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10 **BEFORE THE**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
13 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:  
14 4TH & C SMOG, INC.,  
dba CALIFORNIA SMOG TEST ONLY  
15 JUSTIN P. DEVIN,  
a.k.a. JUSTIN PATRICK DEVIN, PRES./SECY.  
16 GINA M. KETOLA, CFO  
425 C Street  
17 Chula Vista, CA 91910  
  
18 Automotive Repair Dealer Reg. No. AD 233005  
Smog Check, Test Only, Station License No. TD 233005,  
19  
20 JUSTIN PATRICK DEVIN  
1199 Pacific Highway, #903  
San Diego, CA 92101  
21  
22 Advanced Emission Specialist Technician License  
No. EA 149480,  
23  
24 JESSE SMOG STATION  
JESUS BENITO ZUNIGA,  
a.k.a. JESUS B. ZUNIGA, OWNER  
2446 Main Street, #R  
25 Chula Vista, CA 91911  
  
26 Automotive Repair Dealer Reg. No. AE 160498  
Smog Check Station License No. RE 160498,  
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Case No. 79/08-18  
  
**ACCUSATION**  
  
(SMOG CHECK)

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and

JESUS B. ZUNIGA  
524 Center  
Chula Vista, CA 91910

Advanced Emission Specialist Technician License  
No. EA 304458

Respondents.

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 No. AD 233005**

2. On or about June 2, 2004, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number AD 233005 to 4th & C Smog, Inc. ("Respondent 4<sup>th</sup> & C Smog"), doing business as California Smog Test Only, with Justin P. Devin, also known as Justin Patrick Devin ("Respondent Devin"), as president and secretary and Gina M. Ketola as chief financial officer. Respondent 4<sup>th</sup> & C Smog's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2008, unless renewed.

**Smog Check, Test Only, Station License No. TD 233005**

3. On or about June 9, 2004, the Director issued Smog Check, Test Only<sup>1/</sup>, Station License Number TD 233005 to Respondent 4th & C Smog. Respondent's smog check

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1. Test only facilities are licensed smog check stations, that by law, are only allowed to test vehicles; they cannot repair them. Any needed repairs must be performed at either a smog check station designated as a test-and-repair facility or a "gold shield" station. Test-and-repair stations are licensed by the state to provide smog check tests and repairs to most vehicles. Under current law, test-and-repair stations are prohibited from certifying repaired "gross polluters" or vehicles that have been directed to test-only stations for inspection. Only test-only stations and gold shield stations are able to certify repaired gross polluter vehicles.

Pursuant to Health and Safety Code section 39032.5, "gross polluter" means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen (NOX) emissions as established by the department in consultation with the state board.

1 station license was in full force and effect at all times relevant to the charges brought herein and  
2 will expire on April 30, 2008, unless renewed.

3 **Advanced Emission Specialist Technician License No. EA 149480**

4 4. On or about July 28, 2004, the Director issued Advanced Emission  
5 Specialist Technician License Number EA 149480 to Respondent Devin. Respondent's  
6 advanced emission specialist technician license was in full force and effect at all times relevant to  
7 the charges brought herein and will expire on November 30, 2008, unless renewed.

8 **Automotive Repair Dealer Registration No. AE 160498**

9 5. On or about May 14, 1991, the Director issued Automotive Repair Dealer  
10 Registration Number AE 160498 to Jesus Benito Zuniga, also known as Jesus B. Zuniga  
11 ("Respondent Zuniga"), owner of Jesse Smog Station. Respondent's automotive repair dealer  
12 registration was in full force and effect at all times relevant to the charges brought herein and will  
13 expire on May 31, 2008, unless renewed.

14 **Smog Check Station License No. RE 160498**

15 6. On or about July 12, 1991, the Director issued Smog Check Station  
16 License Number RE 160498 to Respondent Zuniga.<sup>2/</sup> Respondent's smog check station license  
17 was in full force and effect at all times relevant to the charges brought herein and will expire on  
18 May 31, 2008, unless renewed.

