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

11 In the Matter of the Accusation Against:
12 AUTO SMOG MASTERS
DIANE WILLIAMS, OWNER
13 1620 N. Long Beach Blvd., #E
Compton, CA 90221
14 Automotive Repair Dealer Reg. No. ARD 237061
15 Smog Check, Test Only, Station License
No. TC 237061,
16 VINICIO AGUAYO
17 2401 Magnolia
Long Beach, CA 90806
18 Advanced Emission Specialist Technician License
19 No. EA 150904,
20 and
21 THEOPHILUS CECIL OKAI
3110 W. Paso Robles Dr.
22 Anaheim, CA 92804-2926
23 Advanced Emission Specialist Technician License
No. EA 017417
24 Respondents.
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Case No. 79/09-06
ACCUSATION
(Smog Check)

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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. ARD 237061

2. On or about March 15, 2005, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 237061 to Diane Williams ("Respondent Williams"), owner of Auto Smog Masters. Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2008, unless renewed.

Smog Check, Test Only, Station License No. TC 237061

3. On or about July 12, 2005, the Director issued Smog Check, Test Only, Station License Number TC 237061 to Respondent Williams. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2008, unless renewed.

Advanced Emission Specialist Technician License No. EA 150904

4. In or about 2006, the Director issued Advanced Emission Specialist Technician License Number EA 150904 to Vinicio Aguayo ("Respondent Aguayo"). Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2008, unless renewed.

Advanced Emission Specialist Technician License No. EA 017417

5. In or about 2007, the Director issued Advanced Emission Specialist Technician License Number EA 017417 to Theophilus Cecil Okai ("Respondent Okai"). Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

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1 JURISDICTION

2 6. Business and Professions Code ("Bus. & Prof. Code") section 9884.7
3 provides that the Director may invalidate an automotive repair dealer registration.

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

8 8. Health and Safety Code ("Health & Saf. Code") section 44002 provides,
9 in pertinent part, that the Director has all the powers and authority granted under the Automotive
10 Repair Act for enforcing the Motor Vehicle Inspection Program.

11 9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the
12 expiration or suspension of a license by operation of law, or by order or decision of the Director
13 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
14 the Director of jurisdiction to proceed with disciplinary action.

15 STATUTORY PROVISIONS

16 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

17 (a) The director, where the automotive repair dealer cannot show there
18 was a bona fide error, may refuse to validate, or may invalidate temporarily or
19 permanently, the registration of an automotive repair dealer for any of the
20 following acts or omissions related to the conduct of the business of the
automotive repair dealer, which are done by the automotive repair dealer or any
automotive technician, employee, partner, officer, or member of the automotive
repair dealer.

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

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25 (4) Any other conduct which constitutes fraud.

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27 (c) Notwithstanding subdivision (b), the director may refuse to
28 validate, or 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

1 in a course of repeated and willful violations of this chapter, or regulations
2 adopted pursuant to it.

3 11. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board"
4 includes "bureau," "commission," "committee," "department," "division," "examining
5 committee," "program," and "agency."

6 12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part,
7 that a "license" includes "registration" and "certificate."

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

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

11 (a) Violates any section of this chapter [the Motor Vehicle Inspection
12 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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14 (c) Violates any of the regulations adopted by the director pursuant to
this chapter.

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

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

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

22 (1) Clean piping, as defined by the department . . .

23 15. Health & Saf. Code section 44072.8 states that when a license has been
24 revoked or suspended following a hearing under this article, any additional license issued under
25 this chapter in the name of the licensee may be likewise revoked or suspended by the director.

26 **Cost Recovery**

27 16. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board
28 may request the administrative law judge to direct a licentiate found to have committed a

1 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
2 investigation and enforcement of the case.

