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Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **VICENTE PARRA PENA** **15457 Beckner Street** **La Puente, CA 91744** **Advanced Emission Specialist Technician License No. EA 141257** Respondent.	Case No. 79/12-53 **ACCUSATION AND PETITION TO REVOKE PROBATION** **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.

Advanced Emission Specialist Technician License

2. On a date uncertain in 1999, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License Number EA 141257 ("technician license") to Vicente Parra Pena ("Respondent"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2011, unless renewed.

PRIOR DISCIPLINARY ACTION

3. Pursuant to the Decision and Stipulated Settlement and Disciplinary Order with Respondent Vicente Parra Pena, Accusation No. 79/09-97, attached hereto as Exhibit "A" and

incorporated herein by reference, effective August 3, 2010, the Director of Consumer Affairs ("Director") revoked Respondent's Advanced Emission Specialist Technician License No. EA 141257; however, the revocation was stayed, and Respondent was placed on probation for three (3) years with terms, including Term 2, set forth as follows:

Term 2: Comply with all statutes, regulations, and rules governing automotive inspections, estimates and repairs.

STATUTORY PROVISIONS

4. 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.

5. Section 44002 of the Health and Safety Code 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.

6. Section 44072.2 of the Health and Safety Code 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.

7. Section 44072.6 of the Health and Safety Code 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.

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8. Section 44072.8 of the Health and Safety Code states:

"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."

COST RECOVERY

9. 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.

UNDERCOVER OPERATION – SEPTEMBER 2, 2011

10. On or about September 2, 2011, a Bureau undercover operator ("operator") drove a Bureau-documented 1996 Toyota Land Cruiser to Tavo's Auto Service, located in Montebello, California. The operator requested a smog inspection; however, the vehicle could not pass the visual portion of a smog inspection because the vehicle's EVAP Charcoal Canister was missing. Respondent performed the smog inspection and issued electronic Certificate of Compliance No. WX402749 for that vehicle. The operator paid $71.24 for the smog inspection and received a copy of Invoice No. 12128, and the Vehicle Inspection Report ("VIR").

FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

11. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about September 2, 2011, regarding the 1996 Toyota Land Cruiser, he violated sections of that Code, as follows:

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

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

///

c. **Section 44032**: Respondent failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle could not have passed the visual portion of the smog inspection because the vehicle's EVAP Charcoal Canister was missing.

SECOND CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

12. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about September 2, 2011, regarding the 1996 Toyota Land Cruiser, he violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.41, subdivision (c)**: Respondent entered false information into the Emission Inspection System for electronic Certificate of Compliance No. WX402749 by entering "Pass" for the visual inspection of the fuel evaporative controls when, in fact, the vehicle could not pass the visual inspection because the vehicle's EVAP Charcoal Canister was missing.

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

THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

13. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about September 2, 2011, regarding the 1996 Toyota Land Cruiser, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. WX402749 without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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PETITION TO REVOKE PROBATION

14. The allegations of paragraphs 1 through 13 of the accusation above are incorporated herein by reference as though fully set forth and are realleged.

15. Grounds exist to revoke the probation and reimpose the order of revocation of Respondent's Advanced Emission Specialist Technician License No. EA 141257, in that Respondent failed to comply with all statutes, regulations, and rules governing automotive inspections, estimates and repairs as required by **Term 2** of the terms of the probation under the Decision and Stipulated Settlement and Disciplinary, Case No. 79/09-97, as set forth in paragraphs 10 through 13 of the accusation above.

OTHER MATTERS

16. Under section 44072.8 of the Health and Safety Code, if Advanced Emission Specialist Technician License Number EA 141257, issued to Vicente Parra Pena, 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. Vacating the stay and reimposing the order of revocation of Advanced Emission Specialist Technician License Number EA 141257, issued to Vicente Parra Pena; .

