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

12 In the Matter of the Accusation Against:

Case No. 79/10-18

13 **CEBU PRIDE, INC.,**
14 **dba MISSION VALLEY ARCO**
15 **JOSEPH N. CUASITO, PRESIDENT**
16 **DEBORAH B. CUASITO, SECRETARY**
17 **ELIZAR Z. RAMAS, TREASURER**
18 **40077 Mission Blvd.**
19 **Fremont, California 94539**

A C C U S A T I O N
(Smog Check)

20 **Automotive Repair Dealer Reg. No. ARD 226207**
21 **Smog Check Station License No. RC 226207**

22 Respondent.

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about March 17, 2003, the Director of Consumer Affairs ("Director") issued
28 Automotive Repair Dealer Registration Number ARD 226207 to CEBU Pride, Inc.

("Respondent"), doing business as Mission Valley Arco, with Joseph N. Cuasito as president,
Deborah B. Cuasito as secretary, and Elizar Z. Ramas as treasurer. Respondent's automotive

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1 repair dealer registration was in full force and effect at all times relevant to the charges brought
2 herein and will expire on February 28, 2010, unless renewed.

3 3. On or about March 20, 2003, the Director issued Smog Check Station License
4 Number RC 226207 to Respondent. Respondent's smog check station license was in full force
5 and effect at all times relevant to the charges brought herein and will expire on February 28,
6 2010, unless renewed.

7 4. On April 10, 2003, Mission Valley Arco was certified as a Gold Shield station. On
8 August 13, 2008, the Gold Shield certification was invalidated, as set forth in subparagraph 21 (a)
9 below.

10 **JURISDICTION**

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

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

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

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

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

2 12. Health & Saf. Code section 44072.8 states that when a license has been revoked or
3 suspended following a hearing under this article, any additional license issued under this chapter
4 in the name of the licensee may be likewise revoked or suspended by the director.

5 **COST RECOVERY**

6 13. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
7 the administrative law judge to direct a licensee found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case.

10 **UNDERCOVER OPERATION: 1992 OLDSMOBILE BRAVADA**

11 14. On October 28, 2008, an undercover operator with the Bureau, using the alias
12 "Katherine Storm" (hereinafter "operator"), took the Bureau's 1992 Oldsmobile Bravada to
13 Respondent's facility and requested a smog inspection. A defective exhaust gas recirculation
14 ("EGR") valve and a blockage plate had been installed in the Bureau-documented vehicle,
15 preventing the EGR system from operating. The operator signed and received a copy of a written
16 estimate for the inspection. After the inspection was completed, the operator paid the facility
17 \$47.25 and received copies of an invoice and a vehicle inspection report. During the undercover
18 operation, a representative of the Bureau observed a Gold Shield banner hung above the entrance
19 of the service bay. That same day, electronic smog Certificate of Compliance #NE562318C was
20 issued for the vehicle.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 15. Respondent's automotive repair dealer registration is subject to disciplinary action
24 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
25 authorized statements which it knew or in the exercise of reasonable care should have known to
26 be untrue or misleading, as follows:

27 a. Respondent certified that the Bureau's 1992 Oldsmobile Bravada had passed the
28 inspection and was in compliance with applicable laws and regulations. In fact, a defective EGR

1 valve and a blockage plate had been installed in the vehicle, preventing the EGR system from
2 operating. As such, the vehicle would not pass the inspection required by Health & Saf. Code
3 section 44012.

4 b. Respondent represented on the written estimate and invoice that its business name
5 was "Smogpros" (estimate) and "Arco Smogpros Mission Valley Arco" (invoice) when, in fact,
6 Respondent's business name as registered with the Bureau is Mission Valley Arco.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 16. Respondent's automotive repair dealer registration is subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
11 an act which constitutes fraud by issuing an electronic smog certificate of compliance for the
12 Bureau's 1992 Oldsmobile Bravada without performing a bona fide inspection of the emission
13 control devices and systems on the vehicle, thereby depriving the People of the State of California
14 of the protection afforded by the Motor Vehicle Inspection Program.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(False Advertising)**

17 17. Respondent's automotive repair dealer registration is subject to disciplinary action
18 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
19 comply with provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3373:** Respondent published, uttered, or made, or caused to be published,
21 uttered, or made false or misleading statements or advertising which it knew or in the exercise of
22 reasonable care should have known to be false or misleading, as follows: Respondent displayed a
23 an advertisement or banner at its facility indicating that it was a Gold Shield station when, in fact,
24 the facility's Gold Shield certification was invalidated on August 13, 2008, as set forth in
25 subparagraph 21 (a) below.

