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

79/11-49

12 In the Matter of the Accusation Against:

Case No.

13 **CALIFORNIA FINEST OIL,**
14 **dba NORTH PARK 76**
15 **RAAD Y. ATTISHA, PRESIDENT**
16 **3154 El Cajon Boulevard**
San Diego, CA 92104
17 **Automotive Repair Dealer Reg. No. ARD 228130**
Smog Check Station License No. RC 228130

A C C U S A T I O N

(Smog Check)

18 **and**

19 **JOSE MANUEL SALAZAR**
20 **2063 Crystal Clear Drive**
Spring Valley, CA 91978
21 **Advanced Emission Specialist Technician**
License No. EA 030584

22 Respondents.

23 Complainant alleges:

24 **PARTIES**

25 I. 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.

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

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

5 (a) The director, where the automotive repair dealer cannot show there
6 was a bona fide error, may deny, suspend, revoke, or place on probation the
7 registration of an automotive repair dealer for any of the following acts or omissions
8 related to the conduct of the business of the automotive repair dealer, which are done
9 by the automotive repair dealer or any automotive technician, employee, partner,
10 officer, or member of the automotive repair dealer.

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

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15 (3) Failing or refusing to give to a customer a copy of any document
16 requiring his or her signature, as soon as the customer signs the document.

17 (4) Any other conduct which constitutes fraud.

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

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

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

9. Bus. & Prof. Code section 9884.8 states:

All work done by an automotive repair dealer, including all warranty
work, shall be recorded on an invoice and shall describe all service work done and
parts supplied. Service work and parts shall be listed separately on the invoice, which
shall also state separately the subtotal prices for service work and for parts, not
including sales tax, and shall state separately the sales tax, 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, that invoice shall clearly state that fact. The invoice shall include
a statement indicating whether any crash parts are original equipment manufacturer

1 crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
2 of the invoice shall be given to the customer and one copy shall be retained by the
3 automotive repair dealer.

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

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

20 12. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
21 "bureau," "commission," "committee," "department," "division," "examining committee,"
22 "program," and "agency." "License" includes certificate, registration or other means to engage in
23 a business or profession regulated by the Bus. & Prof. Code.

24 13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

28 (a) Violates any section of this chapter [the Motor Vehicle Inspection
Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted
pursuant to it, which related to the licensed activities.

....

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

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

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1 14. Health & Saf. Code section 44072.10 states, in pertinent part:

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3 (c) The department shall revoke the license of any smog check technician
4 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
5 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
6 the following:

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7 (4) Intentional or willful violation of this chapter or any regulation,
8 standard, or procedure of the department implementing this chapter . . .

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

11 **COST RECOVERY**

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

16 **VIDEOTAPED UNDERCOVER OPERATION #1: 1979 BUICK LE SABRE**

17 17. On September 8, 2009, an undercover operator with the Bureau (hereinafter
18 "operator") took the Bureau's 1979 Buick Le Sabre to Respondent California Finest Oil's facility.
19 The internal components of the carburetor on the Bureau-documented vehicle had been
20 misadjusted, causing the vehicle to fail the California Smog Check Vehicle Inspection due to
21 excessive tailpipe emissions. The operator met with Respondent Salazar and requested a smog
22 inspection to complete the transfer of ownership of the vehicle. The operator told Salazar that a
23 friend had informed him that "Jose" could help him and showed Salazar a DMV Report of
24 Deposit of Fees for the vehicle. Salazar performed the smog inspection then told the operator that
25 the vehicle needed an adjustment. The operator asked Salazar how much it would cost to perform
26 the adjustment and pass the vehicle. Salazar told the operator that the cost was \$200, which the
27 operator approved. Salazar had the operator sign a work order, but did not provide him with a
28 copy. The operator left the facility at approximately 1205 hours.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Copy of Signed Document)

22. Respondent California Finest Oil's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent California Finest Oil's technician, Respondent Salazar, failed to provide the operator with a copy of the work order, as set forth above.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

23. Respondent California Finest Oil's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1979 Buick Le Sabre without ensuring that a bona fide inspection was performed 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.

FOURTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

24. Respondent California Finest Oil's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows: Respondent failed to diagnose and repair the defect in the emission control system on the Bureau's 1979 Buick Le Sabre; i.e., the internal components of the carburetor which had been misadjusted.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 25. Respondent California Finest Oil's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
5 comply with provisions of that Code in the following material respects:

6 a. **Section 9884.8:** Respondent California Finest Oil's technician, Respondent Salazar,
7 failed to provide the operator with an invoice for all service work performed and/or parts supplied
8 on the Bureau's 1979 Buick Le Sabre.

