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

In the Matter of the First Amended Accusation Against: **FLACO CARBURETORS** **226 E. Florence Ave.** **Los Angeles, CA 90003** **ERNESTO RODRIGUEZ, Owner Automotive Dealer Repair Registration No. ARD 211527** **Smog Check Station License No. RC 211527** **and** **SUN TE KIM** **7100 Wyngate Street** **Tujunga, CA 91042** **Advanced Emission Specialist Technician License No. EA 148666** Respondents.	Case No. 79/11-21 **FIRST AMENDED ACCUSATION** **SMOG CHECK**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On or about July 19, 2000, the Bureau issued Automotive Dealer Repair Registration Number ARD 211527 ("registration") to Ernesto Rodriguez ("Respondent Flaco") doing business as Flaco Carburetors. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

Smog Check Station License

3. On or about March 22, 2007, the Bureau issued Smog Check Station License Number RC 211527 ("station license") to Respondent Flaco. The station license was in full force and effect at all times relevant to the charges brought herein and expired on June 30, 2010.

Advanced Emission Specialist Technician License

4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 148666 ("technician license") to Sun Te Kim ("Respondent Kim"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.

STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
>
> (4) Any other conduct which constitutes fraud.
>
> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.
>
> (c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

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

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

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

9. Section 44072.2 of the Health and Safety Code states:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

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.

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

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

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COST RECOVERY

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

SURVEILLANCE OPERATION – SEPTEMBER 1, 2009

13. On or about September 1, 2009, the Bureau performed a video-taped surveillance at Respondent Flaco's facility. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1249 hours and 1409 hours, Respondent Kim performed four (4) smog inspections that resulted in the issuance of electronic certificates of compliance for vehicles 1, 2, 4, & 5, as set forth in Table 1, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent performed the smog inspections using the clean piping method[1] by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. Vehicle 3 was not issued a certificate of compliance. None of the vehicles tested or certified were in the test bay at the time of the smog inspections.

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[1] "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in compliance or are not present in the smog check area during the time of the certification.

Table 1

Vehicle No.	**Date and Test Times**	**Vehicle Certified**	**Vehicle Actually Tested**	**Certificate Issued**
1.	9/1/2009 1249 hours to 1303 hours	2001 Volkswagen	Unknown	WD018789C
2.	9/1/2009 1307 hours to 1316 hours	2002 Mercury	Unknown	WD018790C
3.	9/1/2009 1323 hours to 1326 hours	2002 Toyota Camry	Unknown	No Cert Issued, Test Aborted
4.	9/1/2009 1338 hours to 1350 hours	2002 Toyota	Unknown	WD018791C
5.	9/1/2009 1354 hours to 1409 hours	2002 Mitsubishi	Unknown	WD018792C

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14.. Respondent Flaco has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about September 1, 2009, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

15. Respondent Flaco has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about September 1, 2009, he committed acts which

constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

16. Respondent Flaco has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Flaco 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 Flaco failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Flaco issued electronic certificates of compliance without properly testing and inspecting those vehicles to determine if they were in compliance with section 44012 of that Code.

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

FOURTH CAUSE FOR DISCIPLINE

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

17. Respondent Flaco has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Flaco falsely or fraudulently issued electronic certificates of compliance without performing bona fide inspections of the emission

control devices and systems on those vehicles as required by Health and Safety Code section 44012.

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

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

18. Respondent Flaco subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and system on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

19. Respondent Kim has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Kim 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 Kim failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

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c. **Section 44032**: Respondent Kim failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code, in that the vehicles had been clean piped.

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

SEVENTH CAUSE FOR DISCIPLINE

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

20. Respondent Kim has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

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

c. **Section 3340.41, subdivision (c)**: Respondent Kim entered false information into the Emission Inspection System ("EIS") for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

21. Respondent Kim has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about September 1, 2009, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing

electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION- HIGHLAND ARCO SMOG– OCTOBER 5, 2010

22. On or about October 5, 2010, a Bureau documented vehicle (2001 Honda Prelude-License Plate No. 4PGX805) with a missing evaporative cannister was sent to Highland Arco Smog located at 5800 San Fernando Road, Glendale, Ca. 91202. Respondent Kim was the technician on duty at the time of the operation. Shortly after arriving at Highland Arco Smog, undercover operator Monica Bobadilla requested a Smog Check Inspection on the 2001 Honda Prelude. On or about October 5, 2010, at approximately 1:06 p.m., the inspection was performed by Respondent Kim and upon completion of the inspection, Certificate of Compliance No. NW939022C was issued for the vehicle. Bobadilla was provided with invoice no. 24537 and a vehicle inspection report for the vehicle. Had the inspection been properly performed by Respondent Kim, the vehicle would have failed the inspection and no certificate issued.

NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

23. Respondent Kim has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about October 5, 2010, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Kim 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 Kim failed to perform emission control tests on the 2001 Honda Prelude in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Kim failed to perform tests of the emission control devices and systems on the 2001 Honda Prelude in accordance with section 44012 of that Code.

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TENTH CAUSE FOR DISCIPLINE

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

24. Respondent Kim has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about October 5, 2010, while employed at Highland Arco Smog, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a)**: Respondent Kim failed to inspect and test the 2001 Honda Prelude in accordance with Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent Kim issued an electronic certificate of compliance to the 2001 Honda Prelude even though the vehicle had not been inspected in accordance with section 3340.42 of the Regulations.

c. **Section 3340.42**: Respondent Kim failed to conduct the required smog test and inspection on the 2001 Honda Prelude in accordance with the Bureau's specifications.