3 **VIDEO SURVEILLANCE OF FEBRUARY 27, 2008**

4 17. On February 27, 2008, representatives of the Bureau conducted a video
5 surveillance operation of Respondent Williams' smog check facility. The surveillance video and
6 information obtained from the Bureau's vehicle information database ("VID") revealed that
7 Respondents Aguayo and Okai issued electronic smog certificates of compliance on behalf of
8 Respondent Williams, certifying that they had tested and inspected the vehicles identified below
9 and that the vehicles were in compliance with applicable laws and regulations. In fact,
10 Respondents Aguayo and Okai conducted the inspections using clean-piping methods¹, resulting
11 in the issuance of fraudulent certificates of compliance for the vehicles.

12 Time of Smog Inspection	13 Vehicle Certified & License #	Certificate of Compliance No.	Vehicle Actually Tested	Technician Performing Test
14 1. 0733-0745	1988 Nissan; license #4JLY178	VN803120C	1998 Chevrolet Lumina; License #6COW072 ²	Respondent Aguayo
15 2. 1722-1800	1992 Mercedes; license #3DFF953	VN803125C	Nissan	Respondent Okai

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 18. Respondent Williams' automotive repair dealer registration is subject to
20 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
21 Respondent made or authorized statements which she knew or in the exercise of reasonable care
22 should have known to be untrue or misleading, as follows: Respondent Williams' technicians,
23 Respondents Aguayo and Okai, certified that vehicles 1 and 2, identified in paragraph 17 above,
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25 1. Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping" means the use of a
26 sample of the exhaust emissions of one vehicle in order to cause the Test Analyzer System or Emissions
27 Inspection System to issue a certificate of compliance for another vehicle.

28 2. The Bureau determined that the 1998 Chevrolet Lumina, license #6COW072, was registered to Respondent Aguayo.

1 had passed inspection and were in compliance with applicable laws and regulations. In fact,
2 Respondents Aguayo and Okai used clean-piping methods in order to issue certificates for the
3 vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 19. Respondent Williams' automotive repair dealer registration is subject to
7 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
8 Respondent committed acts which constitute fraud by issuing electronic smog certificates of
9 compliance for vehicles 1 and 2, identified in paragraph 17 above, without performing bona fide
10 inspections of the emission control devices and systems on the vehicles, thereby depriving the
11 People of the State of California of the protection afforded by the Motor Vehicle Inspection
12 Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 20. Respondent Williams' smog check station license is subject to disciplinary
16 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
17 to comply with provisions of that Code, as follows:

- 18 a. **Section 44012:** Respondent Williams failed to ensure that the emission
19 control tests were performed on vehicles 1 and 2, identified in paragraph
20 17 above, in accordance with procedures prescribed by the department.
- 21 b. **Section 44015:** Respondent Williams issued electronic smog certificates
22 of compliance for vehicles 1 and 2, identified in paragraph 17 above,
23 without ensuring that the vehicles were properly tested and inspected to
24 determine if they were in compliance with Health & Saf. Code section
25 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 21. Respondent Williams' smog check station license is subject to disciplinary
5 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
6 to comply with provisions of California Code of Regulations, title 17, as follows:

- 7 a. **Section 3340.24, subdivision (c):** Respondent Williams falsely or
8 fraudulently issued electronic smog certificates of compliance for vehicles
9 1 and 2, identified in paragraph 17 above.
- 10 b. **Section 3340.35, subdivision (c):** Respondent Williams issued electronic
11 smog certificates of compliance for vehicles 1 and 2, identified in
12 paragraph 17 above, even though those vehicles had not been inspected in
13 accordance with section 3340.42.
- 14 c. **Section 3340.41, subdivision (c):** Respondent Williams authorized or
15 permitted Respondents Aguayo and Okai to enter false information into
16 the emissions inspection system ("EIS") by entering vehicle identification
17 information or emission control system identification data for vehicles
18 other than the ones being tested.
- 19 d. **Section 3340.42:** Respondent Williams failed to ensure that the required
20 smog tests were conducted on vehicles 1 and 2, identified in paragraph 17
21 above, in accordance with the Bureau's specifications.