9 b. **Section 9884.9, subdivision (a):** Respondent California Finest Oil's technician,
10 Respondent Salazar, failed to provide the operator with a written estimate for the smog inspection
11 on the Bureau's 1979 Buick Le Sabre. Further, Salazar failed to obtain the operator's
12 authorization for the smog inspection in that Salazar failed to have the operator sign a work order.

13 **SIXTH CAUSE FOR DISCIPLINE**

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

15 26. Respondent California Finest Oil's smog check station license is subject to
16 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
17 Respondent failed to comply with provisions of that Code, as follows:

18 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
19 performed on the Bureau's 1979 Buick Le Sabre in accordance with procedures prescribed by the
20 department.

21 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
22 the Bureau's 1979 Buick Le Sabre without properly testing and inspecting the vehicle to
23 determine if it was in compliance with Health & Saf. Code section 44012.

24 c. **Section 44016:** Respondent failed to diagnose and repair the Bureau's 1979 Buick Le
25 Sabre in accordance with established specifications and procedures, as set forth in paragraph 24
26 above.

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1 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
2 issuing an electronic smog certificate of compliance for the Bureau's 1979 Buick Le Sabre
3 without ensuring that a bona fide inspection was performed of the emission control devices and
4 systems on the vehicle, thereby depriving the People of the State of California of the protection
5 afforded by the Motor Vehicle Inspection Program.

6 **NINTH CAUSE FOR DISCIPLINE**

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

8 29. Respondent Salazar's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
10 provisions of that Code, as follows:

11 a. **Section 44012:** Respondent failed to perform the emission control tests on the
12 Bureau's 1979 Buick Le Sabre in accordance with procedures prescribed by the department.

13 b. **Section 44016:** Respondent failed to diagnose and repair the Bureau's 1979 Buick Le
14 Sabre in accordance with established specifications and procedures, as set forth in paragraph 24
15 above.

16 c. **Section 44059:** Respondent willfully made false entries on the VIR, as set forth in
17 paragraph 21 above.

18 **TENTH CAUSE FOR DISCIPLINE**

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

21 30. Respondent Salazar's technician license is subject to disciplinary action pursuant to
22 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
23 provisions of California Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
25 electronic smog certificate of compliance for the Bureau's 1979 Buick Le Sabre.

26 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
27 1979 Buick Le Sabre in accordance with Health & Saf. Code sections 44012 and 44035, and
28 California Code of Regulations, title 16, section 3340.42.

1 c. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS
2 by entering data indicating that the Bureau's 1979 Buick Le Sabre had passed the functional
3 ignition timing test and functional fuel evaporative test. In fact, Salazar had not performed those
4 tests on the vehicle.

5 d. **Section 3340.41, subdivision (d)**: Respondent failed to follow applicable
6 specifications and procedures when diagnosing and repairing the Bureau's 1979 Buick Le Sabre,
7 as set forth in paragraph 24 above.

8 e. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
9 Bureau's 1979 Buick Le Sabre in accordance with the Bureau's specifications.

10 **ELEVENTH CAUSE FOR DISCIPLINE**

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

12 31. Respondent Salazar's technician license is subject to disciplinary action pursuant to
13 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
14 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
15 compliance for the Bureau's 1979 Buick Le Sabre without performing a bona fide inspection of
16 the emission control devices and systems on the vehicle, thereby depriving the People of the State
17 of California of the protection afforded by the Motor Vehicle Inspection Program.

18 **VIDEOTAPED UNDERCOVER OPERATION #2: 1993 MAZDA PROTÉGÉ**

19 32. On October 22, 2009, an undercover operator with the Bureau (hereinafter
20 "operator") took the Bureau's 1993 Mazda Protégé to Respondent California Finest Oil's facility.
21 The airflow meter on the Bureau-documented vehicle was altered or misadjusted and an opening
22 had been created in the oxygen sensor wire near the connector, causing the vehicle to fail the
23 California Smog Check Vehicle Inspection due to excessive tailpipe emissions. Also, the MIL
24 (malfunction indicator light) bulb had been disabled, preventing the MIL from operating. The
25 operator met with Respondent Salazar and requested a smog inspection to complete the transfer
26 of ownership of the vehicle. The operator told Salazar that a friend had informed him that "Jose"
27 could help him and gave Salazar a DMV Report of Deposit of Fees for the vehicle. Salazar
28 performed the smog inspection then told the operator that the vehicle failed because it was

1 wasting a lot of gas. The operator asked Salazar how much it would cost to get the vehicle to
2 pass smog. Salazar told the operator that he needed to perform a diagnosis on the vehicle for \$40.
3 Salazar had the operator sign a work order, but did not provide him with a copy. The operator left
4 the facility at approximately 1134 hours.

