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

In the Matter of the Accusation Against:

Case No. 79/14-13

**A OFFICIAL SMOG STATION**  
1813 Mt. Diablo Blvd. Unit C  
Walnut Creek, CA 94596  
**MELISSA ANN LOPEZ, OWNER**

**DEFAULT DECISION AND ORDER  
REGARDING A OFFICIAL SMOG  
STATION/MELISSA ANN LOPEZ,  
OWNER**

**Automotive Repair Dealer**  
**Registration No. ARD 256766**

[Gov. Code, §11520]

**Smog Check Test Only Station**  
**License No. TC 256766**

Respondent

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

**STEVEN GABRIEL ESPINOZA**  
689 San Miguel Ave.  
Sunnyvale, CA 94568

**Advanced Emission Specialist Technician**  
**License No. EA 152567 (to be redesignated**  
**upon renewal as EO 152567 and/or EI**  
**152567)**

Respondent.

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FINDINGS OF FACT

1. On or about August 7, 2013, Complainant Patrick Dorais, in his official capacity as the Acting Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, filed Accusation No. 79/14-13 against Melissa Ann Lopez as Owner of A Official Smog Station (Respondent Lopez) before the Director of Consumer Affairs. *A copy of the Accusation is attached as exhibit A.*

2. On or about November 25, 2008, the Director of Consumer Affairs (Director) issued Automotive Repair Dealer Registration Number ARD 256766 to Respondent Lopez. The

1 registration expired on October 31, 2013, and has not been renewed.

2 3. On or about December 12, 2008, the Director issued Smog Check Test Only Station  
3 License No. TC 256766 to Respondent Lopez. The station license expired on October 31, 2013,  
4 and has not been renewed.

5 4. On or about August 15, 2013, Respondent Lopez was served by Certified and First  
6 Class Mail copies of the Accusation No. 79/14-13, Statement to Respondent, Notice of Defense,  
7 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
8 and 11507.7) at Respondent's address of record which, under Business and Professions Code  
9 section 136, is required to be reported and maintained with the Bureau. Respondent's address of  
10 record was and is: 1813 Mt. Diablo Blvd., Unit C., Walnut Creek, CA 94596. *A copy of the*  
11 *proof of service is attached as exhibit B.*

12 5. Service of the Accusation was effective as a matter of law under the provisions of  
13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
14 124.

15 6. On or about August 20, 2013, the documents mentioned above were returned by the  
16 U.S. Postal Service marked "UTF," meaning "Unable to Forward." The address on the  
17 documents was the same as the address on file with the Bureau. Respondent Lopez failed to  
18 maintain an updated address with the Bureau and the Bureau has made attempts to serve the  
19 Respondent at the address on file. Respondent Lopez has not made herself available for service  
20 and therefore, has not availed herself of her right to file a notice of defense and appear at hearing.

21 *Copies of the returned envelopes are attached as exhibit C.*

22 7. Government Code section 11506 states, in pertinent part:

23 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
24 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
25 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

26 8. Respondent Lopez failed to file a Notice of Defense within 15 days after service upon  
27 her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No.  
28 79/14-13.

1 9. California Government Code section 11520 states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense or to appear at the  
3 hearing, the agency may take action based upon the respondent's express admissions  
4 or upon other evidence and affidavits may be used as evidence without any notice to  
5 respondent.

6 10. Under Government Code section 11520, the Director, after having reviewed the  
7 returned envelopes in addition to the proof of service signed by a Department of Justice  
8 employee, finds that Respondent Lopez is in default. The Director will take action without  
9 further hearing and, based on the affidavit of Bureau representative Roy Peach, finds that the  
10 allegations in the Accusation regarding Respondent Lopez are true. *A copy of the affidavit of  
11 Bureau representative Roy Peach is attached as exhibit D.*

#### 12 DETERMINATION OF ISSUES

13 1. Based on the above findings of fact, Respondent Lopez has subjected her Automotive  
14 Repair Dealer Registration No. ARD 256766 and Smog Check Test Only Station License No. TC  
15 256766 to discipline.

16 2. The agency has jurisdiction to adjudicate this case by default.

17 3. The Director of Consumer Affairs is authorized to invalidate Respondent Lopez's  
18 Automotive Repair Dealer Registration based upon the following violations alleged in the  
19 Accusation that are supported by the evidence contained in the Investigative Report regarding this  
20 matter:

21 a. Untrue and Misleading Statements (Bus. & Prof. Code § 9884.7, subd. (a)(1));

22 b. Failure to Comply with Work Order Requirement (Bus. & Prof. Code § 9884.7, subd.  
23 (a)(2)); and

24 c. Failure to Comply with Code (Bus. & Prof. Code § 9884.7, subd. (a)(6)).