22 **FIFTH CAUSE FOR DISCIPLINE**

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

24 22. Respondent Williams' smog check station license is subject to disciplinary
25 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
26 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
27 smog certificates of compliance for vehicles 1 and 2, identified in paragraph 17 above, without
28 performing bona fide inspections of the emission control devices and systems on the vehicles,

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

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 23. Respondent Aguayo's advanced emission specialist technician license is
6 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
7 that Respondent failed to comply with provisions of that Code, as follows:

- 8 a. **Section 44012:** Respondent failed to perform the emission control tests
9 on vehicle 1, identified in paragraph 17 above, in accordance with
10 procedures prescribed by the department.
11 b. **Section 44059:** Respondent willfully made false entries in the EIS in
12 order to issue a certificate of compliance for vehicle 1, identified in
13 paragraph 17 above.

14 **SEVENTH CAUSE FOR DISCIPLINE**

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

17 24. Respondent Aguayo's advanced emission specialist technician license is
18 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
19 that Respondent failed to comply with provisions of California Code of Regulations, title 17, as
20 follows:

- 21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
22 issued an electronic smog certificate of compliance for vehicle 1,
23 identified in paragraph 17 above.
24 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
25 vehicle 1, identified in paragraph 17 above, in accordance with Health &
26 Saf. Code sections 44012 and 44035, and California Code of Regulations,
27 title 17, section 3340.42.

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- 1 c. **Section 3340.41, subdivision (c)**: Respondent entered false information
2 into the EIS by entering vehicle identification information or emission
3 control system identification data for a vehicle other than the one being
4 tested.
- 5 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on
6 vehicle 1, identified in paragraph 17 above, in accordance with the
7 Bureau's specifications.

8 **EIGHTH CAUSE FOR DISCIPLINE**

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

10 25. Respondent Aguayo's advanced emission specialist technician license is
11 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
12 that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
13 issuing an electronic smog certificate of compliance for vehicle 1, identified in paragraph 17
14 above, without performing a bona fide inspection of the emission control devices and systems on
15 the vehicle, thereby depriving the People of the State of California of the protection afforded by
16 the Motor Vehicle Inspection Program.

17 **NINTH CAUSE FOR DISCIPLINE**

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

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

- 22 a. **Section 44012**: Respondent failed to perform the emission control tests
23 on vehicle 2, identified in paragraph 17 above, in accordance with
24 procedures prescribed by the department.
- 25 b. **Section 44059**: Respondent willfully made false entries in the EIS in
26 order to issue a certificate of compliance for vehicle 2, identified in
27 paragraph 17 above.

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1 **TENTH CAUSE FOR DISCIPLINE**

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

4 27. Respondent Okai'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 17, as
7 follows:

- 8 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently
9 issued an electronic smog certificate of compliance for vehicle 2,
10 identified in paragraph 17 above.
- 11 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test
12 vehicle 2, identified in paragraph 17 above, in accordance with Health &
13 Saf. Code sections 44012 and 44035, and California Code of Regulations,
14 title 17, section 3340.42.
- 15 c. **Section 3340.41, subdivision (c)**: Respondent entered false information
16 into the EIS by entering vehicle identification information or emission
17 control system identification data for a vehicle other than the one being
18 tested.
- 19 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on
20 vehicle 2, identified in paragraph 17 above, in accordance with the
21 Bureau's specifications.

22 **ELEVENTH CAUSE FOR DISCIPLINE**

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

24 28. Respondent Okai's advanced emission specialist technician license is
25 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
26 that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
27 issuing an electronic smog certificate of compliance for vehicle 2, identified in paragraph 17
28 above, without performing a bona fide inspection of the emission control devices and systems on

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

3 **VIDEO SURVEILLANCE OF FEBRUARY 29, 2008**

4 29. On February 29, 2008, representatives of the Bureau conducted a video
5 surveillance operation of Respondent Williams' smog check facility. The surveillance video and
6 information obtained from the Bureau's VID revealed that Respondent Aguayo issued electronic
7 smog certificates of compliance on behalf of Respondent Williams, certifying that he had tested
8 and inspected the vehicles identified below and that the vehicles were in compliance with
9 applicable laws and regulations. In fact, Respondent Aguayo conducted the inspections using
10 clean-piping methods, resulting in the issuance of fraudulent certificates of compliance for the
11 vehicles.

