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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:  
12 **SAN RAFAEL SMOG**  
36 Lisbon Street  
13 San Rafael, California 94901  
**RAMIN ALIYEV, OWNER**  
14  
Automotive Repair Dealer Registration  
15 No. ARD 243548  
Smog Check, Test Only Station License  
16 No. TC 243548,  
17 and  
18 **RAMIN ALIYEV**  
36 Lisbon Street  
19 San Rafael, California 94901  
20 Advanced Emission Specialist Technician  
No. EA 147215.  
21  
22 Respondents.

Case No. 79/09-94

**ACCUSATION**  
**[SMOG CHECK]**

24 Sherry Mehl ("Complainant") alleges:

25 **PARTIES**

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

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1                   **Automotive Repair Dealer Registration**

2                   2.       On or about February 3, 2006, the Bureau issued Automotive Repair  
3 Dealer Registration Number ARD 243548 ("registration") to Ramin Aliyev doing business as  
4 San Rafael Smog ("Respondent"). The registration was canceled on July 8, 2008, and expired on  
5 January 31, 2009.

6                   **Smog Check Test Only Station License**

7                   3.       On or about February 21, 2006, the Bureau issued Smog Check Test Only  
8 Station License Number TC 243548 ("station license") to Respondent. The station license was  
9 canceled on July 8, 2008, and expired on January 31, 2009.

10                  **Advanced Emission Specialist Technician License**

11                  4.       On a date uncertain in 2003, the Bureau issued Advanced Emission  
12 Specialist Technician Number EA 147215 ("technician license") to Respondent. The technician  
13 license will expire on April 30, 2009, unless renewed.

14   **STATUTORY PROVISIONS**

15                  5.       Section 9884.7 of the Business and Professions Code ("Code") states, in  
16 pertinent part:

17                       (a) The director, where the automotive repair dealer cannot show there was  
18 a bona fide error, may refuse to validate, or may invalidate temporarily or  
19 permanently, the registration of an automotive repair dealer for any of the  
20 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.

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

24                           (4) Any other conduct which constitutes fraud.

25                       (b) Except as provided for in subdivision (c), if an automotive repair  
26 dealer operates more than one place of business in this state, the director pursuant  
27 to subdivision (a) 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  
28 business.

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

6 6. Code section 9884.13 provides, in pertinent part, that the expiration of a  
7 valid registration shall not deprive the director or chief of jurisdiction to proceed with a  
8 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a  
9 registration temporarily or permanently.

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

14 8. Section 44002 of the Health and Safety Code provides, in pertinent part,  
15 that the Director has all the powers and authority granted under the Automotive Repair Act for  
16 enforcing the Motor Vehicle Inspection Program.

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:  
18 The director may suspend, revoke, or take other disciplinary action against  
19 a license as provided in this article if the licensee, or any partner, officer, or  
20 director thereof, does any of the following:

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

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

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

28 10. 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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1 he issued electronic Certificate of Compliance No. NA373542C for the 1990 Ford Festiva,  
2 certifying that he had tested and inspected the vehicle and that the vehicle was in compliance  
3 with applicable laws and regulations when, in fact, the vehicle had been clean piped.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 15. Respondent has subjected his registration to discipline under Code section  
7 9884.7, subdivision (a)(4), in that on or about April 22, 2008, he committed acts which constitute  
8 fraud by issuing electronic Certificate of Compliance No. NA373542C for the 1990 Ford Festiva  
9 without performing a bona fide inspection of the emission control devices and systems on that  
10 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
11 Motor Vehicle Inspection Program.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Violation of the Motor Vehicle Inspection Program)**

14 16. Respondent has subjected his station license to discipline under Health and  
15 Safety Code section 44072.2, subdivision (a), in that on or about April 22, 2008, regarding the  
16 1990 Ford Festiva, he violated sections of that Code, as follows:

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

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

22 c. **Section 44015, subdivision (b):** Respondent issued electronic  
23 Certificate of Compliance No. NA373542C without properly testing and inspecting the vehicle to  
24 determine if it was in compliance with section 44012 of that Code.

