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

11 In the Matter of the Accusation Against:
12 A+ SMOG CHECK
13 TRUONG P. DINH, PARTNER
14 DANNY H. PHAM, PARTNER
15 KHUONG Q. PHAM, PARTNER
233 W. Evelyn Avenue
Mountain View, CA 94041
16 Automotive Repair Dealer No. ARD 242846
Smog Check, Test Only, Station License No.
17 TC 242846
18 Respondent.

Case No. 79/09-60
A C C U S A T I O N
SMOG CHECK

19 Complainant alleges:

20 **PARTIES**

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

24 **Automotive Repair Dealer Registration No. ARD 242846**

25 2. On or about December 21, 2005, the Director of Consumer Affairs
26 ("Director") issued Automotive Repair Dealer Registration Number ARD 242846 ("registration")
27 to A+ Smog Check ("Respondent"), with Truong P. Dinh, Danny H. Pham, and Khuong Q. Pham
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1 as partners. Respondent's registration was in full force and effect at all times relevant to the
2 charges brought herein and will expire on December 31, 2008, unless renewed.

3 **Smog Check, Test Only, Station License No. TC 242846**

4 3. On or about December 27, 2005, the Director issued Smog Check, Test
5 Only, Station License Number TC 242846 ("smog check station license") to Respondent.
6 Respondent's smog check station license was in full force and effect at all times relevant to the
7 charges brought herein and will expire on December 31, 2008.

8 **JURISDICTION**

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

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

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

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

22 **STATUTORY PROVISIONS**

23 8. Bus. & Prof. Code section 9884.7 states, in pertinent part:

24 (a) The director, where the automotive repair dealer cannot show there
25 was a bona fide error, may refuse to validate, or may invalidate temporarily or
26 permanently, the registration of an automotive repair dealer for any of the
27 following acts or omissions related to the conduct of the business of the
28 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.

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

5 (2) Causing or allowing a customer to sign any work order which does
6 not state the repairs requested by the customer or the automobile's odometer
7 reading at the time of repair.

8
9 (4) Any other conduct which constitutes fraud.

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

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

21 10. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

28
(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 . . .

11. Health & Saf. Code section 44072.8 states that 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.

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1 **COST RECOVERY**

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

6 **UNDERCOVER OPERATION: 1995 CHEVROLET ASTRO**

7 13. On April 16, 2008, an undercover operator with the Bureau, using the
8 fictitious name "David Gomez" (hereinafter "operator"), took the Bureau's 1995 Chevrolet Astro
9 to Respondent A+ Smog Check's facility and requested a smog inspection. A non-functional
10 Exhaust Gas Recirculation ("EGR") valve had been installed on the Bureau-documented vehicle.
11 The operator signed and received a copy of a repair order/written estimate for the inspection.
12 After the inspection was completed, the operator paid the facility \$65.20 and received copies of
13 an invoice and a vehicle inspection report signed by smog check technician Ryan Nathan Brasil
14 ("Brasil"). That same day, electronic smog Certificate of Compliance #NA292758C was issued
15 for the vehicle.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 14. Respondent's registration is subject to disciplinary action pursuant to Bus.
19 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
20 statement which it knew or in the exercise of reasonable care should have known to be untrue or
21 misleading. Respondent's smog check technician, Brasil, certified under penalty of perjury on
22 the vehicle inspection report that he performed the smog inspection on the Bureau's 1995
23 Chevrolet Astro in accordance with all Bureau requirements and that the vehicle passed the
24 inspection and was in compliance with applicable laws and regulations. In fact, a non-functional
25 EGR valve had been installed on the vehicle and as such, the vehicle would not pass the
26 inspection required by Health & Saf. Code section 44012.

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FIFTH CAUSE FOR DISCIPLINE

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

18. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that it failed to comply with the following sections of California Code of Regulations, title 16:

- a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet Astro.
- b. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet Astro even though the vehicle had not been inspected in accordance with section 3340.42.
- c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the Bureau's 1995 Chevrolet Astro in accordance with the Bureau's specifications.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

19. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that it committed a dishonest, fraudulent, or deceitful act whereby another is injured. Respondent issued an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet Astro 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.

DISCIPLINE CONSIDERATIONS

20. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges as follows:

- a. On or about August 10, 2007, the Bureau issued Citation No. C08-0125 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to determine that emission control devices and systems required by State and Federal law are

1 PRAYER

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

- 4 1. Temporarily or permanently invalidating Automotive Repair Dealer
5 Registration Number ARD 242846, issued to A+ Smog Check;
- 6 2. Temporarily or permanently invalidating any other automotive repair
7 dealer registration issued to A+ Smog Check;
- 8 3. Revoking or suspending Smog Check, Test Only, Station License Number
9 TC 242846, issued to A+ Smog Check;
- 10 4. Revoking or suspending any additional license issued under Chapter 5 of
11 the Health and Safety Code in the name of A+ Smog Check;
- 12 5. Ordering Respondent A+ Smog Check to pay the Director of Consumer
13 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
14 Business and Professions Code section 125.3; and
- 15 6. Taking such other and further action as deemed necessary and proper.
- 16

17 DATED: 1/9/09

18 
19 SHERRY MEHL
20 Chief
21 Bureau of Automotive Repair
22 Department of Consumer Affairs
23 State of California
24 Complainant