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

10 79/11-64

11 In the Matter of the Accusation Against:

Case No.

12 **A AFFORDABLE SMOG TEST ONLY**
MICHAEL LUIS LEGARRETA, OWNER
13 18737 Hwy 18, Suite 12
Apple Valley, CA 92307
14

Automotive Repair Dealer Reg. No. ARD 243351
15 Smog Check Test Only Station License
No. TC 243351
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17 and

VINCENT ALBERT GUTIERREZ
18 13911 Nowata Court
Apple Valley, CA 92307
19

Advanced Emission Specialist Technician License
20 No. EA 146773

21 Respondents.
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A C C U S A T I O N

(Smog Check)

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.

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

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

4 12. Health & Saf. Code section 44072.10 states, in pertinent part:

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

9 (1) Clean piping, as defined by the department.

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

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 Code section 44072.8 states that when a license has been revoked or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

15 **COST RECOVERY**

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

20 **VIDEO SURVEILLANCE OPERATION OF APRIL 27, 2009**

21 15. On April 27, 2009, representatives of the Bureau conducted a video surveillance
22 operation of Respondent Legarreta's smog check facility. The surveillance video and information
23 obtained from the Bureau's vehicle information database revealed that Respondent Gutierrez
24 issued electronic smog certificates of compliance on behalf of Respondent Legarreta, certifying
25 that he had tested and inspected the vehicles identified below and that the vehicles were in
26 compliance with applicable laws and regulations. In fact, Respondent conducted the inspections

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1 using clean piping methods¹, resulting in the issuance of fraudulent certificates of compliance for
2 the vehicles. Further, the Bureau determined that the 1992 Chevrolet pickup, License #4M54754,
3 which was used to certify two of the vehicles, was registered to Respondent Gutierrez.

No.	Time of Inspection	Vehicle Certified & License No.	Vehicle Actually Tested	Certificate No.
4	1126 – 1139	1977 Cadillac Deville; License #926SXX	1992 Chevrolet pickup; License #4M54754	VZ404943C
5	1259 – 1305	1993 Isuzu Rodeo; License #3BSL200	Same as above.	VZ404948C
6	1326 – 1337	1999 Ford F150 pickup; License #5Y31574	GMC SUV	VZ404950C
7	1344 – 1350	1996 Saturn SL; License #3PZA353	Same as above.	VZ436451C

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10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 16. Respondent Legarreta's automotive repair dealer registration is subject to disciplinary
13 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made
14 or authorized statements which he knew or in the exercise of reasonable care should have known
15 to be untrue or misleading, as follows: Respondent Legarreta's technician, Respondent Gutierrez,
16 certified that vehicles 1 through 4, identified in paragraph 15 above, had passed inspection and
17 were in compliance with applicable laws and regulations. In fact, Respondent Gutierrez used
18 clean piping methods in order to issue certificates for the vehicles and did not test or inspect the
19 vehicles as required by Health & Saf. Code section 44012.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 17. Respondent Legarreta's automotive repair dealer registration is subject to disciplinary
23 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent
24 committed acts which constitute fraud by issuing electronic smog certificates of compliance for
25 vehicles 1 through 4, identified in paragraph 15 above, without performing bona fide inspections

26 ¹ Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "clean piping" means
27 the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS to issue a certificate of
28 compliance for another vehicle.

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

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 18. Respondent Legarreta's smog check station license is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
7 comply with provisions of that Code, as follows:

8 a. **Section 44012:** Respondent failed to perform emission control tests on vehicles 1
9 through 4, identified in paragraph 15 above, in accordance with procedures prescribed by the
10 department.

11 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
12 vehicles 1 through 4, identified in paragraph 15 above, without properly testing and inspecting the
13 vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

14 **FOURTH CAUSE FOR DISCIPLINE**

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

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

20 a. **Section 3340.24, subdivision (c):** Respondent Legarreta falsely or fraudulently
21 issued electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph
22 15 above.

23 b. **Section 3340.35, subdivision (c):** Respondent Legarreta issued electronic smog
24 certificates of compliance for vehicles 1 through 4, identified in paragraph 15 above, even though
25 those vehicles had not been inspected in accordance with section 3340.42.