19 **Advanced Emission Specialist Technician License No. EA 304458**

20 7. In or about 1996, the Director issued Advanced Emission Specialist  
21 Technician License Number EA 304458 to Respondent Zuniga. Respondent's advanced  
22 emission specialist technician license was in full force and effect at all times relevant to the  
23 charges brought herein and will expire on March 31, 2009, unless renewed.

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28 2. Respondent Zuniga's smog check station is a licensed test-and-repair facility.



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

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

6 . . . .

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

13 13. Bus. & Prof. Code section 9884.8 states, in pertinent part:

14 All work done by an automotive repair dealer, including all warranty  
15 work, shall be recorded on an invoice and shall describe all service work done  
16 and parts supplied. Service work and parts shall be listed separately on the  
17 invoice, which shall also state separately the subtotal prices for service work  
18 and for parts, not including sales tax, and shall state separately the sales tax,  
19 if any, applicable to each . . .

20 14. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

21 The automotive repair dealer shall give to the customer a written estimated  
22 price for labor and parts necessary for a specific job. No work shall be done and  
23 no charges shall accrue before authorization to proceed is obtained from the  
24 customer. No charge shall be made for work done or parts supplied in excess of  
25 the estimated price without the oral or written consent of the customer that shall  
26 be obtained at some time after it is determined that the estimated price is  
27 insufficient and before the work not estimated is done or the parts not estimated  
28 are supplied. Written consent or authorization for an increase in the original  
estimated price may be provided by electronic mail or facsimile transmission from  
the customer. The bureau may specify in regulation the procedures to be followed  
by an automotive repair dealer when an authorization or consent for an increase in  
the original estimated price is provided by electronic mail or facsimile  
transmission. If that consent is oral, the dealer shall make a notation on the work  
order of the date, time, name of person authorizing the additional repairs and  
telephone number called, if any, together with a specification of the additional  
parts and labor . . .

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

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16. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

....

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

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

17. Health & Saf. Code section 44072.10 states, in pertinent part:

....

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

....

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection . . .

18. Health & Saf. Code section 44072.8 states that 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

19. Bus. & Prof. 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.

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1 Zuniga stated that he was going to take the valve off and get the vehicle to pass the smog test  
2 (pretest); however, the operator would need the part for the next (official) smog test. Later,  
3 Roberto told the operator that if the facility could get the vehicle to pass, the repairs would cost  
4 \$130. The operator authorized the repairs.

5           24.     Approximately 45 minutes later, Roberto told the operator that the vehicle  
6 still would not pass the smog test. Zuniga stated that the vehicle needed a two cable sensor. The  
7 operator asked Roberto to obtain the part and made arrangements to bring the vehicle back for  
8 repair. Roberto gave the operator Estimate No. 66206 and page two of a VIR dated January 5,  
9 2006.

10           25.     Later that same day, Gauronski reinspected the vehicle and found that a  
11 bolt with an eyelet had been inserted under the diaphragm area of the EGR valve.

12           26.     On January 9, 2006, the operator returned the vehicle to Jesse Smog  
13 Station. Later that same day, Roberto drove the vehicle into the shop and began a smog test.  
14 After the test was completed, Zuniga told the operator that the vehicle passed the smog  
15 inspection; however, he needed to replace a bulb (Roberto replaced the bulb in the operator's  
16 presence). The operator paid \$150 for the repairs and received copies of Invoice No. 66206, a  
17 VIR dated January 9, 2006, and the old light bulb and oxygen sensor. The invoice contained a  
18 handwritten notation, indicating, "Emission Reduce, Repair Vacuum Signal to EGR Valve".

19           27.     Later that same day, Gauronski opened the vehicle's hood and observed  
20 that a bolt had been inserted under the EGR valve diaphragm, holding the valve open.

21           28.     On January 13, 2006, Gauronski inspected the vehicle and observed that  
22 the defective EGR valve was still present in the vehicle. Gauronski determined that the  
23 functional ignition timing test had not been properly performed, the air cleaner clips were not  
24 secured, and the functional fuel cap integrity test had not been performed. Gauronski performed  
25 an ASM (Acceleration Simulation Mode) smog check inspection on the vehicle. The vehicle  
26 failed the visual portion of the inspection due to the modified EGR system and the functional  
27 ignition timing test due to the engine RPM being out of tolerance (the specified ignition timing  
28 RPM for the vehicle is 800 RPM; the vehicle's idle RPM was approximately 1000).