OTHER MATTERS

25. Under Code section 9884.7, subdivision (c), the director may deny, suspend, revoke or place on probation, the registrations for all places of business operated in this state by Ernesto Rodriguez doing business as Flaco Carburetors, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

26. Under Health and Safety Code section 44072.8, if Smog Check Station License Number RC 211527, issued to Ernesto Rodriguez doing business as Flaco Carburetors, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may likewise be suspended or revoked.

27. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 148666, issued to Sun Te Kim, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may likewise be suspended or revoked.

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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, suspending, or placing on probation Automotive Dealer Repair Registration Number ARD 211527, issued to Ernesto Rodriguez, doing business as Flaco Carburetors;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued in the name of Ernesto Rodriguez;

3. Revoking or suspending Smog Check Station License Number RC 211527, issued to Ernesto Rodriguez, doing business as Flaco Carburetors;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Ernesto Rodriguez;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 148666, issued to Sun Te Kim;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Sun Te Kim;

7. Ordering Ernesto Rodriguez and Sun Te Kim 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,

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

DATED: 1/22/10

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

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

In the Matter of the Accusation Against: **FLACO CARBURETORS** **226 E. Florence Ave.** **Los Angeles, CA 90003** **ERNESTO RODRIGUEZ, Owner Automotive Dealer Repair Registration** **No. ARD 211527** **Smog Check Station License No. RC 211527** **and** **SUN TE KIM** **7100 Wyngate Street** **Tujunga, CA 91042** **Advanced Emission Specialist Technician License No. EA 148666** Respondents.	79/11-21 Case No. **ACCUSATION** SMOG CHECK

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On or about July 19, 2000, the Bureau issued Automotive Dealer Repair Registration Number ARD 211527 ("registration") to Ernesto Rodriguez ("Respondent Flaco") doing business

as Flaco Carburetors. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

Smog Check Station License

3. On or about March 22, 2007, the Bureau issued Smog Check Station License Number RC 211527 ("station license") to Respondent Flaco. The station license was in full force and effect at all times relevant to the charges brought herein and expired on June 30, 2010.

Advanced Emission Specialist Technician License

4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 148666 ("technician license") to Sun Te Kim ("Respondent Kim"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
>
> (4) Any other conduct which constitutes fraud.
>
> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.
>
> (c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

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

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

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

9. Section 44072.2 of the Health and Safety Code states:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

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.

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

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

COST RECOVERY

12. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

SURVEILLANCE OPERATION – SEPTEMBER 1, 2009

13. On or about September 1, 2009, the Bureau performed a video-taped surveillance at Respondent Flaco's facility. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1249 hours and 1409 hours, Respondent Kim performed four (4) smog inspections that resulted in the issuance of electronic certificates of compliance for vehicles 1, 2, 4, & 5, as set forth in Table 1, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent performed the smog inspections using the clean piping method[1] by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. Vehicle 3 was not issued a certificate of compliance. None of the vehicles tested or certified were in the test bay at the time of the smog inspections.

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[1] "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in compliance or are not present in the smog check area during the time of the certification.

Table 1

Vehicle No.	Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
1.	9/1/2009 1249 hours to 1303 hours	2001 Volkswagen	Unknown	WD018789C
2.	9/1/2009 1307 hours to 1316 hours	2002 Mercury	Unknown	WD018790C
3.	9/1/2009 1323 hours to 1326 hours	2002 Toyota Camry	Unknown	No Cert Issued, Test Aborted
4.	9/1/2009 1338 hours to 1350 hours	2002 Toyota	Unknown	WD018791C
5.	9/1/2009 1354 hours to 1409 hours	2002 Mitsubishi	Unknown	WD018792C

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

2. Respondent Flaco has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about September 1, 2009, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

3. Respondent Flaco has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about September 1, 2009, he committed acts which

constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

4. Respondent Flaco has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Flaco 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 Flaco failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Flaco issued electronic certificates of compliance without properly testing and inspecting those vehicles to determine if they were in compliance with section 44012 of that Code.

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

FOURTH CAUSE FOR DISCIPLINE

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

5. Respondent Flaco has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Flaco falsely or fraudulently issued electronic certificates of compliance without performing bona fide inspections of the emission

control devices and systems on those vehicles as required by Health and Safety Code section 44012.

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

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

6. Respondent Flaco subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and system on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

7. Respondent Kim has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Kim 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 Kim failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

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c. **Section 44032**: Respondent Kim failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code, in that the vehicles had been clean piped.

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

SEVENTH CAUSE FOR DISCIPLINE

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

8. Respondent Kim has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about September 1, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

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

c. **Section 3340.41, subdivision (c)**: Respondent Kim entered false information into the Emission Inspection System ("EIS") for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

9. Respondent Kim has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about September 1, 2009, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing

electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

22. Under Code section 9884.7, subdivision (c), the director may deny, suspend, revoke or place on probation, the registrations for all places of business operated in this state by Ernesto Rodriguez doing business as Flaco Carburetors, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

23. Under Health and Safety Code section 44072.8, if Smog Check Station License Number RC 211527, issued to Ernesto Rodriguez doing business as Flaco Carburetors, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may likewise be suspended or revoked.

23. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 148666, issued to Sun Te Kim, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may likewise be suspended or revoked.

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, suspending, or placing on probation Automotive Dealer Repair Registration Number ARD 211527, issued to Ernesto Rodriguez, doing business as Flaco Carburetors;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued in the name of Ernesto Rodriguez;

3. Revoking or suspending Smog Check Station License Number RC 211527, issued to Ernesto Rodriguez, doing business as Flaco Carburetors;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Ernesto Rodriguez;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 148666, issued to Sun Te Kim;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Sun Te Kim;

7. Ordering Ernesto Rodriguez and Sun Te Kim 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,

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

DATED: 9-14-10

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

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