5 33. At approximately 1400 hours, Salazar called the operator and told him that the
6 diagnosis was completed. Salazar stated that the vehicle needed several repairs in order to pass
7 the smog test and that the repairs cost \$400. The operator told Salazar that he had charged his
8 friend only \$200 for his car to pass smog. Salazar reduced the repair costs to \$350. The operator
9 authorized Salazar to proceed with the work. Salazar told the operator that he would take the
10 vehicle to a test only station after the repairs were completed.

11 34. On October 23, 2009, the operator returned to the facility. An employee named
12 "Roberto" told the operator that Salazar went to pick up the vehicle from the test only station.
13 Later, the operator observed Salazar driving a Chevrolet Cavalier into the facility and an
14 unidentified person driving the Bureau's vehicle. Salazar told the operator that the vehicle was
15 ready. The operator asked Salazar to describe on the invoice the repairs that were performed on
16 the vehicle. While Salazar was preparing the invoice, the operator observed that Roberto had
17 opened the hood of the vehicle and was doing something in the engine compartment. The
18 operator paid the cashier \$350 in cash and received copies of the final invoice and three VIR's,
19 two VIR's from North Park 76 and one VIR from El Cajon Test Only Center (the operator was
20 also given the DMV Report of Deposit of Fees). The initial VIR from North Park 76 stated that
21 the vehicle failed the smog inspection as a gross polluter. The second VIR from North Park 76
22 stated that the vehicle passed all portions of the smog test, but that a certificate of compliance
23 could only be issued by a test only facility since the vehicle was identified as a gross polluter.
24 The VIR from El Cajon Test Only Center stated that the vehicle passed the inspection, resulting
25 in the issuance of a certificate of compliance.

26 35. The Bureau's VID data showed that on October 22, 2009, between 1534 and 1548
27 hours, Salazar performed the second smog inspection on the vehicle, which the vehicle passed,
28 and that Salazar had replaced the spark plugs, spark plug wires, distributor cap, and ignition rotor

1 on the vehicle. The VID data also showed that on October 22, 2009, between 16:40 and 17:12
2 hours, technician Kristian Diaz had performed a smog inspection on the vehicle at El Cajon Test
3 Only Center, resulting in the issuance of an electronic smog certificate of compliance, No.
4 WD672594.

5 36. On October 28, 2009, the Bureau performed smog inspections on the vehicle, a
6 "loaded mode" type (ASM) test and a Two Speed Idle test. The vehicle failed the functional
7 check of the MIL during both inspections because the MIL bulb was still disabled. The vehicle
8 failed the ASM test due to excessive tailpipe emissions. The Bureau inspected the vehicle and
9 observed that the open circuit in the oxygen sensor wire near the connector had been repaired,
10 although that repair had not been recorded on the invoice. The Bureau also found that the air
11 flow meter had not been disturbed, indicating that the emission control component had not been
12 adjusted or replaced, that unnecessary repairs were performed on the vehicle, and that certain
13 repairs were not performed to accepted trade standards.

14 37. The video tape of the undercover operation revealed that Salazar failed to conduct the
15 required functional ignition timing test during both of his smog inspections on the vehicle and
16 that the spark plug wires were replaced on the vehicle *after* the electronic smog certificate of
17 compliance was issued.

18 **TWELFTH CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 38. Respondent California Finest Oil's registration is subject to disciplinary action
21 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
22 authorized statements which it knew or in the exercise of reasonable care should have known to
23 be untrue or misleading, as follows:

24 a. Respondent California Finest Oil's technician, Respondent Salazar, certified under
25 penalty of perjury on both VIR's issued by North Park 76 that he performed the smog inspections
26 on the Bureau's 1993 Mazda Protégé in accordance with all Bureau requirements. In fact, Salazar
27 failed to conduct the functional ignition timing test during both inspections on the vehicle.

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1 b. Respondent California Finest Oil's technician, Respondent Salazar, certified under
2 penalty of perjury on the second VIR issued by North Park 76 that the Bureau's 1993 Mazda
3 Protégé had passed the inspection and was in compliance with applicable laws and regulations.
4 In fact, the airflow meter on the vehicle was altered or misadjusted and the MIL bulb had been
5 disabled, preventing the MIL from operating. As such, the vehicle would not pass the inspection
6 required by Health & Saf. Code section 44012.