1 for parts and/or labor necessary for a specific job prior to performing the second smog inspection  
2 on the Bureau's 1992 Toyota Corolla.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 35. Respondent 4<sup>th</sup> & C Smog's smog check station license is subject to  
6 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that  
7 Respondent failed to comply with the following sections of that Code:

- 8 a. **Section 44012:** Respondent 4<sup>th</sup> & C Smog's technician, Respondent  
9 Devin, failed to perform the emission control tests on the Bureau's 1992  
10 Toyota Corolla in accordance with procedures prescribed by the  
11 department, as set forth in paragraph 32 above.
- 12 b. **Section 44014.5, subdivision (c):** On or about January 5, 2006,  
13 Respondent 4<sup>th</sup> & C Smog's technician, Respondent Devin, referred the  
14 undercover operator to a particular provider of vehicle repair services, i.e.,  
15 Jesse Smog Station, as set forth in paragraph 21 above.
- 16 c. **Section 44015:** Respondent 4<sup>th</sup> & C Smog issued an electronic smog  
17 certificate of compliance for the Bureau's 1992 Toyota Corolla without  
18 properly testing and inspecting the vehicle to determine if it was in  
19 compliance with Health & Saf. Code section 44012.
- 20 d. **Section 44015, subdivision (a)(1):** Respondent 4<sup>th</sup> & C Smog issued an  
21 electronic smog certificate of compliance for the Bureau's 1992 Toyota  
22 Corolla when, in fact, the emissions control system on the vehicle had  
23 been tampered with or illegally modified.
- 24 e. **Section 44033, subdivision (c):** On or about January 19, 2006,  
25 Respondent 4<sup>th</sup> & C Smog failed to provide the undercover operator with a  
26 written estimate for parts and/or labor necessary for a specific job prior to  
27 performing the second smog inspection on the Bureau's 1992 Toyota  
28 Corolla.

1 **FIFTH CAUSE FOR DISCIPLINE**

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

4 36. Respondent 4<sup>th</sup> & C Smog's smog check station license is subject to  
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that  
6 Respondent failed to comply with the provisions of California Code of Regulations, title 16, as  
7 follows:

- 8 a. **Section 3340.16, subdivision (e)**: Respondent 4<sup>th</sup> & C Smog's technician,  
9 Respondent Devin, referred the undercover operator to a particular  
10 provider of vehicle repair services, i.e., Jesse Smog Station, as set forth in  
11 paragraph 21 above.
- 12 b. **Section 3340.24, subdivision (c)**: Respondent 4<sup>th</sup> & C Smog falsely or  
13 fraudulently issued an electronic smog certificate of compliance for the  
14 Bureau's 1992 Toyota Corolla.
- 15 c. **Section 3340.35, subdivision (c)**: Respondent 4<sup>th</sup> & C Smog issued an  
16 electronic smog certificate of compliance for the Bureau's 1992 Toyota  
17 Corolla even though the vehicle had not been inspected in accordance with  
18 Health & Saf. Code section 3340.42.
- 19 d. **3340.41, subdivision (c)**: Respondent 4<sup>th</sup> & C Smog's technician,  
20 Respondent Devin, knowingly entered into the emissions inspection  
21 system false information about the Bureau's 1992 Toyota Corolla.
- 22 e. **Section 3340.42**: Respondent 4<sup>th</sup> & C Smog's technician, Respondent  
23 Devin, failed to conduct the required smog tests on the Bureau's 1992  
24 Toyota Corolla in accordance with the Bureau's specifications.

25 **SIXTH CAUSE FOR DISCIPLINE**

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

27 37. Respondent 4<sup>th</sup> & C Smog's smog check station license is subject to  
28 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that

1 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by  
2 issuing an electronic smog certificate of compliance for the Bureau's 1992 Toyota Corolla  
3 without performing a bona fide inspection of the emission control devices and systems on the  
4 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
5 Motor Vehicle Inspection Program.