26 b. **Section 3356, subdivision (a)(1):** Respondent failed to show its correct business
27 name on the invoice, as set forth in subparagraph 15 (b) above.

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1 compliance for the Bureau's 1992 Oldsmobile Bravada without performing a bona fide inspection
2 of the emission control devices and systems on the vehicle, thereby depriving the People of the
3 State of California of the protection afforded by the Motor Vehicle Inspection Program.

4 DISCIPLINE CONSIDERATIONS

5 21. To determine the degree of discipline, if any, to be imposed on Respondent,
6 Complainant alleges as follows:

7 a. On or about November 19, 2007, the Bureau issued Citation No. C08-0495 against
8 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
9 perform a visual/functional check of emission control devices according to procedures prescribed
10 by the department), and California Code of Regulations, title 16, section ("Regulation") 3340.35,
11 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
12 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a
13 tampered emission control system (AS/PAIR system). The Bureau assessed civil penalties
14 totaling \$500 against Respondent for the violations. The Bureau also invalidated Mission Valley
15 Arco's Gold Shield certificate, prohibiting the facility from operating as a certified Gold Shield
16 station and Consumer Assistance Program station. Respondent appealed the citation; however, it
17 was affirmed on November 25, 2008. Respondent complied with the citation on January 13,
18 2009.

19 b. On or about April 2, 2008, the Bureau issued Citation No. C08-0873 against
20 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
21 determine that emission control devices and systems required by State and Federal law are
22 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,
23 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
24 Respondent had issued a certificate of compliance to a Bureau undercover vehicle that had a
25 tampered emission control system (thermostatic air cleaner or TAC, also known as an ACL
26 system). The Bureau assessed civil penalties totaling \$1,000 against Respondent for the
27 violations. Respondent appealed the citation and pursuant to a settlement agreement, the citation
28 became final on January 29, 2009. Respondent complied with the citation on February 6, 2009.

1 c. On or about September 11, 2008, the Bureau issued Citation No. C09-0228 against
2 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
3 determine that emission control devices and systems required by State and Federal law are
4 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,
5 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
6 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with the
7 ignition timing adjusted beyond specifications. The Bureau assessed civil penalties totaling
8 \$2,000 against Respondent for the violations. Respondent appealed the citation and pursuant to a
9 settlement agreement, the citation became final on January 29, 2009. Respondent complied with
10 the citation on February 23, 2009.

11 OTHER MATTERS

12 22. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
13 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
14 business operated in this state by Respondent CEBU Pride, Inc., doing business as Mission
15 Valley Arco, upon a finding that said Respondent has, or is, engaged in a course of repeated and
16 willful violations of the laws and regulations pertaining to an automotive repair dealer.

17 23. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
18 Number RC 226207, issued to Respondent CEBU Pride, Inc., doing business as Mission Valley
19 Arco, is revoked or suspended, any additional license issued under this chapter in the name of
20 said licensee may be likewise revoked or suspended by the director.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Director of Consumer Affairs issue a decision:

24 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
25 Number ARD 226207, issued to CEBU Pride, Inc., doing business as Mission Valley Arco;

26 2. Temporarily or permanently invalidating any other automotive repair dealer
27 registration issued to CEBU Pride, Inc.;

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3. Revoking or suspending Smog Check Station License Number RC 226207, issued to CEBU Pride, Inc., doing business as Mission Valley Arco;

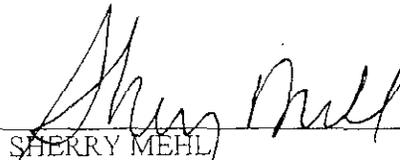
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of CEBU Pride, Inc.;

5. Ordering Respondent CEBU Pride, Inc., doing business as Mission Valley Arco, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

9/25/09



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant