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

12 In the Matter of the Accusation Against:
13 **SALS AUTO SERVICE**
14 **ABEL MORAN CORDERO, Owner**
13556 E. Valley Blvd.
LaPuente, California 91746
15 Automotive Repair Dealer Registration No. ARD 186035
16 Smog Check Station License No. RC 186035
17 **SALVADOR MORAN CORDERO**
13556 E. Valley Blvd.
18 LaPuente, California 91746
19 Advanced Emissions Specialist Technician No. EA 142586
20 **VINCENTE PARRA PENA**
4600 Santa Ana Street, #8
21 Cudahy, California 90201
22 Advanced Emissions Specialist Technician No. EA 141257
23 Respondents.

Case No. 79/09-97
ACCUSATION
SMOG CHECK

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25 Sherry Mehl ("Complainant") alleges:

26 **PARTIES**

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

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Automotive Repair Dealer Registration No. ARD 186035

2. In or about 1995, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 186035 ("registration") to Sals Auto Service with Abel Moran Cordero as the owner ("Respondent Sals"). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

Smog Check Station License No. RC 186035

3. On or about February 22, 1996, the Director issued Smog Check Station License Number RC 186035 to Respondent Sals. The license was delinquent between October 31, 2003, and November 21, 2003. The license will expire on October 31, 2009, unless renewed.

Advanced Emission Specialist Technician License No. EA 142586

4. On or about September 20, 2002, the Director issued Advanced Emission Specialist Technician License Number EA 142586 to Salvador Moran Cordero ("Respondent Cordero"). The license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2010, unless renewed.

Advanced Emission Specialist Technician License No. EA 141257

5. In or about 1999, the Director issued Advanced Emission Specialist Technician License Number EA 141257 to Vincente Parra Pena ("Respondent Pena"). The license was in full force and effect at all times relevant to the charges brought herein and will expire on or about December 31, 2009, unless renewed.

STATUTORY PROVISIONS

6. Business and Professions Code ("Code") section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

5 (6) Failure in any material respect to comply with the provisions of this
6 chapter or regulations adopted pursuant to it.

7 (7) Any willful departure from or disregard of accepted trade standards
8 for good and workmanlike repair in any material respect, which is prejudicial to
9 another without consent of the owner or his or her duly authorized representative.

10 (b) Except as provided for in subdivision (c), if an automotive repair
11 dealer operates more than one place of business in this state, the director pursuant
12 to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily
13 or permanently the registration of the specific place of business which has
14 violated any of the provisions of this chapter. This violation, or action by the
15 director, shall not affect in any manner the right of the automotive repair dealer to
16 operate his or her other places of business.

17 (c) Notwithstanding subdivision (b), the director may refuse to
18 validate, or may invalidate temporarily or permanently, the registration for all
19 places of business operated in this state by an automotive repair dealer upon a
20 finding that the automotive repair dealer has, or is, engaged in a course of
21 repeated and willful violations of this chapter, or regulations adopted pursuant to
22 it.

23 7. Code section 9884.9(a) states:

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

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"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.

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

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

10. Health and Safety 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.

11. Health and Safety 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.

12. Health and Safety 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.

1 13. Health and Safety Code section 44072.8 states:

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

4 **REGULATORY PROVISIONS**

5 14. California Code of Regulations, title 16, section 3340.35(c), states,
6 in pertinent part, that a licensed station shall issue a certificate of compliance or noncompliance
7 to the owner or operator of any vehicle that has been inspected in accordance with the
8 procedures specified in section 3340.42 of this article and has all the required emission control
9 equipment and devices installed and functioning correctly.

10 15. California Code of Regulations, title 16, section 3340.41(d), states:

11 The specifications and procedures required by Section 44016 of the Health
12 and Safety Code shall be the vehicle manufacturer's recommended procedures for
13 emission problem diagnosis and repair or the emission diagnosis and repair
14 procedures found in industry-standard reference manuals and periodicals
15 published by nationally recognized repair information providers. Smog check
16 stations and smog check technicians shall, at a minimum, follow the applicable
17 specifications and procedures when diagnosing defects or performing repairs for
18 vehicles that fail a smog check test.

