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

In the Matter of the Accusation Against:

SANTA CLARA TEST ONLY
3295 El Camino Real #H & I
Santa Clara, California 95051
RICHARD J. REYES, PARTNER
MICHAEL REYES, PARTNER

Automotive Repair Dealer Registration
No. ARD 251248
Smog Check Station License No. TC 251248

LUIS FERNANDO SERRATO
356 Tuscany Way
Greenfield, California 93927

Advanced Emission Specialist Technician
License No. EA 149098

and

OAI C. NGUYEN
1692 Commodore Drive
San Jose, California 95133

2139 Lacsa Ct
San Jose, CA 95116

Advanced Emission Specialist Technician
License No. EA 152160

Respondents.

Case No. 79/10-22

OAH No. 2009120418

DECISION

The attached Stipulated Revocation of Registration and Licenses and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective on 5/25/10.

IT IS SO ORDERED April 19, 2010.

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

EDMUND G. BROWN JR.
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **SANTA CLARA TEST ONLY** 3295 El Camino Real #H & I Santa Clara, California 95051 **Automotive Repair Dealer Registration No. ARD 251248** **Smog Check Station License No. TC 251248,** **RICHARD J. REYES, PARTNER** **MICHAEL REYES, PARTNER** **LUIS FERNANDO SERRATO** 356 Tuscany Way Greenfield, California 93927 **Advanced Emission Specialist License No. EA 149098,** **and** **OAI C. NGUYEN,** 1692 Commodore Drive San Jose, California 95133 2139 Lacsa Ct San Jose, CA 95116 **Advanced Emission Specialist License No. EA 152160,** Respondents.	Case No. 97/10-22 OAH No. 2009120418 **STIPULATED REVOCATION OF REGISTRATION AND LICENSES AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Sherry Mehl ("Complainant") is the Chief of the Bureau of Automotive Repair ("Bureau"). She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Shana A. Bagley, Deputy Attorney General.

2. On or about July 23, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 251248 to Respondent Santa Clara Test Only with Richard J. Reyes and Michael Reyes as partners, (collectively referred to as "Respondent Santa Clara"). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 97/10-22 and will expire on June 30, 2010, unless renewed.

3. On or about August 13, 2007, the Bureau issued Smog Check Station License Number TC 251248 to Respondent Santa Clara. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 97/10-22 and will expire on June 30, 2010, unless renewed.

4. Respondent Santa Clara is represented in this proceeding by attorney William Ferreira, Esq., whose address is: Automotive Defense Specialists, 39210 State Street, Suite 100, Fremont, CA 94538.

5. On or about April 12, 2004, the Bureau issued Advanced Emission Specialist Technician License Number EA 149098 ("technician license") to Luis Fernando Serrato ("Respondent Serrato"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

6. Luis Fernando Serrato is represented in this proceeding by attorney Benjamin W. Williams, Esq., whose address is: 111 North Market Street, Suite 300, San Jose, CA 95113.

7. On or about September 9, 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 152160 to Oai C. Nguyen ("Respondent Nguyen"). The

technician license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2011, unless renewed.

8. Respondent Nguyen is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

JURISDICTION

9. Accusation No. 97/10-22 was filed before the Director of Consumer Affairs (Director), for the Bureau, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 19, 2009. Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation No. 97/10-22 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

10. Respondents Santa Clara, Serrato, and Nguyen have each carefully read and understand the charges and allegations in Accusation No. 97/10-22 and understand the effects of this Stipulated Revocation of Licenses and Registration and Order. Respondent Santa Clara and Respondent Serrato also have carefully read, fully discussed these matters with counsel,

11. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

12. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

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CULPABILITY

13. As to Respondents Serrato and Nguyen only, they admit the truth of each and every charge and allegation in Accusation No. 79/10-22. Respondents Serrato and Nguyen agree that cause exists to revoke their Advanced Emission Specialist Technician Licenses and agree to be bound by the Director's imposition of discipline as set forth in the Disciplinary Order below.

14. As to Respondent Santa Clara only, it understands that the charges and allegations in Accusation No. 97/10-22, if proven at a hearing, constitute cause for imposing discipline upon its Automotive Repair Dealer Registrations and Station License. However, should Respondent Santa Clara, Richard J. Reyes, and/or Michael Reyes apply for a new license, they shall admit the truth of each and every charge and allegation in Accusation No. 97/10-22.

15. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondents hereby give up their right to contest that cause for discipline exists based on those charges.

16. Respondents understand that signing this stipulation enables the Director to issue an order accepting the revocation of Automotive Repair Dealer Registration Number ARD 251248 to Respondent Santa Clara Test Only with Richard J. Reyes and Michael Reyes as partners, Station License Number TC 251248 issued to Respondent Santa Clara, Advanced Emission Specialist Technician License Number EA 149098 issued to Luis Fernando Serrato, and Advanced Emission Specialist Technician License Number EA 152160 to Oai C. Nguyen without further process.

OTHER MATTERS

17. The parties understand and agree that facsimile copies of this Stipulated Revocation of Licenses and Registration and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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CONTINGENCY

18. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondents understand and agree that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and Revocation, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw its agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Revocation and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

19. The parties understand and agree that facsimile copies of this Stipulated Revocation of Licenses and Revocation and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

20. This Stipulated Revocation of Licenses and Registration and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Revocation of Licenses and Registration and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

21. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 251248, and Smog Check Station License No. TC 251248 issued to Respondent Santa Clara Test Only, Richard J. Reyes, Partner and Michael Reyes, Partner, Advanced Emission Specialist Technician License No. EA 149098 issued to Luis Fernando Serrato and Advanced Emission Specialist Technician License No. EA 152160 issued to Oai C. Nguyen are revoked.

22. The Revocation of Respondents' Automotive Repair Dealer Registration, Smog Check Station License, and the acceptance of the revoked Licenses and Registration by the Bureau shall constitute the imposition of discipline against Respondents. This stipulation constitutes a record of the discipline and shall become a part of Respondents' license history with the Bureau.

23. Respondents shall lose all rights and privileges as an Automotive Repair Dealer, Smog Check Station, and Advanced Emission Specialist Technician in California as of the effective date of the Director's Decision and Order.

24. Respondents shall cause to be delivered to the Bureau both their Automotive Repair Dealer Registration, Smog Station License, Advanced Emission Specialist Technician Licenses, wall license certificate, and, if one was issued, pocket licenses, on or before the effective date of the Decision and Order.

25. If Respondents ever apply for licensure or petitions for reinstatement in the State of California, the Bureau shall treat it as a new application for licensure. Respondents must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 97/10-22 shall be deemed to be true, correct and admitted by Respondents when the Director determines whether to grant or deny the application or petition.

26. Respondents shall pay the Bureau its costs of investigation and enforcement in the amount of $16,000.00 at the time of application for a new or reinstated license. Respondents are jointly and severally responsible for the full payment of this amount. However it is agreed that if

all Respondents fully comply with this paragraph, each Respondent may individually pay $4,000.00.

ACCEPTANCE

I have carefully read the above Stipulated Revocation of Licenses and Registration and Order. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License. I enter into this Stipulated Revocation of Licenses and Registration and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 3-22-2010

OAI C. NGUYEN, Respondent

I have carefully read the above Stipulated Revocation of Licenses and Registration and Order and have fully discussed it with my attorney, Benjamin Williams, Esq. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License. I enter into this Stipulated Revocation of Licenses and Registration and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 3-22-10

LUIS FERNANDO SERRATO, Respondent

I have read and fully discussed with Respondent Luis Fernando Serrato, Technician, the terms and conditions and other matters contained in this Stipulated Revocation of License and Order. I approve its form and content.

DATED: _____

BENJAMIN WILLIAMS, ESQ.
Attorney for Respondent Luis Fernando Serrato

all Respondents fully comply with this paragraph, each Respondent may individually pay $4,000.00.

ACCEPTANCE

I have carefully read the above Stipulated Revocation of Licenses and Registration and Order. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License. I enter into this Stipulated Revocation of Licenses and Registration and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: _____ _____
OAI C. NGUYEN, Respondent

I have carefully read the above Stipulated Revocation of Licenses and Registration and Order and have fully discussed it with my attorney, Benjamin Williams, Esq. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License. I enter into this Stipulated Revocation of Licenses and Registration and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: _____ _____
LUIS FERNANDO SERRATO, Respondent

I have read and fully discussed with Respondent Luis Fernando Serrato, Technician, the terms and conditions and other matters contained in this Stipulated Revocation of License and Order. I approve its form and content.