25 d. **Section 44059:** Respondent willfully made false entries for electronic  
26 Certificate of Compliance No. NA373542C, certifying that the vehicle had been inspected as  
27 required when, in fact, it had not.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 17. Respondent has subjected his station license to discipline under Health and  
4 Safety Code section 44072.2, subdivision (c), in that on or about April 22, 2008, regarding the  
5 1990 Ford Festiva, he violated sections of the California Code of Regulations, title 16, as  
6 follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently  
8 issued electronic Certificate of Compliance No. NA373542C without performing a bona fide  
9 inspection of the emission control devices and systems on that vehicle as required by Health and  
10 Safety Code section 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent issued electronic  
12 Certificate of Compliance No. NA373542C for that vehicle even though the vehicle had not been  
13 inspected in accordance with section 3340.42 of that Code.

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

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 18. Respondent subjected his station license to discipline under Health and  
19 Safety Code section 44072.2, subdivision (d), in that on or about April 22, 2008, regarding the  
20 1990 Ford Festiva, he committed acts involving dishonesty, fraud or deceit whereby another was  
21 injured by issuing electronic Certificate of Compliance No. NA373542C without performing a  
22 bona fide inspection of the emission control devices and systems on that vehicle, thereby  
23 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
24 Inspection Program.

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1 c. **Section 3340.41, subdivision (c):** Respondent entered false information  
2 into the Emission Inspection System for electronic Certificate of Compliance No. NA373542C  
3 by entering vehicle identification information or emission control information for a vehicle other  
4 than the vehicle being certified.

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

7 **EIGHTH CAUSE FOR DISCIPLINE**

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

9 21. Respondent has subjected his technician license to discipline under Health  
10 and Safety Code section 44072.2, subdivision (d), in that on or about April 22, 2008, he  
11 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing  
12 electronic Certificate of Compliance No. NA373542C for the 1990 Ford Festiva without  
13 performing a bona fide inspection of the emission control devices and systems on that vehicle,  
14 thereby depriving the People of the State of California of the protection afforded by the Motor  
15 Vehicle Inspection Program.

16 **OTHER MATTERS**

17 22. Under Code section 9884.7, subdivision (c), the director may invalidate  
18 temporarily or permanently or refuse to validate, the registrations for all places of business  
19 operated in this state by Ramin Aliyev doing business as San Rafael Smog, upon a finding that he  
20 has, or is, engaged in a course of repeated and willful violations of the laws and regulations  
21 pertaining to an automotive repair dealer.

22 23. Under Health and Safety Code section 44072.8, if Smog Check Test Only  
23 Station License Number TC 243548, issued to Ramin Aliyev doing business as San Rafael  
24 Smog, is revoked or suspended, any additional license issued under this chapter in the name of  
25 said licensee may be likewise revoked or suspended by the director.

26 24. Under Health and Safety Code section 44072.8, if Advanced Emission  
27 Specialist Technician License Number EA 147215, issued to Ramin Aliyev, is revoked or

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1 suspended, any additional license issued under this chapter in the name of said licensee may be  
2 likewise revoked or suspended by the director.

3 **PRAYER**

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

6 1. Temporarily or permanently invalidating Automotive Repair Dealer  
7 Registration Number ARD 243548, issued to Ramin Aliyev doing business as San Rafael Smog;

8 2. Temporarily or permanently invaliding any other automotive repair dealer  
9 registration issued to Ramin Aliyev doing business as San Rafael Smog;

10 3. Revoking or suspending Smog Check, Test Only Station License Number  
11 TC 243548, issued to Ramin Aliyev doing business as San Rafael Smog;

12 4. Revoking or suspending any additional license issued under this chapter in  
13 the name of Ramin Aliyev doing business as San Rafael Smog;

14 5. Revoking or suspending Advanced Emission Specialist Technician  
15 Number EA 147215, issued to Ramin Aliyev;

16 6. Revoking or suspending any additional license issued under this chapter in  
17 the name of Ramin Aliyev;

18 7. Ordering Ramin Aliyev to pay the Bureau of Automotive Repair the  
19 reasonable costs of the investigation and enforcement of this case, pursuant to Code section  
20 125.3; and,

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

22 DATED: 4-13-09

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24   
25 SHERRY MEHL  
26 Chief  
27 Bureau of Automotive Repair  
28 Department of Consumer Affairs  
State of California  
Complainant