25 4. The Director of Consumer Affairs is authorized to revoke Respondent Lopez's Smog  
26 Check, Test Only, Station License based upon the following violations alleged in the Accusation  
27 that are supported by the evidence contained by the affidavit of Bureau representative Roy Peach  
28 regarding this matter:

1 a. Violation of Motor Vehicle Inspection Program (Health & Saf. Code § 44072.2, subd.  
2 (a)); and

3 b. Failure to Comply with Regulations (Health & Saf. Code § 44072.2, subd. (c)).

4 ORDER

5 IT IS ORDERED that Automotive Repair Dealer Registration No. ARD 256766, issued to  
6 Melissa Ann Lopez as Owner of A Official Smog Station, is revoked.

7 IT IS FURTHER ORDERED that Smog Check Test Only License No. TC 256766, issued  
8 to Respondent Melissa Ann Lopez as Owner of A Official Smog Station, is revoked.

9 Under Government Code section 11520, subdivision (c), Respondent Lopez may serve a  
10 written motion requesting that the Decision be vacated and stating the grounds relied on within  
11 seven (7) days after service of the Decision on her. The motion should be sent to the Bureau of  
12 Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Boulevard, Rancho  
13 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing  
14 on a showing of good cause, as defined in the statute.

15 This Decision shall become effective on September 18, 2014

16 It is so ORDERED August 28, 2014

17  
18   
19 DOREATHA JOHNSON  
20 Deputy Director, Legal Affairs  
21 Department of Consumer Affairs

22 90420971.DOCX  
23 DOJ Matter ID:SF2012901106

24 Attachments:

25 Exhibit A: Accusation

26 Exhibit B: Proof of Service

27 Exhibit C: Copy of Returned Envelopes

28 Exhibit D: Declaration of Roy Peach

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 ASPASIA A. PAPAVALASSILIOU  
Deputy Attorney General  
4 State Bar No. 196360  
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6 Telephone: (510) 622-2199  
Facsimile: (510) 622-2270  
7 E-mail: Aspasia.Papavassiliou@doj.ca.gov  
*Attorneys for Complainant*  
8

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

11  
12 In the Matter of the Accusation Against:

Case No. **79/14-13**

13 **A OFFICIAL SMOG STATION**  
1813 Mt. Diablo Blvd. Unit C  
14 Walnut Creek, CA 94596  
**MELISSA ANN LOPEZ, OWNER**

**ACCUSATION AGAINST A OFFICIAL  
SMOG STATION; ACCUSATION AND  
PETITION TO REVOKE PROBATION  
AGAINST STEVEN GABRIEL  
ESPINOZA**

15 **Automotive Repair Dealer**  
16 **Registration No. ARD 256766**

17 **Smog Check Test Only Station**  
18 **License No. TC 256766**

19 Respondent

20  
21 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

22 **STEVEN GABRIEL ESPINOZA**  
689 San Miguel Ave.  
23 Sunnyvale, CA 94568

24 **Advanced Emission Specialist Technician**  
License No. EA 152567 (to be redesignated  
25 upon renewal as EO 152567 and/or EI  
152567)

26 Respondent  
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Complainant alleges:

**PARTIES**

1. Patrick Dorais (Complainant) brings this Accusation and this Accusation and Petition to Revoke Probation solely in his official capacity as the Acting Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

**A Official Smog Station (Melissa Ann Lopez, Owner)**

2. On or about November 25, 2008, the Director of Consumer Affairs (Director) issued Automotive Repair Dealer Registration Number ARD 256766 (registration) to Melissa Ann Lopez (Respondent Lopez) doing business as A Official Smog Station. The registration was in full force and effect at all times relevant to the charges brought in this Accusation and expires on October 31, 2013, unless renewed.

3. On or about December 12, 2008, the Director issued Smog Check Test Only Station License No. TC 256766 (station license) to Respondent Lopez doing business as A Official Smog Station. The station license was in full force and effect at all times relevant to the charges brought in this Accusation and expires on October 31, 2013, unless renewed.

**Steven Gabriel Espinoza**

4. In 2006, the Director issued Advanced Emission Specialist Technician License Number EA 152567 (technician license) to Steven Gabriel Espinoza (Respondent Espinoza). The technician license is due to expire on February 28, 2014. Upon timely renewal of the license, the license will be redesignated as EO 152567 and/or EI 152567.<sup>1</sup>

5. In a disciplinary action entitled "In the Matter of the Accusation Against...Steven Gabriel Espinoza," Case No. 79/10-54, the Director of Consumer Affairs issued a Decision and Order effective on or about September 7, 2010, in which Respondent Espinoza's technician license was revoked. However, the revocation was stayed and the technician license was placed

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<sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area Technician (EB) license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 on probation for three (3) years with certain terms and conditions. A copy of that Decision and  
2 Order is attached as Exhibit A and is incorporated by reference.

