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7

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

11 In the Matter of the Accusation Against:
12 SUNLAND VALERO SERVICE STATION
MOE H. AYACH, PARTNER
13 BASSAM ESKAF, PARTNER
8404 Foothill Blvd.
14 Sunland, CA 91040
15 Automotive Repair Dealer Reg. No. AM 186717
Smog Check Station License No. RM 186717
16 Official Brake Station License No. BM 186717
Official Lamp Station License No. LM 186717,
17 MOE H. AYACH
18 10359 Haines Canyon
Tujunga, CA 91042
19 Advanced Emission Specialist Technician
20 License No. EA 141957,
21 and
22 JOSE G. GARCIA
132 S. Jackson Street, #5
23 Glendale, CA 91205
24 Brake Adjuster License No. JC 101697
Lamp Adjuster License No. RY 101697
25

Case No. 79/08-67

ACCUSATION

SMOG CHECK

Respondents.

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1 Complainant alleges:

2 **PARTIES**

3 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official
4 capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
5 Affairs.

6 **Sunland Valero Service Station:**

7 2. On or about December 22, 1995, the Director of Consumer Affairs
8 ("Director") issued Automotive Repair Dealer Registration Number AM 186717 ("registration")
9 to Tujung Shell, with Moe H. Ayach and Bassam Eskaf as partners. In or about January 2006,
10 the partnership name was changed to Tujung Service Station. On or about February 7, 2007, the
11 partnership name was changed to Sunland Valero Service Station ("Respondent Sunland").
12 Respondent Sunland's registration was in full force and effect at all times relevant to the charges
13 brought herein and will expire on December 31, 2008, unless renewed.

14 3. On or about September 9, 1996, the Director issued Smog Check Station
15 License Number RM 186717 to Respondent Sunland. Respondent Sunland's smog check station
16 license was in full force and effect at all times relevant to the charges brought herein and will
17 expire on December 31, 2008, unless renewed.

18 4. On or about December 8, 2004, the Director issued Official Brake Station
19 License Number BM 186717 to Respondent Sunland. Respondent Sunland's official brake
20 station license was in full force and effect at all times relevant to the charges brought herein and
21 will expire on December 31, 2008, unless renewed.

22 5. On or about December 22, 2004, the Director issued Official Lamp Station
23 License Number LM 186717 to Respondent Sunland. Respondent Sunland's official lamp
24 station license was in full force and effect at all times relevant to the charges brought herein and
25 will expire on December 31, 2008, unless renewed.

26 **Moe H. Ayach:**

27 6. On or about May 2, 2001, the Director issued Advanced Emission
28 Specialist Technician License Number EA 141957 to Moe H. Ayach ("Respondent Ayach").

1 Respondent Ayach's advanced emission specialist technician license was in full force and effect
2 at all times relevant to the charges brought herein and will expire on December 31, 2008, unless
3 renewed.

4 **Jose G. Garcia:**

5 7. In or about 1997, the Director issued Advanced Emission Specialist
6 Technician License Number EA 101697 to Jose G. Garcia ("Respondent Garcia"). Respondent
7 Garcia's advanced emission specialist technician license expired on March 31, 2007.

8 8. On or about December 2, 2004, the Director issued Brake Adjuster
9 License Number JC 101697 to Respondent Garcia. Respondent Garcia's brake adjuster license
10 was in full force and effect at all times relevant to the charges brought herein and will expire on
11 March 31, 2009, unless renewed.

12 9. On or about December 2, 2004, the Director issued Lamp Adjuster License
13 Number RY 101697 to Respondent Garcia. Respondent Garcia's lamp adjuster license was in
14 full force and effect at all times relevant to the charges brought herein and will expire on March
15 31, 2009, unless renewed.

16 **JURISDICTION**

17 10. Business and Professions Code ("Bus. & Prof. Code") section 9884.7
18 provides that the Director may invalidate an automotive repair dealer registration.

19 11. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
20 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
21 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
22 registration temporarily or permanently.

23 12. Bus. & Prof. Code section 9889.1 provides, in pertinent part, that the
24 Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with
25 section 9887.1) of the Automotive Repair Act.

26 13. Bus. & Prof. Code section 9889.7 provides, in pertinent part, that the
27 expiration or suspension of a license by operation of law or by order or decision of the Director

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1 or a court of law, or the voluntary surrender of a license shall not deprive the Director of
2 jurisdiction to proceed with any disciplinary proceedings.

3 14. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in
4 pertinent part, that the Director has all the powers and authority granted under the Automotive
5 Repair Act for enforcing the Motor Vehicle Inspection Program.

