

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VIP SMOG TEST ONLY
ERICK ELIUD FLORES, Owner

Automotive Repair Dealer Registration
No. ARD 236996
Smog Check, Test Only, Station License
No. TC 236996

and

ERICK ELIUD FLORES

Advance Emission Specialist Technician
License No. EA 150017

Respondent.

Case No. 79/11-61

OAH No. 2011090784

DECISION

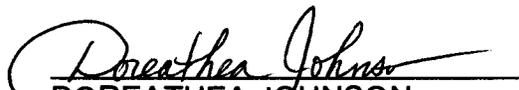
The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter; except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors in the following pages of the Proposed Decision are corrected as follows:

Page 1, under case caption; page 7, heading above paragraph 3; page 8, heading above paragraph 7; and page 10, paragraph 2, under Order:

The Smog Check, Test Only, Station License No. TC 236966 is corrected to read "Smog Check, Test Only, Station License No. TC 236996."

This Decision shall become effective 6/11/12.

DATED: May 4, 2012


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

BEFORE THE
BUREAU OF AUTOMOTIVE REPAIR
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 79/11-61

VIP SMOG TEST ONLY
ERICK ELIUD FLORES, OWNER

OAH No. 2011090784

Automotive Repair Dealer Registration
No. ARD 236996

Smog Check, Test Only, Station License
No. TC 236966

and,

ERIC ELIUD FLORES,
Advanced Emission Specialist Technician
License No. EA 150017

Respondent.

PROPOSED DECISION

Administrative Law Judge Glynda B. Gomez, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California, on March 21, 2012.

Kevin J. Kigley, Deputy Attorney General, represented complainant, Sherry Mehl, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department). Chris DeWys, Attorney at Law, represented respondent Eric Eliud Flores (Flores) individually and doing business as VIP Smog Test Only (VIP).

The record was closed and the matter was submitted on March 21, 2012.

FACTUAL FINDINGS

License history

1. In 2004, the Director of the Department of Consumer Affairs (Director) issued Automotive Repair Dealer Registration Number ARD 236996 (Registration) to Flores. The

Registration was in full force and effect at all times relevant to the charges alleged in the Accusation, and is due to expire on December 31, 2012.

2. On September 26, 2005, the Director issued Smog Check Test Only Station License Number TC 236996 (Smog Check Station License) to Flores, doing business as VIP. The Smog Check Station License was in full force and effect at all times relevant to the charges alleged in the Accusation, and is due to expire on December 31, 2012.

3. In 2004, Flores was issued an Advanced Emission Specialist Technician License Number EA 150017 (Advanced Technician License). The license is due to expire on June 30, 2012.

Smog Inspections

4. There are three parts to a California Emissions Inspection Test (also called a smog inspection, smog check or smog test): (1) a tailpipe emissions test to ensure that the vehicle's emissions are reading at or below acceptable levels. The emissions check requires the technician to insert the free end of a diagnostic probe into the exhaust pipe of the vehicle being tested. The probe enables the emissions inspection system (EIS, also known as a BAR-97) to analyze exhaust emissions when the vehicle's engine is running at two speeds; (2) a visual inspection of the vehicle's emission control components to ensure that they are present, properly connected, and in good working condition; and (3) a functional test of each component that is required to be functionally tested, depending on the make and model of the vehicle. A vehicle must pass all three parts of the California Emissions Inspection Test before an Emission Inspection Certificate of Compliance may be issued.

5. One of the functional tests a licensed technician must perform on most 1996 and newer vehicles is an On Board Diagnostics test. The licensed technician gains access to the emissions inspection system by using a personal access code assigned to that specific licensed technician by the Bureau. The technician is required to connect a test data cable from the BAR-97 analyzer to the vehicle's power train control module (PCM). The PCM is the specific on-board computer responsible for the electronic engine and emissions controls. Through the Diagnostics Link Connector, the BAR-97 analyzer retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the malfunction indicator light. A trouble code results when a vehicle fails a self-test; the code identifies the system and/or component which failed. If the trouble code is "persistent" (occurring more than twice), the on-board computer will command the malfunction indicator light to turn on. The trouble code is stored in the vehicle's PCM.