12 Time of Smog Inspection	13 Vehicle Certified & License #	14 Certificate of Compliance No.	15 Vehicle Actually Tested
16 1. 0739 - 0746	1997 Honda; license #5FWT464	VN803142C	1996 Dodge van; License #3SGX722
17 2. 0802 - 0816	1990 Toyota; license #2UW368	VN803143C	1989 Suzuki; license #4KIN616 ³ and 1998 Chevrolet Lumina; license #6COW072
18 3. 0832 - 0837	1999 Chevrolet Tahoe; no plates	VN803144C	1998 Chevrolet Lumina; license #6COW072

19 **TWELFTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 30. Respondent Williams' automotive repair dealer registration is subject to
22 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
23 Respondent made or authorized statements which she knew or in the exercise of reasonable care
24 should have known to be untrue or misleading, as follows: Respondent Williams' technician,
25 Respondent Aguayo, certified that vehicles 1 through 3, identified in paragraph 29 above, had
26 passed inspection and were in compliance with applicable laws and regulations. In fact,

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28 3. The Bureau determined that the 1989 Suzuki, license #4KIN616, was registered to Respondent Aguayo.

1 Respondent Aguayo used clean-piping methods in order to issue certificates for the vehicles and
2 did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

3 **THIRTEENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 31. Respondent Williams' automotive repair dealer registration is subject to
6 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
7 Respondent committed acts which constitute fraud by issuing electronic smog certificates of
8 compliance for vehicles 1 through 3, identified in paragraph 29 above, without performing bona
9 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
10 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
11 Program.

12 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

14 32. Respondent Williams' smog check station license is subject to disciplinary
15 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
16 to comply with provisions of that Code, as follows:

- 17 a. **Section 44012:** Respondent Williams failed to ensure that the emission
18 control tests were performed on vehicles 1 through 3, identified in
19 paragraph 29 above, in accordance with procedures prescribed by the
20 department.
- 21 b. **Section 44015:** Respondent Williams issued electronic smog certificates
22 of compliance for vehicles 1 through 3, identified in paragraph 29 above,
23 without ensuring that the vehicles were properly tested and inspected to
24 determine if they were in compliance with Health & Saf. Code section
25 44012.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

4 33. Respondent Williams' smog check station license is subject to disciplinary
5 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
6 to comply with provisions of California Code of Regulations, title 16, as follows:

- 7 a. **Section 3340.24, subdivision (c):** Respondent Williams falsely or
8 fraudulently issued electronic smog certificates of compliance for vehicles
9 1 through 3, identified in paragraph 29 above.
- 10 b. **Section 3340.35, subdivision (c):** Respondent Williams issued electronic
11 smog certificates of compliance for vehicles 1 through 3, identified in
12 paragraph 29 above, even though those vehicles had not been inspected in
13 accordance with section 3340.42.
- 14 c. **Section 3340.41, subdivision (c):** Respondent Williams authorized or
15 permitted Respondent Aguayo to enter false information into the EIS by
16 entering vehicle identification information or emission control system
17 identification data for vehicles other than the ones being tested.
- 18 d. **Section 3340.42:** Respondent Williams failed to ensure that the required
19 smog tests were conducted on vehicles 1 through 3, identified in paragraph
20 29 above, in accordance with the Bureau's specifications.

21 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

23 34. Respondent Williams' smog check station license is subject to disciplinary
24 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
25 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
26 smog certificates of compliance for vehicles 1 through 3, identified in paragraph 29 above,
27 without performing bona fide inspections of the emission control devices and systems on the

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

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

5 35. Respondent Aguayo's advanced emission specialist technician license is
6 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
7 that Respondent failed to comply with provisions of that Code, as follows:

- 8 a. **Section 44012:** Respondent failed to perform the emission control tests
9 on vehicles 1 through 3, identified in paragraph 29 above, in accordance
10 with procedures prescribed by the department.
11 b. **Section 44059:** Respondent willfully made false entries in the EIS in
12 order to issue certificates of compliance for vehicles 1 through 3,
13 identified in paragraph 29 above.