6 15. Health & Saf. Code section 44072.6 provides, in pertinent part, that the
7 expiration or suspension of a license by operation of law, or by order or decision of the Director
8 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
9 the Director of jurisdiction to proceed with disciplinary action.

10 **STATUTORY PROVISIONS**

11 16. Bus. & Prof. Code section 9884.7 states, in pertinent part:

12 (a) The director, where the automotive repair dealer cannot show there
13 was a bona fide error, may refuse to validate, or may invalidate temporarily or
14 permanently, the registration of an automotive repair dealer for any of the
15 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.

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

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20 (4) Any other conduct which constitutes fraud.

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

23 (7) Any willful departure from or disregard of accepted trade standards for
24 good and workmanlike repair in any material respect, which is prejudicial to
another without consent of the owner or his or her duly authorized representative.

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26 (c) Notwithstanding subdivision (b), the director may refuse to
27 validate, or may invalidate temporarily or permanently, the registration
for all places of business operated in this state by an automotive repair

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1 dealer upon a finding that the automotive repair dealer has, or is, engaged
2 in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

3 17. Bus. & Prof. Code section 9884.8 states:

4 All work done by an automotive repair dealer, including all warranty
5 work, shall be recorded on an invoice and shall describe all service work done
6 and parts supplied. Service work and parts shall be listed separately on the
7 invoice, which shall also state separately the subtotal prices for service work
8 and for parts, not including sales tax, and shall state separately the sales tax,
9 if any, applicable to each. If any used, rebuilt, or reconditioned parts are
supplied, the invoice shall clearly state that fact. If a part of a component
system is composed of new and used, rebuilt or reconditioned parts, such
invoice shall clearly state that fact. One copy shall be given to the customer
and one copy shall be retained by the automotive repair dealer.

10 18. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

11 The automotive repair dealer shall give to the customer a written
12 estimated price for labor and parts necessary for a specific job. No work shall
13 be done and no charges shall accrue before authorization to proceed is obtained
14 from the customer. No charge shall be made for work done or parts supplied in
15 excess of the estimated price without the oral or written consent of the customer
16 that shall be obtained at some time after it is determined that the estimated price
17 is insufficient and before the work not estimated is done or the parts not
18 estimated are supplied. Written consent or authorization for an increase in the
19 original estimated price may be provided by electronic mail or facsimile
transmission from the customer. The bureau may specify in regulation the
procedures to be followed by an automotive repair dealer when an authorization
or consent for an increase in the original estimated price is provided by electronic
mail or facsimile transmission. If that consent is oral, the dealer shall make a
notation on the work order of the date, time, name of person authorizing the
additional repairs and telephone number called, if any, together with a
specification of the additional parts and labor and the total additional cost . . .

20 19. Bus. & Prof. Code section 9889.3 states, in pertinent part:

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

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

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26 (c) Violates any of the regulations promulgated by the director
27 pursuant to this chapter.

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

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

20. Bus. & Prof. Code section 9889.16 states:

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

21. Bus. & Prof. Code section 9889.22 states:

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

22. Bus. & Prof. Code section 9889.9 states that "[w]hen any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director."

23. Bus. & Prof. Code section 22, subdivision (a), states:

"Board" as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

24. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes "registration" and "certificate."

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1 121361, and Certificate of Lamp Adjustment Number LC 118763. The operator was not given a
2 final invoice. That same day, electronic smog Certificate of Compliance Number FW901832C
3 was issued for the vehicle.

4 29. The Bureau's surveillance video revealed that an unidentified person
5 performed the brake and lamp inspections on the vehicle.

6 30. On August 17, 2005, a representative of the Bureau inspected the vehicle
7 and found that the PCV system was still missing, the left rear wheel had not been removed from
8 the vehicle, the defective light bulbs in the license plate lights had not been replaced, and the
9 headlamps had not been adjusted.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 31. Respondent Sunland's registration is subject to disciplinary action
13 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
14 authorized statements which it knew or in the exercise of reasonable care should have known to
15 be untrue or misleading, as follows:

16 a. Respondent Sunland's smog check technician, Respondent Ayach,
17 certified under penalty of perjury on the vehicle inspection report that the Bureau's 1994
18 Chevrolet S-10 pickup passed the smog check inspection and was in compliance with applicable
19 laws and regulations. In fact, the PCV system was missing and as such, the vehicle would not
20 pass the inspection required by Health & Saf. Code section 44012.