6 **SEVENTH CAUSE FOR DISCIPLINE**

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

8 38. Respondent Devin's advanced emission specialist technician license is  
9 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in  
10 that he failed to comply with provisions of that Code as follows:

- 11 a. **Section 44012:** Respondent failed to perform the emission control tests  
12 on the Bureau's 1992 Toyota Corolla in accordance with procedures  
13 prescribed by the department.
- 14 b. **Section 44059:** Respondent willfully made false entries on the VIR's  
15 dated December 21, 2006, and January 19, 2006, as set forth in paragraph  
16 32 above, the latter of which resulted in the issuance of an electronic smog  
17 certificate of compliance for the Bureau's 1992 Toyota Corolla.

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

21 39. Respondent Devin's advanced emission specialist technician license is  
22 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in  
23 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
24 follows:

- 25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently  
26 issued an electronic smog certificate of compliance for the Bureau's 1992  
27 Toyota Corolla.

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- 1           b.     Section 3340.30, subdivision (a): Respondent failed to inspect and test  
2                     the Bureau's 1992 Toyota Corolla in accordance with Health & Saf. Code  
3                     sections 44012 and 44035, and California Code of Regulations, title 16,  
4                     section 3340.42.
- 5           c.     3340.41, subdivision (c): Respondent knowingly entered into the  
6                     emissions inspection system false information about the Bureau's 1992  
7                     Toyota Corolla.
- 8           d.     Section 3340.42: Respondent failed to conduct the required smog tests on  
9                     the Bureau's 1992 Toyota Corolla in accordance with the Bureau's  
10                    specifications.

11                                   **NINTH CAUSE FOR DISCIPLINE**

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

13           40.     Respondent Devin's advanced emission specialist technician license is  
14     subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in  
15     that he committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing  
16     an electronic smog certificate of compliance for the Bureau's 1992 Toyota Corolla without  
17     performing a bona fide inspection of the emission control devices and systems on the vehicle,  
18     thereby depriving the People of the State of California of the protection afforded by the Motor  
19     Vehicle Inspection Program.

20                                   **TENTH CAUSE FOR DISCIPLINE**

21                                   **(Untrue or Misleading Statements)**

22           41.     Respondent Zuniga's automotive repair dealer registration is subject to  
23     disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that  
24     Respondent made or authorized statements which he knew, or in the exercise of reasonable care,  
25     should have known to be untrue or misleading, as follows:

26           a.     Respondent certified under penalty of perjury on the VIR dated January 9,  
27     2006, that he performed the smog (pretest) inspection on the Bureau's 1992 Toyota Corolla in  
28     accordance with all Bureau requirements. In fact, Respondent tampered with and illegally

1 modified the EGR valve on the vehicle prior to performing the smog inspection by inserting a  
2 bolt under the EGR valve diaphragm, holding the valve open and allowing exhaust gas  
3 recirculation to occur at all times the engine was running, including idle. As such, the vehicle  
4 would not pass the visual portion of the California smog test inspection. Further, Respondent  
5 failed to properly perform the functional ignition timing test on the vehicle in that he failed to test  
6 the base timing on the engine with the check connector (diagnostic connector) short-circuited  
7 between terminals E-1 and TE-1. In addition, Respondent failed to perform the functional fuel  
8 cap integrity test.

9           b. Respondent certified under penalty of perjury on the VIR dated January 9,  
10 2006, that the Bureau's 1992 Toyota Corolla had passed the pretest inspection and was in  
11 compliance with applicable laws and regulations. In fact, the diaphragm on the EGR valve was  
12 defective (ruptured), the EGR valve was illegally modified, as set forth in subparagraph (a)  
13 above, and the engine RPM was out of tolerance. As such, the vehicle would not pass the  
14 inspection required by Health & Saf. Code section 44012.

15           c. Respondent represented on Invoice Number 66206 that the vacuum signal  
16 to the EGR valve needed repair in order to reduce the emissions on the Bureau's 1992 Toyota  
17 Corolla. In fact, the only repair needed to restore the EGR system to functional condition was the  
18 replacement of the EGR valve. Further, there was no defect in the EGR system vacuum circuit.

19                                   **ELEVENTH CAUSE FOR DISCIPLINE**

20                                   **(Failure to Provide Copy of Signed Document)**

21           42. Respondent Zuniga's automotive repair dealer registration is subject to  
22 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that  
23 Respondent's employee, Roberto, failed to give the undercover operator a copy of the work  
24 order, identified in paragraph 23 above, as soon as the operator signed the document.

25                                   **TWELFTH CAUSE FOR DISCIPLINE**

26                                   **(Fraud)**

27           43. Respondent Zuniga's automotive repair dealer registration is subject to  
28 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that

1 Respondent committed an act which constitutes fraud, as follows: Respondent tampered with  
2 and illegally modified the EGR valve on the Bureau's 1992 Toyota Corolla, as set forth in  
3 subparagraph 41 (a) above, in a manner that would cause the vehicle to falsely pass or falsely fail  
4 an inspection.

5 **THIRTEENTH CAUSE FOR DISCIPLINE**

6 **(Departure From Trade Standards)**

7 44. Respondent Zuniga's automotive repair dealer registration is subject to  
8 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that  
9 Respondent willfully departed from or disregarded accepted trade standards for good and  
10 workmanlike repair without the consent of the owner or the owner's duly authorized  
11 representative, in the following material respects:

12 a. Respondent failed to diagnose, or properly diagnose, and repair the defect  
13 in the EGR system on the Bureau's 1992 Toyota Corolla. Respondent determined that the  
14 vacuum signal to the EGR valve needed repair in order to reduce the emissions on the vehicle. In  
15 fact, the only repair needed to restore the EGR system to functional condition was the  
16 replacement of the EGR valve, which Respondent failed to perform. Further, there was no defect  
17 in the EGR system vacuum circuit.

18 b. Respondent tampered with and illegally modified the EGR valve on the  
19 vehicle by inserting a bolt under the EGR valve diaphragm, holding the valve open and allowing  
20 exhaust gas recirculation to occur at all times the engine was running, including idle<sup>d</sup>, and  
21 causing the engine to idle rough.

22 c. Respondent failed to properly install the air cleaner on the vehicle in that  
23 the air cleaner clips were not secured.

24 d. Respondent failed to install the correct oxygen sensor for the vehicle.

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28 4. The EGR system is designed to operate off idle based on engine load and exhaust backpressure.

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Bus. & Prof. Code)**

3 45. Respondent Zuniga's automotive repair dealer registration is subject to  
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that  
5 Respondent failed to comply with provisions of that Code, as follows:

- 6 a. **Section 9884.8:** Respondent failed to record on Invoice No. 66206 all  
7 service work performed and/or parts supplied on the Bureau's 1992  
8 Toyota Corolla, including the repair of the MIL and the replacement  
9 of the oxygen sensor.
- 10 b. **Section 9884.9, subdivision (a):** On or about January 5, 2006,  
11 Respondent failed to provide the undercover operator with a written  
12 estimate for parts and/or labor necessary for a specific job prior to  
13 performing the initial pretest smog inspection on the Bureau's 1992  
14 Toyota Corolla.

15 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

17 46. Respondent Zuniga's smog check station license is subject to disciplinary  
18 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed  
19 to comply with the following sections of that Code:

- 20 a. **Section 44012:** Respondent failed to perform the emission control tests  
21 on the Bureau's 1992 Toyota Corolla in accordance with procedures  
22 prescribed by the department.
- 23 b. **Section 44016:** Respondent failed to perform the repairs on the Bureau's  
24 1992 Toyota Corolla in accordance with established specifications and  
25 procedures.
- 26 c. **Section 44033, subdivision (c):** Respondent failed to provide the  
27 undercover operator with a written estimate for parts and/or labor

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1 necessary for a specific job prior to performing the second smog  
2 inspection on the Bureau's 1992 Toyota Corolla.

- 3 d. **Section 44072.10, subdivision (c)(3):** Respondent tampered with and  
4 illegally modified the EGR valve on the Bureau's 1992 Toyota Corolla,  
5 as set forth in subparagraph 41 (a) above, in a manner that would cause the  
6 vehicle to falsely pass or falsely fail an inspection.

7 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

10 47. Respondent Zuniga's smog check station license is subject to disciplinary  
11 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed  
12 to comply with the following sections of California Code of Regulations, title 16:

- 13 a. **Section 3340.41, subdivision (d):** Respondent failed to perform the  
14 repairs on the Bureau's 1992 Toyota Corolla in accordance with  
15 established specifications and procedures.
- 16 b. **3340.41, subdivision (c):** Respondent knowingly entered into the  
17 emissions inspection system false information about the Bureau's 1992  
18 Toyota Corolla.
- 19 c. **Section 3340.41.3:** Respondent failed to record on Invoice No. 66206 all  
20 service work performed and/or parts supplied on the Bureau's 1992  
21 Toyota Corolla to reduce emissions, including the repair of the MIL and  
22 the oxygen sensor.
- 23 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on  
24 the Bureau's 1992 Toyota Corolla in accordance with the Bureau's  
25 specifications.

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1 Respondent made or authorized statements which it knew or in the exercise of reasonable care  
2 should have known to be untrue or misleading, as follows:

3 a. Respondent 4<sup>th</sup> & C Smog's technician, Respondent Devin, certified under  
4 penalty of perjury on the VIR dated October 10, 2006, that the information listed on the VIR was  
5 true and correct and that there was a mechanical problem with the ignition system and/or ignition  
6 timing on the Bureau's 1992 Toyota Corolla. In fact, the ignition timing was adjusted to  
7 manufacturer's specifications and there were no anomalies with the ignition system or  
8 mechanical components related to measurement and control of the ignition timing at the time the  
9 vehicle was taken to Respondent 4<sup>th</sup> & C Smog on the above date.

10 b. Respondent 4<sup>th</sup> & C Smog's technician, Respondent Devin, certified under  
11 penalty of perjury on the VIR dated October 25, 2006, that the Bureau's 1992 Toyota Corolla had  
12 passed inspection and was in compliance with applicable laws and regulations. In fact, a  
13 defective lamp bulb had been installed in the check engine light/MIL at the time the vehicle was  
14 taken to Respondent 4<sup>th</sup> & C Smog on the above date. Further, the vehicle's exhaust emissions  
15 were at gross polluter levels and the ignition timing was not adjusted to manufacturer's  
16 specifications at the time the vehicle was inspected by Bureau Representative Giese on October  
17 25, 2006, and October 26, 2006. As such, the vehicle would not pass the inspection required by  
18 Health & Saf. Code section 44012.

19 c. Respondent 4<sup>th</sup> & C Smog's technician, Respondent Devin, certified under  
20 penalty of perjury on the VIR dated October 25, 2006, that he performed the smog inspection on  
21 the Bureau's 1992 Toyota Corolla in accordance with all Bureau requirements. In fact, Devin  
22 retarded or adjusted the ignition timing on the vehicle to 3 degrees after top dead center when the  
23 manufacturer's specifications are 10 degrees BTDC. As a result thereof, and of the other defects  
24 present in the vehicle, the tailpipe NOX emissions exceeded the gross polluter limits during the  
25 25 mph portion of the ASM test conducted by Bureau Representative Giese. Further, Devin  
26 retarded or adjusted the ignition timing, temporarily disconnected two vacuum lines, and  
27 disconnected and reconnected or moved the air intake duct, allowing the vehicle's emissions to  
28 drop low enough for the vehicle to temporarily pass the emissions test.

1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 59. Respondent 4<sup>th</sup> & C Smog's automotive repair dealer registration is subject  
4 to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it  
5 committed an act which constitutes fraud, as follows: On or about October 25, 2006,  
6 Respondent issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota  
7 Corolla without performing a bona fide inspection of the emission control devices and systems  
8 on the vehicle, thereby depriving the People of the State of California of the protection afforded  
9 by the Motor Vehicle Inspection Program.