DATED: 3/22/10 _____
BENJAMIN WILLIAMS, ESQ.
Attorney for Respondent Luis Fernando Serrato

I have carefully read the above Stipulated Revocation of Licenses and Registration and Order and have fully discussed it with my attorney, William Ferreria, Esq. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog Check Station License. I enter into this Stipulated Revocation of Licenses and Registration and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 3. 22.10

SANTA CLARA TEST ONLY,
RICHARD J. REYES, PARTNER, Respondent

I have carefully read the above Stipulated Revocation of Licenses and Registration and Order and have fully discussed it with my attorney, William Ferreira, Esq. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog Check Station License. I enter into this Stipulated Revocation of Licenses and Registration and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 3.22.10

SANTA CLARA TEST ONLY,
MICHAEL REYES, PARTNER, Respondent

I have read and fully discussed with Respondents Santa Clara Test Only, Richard J. Reyes, Partner, and Michael Reyes, Partner, the terms and conditions and other matters contained in this Stipulated Revocation of License and Order. I approve its form and content.

DATED: 3/22/10

WILLIAM FERREIRA, ESQ.
Attorney for Respondents Santa Clara Test Only, Richard Reyes and Michael Reyes

ENDORSEMENT

The foregoing Stipulated Revocation of Licenses and Registration and Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: March 17, 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

SHANA A. BAGLEY
Deputy Attorney General
Attorneys for Complainant

SF2009403378/ Stipulation.rtf

Exhibit A

Accusation No. 97/10-22

EDMUND G. BROWN JR.
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Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **SANTA CLARA TEST ONLY** 3295 El Camino Real #H & I Santa Clara, California 95051, **Automotive Repair Dealer Registration No. ARD 251248** **Smog Check Test Only Station License No. TC 251248,** **RICHARD J. REYES, PARTNER** **MICHAEL REYES, PARTNER** **LUIS FERNANDO SERRATO** 356 Tuscany Way Greenfield, California 93927 and/or 351 Maple Avenue Greenfield, California 93927 **Advanced Emission Specialist Technician License No. EA 149098,** **OAI C. NGUYEN** 1692 Commodore Drive San Jose, California 95133 **Advanced Emission Specialist Technician License No. EA 152160** Respondents.	Case No. 79/10-22 **ACCUSATION** **SMOG CHECK**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On or about July 23, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 251248 ("registration") to Santa Clara Test Only ("Respondent Santa Clara") with Richard J. Reyes and Michael Reyes as partners. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

Smog Check Test Only Station License

3. On or about August 13, 2007, the Bureau issued Smog Check Test Only Station License Number TC 251248 ("station license") to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

Advanced Emission Specialist Technician License

4. On or about April 12, 2004, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License Number EA 149098 ("technician license") to Luis Fernando Serrato ("Respondent Serrato"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2010, unless renewed.

Advanced Emission Specialist Technician License

5. On or about September 9, 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 152160 ("technician license") to Oai C. Nguyen ("Respondent Nguyen"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2009, unless renewed.

STATUTORY PROVISIONS

6. Section 9884.7 of the Code states, in pertinent part

> (a) The director, where the automotive repair dealer cannot show there 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 acts or omissions related to the conduct of the business of the automotive repair

dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

(4) Any other conduct which constitutes fraud.

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

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

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

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

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

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.

(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.

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

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

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

COST RECOVERY

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

SURVEILLANCE OPERATION - DECEMBER 3, 2008

14. On or about December 3, 2008, the Bureau performed a videotaped surveillance at Respondent Santa Clara's facility. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between approximately 1049 hours and 1058 hours, Respondent Serrato performed a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. NG140674, certifying that he had tested and inspected a 1992 Cadillac Seville, California License Plate No. 3CFL960, and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent Serrato performed the smog inspection using the clean piping method[1] by using the tail pipe emissions of a vehicle other

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

than the vehicle being certified in order to issue the certificate of compliance. The vehicle certified was not in the test bay at the time of the smog inspection.

