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

79/11-89

12 In the Matter of the Accusation Against:

Case No.

13 **EAST BAY SMOG**
14 **ERIC MOISES GARCIA, PARTNER**
15 **DANIEL GARCIA, PARTNER**
16 **DANIEL GARCIA,**
aka DANIEL GARCIA TORRES, PARTNER
17 **5660 Main Street, Suite #102**
Oakley, CA 94561
18 **Mailing Address:**
7258 Brentwood Boulevard
19 **Brentwood, CA 94513**
Automotive Repair Dealer Reg. No. ARD 252615
20 **Smog Check, Test Only, Station License No.**
21 **TC 252615**

A C C U S A T I O N

SMOG CHECK

22 **and**

23 **ERIC MOISES GARCIA**
24 **7258 Brentwood Blvd.**
Brentwood, CA 94513
25 **Advanced Emission Specialist Technician**
26 **License No. EA 153742**

Respondents.

27 Complainant alleges:

28 **PARTIES/LICENSE INFORMATION**

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

1 **East Bay Smog**

2 2. On or about November 21, 2007, the Director of Consumer Affairs ("Director")
3 issued Automotive Repair Dealer Registration Number ARD 252615 ("registration") to East Bay
4 Smog ("Respondent East Bay Smog"), with Eric Moises Garcia, Daniel Garcia, and Daniel
5 Garcia, also known as Daniel Garcia Torres, as partners. Respondent East Bay Smog's
6 registration was in full force and effect at all times relevant to the charges brought herein and will
7 expire on October 31, 2011, unless renewed.

8 3. On or about December 19, 2007, the Director issued Smog Check, Test Only, Station
9 License Number TC 252615 ("smog check station license") to Respondent East Bay Smog.
10 Respondent's smog check station license was in full force and effect at all times relevant to the
11 charges brought herein and will expire on October 31, 2011, unless renewed.

12 **Eric Moises Garcia**

13 4. In or about 2006, the Director issued Advanced Emission Specialist Technician
14 License Number EA 153742 ("technician license") to Eric Moises Garcia ("Respondent Garcia"
15 or "Garcia"). Respondent's technician license was in full force and effect at all times relevant to
16 the charges brought herein and will expire on April 30, 2012, unless renewed.

17 **JURISDICTION**

18 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
19 the Director may revoke an automotive repair dealer registration.

20 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
21 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
22 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
23 invalidating (suspending or revoking) a registration.

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

27 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
28 suspension of a license by operation of law, or by order or decision of the Director of Consumer

1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
2 of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

14

15 (3) Failing or refusing to give to a customer a copy of any document
16 requiring his or her signature, as soon as the customer signs the document.

17 (4) Any other conduct that constitutes fraud.

18

19 (6) Failure in any material respect to comply with the provisions of this
20 chapter or regulations adopted pursuant to it.

21

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

27 10. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

28 The automotive repair dealer shall give to the customer a written
estimated price for labor and parts necessary for a specific job. No work shall be
done and no charges shall accrue before authorization to proceed is obtained from the
customer. No charge shall be made for work done or parts supplied in excess of the
estimated price without the oral or written consent of the customer that shall be
obtained at some time after it is determined that the estimated price is insufficient and
before the work not estimated is done or the parts not estimated are supplied. Written
consent or authorization for an increase in the original estimated price may be
provided by electronic mail or facsimile transmission from the customer. The bureau
may specify in regulation the procedures to be followed by an automotive repair
dealer when an authorization or consent for an increase in the original estimated price
is provided by electronic mail or facsimile transmission. If that consent is oral, the
dealer shall make a notation on the work order of the date, time, name of person

1 authorizing the additional repairs and telephone number called, if any, together with a
2 specification of the additional parts and labor and the total additional cost . . .

3 11. Bus. & Prof. Code section 22, subdivision (a), states:

4 "Board" as used in any provision of this Code, refers to the board in
5 which the administration of the provision is vested, and unless otherwise expressly
6 provided, shall include "bureau," "commission," "committee," "department,"
7 "division," "examining committee," "program," and "agency."

8 12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
9 "license" includes "registration" and "certificate."