21 b. Respondent certified under penalty of perjury on Brake Certificate Number
22 BC 121361 that the applicable inspection was performed on the brake system on the Bureau's
23 1994 Chevrolet S-10 pickup. In fact, Respondent failed to inspect the left rear brake on the
24 vehicle.

25 c. Respondent certified under penalty of perjury on Lamp Certificate Number
26 LC 118763 that the applicable adjustment was performed on the lighting system on the Bureau's
27 1994 Chevrolet S-10 pickup. In fact, the headlamps had not been adjusted. Further, the right

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1 headlamp was 10 inches out of adjustment at the time the vehicle was taken to Respondent's
2 facility.

3 d. Respondent certified under penalty of perjury on Lamp Certificate Number
4 LC 118763 that the applicable repairs had been performed on the lighting system on the Bureau's
5 1994 Chevrolet S-10 pickup. In fact, the license plate lamps were not repaired or operating (the
6 burned-out bulbs were still installed on the vehicle).

7 e. Respondent certified under penalty of perjury on Brake Certificate Number
8 BC 121361 and Lamp Certificate Number LC 118763 that Respondent Garcia performed the
9 inspections of the brake and lighting systems on the Bureau's 1994 Chevrolet S-10 pickup. In
10 fact, the inspections were performed by an unidentified person.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 32. Respondent Sunland's registration is subject to disciplinary action
14 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
15 acts which constitute fraud, as follows:

16 a. Respondent issued an electronic smog certificate of compliance for the
17 Bureau's 1994 Chevrolet S-10 pickup without performing a bona fide inspection of the emission
18 control devices and systems on the vehicle, thereby depriving the People of the State of
19 California of the protection afforded by the Motor Vehicle Inspection Program.

20 b. Respondent charged and obtained payment from the operator for
21 performing the applicable inspections, adjustments, or repairs of the brake and lighting systems
22 on the Bureau's 1994 Chevrolet S-10 pickup as specified by the Bureau and in accordance with
23 the Vehicle Code. In fact, Respondent failed to conduct the inspections and perform the
24 necessary adjustments and repairs in compliance with Bureau Regulations or the Vehicle Code,
25 as set forth in subparagraphs 31 (b) through (d) above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Bus. & Prof. Code)**

3 33. Respondent Sunland's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a
5 material respect to comply with provisions of that Code, as follows:

- 6 a. **Section 9884.8:** Respondent failed to provide the operator with an invoice
7 listing all service work performed on the Bureau's 1994 Chevrolet S-10
8 pickup.
- 9 b. **Section 9884.9, subdivision (a):** Respondent failed to provide the
10 operator with a written estimate for parts and/or labor necessary for the
11 smog, brake, and lamp inspections on the Bureau's 1994 Chevrolet S-10
12 pickup.
- 13 c. **Section 9889.16:** Respondent issued Brake Certificate Number
14 BC 121361 and Lamp Certificate Number LC 118763 as to the Bureau's
15 1994 Chevrolet S-10 pickup when the vehicle was not in compliance with
16 Bureau Regulations or the requirements of the Vehicle Code.
- 17 d. **Section 9889.22:** Respondent willfully made false statements or entries
18 on Brake Certificate Number BC 121361 and Lamp Certificate Number
19 LC 118763, as set forth in subparagraphs 31 (b) through (e) above.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Violations of Regulations)**

22 34. Respondent Sunland's registration is subject to disciplinary action
23 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a
24 material respect to comply with provisions of California Code of Regulations, title 16, as
25 follows:

- 26 a. **Section 3303, subdivision (j):** Respondent failed to have the operator
27 sign a work order authorizing the smog check, brake, and lamp inspections
28 on the Bureau's 1994 Chevrolet S-10 pickup.

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SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

37. Respondent Sunland's official brake and lamp station licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 32 above.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

38. Respondent Sunland's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed in a material respect to comply with provisions of that Code, as follows:

- a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1994 Chevrolet S-10 pickup in accordance with procedures prescribed by the department.
- b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for the Bureau's 1994 Chevrolet S-10 pickup without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

NINTH CAUSE FOR DISCIPLINE

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

39. Respondent Sunland's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed in a material respect to comply with provisions of California Code of Regulations, title 16, as follows:

- a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1994 Chevrolet S-10 pickup.

1 b. Section 3340.35, subdivision (c): Respondent issued an electronic smog
2 certificate of compliance for the Bureau's 1994 Chevrolet S-10 pickup
3 even though the vehicle had not been inspected in accordance with section
4 3340.42.

5 c. Section 3340.42: Respondent failed to conduct the required smog tests on
6 the Bureau's 1994 Chevrolet S-10 pickup in accordance with the Bureau's
7 specifications.