15. Between approximately 1531 hours and 1545 hours, Respondent Nguyen performed a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. NG140681, certifying that he had tested and inspected a 1992 Volkswagen Jetta, California License Plate No. 4FUZ160, and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent Nguyen performed the smog inspection using the clean piping method by using the tail pipe emissions of a vehicle other than the vehicle being certified in order to issue the certificate of compliance.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

16. Respondent Santa Clara has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about December 3, 2008, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when it issued electronic Certificate of Compliance No. NG140674 for the 1992 Cadillac Seville and Certificate of Compliance No. NG140681 for the 1992 Volkswagen Jetta, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent Santa Clara has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about December 3, 2008, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NG140674 for the 1992 Cadillac Seville and Certificate of Compliance No. NG140681 for the 1992 Volkswagen Jetta without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

18. Respondent Santa Clara has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 3, 2008, regarding the 1992 Cadillac Seville and 1992 Volkswagen Jetta, it violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Santa Clara failed to perform emission control tests in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Santa Clara issued electronic Certificate of Compliance Nos. NG140674 and NG140681 without properly testing and inspecting those vehicles to determine if they were in compliance with section 44012 of that Code.

d. **Section 44059**: Respondent Santa Clara willfully made false entries for electronic Certificate of Compliance Nos. NG140674 and NG140681, certifying that those vehicles had been inspected as required when, in fact, they had not.

FOURTH CAUSE FOR DISCIPLINE

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

19. Respondent Santa Clara has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about December 3, 2008, regarding the 1992 Cadillac Seville and 1992 Volkswagen Jetta, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Santa Clara falsely or fraudulently issued electronic Certificate of Compliance Nos. NG140674 and NG140681 without performing bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent Santa Clara issued electronic Certificate of Compliance Nos. NG140674 and NG140681 even though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

c. **Section 3340.42**: Respondent Santa Clara failed to conduct the required smog tests and inspections in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent Santa Clara subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 3, 2008, regarding the 1992 Cadillac Seville and 1992 Volkswagen Jetta, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance Nos. NG140674 and NG140681 without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

21. Respondent Serrato has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 3, 2008, regarding the 1992 Cadillac Seville, he violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Serrato failed to perform emission control tests in accordance with procedures prescribed by the department.

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

d. **Section 44059**: Respondent Serrato willfully made false entries for electronic Certificate of Compliance No. NG140674, certifying that the vehicle had been inspected as required when, in fact, it had not.

SEVENTH CAUSE FOR DISCIPLINE

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

22. Respondent Serrato has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about December 3, 2008, regarding the 1992 Cadillac Seville, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Serrato falsely or fraudulently issued electronic Certificate of Compliance No. NG140674 without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c)**: Respondent Serrato entered false information into the Emission Inspection System ("EIS") for electronic Certificate of Compliance No. NG140674 by entering vehicle identification information or emission control information for a vehicle other than the vehicle being certified.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

23. Respondent Serrato has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 3, 2008, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NG140674 for the 1992 Cadillac Seville without performing a bona fide inspection of the emission control devices and systems on that vehicle,

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

NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

24. Respondent Nguyen has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 3, 2008, regarding the 1992 Volkswagen Jetta, he violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Nguyen failed to perform emission control tests in accordance with procedures prescribed by the department.

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

d. **Section 44059**: Respondent Nguyen willfully made false entries for electronic Certificate of Compliance No. NG140681, certifying that the vehicle had been inspected as required when, in fact, it had not.

TENTH CAUSE FOR DISCIPLINE

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

25. Respondent Nguyen has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about December 3, 2008, regarding the 1992 Volkswagen Jetta, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Nguyen falsely or fraudulently issued electronic Certificate of Compliance No. NG140681 without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c)**: Respondent Nguyen entered false information into the EIS for electronic Certificate of Compliance No. NG140681 by entering vehicle identification information or emission control information for a vehicle other than the vehicle being certified.

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

ELEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

26. Respondent Nguyen has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 3, 2008, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NG140681 for the 1992 Volkswagen Jetta without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SURVEILLANCE OPERATION - DECEMBER 30, 2008

27. On or about December 30, 2008, the Bureau performed a videotaped surveillance at Respondent Santa Clara's facility. The surveillance operation and information obtained from the Bureau's VID revealed that between approximately 0921 hours and 0955 hours, Respondent Serrato performed a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. NG478233, certifying that he had tested and inspected a 1990 Eagle Summit, California License Plate No. 4GYF891, and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent Serrato performed the smog inspection using the clean piping method by using the tail pipe emissions of a vehicle other than the vehicle being certified in order to issue the certificate of compliance.

28. Between approximately 1014 hours and 1026 hours, Respondent Serrato performed another smog inspection that resulted in the issuance of electronic Certificate of Compliance No.