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

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

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

17

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

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

22 14. Health & Saf. Code section 44072.10 states, in pertinent part:

23

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

28

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

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

6 **UNDERCOVER OPERATION: 2001 CHRYSLER 300M**

7 17. On May 28, 2010, an undercover operator with the Bureau (“operator”) took the
8 Bureau’s 2001 Chrysler 300M to Respondent East Bay Smog's facility and requested a smog
9 inspection. The positive crankcase ventilation (PCV) valve had been removed from the Bureau-
10 documented vehicle and the PCV hose was disconnected. Respondent Garcia had the operator
11 sign and fill in the customer information on a work order, but did not provide her with a copy or a
12 written estimate for the inspection. After the inspection was completed, the operator paid Garcia
13 \$67 and received copies of an invoice and a vehicle inspection report. The vehicle inspection
14 report indicated that Garcia had performed the smog inspection on the vehicle. That same day,
15 electronic smog Certificate of Compliance No. NU233674C was issued for the vehicle.

16 18. On June 7, 2010, the Bureau inspected the vehicle and found that the PCV valve was
17 still missing and the PCV hose was still disconnected.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 19. Respondent East Bay Smog's registration is subject to disciplinary action pursuant to
21 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
22 statement which it knew or in the exercise of reasonable care should have known to be untrue or
23 misleading, as follows: Respondent East Bay Smog's technician, Respondent Garcia, certified
24 under penalty of perjury on the vehicle inspection report that the Bureau’s 2001 Chrysler 300M
25 had passed the inspection and was in compliance with applicable laws and regulations. In fact,
26 the PCV valve was missing and the PCV hose was disconnected, and as such, the vehicle would
27 not pass the inspection required by Health & Saf. Code section 44012.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 23. Respondent East Bay Smog's smog check station license is subject to disciplinary
4 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
5 to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on the Bureau's 2001 Chrysler 300M in accordance with procedures prescribed by the
8 department.

9 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
10 the Bureau's 2001 Chrysler 300M without properly testing and inspecting the vehicle to
11 determine if it was in compliance with Health & Saf. Code section 44012.

12 **SIXTH CAUSE FOR DISCIPLINE**

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

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

18 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
19 electronic smog certificate of compliance for the Bureau's 2001 Chrysler 300M.

20 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
21 of compliance for the Bureau's 2001 Chrysler 300M even though the vehicle had not been
22 inspected in accordance with section 3340.42.

23 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
24 conducted on the Bureau's 2001 Chrysler 300M in accordance with the Bureau's specifications.

25 **SEVENTH CAUSE FOR DISCIPLINE**

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

27 25. Respondent East Bay Smog's smog check station license is subject to disciplinary
28 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent

1 committed a dishonest, fraudulent, or deceitful act whereby another is injured by issuing an
2 electronic smog certificate of compliance for the Bureau's 2001 Chrysler 300M without
3 performing a bona fide inspection of the emission control devices and systems on the vehicle,
4 thereby depriving the People of the State of California of the protection afforded by the Motor
5 Vehicle Inspection Program.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 26. Respondent Garcia's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
10 provisions of that Code in the following material respects:

11 a. **Section 44012:** Respondent failed to perform the emission control tests on the
12 Bureau's 2001 Chrysler 300M in accordance with procedures prescribed by the department.

13 b. **Section 44059:** Respondent willfully made a false entry on the vehicle inspection
14 report, as set forth in paragraph 19 above.

15 **NINTH CAUSE FOR DISCIPLINE**

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

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

21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
22 electronic smog certificate of compliance for the Bureau's 2001 Chrysler 300M.

23 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
24 2001 Chrysler 300M in accordance with Health & Saf. Code sections 44012 and 44035, and
25 California Code of Regulations, title 16, section 3340.42.

26 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
27 Bureau's 2001 Chrysler 300M in accordance with the Bureau's specifications.

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1 **TENTH CAUSE FOR DISCIPLINE**

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

3 28. Respondent Garcia's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
5 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
6 compliance for the Bureau's 2001 Chrysler 300M without performing a bona fide inspection of
7 the emission control devices and systems on the vehicle, thereby depriving the People of the State
8 of California of the protection afforded by the Motor Vehicle Inspection Program.

