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

11 In the Matter of the Accusation Against:

Case No. 79/12-44

12 **ACE SMOG CHECK TEST ONLY CENTER**
13 **AND OIL CHANGE**
14 **GARY Y. TSUJIUCHI, Owner**
15 **1501 E. Edinger Avenue**
16 **Santa Ana, California 92705**
17 **Automotive Repair Dealer Registration No. ARD**
236267
18 **Smog Check Test Only Station License Number**
19 **No. TC 236267**

A C C U S A T I O N

SMOG CHECK

20 **GARY Y. TSUJIUCHI**
21 **26286 Eva Street**
Laguna Hills, California 92656
22 **Advanced Emission Specialist Technician License**
No. EA 146148

Respondent.

23
24 Sherry Mehl ("Complainant") alleges:

25 **PARTIES**

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

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1 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates
2 more than one place of business in this state, the director pursuant to subdivision (a) shall
3 only refuse to validate, or shall only invalidate temporarily or permanently the registration
4 of the specific place of business which has violated any of the provisions of this chapter.
5 This violation, or action by the director, shall not affect in any manner the right of the
6 automotive repair dealer to operate his or her other places of business.

7 (c) Notwithstanding subdivision (b), the director may refuse to validate, or may
8 invalidate temporarily or permanently, the registration for all places of business operated in
9 this state by an automotive repair dealer upon a finding that the automotive repair dealer
10 has, or is, engaged in a course of repeated and willful violations of this chapter, or
11 regulations adopted pursuant to it.

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

16 7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
17 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
18 the Motor Vehicle Inspection Program.

19 8. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

9. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
expiration or suspension of a license by operation of law, or by order or decision of the
Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not
deprive the Director of jurisdiction to proceed with disciplinary action.

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SECOND CAUSE FOR DISCIPLINE

(Fraud)

14. Respondent's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that on or about January 28, 2011, he committed acts which constitute fraud by issuing electronic Certificate of Compliance No. WR661676 for the vehicle 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.

THIRD CAUSE FOR DISCIPLINE

(Failure to Provide a Copy of a Signed Document)

15. Respondent's registration is subject to discipline under Code section 9884.7, subdivision (a)(3), in that on or about January 28, 2011, Respondent failed to provide the operator with a copy of the estimate as soon as the operator signed the document.

FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

16. Respondent's station license is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about January 28, 2011, he failed to comply with the following sections of that Code:

a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of Compliance No. WR661676 for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 17. Respondent's station license is subject to discipline pursuant to Health & Safety
4 Code section 44072.2, subdivision (c), in that on or about January 28, 2011, he failed to comply
5 with provisions of California Code of Regulations, title 16, as follows:

6 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
7 Compliance No. WR661676 for the vehicle even though the vehicle had not been inspected in
8 accordance with section 3340.42.

9 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
10 vehicle in accordance with the Bureau's specifications.

11 **SIXTH CAUSE FOR DISCIPLINE**

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

13 18. Respondent's station license is subject to discipline pursuant to Health & Safety
14 Code section 44072.2, subdivision (d), in that on or about January 28, 2011, he committed
15 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate
16 of Compliance No. WR661676 for the vehicle without performing a bona fide inspection of the
17 emission control devices and systems on the vehicle, thereby depriving the People of the State of
18 California of the protection afforded by the Motor Vehicle Inspection Program.

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 19. Respondent's technician license is subject to discipline pursuant to Health and
22 Safety Code section 44072.2, subdivision (d), in that on or about January 28, 2011, he committed
23 acts involving dishonesty, fraud or deceit whereby another was injured, as set forth above in
24 paragraph 14.

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PRIOR DISCIPLINE

20. To determine the degree of discipline, if any, Complainant alleges the following:

a. On or about June 1, 2007, the Bureau issued Citation No. C07-0969 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent issued a certificate of compliance to a consumer vehicle that was missing the positive crankcase ventilation system. The Bureau assessed a civil penalty of \$1,000. Respondent complied with this citation on June 28, 2007.

b. On or about January 6, 2009, the Bureau issued Citation No. C09-0812 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent performed a low pressure fuel evaporative test on a consumer vehicle, utilizing the low pressure fuel evaporative tester's calibration tank instead of the fuel evaporative control system on the vehicle being tested and issued a certificate of compliance. The Bureau assessed a civil penalty of \$1,000. Respondent complied with this citation on February 19, 2009.

c. On or about August 10, 2010, the Bureau issued Citation No. C2011-0162 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of \$1,500. Respondent complied with this citation on September 16, 2010.

