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

79/11-40

11 In the Matter of the Accusation Against:

Case No.

12 **CESAR GOMEZ**
13 **dba ONE STOP TEST ONLY**
14 630 W. Rialto Avenue #B8
Rialto, California 92376
15 **Automotive Repair Dealer Registration No. ARD 252693**
16 **Smog Check, Test Only, Station License No. TC 252693**

A C C U S A T I O N

SMOG CHECK

17 **CESAR GOMEZ**
18 39415 Ardenwood Way #283
Lake Elsinore, California 92532
19 **Advanced Emission Specialist Technician License**
No. EA 142955

20 **JOEL GOMEZ**
21 1046 S. Brampton
Rialto, California 92376
22 **Advanced Emission Specialist Technician License**
23 **No. EA 147915**

Respondents.

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25 Sherry Mehl ("Complainant") alleges:

26 **PARTIES**

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

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

4 (4) Any other conduct that constitutes fraud.

5 (6) Failure in any material respect to comply with the provisions of this chapter [the
6 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to
7 it.

8 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
9 than one place of business in this state, the director pursuant to subdivision (a) shall only suspend,
10 revoke, or place on probation the registration of the specific place of business which has violated
11 any of the provisions of this chapter. This violation, or action by the director, shall not affect in
12 any manner the right of the automotive repair dealer to operate his or her other places of business.

13 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
14 probation the registration for all places of business operated in this state by an automotive repair
15 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
16 and willful violations of this chapter, or regulations adopted pursuant to it.

17 7. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
18 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
19 proceeding against an automotive repair dealer or to render a decision invalidating a registration
20 temporarily or permanently.

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

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

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

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

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

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

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

10 11. Section 44072.8 of the Health and Safety Code states:

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

14 COST RECOVERY

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

19 FACTUAL BACKGROUND

20 13. In or about April 2010, the Bureau conducted a detailed review of the Vehicle
21 Information Database ("VID") for all smog inspections performed at Respondent's facility for the
22 period between April 15, 2009, and April 14, 2010. The VID showed a pattern of various random
23 diagnostic trouble codes stored in the memory of the power train control module ("PCM") on
24 different vehicles. Vehicles 1 through 5, set forth in Table 1 below, were all certified with
25 various pending codes stored in the PCM memory while the original equipment manufacturer
26 ("OEM") service information shows these vehicles do not support the pending codes stored in the
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1 PCM memory. The vehicles receiving smog certificates were not tested during the OBD II¹
2 functional test and another vehicle(s) was used, constituting clean plugging².

3 **TABLE 1**

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| Date and Time of Inspection | Vehicle Certified License No. | Certificate No. | Technician |
|--------------------------------------|---|------------------------|-------------------|
| 5 1. 02/19/2010 1041 – 1051 hours | 1996 Nissan Sentra License No. 5XEB512 | WH350847C | J. Gomez |
| 6 2. 02/22/2010 1028 – 1048 hours | 2001 Nissan Altima License No. 4SNA061 | WH436720C | J. Gomez |
| 7 3. 02/23/2010 1327 – 1347 hours | 1997 Nissan Sentra License No. 6JRC999 | WH436740C | C. Gomez |
| 8 4. 02/25/2010 1733 – 1742 hours | 1997 Nissan Quest License No. 6DEZ502 | WH509875C | J. Gomez |
| 9 5. 03/02/2010 1757 – 1813 hours | 2000 Nissan Quest License No. 5FNF490 | WH570287C | J. Gomez |

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11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 14. Respondent's registration is subject to discipline pursuant to Code section
14 9884.7(a)(1), in that between February 19, 2010, and March 2, 2010, Respondent made or
15 authorized statements which he knew or in the exercise of reasonable care should have known to
16 be untrue or misleading, as follows: Respondent certified that vehicles 1 through 5, set forth
17 above in Table 1, had passed inspection and were in compliance with applicable laws and
18 regulations. In fact, Respondent conducted the inspections on those vehicles using the clean
19 plugging method by substituting or using different vehicles during the OBD II functional tests in
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22 ¹ The On Board Diagnostics (OBDII) functional test is an automated function of the
23 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
24 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
25 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
26 information from the vehicle's on-board computer about the status of the readiness indicators,
27 trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
28 functional test, it will fail the overall inspection.