3 **JURISDICTION AND STATUTORY PROVISIONS**

4 6. These Accusations and Petition to Revoke Probation are brought before the Director  
5 of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the  
6 following laws.

7 7. Business and Professions Code section 9884.7 provides that the Director may revoke  
8 an automotive repair dealer registration.

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

13 9. Business and Professions Code section 9884.7 states, in pertinent part:

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

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

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

24 ...

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

28 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more

1 than one place of business in this state, the director pursuant to subdivision (a) shall only suspend,  
2 revoke, or place on probation the registration of the specific place of business which has violated  
3 any of the provisions of this chapter. This violation, or action by the director, shall not affect in  
4 any manner the right of the automotive repair dealer to operate his or her other places of business.

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

9 10. Business and Professions Code section 9884.9, subdivision (a), states, in pertinent  
10 part:

11 "The automotive repair dealer shall give to the customer a written estimated price for labor  
12 and parts necessary for a specific job. No work shall be done and no charges shall accrue before  
13 authorization to proceed is obtained from the customer."

14 11. Business and Professions Code section 477 provides, in pertinent part, that "Board"  
15 includes "bureau," "commission," "committee," "department," "division," "examining  
16 committee," "program," and "agency." "License" includes certificate, registration or other means  
17 to engage in a business or profession regulated by the Code.

18 12. Health and Safety Code section 44002 provides, in pertinent part, that the Director  
19 has all the powers and authority granted under the Automotive Repair Act for enforcing the  
20 Motor Vehicle Inspection Program.

21 13. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

28 ....

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

2 14. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
3 expiration or suspension of a license by operation of law, or by order or decision of the Director  
4 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
5 the Director of the jurisdiction to proceed with disciplinary action.

6 15. Section 44072.8 of the Health and Safety Code states:

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

10 16. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that  
11 upon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist  
12 Technician license issued prior to the effective date of this regulation, the licensee may apply to  
13 renew as a Smog Inspector, Smog Check Repair Technician, or both.

14 **COST RECOVERY**

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

19 **UNDERCOVER VEHICLE NO. 1: – MAY 9, 2012**

20 18. On or about May 9, 2012, a Bureau undercover operator requested a smog  
21 inspection for a 2000 Chevrolet from Respondent Lopez’s A Official Smog Station, located at  
22 1813 Mt. Diablo Blvd., Unit C, Walnut Creek, California, where Respondent Espinoza was  
23 employed as a smog technician. The operator signed a work order but did not receive a written  
24 estimate for the price of parts and labor. Respondent Espinoza then performed the smog  
25 inspection and issued electronic Certificate of Compliance No. [REDACTED], certifying that the  
26 vehicle was in compliance with all laws and regulations; however, the vehicle should have failed  
27 the visual portion of the smog inspection, because the vehicle’s Air Injection Pump and other  
28 related components had been removed. After the inspection, the operator paid \$39.95 and

1 received a Vehicle Inspection Report indicating that Respondents had issued a certificate of  
2 compliance for the vehicle.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue and Misleading Statements)**

5 19. Respondent Lopez has subjected her registration to discipline under Business and  
6 Professions Code section 9884.7, subdivision (a)(1), by issuing electronic Certificate of  
7 Compliance No. [REDACTED] for the 2000 Chevrolet on or about May 9, 2012, certifying that the  
8 vehicle was in compliance with applicable laws and regulations when, in fact, it could not have  
9 passed the visual portion of the smog inspection due to the fact that the Air Injection Pump had  
10 been removed from the vehicle.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Code)**

13 20. Respondent Lopez has subjected her registration to discipline under Business and  
14 Professions Code section 9884.7, subdivision (a)(6), in that on or about May 9, 2012, Respondent  
15 failed to comply with the following section of that code:

16 a. Section 9884.9, subdivision (a): Respondent failed to provide the operator  
17 with a written estimated price for parts and labor for a specific job.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Violation of the Motor Vehicle Inspection Program)**

20 21. Respondent Lopez has subjected her station license to discipline under Health &  
21 Safety Code section 44072.2, subdivision (a), in that on or about May 9, 2012, regarding the 2000  
22 Chevrolet, she failed to comply with the following sections of that Code:

23 a. Section 44012, subdivision (f): Respondent failed to perform emission control  
24 inspections on the vehicle in accordance with procedures prescribed by the department.

