

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

In the Matter of the Accusation and Petition to
Revoke Probation Against:

VICTOR HUGO DELEON
Advanced Emission Specialist Technician
License No. EA 145370,

Respondent.

Case No. 79/12-122

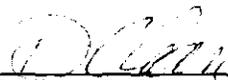
OAH No. 2012060177

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective 2/25/13.

DATED: January 18, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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:

VICTOR HUGO DELEON
Advanced Emission Specialist Technician
License No. EA 145370,

Respondent.

Case No. 79/12-122

OAH No. 2012060177

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on November 14, 2012, in Los Angeles, California. Complainant was represented by Thomas L. Rinaldi, Deputy Attorney General. Victor Hugo Deleon (Respondent), was present was represented by Bruce Loren Karey, Attorney at Law, with the assistance of a Spanish language interpreter.

Oral and documentary evidence was received and argument was heard. The record was closed, and the matter was submitted for decision on November 14, 2012.

FACTUAL FINDINGS

1. On April 20, 2012, Complainant John Wallauch filed the Accusation and Petition to Revoke Probation (Accusation/Petition) while acting in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.

2. In 2002, the Bureau issued Advanced Emission Specialist (AES) Technician License Number EA 145370 (technician license) to Respondent. The technician license was in full force and effect at all relevant times and will expire on October 31, 2014, unless renewed.

3. At the administrative hearing, Respondent stipulated to the allegations in the Accusation/Petition at paragraphs 1 through 4 and 9 through 14, set forth as follows:

Prior Discipline

3. In a disciplinary action entitled "Accusation," Case No. 79/08-36, the Bureau of Automotive Repair issued a Decision and Order

effective June 25, 2008, in which Respondent's Advanced Emission Specialist Technician License No. EA 145370 was revoked. However, the revocation was stayed and Respondent was placed on probation for two (2) years with certain terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

4. In a disciplinary action entitled "Accusation," Case No. 79/11-54, the Bureau of Automotive Repair issued a Decision and Order effective August 25, 2011, in which Respondent's Advanced Emission Specialist Technician License No. EA 145370 was revoked. A copy of that Decision and Order is attached as Exhibit B and is incorporated by reference. However, the revocation was stayed and Respondent was placed on probation for three (3) years with certain terms, including Term 1, set forth as follows:

Term 1 – Obey all Laws: Comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

[¶] . . . [¶]

ACCUSATION

UNDERCOVER OPERATION – FEBRUARY 1, 2012

9. On or about February 1, 2012, a Bureau undercover operator (operator) drove a Bureau-documented 2001 Honda Prelude to Quality Smog & Auto Repair, Bellflower, California for a smog inspection. The vehicle could not pass the visual portion of the smog inspection because the vehicle's evaporative canister was missing. The operator signed and received a copy of the work order. Respondent completed the smog inspection and issued electronic Certificate of Compliance No. XD328883, certifying that he had tested and inspected that vehicle and that the vehicle was in compliance with applicable laws and regulations. The operator paid \$50 for the smog inspection and received a copy of Invoice No. 21102 and the Vehicle Inspection Report.

FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

10. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that

on or about February 1, 2012, regarding the 2001 Honda Prelude, 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.

SECOND CAUSE FOR DISCIPLINE

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

11. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about February 1, 2012, regarding the 2001 Honda Prelude, 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 the electronic certificate of compliance by entering "Pass" for the fuel evaporative controls. In fact, the vehicle's fuel evaporative 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)

12. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that

on or about February 1, 2012, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. XD328883 for the 2001 Honda Prelude 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.

PETITION TO REVOKE PROBATION

13. The allegations of paragraphs 1 through 12 of the accusation above are incorporated herein by reference as though fully set forth and are realleged.

14. Grounds exist to revoke the probation and reimpose the order of revocation of Respondent's Advanced Emission Specialist Technician License No. EA 145370, in that Respondent failed to comply with all statutes, regulations, and rules governing estimates and inspections as required by Term 1 of the terms of the probation under the Decision and Order, Case No. 79/11-54. . . .

(Exhibit 1.)

4. At the administrative hearing, Respondent attempted to assure the Bureau that there would be no recurrence of violations, and he requested extended probation. Respondent testified that he now pays "more attention" to what he is doing, "check[s] the manual," and "follow[s] the rules and instructions." However, he admitted that after his first Bureau-ordered probation in 2008, he took steps to prevent recurrence by paying "more attention," but that he again committed violations and incurred his second Bureau-ordered probation in 2011 (for issuance of a certificate of compliance to a vehicle that should have failed the visual inspection due to a missing air suction valve). Thereafter, Respondent again resolved to pay more attention to his work, but later committed the violations in 2012 which gave rise to this hearing (for issuance of a certificate of compliance to a vehicle that should have failed the visual inspection due to a missing fuel evaporative canister). Although Respondent continually insisted that he pays "more attention" now and that extended probation will prevent further violations, given his unsuccessful probationary history, his assurances were not persuasive.

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5(a). Complainant submitted as evidence of the costs of investigation of this matter a certification of investigation costs, signed by William D. Thomas, Program Manager I for the Bureau, certifying that the Bureau had incurred \$3,570.41 in costs for investigative services through October 30, 2012.¹

5(b). Complainant also submitted a Certification of Prosecution Costs: Declaration of Thomas L. Rinaldi (DAG Declaration), certifying that the Department of Justice, Office of the Attorney General billed the Bureau \$2,000 for legal services provided through November 13, 2012.

5(c). There was no evidence that any of the costs were unreasonable.

5(d). The evidence established that Complainant incurred total costs of \$5,570.41, all of which are deemed reasonable.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's Advanced Emission Specialist Technician License under Health and Safety Code section 44072.2, subdivision (a), for failure to comply with Health and Safety Code sections 44012, subdivisions (a) and (f), and 44032, as set forth in Factual Finding 3.

2. Cause exists to revoke or suspend Respondent's Advanced Emission Specialist Technician License under Health and Safety Code section 44072.2, subdivision (c), for failure to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42, as set forth in Factual Finding 3.

