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

In the Matter of the Accusation Against: **MATTHEW C. ROSTAMI** 4568 Mariners Bay Oceanside, CA 92057 **Advanced Emission Specialist Technician License No. EA 137172** Respondent.	Case No. 79/12-72 OAH No. 2012031140

DECISION

The attached Stipulated Revocation of License and 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 3/14/13.

DATED: FEB 20 2013

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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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: **MATTHEW C. ROSTAMI** **4568 Mariners Bay** **Oceanside, CA 92057** **Advanced Emission Specialist Technician License No. EA 137172** Respondent.	Case No. 79/12-72 OAH No. 2012031140 **STIPULATED REVOCATION OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Sherry L. Ledakis, Deputy Attorney General.

2. Matthew C. Rostami (Respondent) is represented in this proceeding by attorney Thomas V. Grimes, whose address is 3156 Vista Way, Suite 200, Oceanside, CA 92056.

3. On or about April 10, 1995, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License No. EA 137172 to Matthew C. Rostami (Respondent).

The Advanced Emission Specialist Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/12-72 and will expire on December 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 79/12-72 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 1, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 79/12-72 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 79/12-72. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Revocation of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 79/12-72, agrees that cause exists for discipline and hereby agrees to the revocation of his Advanced Emission Specialist Technician License No. EA 137172 for the Bureau's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Director to issue her order accepting the revocation of his Advanced Emission Specialist Technician License without further process.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of Automotive Repair or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

12. The parties understand and agree that facsimile copies of this Stipulated Revocation of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Revocation of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Revocation of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

ORDER

IT IS HEREBY ORDERED that Advanced Emission Specialist Technician License No. EA 137172, issued to Respondent Matthew C. Rostami, is revoked, and the revocation of license is accepted by the Director of Consumer Affairs.

1. The revocation of Respondent's Advanced Emission Specialist Technician License and the acceptance of the revoked license by the Bureau shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Bureau of Automotive Repair.

2. Respondent shall lose all rights and privileges as an Advanced Emission Specialist Technician in California as of the effective date of the Director's Decision and Order.

3. Respondent shall cause to be delivered to the Bureau his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application is filed, and all of the charges and allegations contained in Accusation No. 79/12-72 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $5,217.71 prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the above Stipulated Revocation of License and Order and have fully discussed it with my attorney, Thomas V. Grimes. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License. I enter into this Stipulated

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

DATED: Wed. JAN. 23/13

MATTHEW C. ROSTAMI
Respondent

I have read and fully discussed with Respondent Matthew C. Rostami the terms and conditions and other matters contained in this Stipulated Revocation of License and Order. I approve its form and content.

DATED: 1/23/13

THOMAS V. GRIMES
Attorney for Respondent

ENDORSEMENT

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

Dated: 1/28/13

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

SHERRY L. LEDAKIS
Deputy Attorney General
Attorneys for Complainant

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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: **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 **ACCUSATION** **(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.

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

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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.

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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