7 c. Respondent represented on the invoice that the check engine light (MIL) on the
8 Bureau's 1993 Mazda Protégé had a blown fuse and that the MIL had been repaired. In fact, the
9 MIL fuse was intact at the time the Bureau inspected the vehicle on October 28, 2009. Further,
10 the defect in the MIL had not been diagnosed and repaired in that the MIL bulb was still disabled,
11 preventing the MIL from operating.

12 d. Respondent represented on the invoice that the oxygen sensor on the Bureau's 1993
13 Mazda Protégé was defective. In fact, the oxygen sensor was in good condition and was not in
14 need of replacement.

15 e. Respondent represented on the invoice that the distributor cap and ignition rotor on
16 the Bureau's 1993 Mazda Protégé were defective. In fact, the distributor cap and ignition rotor
17 were in good condition and were not in need of replacement.

18 f. Respondent represented on the invoice that the spark plugs and spark plug wires
19 should be replaced on the Bureau's 1993 Mazda Protégé. In fact, the spark plugs and spark plug
20 wires on the vehicle were in good condition and were not in need of replacement. Further, the
21 spark plug wires were replaced on the vehicle *after* it had already passed the smog inspection and
22 the electronic smog certificate of compliance had been issued.

THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Copy of Signed Document)

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25 39. Respondent California Finest Oil's registration is subject to disciplinary action
26 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent California
27 Finest Oil's technician, Respondent Salazar, failed to provide the operator with a copy of the work
28 order, as set forth above.

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 40. Respondent California Finest Oil's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
5 an act that constitutes fraud, as follows: Respondent obtained payment from the operator for
6 repairing a blown fuse in the MIL on the Bureau's 1993 Mazda Protégé. In fact, the MIL fuse
7 was intact at the time the Bureau inspected the vehicle on October 28, 2009.

8 **FIFTEENTH CAUSE FOR DISCIPLINE**

9 **(Departure from Trade Standards)**

10 41. Respondent California Finest Oil's registration is subject to disciplinary action
11 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully
12 departed from or disregarded accepted trade standards for good and workmanlike repair without
13 the consent of the owner or the owner's duly authorized representative in the following material
14 respects:

15 a. Respondent replaced the spark plugs, spark plug wires, distributor cap, ignition rotor,
16 and oxygen sensor on the Bureau's 1993 Mazda Protégé when, in fact, those parts were in good
17 condition and were not in need of replacement. Further, the only repairs needed on the vehicle
18 were the repair of the open wire in the oxygen sensor circuit, the replacement of the MIL bulb,
19 and the replacement or re-adjustment of the airflow meter.

20 b. Respondent failed to tighten the new oxygen sensor on the Bureau's 1993 Mazda
21 Protégé to Mazda's specification of 22 to 36 foot pounds.

22 c. Respondent failed to properly repair the open circuit in the oxygen sensor wire near
23 the connector on the Bureau's 1993 Mazda Protégé in that Respondent used a standard crimp
24 splice type of connector that was not watertight rather than the factory locking watertight
25 connector that was originally in place on the vehicle.

26 d. Respondent installed new spark plugs on the Bureau's 1993 Mazda Protégé that were
27 one range higher in heat range than the spark plugs which were originally in place on the vehicle.

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1 e. Respondent failed to diagnose and repair all of the defects in the emission control
2 components on the Bureau's 1993 Mazda Protégé in that the airflow meter was still altered or
3 misadjusted and the MIL bulb was still disabled at the time the Bureau inspected the vehicle on
4 October 28, 2009.

5 **SIXTEENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Provisions of the Bus. & Prof. Code)**

7 42. Respondent California Finest Oil's registration is subject to disciplinary action
8 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
9 comply with provisions of that Code in the following material respects:

10 a. **Section 9884.8:** Respondent California Finest Oil's technician, Respondent Salazar,
11 failed to record on the invoice the diagnostic work that was performed on the Bureau's 1993
12 Mazda Protégé as well as the repair of the open circuit in the oxygen sensor wire near the
13 connector.

14 b. **Section 9884.9, subdivision (a):** Respondent California Finest Oil's technician,
15 Respondent Salazar, failed to provide the operator with a written estimate for the smog inspection
16 on the Bureau's 1993 Mazda Protégé. Further, Salazar failed to obtain the operator's authorization
17 for the smog inspection in that Salazar failed to have the operator sign a work order.

18 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

20 43. Respondent California Finest Oil's smog check station license is subject to
21 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
22 Respondent failed to comply with provisions of that Code, as follows:

23 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
24 performed on the Bureau's 1993 Mazda Protégé in accordance with procedures prescribed by the
25 department.