3. Cause exists to revoke or suspend Respondent's Advanced Emission Specialist Technician License under Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud and deceit, causing injury to another by issuing a fraudulent certificate of compliance and depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program, as set forth in Factual Finding 3.

4. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Advanced Emission Specialist Technician License for failure to comply with Term 1 of his probation, by failing to comply with all laws, as set forth in Factual Finding 3, and Legal Conclusions 1 through 3.

¹ This costs certification was admitted as a certified copy of the actual costs incurred by the Bureau, signed by a designated representative of the Bureau. Pursuant to Business and Professions Code section 125.3, the costs certification was considered prima facie evidence of the reasonable costs of investigation in this matter.

5. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover reasonable costs of investigation and prosecution of this matter in the amount of \$5,570.41, as set forth in Factual Finding 5.

6. Respondent has a history of prior discipline which has illustrated that, despite being afforded the opportunity for rehabilitation, Respondent continues to commit violations. Furthermore, Respondent has not established that he now has safeguards in place to prevent recurrence of similar violations and to ensure compliance with smog check laws and regulations. All of these factors do not bode well for the likelihood of a successful extended probation. Given the facts and circumstances of this case, revocation of Respondent's license is necessary in order to protect the public health, safety and welfare.

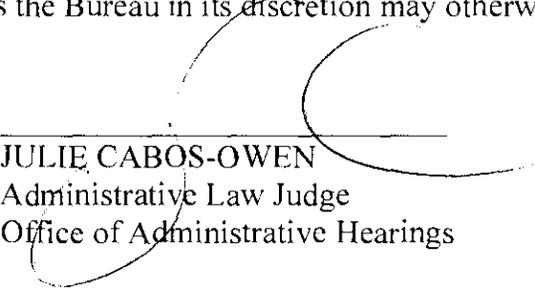
ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. Advanced Emission Specialist Technician License Number EA 145370, issued to Respondent Victor Hugo Deleon, is hereby revoked.

2. If Respondent Victor Hugo Deleon later applies for a new license or reinstatement of his revoked license(s), Respondent Deleon shall reimburse the Bureau \$5,570.41 for its investigative and prosecutorial costs in this case, prior to reinstatement or issuance of any registration or license, or as the Bureau in its discretion may otherwise order.

DATED: December 21, 2012



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 **VICTOR HUGO DELEON**
14 **227 W. Imperial Highway, Unit #C**
Los Angeles, CA 90061
15 **Advanced Emission Specialist Technician**
License No. EA 145370

16 Respondent.

Case No. 79/12-122

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

SMOG CHECK

17 Complainant alleges:

18 **PARTIES**

19 1. John Wallauch ("Complainant") brings this Accusation and Petition to Revoke
20 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair
21 ("Bureau"), Department of Consumer Affairs.

22 **Advanced Emission Specialist Technician License**

23 2. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist
24 Technician License Number EA 145370 ("technician license") to Victor Hugo Delcon
25 ("Respondent"). The technician license was in full force and effect at all times relevant to the
26 charges brought herein and will expire on October 31, 2012, unless renewed.

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28 ///

1 **Prior Discipline**

2 3. In a disciplinary action entitled "Accusation," Case No. 79/08-36, the Bureau of
3 Automotive Repair issued a Decision and Order effective June 25, 2008, in which Respondent's
4 Advanced Emission Specialist Technician License No. EA 145370 was revoked. However, the
5 revocation was stayed and Respondent was placed on probation for two (2) years with certain
6 terms and conditions. A copy of that Decision and Order is attached as **Exhibit A** and is
7 incorporated by reference.

8 4. In a disciplinary action entitled "Accusation," Case No. 79/11-54, the Bureau of
9 Automotive Repair issued a Decision and Order effective August 25, 2011, in which
10 Respondent's Advanced Emission Specialist Technician License No. EA 145370 was revoked. A
11 copy of that Decision and Order is attached as **Exhibit B** and is incorporated by reference.
12 However, the revocation was stayed and Respondent was placed on probation for three (3) years
13 with certain terms, including Term 1, set forth as follows:

14 **Term 1 - Obey all Laws:** Comply with all statutes, regulations, and rules governing
15 automotive inspections, estimates, and repairs.

16 **STATUTORY PROVISIONS**

17 5. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
18 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
19 the Motor Vehicle Inspection Program.

20 6. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
21 expiration or suspension of a license by operation of law, or by order or decision of the Director
22 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
23 the Director of jurisdiction to proceed with disciplinary action.

24 7. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

4 **COST RECOVERY**

5 8. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **ACCUSATION**

10 **UNDERCOVER OPERATION FEBRUARY 1, 2012**

11 9. On or about February 1, 2012, a Bureau undercover operator ("operator") drove a
12 Bureau-documented 2001 Honda Prelude to Quality Smog & Auto Repair located at 9519 Artesia
13 Boulevard, Bellflower, California, for a smog inspection. The vehicle could not pass the visual
14 portion of the smog inspection because the vehicle's evaporative canister was missing. The
15 operator signed and received a copy of the work order. Respondent completed the smog
16 inspection and issued electronic Certificate of Compliance No. XD328883, certifying that he had
17 tested and inspected that vehicle and that the vehicle was in compliance with applicable laws and
18 regulations. The operator paid \$50 for the smog inspection and received a copy of Invoice No.
19 21102 and the Vehicle Inspection Report.

20 **FIRST CAUSE FOR DISCIPLINE**

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

22 10. Respondent has subjected his technician license to discipline under Health and
23 Safety Code section 44072.2, subdivision (a), in that on or about February 1, 2012, regarding the
24 2001 Honda Prelude, he violated sections of that Code, as follows:

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

28 ///

1 **PETITION TO REVOKE PROBATION**

2 13. The allegations of paragraphs 1 through 12 of the accusation above are incorporated
3 herein by reference as though fully set forth and are realleged.

4 14. Grounds exist to revoke the probation and reimpose the order of revocation of
5 Respondent's Advanced Emission Specialist Technician License No. EA 145370, in that
6 Respondent failed to comply with all statutes, regulations, and rules governing estimates and
7 inspections as required by **Term I** of the terms of the probation under the Decision and Order,
8 Case No. 79/11-54, as set forth in paragraphs 14 through 22 of the accusation above.