8 **TENTH CAUSE FOR DISCIPLINE**

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

10 40. Respondent Sunland's smog check station license is subject to disciplinary
11 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
12 committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows:
13 Respondent issued an electronic smog certificate of compliance for the Bureau's 1994 Chevrolet
14 S-10 pickup without performing a bona fide inspection of the emission control devices and
15 systems on the vehicle, thereby depriving the People of the State of California of the protection
16 afforded by the Motor Vehicle Inspection Program.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

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

19 41. Respondent Ayach's advanced emission specialist technician license is
20 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
21 that Respondent failed in a material respect to comply with provisions of that Code, as follows:

22 a. Section 44012: Respondent failed to perform the emission control tests
23 on the Bureau's 1994 Chevrolet S-10 pickup in accordance with
24 procedures prescribed by the department.

25 b. Section 44059: Respondent willfully made false entries on the vehicle
26 inspection report, as set forth in subparagraph 31 (a) above.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 42. Respondent Ayach's advanced emission specialist technician license is
5 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
6 that Respondent failed in a material respect to comply with provisions of California Code of
7 Regulations, title 16, as follows:

- 8 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
9 issued an electronic smog certificate of compliance for the Bureau's 1994
10 Chevrolet S-10 pickup.
11 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
12 the Bureau's 1994 Chevrolet S-10 pickup in accordance with Health &
13 Saf. Code sections 44012 and 44035, and California Code of Regulations,
14 title 16, section 3340.42.
15 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on
16 the Bureau's 1994 Chevrolet S-10 pickup in accordance with the Bureau's
17 specifications.

18 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

20 43. Respondent Ayach's advanced emission specialist technician license is
21 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
22 that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured,
23 as follows: Respondent issued an electronic smog certificate of compliance for the Bureau's
24 1994 Chevrolet S-10 pickup without performing a bona fide inspection of the emission control
25 devices and systems on the vehicle, thereby depriving the People of the State of California of the
26 protection afforded by the Motor Vehicle Inspection Program.

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1 authorized statements which it knew or in the exercise of reasonable care should have known to
2 be untrue or misleading, as follows:

3 a. Respondent Sunland's technician, Respondent Garcia, certified under
4 penalty of perjury on Brake Certificate Number BC 175201 that the rear brake drums on the
5 Bureau's 1987 Toyota Camry wagon were inspected and in a satisfactory condition. In fact, the
6 inside diameters of the rear brake drums had been machined beyond the manufacturer's discard
7 specifications, requiring the replacement of the brake drums.

8 b. Respondent Sunland's technician, Respondent Garcia, certified under
9 penalty of perjury on Lamp Certificate Number LC 172701 that the applicable adjustment had
10 been performed on the lighting system on the Bureau's 1987 Toyota Camry wagon. In fact, the
11 headlamps had not been adjusted. Further, the right headlamp was 10 inches out of adjustment at
12 the time the vehicle was taken to Respondent's facility.

13 **FIFTEENTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 48. Respondent Sunland's registration is subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
17 an act which constitutes fraud, as follows: Respondent charged and obtained payment from the
18 operator for performing the applicable inspections, adjustments, or repairs of the brake and
19 lighting systems on the Bureau's 1987 Toyota Camry wagon as specified by the Bureau and in
20 accordance with the Vehicle Code. In fact, Respondent failed to perform the necessary
21 adjustments and repairs in compliance with Bureau Regulations or the Vehicle Code, as set forth
22 in paragraph 47 above.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Bus. & Prof. Code)**

3 49. Respondent Sunland's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a
5 material respect to comply with provisions of that Code, as follows:

- 6 a. **Section 9884.9, subdivision (a):** Respondent Sunland failed to document
7 on Invoice Number 001841 the operator's authorization for the additional
8 repairs on the Bureau's 1987 Toyota Camry wagon, i.e., the adjustment of
9 the ignition timing and replacement of the two license plate lamps.
- 10 b. **Section 9889.16:** Respondent Sunland's technician, Respondent Garcia,
11 issued Brake Certificate Number BC 175201 and Lamp Certificate
12 Number LC 172701 as to the Bureau's 1987 Toyota Camry wagon when
13 the vehicle was not in compliance with Bureau Regulations or the
14 requirements of the Vehicle Code.
- 15 c. **Section 9889.22:** Respondent Sunland's technician, Respondent Garcia,
16 willfully made false statements or entries on Brake Certificate Number BC
17 175201 and Lamp Certificate Number LC 172701, as set forth in
18 paragraph 47 above.

