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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: **RON BARRY ROSENBERG** **16620 Pauhaska Road** **Apple Valley, CA 92307** **Advanced Emission Specialist Technician License No. EA 149782** Respondent.	Case No. 79/13-33 **ACCUSATION** **(Smog Check)**

Complainant alleges:

PARTIES

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

2. In or about 2005, the Director of Consumer Affairs ("Director") issued Advanced Emission Specialist Technician License Number EA 149782 ("technician license") to Ron Barry Rosenberg ("Respondent"). Respondent's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2013, unless renewed.

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JURISDICTION

3. Health and Safety Code ("Health & Saf. Code") section 44002 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.

4. Health & Saf. Code section 44072.6 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.

STATUTORY PROVISIONS

5. 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:
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> (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.
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> . . . .
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> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
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> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

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

> . . . .
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> (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:
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> (1) Clean piping, as defined by the department.
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> . . . .
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> (4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . .

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7. 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.

8. Business and Professions Code ("Bus. & Prof. Code") section 22, subdivision (a), states:

> "Board" as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

COST RECOVERY

9. 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.

FRAUDULENT SMOG CERTIFICATE OF COMPLIANCE

10. On or about January 28, 2012, the Bureau received an anonymous complaint, alleging that Respondent, while employed at Rancho Motor Company located in Victorville, California, had clean piped[1] his personal vehicle on January 26, 2012, using another customer's vehicle or a used car at the facility, resulting in the issuance of an illegal smog certificate. That same day, a representative of the Bureau searched the Bureau's vehicle information database ("VID") and found that on January 26, 2012, between 11:34 and 11:47 hours, Respondent had performed a smog inspection on a 1991 Chevrolet K-1500 Blazer, License No. 3JCJ084 ("Blazer"), resulting in the issuance of electronic smog Certificate of Compliance No. XD311861C. The representative obtained information from the California Department of Motor Vehicles ("DMV") showing that the Blazer was registered to Respondent.

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[1] Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS to issue a certificate of compliance for another vehicle.

11. On or about February 10, 2012, the representative went to Rancho Motor Company and spoke with the service manager, Bill Markloff ("Markloff"), regarding the anonymous complaint. Markloff checked the facility's computer system and could not locate an invoice for the smog inspection of January 26, 2012. Markloff told the representative that the facility had terminated Respondent's employment. Markloff explained that on January 26, 2012, he and the facility's owner/president, John Wilkins ("Wilkins"), were walking toward Wilkins' vehicle and observed Respondent placing the facility's Emissions Inspection System ("EIS") exhaust sample probe into the tailpipe of his personal vehicle, a 1991 Chevrolet Silverado pickup, License No. K16FJG ("Silverado"). Markloff stated that it appeared strange because the Silverado was headed forward into the service bay rather than backed in (so that the vehicle could be run on the dynamometer). Markloff had the facility's foreman, Mike Paholsky ("Paholsky"), check the EIS to determine whether a smog certificate had been issued. Paholsky found that Certificate of Compliance No. XD311861C had been issued to the Blazer and not the Silverado. Paholsky printed a copy of the Vehicle Inspection Report ("VIR"). Later, Markloff and Paholsky reviewed surveillance video from the facility's surveillance system. The video showed that the Blazer was not present in the service bay at the time of the smog inspection. Markloff provided the representative with 5 still photographs which he had printed from the video. The representative found in reviewing the photographs that Respondent's Silverado was in the service bay at the time Certificate of Compliance No. XD311861C was issued for the Blazer. Later, the representative drove to Respondent's residence and took photographs of the Blazer and Silverado. The representative obtained DMV information showing that the Silverado was registered to Denise Rosenberg.

12. On or about February 14, 2012, the representative returned to the facility and obtained declarations from Markloff, Wilkins, and Paholsky. Markloff stated in his declaration that the surveillance video of January 26, 2012, showed the Silverado was in the service bay at the time the smog certificate was issued to the Blazer. Markloff also stated that he and Wilkins met with Respondent on January 30, 2012, and confronted him with the VIR and the still

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photographs. Respondent admitted to Markloff and Wilkins that he had used his Silverado to issue Certificate of Compliance No. XD311861C for the Blazer.

13. On or about February 16, 2012, the representative met with Respondent at his residence. After discussing the smog inspection of January 26, 2012, Respondent voluntarily surrendered his technician license and technician badge.

FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

14. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent used clean piping methods in order to issue a certificate of compliance for the 1991 Chevrolet K-1500 Blazer, and did not test or inspect the vehicle as required by section 44012.

SECOND CAUSE FOR DISCIPLINE

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

15. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1991 Chevrolet K-1500 Blazer in accordance with Health & Saf. Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1991 Chevrolet K-1500 Blazer in accordance with the Bureau's specifications.

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THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

16. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the 1991 Chevrolet K-1500 Blazer without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

17. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 149782, issued to Ron Barry Rosenberg, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

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 Advanced Emission Specialist Technician License Number EA 149782, issued to Ron Barry Rosenberg;

2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Ron Barry Rosenberg;

3. Ordering Ron Barry Rosenberg 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;

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

DATED: December 10, 2012

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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