

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

In the Matter of the Accusation/Petition to Revoke
Probation Against:

Case No. 79/11-60

CALI SMOG; HECTOR TRUJILLO
aka HECTOR TRUJILLO, JR.
15325 Via Rio
Moreno Valley, CA 92555

Automotive Repair Dealer Registration
No. ARD 254053
Smog Check, Test Only, Station License
No. TC 254053

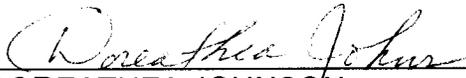
Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 10/14/11.

DATED: September 7, 2011



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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Attorneys for Complainant
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8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation/Petition to
12 Revoke Probation Against:

13 **CALI SMOG; HECTOR TRUJILLO, AKA**
HECTOR TRUJILLO, JR.
14 15325 Via Rio
15 Moreno Valley, CA 92555

16 Automotive Repair Dealer Registration No.
ARD 254053
17 Smog Check, Test Only, Station License No.
TC 254053
18

19 Respondent.
20

Case No. 79/11-60

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 PARTIES

24 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
25 brought this action solely in her official capacity and is represented in this matter by Kamala D.
26 Harris, Attorney General of the State of California, by Kevin J. Rigley, Deputy Attorney General.

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1 the issuance of subpoenas to compel the attendance of witnesses and the production of
2 documents; the right to reconsideration and court review of an adverse decision; and all other
3 rights accorded by the California Administrative Procedure Act and other applicable laws.

4 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
5 every right set forth above.

6 CULPABILITY

7 9. Respondent admits the truth of each and every charge and allegation in
8 Accusation/Petition to Revoke Probation No. 79/11-60.

9 10. Respondent agrees that his ARD registration and station license are subject to
10 discipline and he agrees to be bound by the Director's probationary terms as set forth in the
11 Disciplinary Order below.

12 CONTINGENCY

13 11. This stipulation shall be subject to approval by the Director his/her designee.
14 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau may
15 communicate directly with the Director and staff of the Department of Consumer Affairs
16 regarding this stipulation and settlement, without notice to or participation by Respondent. By
17 signing the stipulation, Respondent understands and agrees that he may not withdraw his
18 agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon
19 it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated
20 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
21 be inadmissible in any legal action between the parties, and the Director shall not be disqualified
22 from further action by having considered this matter.

23 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
24 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
25 effect as the originals.

26 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
3 writing executed by an authorized representative of each of the parties.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Director may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 254053
9 issued to Respondent is permanently invalidated; and Smog Check, Test Only, Station License
10 No. TC 254053 issued to Respondent is revoked. However, the permanent invalidation and
11 revocation are stayed and Respondent's ARD registration and station license are placed on
12 probation for three (3) years on the following terms and conditions.

13 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 254053 and
14 Smog Check, Test Only Station License No. TC 254053 issued to Respondent are both suspended
15 for ten (10) consecutive days, beginning on the effective date of the Director's Decision and
16 Order.

17 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
18 automotive inspections, estimates and repairs.

19 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
20 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
21 conspicuously displayed in a location open to and frequented by customers and shall remain
22 posted during the entire period of actual suspension.

23 4. **Reporting.** Respondent or Respondent's authorized representative must report in
24 person or in writing as prescribed by and on a schedule set by the Bureau, but no more frequently
25 than each quarter, on the methods used and success achieved in maintaining compliance with the
26 terms and conditions of probation.

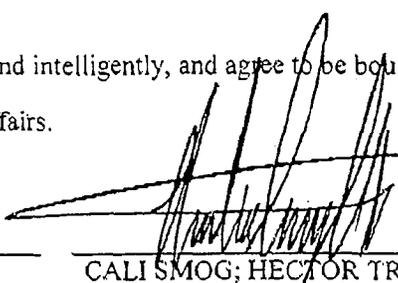
27 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
28 any financial interest which any partners, officers, or owners of the Respondent facility may have

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Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED:

6/27/11



CALI SMOG; HECTOR TRUJILLO, AKA HECTOR TRUJILLO, JR.
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

KEVIN J. RIGLEY
Deputy Attorney General
Attorneys for Complainant

LA2010601306
Stipulation.rtf

1 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
2 of the Director of Consumer Affairs.

3
4 DATED: _____

5 CALI SMOG; HECTOR TRUJILLO, AKA HECTOR
6 TRUJILLO, JR.
7 Respondent

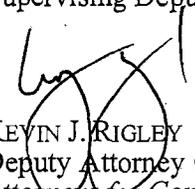
8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Director of Consumer Affairs.