19 **SEVENTEENTH CAUSE FOR DISCIPLINE**

20 **(Violations of Regulations)**

21 50. Respondent Sunland's registration is subject to disciplinary action
22 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a
23 material respect to comply with provisions of California Code of Regulations, title 16, as
24 follows:

- 25 a. **Section 3305, subdivision (a):** Respondent Sunland's technician,
26 Respondent Garcia, failed to perform the inspection of the brake system
27 and inspection and adjustment of the lamp system on the Bureau's 1987

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Toyota Camry wagon in accordance with the specifications, instructions, and directives issued by the Bureau and the vehicle manufacturer.

b. **Section 3316, subdivision (d)(2):** Respondent Sunland’s technician, Respondent Garcia, issued Lamp Certificate Number LC 172701 as to the Bureau’s 1987 Toyota Camry wagon when all of the lamps, lighting equipment, and/or related electrical systems on the vehicle had not been inspected and were not in compliance with Bureau regulations, as set forth in paragraph 47 above.

c. **Section 3356, subdivision (a):** Respondent Sunland failed to show its registration number on Invoice Number 001841. Further, Respondent showed its business name on the invoice as ROD 77 Service Station when, in fact, its business name at that time was Tujunga Service Station.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Bus. & Prof. Code)

51. Respondent Sunland’s official brake and lamp station licenses are subject to disciplinary action pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in that Respondent violated the provisions of Bus. & Prof. Code sections 9889.16 and 9889.22 relating to Respondent’s licensed activities, as set forth in paragraph 49 above.

NINETEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

52. Respondent Sunland’s official brake and lamp station licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), and 3316, subdivision (d)(2), as set forth in paragraph 50 above.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

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

3 53. Respondent Sunland's official brake and lamp station licenses are subject
4 to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that
5 Respondent committed an act involving dishonesty, fraud, or deceit whereby another was
6 injured, as set forth in paragraph 48 above.

7 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Code)**

9 54. Respondent Garcia's brake and lamp adjuster licenses are subject to
10 disciplinary action pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3,
11 subdivision (h), in that he violated the provisions of Bus. & Prof. Code sections 9889.16 and
12 9889.22 relating to his licensed activities, as set forth in subparagraphs 49 (b) and (c) above.

13 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

14 **(Violations of Regulations)**

15 55. Respondent Garcia's brake and lamp adjuster licenses are subject to
16 disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he
17 failed to comply with the provisions of California Code of Regulations, title 16, sections 3305,
18 subdivision (a), and 3316, subdivision (d)(2), as set forth in subparagraphs 50 (a) and (b) above.

19 **CAP VEHICLE REPAIR VERIFICATION**

20 56. Consumer Joan Pleasants ("Pleasants") was directed by the Consumer
21 Assistance Program ("CAP") to take her 1984 Ford Mustang to Respondent Sunland's facility to
22 have a diagnostic test performed on the vehicle to determine why it had failed a prior smog check
23 inspection.

24 57. On or about March 15, 2006, Pleasant took the vehicle to Respondent
25 Sunland's facility and was given a written estimate in the amount of \$136 for the diagnostic test.
26 Pleasant also authorized the facility to repair a tear in the exhaust pipe and change the engine oil.
27 On March 18, 2006, Pleasants returned to the facility to retrieve the vehicle and received copies
28 of Invoice Number 001175 dated March 15, 2006, for the CAP repairs, an invoice dated March

1 18, 2006, for the exhaust pipe repair and oil change, and a vehicle inspection report dated March
2 17, 2006, signed by Respondent Ayach. The vehicle inspection report indicated that on March
3 17, 2006, the vehicle passed a smog inspection, resulting in the issuance of Certificate of
4 Compliance Number GC021321.

5 58. On May 10, 2006, Bureau Representative Tom Oliver ("Oliver") inspected
6 the vehicle and determined that Respondent Sunland's facility failed to properly perform the
7 CAP repairs. Oliver also found that the facility had issued a certificate of compliance for the
8 vehicle even though certain emission-related components were modified and disconnected.

9 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 59. Respondent Sunland's registration is subject to disciplinary action
12 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
13 authorized a statement which it knew or in the exercise of reasonable care should have known to
14 be untrue or misleading, as follows: Respondent Sunland's smog check technician, Respondent
15 Ayach, certified under penalty of perjury on the vehicle inspection report that Pleasants' 1984
16 Ford Mustang had passed the smog check inspection and was in compliance with applicable laws
17 and regulations. In fact, the vent solenoid on the new exhaust gas recirculation ("EGR") valve
18 was capped off and the line was disconnected, and the straight vacuum connector at the top of the
19 early fuel evaporative ("EFE") actuator vacuum nipple did not fit properly and was leaking. As
20 such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

21 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 60. Respondent Sunland's registration is subject to disciplinary action
24 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
25 an act which constitutes fraud, as follows: Respondent issued an electronic smog certificate of
26 compliance for Pleasants' 1984 Ford Mustang without performing a bona fide inspection of the
27 emission control devices and systems on the vehicle, thereby depriving the People of the State of
28 California of the protection afforded by the Motor Vehicle Inspection Program.

1 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

2 **(Departure From Trade Standards)**

3 61. Respondent Sunland's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully
5 departed from or disregarded accepted trade standards for good and workmanlike repair without
6 the consent of the owner or the owner's duly authorized representative, in the following material
7 respects:

8 a. Respondent failed to properly install the new EGR valve on Pleasants'
9 1984 Ford Mustang in that the EGR vent solenoid was capped off and the line was disconnected.

10 b. Respondent failed to properly repair the EFE actuator vacuum nipple by
11 inserting a straight vacuum connector into the top where the original vacuum nipple had broken
12 off. Further, the connector fit improperly and was leaking.

13 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

14 **(Violations of Regulations)**

15 62. Respondent Sunland's registration is subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a
17 material respect to comply with California Code of Regulations, title 16, section 3356,
18 subdivision (a), as follows:

19 a. Respondent showed its business name as Tujunga Alliance on the invoice
20 dated March 18, 2006, when, in fact, its business name was Tujunga Service Station as of that
21 time.

22 b. Respondent showed its business name as ROD 77 Service Station on
23 Invoice Number 001175 when, in fact, its business name was Tujunga Service Station.

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1 c. Section 3340.41, subdivision (d): Respondent failed to follow applicable
2 specifications and procedures when repairing Pleasants' 1984 Ford
3 Mustang.

4 d. Section 3340.42: Respondent failed to conduct the required smog tests on
5 Pleasants' 1984 Ford Mustang in accordance with the Bureau's
6 specifications.

7 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

9 65. Respondent Sunland's smog check station license is subject to disciplinary
10 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
11 committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows:
12 Respondent issued an electronic smog certificate of compliance for Pleasants' 1984 Ford
13 Mustang without performing a bona fide inspection of the emission control devices and systems
14 on the vehicle, thereby depriving the People of the State of California of the protection afforded
15 by the Motor Vehicle Inspection Program.

16 **THIRTIETH CAUSE FOR DISCIPLINE**

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

18 66. Respondent Ayach's advanced emission specialist technician license is
19 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
20 that Respondent failed in a material respect to comply with provisions of that Code as follows:

21 a. Section 44012: Respondent failed to perform the emission control tests
22 on Pleasants' 1984 Ford Mustang in accordance with procedures
23 prescribed by the department.

24 b. Section 44059: Respondent willfully made false entries on the vehicle
25 inspection report, as set forth in paragraph 59 above.

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THIRTY-FIRST CAUSE FOR DISCIPLINE

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

67. Respondent Ayach's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed in a material respect to comply with provisions of California Code of Regulations, title 16, as follows:

- a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an electronic smog certificate of compliance for Pleasant's 1984 Ford Mustang.
- b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test Pleasants' 1984 Ford Mustang in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.
- c. **Section 3340.42**: Respondent failed to conduct the required smog tests on Pleasants' 1984 Ford Mustang in accordance with the Bureau's specifications.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

68. Respondent Ayach's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an electronic smog certificate of compliance for Pleasants' 1984 Ford Mustang without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 UNDERCOVER-VIDEO SURVEILLANCE OPERATION #3: 1990 HONDA ACCORD

2 69. On September 13, 2006, an undercover operator with the Bureau, using the
3 fictitious name "Tran Nguyen" (hereinafter "operator"), took the Bureau's 1990 Honda Accord
4 to Respondent Sunland's facility and requested a smog inspection and a brake and lamp
5 inspection. The ignition timing on the Bureau-documented vehicle was not adjusted to
6 manufacturer's specifications, the front disc brake pads needed replacement, the inside diameters
7 of the rear brake drums were machined beyond the manufacturer's discard specifications,
8 requiring the replacement of the brake drums, the left headlamp was mis-adjusted, and defective
9 light bulbs had been installed in the two rear license plate lights, preventing the license plate
10 lights from operating. The operator signed and received a copy of a written estimate, totaling
11 \$109.99, for the inspections, then left the facility.