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1 d. On or about November 3, 2010, the Bureau issued Citation No. C2011-0576 to
2 Respondent against his registration and station licenses for violations of Health and Safety Code
3 section 44012(f) (failure to perform a visual/functional check of emission control devices
4 according to procedures prescribed by the department), and California Code of Regulations, title
5 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly
6 tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing fuel
7 evaporative canister. The Bureau assessed a civil penalty of \$2,500. Respondent complied with
8 this citation on December 30, 2010.

9 e. On or about June 1, 2007, the Bureau issued Citation No. M07-0970 to Respondent
10 against his technician license for violations of Health and Safety Code section 44032 (failure to
11 perform tests and inspections in accordance with Health and Safety Code section 44012), and
12 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
13 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
14 Regulations, title 16, section 3340.42). Respondent issued a certificate of compliance to a
15 consumer vehicle that was missing the positive crankcase ventilation system. Respondent was
16 required to attend a 16-hour training course. On or about July 3, 2007, Respondent completed the
17 required training course.

18 f. On or about January 6, 2009, the Bureau issued Citation No. M09-0813 to
19 Respondent against his technician license for violations of Health and Safety Code section 44032
20 (failure to perform tests and inspections in accordance with Health and Safety Code section
21 44012), and California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair
22 vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California
23 Code of Regulations, title 16, section 3340.42). Respondent issued a certificate of compliance to
24 a consumer vehicle, utilizing the low pressure fuel evaporative tester's calibration tank instead of
25 the fuel evaporative control system on the vehicle being tested and issued a certificate of
26 compliance. Respondent was required to attend a 16-hour training course. On or about
27 February 22, 2009, Respondent completed the required training course.

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1 g. On or about August 10, 2010, the Bureau issued Citation No. M2011-0163 to
2 Respondent against his technician license for violations of Health and Safety Code section 44032
3 (failure to perform tests and inspections in accordance with Health and Safety Code section
4 44012), and California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair
5 vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California
6 Code of Regulations, title 16, section 3340.42). Respondent issued a certificate of compliance to
7 a Bureau vehicle with the ignition timing adjusted beyond specification. Respondent was
8 required to attend a 16-hour training course. On or about October 11, 2010, Respondent
9 completed the required training course.

10 h. On or about November 3, 2010, the Bureau issued Citation No. M2011-0577 to
11 Respondent against his technician license for violations of Health and Safety Code section 44032
12 (failure to perform tests and inspections in accordance with Health and Safety Code section
13 44012), and California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair
14 vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California
15 Code of Regulations, title 16, section 3340.42). Respondent issued a certificate of compliance to
16 a Bureau vehicle that was missing fuel evaporative canister. Respondent was required to attend a
17 68-hour training course. On or about January 31, 2011, Respondent completed the required
18 training course.

19 OTHER MATTERS

20 21. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
21 probation the registrations for all places of business operated in this state by Gary Y. Tsujiuchi,
22 upon a finding that he has, or is, engaged in a course of repeated and willful violation of the laws
23 and regulations pertaining to an automotive repair dealer.

24 22. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
25 Station License Number TC 236267, issued to Gary Y. Tsujiuchi, doing business ACE Smog
26 Check Test Only Center and Oil Change, is revoked or suspended, any additional license issued
27 under this chapter in the name of said licensee may be likewise revoked or suspended by the
28 director.

1 23. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist
2 Technician License Number EA 146148, issued to Gary Y. Tsujiuchi, is revoked or suspended,
3 any additional license issued under this chapter in the name of said licensee may be likewise
4 revoked or suspended by the director.

5 **PRAYER**

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

8 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
9 Registration No. ARD 236267, issued to Gary Y. Tsujiuchi, doing business as ACE Smog Check
10 Test Only Center and Oil Change;

11 2. Revoking or suspending any other automotive repair dealer registration issued to
12 Gary Y. Tsujiuchi;

13 3. Revoking or suspending Smog Check Test Only Station License Number TC
14 236267, issued to Gary Y. Tsujiuchi, doing business as ACE Smog Check Test Only Center and
15 Oil Change;

16 4. Revoking or suspending Advanced Emission Specialist Technician License
17 Number EA 146148, issued to Gary Y. Tsujiuchi;

18 5. Revoking or suspending any additional license issued under Chapter 5 of the
19 Health and Safety Code in the name of Gary Y. Tsujiuchi;

20 6. Ordering Gary Y. Tsujiuchi to pay the Director of Consumer Affairs the
21 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
22 125.3; and,

23 7. Taking such other and further action as deemed necessary and proper.

24 DATED: 10/10/11

Sherry Mehl by Sherry Mehl
SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
DUNG BALAH
Complainant
Assist
Chief

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