16 **COST RECOVERY**

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

21 **UNDERCOVER OPERATION - MARCH 2, 2007**

22 17. On or about March 2, 2007, a Bureau undercover operator using the alias
23 Carmen Marquez ("operator") drove a Bureau documented 1987 Buick Regal to Respondent
24 Sals' facility. The only repair necessary was to adjust the Throttle Position Sensor ("TPS") and
25 install a TPS adjusting screw retention plug or screw thread locking compound. Without these
26 adjustments, the vehicle could not pass a smog inspection. The operator was approached by
27 Respondent Cordero. The operator presented a failed Vehicle Inspection Report ("VIR") and
28 requested a diagnosis and repair of the emissions failure. The operator was given a quote of

1 \$180 to adjust the vehicle's carburetor. The operator gave a verbal authorization for the repairs.
2 The operator did not sign a work order or receive a written estimate. Later that afternoon, the
3 operator returned to Respondent Sals' facility to retrieve the vehicle. When the operator arrived,
4 she made arrangements to bring the vehicle back on March 5, 2007, to complete the repairs, in
5 that the carburetor still needed to be removed, cleaned, and reinstalled. The operator was given
6 an invoice and was not charged for the carburetor adjustment.

7 18. On or about March 5, 2007, the operator returned to Respondent Sals'
8 facility. The operator did not sign a work order or receive a written estimate before the repairs
9 began. Respondent Cordero changed the previous quote of \$180 to \$220, to the cleaning of the
10 carburetor and a passing VIR and Certificate of Compliance.

11 19. On or about March 6, 2007, the operator returned to Respondent Sals'
12 facility to retrieve the vehicle. The operator paid \$220, signed and was provided with two copies
13 of Invoice No. 2985. When the operator began to leave, the vehicle continued to stall upon
14 placing it in gear. The operator informed Respondent Cordero of the problem and he re-adjusted
15 the carburetor to restore drivability.

16 20. On or about March 7, 2007, a Bureau representative performed a visual
17 inspection of the vehicle and found that the air filter element was missing. The Bureau
18 representative performed a smog inspection of the vehicle, which failed the test with tailpipe
19 emissions above the "Gross Polluter" level.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 21. Respondent Sals' registration is subject to discipline under Code section
23 9884.7(a)(1), in that on or about March 2, 2007, Respondent made or authorized statements
24 which he knew, or in the exercise of reasonable care, should have known to be untrue or
25 misleading, in that Respondent falsely represented to the operator that the carburetor had to
26 cleaned and adjusted, when in fact, it did not.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 26. Respondent Cordero's technician license is subject to discipline pursuant
4 to Health and Safety Code section 44072.2(a), in that on or about March 2, 2007, he failed to
5 comply with Code section 44016, by failing to perform all repairs in accordance with established
6 specifications and procedures.

7 SEVENTH CAUSE FOR DISCIPLINE

8 (Departure from Accepted Trade Standards)

9 27. Respondent's registration is subject to discipline under Code section
10 9884.7(a)(7), in that on or about March 2, 2007, Respondent willfully departed from or
11 disregarded accepted trade standards for good and workmanlike repair by failing to properly
12 adjust the carburetor to the manufacturer's specifications.

13 UNDERCOVER OPERATION - APRIL 16, 2007

14 28. On or about April 16, 2007, a Bureau undercover operator using the alias
15 Carmen Marquez ("operator") drove a Bureau documented 1986 Jeep Cherokee to Respondent
16 Sals facility. The operator was approached by Respondent Cordero. The operator presented a
17 failed VIR and requested a diagnosis and repair of the emissions failure. The only repair
18 necessary was to replace the coolant temperature sensor ("CTS"). After review of the failed
19 VIR, Respondent gave the operator a quote of \$180 to adjust the vehicle's carburetor. The
20 operator did not sign a work order or receive a written estimate. The operator authorized the
21 repairs and left the facility.

22 29. On or about April 18, 2007, the operator returned to Respondent Sals'
23 facility to retrieve the vehicle. The operator paid \$190 (the extra \$10 was for the re-test
24 inspection that had been performed at Industry Test Only). The operator requested a receipt for
25 the amount paid. The operator signed Invoice No. 0604 and was provided with two copies. The
26 operator was also provided with Invoice No. 0633 from Industry Test Only who performed a
27 smog inspection.

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EIGHTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

30. Respondent Sals' registration is subject to discipline under Code section 9884.7(a)(1), in that on or about April 16, 2007, Respondent made or authorized statements which he knew, or in the exercise of reasonable care, should have known to be untrue or misleading, in that he falsely represented to the operator that the carburetor needed to be adjusted, when in fact, it did not.

NINTH CAUSE FOR DISCIPLINE

(Failure to Comply with Provisions of the Automotive Repair Act)

31. Respondent Sals' registration is subject to discipline under Code section 9884.7(a)(6), in that on or about April 16, 2007, Respondent failed to comply with the Code section 9884.9(a), by failing to provide the operator with a written estimate prior to performing service or repairs.

TENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

32. Respondent Sals' station license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that on or about April 16, 2007, he failed to comply with section 44016 of that Code, in that Respondent failed to perform all repairs in accordance with established specifications and procedures.