9 **OTHER MATTERS**

10 15. Under section 44072.8 of the Health and Safety Code, if Advanced Emission
11 Specialist Technician License No. EA 145370, issued to Victor Hugo Deleon, is revoked or
12 suspended, any additional license issued under this chapter in the name of said licensee may be
13 likewise revoked or suspended by the director.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
16 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of
17 Consumer Affairs issue a decision:

18 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
19 No. 79/11-54 and imposing the disciplinary order that was stayed thereby revoking Advanced
20 Emission Specialist Technician License No. EA 145370 issued to Victor Hugo Deleon;

21 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
22 and Safety Code in the name of Victor Hugo Deleon;

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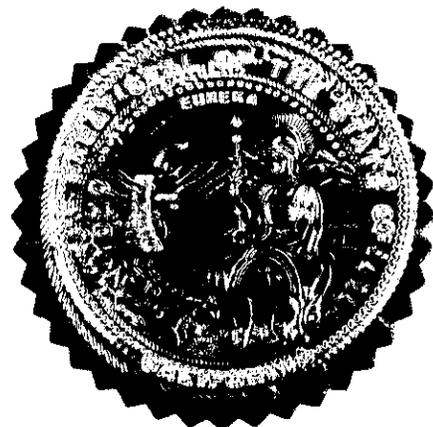
- 3. Ordering Victor Hugo Deleon to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 4. Taking such other and further action as deemed necessary and proper.

DATED: 4-20-12

~~John Wallauch~~ by James B. [Signature]
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Assist. Chief

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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:)
)
QUALITY SMOG AND AUTO REPAIR)
ARNULFO G. GONZALEZ, Owner)
19519 E. Artesia Blvd.)
Bellflower, CA 90706)
)
Automotive Repair Dealer Registration)
No. AB 214928)
Smog Check Station License No. RB 214928)
)
and)
)
VICTOR HUGO DELEON)
227 w. Imperial Highway, Apt. #C)
Los Angeles, CA 90061)
)
Advanced Emission Specialist Technician)
License No. EA 145370)
)
)
Respondents.)

Case No. 79/08-36
OAH No. 2008010080

DECISION

The attached Stipulated Settlement and Disciplinary Order 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 Victor Hugo DeLeon, Advanced Emission Specialist Technician License No. EA 145370.

This Decision shall become effective 6/25/08

DATED: May 19, 2008

P. J. Harris
PATRICIA HARRIS
Deputy Director, Bureau Relations
Department of Consumer Affairs

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI, State Bar No. 206911
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2541
Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 VICTOR HUGO DELEON
227 W. Imperial Highway, Apt. #C
Los Angeles, CA 90061
Advanced Emission Specialist Technician
License No. EA 145370

14 Respondent.

Case No. 79/08-36

OAH No. 2008010080

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive
21 Repair. She brought this action solcly in her official capacity and is represented in this matter by
22 Edmund G. Brown Jr., Attorney General of the State of California, by Thomas L. Rinaldi,
23 Deputy Attorney General.

24 2. Victor Hugo Deleon (Respondent) is represented in this proceeding by
25 attorney Frank M. Buda, whose address is 21243 Ventura Blvd., #102, Woodland Hills, CA
26 91364.

27 3. On or about June 10, 2002, the Bureau of Automotive Repair issued
28 Advanced Emission Specialist License No. EA 145370 to Respondent. The Advanced Emission

1 Specialist Technician License was in full force and effect at all times relevant to the charges
2 brought in Accusation No. 79/08-36 and will expire on October 31, 2008, unless renewed.

3 JURISDICTION

4 4. Accusation No. 79/08-36 was filed before the Director of Consumer
5 Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending
6 against Respondent. The Accusation and all other statutorily required documents were properly
7 served on Respondent on December 5, 2007. Respondent timely filed his Notice of Defense
8 contesting the Accusation. A copy of Accusation No. 79/08-36 is attached as exhibit A and
9 incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 79/08-36. Respondent has also
13 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
14 Settlement and Disciplinary Order.

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

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

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in
26 Accusation No. 79/08-36.

27 9. Respondent agrees that his Advanced Emission Specialist Technician
28 License is subject to discipline and he agrees to be bound by the Director's imposition of

1 discipline as set forth in the Disciplinary Order below.

2 CONTINGENCY

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

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

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

19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that Advanced Emission Specialist Technician
21 License No. EA 145370 issued to Respondent is revoked. However, the revocation is stayed and
22 Respondent is placed on probation for two (2) years on the following terms and conditions.

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

25 2. **Reporting.** Respondent or Respondent's authorized representative must
26 report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule
27 set by the Bureau, but no more frequently than each quarter, on the methods used and success
28 achieved in maintaining compliance with the terms and conditions of probation.

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

4 4. **Violation of Probation.** Should the Director determine that Respondent
5 has failed to comply with the terms and conditions of probation, the Department may, after
6 giving notice and opportunity to be heard, temporarily or permanently suspend or revoke
7 Respondent's license.

8 5. **Continuing Education Courses.** During the period of probation,
9 Respondent shall attend and successfully complete a Bureau certified training course in diagnosis
10 and repair of emission systems failures and engine performance, applicable to the class of license
11 held by the Respondent. Said course shall be completed and proof of completion submitted to
12 the Bureau within six months of the effective date of this decision and order. If proof of
13 completion of the course is not furnished to the Bureau within the 60-day period, Respondent's
14 license shall be immediately suspended until such proof is received.

15 6. **Cost Recovery.** Payment to the Bureau of cost recovery in the amount of
16 \$1,184 shall be received no later than 6 months before probation terminates. Failure to complete
17 payment of cost recovery within this time frame shall constitute a violation of probation which
18 may subject Respondent's advanced emission specialist technician license to outright revocation;
19 however, the Director or the Director's Bureau of Automotive Repair designee may elect to
20 continue probation until such time as reimbursement of the entire cost recovery amount has been
21 made to the Bureau.

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1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI, State Bar No. 206911
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4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 79/08-36

12 QUALITY SMOG AND AUTO REPAIR;
ARNULFO G. GONZALEZ, Owner
13 9519 E. Artesia Blvd.
Bellflower, CA 90706

OAH No.

ACCUSATION

(SMOG CHECK)

15 Automotive Repair Dealer Registration
No. AB 214928

16 Smog Check Station License
17 No. RB 214928

18 and

19 VICTOR HUGO DELEON
227 W. Imperial Highway, Apt. #C
20 Los Angeles, CA 90061

21 Advanced Emission Specialist License
No. EA 145370

22 Respondents.

23
24 Complainant alleges:

25 PARTIES

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

1
2 (c) Violates any of the regulations adopted by the director pursuant to
3 this chapter.

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

6 (f) Aids or abets unlicensed persons to evade the provisions of this chapter.

7 Cost Recovery

8 13. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board
9 may request the administrative law judge to direct a licentiate found to have committed a
10 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
11 investigation and enforcement of the case.

12 CONSUMER COMPLAINT

13 14. On or about January 2, 2007, the Bureau received a consumer complaint
14 alleging that on August 17, 2006, Respondent Gonzalez issued a smog check certification for a
15 1997 Cadillac Seville recently purchased from Diamond Motors, located at 9619 Artesia Blvd.,
16 Bellflower, CA. The smog inspection was allegedly performed by advanced emission specialist
17 technician, Vinicio Aguayo ("Aguayo"). At the time the test was purportedly conducted, the
18 vehicle was located at the complainant's place of business in Garden Grove, CA, rather than
19 Quality Smog and Auto Repair.

20 15. On or around January 16, 2007, a Bureau representative stationed outside
21 Quality Smog observed Arnulfo Gonzalez Jr., an unlicensed technician (Arnulfo Jr.), perform an
22 incomplete smog inspection on a 1995 Ford Thunderbird using the access code of Respondent
23 Deleon. Afterwards, the Bureau representative entered the shop and confronted both Respondent
24 Deleon and the unlicensed technician with his observations. After initially denying that an
25 improper smog inspection had taken place, both admitted that it had.

26 16. On or around January 22, 2007, a Bureau representative went to Smog
27 Check Station ES Auto Repair and spoke with Aguayo, the technician who had purportedly
28 certified the 1997 Cadillac Seville referenced above. Aguayo stated that he had not worked at
Quality Smog & Auto Repair since the end of July, 2006 and that he was not present at the

1 facility on August 17, 2006.

2 17. The Bureau subsequently reviewed its vehicle information database (VID)
3 to determine all smog inspections using Aguayo's access code from October 1, 2006 to January
4 4, 2007. The data revealed that Aguayo's access code was used to conduct approximately 454
5 tests at three different shops, including Quality Smog & Auto Repair, ES Auto Repair, and LA
6 Auto Smog & Repair. A review of the test times indicate that it would not be possible for
7 Aguayo to perform all of the tests given the overlapping nature of many of the test times.

8 18. On or around January 23, A Bureau representative went to Respondent's
9 shop and spoke with both Gonzalez, Jr. and Respondent Deleon about the results of the VID
10 report. Respondent Deleon admitted that he had not seen Aguayo at Respondent's shop since the
11 end of July 2006 and that he had observed Gonzalez Jr. performing smog inspections at least
12 twice a week. Gonzalez Jr. admitted he had been using Aguayo's license to conduct smog
13 inspections since September, 2006. At a later date, Gonzalez Jr. also admitted clean piping the
14 Cadillac Seville referenced above.

15 19. The Bureau subsequently conducted a further review of its VID to
16 determine all smog inspections conducted at Respondent's facility from October 1, 2006 to
17 January 4, 2007, using Aguayo's access code. The report indicates that a total of 158 tests were
18 conducted which resulted in the issuance of 153 fraudulent certifications as follows:

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DATE	TIME	VEHICLE	LICENSE	CERT #
10/03/06	0748-0801	1994 CHEVROLET (T)	(N)	VB410341
10/03/06	1908-1916	1997 GMC (T)	5EVP757	VB484706
10/04/06	0747-0759	1988 FORD (T)	5K30353	VB484707
10/05/06	0741-0746	2000 HONDA	4JKZ413	VB484715
10/05/06	1626-1635	1998 LEXUS	4CRJ953	VB484723
10/05/06	1814-1819	1997 NISSAN	4PKF783	VB484724
10/05/06	1826-1844	1996 CHEVROLET (T)	5J71825	VB484725
10/09/06	0752-0801	1999 NISSAN (T)	(N)	VB484735
10/09/06	1434-1452	1997 GMC (T)	5HTW887	FAIL

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	DATE	TIME	VEHICLE	LICENSE	CERT #
1					
2	10/09/06	1758-1803	1997 GMC (T)	5HTW887	VB484742
3	10/10/06	0758-0810	1995 CHEVROLET	(N)	VB484743
4	10/11/06	0758-0809	1990 LEXUS	5UPJ328	VB484749
5	10/12/06	1703-1715	1988 TOYOTA (T)	3T97491	VB582813
6	10/12/06	1730-1741	1988 HONDA	3DXP612	VB582814
7	10/13/06	0742-0753	1984 FORD (T)	2U52033	VB582815
8	10/13/06	0758-0812	1988 CHEVROLET (T)	5PNJ837	VB582816
9	10/15/06	0908-0917	1976 CHEVROLET (T)	1E07812	VB582823
10	10/16/06	0752-0812	1995 FORD (T)	7M93810	VB582827
11	10/16/06	1741-1750	1996 HYUNDAI	4RXV784	VB582831
12	10/17/06	0748-0755	2000 CHEVROLET	(N)	VB582832
13	10/17/06	0813-0826	1995 FORD (T)	(N)	VB582833
14	10/18/06	1228-1239	1997 CHEVROLET	3VNP634	VB582836
15	10/20/06	1342-1354	2000 HONDA	DP86924	VB582849
16	10/23/06	1405-1422	1997 MITSUBISHI	3XDW644	VB698807
17	10/23/06	1804-1825	1989 FORD	4XIE871	VB698811
18	10/26/06	1331-1352	1997 GEO	3XRG211	VB698827
19	10/27/06	1619-1626	1988 LINCOLN	4ABG981	VB698833
20	10/27/06	1707-1720	1978 CHEVROLET (T)	3XQM565	VB698834
21	10/27/06	1820-1831	1993 SATURN	(N)	VB698835
22	10/27/06	1846-1857	1996 NISSAN	4XLD943	VB698836
23	10/30/06	1549-1558	1999 KIA	5RIA196	VB698843
24	11/01/06	1406-1421	1995 NISSAN	(N)	VB827563
25	11/02/06	1846-1900	1997 GEO	5LKX329	VB827573
26	11/03/06	1123-1133	2000 CHEVROLET (T)	7G47169	FAIL
27	11/05/06	1003-1012	2000 CHEVROLET (T)	7G47169	VB827580
28	11/05/06	1304-1320	2000 VOLKSWAGEN	ANASBTL	VB827581
29	11/06/06	1639-1648	1997 NISSAN	4MUR920	VB827589
30	11/07/06	1052-1104	1988 TOYOTA (T)	3R24501	VB827593
31	11/07/06	1410-1419	1988 CHEVROLET (T)	2JFF398	VB827594