6. All the information sent to and received by the smog test analyzer is not reported on the vehicle inspection report provided to the technician. The Bureau's Vehicle Information Database (VID) also collects and provides information to the bureau about pending codes. All the information sent to and received by the smog test analyzer is reported to the VID, from which it can be determined if "clean-plugging" activity has occurred. The term "clean-plugging" refers to a method used to fraudulently inspect and certify vehicles

that will not pass a properly performed smog inspection. To clean-plug a vehicle, the technician uses another vehicle's On Board Diagnostic connection to perform the On Board Diagnostic functional test. This "clean-plug" will allow a vehicle that would not otherwise pass the smog check function test to pass the smog check functional test. It requires that the licensed smog technician enter data in the Emissions Inspection System for the non-compliant vehicle, while the "clean plug" vehicle, the vehicle that is actually being tested, performs the functional test. The functional test data from the "clean plug" vehicle is then submitted to the Bureau purporting fraudulently that the non-compliant vehicle passed the functional smog check.

7. A vehicle will fail the On Board Diagnostics functional test in the following situations: (1) if more than the allowable number of readiness monitors have not been set; (2) a trouble code has been set; (3) the malfunction indicator light has been commanded on; or, (4) the on-board computer does not communicate with the BAR-97 through the Diagnostics Link Connector. During a smog inspection, technicians are prompted to plug in an On-Board Diagnostic System II component (OBD II) into a data port of a vehicle which is being tested for certification. Once the data component is connected, the formation from the vehicle's computer is sent to and received by the smog test analyzer. If the smog test analyzer passes all three portions of the smog inspection, a smog certificate can be issued. If a vehicle fails any phase of the visual or functional tests, the vehicle will fail the overall inspection. A failed vehicle smog inspection precludes the issuance of a smog certificate of compliance.

Bureau's Vehicle Information Database – January 1, 2010-March 10, 2010.

8. Cameron Loessberg, Jr. (Loessberg) is a Program Representative I Specialist with the Bureau's Enforcement Unit. As part of his job duties, Loessberg reviews data from the Bureau's VID to determine if smog check technicians and smog check facilities are in compliance with the bureau's regulations pertaining to motor vehicle inspections. On May 6, 2010, Loessberg reviewed the data stored on the VID pertaining to smog inspections performed by Flores between January 1, 2010 and March 10, 2010. Loessberg detected clean-plugging activity by Flores on eight occasions from January 13, 2010 through February 24, 2010. Flores was the only licensed smog technician at VIP during that time period.

Clean Plug #1, January 13, 2010

9. On January 13, 2010, between 1223 and 1241 hours at VIP, a 2009 Mercedes E500, license plate 6AID578, was tested and smog certificate NQ337956C was issued using the access code assigned to Flores' for advanced technician license.

10. VIP's BAR 97 Test Data Details show trouble code 1478 was stored in the PCM at the time smog certificate NQ337956C was issued. Trouble code P1478 does not apply to the 2009 Mercedes E500 according to the original equipment manufacturer service

information (OEM) and would not display with a 2009 Mercedes E500 plugged into the OBD II function test.

11. Flores fraudulently issued smog certificate of compliance number NQ337956C using the clean-plugging method.

Clean Plug #2, January 22, 2010

12. On January 22, 2010, between 1438 and 1454 hours at VIP, a 1997 Cadillac Catera, license plate 3UFD798, was tested and smog certificate NQ338000C was issued using the access code assigned to Flores' advanced technician license.

13. VIP's BAR 97 Test Data Details show trouble P1478 was stored in the PCM at the time smog certificate NQ338000C was issued. Trouble code P1478 does not apply to the 1997 Cadillac Catera according to the OEM and would not display with a 1997 Cadillac Catera plugged into the OBD II function test.

14. Flores fraudulently issued smog certificate of compliance number NQ338000C using the clean-plugging method in order to pass the smog check functional test.

Clean Plug #3, January 26, 2010

15. On January 26, 2010, between 1547 and 1610 hours at VIP, a 1996 Dodge Intrepid, license plate 6CBP420, was tested and smog certificate NQ515074C was issued using the access code assigned to Flores' advanced technician license.

16. VIP's BAR 97 Test Data Details show trouble code 1784 was stored in the PCM at the time smog certificate NQ515074C was issued. Trouble code 1784 does not apply to the 1996 Dodge Intrepid according to the OEM and would not display with a 1996 Dodge Intrepid plugged into the OBD II function test.

