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

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In the Matter of the Accusation Against:
JUNIORS TEST ONLY
8323 Long Beach Blvd
South Gate, CA 90280
JESSE JUNIOR ESPINOZA, OWNER
Automotive Repair Dealer Registration No.
ARD 258121
Smog Check Test Only Station License No.
TC 258121,
AND
JESSE JUNIOR ESPINOZA
14408 S. Butler Ave
Compton, CA 90221
Advanced Emission Specialist Technician
No. EA 151078,
AND
JAVIER ESPINOZA PARRA
8938 Evergreen Ave
South Gate, CA 90280
Advanced Emission Specialist Technician
No. EA 154440,
Respondents.

Case No. 79/12-02

A C C U S A T I O N
S M O G C H E C K

Complainant alleges:

1 PARTIES

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

4 **Automotive Repair Dealer Registration**

5 2. On or about May 14, 2009, the Bureau issued Automotive Repair Dealer Registration
6 Number ARD 258121 ("registration") to Jesse Junior Espinoza ("Respondent Juniors") doing
7 business as Juniors Test Only. The registration was in full force and effect at all times relevant to
8 the charges brought herein and will expire on April 30, 2012, unless renewed.

9 **Smog Check Test Only Station License**

10 3. On or about May 20, 2009, the Bureau issued Smog Check Test Only Station License
11 Number TC 258121 ("station license") to Respondent Juniors. The station license was in full
12 force and effect at all times relevant to the charges brought herein and will expire on April 30,
13 2012, unless renewed.

14 **Advanced Emission Specialist Technician License**

15 4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist
16 Technician License Number EA 151078 ("technician license") to Jesse Junior Espinoza. The
17 technician license was in full force and effect at all times relevant to the charges brought herein
18 and will expire on August 31, 2011, unless renewed.

19 **Advanced Emission Specialist Technician License**

20 5. On a date uncertain in 2007, the Bureau issued Advanced Emission Specialist
21 Technician Number EA 154440 ("technician license") to Javier Espinoza Parra ("Respondent
22 Parra"). The technician license was in full force and effect at all times relevant to the charges
23 brought herein and will expire on March 31, 2013, unless renewed.

24 STATUTORY PROVISIONS

25 6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
26 part:

27 (a) The director, where the automotive repair dealer cannot show there
28 was a bona fide error, may refuse to validate, or may invalidate temporarily or
permanently, the registration of an automotive repair dealer for any of the following

1 acts or omissions related to the conduct of the business of the automotive repair
2 dealer, which are done by the automotive repair dealer or any automotive technician,
3 employee, partner, officer, or member of the automotive repair dealer.

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

7 (4) Any other conduct which constitutes fraud.

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

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

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

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

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

10. Section 44072.2 of the Health and Safety Code 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.

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

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

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

8 12. Section 44072.8 of the Health and Safety Code states:

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

12 COST RECOVERY

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

17 **BACKGROUND INFORMATION**

18 14. On July 13, 2010, Respondent Juniors and Respondent Parra issued Certificate of
19 Compliance Number WL654506C to a 1990 Toyota truck, License Number 8U03979, certifying
20 that the vehicle had been tested and inspected and that the vehicle was in compliance with
21 applicable laws and regulations. In fact, Respondent Parra performed the smog inspection using
22 the clean piping method¹ by using the tail pipe emissions of a vehicle other than the vehicle being
23 certified, in order to issue the certificate of compliance. The 1990 Toyota was not on Respondent
24 Juniors' premises at the time of the inspection and certification.

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

1 FIRST CAUSE FOR DISCIPLINE

2 (Misleading Statements)

3 14. Respondent Juniors' registration is subject to discipline under Code section 9884.7,
4 subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable
5 care he should have known were untrue or misleading by issuing electronic Certificate of
6 Compliance Number WL654506C to the 1990 Toyota truck, certifying that the vehicle was in
7 compliance with applicable laws and regulations when, in fact, that vehicle had been clean piped.

8 SECOND CAUSE FOR DISCIPLINE

9 (Fraud)

10 15. Respondent Juniors' registration is subject to discipline under Code section 9884.7,
11 subdivision (a)(4), in that he committed acts which constitute fraud by issuing electronic
12 Certificate of Compliance Number WL654506C for the 1990 Toyota truck without performing a
13 bona fide inspection of the emission control devices and systems on that vehicle, thereby
14 depriving the People of the State of California of the protection afforded by the Motor Vehicle
15 Inspection Program.

16 THIRD CAUSE FOR DISCIPLINE

17 (Violation of the Motor Vehicle Inspection Program)

18 16. Respondent Juniors' station license is subject to discipline under Health and Safety
19 Code section 44072.2, subdivision (a), in that regarding the 1990 Toyota truck, he violated
20 sections of that Code, as follows:

21 a. **Section 44012, subdivision (a):** Respondent Juniors failed to determine that all
22 emission control devices and systems required by law were installed and functioning correctly in
23 accordance with test procedures.