	DATE	TIME	VEHICLE	LICENSE	CERT #
1					
2	11/08/06	1430-1435	1988 VOLKSWAGEN	5ASE318	VB827598
3	11/08/06	1617-1622	1987 NISSAN	1RWJ162	VB932901
4	11/08/06	1649-1700	1991 HONDA	3UQD539	VB932902
5	11/09/06	0745-0755	1997 GMC (T)	5M31830	VB932903
6	11/09/06	1559-1608	2000 HONDA	4HJR447	VB932908
7	11/09/06	1653-1700	1998 VOLVO	3XZF707	VB932911
8	11/10/06	0840-0848	1996 FORD (T)	5J57757	VB932912
9	11/10/06	0904-0914	1989 TOYOTA	5DZF262	VB932913
10	11/10/06	1210-1227	1996 NISSAN	5CSN890	VB932917
11	11/12/06	0931-0943	1999 PONTIAC	5BDU799	VB932920
12	11/12/06	1037-1047	2000 MITZUBISHI (T)	5RIB600	VB932921
13	11/13/06	0801-0811	1994 TOYOTA (T)	4BZJ302	VB932922
14	11/13/06	1223-1239	1986 TOYOTA	4MQD496	VB932923
15	11/13/06	1314-1328	2002 CHEVROLET (T)	7Z12704	VB932924
16	11/13/06	1559-1626	1999 CHEVROLET (T)	4TQH189	VB932926
17	11/13/06	1759-1815	2001 TOYOTA	(N)	VB932927
18	11/13/06	1832-1845	1998 CHEVROLET	4AMA372	VB932928
19	11/14/06	1238-1246	1999 FORD	4DIR627	VB932933
20	11/14/06	1411-1421	1999 HONDA	5KCF491	VB932937
21	11/14/06	1650-1704	1998 DODGE (T)	4CKZ113	VB932940
22	11/14/06	1717-1723	1992 LEXUS	4HVZ706	VB932941
23	11/14/06	1741-1750	1989 CHEVROLET (T)	(N)	VB932942
24	11/14/06	1756-1813	1998 DODGE (T)	(N)	VB932943
25	11/15/06	1109-1119	2000 CHEVROLET	4HCC006	VB932945
26	11/15/06	1624-1642	1996 DODGE	5HXC525	VB932949
27	11/15/06	1650-1656	1998 FORD (T)	4DIV518	VB932950
28	11/17/06	0955-1000	1995 CADILLAC	3LUJ985	VD015954
29	11/17/06	1532-1549	1990 JEEP (T)	5MUZ202	VD015957
30	11/19/06	1627-1635	1997 MITZUBISHI	(N)	VD015959
31	11/20/06	0826-0834	1996 CHRYSLER	5SER249	VD015966

	DATE	TIME	VEHICLE	LICENSE	CERT #
1	11/22/06	0940-0949	1999 FORD	5MEZ831	VD015975
2	11/22/06	1041-1055	1991 NISSAN (T)	4L13658	VD015976
3	11/24/06	1307-1314	1994 CHEVROLET (T)	3JW'N997	VD015983
4	11/24/06	1321-1329	1997 HONDA	3WTA123	VD015984
5	11/24/06	1450-1458	1993 HONDA	(N)	VD015989
6	11/24/06	1502-1512	1994 TOYOTA	5LGF277	VD015990
7	11/27/06	1301-1319	1998 FORD (T)	5LFE552	VD015993
8	11/27/06	1348-1402	1996 INFINITY	(N)	VD015994
9	11/27/06	1659-1705	1993 NISSAN	3CHW759	VD015998
10	11/27/06	1712-1720	1995 NISSAN	3JWV581	VD015999
11	11/28/06	1155-1203	2001 DAEWOO	4PZR944	VD132504
12	11/28/06	1323-1330	1996 NISSAN	3SVB331	VD132507
13	11/29/06	1035-1110	1999 HONDA	4FIH795	VD135511
14	11/29/06	1327-1333	1999 NISSAN	4LWC754	VD132512
15	11/29/06	1457-1512	1994 TOYOTA	5FSL283	VD132513
16	11/29/06	1841-1846	2001 CHRYSLER	4PGG473	VD132515
17	11/30/06	1021-1032	1987 TOYOTA (T)	3J76617	VD132517
18	11/30/06	1537-1544	1987 NISSAN (T)	5P60936	VD132522
19	11/30/06	1602-1613	1998 CHRYSLER (T)	5JFV910	VD132523
20	11/30/06	1624-1631	2000 TOYOTA	4JOT841	VD132524
21	12/01/06	0800-0813	1994 FORD	5EVG883	VD132526
22	12/01/06	1518-1526	2001 CHRYSLER	(N)	VD132534
23	12/03/06	1315-1320	1998 DODGE	4APN486	VD132541
24	12/04/06	1345-1355	1998 CHEVROLET	VRW758	VD211001
25	12/04/06	1443-1459	1993 DODGE (T)	3FAF319	VD211003
26	12/04/06	1816-1830	1995 BMW	(N)	VD211006
27	12/05/06	1207-1217	2000 FORD (T)	4ESN328	VD211010
28	12/05/06	1225-1239	2000 CHEVROLET (T)	5KKA451	VD211011
29	12/05/06	1347-1355	1995 FORD (T)	3WEX475	VD211012
30	12/06/06	1524-1529	1997 FORD (T)	7L22826	VD211019
31	12/06/06	1551-1605	1996 SATURN	3NLF282	VD211021