² Clean plugging is the use of the OBD II readiness monitor status and stored fault code
(trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to
another vehicle that is not in compliance due to a failure to complete the minimum number of self
test, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

1 order to issue smog certificates of compliance for the 5 vehicles, and did not test or inspect the 5
2 vehicles as required by Health and Safety Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 15. Respondent's registration is subject to discipline pursuant to Code section
6 9884.7(a)(4), in that between February 19, 2010, and March 2, 2010, Respondent committed acts
7 which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 5,
8 set forth above in Table 1, without performing bona fide inspections of the emission control
9 devices and systems on those vehicles, thereby depriving the People of the State of California of
10 the protection afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with the Motor Vehicle Inspection Program)**

13 16. Respondent's station license is subject to discipline pursuant to Health and Safety
14 Code section 44072.2(a), in that between February 19, 2010, and March 2, 2010, regarding
15 vehicles 1 through 5, set forth above in Table 1, Respondent failed to comply with the following
16 sections of that Code:

17 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
18 performed on vehicles 1 through 5, in accordance with procedures prescribed by the department.

19 b. **Section 44015:** Respondent issued electronic certificates of compliance for vehicles 1
20 through 5, without ensuring that the vehicles were properly tested and inspected to determine if
21 they were in compliance with Health and Safety Code section 44012.

22 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates of
23 compliance by certifying that those vehicles had been inspected as required, when in fact, they
24 had not.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 17. Respondent's station license is subject to discipline pursuant to Health and Safety
5 Code section 44072.2(c), in that between February 19, 2010, and March 2, 2010, regarding
6 vehicles 1 through 5, set forth above in Table 1, Respondent failed to comply with provisions of
7 California Code of Regulations, title 16, as follows:

8 a. **Section 3340.24(c)**: Respondent falsely or fraudulently issued electronic certificates of
9 compliance for those vehicles without performing bona fide inspections of the emission control
10 devices and systems on the vehicles as required by Health and Safety Code section 44012.

11 b. **Section 3340.35(c)**: Respondent issued electronic certificates of compliance even
12 though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 18. Respondent's station license is subject to discipline pursuant to Health and Safety
18 Code section 44072.2(d), in that between February 19, 2010, and March 2, 2010, regarding
19 vehicles 1 through 5, set forth above in Table 1, Respondent committed acts involving dishonesty,
20 fraud or deceit whereby another was injured by issuing electronic certificates of compliance for
21 those vehicles without performing bona fide inspections of the emission control devices and
22 systems on the vehicles, thereby depriving the People of the State of California of the protection
23 afforded by the Motor Vehicle Inspection Program.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 19. Respondent J. Gomez's technician license is subject to discipline pursuant to
4 Health and Safety Code section 44072.2(a), in that between February 19, 2010, and
5 March 2, 2010, regarding vehicles 1, 2, 4, and 5, set forth above in Table 1, he failed to comply
6 with section 44012 of that Code in a material respect, as follows: Respondent J. Gomez failed to
7 perform the emission control tests on those vehicles in accordance with procedures prescribed by
8 the department.

9 SEVENTH CAUSE FOR DISCIPLINE

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

12 20. Respondent J. Gomez's technician license is subject to discipline pursuant to
13 Health and Safety Code section 44072.2(c), in that between February 19, 2010, and
14 March 2, 2010, regarding vehicles 1, 2, 4, and 5, set forth above in Table 1, he failed to comply
15 with provisions of California Code of Regulations, title 16, as follows:

16 a. Section 3340.24(c): Respondent J. Gomez falsely or fraudulently issued electronic
17 certificates of compliance without performing bona fide inspections of the emission control
18 devices and systems on those vehicles as required by Health and Safety Code section 44012.

19 b. Section 3340.30(a): Respondent J. Gomez failed to inspect and test those vehicles in
20 accordance with Health and Safety Code sections 44012.

21 c. Section 3340.42: Respondent J. Gomez failed to conduct the required smog tests and
22 inspections on those vehicles in accordance with the Bureau's specifications.