12 70. At approximately 1205 hours that same day, the operator received a
13 telephone call from a person who identified himself as "Moe". Moe told the operator that the
14 ignition timing on the vehicle needed adjustment and the front brake pads and front rotors needed
15 replacement. Moe gave the operator a revised estimate price of \$377.99 for the repairs, which
16 the operator authorized. The operator told Moe that he wanted the replaced parts returned to
17 him. After the inspections and repairs were completed, the operator paid the facility \$375.99,
18 was given the old brake pads and rotors, and received copies of various documents, including
19 Invoice Number 001254, Certificate of Brake Adjustment Number BC 313355, and Certificate of
20 Lamp Adjustment Number LC 303865. The certificates were signed by Respondent Garcia.

21 71. On September 25, 2006, a representative of the Bureau inspected the
22 vehicle and found that the rear brake drums had not been replaced, the front brake rotors had
23 been unnecessarily replaced, the left rear wheel had not been removed from the vehicle, the
24 headlamps had not been adjusted, and the defective license plate light bulbs had not been
25 replaced.

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1 THIRTY-FOURTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 73. Respondent Sunland's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
5 acts which constitute fraud, as follows:

6 a. Respondent's employee, Moe, made a false or misleading statement to the
7 operator regarding the condition of the brake system on the Bureau's 1990 Honda Accord, as set
8 forth in subparagraph 72 (a) above, in order to induce the operator to purchase an unnecessary
9 repair on the vehicle, then sold the operator an unnecessary repair, the replacement of the front
10 brake rotors.

11 b. Respondent charged and obtained payment from the operator for
12 performing the applicable inspections, adjustments, or repairs of the brake and lighting systems
13 on the Bureau's 1990 Honda Accord as specified by the Bureau and in accordance with the
14 Vehicle Code. In fact, Respondent failed to perform the necessary inspections, adjustments, and
15 repairs in compliance with Bureau Regulations or the Vehicle Code, as set forth in subparagraphs
16 72 (b) through (e) above.

17 THIRTY-FIFTH CAUSE FOR DISCIPLINE

18 (Failure to Comply with the Bus. & Prof. Code)

19 74. Respondent Sunland's registration is subject to disciplinary action
20 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a
21 material respect to comply with provisions of that Code, as follows:

22 a. Section 9884.9, subdivision (a): Respondent Sunland documented on
23 Invoice Number 001254 that the operator had authorized a revised
24 estimate price of \$377.99 for the additional repairs on the Bureau's 1990
25 Honda Accord, but failed to specify the parts and/or labor that were
26 authorized on the vehicle.

27 b. Section 9889.16: Respondent Sunland's technician, Respondent Garcia,
28 issued Brake Certificate Number BC 313355 and Lamp Certificate

1 Number LC 303865 as to the Bureau's 1990 Honda Accord when the
2 vehicle was not in compliance with Bureau Regulations or the
3 requirements of the Vehicle Code.

- 4 c. **Section 9889.22:** Respondent Sunland's technician, Respondent Garcia,
5 willfully made false statements or entries on Brake Certificate Number
6 BC 313355 and Lamp Certificate Number LC 303865, as set forth in
7 subparagraphs 72 (b) through (e) above.

8 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

9 **(Violations of Regulations)**

10 75. Respondent Sunland's registration is subject to disciplinary action
11 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a
12 material respect to comply with provisions of California Code of Regulations, title 16, as
13 follows:

- 14 a. **Section 3305, subdivision (a):** Respondent Sunland's technician,
15 Respondent Garcia, failed to perform the inspection of the brake system
16 and inspection and adjustment of the lamp system on the Bureau's 1990
17 Honda Accord in accordance with the specifications, instructions, and
18 directives issued by the Bureau and the vehicle manufacturer.
- 19 b. **Section 3316, subdivision (d)(2):** Respondent Sunland's technician,
20 Respondent Garcia, issued Lamp Certificate Number LC 303865 as to the
21 Bureau's 1990 Honda Accord when all of the lamps, lighting equipment,
22 and/or related electrical systems on the vehicle had not been inspected,
23 adjusted, or repaired and were not in compliance with Bureau regulations,
24 as set forth in subparagraphs 72 (d) and (e) above.
- 25 c. **Section 3321, subdivision (c)(2):** Respondent Sunland's technician,
26 Respondent Garcia, issued Brake Certificate Number BC 313355 as to the
27 Bureau's 1990 Honda Accord when the entire brake system on the

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1 vehicle had not been tested or inspected, as set forth in subparagraph 72
2 (b) above.