NG482581, certifying that he had tested and inspected a 1997 Volvo 850, California License Plate No. 5JWR364, and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent Serrato performed the smog inspection using the clean piping method by using the tail pipe emissions of a vehicle other than the vehicle being certified in order to issue the certificate of compliance. The vehicle certified was not in the test bay at the time of the smog inspection.

TWELFTH CAUSE FOR DISCIPLINE

(Misleading Statements)

29. Respondent Santa Clara has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about December 30, 2008, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when it issued electronic Certificate of Compliance No. NG478233 for the 1990 Eagle Summit and Certificate of Compliance No. NG482581 for the 1997 Volvo 850, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had been clean piped.

THIRTEENTH CAUSE FOR DISCIPLINE

(Fraud)

30. Respondent Santa Clara has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about December 30, 2008, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NG478233 for the 1990 Eagle Summit and Certificate of Compliance No. NG482581 for the 1997 Volvo 850 without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTEEN CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

31. Respondent Santa Clara has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 30, 2008,

regarding the 1990 Eagle Summit and 1997 Volvo 850, it violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Santa Clara failed to perform emission control tests in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Santa Clara issued electronic Certificate of Compliance Nos. NG478233 and NG482581 without properly testing and inspecting those vehicles to determine if they were in compliance with section 44012 of that Code.

d. **Section 44059**: Respondent Santa Clara willfully made false entries for electronic Certificate of Compliance Nos. NG478233 and NG482581, certifying that those vehicles had been inspected as required when, in fact, they had not.

FIFTEENTH CAUSE FOR DISCIPLINE

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

32. Respondent Santa Clara has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about December 30, 2008, regarding the 1990 Eagle Summit and 1997 Volvo 850, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Santa Clara falsely or fraudulently issued electronic Certificate of Compliance Nos. NG478233 and NG482581 without performing bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent Santa Clara issued electronic Certificate of Compliance Nos. NG478233 and NG482581 even though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

c. **Section 3340.42**: Respondent Santa Clara failed to conduct the required smog tests and inspections in accordance with the Bureau's specifications.

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

33. Respondent Santa Clara subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 30, 2008, regarding the 1990 Eagle Summit and 1997 Volvo 850, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance Nos. NG478233 and NG482581 without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

34. Respondent Serrato has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 30, 2008, regarding the 1990 Eagle Summit and 1997 Volvo 850, he violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Serrato failed to perform emission control tests in accordance with procedures prescribed by the department.

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

d. **Section 44059**: Respondent Serrato willfully made false entries for electronic Certificate of Compliance Nos. NG478233 and NG482581, certifying that those vehicles had been inspected as required when, in fact, they had not.

EIGHTEENTH CAUSE FOR DISCIPLINE

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

35. Respondent Serrato has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about December 30, 2008, regarding the 1990 Eagle Summit and 1997 Volvo 850, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Serrato falsely or fraudulently issued electronic Certificate of Compliance Nos. NG478233 and NG482581 without performing bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c)**: Respondent Serrato entered false information into the Emission Inspection System for electronic Certificate of Compliance Nos. NG478233 and NG482581 by entering vehicle identification information or emission control information for vehicles other than the vehicles being certified.

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

NINETEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

36. Respondent Serrato has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 30, 2008, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NG478233 for the 1990 Eagle Summit and NG482581 for the 1997 Volvo 850 without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

37. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Santa Clara Test Only, upon a finding that it has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

38. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 251248, issued to Santa Clara Test Only, 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.

39. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 149098, issued to Luis Fernando Serrato, 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.

40. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 152160, issued to Oai C. Nguyen, 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. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 251248, issued to Santa Clara Test Only;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Santa Clara Test Only;

3. Revoking or suspending Smog Check Test Only Station License Number TC 251248, issued to Santa Clara Test Only:

4. Revoking or suspending any additional license issued under this chapter in the name of Santa Clara Test Only;

5. Revoking or suspending Advanced Emission Specialist License Number EA 149098, issued to Luis Fernando Serrato;

6. Revoking or suspending any additional license issued under this chapter in the name Luis Fernando Serrato;

7. Revoking or suspending Advanced Emission Specialist License Number EA 152160, issued to Oai C. Nguyen;

8. Revoking or suspending any additional license issued under this chapter in the name of Oai C. Nguyen;

9. Ordering Santa Clara Test Only, Luis Fernando Serrato, and Oai C. Nguyen to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 10/7/09

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

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