23 EIGHTH CAUSE FOR DISCIPLINE

24 (Dishonesty, Fraud or Deceit)

25 21. Respondent J. Gomez's technician license is subject to discipline pursuant to Health
26 and Safety Code section 44072.2(d), in that between February 19, 2010, and March 2, 2010,
27 regarding vehicles 1, 2, 4, and 5, set forth above in Table 1, he committed acts involving
28 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of

1 compliance without performing bona fide inspections of the emission control devices and systems
2 on those vehicles, thereby depriving the People of the State of California of the protection
3 afforded by the Motor Vehicle Inspection Program.

4 **NINTH CAUSE FOR DISCIPLINE**

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

6 22. Respondent C. Gomez's technician license is subject to discipline pursuant to
7 Health and Safety Code section 44072.2(a), in that on or about February 23, 2010, regarding
8 vehicle 3, set forth above in Table 1, he failed to comply with section 44012 of that Code in a
9 material respect, as follows: Respondent C. Gomez failed to perform the emission control tests
10 on the vehicle in accordance with procedures prescribed by the department.

11 **TENTH CAUSE FOR DISCIPLINE**

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

14 23. Respondent C. Gomez's technician license is subject to discipline pursuant to
15 Health and Safety Code section 44072.2(c), in that on or about February 23, 2010, regarding
16 vehicle 3, set forth above in Table 1, he failed to comply with provisions of California Code of
17 Regulations, title 16, as follows:

18 a. **Section 3340.24(c)**: Respondent C. Gomez falsely or fraudulently issued an electronic
19 certificate of compliance without performing a bona fide inspection of the emission control
20 devices and systems on the vehicle as required by Health and Safety Code section 44012.

21 b. **Section 3340.30(a)**: Respondent C. Gomez failed to inspect and test the vehicle in
22 accordance with Health and Safety Code sections 44012.

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

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1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 24. Respondent C. Gomez's technician license is subject to discipline pursuant to Health
4 and Safety Code section 44072.2(d), in that on or about February 23, 2010, regarding vehicle 3,
5 set forth above in Table 1, he committed acts involving dishonesty, fraud or deceit whereby
6 another was injured by issuing an electronic certificate of compliance without performing a bona
7 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 OTHER MATTERS

11 25. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
12 probation the registrations for all places of business operated in this state by Cesar Gomez, doing
13 business as One Stop Test Only, upon a finding that he has, or is, engaged in a course of repeated
14 and willful violation of the laws and regulations pertaining to an automotive repair dealer.

15 26. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
16 Station License Number TC 252693, issued to Cesar Gomez, doing business as One Stop Test
17 Only, is revoked or suspended, any additional license issued under this chapter in the name of
18 said licensee may be likewise revoked or suspended by the director.

19 27. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist
20 Technician License Number EA 142955, issued to Cesar Gomez, is revoked or suspended, any
21 additional license issued under this chapter in the name of said licensee may be likewise revoked
22 or suspended by the director.

23 28. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist
24 Technician License Number EA 147915, issued to Joel Gomez, is revoked or suspended, any
25 additional license issued under this chapter in the name of said licensee may be likewise revoked
26 or suspended by the director.

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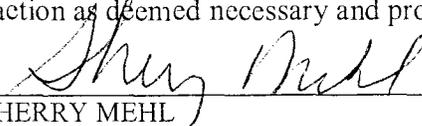
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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 252693, issued to Cesar Gomez, doing business as One Stop Test Only;
2. Revoking or suspending any other automotive repair dealer registration issued to Cesar Gomez;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 252693, issued to Cesar Gomez, doing business as One Stop Test Only;
4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 142955, issued to Cesar Gomez;
5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Cesar Gomez;
6. Revoking or suspending Advanced Emission Specialist Technician License Number EA 147915, issued to Joel Gomez;
7. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Joel Gomez;
8. Ordering Cesar Gomez and Joel Gomez to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
9. Taking such other and further action as deemed necessary and proper.

DATED: 11-18-10


SHERRY MEHL
Chief
Bureau of Automotive Repair I/M Smog
Department of Consumer Affairs
State of California
Complainant

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