EDMUND G. BROWN JR.
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General
GREGORY J. SALUTE
Supervising Deputy Attorney General
State Bar No. 164015
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2520
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **JOSE LUIS LEON** **dba FOX TEST ONLY** 598 North H Street, Unit B San Bernardino, California 92410 **Automotive Repair Dealer Registration No. ARD 237661** **Smog Check, Test Only, Station License No. TC 237661** **JOSE LUIS LEON** 598 North H Street, Unit B San Bernardino, California 92410 **Advanced Emission Specialist Technician** **License No. EA 152053** Respondents.	Case No. 79/11-37 **ACCUSATION** SMOG CHECK

Sherry Mehl ("Complainant") alleges:

PARTIES

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

///

///

///

Automotive Repair Dealer Registration No. ARD 237661

2. In or about January 2005, the Bureau issued Automotive Repair Dealer Registration Number ARD 237661 to Jose Luis Leon ("Respondent"), doing business as Fox Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2011, unless renewed.

Smog Check Test Only Station License No. TC 237661

3. On or about June 21, 2005, the Bureau issued Smog Check, Test Only, Station License Number TC 237661 ("station license") to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2011, unless renewed.

Advanced Emission Specialist Technician License No. EA 152053

4. In or about 2005, the Bureau issued Advanced Emission Specialist Technician License No. EA 152053 ("technician license") to Respondent. The license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2011, unless renewed.

STATUTORY PROVISIONS

5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

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

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

(4) Any other conduct that constitutes fraud.

///

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

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

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

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

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

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

(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.

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.

10. Section 44072.8 of the Health and Safety Code states:

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

COST RECOVERY

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

FACTUAL BACKGROUND

12. On April 12, 2010, and April 15, 2010, the Bureau conducted a detailed review of the Vehicle Information Database ("VID") for all smog inspections performed at Respondent's facility for the period of November 19, 2009, through December 17, 2009. The VID showed a pattern of various diagnostic trouble codes stored in the memory of the power train control module ("PCM") on different vehicles. Vehicles 1 through 15, set forth in Table 1 below, were all certified with various pending codes stored in the PCM memory while the original equipment manufacturer ("OEM") service information shows these vehicles do not support the pending codes stored in the PCM memory. The vehicles receiving smog certificates were not tested during the OBD II[1] functional test and another vehicle(s) was used, constituting clean plugging.[2] All of the following inspections were performed by Respondent.

---

[1] The On Board Diagnostics (OBDII) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is 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

(continued...)

TABLE 1

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.	
1. 11/19/2009 0932 – 0948 hours	1999 Ford Windstar License No. 6DED962	WF203179C	
2. 11/19/2009 1119 – 1139 hours	2000 Honda Accord License No. 4JDR943	WF203183C	
3. 11/19/2009 1216 – 1239 hours	1996 Dodge Caravan License No. 3PKS378	WF203185C	
4. 11/19/2009 1311 – 1326 hours	1998 Plymouth Voyager License No. 3WRH229	WF203186C	
5. 11/21/2009 1202 – 1215 hours	1996 Ford Mustang License No. 4NAV684	WF250211C	
6. 11/21/2009 1223 – 1244 hours	1996 GMC Suburban License No. 4XLD465	WF250212C	
7. 11/21/2009 1252 – 1308 hours	2001 Ford Windstar License No. 4PDE015	WF250213C	
8. 11/21/2009 1407 – 1416 hours	2000 Toyota Camry License No. 4JKC883	WF250216C	
9. 11/23/2009 1820 – 1831 hours	1996 Volkswagen Jetta License No. 5SZZ461	WF250231C	
10. 12/12/2009 0921 – 0939 hours	1997 Toyota Camry License No. 6GER294	WF475439C	
11. 12/12/2009 1156 – 1215 hours	1999 Toyota Camry License No. 4DYD478	WF475443C	
12. 12/14/2009 1257 – 1310 hours	2003 Cadillac Seville (last 5 numbers of VIN) 78382	WF475449C	
13. 12/15/2009 0843 – 0858 hours	1996 Nissan Maxima License No. 3PQS174	WF554860C	
14. 12/15/2009 1216 – 1236 hours	1999 Honda Accord License No. 6DBY333	WF554863C	
15. 12/17/2009 1214 – 1229 hours	2001 Chevrolet Malibu License No. 4VFY362	WF554887C	

///

///

///

functional test, it will fail the overall inspection.

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

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

13. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that between November 19, 2009, and December 17, 2009, Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that vehicles 1 through 15, set forth above in Table 1, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using the clean plugging method by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the 15 vehicles, and did not test or inspect the 15 vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

14. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(4), in that between November 19, 2009, and December 17, 2009, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 15, set forth above in Table 1, without performing bona fide inspections of the emission control devices and systems on those vehicles, 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 Comply with the Motor Vehicle Inspection Program)

15. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that between November 19, 2009, and December 17, 2009, regarding vehicles 1 through 15, set forth above in Table 1, Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicles 1 through 15, in accordance with procedures prescribed by the department.

///

b. **Section 44015:** Respondent issued electronic certificates of compliance for vehicles 1 through 15, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

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

FOURTH CAUSE FOR DISCIPLINE

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

16. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that between November 19, 2009, and December 17, 2009, regarding vehicles 1 through 15, set forth above in Table 1, Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

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

b. **Section 3340.35(c)**: Respondent issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

17. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that between November 19, 2009, and December 17, 2009, regarding vehicles 1 through 15, set forth above in Table 1, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control

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

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

18. Respondent's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that between November 19, 2009, and December 17, 2009, regarding vehicles 1 through 15, set forth above in Table 1, he failed to comply with section 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission control tests on those vehicles in accordance with procedures prescribed by the department.

SEVENTH CAUSE FOR DISCIPLINE

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

19. Respondent's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that between November 19, 2009, and December 17, 2009, regarding vehicles 1 through 15, set forth above in Table 1, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

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

b. **Section 3340.30(a)**: Respondent failed to inspect and test those vehicles in accordance with Health and Safety Code sections 44012.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that between November 19, 2009, and December 17, 2009, regarding vehicles 1 through 15, set forth above in Table 1, he committed acts involving dishonesty, fraud

or deceit whereby another was injured by issuing electronic certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

21. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by Jose Luis Leon, doing business as Fox Test Only, upon a finding that he has, or is, engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer.

22. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 237661, issued to Jose Luis Leon, doing business as Fox Test Only, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

23. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 152053, issued to Jose Luis Leon, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 237661, issued to Jose Luis Leon, doing business as Fox Test Only;

2. Revoking or suspending any other automotive repair dealer registration issued to Jose Luis Leon;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 237661, issued to Jose Luis Leon, doing business as Fox Test Only;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 152053, issued to Jose Luis Leon;

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

6. Ordering Jose Luis Leon to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 11-18-10

SHERRY MEHL
Chief
Bureau of Automotive Repair I/M Smog
Department of Consumer Affairs
State of California
Complainant

LA2010503599
10625629.doc