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

In the Matter of the Accusation Against:

QUICK SMOG TEST ONLY
JORGE LUIS SOTO, Owner
14525 Nordoff Street
Panorama City, CA 91402

Automotive Repair Dealer Registration
No. ARD 250690
Smog Check Station License No. TC 250690

JORGE LUIS SOTO
1624 8TH Street
San Fernando, California 91340

Advanced Emission Specialist Technician
License No. EA 152882

STANLEY EMMANUEL GUEVARA
8809 Etiwanda Ave., #23
Northridge, California 91325

Advanced Emission Specialist Technician
License No. EA 153826

Respondents.

Case No. 79/09-44

OAH No. L-2009060217

DECISION

The attached Stipulated Revocation and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Stanley Emmanuel Guevara, Advanced Emission Specialist Technician License No. EA 153826.

This Decision shall become effective 12/29/09.

DATED: November 23, 2009

Doreathea Johnson
DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

EDMUND G. BROWN JR.
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General
MICHAEL BROWN
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State Bar No. 231237
300 So. Spring Street, Suite 1702
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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: **STANLEY EMMANUEL GUEVARA** 8809 Etiwanda Ave., #23 Northridge, California 91325 **Advanced Emission Specialist Technician License No. EA153826** Respondents.	Case No. 79/09-44 OAH No. L-2009060217 **STIPULATED REVOCATION AND DISCIPLINARY 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. 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 Michael Brown, Deputy Attorney General.

2. Stanley Emmanuel Guevara (Respondent Guevara) is represented in this proceeding by attorney Larry Nash, Esq. whose address is 19420 Business Center Drive, Ste. #102, Northridge CA. 91324.

3. On or about November 22, 2006, the Bureau issued Advanced Emission Specialist Technician License Number EA 153826 ("technician license") to Stanley Emmanuel Guevara ("Respondent Guevara"). The technician license will expire on June 30, 2010.

JURISDICTION

4. The First Amended Accusation No. 79/09-44 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent Guevara. The First Amended Accusation and all other statutorily required documents were properly served on Respondent Guevara on October 14, 2009. Respondent Guevara timely filed his Notice of Defense contesting the the First Amended Accusation. A copy of the First Amended Accusation No. 79/09-44 is attached as exhibit 1 and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent Guevara has carefully read, fully discussed with counsel, and understands the charges and allegations in the First Amended Accusation No. 79/09-44. Respondent Guevara also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Revocation and Disciplinary Order.

8. Respondent Guevara is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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.

9. Respondent Guevara voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent Guevara admits the truth of each and every charge and allegation in the First Amended Accusation No. 79/09-44.

11. Respondent Guevara agrees that his Advanced Emission Specialist Technician License is subject to discipline and Respondent Guevara agrees to be bound by the Director of Consumer Affairs imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Director of Consumer Affairs or her designee. Respondent Guevara understands and agrees 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 surrender, without notice to or participation by Respondent Guevara or his counsel. By signing the stipulation, Respondent Guevara understands and agrees that he may not withdraw his 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.

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

6. This the Stipulated Revocation and Disciplinary 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 the Stipulated Revocation and Disciplinary 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.

7. 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:

ORDER

IT IS HEREBY ORDERED that Advanced Emission Specialist Technician license No. EA 153826 issued to Responent Guevara is revoked.

8. IT IS HEREBY FURTHER ORDERED that collection of the Bureau's costs of prosecution in the amount of $9,804.50 is hereby waived unless and until Respondent Guevara applies for a new or reinstatement of a registration or license issued by the Bureau, in which case costs are due in full at the time of application. The payments must be tendered to: Bureau of Automotive Repair, Enforcement Division, 10240 Systems Parkway, Sacramento, CA 95827.

ACCEPTANCE

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

DATED: 10/20/09

Respondent

I have read and fully discussed with Respondent Jorge Luis Guevara, the terms and conditions and other matters contained in this Stipulated Revocation and Disciplinary Order. I approve its form and content.