10 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

11 **(Violations of the Bus. & Prof. Code)**

12 60. Respondent 4<sup>th</sup> & C Smog's automotive repair dealer registration is subject  
13 to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that  
14 Respondent failed to comply with section 9884.9, subdivision (a), of that Code. On or about  
15 October 25, 2006, Respondent failed to provide the undercover operator with a written estimate  
16 for parts and/or labor necessary for a specific job prior to performing the second smog inspection  
17 on the Bureau's 1992 Toyota Corolla.

18 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

20 61. Respondent 4<sup>th</sup> & C Smog's smog check station license is subject to  
21 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that  
22 Respondent failed to comply with the following sections of that Code:

- 23 a. **Section 44012:** Respondent 4<sup>th</sup> & C Smog's technician, Respondent  
24 Devin, failed to perform the emission control tests on the Bureau's 1992  
25 Toyota Corolla in accordance with procedures prescribed by the  
26 department.
- 27 b. **Section 44015:** Respondent 4<sup>th</sup> & C Smog issued an electronic smog  
28 certificate of compliance for the Bureau's 1992 Toyota Corolla without

1 properly testing and inspecting the vehicle to determine if it was in  
2 compliance with Health & Saf. Code section 44012.

3 c. **Section 44015, subdivision (a)(1)**: Respondent 4<sup>th</sup> & C Smog issued an  
4 electronic smog certificate of compliance for the Bureau's 1992 Toyota  
5 Corolla when, in fact, the emissions control system on the vehicle had  
6 been tampered with or illegally modified, as set forth in paragraph 57  
7 above.

8 d. **Section 44033, subdivision (c)**: On or about October 25, 2006,  
9 Respondent 4<sup>th</sup> & C Smog failed to provide the undercover operator with a  
10 written estimate for parts and/or labor necessary for a specific job prior to  
11 performing the second smog inspection on the Bureau's 1992 Toyota  
12 Corolla.

13 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

16 62. Respondent 4<sup>th</sup> & C Smog's smog check station license is subject to  
17 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that  
18 Respondent failed to comply with the provisions of California Code of Regulations, title 16, as  
19 follows:

20 a. **Section 3340.24, subdivision (c)**: Respondent 4<sup>th</sup> & C Smog falsely or  
21 fraudulently issued an electronic smog certificate of compliance for the  
22 Bureau's 1992 Toyota Corolla.

23 b. **Section 3340.35, subdivision (c)**: Respondent 4<sup>th</sup> & C Smog issued an  
24 electronic smog certificate of compliance for the Bureau's 1992 Toyota  
25 Corolla even though the vehicle had not been inspected in accordance with  
26 Health & Saf. Code section 3340.42.

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- 1 c. **3340.41, subdivision (c)**: Respondent 4<sup>th</sup> & C Smog's technician,  
2 Respondent Devin, knowingly entered into the emissions inspection  
3 system false information about the Bureau's 1992 Toyota Corolla.
- 4 d. **Section 3340.42**: Respondent 4<sup>th</sup> & C Smog's technician, Respondent  
5 Devin, failed to conduct the required smog tests on the Bureau's 1992  
6 Toyota Corolla in accordance with the Bureau's specifications.

7 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

9 63. Respondent 4<sup>th</sup> & C Smog's smog check station license is subject to  
10 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that on or  
11 about October 25, 2006, Respondent committed a dishonest, fraudulent or deceitful act whereby  
12 another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1992  
13 Toyota Corolla without performing a bona fide inspection of the emission control devices and  
14 systems on the vehicle, thereby depriving the People of the State of California of the protection  
15 afforded by the Motor Vehicle Inspection Program.

16 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

18 64. Respondent Devin's advanced emission specialist technician license is  
19 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in  
20 that he failed to comply with provisions of that Code as follows:

- 21 a. **Section 44012**: Respondent failed to perform the emission control tests  
22 on the Bureau's 1992 Toyota Corolla in accordance with procedures  
23 prescribed by the department.
- 24 b. **Section 44059**: Respondent willfully made false entries on the VIR's  
25 dated October 10, 2006, and October 25, 2006, as set forth in paragraph  
26 58 above, the latter of which resulted in the issuance of an electronic smog  
27 certificate of compliance for the Bureau's 1992 Toyota Corolla.