17. Flores' fraudulently issued a certificate of compliance, number NQ515074C, to the 1996 Dodge Intrepid, license plate 6CBP420, after using clean-plugging methods on the 1996 Dodge Intrepid in order to pass the smog check functional test.

Clean Plug #4, February 10, 2010

18. On February 10, 2010, between 1654 and 1711 hours at VIP, a 1998 BMW 7-Series, license plate 6CMB162, was tested and smog certificate NQ707248C was issued using the access code assigned to Flores' advanced technician license.

19. VIP's BAR 97 Test Data Details show trouble code 1784, was stored in the PCM at the time smog certificate NQ515074C was issued. Trouble code 1478 does not

apply to the 1998 BMW 7-Series according to the OEM and would not display with a 1998 BMW 7-Series plugged into the OBD II function test.

20. Flores' fraudulently issued a certificate of compliance, number NQ707248C, to the 1998 BMW 7-Series, license plate 6CBP420 after using clean-plugging methods on the 1998 BMW 7-Series in order to pass the smog check functional test.

Clean Plug #5, February 15, 2010

21. On February 15, 2010, between 1522 and 1536 hours at VIP, a 2001 BMW 330CI, vehicle Identification Number (VIN) WBABN53421JU33074 was tested and smog certificate NQ794187C using the access code assigned to Flores' advanced technician license.

22. VIP's BAR 97 Test Data Details show trouble code P1478 was stored in the PCM at the time smog certificate NQ794187C was issued. Trouble code P1478 does not apply to the 2001 BMW 330CI according to the OEM and would not display with a 2001 BMW 330CI plugged into the OBD II function test.

23. Flores fraudulently issued a smog certificate of compliance, number NQ794187C, for the 2001 BMW 330CI, VIN number WBABN53421JU33074 after using clean-plugging methods in order to pass the smog check functional test.

Clean Plug #6, February 18, 2010

24. On February 18, 2010, between 1555 and 1610 hours at VIP, a 1998 BMW 5-series, license plate 5KRX957, was tested and smog certificate NQ822800C was issued using the access code assigned to Flores' advanced technician license.

25. VIP's BAR 97 Test Data Details show trouble code P1478, was stored in the PCM at the time smog certificate NQ822800C was issued. Trouble code P1478 does not apply to the 1998 BMW 5-series according to the OEM and would not display with a 1998 BMW 5-series plugged into the OBD II function test.

26. Flores fraudulently issued a smog certificate of compliance, number NQ822800C, for the 1998 BMW 5-series, 5KRX957 after using clean-plugging methods in order to pass the smog check functional test.

Clean Plug #7, February 18, 2010

27. On February 18, 2010, between 1758 and 1813 hours at VIP, a 2003 BMW 325i, VIN number WBAET37473NJ28280, was tested and smog certificate NQ860403C was issued using the access code assigned to Flores' advanced technician license.

28. VIP's BAR 97 Test Data Details show trouble code P1478, was stored in the PCM at the time smog certificate NQ860403C was issued. Trouble code P1478 does not apply to the 2003 BMW 325i according to the OEM and would not display with a 2003 BMW 325i plugged into the OBD II function test.

29.. Flores fraudulently issued a smog certificate of compliance, number NQ860403C, for the 2003 BMW 325i, VIN number WBAET37473NJ28280 using clean-plugging methods in order to pass the smog check functional test.

Clean Plug #8, February 24, 2010

30. On February 24, 2010, between 1616 and 1626 hours at VIP, a 2004 Chevrolet Corvette, license plate 6CND842 was tested and smog certificate NQ895792C was issued using the access code assigned to Flores' advanced technician license.

31. VIP's BAR 97 Test Data Details show trouble code P1478, was stored in the PCM at the time smog certificate NQ895792C was issued. Trouble code P1478 does not apply to the 2004 Chevrolet Corvette according to the OEM and would not display with a 2004 Chevrolet Corvette plugged into the OBD II function test.

32. Flores fraudulently issued a smog certificate of compliance, number NQ895792C, for the 2004 Chevrolet Corvette, 6CND 842, using clean-plugging methods in order to pass the smog check functional test.