DATED: 10-20-09

LARRY NASH, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: October 20, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General

MICHAEL BROWN
Deputy Attorney General
Attorneys for Complainant

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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: **QUICK SMOG TEST ONLY** **JORGE LUIS SOTO, Owner** 14525 Nordoff Street Panorama City, California 91402 **Automotive Repair Dealer Registration No. ARD 250690** **Smog Check Test Only Station License No. TC 250690** **JORGE LUIS SOTO** 1624 8th Street San Fernando, California 91340 **Advanced Emission Specialist Technician License No. EA 152882** **STANLEY EMMANUEL GUEVARA** 8809 Etiwanda Ave., #23 Northridge, California 91325 **Advanced Emission Specialist Technician License No. EA 153826** Respondents.	Case No. 79/09-44 **ACCUSATION** Smog Check

Sherry Mehl ("Complainant") alleges:

PARTIES

1. 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 June 6, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 250690 ("registration") to Jorge Luis Soto ("Respondent"), doing business as Quick Smog Test Only. The registration expired on May 31, 2008, and has not been renewed.

Smog Check Test Only Station License

3. On or about June 14, 2007, the Bureau issued Smog Check Test Only Station License Number TC 250690 ("station license") to Respondent. The station license expired on May 31, 2008, and has not been renewed.

Advanced Emission Specialist Technician License No. EA152882

4. On or about September 18, 2006, the Bureau issued Advanced Emission Specialist Technician License Number EA 152882 ("technician license") to Jorge Luis Soto ("Respondent Soto"). The technician license will expire on April 30, 2010, unless renewed.

Advanced Emission Specialist Technician License No. EA 153826

5. On or about November 22, 2006, the Bureau issued Advanced Emission Specialist Technician License Number EA 153826 ("technician license") to Stanley Emmanuel Guevara ("Respondent Guevara"). The technician license will expire on June 30, 2010.

STATUTORY PROVISIONS

6. Business and Professions Code ("Code") section 9884.7 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 refuse to validate, or 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 refuse to 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 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. Health and Safety Code section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

10. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

11. Health and Safety Code section 44072.6 provides, in pertinent part, that

the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

12. Health and Safety Code section 44072.8 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.

SITE INSPECTION - OCTOBER 5, 2007

14. On or about October 5, 2007, between 1300 hours and 1415 hours, the Bureau performed a site inspection at Respondent's facility. The site inspection and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that Respondent Guevara performed a smog inspection resulting in the issuance of an illegal electronic certificate of compliance, certifying that he had tested and inspected the vehicle set forth in Table 1 below, and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent Guevara performed the smog inspection using the clean piping method[1] by using the tail pipe emissions of a vehicle other than the vehicle being certified in order to issue the certificate. The vehicle certified was not in the test bay at the time of the smog inspection.

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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.

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TABLE 1

Date & Time	Vehicle Certified	Vehicle Actually Tested	Certificate No.	Technician
10/5/2007 1341 - 1356 hours	1991 Dodge Ram pickup License No. 7N18951	1990 Acura Integra	MU907617C	Guevara

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

15. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about October 5, 2007, Respondent made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing an electronic certificate of compliance for the vehicle set forth in Table 1 above, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

16. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about October 5, 2007, Respondent committed acts which constitute fraud by issuing an electronic certificate of compliance for the vehicle set forth in Table 1 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

17. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about October 5, 2007, regarding the electronic certificate of compliance and the vehicle set forth in Table 1 above, Respondent violated sections of that Code, as follows:

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

b. **Section 44015, subdivision (b):** Respondent issued an electronic certificate of compliance for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

c. **Section 44059:** Respondent willfully made false entries for the electronic certificate of compliance by certifying that the vehicle had been inspected as required when, in fact, it had not.