9 **MATTERS IN AGGRAVATION**

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

12 **Respondent East Bay Smog**

13 a. On or about January 12, 2009, the Bureau issued Citation No. C09-0819 against
14 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
15 perform a visual/functional check of emission control devices according to procedures prescribed
16 by the department), and California Code of Regulations, title 16, section ("Regulation") 3340.35,
17 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
18 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing
19 pulse air injection reactor system (PAIR). The Bureau assessed civil penalties totaling \$500
20 against Respondent for the violations. Respondent complied with the citation on February 27,
21 2009.

22 b. On or about July 20, 2009, the Bureau issued Citation No. C2010-0063 against
23 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
24 perform a visual/functional check of emission control devices according to procedures prescribed
25 by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
26 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
27 Bureau undercover vehicle with a missing fuel evaporative canister. The Bureau assessed civil

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1 penalties totaling \$1,000 against Respondent for the violations. Respondent complied with the
2 citation on September 24, 2009.

3 c. On or about January 13, 2010, the Bureau issued Citation No. C2010-0669 against
4 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
5 determine that emission control devices and systems required by State and Federal law are
6 installed and functioning correctly in accordance with test procedures), and Regulation 3340.35,
7 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
8 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with the
9 ignition timing adjusted beyond specifications. The Bureau assessed civil penalties totaling
10 \$2,000 against Respondent for the violations. Respondent complied with the citation on March 8,
11 2010.

12 **Respondent Garcia**

13 d. On or about January 12, 2009, the Bureau issued Citation No. M09-0820 against
14 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
15 perform tests of emission control systems and devices in accordance with Health & Saf. Code
16 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
17 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
18 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
19 vehicle with a missing PAIR. Respondent was directed to complete an 8 hour training course and
20 to submit proof of completion to the Bureau within 30 days from receipt of the citation.
21 Respondent complied with the citation and completed the training on February 18, 2009.

22 e. On or about July 20, 2009, the Bureau issued Citation No. M2010-0064 against
23 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
24 perform tests of emission control systems and devices in accordance with Health & Saf. Code
25 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
26 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
27 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
28 vehicle with a missing fuel evaporative canister. Respondent was directed to complete a 16 hour

1 training course and to submit proof of completion to the Bureau within 30 days from receipt of
2 the citation. Respondent complied with the citation and completed the training on September 19,
3 2009.

4 f. On or about January 13, 2010, the Bureau issued Citation No. M2010-0670 against
5 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
6 perform tests of emission control systems and devices in accordance with Health & Saf. Code
7 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
8 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
9 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
10 vehicle with the ignition timing adjusted beyond specifications. Respondent was directed to
11 complete a Clean Air Car Course and to submit proof of completion to the Bureau. Respondent
12 complied with the citation and completed the training on February 28, 2010.

13 **OTHER MATTERS**

14 30. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
15 suspend, revoke or place on probation the registration for all places of business operated in this
16 state by Respondent East Bay Smog upon a finding that said Respondent has, or is, engaged in a
17 course of repeated and willful violations of the laws and regulations pertaining to an automotive
18 repair dealer.

19 31. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
20 License Number TC 252615, issued to Respondent East Bay Smog, is revoked or suspended, any
21 additional license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee
22 may be likewise revoked or suspended by the Director.

23 32. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
24 Technician License Number EA 153742, issued to Respondent Eric Moises Garcia, is revoked or
25 suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name
26 of said licensee may be likewise revoked or suspended by the Director.

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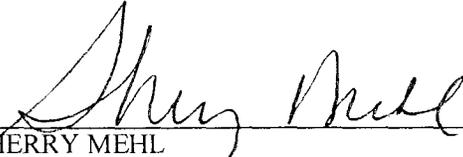
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PRAYER

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 Number ARD 252615, issued to East Bay Smog;
2. Revoking or suspending any other automotive repair dealer registration issued to East Bay Smog;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 252615, issued to East Bay Smog;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of East Bay Smog;
5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 153742, issued to Eric Moises Garcia;
6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Eric Moises Garcia;
7. Ordering East Bay Smog and Eric Moises Garcia to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
8. Taking such other and further action as deemed necessary and proper.

DATED: 5/10/11


SHERRY MEHL

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

SF2010202385