11
12 Dated: 8/22/11

13 Respectfully submitted,

14 KAMALA D. HARRIS
15 Attorney General of California
16 GREGORY J. SALUTE
17 Supervising Deputy Attorney General

18 
19 KEVIN J. RIGLEY
20 Deputy Attorney General
21 *Attorneys for Complainant*

22 LA2010601306
23 Stipulation.rtf
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Exhibit A

Accusation/Petition to Revoke Probation No. 79/11-60

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

12 In the Matter of the Accusation and Petition to Revoke
Probation Against:

Case No. 79/11-60

13 **CALI SMOG**
14 **HECTOR TRUJILLO,**
15 **a.k.a. HECTOR TRUJILLO, JR., OWNER**
297 E. 3rd Street
16 San Bernardino, CA 92410
Mailing Address:
17 15325 Via Rio
Moreno Valley, CA 92555
Automotive Repair Dealer Reg. No. ARD 254053
18 Smog Check, Test Only, Station License No. TC 254053

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

(Smog Check)

19 and

20 **HECTOR TRUJILLO, JR.**
15400 Avenida De Portugal
21 Moreno Valley, CA 92555
Advanced Emission Specialist Technician License No.
22 EA 141262

Respondents.

24 Complainant alleges:

25 **PARTIES**

26 1. Sherry Mehl ("Complainant") brings this Accusation and Petition to Revoke
27 Probation solely in her official capacity as the Chief of the Bureau of Automotive Repair
28 ("Bureau"), Department of Consumer Affairs.

1 2. On or about March 13, 2008, the Director of Consumer Affairs ("Director") issued
2 Automotive Repair Dealer Registration Number ARD 254053 ("registration") to Hector Trujillo,
3 also known as Hector Trujillo, Jr. ("Respondent"), owner of Cali Smog. The registration was
4 immediately revoked; however, the revocation was stayed and Respondent was placed on
5 probation for three (3) years on terms and conditions, as forth in paragraph 7 below.
6 Respondent's registration will expire on March 31, 2011, unless renewed.

7 3. On or about April 15, 2008, the Director issued Smog Check, Test Only, Station
8 License Number TC 254053 ("smog check station license") to Respondent. The smog check
9 station license was immediately revoked; however, the revocation was stayed and Respondent
10 was placed on probation for three (3) years on terms and conditions, as set forth in paragraph 7
11 below. Respondent's smog check station license will expire on March 31, 2011, unless renewed.

12 4. In or about 1999, the Director issued Advanced Emission Specialist Technician
13 License Number EA 141262 ("technician license") to Respondent. Respondent's technician
14 license will expire on September 30, 2011, unless renewed.

15 **PRIOR REGISTRATION/SMOG CHECK STATION LICENSE**

16 5. On or about September 30, 2004, the Director issued Automotive Repair Dealer
17 Registration Number AH 235228 to Respondent, owner of The Smog Shop. On March 3, 2008,
18 Respondent's registration was revoked, as set forth in paragraph 7 below.

19 6. On or about May 10, 2005, the Director issued Smog Check Station License Number
20 TH 235228 to Respondent, owner of The Smog Shop. On March 3, 2008, Respondent's smog
21 check station license was revoked, as set forth in paragraph 7 below.

22 **DISCIPLINARY HISTORY**

23 7. On or about March 3, 2008, pursuant to the Stipulated Settlement and Disciplinary
24 Order adopted as the Decision of the Director in the consolidated disciplinary proceedings titled
25 "In the Matter of the Accusation Against: Hector Trujillo, Jr. dba the Smog Shop", Case No.
26 79/07-69, and "In the Matter of the Statement of Issues Against: Cali Smog, Hector Trujillo,
27 Owner", Case No. 79/07-69 S, the Director revoked Respondent's Automotive Repair Dealer
28 Registration Number AH 235228 and Smog Check Station License Number TH 235228. The

1 Director further ordered that upon successful completion of all licensing requirements, a
2 registration and smog check station license shall be issued to Respondent as owner of Cali Smog
3 and automatically revoked. However, the revocations will be stayed and Respondent placed on
4 probation for three (3) years on terms and conditions.

5 **JURISDICTION**

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

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

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

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

19 **STATUTORY PROVISIONS**

20 12. Bus. & Prof. Code section 9884.7 states, in pertinent part:

21 (a) The director, where the automotive repair dealer cannot show there
22 was a bona fide error, may deny, suspend, revoke, or place on probation the
23 registration of an automotive repair dealer for any of the following acts or omissions
24 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.

25 (1) Making or authorizing in any manner or by any means whatever any
26 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.