3 d. **Section 3356, subdivision (a):** Respondent failed to show its registration
4 number on Invoice Number 001254. Further, Respondent failed to show
5 its complete business name (Respondent's business name was shown as
6 "Service Station").

7 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**
8 **(Failure to Comply with the Bus. & Prof. Code)**

9 76. Respondent Sunland's official brake and lamp station licenses are subject
10 to disciplinary action pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3,
11 subdivision (h), in that Respondent violated the provisions of Bus. & Prof. Code sections
12 9889.16 and 9889.22 relating to Respondent's licensed activities, as set forth in paragraph 74
13 above.

14 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**
15 **(Failure to Comply with Regulations)**

16 77. Respondent Sunland's official brake and lamp station licenses are subject
17 to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that
18 Respondent failed to comply with the provisions of California Code of Regulations, title 16,
19 sections 3305, subdivision (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and 3356,
20 subdivision (a), as set forth in paragraph 75 above.

21 **THIRTY-NINTH CAUSE FOR DISCIPLINE**
22 **(Dishonesty, Fraud, or Deceit)**

23 78. Respondent Sunland's official brake and lamp station licenses are subject
24 to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that
25 Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured,
26 as set forth in paragraph 73 above.

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1 **FORTIETH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Code)**

3 79. Respondent Garcia's brake and lamp adjuster licenses are subject to
4 disciplinary action pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3,
5 subdivision (h), in that he violated the provisions of Bus. & Prof. Code sections 9889.16 and
6 9889.22 relating to his licensed activities, as set forth in subparagraphs 74 (b) and (c) above.

7 **FORTY-FIRST CAUSE FOR DISCIPLINE**

8 **(Violations of Regulations)**

9 80. Respondent Garcia's brake and lamp adjuster licenses are subject to
10 disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he
11 failed to comply with the provisions of California Code of Regulations, title 16, sections 3305,
12 subdivision (a), 3316, subdivision (d)(2), and Section 3321, subdivision (c)(2), as set forth in
13 subparagraphs 75 (a) through (c) above.

14 **OTHER MATTERS**

15 81. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
16 Director may refuse to validate, or may invalidate temporarily or permanently, the registrations
17 for all places of business operated in this state by Respondent Sunland Valero Service Station
18 upon a finding that said Respondent has, or is, engaged in a course of repeated and willful
19 violations of the laws and regulations pertaining to an automotive repair dealer.

20 82. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station
21 License Number RM 186717, issued to Respondent Sunland Valero Service Station, is revoked
22 or suspended, any additional license issued under this chapter in the name of said licensee may
23 be likewise revoked or suspended by the Director.

24 83. Pursuant to Bus. & Prof. Code section 9889.9, if Official Brake Station
25 License Number BM 186717, issued to Respondent Sunland Valero Service Station, is revoked
26 or suspended, any additional license issued under this chapter in the name of said licensee may
27 be likewise revoked or suspended by the Director.

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1 5. Revoking or suspending Official Brake Station License Number
2 BM 186717, issued to Sunland Valero Service Station;

3 6. Revoking or suspending Official Lamp Station License Number
4 LM 186717, issued to Sunland Valero Service Station;

5 7. Revoking or suspending any additional license issued under Articles
6 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Sunland Valero
7 Service Station;

8 8. Revoking or suspending Advanced Emission Specialist Technician
9 License Number EA 141957, issued to Moe H. Ayach,

10 9. Revoking or suspending any additional license issued under Chapter 5 of
11 the Health and Safety Code in the name of Moe H. Ayach;

12 10. Revoking or suspending Brake Adjuster License Number JC 101697,
13 issued to Jose G. Garcia;

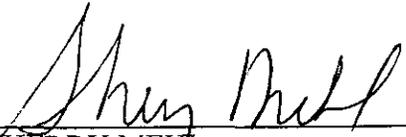
14 11. Revoking or suspending Lamp Adjuster License Number RY 101697,
15 issued to Jose G. Garcia;

16 12. Revoking or suspending any additional license issued under Articles
17 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Jose G. Garcia;

18 13. Ordering Respondents Sunland Valero Service Station, Moe H. Ayach,
19 and Jose G. Garcia, to pay the Director of Consumer Affairs the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3;

22 14. Taking such other and further action as deemed necessary and proper.

23 DATED: 3/25/08

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25 
26 SHERRY MEHL
27 Chief, Bureau of Automotive Repair
28 Department of Consumer Affairs
State of California
Complainant