24 b. **Section 44012, subdivision (f):** Respondent Juniors failed to perform emission
25 control tests on that vehicle in accordance with procedures prescribed by the department.

26 c. **Section 44015, subdivision (b):** Respondent Juniors issued electronic Certificate of
27 Compliance Number WL654506C without properly testing and inspecting that vehicle to
28 determine if it was in compliance with section 44012 of that Code.

1 d. **Section 44059:** Respondent Juniors willfully made false entries for electronic
2 Certificate of Compliance Number WL654506C by certifying that the vehicle had been inspected
3 as required when, in fact, it had not.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 17. Respondent Juniors' station license is subject to discipline under Health and Safety
7 Code section 44072.2, subdivision (c), in that regarding the 1990 Toyota truck, he violated
8 sections of the California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent Juniors falsely or fraudulently issued
10 electronic Certificate of Compliance Number WL654506C without performing a bona fide
11 inspection of the emission control devices and systems on that vehicle as required by Health and
12 Safety Code section 44012.

13 b. **Section 3340.35, subdivision (c):** Respondent Juniors issued electronic Certificate of
14 Compliance Number WL654506C even though that vehicle had not been inspected in accordance
15 with section 3340.42 of that Code.

16 c. **Section 3340.42:** Respondent Juniors failed to conduct the required smog tests and
17 inspections on that vehicle in accordance with the Bureau's specifications.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 18. Respondent Juniors' station license is subject to discipline under Health and Safety
21 Code section 44072.2, subdivision (d), in that regarding the 1990 Toyota truck, he committed acts
22 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
23 Certificate of Compliance Number WL654506C for that vehicle without performing a bona fide
24 inspection of the emission control devices and systems on the vehicle, thereby depriving the
25 People of the State of California of the protection afforded by the Motor Vehicle Inspection
26 Program.

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1 c. **Section 3340.41, subdivision (c):** Respondent Parra entered false information into
2 the Emission Inspection System for electronic Certificate of Compliance Number WL654506C by
3 entering vehicle identification information or emission control information for a vehicle other
4 than the vehicle being certified.

5 d. **Section 3340.42:** Respondent Parra failed to conduct the required smog tests and
6 inspections on that vehicle in accordance with the Bureau's specifications.

7 **EIGHTH CAUSE FOR DISCIPLINE**

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

9 21. Respondent Parra has subjected his technician license to discipline under Health and
10 Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
11 fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance
12 Number WL654506C for the 1990 Toyota truck without performing a bona fide inspection of the
13 emission control devices and systems on that vehicle, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program.

15 **OTHER MATTERS**

16 31. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
17 or permanently or refuse to validate, the registrations for all places of business operated in this
18 state by Jesse Junior Espinoza doing business as Juniors Test Only, upon a finding that he has, or
19 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
20 an automotive repair dealer.

21 32. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
22 License Number TC 258121, issued to Jesse Junior Espinoza doing business as Juniors Test Only,
23 is revoked or suspended, any additional license issued under this chapter in the name of said
24 licensee may be likewise revoked or suspended by the director including, but not limited to
25 Advanced Emission Specialist Technician License Number EA 151078, issued to Jesse Junior
26 Espinoza.

27 33. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
28 Technician License Number EA 154440, issued to Javier Espinoza Parra is revoked or suspended,

1 any additional license issued under this chapter in the name of said licensee may be likewise
2 revoked or suspended by the director.

3 **PRAYER**

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

- 6 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
7 Registration Number ARD 258121, issued to Jesse Junior Espinoza doing business as Juniors
8 Test Only;
- 9 2. Revoking, suspending, or placing on probation any other automotive repair dealer
10 registration issued in the name Jesse Junior Espinoza;
- 11 3. Revoking or suspending Smog Check Test Only Station License Number TC 258121,
12 issued to Jesse Junior Espinoza doing business as Juniors Test Only;
- 13 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
14 and Safety Code in the name of Jesse Junior Espinoza including, but not limited to Advanced
15 Emission Specialist Technician License Number EA 151078;
- 16 5. Revoking or suspending Advanced Emission Specialist Technician Number EA
17 154440, issued to Javier Espinoza Parra;
- 18 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
19 and Safety Code in the name of Javier Espinoza Parra;

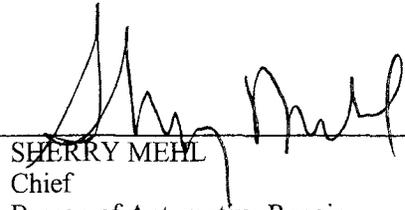
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1 7. Ordering Jesse Junior Espinoza and Javier Espinoza Parra to pay the Bureau of
2 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3; and,

4 8. Taking such other and further action as deemed necessary and proper.
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8 DATED: _____

7/6/11


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

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