	DATE	TIME	VEHICLE	LICENSE	CERT #
1	12/07/06	0816-0822	1999 GMC (T)	5LDA984	VD211025
2	12/07/06	1048-1055	1996 HONDA	3NYN204	VD211027
3	12/07/06	1602-1613	1999 KIA	4GUK123	VD211032
4	12/07/06	1616-1626	1996 NISSAN	3RUU569	VD211033
5	12/08/06	1014-1019	1999 BMW	(N)	VD211035
6	12/08/06	1028-1033	2000 MITSUBISHI	4NDW854	VD211036
7	12/08/06	1240-1255	1982 FORD (T)	5E81679	VD211039
8	12/08/06	1341-1404	1983 SOUTHWIND (MH)	2LQK238	VD211040
9	12/10/06	1327-1353	1987 FORD (T)	5J18265	VD211047
10	12/11/06	1359-1423	1989 GMC (T)	3EWY747	VD289801
11	12/12/06	1205-1214	1994 INFINITY	CARMIN1	VD289808
12	12/12/06	1534-1544	1995 DODGE (T)	6W13465	VD289813
13	12/13/06	1145-1154	1986 NISSAN	2WPN885	VD289818
14	12/13/06	1412-1424	2001 VOLKSWAGEN	4PYW902	VD289819
15	12/13/06	1432-1444	1988 TOYOTA (T)	896811T	VD289820
16	12/14/06	0954-1010	1990 NISSAN	3JUZ446	VD289824
17	12/14/06	1302-1308	1997 FORD (T)	4VRX002	VD289828
18	12/14/06	1557-1605	1998 FORD (T)	(N)	FAIL
19	12/14/06	1613-1621	1998 FORD (T)	(N)	VD289832
20	12/15/06	0823-0835	1989 TOYOTA	3JCV918	VD289834
21	12/15/06	0855-0906	1997 HONDA (T)	3VVH577	VD289835
22	12/15/06	1314-1323	1993 VOLKSWAGEN	3FCP866	VD289838
23	12/17/06	1147-1159	1994 MITSUBISHI (T)	896583T	VD289843
24	12/17/06	1327-1345	1986 TOYOTA (T)	7V44077	VD289844
25	12/19/06	1320-1331	2001 MERCEDES BENZ	(N)	VD369105
26	12/20/06	1111-1121	1996 TOYOTA	3NRY653	VD369108
27	12/20/06	1157-1213	2000 LEXUS	(N)	VD369109
28	12/21/06	1048-1108	1998 CHEVROLET (T)	7M89324	PASS
					PRE-TEST
	12/21/06	1449-1500	1990 DAIHA (T)	2VAN771	VD369115
	12/21/06	1549-1557	1998 TOYOTA (T)	7U84776	VD369117

	DATE	TIME	VEHICLE	LICENSE	CERT #
1	12/22/06	1020-1030	1997 NISSAN (T)	3TDJ089	VD369119
2	12/26/06	1112-1119	2001 HYUNDAI	5JFW759	VD369125
3	12/26/06	1141-1153	2000 FORD	4TNF745	VD369127
4	12/26/06	1218-1230	2000 VOLKSWAGEN	4NED259	VD369128
5	12/26/06	1540-1556	1984 OLDSMOBILE	1JFY290	VD369133
6	12/27/06	1025-1032	1980 CADILLAC	258458U	VD369136
7	12/27/06	1039-1047	1996 HONDA	5KMU993	VD369137
8	12/27/06	1533-1550	2001 CHEVROLET (T)	6L30081	VD369140
9	12/27/06	1721-1728	1998 CHEVROLET (T)	5X48876	VD369141
10	12/27/06	1734-1742	1995 CHEVROLET	(N)	VD369142
11	12/28/06	1112-1122	1991 CHEVROLET (T)	4F61928	VD369145
12	12/28/06	1204-1224	1996 GMC (T)	5L30994	VD369147
13	12/28/06	1627-1633	1996 HYUNDAI	3PTU089	VD475701
14	12/28/06	1639-1646	1990 HONDA	(N)	VD475702
15	12/29/06	0940-0949	1998 DODGE	4ASM329	VD475706
16	12/29/06	1041-1047	1982 TOYOTA	1DOJ866	VD475708
17	12/29/06	1119-1124	2001 HONDA (T)	XYJ708	VD475710
18	12/29/06	1136-1150	2000 FORD	(N)	VD475711
19	12/29/06	1159-1207	1992 MITSUBISHI	(N)	VD475712
20	12/29/06	1215-1221	1999 HYUNDAI	(N)	VD475713
21	12/29/06	1224-1235	2000 MAZDA	5JLY878	VD475714
22	12/29/06	1256-1311	1997 NISSAN (T)	5L62990	VD475715
23	12/29/06	1639-1654	1996 CHEVROLET	(N)	VD475720
24	12/29/06	1655-1701	2000 FORD (T)	(N)	VD475721
25	01/02/07	0903-0910	1997 TOYOTA	3THG243	VD475723
26	01/02/07	1051-1057	1993 GMC (T)	A09095X	VD475725
27	01/02/07	1202-1211	1996 BUICK	3VUU574	FAIL
28	01/02/07	1222-1233	1986 BUICK	2CTK340	VD475727

1
2 FIRST CAUSE FOR DISCIPLINE

3 (Untrue or Misleading Statements)

4 20. Respondent Gonzalez's ARD registration is subject to disciplinary action
5 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that between October, 2006
6 and January 4, 2007, Respondent Gonzalez made or authorized statements which he knew, or in
7 the exercise of reasonable care, should have known to be untrue or misleading as follows:

8 a. Respondent Gonzalez certified that the vehicles described in paragraphs
9 14-19 had been inspected by licensed technician Vinicio Aguayo, when in fact, the inspections
10 were performed by unlicensed technician Arnulfo Gonzalez Jr..