Mitigation/rehabilitation

33. Flores offered no evidence of mitigation or rehabilitation.

Costs

34. Pursuant to Business and Professions Code section 125.3, complainant requested costs of investigation and enforcement in the total amount of \$2,940 which consisted entirely of prosecution costs billed by the Attorney General's Office. Complainant submitted a Certification of Costs of Investigation and Prosecution, and the Declaration of the Deputy Attorney General Kevin Rigley, in support of the request for \$2,940. The amount requested is reasonable. Respondent did not dispute the costs.

LEGAL CONCLUSIONS

Automotive Repair Dealer Registration No. ARD 236996
First Cause for Discipline--Untrue or Misleading Statements

1. Flores issued smog certificates of compliance for eight vehicles indicating those vehicles were in compliance with smog certification. Flores employed the clean

plugging method on the eight vehicles in order to issue smog certificates of compliance for vehicles that otherwise would not have passed the smog inspection. By issuing fraudulent certificates of compliance, respondent Flores made statements that were untrue and, which by the exercise of reasonable care, he should have known were untrue. By reason of Factual Findings 1 through 32, cause exists to discipline respondent VIP's Dealer Registration, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

Automotive Repair Dealer Registration No. ARD 236996
Second Cause for Discipline --Fraud

2. Business and Professions Code section 9884.7, subdivision (a)(4), provides that an automotive repair dealer registration may be revoked, suspended, or placed on probation when the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer, has engaged in conduct that constitutes fraud. In general, fraud will be found when an individual "intentionally, or by design, misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him." (*Wayne v. Bureau of Private Investigators & Adjusters* (1962) 201 Cal.App.2d 427, 438.) The evidence established that Flores engaged in conduct that constituted fraud. By reason of the matters set forth in Factual Findings 1 through 33, cause exists to discipline Flores' Automotive Repair Dealer Registration, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

Smog Check, Test Only, Station License No. TC 236966
Third Cause for Discipline--Violation of the Motor Vehicle Inspection Program

3. Health and Safety Code section 44072.2, subdivision (a), provides that a station license may be suspended, revoked or otherwise disciplined if the licensee violates any section of the Motor Vehicle Inspection Program (Health and Safety Code section 44000 et seq.).

4. Health and Safety Code section 44012, subdivision (f), provides that, as part of a smog inspection, a visual or functional check shall be made of emission control devices specified by the department. Flores violated section 44012, subdivision (f), when he failed to perform emission control inspections on eight vehicles in accordance with procedures prescribed by the Department. By reason of Factual Findings 1 through 32, cause exists to discipline Flores' Smog Check Station License, pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (f).

5. Health and Safety Code section 44015, subdivision (b), provides that an electronic smog certificate of compliance can be issued for vehicles that pass the emission control tests. Flores violated Health and Safety Code section 44015, subdivision (b), when he issued fraudulent certificates of compliance for eight vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with Health and Safety Code section 44012. By reason of Factual Findings 1 through 32, cause exists to discipline

Flores' Smog Check Station License, pursuant to Health and Safety Code sections 44072.2, subdivision (a), as it relates to section 44015, subdivision (b).

6. Health and Safety Code section 44059, provides that it illegal for a licensee to make a willful false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application. Flores violated section 44059, when he made false entries for the electronic certification of compliance of eight vehicles. Flores certified that the eight vehicles had been inspected as required when in fact they had not been inspected as required. By reason of Factual Findings 1 through 32, cause exists to discipline Flores' Smog Check Station License, pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44059.

Smog Check, Test Only, Station License No. TC 236966

Fourth Cause for Discipline--Failure to comply with regulations pursuant to the Motor Vehicle Inspection Program

7. Health and Safety Code section 44072.2, subdivision (c), provides that a station license may be suspended, revoked or otherwise disciplined if a licensee violates any of the regulations adopted by the Director pursuant to the Motor Vehicle Inspection Program.

8. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides that the Bureau may suspend or revoke the license or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance. Flores violated section 3340.24, subdivision (c), when he issued fraudulent certificates of compliance that falsely represented that eight vehicles passed the California Emissions Inspection Test.

9. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides that a "licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly."

10. California Code of Regulations, title 16, section 3340.42, sets forth the mandatory emissions inspection standards and test procedures that a licensed station must follow. Respondent Flores violated section 3340.35, subdivision (c), when he issued certificates of compliance for eight vehicles although these vehicles had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

11. By reason of Factual Findings 1 through 32, the violations of California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42, constitute cause to suspend, revoke or otherwise discipline Flores' Smog Check Station License pursuant to Health and Safety Code section 44072.2, subdivision (c).

