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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 Against:

Case No. 79/11-19

12 **H & R SMOG CHECK & AUTO REPAIR**
CESAR TRUJILLO, OWNER
13 **715 E. Mill Street**
San Bernardino, CA 92408
14 **Mailing Address:**
143 Chant St.
15 **Perris, CA 92571**
16 **Automotive Repair Dealer Reg. No. ARD 207580**
17 **Smog Check Station License No. RC 207580**
Official Lamp Station License No. LS 207580
Official Brake Station License No. BS 207580

A C C U S A T I O N

(Smog Check)

18 and

19 **HECTOR ALAN TRUJILLO**
20 **715 E. Mill Street**
San Bernardino, CA 92408
21 **Advanced Emission Specialist Technician License**
No. EA 151444
22 **Brake Adjuster License No. BA 151444**
Lamp Adjuster License No. LA 151444

23 Respondents.

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25 Complainant alleges:

26 **PARTIES**

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

1 **H & R Smog Check & Auto Repair; Cesar Trujillo, Owner**

2 2. In or about 1999, the Director of Consumer Affairs ("Director") issued Automotive
3 Repair Dealer Registration Number ARD 207580 (hereinafter "registration") to Cesar Trujillo
4 ("Respondent Cesar Trujillo"), owner of H & R Smog Check & Auto Repair. Respondent's
5 registration was in full force and effect at all times relevant to the charges brought herein and will
6 expire on October 31, 2010, unless renewed.

7 3. On or about November 17, 1999, the Director issued Smog Check Station License
8 Number RC 207580 to Respondent Cesar Trujillo. Respondent's smog check station license was
9 in full force and effect at all times relevant to the charges brought herein and will expire on
10 October 31, 2010, unless renewed.

11 4. On or about October 2, 2003, the Director issued Official Lamp Station License
12 Number LS 207580 (hereinafter "lamp station license") to Respondent Cesar Trujillo.
13 Respondent's lamp station license was in full force and effect at all times relevant to the charges
14 brought herein and will expire on October 31, 2010, unless renewed.

15 5. On or about October 2, 2003, the Director issued Official Brake Station License
16 Number BS 207580 (hereinafter "brake station license") to Respondent Cesar Trujillo.
17 Respondent's brake station license was in full force and effect at all times relevant to the charges
18 brought herein and will expire on October 31, 2010, unless renewed.

19 **Hector Alan Trujillo**

20 6. In or about 2005, the Director issued Advanced Emission Specialist Technician
21 License Number EA 151444 (hereinafter "technician license") to Hector Alan Trujillo
22 ("Respondent Hector Trujillo"). Respondent's technician license was in full force and effect at all
23 times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

24 7. In or about 2005, the Director issued Brake Adjuster License Number BA 151444 to
25 Respondent Hector Trujillo. Respondent's brake adjuster license was in full force and effect at all
26 times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

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1 “program,” and “agency.” “License” includes certificate, registration or other means to engage in
2 a business or profession regulated by the Bus. & Prof. Code.

3 19. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

10

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

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

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

16

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

21

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

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

27 **COST RECOVERY**

28 22. Bus. & Prof. 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 the licensing act to pay a sum not to exceed the reasonable costs of the investigation
and enforcement of the case.

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VID DATA REVIEW

23. On or about April 12, 2010, the Bureau initiated an investigation against Respondent Cesar Trujillo based on a review of information from the Bureau's Vehicle Information Database ("VID"), which indicated that Respondent may be engaging in fraudulent smog check activities.

24. On or about April 14, 2010, a representative of the Bureau conducted a detailed review of VID data for all smog inspections performed at Respondent Cesar Trujillo's facility for the period of January 21, 2010, through January 29, 2010. The representative found that the 13 vehicles identified below recorded the same diagnostic trouble code (hereinafter "code") during the OBD II tests¹ regardless of the make or model of the vehicle. The representative obtained information indicating that the code was not applicable to any of the vehicles. The VID data also showed that Respondent Hector Trujillo performed the inspections on all of the vehicles.

25. The Bureau concluded that Respondent Hector Trujillo had performed the smog inspections on the 13 vehicles using a different vehicle(s) during the OBD II tests, a method known as "clean plugging",² resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 01/21/2010 09:58 – 10:07	1997 Ford Expedition; License No. 3TIX654	WF981508C
2. 01/25/2010 13:53 – 13:59	1999 Acura Integra; License No. 4JUN514	WF981536C

¹ The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
3. 01/25/2010 15:32 – 15:37	1999 Honda Civic; License No. 5ESN321	WF981541C
4. 01/25/2010 16:32 – 16:47	1999 Nissan Altima; License No. 6KRG050	WF981542C
5. 01/26/2010 13:12 – 13:16	2000 Nissan Maxima; License No. 6DNV930	WF981546C
6. 01/26/2010 14:46 – 14:52	2001 Honda Accord; VIN #1HGCG66531A047566	WF981548C
7. 01/27/2010 17:09 – 17:17	2003 Toyota Celica; License No. 4ZYP290	WH049608C
8. 01/27/2010 17:25 – 17:30	2001 Ford Mustang; License No. 4UVJ458	WH049609C
9. 01/28/2010 13:53 – 14:00	2001 Ford Expedition; License No. 6CBB760	WH049613C
10. 01/29/2010 09:58 – 10:03	2001 Ford Taurus; License No. 6GLR650	WH049620C
11. 01/29/2010 13:08 – 13:13	2001 Nissan Sentra; License No. 4PTE831	WH049626C
12. 01/29/2010 14:29 – 14:37	1998 Honda Accord; VIN #1HGCG3252WA008012	WH049628C
13. 01/29/2010 15:06 – 15:25	1999 Nissan Maxima; VIN #JN1CA21D6XT820120	WH049629C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

26. Respondent Cesar Trujillo's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Cesar Trujillo's smog check technician, Respondent Hector Trujillo, certified that vehicles 1 through 13, identified in paragraph 25 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Hector Trujillo conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

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1 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
2 forth in paragraphs 27 and 30 above.