ELEVENTH CAUSE FOR DISCIPLINE

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

33. Respondent Sals' station license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that on or about April 16, 2007, he failed to comply with California Code of Regulations, title 16, section 3340.41(d), in that Respondent failed to properly diagnose the cause of the emission failure and perform proper repairs.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

4 34. Respondent Cordero's technician license is subject to discipline pursuant
5 to Health and Safety Code section 44072.2(c), in that on or about April 16, 2007, he failed to
6 comply with California Code of Regulations, title 16, section 3340.41(d), in that Respondent
7 Cordero failed to properly diagnose and repair the vehicle to manufacturers or industry
8 standards.

9 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

11 35. Respondent Cordero's technician license is subject to discipline pursuant
12 to Health and Safety Code section 44072.2(a), in that on or about April 16, 2007, he failed to
13 comply with section 44016 of that Code, in that Respondent Cordero failed to properly diagnose
14 and repair the vehicle to manufacturers or industry standards.

15 **UNDERCOVER OPERATION - JUNE 29, 2007**

16 36. On or about June 29, 2007, a Bureau undercover operator using the alias
17 Juan Perez ("operator") drove a Bureau documented 1988 Toyota Corolla to Respondent Sals'
18 facility. The Air Injection System ("AIS") was missing and as such, the vehicle could not pass a
19 smog inspection. The operator requested a smog inspection. After Respondent Pena performed
20 a partial inspection, Respondent Cordero advised the operator that the vehicle would not pass the
21 smog test, and offered to make the vehicle pass for \$120 by making unspecified adjustments.
22 The operator authorized the repairs but did not sign a work order or receive a written estimate.
23 Respondent Cordero instructed Respondent Pena to perform the adjustments to the vehicle. The
24 operator witnessed Respondent Pena loosen and adjust the vehicle's distributor and pull vacuum
25 hoses while viewing the Emission's Inspection System ("EIS") analyzer screen. Respondent
26 Pena proceeded performing the smog inspection and upon completion, he re-adjusted the
27 vehicle's ignition timing and re-connected one vacuum hose line that was left disconnected
28 during the test. The operator also observed that the vehicle's fuel cap remained attached to the

1 vehicle throughout the smog inspection, which means that Respondent failed to perform the
2 required functional fuel cap test. On that same day, Respondent Pena issued Certificate of
3 Compliance Number VH744190 for the 1988 Toyota Corolla, which had a missing AIS.

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5 37. The operator paid \$120 and requested a receipt for the services performed.
6 The operator received two copies of Invoice No. 0407 and a VIR.

7 **FOURTEENTH CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 38. Respondent Sals' registration is subject to discipline under Code section
10 9884.7(a)(1), in that on or about June 29, 2007, Respondent made or authorized statements
11 which he knew, or in the exercise of reasonable care, should have known to be untrue or
12 misleading, in that Respondent issued electronic Certificate of Compliance Number VH744190
13 for the 1988 Toyota Corolla, certifying that the vehicle was in compliance with applicable laws
14 and regulations, when in fact, Respondent Pena failed to perform the functional fuel cap integrity
15 test and the vehicle could not have passed the smog inspection due to the missing AIS.

16 **FIFTEENTH CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 39. Respondent Sals' registration is subject to discipline pursuant to Code
19 section 9884.7(a)(4), in that on or about June 29, 2007, he committed acts which constitute fraud
20 by issuing electronic Smog Certificate of Compliance Number VH744190 without performing a
21 bona fide inspection of the emission control devices and systems on the 1988 Toyota Corolla,
22 thereby depriving the People of the State of California of the protection afforded by the Motor
23 Vehicle Inspection Program.

24 **SIXTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Provisions of the Automotive Repair Act)**

26 40. Respondent Sals' registration is subject to discipline under Code section
27 9884.7(a)(6), in that on or about June 29, 2007, Respondent failed to comply with Code section
28 9884.9(a), by failing to provide the operator with a written estimate prior to performing service

1 or repairs.

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3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Chapter Requirements)**

5 41. Respondent Sals' station license is subject to discipline under section
6 44072.2(a), of the Health and Safety Code, in that on or about June 29, 2007, Respondent failed
7 to comply with the following sections of that Code:

8 a. **Section 44012(f):** Respondent failed to properly perform a smog
9 inspection of the 1988 Toyota Corolla in accordance with procedures prescribed by the
10 department.

11 b. **Section 44015(b):** Respondent issued electronic Certificate of
12 Compliance Number VH744190 for the 1988 Toyota Corolla without properly testing and
13 inspecting the vehicle to determine if it was in compliance with section 44012 of the Health and
14 Safety Code.