14 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

17 36. Respondent Aguayo's advanced emission specialist technician license is
18 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
19 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as
20 follows:

- 21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
22 issued electronic smog certificates of compliance for vehicles 1 through 3,
23 identified in paragraph 29 above.
24 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
25 vehicles 1 through 3, identified in paragraph 29 above, in accordance
26 with Health & Saf. Code sections 44012 and 44035, and California Code
27 of Regulations, title 16, section 3340.42.

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1 c. **Section 3340.41, subdivision (c):** Respondent entered false information
2 into the EIS by entering vehicle identification information or emission
3 control system identification data for vehicles other than the ones being
4 tested.

5 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
6 vehicles 1 through 3, identified in paragraph 29 above, in accordance with
7 the Bureau's specifications.

8 **NINETEENTH CAUSE FOR DISCIPLINE**

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

10 37. Respondent Aguayo's advanced emission specialist technician license is
11 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
12 that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by
13 issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in
14 paragraph 29 above, without performing bona fide inspections of the emission control devices
15 and systems on the vehicles, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program.

17 **VIDEO SURVEILLANCE OF MARCH 11, 2008**

18 38. On March 11, 2008, representatives of the Bureau conducted a video
19 surveillance operation of Respondent Williams' smog check facility. The surveillance video and
20 information obtained from the Bureau's VID revealed that Respondents Aguayo and Okai issued
21 electronic smog certificates of compliance on behalf of Respondent Williams, certifying that they
22 had tested and inspected the vehicles identified below and that the vehicles were in compliance
23 with applicable laws and regulations. In fact, Respondents Aguayo and Okai conducted the
24 inspections using clean-piping methods, resulting in the issuance of fraudulent certificates of
25 compliance for the vehicles.

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Time of Smog Inspection	Vehicle Certified & License #	Certificate of Compliance No.	Vehicle Actually Tested	Technician(s) Performing Test
1. 0735 - 0746	1992 Toyota; license #3BHG276	VN988088C	1989 Suzuki; license #4KIN616	Respondent Aguayo
2. 0754 - 0812	1984 Chevrolet; license #3JCL994	VN988089C	1998 Chevrolet Lumina; license #6COW072; and 1989 Suzuki; license #4KIN616	Respondent Aguayo
3. 0910 - 0915	1994 BMW; license #3GNU152	VN988090C	1998 Chevrolet Lumina; license #6OW072	Respondents Okai and Aguayo; Okai's personal access code was used to certify the vehicle

TWENTIETH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

39. Respondent Williams' automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Williams' technicians, Respondents Aguayo and Okai, certified that vehicles 1 through 3, identified in paragraph 38 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents Aguayo and Okai used clean-piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Fraud)

40. Respondent Williams' automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 38 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving

1 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

5 41. Respondent Williams' smog check station license is subject to disciplinary
6 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
7 to comply with provisions of that Code, as follows:

- 8 a. **Section 44012:** Respondent Williams failed to ensure that the emission
9 control tests were performed on vehicles 1 through 3, identified in
10 paragraph 38 above, in accordance with procedures prescribed by the
11 department.
- 12 b. **Section 44015:** Respondent Williams issued electronic smog certificates
13 of compliance for vehicles 1 through 3, identified in paragraph 38 above,
14 without ensuring that the vehicles were properly tested and inspected to
15 determine if they were in compliance with Health & Saf. Code section
16 44012.

17 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

20 42. Respondent Williams' smog check station license is subject to disciplinary
21 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
22 to comply with provisions of California Code of Regulations, title 16, as follows:

- 23 a. **Section 3340.24, subdivision (c):** Respondent Williams falsely or
24 fraudulently issued electronic smog certificates of compliance for vehicles
25 1 through 3, identified in paragraph 38 above.
- 26 b. **Section 3340.35, subdivision (c):** Respondent Williams issued electronic
27 smog certificates of compliance for vehicles 1 through 3, identified in

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1 paragraph 38 above, even though those vehicles had not been inspected in
2 accordance with section 3340.42.