Smog Check, Test Only, Station License No. TC 236966

Fifth Cause for Discipline--Dishonest, Fraud or Deceit

12. Health and Safety Code section 44072.2, subdivision (d), provides that a station license may be suspended, revoked or otherwise disciplined if the licensee commits any act involving dishonesty, fraud, or deceit. The evidence established that Flores engaged in acts involving dishonesty, fraud, and deceit, by reason of Factual Findings 1 through 32. Accordingly, cause exists to suspend, revoke or otherwise discipline respondent Flores' Smog Check Station license pursuant to Health and Safety Code section 44072.2, subdivision (d).

Advanced Emission Specialist Technician License No. EA 150017

Sixth Cause for Discipline--Violations of Vehicle Inspection Program

13. Health and Safety Code section 44072.2, subdivision (a), provides that an advanced technician license may be suspended, revoked or otherwise disciplined if the licensee violates any section of the Motor Vehicle Inspection Program (Health and Safety Code section 44000 et. seq.). Flores violated Health and Safety Code section 44012, subdivision (f), when he failed to perform emissions tests on eight vehicles in accordance with procedures prescribed by the Department, by reason of Factual Findings 1 through 32. Accordingly, cause exists to suspend, revoke or otherwise discipline respondent Flores' Advanced Technician License pursuant to Health and Safety Code sections 44072.2, subdivision (a) and 44012, subdivision (f).

Advanced Emission Specialist Technician License No. EA150017

Seventh Cause for Discipline—Failure to comply with regulations pursuant to the Motor Vehicle Inspection Program

14. Health and Safety Code section 44072.2, subdivision (c), provides that an advanced technician license may be suspended, revoked or otherwise disciplined if a licensee violates any of the regulations adopted by the director pursuant to the Motor Vehicle Inspection Program.

15. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides that a person shall not falsely or fraudulently issue an electronic smog certificate of compliance for a vehicle not properly inspected. Flores entered false information into the emissions inspection system for eight vehicles in violation of section 3340.24, subdivision (c).

16. California Code of Regulations, title 16, section 3340.30, subdivision (a), in relevant part, provides that a "licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code." Flores violated section 3340.30, subdivision (a), when he failed to inspect and test eight vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

17. California Code of Regulations, title 16, section 3340.42, requires a licensee to conduct the required smog tests in accordance with the Bureau's specifications. Flores failed to conduct the required smog tests on eight vehicles in accordance with the Bureau's specifications.

18. By reason of Factual Findings 1 through 32, cause exists to suspend, revoke or otherwise discipline respondent Flores' Advanced Technician License pursuant to Health and Safety Code section 44072.2, subdivision (c) as that section relates to California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.30, subdivision (a), and 3340.42.

*Advanced Emission Specialist Technician License No. EA 150017
Eighth Cause for Discipline—Dishonesty, Fraud and Deceit*

19. Health and Safety Code section 44072.2, subdivision (d), provides that an advanced technician license may be suspended, revoked or otherwise disciplined if the licensee commits any act involving dishonesty, fraud, or deceit. Flores engaged in acts involving dishonesty, fraud, and deceit when he certified that he had performed the required inspections on eight vehicles, but had not performed the appropriate inspections. By reason of the matters set forth in Findings 1 through 32, cause exists to suspend, revoke or otherwise discipline respondent Flores' Advanced Technician License pursuant to Health and Safety Code section 44072.2, subdivision (d).

Costs

20. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Complaint's request for \$2,940 in costs is reasonable and supported by the evidence by reason of Factual Finding 34.

ORDER

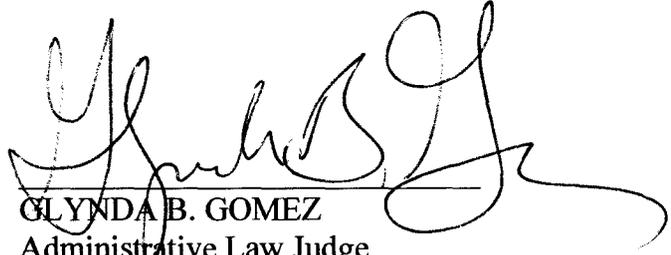
1. Automotive Repair Dealer Registration Number ARD 236996, issued to respondent Erick Eliud Flores, dba VIP Smog Test Only, and all other registrations issued by the Bureau to respondent Erick Eliud Flores, are revoked.