11 b. Respondent Gonzalez certified that the Cadillac Deville described in
12 paragraphs 14-19 had passed inspection and was in compliance with applicable laws and
13 regulations. In fact, Respondent Gonzalez used clean-piping methods in order to issue a
14 certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf.
15 Code section 44012.

16 SECOND CAUSE FOR DISCIPLINE

17 (Fraud)

18 21. Respondent Gonzalez's ARD registration is subject to disciplinary action
19 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that on August 17, 2006 and
20 between October 1, 2006 to January 4, 2007, Respondent Gonzalez committed acts which
21 constitute fraud by issuing electronic smog certificates for the vehicles described in paragraphs
22 14-19 without performing bona fide inspections of the emission control devices and systems on
23 the vehicles, thereby depriving the People of the State of California of the protection afforded by
24 the Motor Vehicle Inspection Program.

25 THIRD CAUSE FOR DISCIPLINE

26 (Violations of the Motor Vehicle Inspection Program)

27 22. Respondent Gonzalez's smog check station license is subject to
28 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that on

1 August 17, 2006 and between October 1, 2006 to January 4, 2007, Respondent Gonzalez failed
2 to comply with the following sections of that Code:

- 3 a. Section 44012: Respondent Gonzalez failed to perform emission
4 control tests on the vehicles described in paragraphs 14-19 in accordance
5 with procedures prescribed by the department.
- 6 b. Section 44015: Respondent Gonzalez issued electronic smog
7 certificates of compliance for the vehicles described in paragraphs 14-19
8 without properly testing and inspecting the vehicles to determine if they
9 were in compliance with Health & Saf. Code section 44012.
- 10 c. Section 44032: Respondent Gonzalez issued electronic smog
11 certificates of compliance for the vehicles described in paragraphs 14-19
12 despite the fact that the tests were not conducted by a qualified smog
13 check technician.
- 14 d. Section 44059: Respondent Gonzalez certified in the electronic smog
15 certificates of compliance for the vehicles described in paragraphs 14-19
16 that they had been tested by a licensed smog check technician, when in
17 fact, they had not.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

21 23. Respondent Gonzalez's smog check station license is subject to
22 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that on or
23 about August 17, 2006 and between October 1, 2006 to January 4, 2007, Respondent Gonzalez
24 failed to comply with the following sections of California Code of Regulations, title 16:

- 25 a. Section 3340.24, subdivision (c): Respondent Gonzalez falsely or
26 fraudulently issued electronic smog certificates of compliance for the
27 vehicles described in paragraphs 14-19.

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- b. Section 3340.35, subdivision (c): Respondent Gonzalez issued electronic smog certificates of compliance for the vehicles described in paragraphs 14-19 even though they had not been inspected in accordance with section 3340.42.
- c. Section 3340.42: Respondent Gonzalez failed to conduct the required smog tests on the vehicles described in paragraphs 14-19 in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

24. Respondent Gonzalez's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that on or about August 17, 2006 and between October 1, 2006 to January 4, 2007, Respondent Gonzalez committed dishonest, fraudulent or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance for the vehicles described in paragraphs 14-19 without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Activity)

25. Respondent Deleon's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (f), in that he aided and abetted Arnulfo Gonzalez Jr., an unlicensed person, to perform smog inspections in violation of the motor vehicle inspection program.

OTHER MATTERS

26. Pursuant to Code section 9884.7, subdivision (c), the Director may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Arnulfo G. Gonzalez, doing business as Quality Smog and Auto Repair, upon a finding

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

DATED: 11-27-07



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

Complainant

LA2007601179
accusation 101907.wpd

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

In the Matter of the Accusation Against:

VICTOR HUGO DELEON
227 W. Imperial Highway, Apt. #C
Los Angeles, CA 90061

Advanced Emission Specialist Technician
License No. EA 145370

Respondent.

Case No. 79/11-54

OAH No. L-2011031619

DECISION

The attached Stipulated Settlement and Disciplinary 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 8/25/11.

DATED: July 19, 2011



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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Attorneys for Complainant

7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/11-54

13 **VICTOR HUGO DELEON**
227 W. Imperial Highway, Apt. #C
14 Los Angeles, CA 90061
Advanced Emission Specialist Technician
License No. EA 145370

OAH No. L-2011031619
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
21 brought this action solely in her official capacity and is represented in this matter by Kamala D.
22 Harris, Attorney General of the State of California, by Thomas L. Rinaldi, Deputy Attorney
23 General.

24 2. Victor Hugo Deleon (Respondent) is representing himself in this proceeding and has
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about January 1, 2002, the Bureau of Automotive Repair issued Advanced
27 Emission Specialist Technician License No. EA 145370 to Respondent. The Advanced Emission
28

1 Specialist Technician License was in full force and effect at all times relevant to the charges
2 brought in Accusation No. 79/11-54 and will expire on October 31, 2012, unless renewed.

3 JURISDICTION

4 4. Accusation No. 79/11-54 was filed before the Director of Consumer Affairs
5 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on February 25, 2011. Respondent timely filed his Notice of Defense contesting
8 the Accusation. A copy of Accusation No. 79/11-54 is attached as exhibit A and incorporated
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 79/11-54. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

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

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

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 79/11-54.

26 9. Respondent agrees that his Advanced Emission Specialist Technician License is
27 subject to discipline and he agrees to be bound by the Director's probationary terms as set forth in
28 the Disciplinary Order below.