26 b. **Section 44016:** Respondent failed to diagnose and repair the Bureau's 1993 Mazda
27 Protégé in accordance with established specifications and procedures, as set forth in paragraph 41
28 above.

1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

4 44. Respondent California Finest Oil's smog check station license is subject to
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
6 Respondent failed to comply with provisions of California Code of Regulations, title 16, as
7 follows:

8 a. **Section 3340.41, subdivision (c)**: Respondent California Finest Oil permitted its
9 smog check technician, Respondent Salazar, to enter false information into the EIS during both
10 smog inspections on the Bureau's 1993 Mazda Protégé by entering data indicating that the vehicle
11 had passed the functional ignition timing test. In fact, Salazar had not performed that test on the
12 vehicle. Further, Salazar entered data during the second smog inspection indicating that the
13 vehicle had passed the functional MIL test when, in fact, the MIL bulb had been disabled,
14 preventing the MIL from operating.

15 b. **Section 3340.41, subdivision (d)**: Respondent California Finest Oil failed to follow
16 applicable specifications and procedures when diagnosing and repairing the Bureau's 1993 Mazda
17 Protégé, as set forth in paragraph 41 above.

18 c. **Section 3340.42**: Respondent California Finest Oil failed to ensure that the required
19 smog tests were conducted on the Bureau's 1993 Mazda Protégé in accordance with the Bureau's
20 specifications.

21 **NINETEENTH CAUSE FOR DISCIPLINE**

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

23 45. Respondent California Finest Oil's smog check station license is subject to
24 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
25 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set
26 forth in paragraph 40 above.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

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

3 46. Respondent Salazar's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
5 provisions of that Code, as follows:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the
7 Bureau's 1993 Mazda Protégé in accordance with procedures prescribed by the department.

8 b. **Section 44016:** Respondent failed to diagnose and repair the Bureau's 1993 Mazda
9 Protégé in accordance with established specifications and procedures, as set forth in paragraph 41
10 above.

11 c. **Section 44059:** Respondent willfully made false entries on the VIR's, as set forth in
12 subparagraphs 38 (a) and (b) above.

13 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

16 47. Respondent Salazar's technician license is subject to disciplinary action pursuant to
17 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
18 provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
20 1993 Mazda Protégé in accordance with Health & Saf. Code sections 44012 and 44035, and
21 California Code of Regulations, title 16, section 3340.42.

22 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
23 during both smog inspections on the Bureau's 1993 Mazda Protégé by entering data indicating
24 that the vehicle had passed the functional ignition timing test. In fact, Respondent had not
25 performed that test on the vehicle. Further, Respondent entered data during the second smog
26 inspection indicating that the vehicle had passed the functional MIL test when, in fact, the MIL
27 bulb had been disabled, preventing the MIL from operating.

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1 c. **Section 3340.41, subdivision (d)**: Respondent failed to follow applicable
2 specifications and procedures when diagnosing and repairing the Bureau's 1993 Mazda Protégé,
3 as set forth in paragraph 41 above.

4 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
5 Bureau's 1993 Mazda Protégé in accordance with the Bureau's specifications.

6 **OTHER MATTERS**

7 48. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
8 suspend, revoke, or place on probation the registration for all places of business operated in this
9 state by Respondent California Finest Oil, doing business as North Park 76, upon a finding that
10 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
11 regulations pertaining to an automotive repair dealer.

12 49. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
13 Number RC 228130, issued to Respondent California Finest Oil, doing business as North Park
14 76, is revoked or suspended, any additional license issued under this chapter in the name of said
15 licensee may be likewise revoked or suspended by the Director.

16 50. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
17 Technician License Number EA 030584, issued to Respondent Jose Manuel Salazar, is revoked
18 or suspended, any additional license issued under this chapter in the name of said licensee may be
19 likewise revoked or suspended by the Director.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 228130, issued to California Finest Oil, doing business as North Park 76;

25 2. Revoking or suspending any other automotive repair dealer registration issued to
26 California Finest Oil;

27 3. Revoking or suspending Smog Check Station License Number RC 228130, issued to
28 California Finest Oil, doing business as North Park 76;

1 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of California Finest Oil;

3 5. Revoking or suspending Advanced Emission Specialist Technician License Number
4 EA 030584, issued to Jose Manuel Salazar;

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

7 7. Ordering California Finest Oil, doing business as North Park 76, and Jose Manuel
8 Salazar to pay the Director of Consumer Affairs the reasonable costs of the investigation and
9 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

11
12 DATED: 12/15/10



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

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