2. Smog Check Test Only Station License Number TC 236966 issued to respondent Erick Eliud Flores, dba VIP SMOG TEST ONLY, is revoked.

3. Advanced Emission Specialist Technician License Number EA 150017 issued to respondent Erick Eliud Flores is revoked.

4. Respondent Erick Eliud Flores, dba VIP Smog Test Only shall pay to the Bureau the sum of \$2,940 at such time and in such manner as the Bureau, in its discretion, may direct.

DATED: April 20, 2012



GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE
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Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
9 **STATE OF CALIFORNIA**

10

11 In the Matter of the Accusation Against:

Case No. 79/11-61

12 **V I P SMOG TEST ONLY**
11530 Glenoaks Unit #3
13 Pacoima, CA 91331
Mailing Address:
14 11815 Gillmore Street, Apt. #115
North Hollywood, CA 91606
15 **ERICK ELIUD FLORES, OWNER**
Automotive Repair Dealer Registration No. ARD 236996
16 Smog Check Test Only Station License No. TC 236996

A C C U S A T I O N
S M O G C H E C K

17 and

18 **ERICK ELIUD FLORES**
13760 Dronfield Avenue
19 Sylmar, CA 91342
Advanced Emission Specialist Technician License
20 No. EA 150017

21 Respondents.

22

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 ///

28 ///

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

6 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
7 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
8 proceeding against an automotive repair dealer or to render a decision invalidating a registration
9 temporarily or permanently.

10 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
11 "commission," "committee," "department," "division," "examining committee," "program," and
12 "agency." "License" includes certificate, registration or other means to engage in a business or
13 profession regulated by the Code.

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

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

32 ///

33 ///

1 11. Section 44072.8 of the Health and Safety Code states:

2 When a license has been revoked or suspended following a hearing under
3 this article, any additional license issued under this chapter in the name of the
licensee may be likewise revoked or suspended by the director.

4 **COST RECOVERY**

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

9 **FACTUAL BACKGROUND**

10 13. On or about May 6, 2010, the Bureau conducted a detailed review of the Vehicle
11 Information Database ("VID") for all smog inspections performed at Respondent's facility for the
12 period January 1, 2010, through March 10, 2010. The VID showed the same diagnostic trouble
13 code stored in memory of the power train control modules ("PCM") on different vehicles. The
14 following 8 vehicles were all certified with the same pending code stored in the PCM memory
15 while the original equipment manufacturer ("OEM") service information shows these vehicles do
16 not support the pending code stored in the PCM memory for these vehicles. The vehicles
17 receiving smog certificates were not tested during the OBD II functional test¹ and another vehicle
18 was used, constituting clean plugging². All of the following inspections were performed by
19 Respondent.

20 ///

21 ¹ The On Board Diagnostics (OBD II) functional test is an automated function of the
22 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
23 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
24 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
information from the vehicle's on-board computer about the status of the readiness indicators,
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall inspection.

25 ² Clean plugging is the use of the OBD II readiness monitor status and stored fault code
26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
28 control system or component failure.

TABLE 1

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
1. 1/13/2010 1223 – 1241 hours	2003 Mercedes E500, License No. 6AID578	NQ337956C
2. 1/22/2010 1438 – 1459 hours	1997 Cadillac Catera, License No. 3UFD798	NQ338000C
3. 1/26/2010 1547 – 1610 hours	1996 Dodge Intrepid, License No. 6CBP420	NQ515074C
4. 2/10/2010 1654 – 1711 hours	1998 BMW 7-series, License No. 6CMB162	NQ707249C
5. 2/15/2010 1522 – 1536 hours	2001 BMW 330CI, VIN# WBABN53421JU33074	NQ794187C
6. 2/18/2010 1555 – 1610 hours	1998 BMW 5-series, License No. 5KRX957	NQ822800C
7. 2/18/2010 1758 – 1813 hours	2003 BMW 325I, Vin# WBAET37473NJ28280	NQ860403C
8. 2/24/2010 1616 – 1626 hours	2004 Chevrolet Corvette, License No. 6CND842	NQ895792C