2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Vicente Parra Pena;

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3. Ordering Vicente Parra Pena 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,

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

DATED: 11/4/11

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

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

In the Matter of the Accusation Against:

SALS AUTO SERVICE;
ABEL MORAN CORDERO, Owner
13556 E. Valley Road
La Puente, California 91746

Automotive Repair Dealer Registration
No. ARD 186035
Smog Check Station License No. RC 186035

SALVADOR MORAN CORDERO
13556 E. Valley Road
La Puente, California 91746

Advanced Emissions Specialist Technician
License No. EA 142586

VINCENTE PARRA PENA
4600 Santa Ana Street, #8
Cudahy, California 90201

Advanced Emissions Specialist Technician
License No. EA 141257

Respondents.

Case No. 79/09-97

OAH No. L-2009120311

DECISION

The attached Stipulated Settlement and Disciplinary Order with Respondent Vincente Parra Pena is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Vincente Parra Pena, Advanced Emissions Specialist Technician License No. EA 141257.

The suspension of Advanced Emission Specialist Technician License No. EA 141257 issued to Vincente Parra Pena shall commence on the effective date of this Decision.

This Decision shall become effective on 8/3/10.

DATED: June 30, 2010

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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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: **SALS AUTO SERVICE; ABEL MORAN CORDERO, Owner** 13556 E. Valley Blvd. La Puente, California 91746 Automotive Repair Dealer Registration No. ARD 186035 Smog Check Station License No. RC 186035 **SALVADOR MORAN CORDERO** 13556 E. Valley Blvd. La Puente, California 91746 Advanced Emissions Specialist Technician No. EA 142586 **VINCENTE PARRA PENA** 4600 Santa Ana Street, # 8 Cudahy, California 90201 Advanced Emissions Specialist Technician No. EA 141257 Respondents.	Case No. 79/09-97 OAH No. L-2009120311 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER WITH RESPONDENT VINCENTE PARRA PENA**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Rene Judkiewicz, Deputy Attorney General.

2. In or about 1999, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License Number EA 141257 to Respondent Vincente Parra Pena (Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2011, unless renewed.

JURISDICTION

3. Accusation No. 79/09-97 was filed before the Director of Consumer Affairs, for the Bureau of Automotive Repair, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 18, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 79/09-97 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

4. Respondent has carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 79/09-97. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

5. 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 be represented by counsel at his own expense; 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.

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

CULPABILITY

7. Respondent admits the truth of each and every charge and allegation in Accusation No. 79/09-97.

8. Respondent agrees that his advanced emission specialist technician license is subject to discipline and is to be bound by the imposition of discipline by the Director of Consumer Affairs as set forth in the Disciplinary Order below.

CONTINGENCY

9. This stipulation shall be subject to approval by the Director of Consumer Affairs (Director) or his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair (Bureau) may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent. 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 Settlement 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.

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

11. This Stipulated Settlement and Disciplinary 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 Settlement and Disciplinary

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.

12. 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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Advanced Emission Specialist Technician License Number EA 141257 issued to Respondent Vincente Parra Pena is revoked. However, the revocation is stayed, and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension.** Advanced Emission Specialist Technician License Number EA 141257 is suspended for 30 consecutive days.

2. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

3. **Reporting.** Respondent or his authorized representative must report in person or in writing as prescribed by the Bureau, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

4. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

5. **Jurisdiction.** If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

6. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, revoke Respondent's license.

7. **Basic Clean Air Car Course.** During the period of probation, Respondent shall

attend and successfully complete a Bureau-certified 68-hour basic clean air car course. Said course shall be completed and proof of completion submitted to the Bureau within 120 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 120-day period, Respondent's license shall be immediately suspended until such proof is received.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License Number EA 141257. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 05-12-10 Vicente Parra Peña

VINCENTE PARRA PENA
Respondent

ENDORSEMENT

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

Dated: 05-12-10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

RENE JUDKIEWICZ
Deputy Attorney General
Attorneys for Complainant

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attend and successfully complete a Bureau-certified 68-hour basic clean air car course. Said course shall be completed and proof of completion submitted to the Bureau within 120 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 120-day period, Respondent's license shall be immediately suspended until such proof is received.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License Number EA 141257. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: _____