3 **SEVENTH CAUSE FOR DISCIPLINE**

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

5 32. Respondent Hector Trujillo's technician license is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
7 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
8 perform the emission control tests on vehicles 1 through 13, identified in paragraph 25 above, in
9 accordance with procedures prescribed by the department.

10 **EIGHTH CAUSE FOR DISCIPLINE**

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

13 33. Respondent Hector Trujillo's technician license is subject to disciplinary action
14 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
15 comply with provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic smog certificates of compliance for vehicles 1 through 13, identified in paragraph 25
18 above.

19 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
20 through 13, identified in paragraph 25 above, in accordance with Health & Saf. Code sections
21 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

22 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
23 through 13, identified in paragraph 25 above, in accordance with the Bureau's specifications.

24 **NINTH CAUSE FOR DISCIPLINE**

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

26 34. Respondent Hector Trujillo's technician license is subject to disciplinary action
27 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
28 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog

1 certificates of compliance for vehicles 1 through 13, identified in paragraph 25 above, without
2 performing bona fide inspections of the emission control devices and systems on the vehicles,
3 thereby depriving the People of the State of California of the protection afforded by the Motor
4 Vehicle Inspection Program.

5 **TENTH CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 35. Respondent Hector Trujillo's brake and lamp adjuster licenses are subject to
8 disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that
9 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
10 forth in paragraph 34 above.

11 **OTHER MATTERS**

12 36. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
13 suspend, revoke, or place on probation the registration for all places of business operated in this
14 state by Respondent Cesar Trujillo, owner of H & R Smog Check & Auto Repair, upon a finding
15 that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
16 regulations pertaining to an automotive repair dealer.

17 37. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
18 Number RC 207580, issued to Cesar Trujillo, owner of H & R Smog Check & Auto Repair, is
19 revoked or suspended, any additional license issued under this chapter in the name of said
20 licensee may be likewise revoked or suspended by the director.

21 38. Pursuant to Bus. & Prof. Code section 9889.9, if Official Lamp Station License
22 Number LS 207580, issued to Cesar Trujillo, owner of H & R Smog Check & Auto Repair, is
23 revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the
24 Bus. & Prof. Code in the name of said licensee may be likewise revoked or suspended by the
25 Director.

26 39. Pursuant to Bus. & Prof. Code section 9889.9, if Official Brake Station License
27 Number BS 207580, issued to Cesar Trujillo, owner of H & R Smog Check & Auto Repair, is
28 revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the

1 Bus. & Prof. Code in the name of said licensee may be likewise revoked or suspended by the
2 Director.

3 40. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
4 Technician License Number EA 151444, issued to Hector Alan Trujillo, is revoked or suspended,
5 any additional license issued under this chapter in the name of said licensee may be likewise
6 revoked or suspended by the director.

7 41. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number
8 BA 151444, issued to Hector Alan Trujillo, is revoked or suspended, any additional license issued
9 under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said licensee may
10 be likewise revoked or suspended by the Director.

11 42. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Adjuster License Number
12 LA 151444, issued to Hector Alan Trujillo, is revoked or suspended, any additional license issued
13 under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said licensee may
14 be likewise revoked or suspended by the Director.

15 **PRAYER**

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

18 1. Revoking or suspending Automotive Repair Dealer Registration Number
19 ARD 207580, issued to Cesar Trujillo, owner of H & R Smog Check & Auto Repair;

20 2. Revoking or suspending any other automotive repair dealer registration issued to
21 Cesar Trujillo;

22 3. Revoking or suspending Smog Check Station License Number RC 207580, issued to
23 Cesar Trujillo, owner of H & R Smog Check & Auto Repair;

24 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
25 and Safety Code in the name of Cesar Trujillo;

26 5. Revoking or suspending Official Lamp Station License Number LS 207580, issued to
27 Cesar Trujillo, owner of H & R Smog Check & Auto Repair;

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1 6. Revoking or suspending Official Brake Station License Number BS 207580, issued to
2 Cesar Trujillo, owner of H & R Smog Check & Auto Repair;

3 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
4 Chapter 20.3 of the Business and Professions Code in the name of Cesar Trujillo;

5 8. Revoking or suspending Advanced Emission Specialist Technician License Number
6 EA 151444, issued to Hector Alan Trujillo;

7 9. Revoking or suspending any additional license issued under Chapter 5 of the Health
8 and Safety Code in the name of Hector Alan Trujillo;

9 10. Revoking or suspending Brake Adjuster License Number BA 151444, issued to
10 Hector Alan Trujillo;

11 11. Revoking or suspending Lamp Adjuster License Number LA 151444, issued to
12 Hector Alan Trujillo;

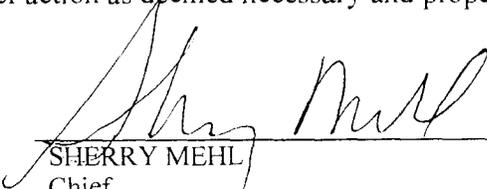
13 12. Revoking or suspending any additional license issued under Articles 5 and 6 of
14 Chapter 20.3 of the Business and Professions Code in the name of Hector Alan Trujillo;

15 13. Ordering Cesar Trujillo, owner of H & R Smog Check & Auto Repair, and Hector
16 Alan Trujillo to pay the Director of Consumer Affairs the reasonable costs of the investigation
17 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

18 14. Taking such other and further action as deemed necessary and proper.

19
20 DATED: _____

9/13/10


SHERRY MEHL

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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