25 b. Section 44015, subdivision (b): Respondent issued electronic Certificate of  
26 Compliance No. [REDACTED] for the vehicle without properly inspecting the vehicle to determine  
27 if it was in compliance with Health & Safety Code section 44012.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 22. Respondent Lopez has subjected her station license to discipline under Health &  
4 Safety Code section 44072.2, subdivision (c), in that on or about May 9, 2012, regarding the 2000  
5 Chevrolet, she failed to comply with provisions of California Code of Regulations, title 16, as  
6 follows:

7 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
8 Compliance No. [REDACTED] for the vehicle even though the vehicle had not been inspected in  
9 accordance with section 3340.42.

10 b. **Section 3340.42, subdivision (e)(1)(A):** Respondent failed perform a proper  
11 visual inspection of the vehicle in accordance with procedures prescribed by the department.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Violation of the Motor Vehicle Inspection Program)**

14 23. Respondent Espinoza has subjected his technician license to discipline under Health  
15 and Safety Code section 44072.2, subdivision (a), in that on or about May 9, 2012, regarding the  
16 2000 Chevrolet, he violated sections of the Code , as follows:

17 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission  
18 control devices and systems required by law were installed and functioning correctly in  
19 accordance with test procedures.

20 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests  
21 on that vehicle in accordance with procedures prescribed by the department.

22 c. **Section 44032:** Respondent failed to perform tests of the emission control devices  
23 and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle's  
24 Air Injection Pump and other related components were missing.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Failure to Comply with Regulations)**

27 24. Respondent Espinoza has subjected his technician license to discipline under Health  
28 and Safety Code 44072.2, subdivision (c), in that on or about May 9, 2012, regarding the 2000

1 Chevrolet, he violated sections of the California Code of Regulations, title 16, as follows:

2 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle  
3 in accordance with Health and Safety Code section 44012.

4 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the  
5 Emissions Inspection System for electronic Certificate of Compliance No. [REDACTED] by  
6 entering "N" for Not Applicable for the visual inspection of the air injection system even though  
7 the Air Injection Pump and other related components that are required were missing from this  
8 vehicle.

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

11 **UNDERCOVER VEHICLE NO. 2: – MAY 9 and 16, 2012**

12 25. On or about May 9, 2012, a Bureau undercover operator requested a smog inspection  
13 for a 1997 Chevrolet from Respondent Lopez's A Official Smog Station, located at 1813 Mt.  
14 Diablo Blvd., Unit C, Walnut Creek, California, where Respondent Espinoza was employed as a  
15 smog technician. The operator signed a work order but did not receive a written estimate for the  
16 price of parts and labor. The work order did not show the automobile's odometer reading.  
17 Respondent Espinoza then performed a smog inspection and entered "Pass" into the Emissions  
18 Inspection System (EIS) for the Comprehensive Visual Inspection portion of the smog inspection  
19 indicating that the required visual smog equipment components were in compliance with all laws  
20 and regulations; however, the vehicle should have failed the visual portion of the smog  
21 inspection, because the vehicle's Evaporative Emission Control (EVAP) canister had been  
22 removed. The operator paid \$49.95 and received a Vehicle Inspection Report indicating that the  
23 vehicle had passed the portion of the inspection requiring the technician to check for Fuel  
24 Evaporative Controls. Respondents did not issue an electronic certificate of compliance due to  
25 uncompleted self tests and Respondent Espinoza instructed the operator to return for another  
26 inspection after driving the vehicle for approximately 80 miles.

27 26. On or about May 16, 2012, the operator returned to the station with the vehicle for the  
28 reinspection. The operator signed a work order but did not receive a written estimate for the price

1 of parts and labor. Respondent Espinoza performed another smog inspection and this time issued  
2 electronic Certificate of Compliance No. [REDACTED] certifying that the vehicle was in  
3 compliance with all laws and regulations; however, the vehicle should have failed the visual  
4 portion of the smog inspection because the vehicle's Evaporative Emission Control (EVAP)  
5 canister was still missing.

6 **SEVENTH CAUSE FOR DISCIPLINE**

7 (Untrue and Misleading Statements)

8 27. Respondent Lopez has subjected her registration to discipline under Business and  
9 Professions Code section 9884.7, subdivision (a)(1), by issuing electronic Certificate of  
10 Compliance No. [REDACTED] for the 1997 Chevrolet on or about May 16, 2012, certifying that  
11 the vehicle was in compliance with applicable laws and regulations when, in fact, it could not  
12 have passed the visual portion of the smog inspection due to the fact that the EVAP canister had  
13 been removed from the vehicle.

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 (Failure to Comply with Work Order Requirement)

16 28. Respondent Lopez has subjected her registration to discipline under Business and  
17 Professions Code section 9884.7, subdivision (a)(2), in that on or about May 9, 2012, Respondent  
18 allowed the operator to sign a work order that did not state the odometer reading of the vehicle.