26 c. **Section 3340.41, subdivision (c):** Respondent Legarreta's technician, Respondent
27 Gutierrez, entered false information into the Emission Inspection System ("EIS") by entering

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1 vehicle identification information or emission control system identification data for vehicles other
2 than the ones being tested.

3 d. **Section 3340.42**: Respondent Legarreta failed to conduct the required smog tests on
4 vehicles 1 through 4, identified in paragraph 15 above, in accordance with the Bureau's
5 specifications.

6 **FIFTH CAUSE FOR DISCIPLINE**

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

8 20. Respondent Legarreta's smog check station license is subject to disciplinary action
9 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
10 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
11 certificates of compliance for vehicles 1 through 4, identified in paragraph 15 above, without
12 performing bona fide inspections of the emission control devices and systems on the vehicles,
13 thereby depriving the People of the State of California of the protection afforded by the Motor
14 Vehicle Inspection Program.

15 **SIXTH CAUSE FOR DISCIPLINE**

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

17 21. Respondent Gutierrez's technician license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
19 provisions of that Code, as follows:

20 a. **Section 44012**: Respondent failed to perform emission control tests on vehicles 1
21 through 4, identified in paragraph 15 above, in accordance with procedures prescribed by the
22 department.

23 b. **Section 44059**: Respondent willfully made false entries in the EIS, resulting in the
24 issuance of fraudulent certificates of compliance for vehicles 1 through 4, identified in paragraph
25 15 above.

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1 SEVENTH CAUSE FOR DISCIPLINE

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

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

7 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 15
9 above.

10 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test vehicles
11 1 through 4, identified in paragraph 15 above, in accordance with Health & Saf. Code sections
12 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

13 c. Section 3340.41, subdivision (c): Respondent entered false information into the EIS
14 by entering vehicle identification information or emission control system identification data for
15 vehicles other than the ones being tested.

16 d. Section 3340.42: Respondent failed to conduct the required smog tests on vehicles
17 1 through 4, identified in paragraph 15 above, in accordance with the Bureau's specifications.

18 EIGHTH CAUSE FOR DISCIPLINE

19 (Dishonesty, Fraud or Deceit)

20 23. Respondent Gutierrez's technician license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
22 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
23 compliance for vehicles 1 through 4, identified in paragraph 15 above, without performing bona
24 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
25 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
26 Program.

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1 OTHER MATTERS

2 24. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
4 business operated in this state by Respondent Michael Luis Legarreta, owner of A Affordable
5 Smog Test Only, upon a finding that said Respondent has, or is, engaged in a course of repeated
6 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

7 25. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
8 License Number TC 243351, issued to Respondent Michael Luis Legarreta, owner of A
9 Affordable Smog Test Only, is revoked or suspended, any additional license issued under this
10 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

11 26. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
12 Technician License Number EA 146773, issued to Respondent Vincent Albert Gutierrez, is
13 revoked or suspended, any additional license issued under this chapter in the name of said
14 licensee may be likewise revoked or suspended by the Director.

15 PRAYER

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

18 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
19 Number ARD 243351, issued to Michael Luis Legarreta, owner of A Affordable Smog Test
20 Only;

21 2. Temporarily or permanently invalidating any other automotive repair dealer
22 registration issued to Michael Luis Legarreta;

23 3. Revoking or suspending Smog Check Test Only Station License Number
24 TC 243351, issued to Michael Luis Legarreta, owner of A Affordable Smog Test Only;

25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
26 and Safety Code in the name of Michael Luis Legarreta;

27 5. Revoking or suspending Advanced Emission Specialist Technician License Number
28 EA 146773, issued to Vincent Albert Gutierrez;

1 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Vincent Albert Gutierrez;

3 7. Ordering Respondents Michael Luis Legarreta, owner of A Affordable Smog Test
4 Only, and Vincent Albert Gutierrez to pay the Bureau of Automotive Repair the reasonable costs
5 of the investigation and enforcement of this case, pursuant to Business and Professions Code
6 section 125.3;

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

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9 DATED: 1/31/11


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

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