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1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

4 65. Respondent Devin's advanced emission specialist technician license is  
5 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in  
6 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
7 follows:

- 8 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently  
9 issued an electronic smog certificate of compliance for the Bureau's 1992  
10 Toyota Corolla.
- 11 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test  
12 the Bureau's 1992 Toyota Corolla in accordance with Health & Saf. Code  
13 sections 44012 and 44035, and California Code of Regulations, title 16,  
14 section 3340.42.
- 15 c. **3340.41, subdivision (c)**: Respondent knowingly entered into the  
16 emissions inspection system false information about the Bureau's 1992  
17 Toyota Corolla.
- 18 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on  
19 the Bureau's 1992 Toyota Corolla in accordance with the Bureau's  
20 specifications.

21 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

23 66. Respondent Devin's advanced emission specialist technician license is  
24 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in  
25 that on or about October 25, 2006, he committed a dishonest, fraudulent or deceitful act whereby  
26 another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1992  
27 Toyota Corolla without performing a bona fide inspection of the emission control devices and

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1 systems on the vehicle, thereby depriving the People of the State of California of the protection  
2 afforded by the Motor Vehicle Inspection Program.

3 **OTHER MATTERS**

4 67. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the  
5 Director may invalidate temporarily or permanently, the registrations for all places of business  
6 operated in this state by Respondent 4th & C Smog, Inc., doing business as California Smog Test  
7 Only, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful  
8 violations of the laws and regulations pertaining to an automotive repair dealer.

9 68. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test  
10 Only, Station License Number TD 233005, issued to Respondent 4th & C Smog, Inc., doing  
11 business as California Smog Test Only, is revoked or suspended, any additional license issued  
12 under this chapter in the name of said licensee may be likewise revoked or suspended by the  
13 director.

14 69. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission  
15 Specialist Technician License Number EA 149480, issued to Justin P. Devin, also known as  
16 Justin Patrick Devin, is revoked or suspended, any additional license issued under this chapter in  
17 the name of said licensee may be likewise revoked or suspended by the director.

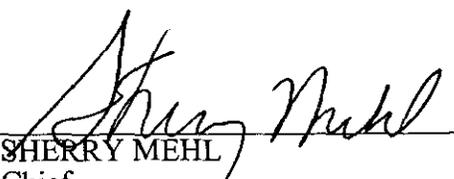
18 70. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the  
19 Director may invalidate temporarily or permanently, the registrations for all places of business  
20 operated in this state by Respondent Jesus Benito Zuniga, also known as Jesus B. Zuniga, owner  
21 of Jesse Smog Station, upon a finding that said Respondent has, or is, engaged in a course of  
22 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
23 dealer.

24 71. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station  
25 License Number RE 160498, issued to Respondent Jesus Benito Zuniga, also known as Jesus B.  
26 Zuniga, owner of Jesse Smog Station, is revoked or suspended, any additional license issued  
27 under this chapter in the name of said licensee may be likewise revoked or suspended by the  
28 director.



- 1                   10.    Revoking or suspending Advanced Emission Specialist Technician
- 2 License Number EA 304458, issued to Jesus Benito Zuniga, also known as Jesus B. Zuniga;
- 3                   11.    Revoking or suspending any additional license issued under Chapter 5 of
- 4 the Health and Safety Code in the name of Jesus Benito Zuniga, also known as Jesus B. Zuniga;
- 5                   12.    Ordering Respondents 4th & C Smog, Inc., doing business as California
- 6 Smog Test Only, Justin P. Devin, also known as Justin Patrick Devin, and/or Jesus Benito
- 7 Zuniga, also known as Jesus B. Zuniga, individually, and as owner of Jesse Smog Station, to pay
- 8 the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of
- 9 this case, pursuant to Business and Professions Code section 125.3;
- 10                  13.    Taking such other and further action as deemed necessary and proper.

11 DATED: 9-20-07.

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

Complainant

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