19 **NINTH CAUSE FOR DISCIPLINE**

20 (Failure to Comply with Code)

21 29. Respondent has subjected her registration to discipline under Business and  
22 Professions Code section 9884.7, subdivision (a)(6), in that on or about May 9, 2012, and on or  
23 about May 16, 2012, Respondent failed to comply with the following section of that code:

24 a. Section 9884.9, subdivision (a): Respondent failed to provide the operator  
25 with a written estimated price for parts and labor for a specific job.

26 **TENTH CAUSE FOR DISCIPLINE**

27 (Violations of the Motor Vehicle Inspection Program)

28 30. Respondent Lopez has subjected her station license to discipline under Health &

1 Safety Code section 44072.2, subdivision (a), in that on or about May 9, 2012 and on or about  
2 May 16, 2012, regarding the 1997 Chevrolet, she failed to comply with the following section of  
3 that code:

4 a. Section 44012, subdivision (f): Respondent failed to perform emission control  
5 inspections on the vehicle in accordance with procedures prescribed by the department.

6 **ELEVENTH CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Regulations)**

8 31. Respondent Lopez has subjected her station license to discipline under Health &  
9 Safety Code section 44072.2, subdivision (c), in that on or about May 9, 2012, and May 16, 2012,  
10 regarding the 1997 Chevrolet, she failed to comply with provisions of California Code of  
11 Regulations, title 16, as follows:

12 a. Section 3340.42, subdivision (e)(1)(F): Respondent failed perform a proper visual  
13 inspection of the vehicle in accordance with procedures prescribed by the department.

14 **TWELFTH CAUSE FOR DISCIPLINE**

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

16 32. Respondent Espinoza has subjected his technician license to discipline under Health  
17 and Safety Code section 44072.2, subdivision (a), in that on or about May 9, 2012, and May 16,  
18 2012, regarding the 1997 Chevrolet, he violated sections of the Health and Safety Code, as  
19 follows:

20 a. Section 44012, subdivision (a): Respondent failed to determine that all emission  
21 control devices and systems required by law were installed and functioning correctly in  
22 accordance with test procedures.

23 b. Section 44012, subdivision (f): Respondent failed to perform emission control tests  
24 on that vehicle in accordance with procedures prescribed by the department.

25 c. Section 44032: Respondent failed to perform tests of the emission control devices  
26 and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle's  
27 EVAP canister had been removed.

28

1 THIRTEENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Regulations)

3 33. Respondent Espinoza has subjected his technician license to discipline under Health  
4 and Safety Code 44072.2, subdivision (c), in that on or about May 9, 2012, and May 16, 2012,  
5 regarding the 1997 Chevrolet, he violated sections of California Code of Regulations, title 16, as  
6 follows:

7 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test that vehicle  
8 in accordance with Health and Safety Code section 44012.

9 b. Section 3340.41, subdivision (c): On May 16, 2012, Respondent entered false  
10 information into the Emissions Inspection System for electronic Certificate of Compliance No.  
11 [REDACTED] by entering "PASS" for the visual inspection of the EVAP even though the EVAP  
12 canister had been removed from this vehicle.

13 c. Section 3340.42: Respondent failed to conduct the required smog tests and  
14 inspections on that vehicle in accordance with the Bureau's specifications.

15 **DISCIPLINARY CONSIDERATION REGARDING RESPONDENT LOPEZ**

16 34. To determine the degree of discipline, if any, to be imposed against Respondent  
17 Lopez, Complaint alleges that or about January 26, 2010, the Bureau issued Citation No. C2010-  
18 0729 against Respondent Lopez for violating Health and Safety Code section 44012(f) (failure to  
19 determine that emission control devices and systems required by State and Federal law are  
20 installed and functioning correctly in accordance with test procedures) and California Code of  
21 Regulations section 3340.35(c) (issuing a Certificate of Compliance to a vehicle that was  
22 improperly tested). The Bureau assessed civil penalties totaling \$500 against Respondent for the  
23 violations. Respondent paid this citation on April 5, 2010.

24 **OTHER MATTERS**

25 35. Under Business and Professions Code section 9884.7(c), the director may suspend,  
26 revoke, or place on probation the registrations for all places of business operated in this state by  
27 Melissa Ann Lopez, upon a finding that she has, or is, engaged in a course of repeated and willful  
28 violation of the laws and regulations pertaining to an automotive repair dealer.



