KAMALA D. HARRIS
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General
JAMES M. LEDAKIS
Supervising Deputy Attorney General
State Bar No. 132645
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2105
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against: **MATTHEW C. ROSTAMI,** **aka MOHAMMAD ROSTAMI-TEHRANI** **4568 Mariners Bay** **Oceanside, CA 92057** **Advanced Emission Specialist Technician** **License No. EA 137172** Respondent.	Case No. 79/12-72 **A C C U S A T I O N** **(Smog Check)**

Complainant alleges:

PARTIES

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

2. In or about 1997, the Director of Consumer Affairs ("Director") issued Advanced Emission Specialist Technician License Number EA 137172 ("technician license") to Matthew C. Rostami, also known as Mohammad Rostami-Tehrani ("Respondent"). Respondent's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

///

JURISDICTION

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

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

STATUTORY PROVISIONS

5. 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 . . .

6. 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:
>
> (1) Clean piping, as defined by the department.
>
> . . . .
>
> (4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . .

///

///

7. 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.

8. Business and Professions Code ("Bus. & Prof. Code") section 22, subdivision (a), states:

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

COST RECOVERY

9. 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.

BACKGROUND

10. On May 27, 2011, Bureau representatives attended a meeting with John Casale ("Casale"), Loss Prevention Manager for Pep Boys, regarding an illegal smog inspection that was performed on April 25, 2011, at Pep Boys Auto #664 located in Escondido, California ("store #664"). Casale told the representatives that he became aware of the illegal activity when he called a Pep Boys store located in Vista. Casale was attempting to locate manager, Adam Ahmadi ("Ahmadi"), who was assigned to the Vista store. Casale was informed that Ahmadi had called in sick for the day. Casale called store #664 on an unrelated issue and was advised that Ahmadi was at store #664 getting a smog inspection performed on his vehicle. Later, Casale spoke with Ahmadi. Ahmadi claimed that the smog check technician who worked at Pep Boys #987 in Clairemont (the station located closest to Ahmadi's home) was not on duty that day, which was why he was having the inspection performed at store #664. Casale called the Clairmont store and found that the smog check technician was on duty, contrary to Ahmadi's representation. Casale obtained copies of the work order and invoice relating to Ahmadi's vehicle, both of which were dated April 25, 2011. The documents indicated that Ahmadi had

requested a smog inspection for a 2004 Chrysler Town & Country van. Casale researched the Bureau's website and found that the Chrysler Town & Country van had passed a smog inspection on February 10, 2011. Casale contacted a technical trainer for Pep Boys' automotive technicians. The technical trainer obtained a vehicle inspection report ("VIR") from the Emissions Inspection System ("EIS") that was used to issue the certificate for the smog inspection performed on April 25, 2011. The VIR indicated that the inspection was performed on a *1993 Coron motor home*, not the Chrysler Town & Country van, that the inspection was completed at approximately 1:29 p.m., and that Respondent performed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No. WT887055C for the motor home. Casale reviewed the security video from store #664 for April 25, 2011, and compared the time recorded on the video with the time shown on the VIR. The video revealed that a tan colored Saturn was being tested at the facility at the time shown on the VIR and not the motor home. Casale provided the Bureau representatives with copies of the security video as well as copies of the above documents. Casale stated that on May 5, 2011, he interviewed Respondent. Respondent told Casale that Ahmadi was "desperate" to have his motor home smog certified. Respondent offered to repair Ahmadi's motor home so that it would pass the smog inspection, but Ahmadi refused due to the cost of driving the motor home to Escondido. Respondent stated that he used the Saturn in place of the motor home during the inspection as a favor to Admadi.

11. On July 26, 2011, the Bureau representatives met with Respondent, who admitted that he performed the inspection on the motor home using the Saturn's tailpipe emission readings, a method known as clean piping[1].

FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

12. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section

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

44012 of that Code, as follows: Respondent used clean piping methods in order to issue a certificate of compliance for Ahmadi's 1993 Coron motor home, and did not test or inspect the vehicle as required by section 44012.

SECOND CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test Ahmadi's 1993 Coron motor home in accordance with Health & Saf. Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent entered false information into the Emissions Inspection System by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on Ahmadi's 1993 Coron motor home in accordance with the Bureau's specifications.

THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

14. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for Ahmadi's 1993 Coron motor home without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

///

///

///

MATTERS IN AGGRAVATION

15. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges as follows: On or about June 12, 2001, the Bureau issued Citation No. M01-0662 against Respondent for violations of Health & Saf. Code section 44032 (failure to determine that emission control devices and systems required by State and Federal law are installed and functioning correctly in accordance with test procedures); and California Code of Regulations, title 16, section ("Regulation") 3340.30, subdivision (a) (failure to inspect vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). On or about May 10, 2001, Respondent issued a certificate of compliance to a Bureau undercover vehicle with incorrect ignition timing. Respondent was directed to complete an 8 hour training course and to submit proof of completion to the Bureau within 30 days from receipt of the citation. Respondent completed the training on July 17, 2001.

OTHER MATTERS

16. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 137172, issued to Matthew C. Rostami, also known as Mohammad Rostami-Tehrani, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Advanced Emission Specialist Technician License Number EA 137172, issued to Matthew C. Rostami, also known as Mohammad Rostami-Tehrani;

2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Matthew C. Rostami, also known as Mohammad Rostami-Tehrani;

3. Ordering Matthew C. Rostami, also known as Mohammad Rostami-Tehrani, 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;

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

DATED: 2/3/12

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

SD2011801335