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about January 13, 2010, through February 24, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading as follows: Respondent certified that vehicles 1 through 8, set forth in Table 1, above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using clean plugging methods by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the 8 vehicles, and did not test or inspect those vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

15. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about January 13, 2010, through February 24, 2010, he committed acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 8, set forth in Table 1, above, without performing bona fide inspections of the emission control

1 devices and systems on those vehicles, thereby depriving the People of the State of California of
2 the protection afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program)**

5 16. Respondent has subjected his station license to discipline under Health and Safety
6 Code section 44072.2, subdivision (a), in that on or about January 13, 2010, through February 24,
7 2010, regarding vehicles 1 through 8, set forth in Table 1, above, he violated sections of that
8 Code, as follows:

9 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
10 performed on vehicles 1 through 8, in accordance with procedures prescribed by the department.

11 b. **Section 44015:** Respondent issued electronic certificates of compliance for vehicles
12 1 through 8, without ensuring that the vehicles were properly tested and inspected to determine if
13 they were in compliance with Health and Safety Code section 44012.

14 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates
15 of compliance by certifying that those vehicles had been inspected as required when, in fact, they
16 had not.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

19 17. Respondent has subjected his station license to discipline under Health and Safety
20 Code section 44072.2, subdivision (c), in that on or about January 13, 2010, through February 24,
21 2010, regarding vehicles 1 through 8, set forth in Table 1, above, he violated sections of the
22 California Code of Regulations, title 16, as follows:

23 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
24 electronic certificates of compliance for those vehicles without performing bona fide inspections
25 of the emission control devices and systems on the vehicles as required by Health and Safety
26 Code section 44012.

27 ///

28 ///

1 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued
2 electronic certificates of compliance without performing bona fide inspections of the emission
3 control devices and systems on those vehicles as required by Health and Safety Code section
4 44012.

5 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test those
6 vehicles in accordance with Health and Safety Code section 44012.

7 c. Section 3340.42: Respondent failed to conduct the required smog tests and
8 inspections on those vehicles in accordance with the Bureau's specifications.

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

11 21. Respondent has subjected his technician license to discipline under Health and Safety
12 Code section 44072.2, subdivision (d), in that on or about January 13, 2010, through February 24,
13 2010, regarding vehicles 1 through 8, set forth in Table 1, above, he committed acts involving
14 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
15 compliance without performing bona fide inspections of the emission control devices and systems
16 on those vehicles, thereby depriving the People of the State of California of the protection
17 afforded by the Motor Vehicle Inspection Program.

18 **OTHER MATTERS**

19 22. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
20 or permanently or refuse to validate, the registrations for all places of business operated in this
21 state by to Erick Eliud Flores doing business as V I P Smog Test Only, upon a finding that he has,
22 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining
23 to an automotive repair dealer.

24 23. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
25 License Number TC 236996, issued to Erick Eliud Flores doing business as V I P Smog Test
26 Only, is revoked or suspended, any additional license issued under this chapter in the name of
27 said licensee, including but not limited to Advanced Emission Specialist Technician License
28 Number EA 150017, may be likewise revoked or suspended by the director.

1 P R A Y E R

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

4 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
5 Registration Number ARD 236996, issued to Erick Eliud Flores doing business as V I P Smog
6 Test Only;

7 2. Revoking, suspending or placing on probation any other automotive repair dealer
8 registration issued to Erick Eliud Flores;

9 3. Revoking or suspending Smog Check Test Only Station License Number TC 236996,
10 issued to Erick Eliud Flores doing business as V I P Smog Test Only;

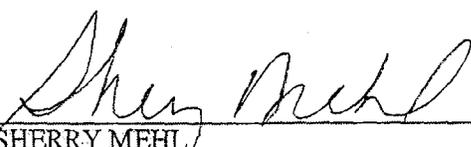
11 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
12 & Safety Code in the name of Erick Eliud Flores, including but not limited to Advanced Emission
13 Specialist Technician License Number EA 150017;

14 5. Ordering Erick Eliud Flores to pay the Bureau of Automotive Repair the reasonable
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions
16 Code section 125.3; and,

17 6. Taking such other and further action as deemed necessary and proper.
18
19

20 DATED: _____
21

1/25/11


22 SHERRY MEHL
23 Chief
24 Bureau of Automotive Repair
25 Department of Consumer Affairs
26 State of California
27 Complainant

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