1 PRAYER

2 THEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
3 Accusation and Accusation and Petition to Revoke Probation, and that following the hearing, the  
4 Director of Consumer Affairs issue a decision:

5 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
6 Registration Number ARD 256766, issued to Melissa Ann Lopez, doing business as A Official  
7 Smog Station;

8 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
9 registration issued to Melissa Ann Lopez;

10 3. Revoking or suspending Smog Check Test Only Station License Number TC 256766,  
11 issued to Melissa Ann Lopez, doing business as A Official Smog Station;

12 4. Revoking or suspending any additional license issued to Melissa Ann Lopez under  
13 Chapter 5, of the Health and Safety Code, pursuant to Health and Safety Code section 44072.8;

14 5. Ordering Melissa Ann Lopez to pay the Director of Consumer Affairs the reasonable  
15 costs of the investigation and enforcement of this case, pursuant to Code section 125.3;

16 6. Revoking the probation that was granted by the Bureau of Automotive Repair in Case  
17 No. 79/10-54 and imposing the disciplinary order that was stayed thereby revoking Steven  
18 Gabriel Espinoza's technician license, currently designated as Advanced Emission Specialist  
19 Technician License No. EA 152567, and subject to redesignation upon timely renewal as EO  
20 152567 and/or EI 152567;

21 7. Revoking or suspending Steven Gabriel Espinoza's technician license, currently  
22 designated as EA 152567, and subject to redesignation upon timely renewal as EO 152567 and/or  
23 EI 152567;

24 7. Revoking or suspending any additional license issued under Chapter 5 of the Health  
25 and Safety Code in the name of Steven Gabriel Espinoza;

26 8. Ordering Steven Gabriel Espinoza to pay the Director of Consumer Affairs the  
27 reasonable costs of the investigation and enforcement of this case, pursuant to Code section  
28 125.3;

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

DATED: August 7, 2013

Patrick Dorais  
PATRICK DORAIS  
Acting Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

SF2012901106

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Special Assistant Attorney General  
3 ASPASIA PAPAVASILLIOU  
Deputy Attorney General  
4 State Bar No. 196360  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (415) 703-5547  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 79/10-54

12 **DISCOUNT SMOG CHECK CENTERS #3,**  
13 **6055 Dougherty Road**  
**Dublin, California 94568**  
14 **STEVEN GABRIEL ESPINOZA, OWNER**  
**Automotive Repair Dealer Registration No.**  
15 **ARD 247901**  
**Smog Check Test Only Station License No.**  
16 **TC 247901,**

**A C C U S A T I O N**  
**S M O G C H E C K**

17 and

18 **STEVEN GABRIEL ESPINOZA**  
**689 San Miguel Avenue**  
19 **Sunnyvale, CA 94568**  
**Advanced Emission Specialist Technician**  
20 **License No. EA 152567**

21 Respondents.

22  
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.

27 ///

28 ///



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

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

12 6. Code section 9884.9, subdivision (a), states:

13 (a) The automotive repair dealer shall give to the customer a written  
14 estimated price for labor and parts necessary for a specific job. No work shall be done  
15 and no charges shall accrue before authorization to proceed is obtained from the  
16 customer. No charge shall be made for work done or parts supplied in excess of the  
17 estimated price without the oral or written consent of the customer that shall be  
18 obtained at some time after it is determined that the estimated price is insufficient and  
19 before the work not estimated is done or the parts not estimated are supplied. Written  
20 consent or authorization for an increase in the original estimated price may be  
21 provided by electronic mail or facsimile transmission from the customer. The bureau  
22 may specify in regulation the procedures to be followed by an automotive repair  
23 dealer if an authorization or consent for an increase in the original estimated price is  
24 provided by electronic mail or facsimile transmission. If that consent is oral, the  
25 dealer shall make a notation on the work order of the date, time, name of person  
26 authorizing the additional repairs and telephone number called, if any, together with a  
27 specification of the additional parts and labor and the total additional cost, and shall  
28 do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the  
notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or  
initials to an acknowledgment of notice and consent, if there is an oral consent of the  
customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original  
estimated price.

\_\_\_\_\_  
(signature or initials)"

Nothing in this section shall be construed as requiring an automotive  
repair dealer to give a written estimated price if the dealer does not agree to perform  
the requested repair.

7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
2 temporarily or permanently.

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

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

10 10. Section 44072.2 of the Health and Safety Code 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 (c) Violates any of the regulations adopted by the director pursuant to  
18 this chapter.

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

21 11. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
22 expiration or suspension of a license by operation of law, or by order or decision of the Director  
23 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
24 the Director of jurisdiction to proceed with disciplinary action.