VINCENTE PARRA PENA
Respondent

ENDORSEMENT

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

Dated: 5/12/10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

RENE JUDKIEWICZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/09-97

EDMUND G. BROWN JR., Attorney General
of the State of California
ALFREDO TERRAZAS
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KAREN B. CHAPPELLE, State Bar No. 141267
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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: **SALS AUTO SERVICE** **ABEL MORAN CORDERO, Owner** 13556 E. Valley Blvd. LaPuente, California 91746 Automotive Repair Dealer Registration No. ARD 186035 Smog Check Station License No. RC 186035 **SALVADOR MORAN CORDERO** 13556 E. Valley Blvd. LaPuente, California 91746 Advanced Emissions Specialist Technician No. EA 142586 **VINCENTE PARRA PENA** 4600 Santa Ana Street, #8 Cudahy, California 90201 Advanced Emissions Specialist Technician No. EA 141257 Respondents.	Case No. 79/09-97 **A C C U S A T I O N** SMOG CHECK

Sherry Mehl ("Complainant") alleges:

PARTIES

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

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

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

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

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

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

7. Code section 9884.9(a) states:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess 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.

13. Health and Safety Code section 44072.8 states:

> 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.

REGULATORY PROVISIONS

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

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

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

COST RECOVERY

16. 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.

UNDERCOVER OPERATION - MARCH 2, 2007

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

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

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

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

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

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

21. Respondent Sals' registration is subject to discipline under Code section 9884.7(a)(1), in that on or about March 2, 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 Respondent falsely represented to the operator that the carburetor had to cleaned and adjusted, when in fact, it did not.

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SECOND CAUSE FOR DISCIPLINE

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

22. Respondent Sals' registration is subject to discipline under Code section 9884.7(a)(6), in that on or about March 2, 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.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

23. Respondent Sals' station license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about March 2, 2007, Respondent failed to materially 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.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Chapter Requirements)

24. Respondent Sals' station license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about March 2, 2007, Respondent failed to comply with section 44016 of that Code, by failing to perform all repairs in accordance with established specifications and procedures.

FIFTH CAUSE FOR DISCIPLINE

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

25. Respondent Cordero's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that on or about March 2, 2007, he failed to comply with California Code of Regulations, title 16, section 3340.41(d), in that Respondent Cordero failed to properly diagnose the cause of the emission failure and perform repairs in accordance with established specifications and procedures. The adjustments to the vehicle's carburetor were not necessary and had to be re-adjusted to restore drivability.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

SEVENTH CAUSE FOR DISCIPLINE

(Departure from Accepted Trade Standards)

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

UNDERCOVER OPERATION - APRIL 16, 2007

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

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

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

34. Respondent Cordero's technician 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 Cordero failed to properly diagnose and repair the vehicle to manufacturers or industry standards.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

35. Respondent Cordero's technician 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 Cordero failed to properly diagnose and repair the vehicle to manufacturers or industry standards.

UNDERCOVER OPERATION - JUNE 29, 2007

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

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

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

FOURTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

38. Respondent Sals' registration is subject to discipline under Code section 9884.7(a)(1), in that on or about June 29, 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 Respondent issued electronic Certificate of Compliance Number VH744190 for the 1988 Toyota Corolla, certifying that the vehicle was in compliance with applicable laws and regulations, when in fact, Respondent Pena failed to perform the functional fuel cap integrity test and the vehicle could not have passed the smog inspection due to the missing AIS.

FIFTEENTH CAUSE FOR DISCIPLINE

(Fraud)

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

SIXTEENTH CAUSE FOR DISCIPLINE

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

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

or repairs.

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SEVENTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Chapter Requirements)

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

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

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

EIGHTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

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

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

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

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

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

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

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

NINETEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

TWENTIETH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

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

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

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

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TWENTY-FIRST CAUSE FOR DISCIPLINE

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

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

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

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

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

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

46. Respondent Pena's technician license is subject to discipline under Health and Safety Code section 44072.2(d), in that he committed acts involving dishonesty, fraud or deceit whereby another was injured, as more particularly set forth above in paragraphs 44 and 45.

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

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

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: 5/8/09

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

LA2007304637
Accusation (kdg) 3/17/09