15 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

17 42. Respondent Sals' station license is subject to discipline under section
18 44072.2(c), of the Health and Safety Code, in that on or about June 29, 2007, he failed to
19 materially comply with the following sections of the California Code of Regulations, title 16:

20 a. **Section 3340.24(c):** Respondent falsely or fraudulently issued electronic
21 Certificate of Compliance Number VH744190 for the 1988 Toyota Corolla, without performing
22 a bona fide inspection of the emission control devices and systems on the vehicle, as required by
23 Health and Safety Code section 44012.

24 b. **Section 3340.35(c):** Respondent issued electronic Certificate of
25 Compliance Number VH744190 for the 1988 Toyota Corolla, even though the vehicle had not
26 been tested and inspected in accordance with the procedures specified in section 3340.42 of that
27 Code.

28 c. **Section 3340.41(c):** Respondent entered false information into the EIS

1 for the electronic certificate of compliance by entering vehicle identification information or
2 emission control information for a vehicle other than the vehicle being tested.

3 d. **Section 3340.41(d):** Respondent failed to properly test and repair the
4 1988 Toyota Corolla to the manufacturer or industry standards, in that the unspecified
5 adjustments were not necessary and the missing AIS system was not identified. In addition, the
6 vacuum hose(s) were left disconnected during the inspection.

7 e. **Section 3340.42:** Respondent failed to conduct the required smog tests
8 and inspections for the 1988 Toyota Corolla in accordance with the Bureau's specifications.

9 **NINETEENTH CAUSE FOR DISCIPLINE**

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

11 43. Respondent Sal's station license is subject to discipline under Health and
12 Safety Code section 44072.2(d), in that he committed acts involving dishonesty, fraud or deceit
13 whereby another was injured, as more particularly set forth above in paragraphs 38 through 42.

14 **TWENTIETH CAUSE FOR DISCIPLINE**

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

16 44. Respondent Pena's technician license is subject to discipline under section
17 44072.2(a), of the Health and Safety Code, in that on or about June 29, 2007, he failed to comply
18 with provisions of that Code as follows:

19 a. **Section 44012:** Respondent Pena failed to perform emission control tests
20 on the 1988 Toyota Corolla in accordance with procedures prescribed by the department.

21 b. **Section 44016:** Respondent Pena failed to conduct the required smog
22 tests and inspections for the 1988 Toyota Corolla in accordance with the Bureau's specifications.

23 c. **Section 44059:** Respondent Pena entered false information into the EIS
24 for the electronic smog certificate of compliance by certifying that the 1988 Toyota Corolla had
25 been inspected as required, when, in fact, it had not.

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3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

6 45. Respondent Pena's technician license is subject to discipline pursuant to
7 Health and Safety Code section 44072.2(c), in that on or about June 29, 2007, he failed to
8 comply with provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent Pena falsely or
10 fraudulently issued an electronic smog certificate of compliance for the 1988 Toyota Corolla.

11 b. **Section 3340.30, subdivision (a):** Respondent Pena failed to inspect and
12 test the 1988 Toyota Corolla in accordance with sections 44012 and 44035 of that Code, and
13 California Code of Regulations, title 16, section 3340.42.

14 c. **Section 3340.42:** Respondent Pena failed to conduct the required smog
15 tests on the 1988 Toyota Corolla in accordance with the Bureau's specifications.

16 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

18 46. Respondent Pena's technician license is subject to discipline under Health
19 and Safety Code section 44072.2(d), in that he committed acts involving dishonesty, fraud or
20 deceit whereby another was injured, as more particularly set forth above in paragraphs 44 and

21 45. **PRAYER**

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

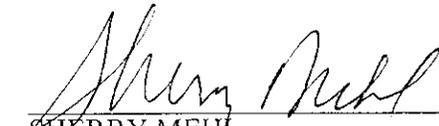
24 1. Temporarily or permanently invalidating Automotive Repair Dealer
25 Registration Number ARD 186035, issued to Sals Auto Service, with Abel Moran Cordero as the
26 owner;

27 2. Temporarily or permanently invalidating any other automotive repair
28 dealer registration issued to Abel Moran Cordero;

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- 3. Revoking or suspending Smog Check Station License Number RC 186035, issued to Sals Auto Service, with Abel Moran Cordero as the owner;
- 4. Revoking or suspending any additional license issued under this chapter in the name of Abel Moran Cordero;
- 5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 142586, issued to Salvador Moran Cordero;
- 6. Revoking or suspending any additional license issued under this chapter in the name of Salvador Moran Cordero;
- 7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 141257, issued to Vincente Parra Pena;
- 8. Revoking or suspending any additional license issued under this chapter in the name of Vincente Parra Pena;
- 9. Ordering Abel Moran Cordero, Salvador Moran Cordero, and Vincente Parra Pena to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 10. Taking such other and further action as deemed necessary and proper.

DATED: 5/18/09



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

LA2007304637
Accusation (kdg) 3/17/09