25 12. Section 44072.8 of the Health and Safety Code states:

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

#### **COST RECOVERY**

13. 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

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **UNDERCOVER OPERATION – MARCH 5, 2009**

4 14. On March 5, 2009, a Bureau undercover operator (“operator”) drove a Bureau-  
5 documented 1998 Nissan Altima to Respondent’s facility for a smog inspection. The vehicle  
6 could not pass a smog inspection because the vehicle’s ignition timing was adjusted beyond the  
7 manufacturer’s specifications. The operator signed a work order; however, she was not provided  
8 with a copy of the document prior to the performance of the smog inspection. Fernando  
9 Solorzano, a licensed smog technician, performed the smog inspection and issued electronic  
10 Certificate of Compliance No. NI350931C, certifying that he had tested and inspected the 1998  
11 Nissan Altima and that the vehicle was in compliance with applicable laws and regulations. In  
12 fact, the vehicle could not have passed the functional portion of the smog inspection because the  
13 vehicle’s ignition timing was adjusted beyond the manufacturer’s specifications.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 15. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,  
17 subdivision (a)(1), in that on or about March 5, 2009, Respondent made or authorized statements  
18 which he knew or in the exercise of reasonable care he should have known to be untrue or  
19 misleading, by issuing electronic Certificate of Compliance No. NI350931C for the 1998 Nissan  
20 Altima, certifying that the vehicle was in compliance with applicable laws and regulations. In  
21 fact, the vehicle could not have passed the functional portion of the smog inspection because the  
22 vehicle’s ignition timing was adjusted beyond the manufacturer’s specifications.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Failure to Record Odometer Reading on Signed Document)**

25 16. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,  
26 subdivision (a)(2), in that on or about March 5, 2009, Respondent failed to set forth the vehicle’s  
27 current odometer reading on the work order signed by the operator.

28





1 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate  
2 of Compliance No. NI350931C for the 1998 Nissan Altima without performing a bona fide  
3 inspection of the emission control devices and systems on that vehicle, thereby depriving the  
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
5 Program.

6 **PRIOR CITATIONS**

7 23. To determine the degree of discipline, if any, to be imposed on Respondent,  
8 Complainant alleges as follows:

9 a. On or about February 4, 2008, the Bureau issued Citation No. C08-0663 against  
10 Respondent's registration and station licenses for violations of Health & Safety Code section  
11 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices  
12 according to procedures prescribed by the department); and, California Code of Regulations, title  
13 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a  
14 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover  
15 vehicle with a missing PCV system. The Bureau assessed civil penalties totaling \$500 against  
16 Respondent for the violations. Respondent complied with this citation on March 25, 2008.

17 b. On or about June 27, 2008, the Bureau issued Citation No. C08-1150 against  
18 Respondent's registration and station licenses for violations of Health & Safety Code section  
19 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices  
20 according to procedures prescribed by the department), and Regulation 3340.35, subdivision (c)  
21 (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a  
22 certificate of compliance to a Bureau undercover vehicle with a missing air suction system reed  
23 valve assembly. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the  
24 violations. Respondent complied with this citation on September 3, 2008.

25 c. On or about June 27, 2008, the Bureau issued Citation No. M08-1151 against  
26 Respondent's technician license for violations of Health and Safety Code section 44032 (qualified  
27 technicians shall perform tests of the emission control systems and devices in accordance with  
28 section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test,

1 and repair vehicles in accordance with Health and Safety Code sections 44012, 44035, and  
2 Regulation 3340.42) for issuing a certificate of compliance to a Bureau undercover vehicle with a  
3 missing air suction system reed valve assembly. The Bureau directed Respondent to complete an  
4 8-hour training course. Respondent complied with this citation on August 6, 2008.

5 d. On or about November 10, 2008, the Bureau issued Citation No. C09-0559 against  
6 Respondent's registration and smog station licenses for violations of Health & Safety Code  
7 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control  
8 devices according to procedures prescribed by the department), and Regulation 3340.35,  
9 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for  
10 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing  
11 adjusted beyond the manufacturer's specifications. The Bureau assessed civil penalties totaling  
12 \$2,000 against Respondent for the violations. Respondent complied with this citation on  
13 January 9, 2009.

14 e. On or about November 10, 2008, the Bureau issued Citation No. M09-0560 against  
15 Respondent's technician license for violations of Health and Safety Code section 44032 (qualified  
16 technicians shall perform tests of the emission control systems and devices in accordance with  
17 section 44012) and Regulation section 3340.30, subdivision (a) (qualified technicians shall  
18 inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012,  
19 44035, and Regulation 3340.42) for issuing a certificate of compliance to a Bureau undercover  
20 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau  
21 directed Respondent to complete a 16-hour training course. Respondent complied with this  
22 citation on January 4, 2009.

### 23 OTHER MATTERS

24 24. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
25 or permanently or refuse to validate, the registrations for all places of business operated in this  
26 state by to Steven Gabriel Espinoza doing business as Discount Smog Check Centers #3, upon a  
27 finding that he has, or is, engaged in a course of repeated and willful violations of the laws and  
28 regulations pertaining to an automotive repair dealer.