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28 (4) Any other conduct that constitutes fraud.

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(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.

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

14. Health & Saf. Code section 44072.2 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 . . .

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

.....
(c) The department shall revoke the license of any smog check technician 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 the following:

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

16. 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 17. 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 ACCUSATION

7 UNDERCOVER OPERATION: 1997 NISSAN PATHFINDER

8 18. On July 15, 2010, an undercover operator with the Bureau ("operator") took the
9 Bureau's 1997 Nissan Pathfinder to Respondent's facility and requested a smog inspection. The
10 ignition timing on the Bureau-documented vehicle was not adjusted to manufacturer's
11 specifications in that it was set to 26 degrees before top dead center (BTDC); the manufacturer's
12 specifications are 15 degrees BTDC. The operator signed and received a copy of a written
13 estimate for the inspection. After the inspection was completed, the operator paid the facility \$50
14 and received copies of an invoice and a vehicle inspection report ("VIR"). The VIR indicated
15 that Respondent's technician, Ruth Ema Trujillo, had performed the smog inspection on the
16 vehicle. That same day, electronic smog Certificate of Compliance No. WL679404C was issued
17 for the vehicle.

18 19. On July 29, 2010, the Bureau inspected the vehicle and found that the ignition timing
19 had not been adjusted and was still set to 26 degrees BTDC.

20 FIRST CAUSE FOR DISCIPLINE

21 (Untrue or Misleading Statements)

22 20. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
23 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which
24 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
25 follows: Respondent's technician, Ruth Ema Trujillo, certified under penalty of perjury on the
26 VIR that the Bureau's 1997 Nissan Pathfinder had passed the inspection and was in compliance
27 with applicable laws and regulations. In fact, the ignition timing on the vehicle was not adjusted

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1 to manufacturer's specifications, as set forth in paragraphs 18 and 19 above. As such, the vehicle
2 would not pass the inspection required by Health & Saf. Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 21. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
6 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes
7 fraud by issuing an electronic smog certificate of compliance for the Bureau's 1997 Nissan
8 Pathfinder without performing a bona fide inspection of the emission control devices and systems
9 on the vehicle, thereby depriving the People of the State of California of the protection afforded
10 by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 22. Respondent's smog check station license is subject to disciplinary action pursuant to
14 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
15 following sections of that Code:

16 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
17 performed on the Bureau's 1997 Nissan Pathfinder in accordance with procedures prescribed by
18 the department.

19 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
20 the Bureau's 1997 Nissan Pathfinder without properly testing and inspecting the vehicle to
21 determine if it was in compliance with Health & Saf. Code section 44012.

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1 after giving notice and opportunity to be heard, temporarily or permanently invalidate (suspend or
2 revoke) Respondent's registration and suspend or revoke his smog check station license.

3 27. Grounds exist to revoke Respondent's probation and reimpose the order of revocation
4 of Respondent's registration and smog check station license as follows:

5 **CAUSE TO REVOKE PROBATION**

6 **(Failure to Obey all Laws)**

7 28. Condition 1 of Respondent's probation states that Respondent shall comply with all
8 statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

9 29. Respondent's probation is subject to revocation in that he failed to comply with all
10 statutes, regulations, and rules governing automotive inspections, as set forth in paragraphs 18
11 through 24 above.

12 **OTHER MATTERS**

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

18 31. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
19 License Number TC 254053, issued to Respondent Hector Trujillo, also known as Hector
20 Trujillo, Jr., owner of Cali Smog, is revoked or suspended, any additional license issued under
21 this chapter in the name of said licensee, including, but not limited to, Advanced Emission
22 Specialist Technician License Number EA 141262, may be likewise revoked or suspended by the
23 Director.

24 **PRAAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 254053, issued to Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog;

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2. Revoking probation and reimposing the order of revocation of Automotive Repair Dealer Registration Number ARD 254053, issued to Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog;

3. Revoking or suspending any other automotive repair dealer registration issued to Hector Trujillo, also known as Hector Trujillo, Jr.;

4. Revoking or suspending Smog Check, Test Only, Station License Number TC 254053, issued to Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog;

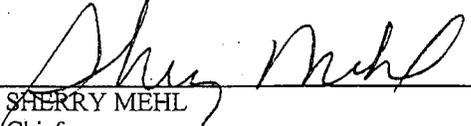
5. Revoking probation and reimposing the order of revocation of Smog Check, Test Only, Station License Number TC 254053, issued to Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog, including, but not limited to, Advanced Emission Specialist Technician License Number EA 141262;

7. Ordering Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog, 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: 1/25/11



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

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