CONTINGENCY

1
2 10. This stipulation shall be subject to approval by the Director of Consumer Affairs or
3 his designee. Respondent understands and agrees that counsel for Complainant and the staff of
4 the Bureau of Automotive Repair may communicate directly with the Director and staff of the
5 Department of Consumer Affairs regarding this stipulation and settlement, without notice to or
6 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
7 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director
8 considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and
9 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
10 this paragraph, it shall be inadmissible in any legal action between the parties, and the Director
11 shall not be disqualified from further action by having considered this matter.

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

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

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

DISCIPLINARY ORDER

24
25 IT IS HEREBY ORDERED that Advanced Emission Specialist Technician License No. EA
26 145370 issued to Respondent is revoked. However, the revocation is stayed and Respondent is
27 placed on probation for three (3) years on the following terms and conditions.

28 1. **Obey All Laws.** Comply with all statutes, regulations and rules governing

1 automotive inspections, estimates and repairs.

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

6 3. **Report Financial Interest.** Within 30 days of the effective date of this action, report
7 any financial interest which any partners, officers, or owners of the Respondent facility may have
8 in any other business required to be registered pursuant to Section 9884.6 of the Business and
9 Professions Code.

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

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

16 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
17 Respondent has failed to comply with the terms and conditions of probation, the Department may,
18 after giving notice and opportunity to be heard suspend or revoke his advanced emissions
19 specialist technician license.

20 7. **Continuing Education Courses.** During the period of probation, Respondent shall
21 attend and successfully complete the Bureau's Clean Air Car Course and provide proof of
22 completion to the Bureau within six (6) months of the effective date of this decision and order. If
23 proof of completion of the course is not furnished to the Bureau within the 6 month period,
24 Respondent's license shall be immediately suspended until such proof is received.

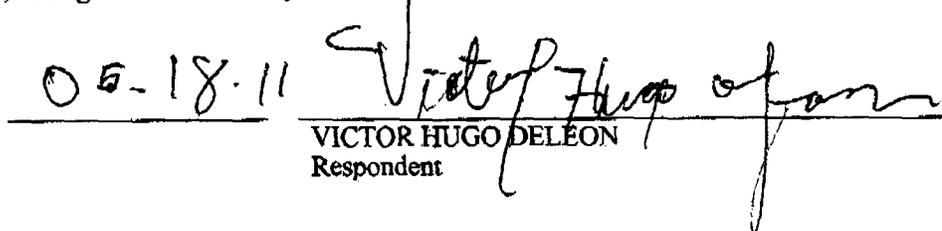
25 8. **Cost Recovery.** Payment to the Bureau of cost recovery in the amount of \$1,759
26 shall be received no later than 6 months before probation terminates. Failure to complete
27 payment of cost recovery within this time frame shall constitute a violation of probation which
28 may subject Respondent's **advanced emission specialist technician license** to outright

1 revocation; however, the Director or the Director's Bureau of Automotive Repair designee may
2 elect to continue probation until such time as reimbursement of the entire cost recovery amount
3 has been made to the Bureau.

4 ACCEPTANCE

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

10 DATED: 05-18-11


11 VICTOR HUGO DELEON
12 Respondent

13 ENDORSEMENT

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

16 Dated: May 13, 2011

17 Respectfully submitted,

18 KAMALA D. HARRIS
19 Attorney General of California
20 KAREN B. CHAPPELLE
21 Supervising Deputy Attorney General


22 THOMAS L. RINALDI
23 Deputy Attorney General
24 *Attorneys for Complainant*

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Exhibit A

Accusation No. 79/11-54

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
9 **STATE OF CALIFORNIA**

10
11 In the Matter of the Accusation Against:
12 **VICTOR HUGO DELEON**
227 W. Imperial Highway, Apt. #C
13 Los Angeles, CA 90061
Advanced Emission Specialist Technician
14 License No. EA 145370
15 Respondent.

Case No. 79/11-54
ACCUSATION
SMOG CHECK

16
17 Complainant alleges:

18 **PARTIES**

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

21 **Advanced Emission Specialist Technician License**

22 2. On a date uncertain in 2002, the Bureau of Automotive Repair issued Advanced
23 Emission Specialist Technician License Number EA 145370 ("technician license") to Victor
24 Hugo Deleon ("Respondent"). The technician license was in full force and effect at all times
25 relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.

26 ///
27 ///
28 ///

1 SECOND CAUSE FOR DISCIPLINE

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

3 11. Respondent has subjected his technician license to discipline under Health and Safety
4 Code section 44072.2, subdivision (c), in that on or about May 17, 2010, regarding the 1991
5 Toyota pickup, he violated sections of the California Code of Regulations, title 16, as follows:

6 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
7 electronic Certificate of Compliance No. WJ711276 without performing a bona fide inspection of
8 the emission control devices and systems on that vehicle as required by Health and Safety Code
9 section 44012.

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

12 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
13 Emission Inspection System for electronic Certificate of Compliance No. WJ711276 by entering
14 "Pass" for the visual portion of the inspection even though the vehicle could not pass the visual
15 portion of the smog inspection because the vehicle's air suction valve was missing.

16 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and
17 inspections on those vehicles in accordance with the Bureau's specifications.

18 THIRD CAUSE FOR DISCIPLINE

19 (Dishonesty, Fraud or Deceit)

20 12. Respondent has subjected his technician license to discipline under Health and Safety
21 Code section 44072.2, subdivision (d), in that on or about May 17, 2010, he committed acts
22 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
23 Certificate of Compliance No. WJ711276 for the 1991 Toyota pickup without performing a bona
24 fide inspection of the emission control devices and systems on that vehicle, thereby depriving the
25 People of the State of California of the protection afforded by the Motor Vehicle Inspection
26 Program.

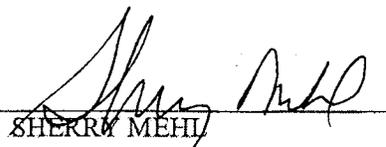
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28 ///

1 3. Ordering Victor Hugo Deleon to pay the Bureau of Automotive Repair the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3; and,

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

5
6
7 DATED: 1-14-11


8 SHERRY MEHL
9 Chief
10 Bureau of Automotive Repair
11 Department of Consumer Affairs
12 State of California
13 *Complainant*

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