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7. Ordering Steven Gabriel Espinoza to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 2/22/10

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

# Exhibit B

Proof of Service of Accusation





# Exhibit C

Copy of Returned Envelopes

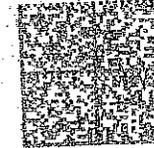
Aspasia A. Papavassiliou  
 Deputy Attorney General  
 Office of the Attorney General  
 1515 Clay Street, 20th Floor ~ P.O.B. 70550  
 Oakland, CA 94612-0550

**CERTIFIED MAIL**



7160 3901 9848 6907 2792

RETURN RECEIPT REQUESTED



UNITED STATES POSTAGE  
 02 IR  
 0002004533 AUG 15 2013  
 \$ 08.17  
 MAILED FROM ZIP CODE 94612

2013 AUG 20 PM 4:10

*Handwritten:* [Signature]

*Postmark:* 2013 AUG 20 PM 4:10

*Postmark:* 03562

*Postmark:* Attempted Not Known  
 No Such Number  
 Insufficient Address  
 Postmarking Order Deleted  
 Cancelled  
 No Mail Receipts  
 Returned

C

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED  
 USPS MAIL CARRIER  
 DETACH ALONG PERFORATION

2. Article Number



7160 3901 9848 6907 2792

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

Melissa Ann Lopez, Owner  
 A Official Smog Station  
 1813 Mount Diablo Boulevard, Unit C  
 Walnut Creek, CA 94596

03562-110-SF2012901106

PS Form 3811, July 2001

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature <b>X</b>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No

A OFFICIAL SMOG STATION

Aspasia A. Papavassiliou

Thank you for using Return Receipt Service

WALZ Certified Mailer™ 1-800-882-3811 www.walzpostals.com



UNITED STATES POSTAGE  
 EITHEL BOWEN  
 02 1R \$ 02.52  
 0002004533 AUG 15 2013  
 MAILED FROM ZIP CODE 94612

2013 AUG 15 10 10 AM

*[Handwritten signature]*

**DEPARTMENT OF JUSTICE**

Office of the Attorney General  
 1515 Clay Street, 20th Floor ~ P. O. Box 70550  
 Oakland, CA 94612-0550

Melissa Ann Lopez, Owner  
 A Official Smog Station  
 1813 Mount Diablo Boulevard, Unit C  
 Walnut Creek, CA 94596

Via First Class Mail

*[Postmark and cancellation text]*  
 No Postage  
 Necessary  
 If Mailed  
 in the  
 United States  
 POSTAGE  
 WILL BE  
 PAID  
 BY ADDRESSEE

# Exhibit D

Declaration of Roy Peach

## AFFIDAVIT OF ROY PEACH

1 I, Roy Peach, Program Representative I, Bureau of Automotive Repair, Hercules  
2 Field Office, hereby affirm the following facts regarding A Official Smog Station,  
3 Automotive Repair Dealer registration # ARD256766 and licensed Smog Check Test  
4 Only Station # TC256766, located at 1813 Mt Diablo Blvd. Unit C Walnut Creek, CA  
5 94596, Accusation Case No. 79/14-13:

6 In the course and scope of my duties as Program Representative I in the  
7 Hercules Field Office, I investigated A Official Smog Station (Respondent). This  
8 investigation determined that during undercover operations: Respondent made false  
9 and misleading statements when they issued fraudulent electronic Certificates of  
10 Compliance. This conduct fails to comply with Business and Professions Code  
11 §9884.7(a)(1).

12 Respondent fraudulently issued an electronic Certificates of Compliance to a  
13 vehicle without performing a bona fide inspection of emission control devices. This  
14 conduct fails to comply with Business and Professions Code §9884.7(a)(4).

15 Respondent did not perform emission control tests/inspections in accordance  
16 with procedures prescribed by the department and vehicle manufacturer. This conduct  
17 fails to comply with Health and Safety Code §44012 and California Code of Regulations  
18 §3340.42.

19 Respondent issued a Certificate of Compliance for a motor vehicle, which did not  
20 meet the requirements of Health and Safety Code § 44012. This conduct fails to comply  
21 with Health and Safety Code §44015.

22 Respondent falsely or fraudulently issued electronic Certificate of Compliance to  
23 a vehicle that was not in compliance. This conduct fails to comply with California Code  
24 of Regulations §3340.24(c).

25 Respondent issued a Certificate of Compliance to the owner or operator of a  
26 vehicle that had not been inspected in accordance with the procedures specified in  
27 California Code of Regulations § 3340.42. This conduct fails to comply with California  
28 Code of Regulations §3340.35(c).

**AFFIDAVIT OF ROY PEACH**

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I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently to those facts and to the facts, evidence, and information contained within the investigation report supporting the violations asserted in the Accusation and mentioned herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on the 7 day of July, 2014,  
at Hercules, California.

  
\_\_\_\_\_  
Roy Peach PRI  
Bureau of Automotive Repair