3 c. **Section 3340.41, subdivision (c)**: Respondent Williams authorized or
4 permitted Respondents Aguayo and Okai to enter false information into
5 the EIS by entering vehicle identification information or emission control
6 system identification data for vehicles other than the ones being tested.

7 d. **Section 3340.42**: Respondent Williams failed to ensure that the required
8 smog tests were conducted on vehicles 1 through 3, identified in paragraph
9 38 above, in accordance with the Bureau's specifications.

10 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

12 43. Respondent Williams' smog check station license is subject to disciplinary
13 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
14 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
15 smog certificates of compliance for vehicles 1 through 3, identified in paragraph 38 above,
16 without performing bona fide inspections of the emission control devices and systems on the
17 vehicles, thereby depriving the People of the State of California of the protection afforded by the
18 Motor Vehicle Inspection Program.

19 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

21 44. Respondent Aguayo's advanced emission specialist technician license is
22 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
23 that Respondent failed to comply with provisions of that Code, as follows:

24 a. **Section 44012**: Respondent failed to perform the emission control tests
25 on vehicles 1 through 3, identified in paragraph 38 above, in accordance
26 with procedures prescribed by the department.

27 ///

28 ///

- 1 b. **Section 44059:** Respondent willfully made false entries in the EIS in
2 order to issue certificates of compliance for vehicles 1 and 2, identified in
3 paragraph 38 above.

4 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

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

- 11 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
12 issued electronic smog certificates of compliance for vehicles 1 and 2,
13 identified in paragraph 38 above.
- 14 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
15 vehicles 1 through 3, identified in paragraph 38 above, in accordance with
16 Health & Saf. Code sections 44012 and 44035, and California Code of
17 Regulations, title 16, section 3340.42.
- 18 c. **Section 3340.41, subdivision (c):** Respondent entered false information
19 into the EIS by entering vehicle identification information or emission
20 control system identification data for vehicles other than the ones being
21 tested.
- 22 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
23 vehicles 1 through 3, identified in paragraph 38 above, in accordance with
24 the Bureau's specifications.

25 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

27 46. Respondent Aguayo's advanced emission specialist technician license is
28 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in

1 that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
2 issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 38
3 above, without performing bona fide inspections of the emission control devices and systems on
4 the vehicles, thereby depriving the People of the State of California of the protection afforded by
5 the Motor Vehicle Inspection Program.

6 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

8 47. Respondent Okai'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 Respondent failed to comply with provisions of that Code, as follows:

- 11 a. **Section 44012:** Respondent failed to perform the emission control tests
12 on vehicle 3, identified in paragraph 38 above, in accordance with
13 procedures prescribed by the department.
- 14 b. **Section 44059:** Respondent willfully made false entries in the EIS in
15 order to issue a certificate of compliance for vehicle 3, identified in
16 paragraph 38 above.

17 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

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

- 24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
25 issued an electronic smog certificate of compliance for vehicle 3,
26 identified in paragraph 38 above.
- 27 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
28 vehicle 3, identified in paragraph 38 above, in accordance with Health &

1 Saf. Code sections 44012 and 44035, and California Code of Regulations,
2 title 16, section 3340.42.

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

7 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on
8 vehicle 3, identified in paragraph 38 above, in accordance with the
9 Bureau's specifications.

10 **THIRTIETH CAUSE FOR DISCIPLINE**

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

12 49. Respondent Okai's advanced emission specialist technician license is
13 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
14 that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
15 issuing an electronic smog certificate of compliance for vehicle 3, identified in paragraph 38
16 above, without performing a bona fide inspection of the emission control devices and systems on
17 the vehicle, thereby depriving the People of the State of California of the protection afforded by
18 the Motor Vehicle Inspection Program.

