLIAM FERREIRA
27 Attorneys for the Plaintiffs
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