19 **MATTERS IN AGGRAVATION**

20 50. To determine the degree of discipline, if any, to be imposed on
21 Respondent Theophilus Cecil Okai, Complainant alleges by way of aggravation, as follows:
22 On July 16, 1999, pursuant to the Default Decision in the disciplinary action titled *In the Matter*
23 *of the Accusation Against: Auto Smog Master IV, etc.*, Case No. 79/97-3, the Director
24 permanently invalidated Automotive Repair Dealer Registration Number AJ 162891 and revoked
25 Smog Check Station License Number RJ 162891, both of which were issued to Respondent as
26 owner of Auto Smog Masters IV. Respondent was found to have violated Bus. & Prof. Code
27 sections 9884.7, subdivision (1)(a), and 9884.7, subdivision (1)(d) (fraud), and Health & Saf.
28 Code sections 44012, 44012, subdivision (a), 44015, subdivision (a), 44059, 44072.2,

1 subdivision (a), and 44072.2, subdivision (d), by conducting smog inspections on nine (9)
2 vehicles using clean-piping methods in order to issue fraudulent smog certificates for those
3 vehicles.

4 **OTHER MATTERS**

5 51. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
6 Director may refuse to validate, or may invalidate temporarily or permanently, the registrations
7 for all places of business operated in this state by Respondent Diane Williams, owner of Auto
8 Smog Masters, upon a finding that said Respondent has, or is, engaged in a course of repeated
9 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

10 52. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test
11 Only, Station License Number TC 237061, issued to Respondent Diane Williams, owner of Auto
12 Smog Masters, is revoked or suspended, any additional license issued under this chapter in the
13 name of said licensee may be likewise revoked or suspended by the Director.

14 53. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission
15 Specialist Technician License Number EA 150904, issued to Respondent Vinicio Aguayo, is
16 revoked or suspended, any additional license issued under this chapter in the name of said
17 licensee may be likewise revoked or suspended by the Director.

18 54. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission
19 Specialist Technician License Number EA 017417, issued to Respondent Theophilus Cecil Okai,
20 is revoked or suspended, any additional license issued under this chapter in the name of said
21 licensee may be likewise revoked or suspended by the Director.

22 **PRAYER**

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

- 25 1. Temporarily or permanently invalidating Automotive Repair Dealer
26 Registration Number ARD 237061, issued to Diane Williams, owner of Auto Smog Masters;
27 2. Temporarily or permanently invalidating any other automotive repair
28 dealer registration issued to Diane Williams;

1 3. Revoking or suspending Smog Check, Test Only, Station License Number
2 TC 237061, issued to Diane Williams, owner of Auto Smog Masters;

3 4. Revoking or suspending any additional license issued under Chapter 5 of
4 the Health and Safety Code in the name of Diane Williams;

5 5. Revoking or suspending Advanced Emission Specialist Technician
6 License Number EA 150904, issued to Vinicio Aguayo;

7 6. Revoking or suspending any additional license issued under Chapter 5 of
8 the Health and Safety Code in the name of Vinicio Aguayo;

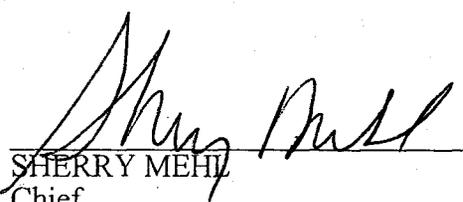
9 7. Revoking or suspending Advanced Emission Specialist Technician
10 License Number EA 017417, issued to Theophilus Cecil Okai;

11 8. Revoking or suspending any additional license issued under Chapter 5 of
12 the Health and Safety Code in the name of Theophilus Cecil Okai;

13 9. Ordering Respondents Diane Williams, owner of Auto Smog Masters,
14 Vinicio Aguayo, and Theophilus Cecil Okai to pay the Director of Consumer Affairs the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3;

17 10. Taking such other and further action as deemed necessary and proper.

18 DATED: 7/28/08



SHERRY MEHL
Chief

Bureau of Automotive Repair
Department of Consumer Affairs
State of California

Complainant