FOURTH CAUSE FOR DISCIPLINE

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

18. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about October 5, 2007, regarding the electronic certificate of compliance and the vehicle set forth in Table 1 above, Respondent violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic certificate of compliance for the vehicle without performing a bona fide inspection of the emission control device and system on the vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of compliance for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42 of that Code.

c. **Section 3340.42:** Respondent failed to conduct the required smog test and inspection on the vehicle in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

19. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about October 5, 2007, Respondent committed acts

involving dishonesty, fraud or deceit whereby another was injured by issuing an electronic certificate of compliance for the vehicle set forth in Table 1 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

20. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about October 5, 2007, regarding the electronic certificate of compliance and the vehicle set forth in Table 1 above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (f):** Respondent Guevara failed to perform emission control tests on the vehicle set forth above in Table 1 in accordance with procedures prescribed by the department.

b. **Section 44032:** Respondent Guevara failed to perform tests of the emission control device and system on the vehicle in accordance with section 44012 of that Code, in that the vehicle had been clean piped.

c. **Section 44059:** Respondent Guevara willfully made false entries for the electronic certificate of compliance by 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)

21. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about October 5, 2007, regarding the electronic certificate of compliance and the vehicle set forth in Table 1 above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Guevara falsely or fraudulently issued an electronic certificate of compliance for the vehicle without performing a

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bona fide inspection of the emission control device and system on the vehicle as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c):** Respondent Guevara entered false information into the EIS for the electronic certificate of compliance by entering vehicle identification information or emission control information for a vehicle other than the vehicle being tested.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

22. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about October 5, 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic certificate of compliance for the vehicle set forth in Table 1 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

VIDEO SURVEILLANCE OPERATION

NOVEMBER 6, 2007

23. On or about November 6, 2007, between 0500 hours and 1900 hours, the Bureau performed a videotaped surveillance at Respondent's facility. The surveillance operation and information obtained from the Bureau's VID revealed that Respondent Guevara performed eight (8) smog inspections, resulting in the issuance of six (6) illegal electronic certificates of compliance, certifying that he had tested and inspected the vehicles set forth in Table 2 below, and that those vehicles were in compliance with applicable laws and regulations. In fact,

Respondent Guevara performed those smog inspections using the clean piping method by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue those certificates. None of the vehicles certified were in the test bay at the time of the smog inspections.

TABLE 2

Date & Time	Vehicle Certified	Vehicle Actually Tested	Certificate No.	Technician
11/6/2007 1224 - 1238 hours	1995 Toyota Tercel License No. 4JRU233	Mercedes Benz S Class License No. 5RIZ861	MW260239C	Guevara
11/6/2007 1617 - 1634 hours	1990 Lexus LS400 License No. 4STM564	Toyota 4-Runner License No. 3BFN111 (tailpipe sample) Honda Civic License No. 4ZZD553 (RPM signal)	MW260240C	Guevara
11/6/2007 1638 - 1650 hours	1991 Saturn SC License No. 5RCX347	Honda Civic License No. 3VJZ116	MW260241C	Guevara
11/6/2007 1653 - 1704 hours	1998 Honda Accord License No. 5HSE461	Lincoln Navigator License No. 4PCE793	MW260242C	Guevara
11/6/2007 1710 - 1721 hours	2001 Dodge Durango License No. 5KIB994	Lincoln Navigator License No. 4PCE793	MW260243C	Guevara
11/6/2007 1726 - 1741 hours	1993 Chevrolet Lumina APV License No. 5WNS245	Honda Civic License No. 3VJZ116 (tailpipe sample) Honda Civic License No. 4ZZD553 (RPM signal)	MW260244C	Guevara

NINTH CAUSE FOR DISCIPLINE

(Misleading Statements)

24. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about November 6, 2007, Respondent made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing electronic certificates of compliance for the vehicles set forth in Table 2 above,

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certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about November 6, 2007, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 2 above, 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.

ELEVENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

26. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about November 6, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 2 above, Respondent violated sections of that Code, as follows:

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

b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of compliance for those vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

c. **Section 44059:** Respondent willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

TWELFTH CAUSE FOR DISCIPLINE

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

27. Respondent's station license is subject to discipline under Health and

Safety Code section 44072.2(c), in that on or about November 6, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 2 above, Respondent violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of compliance for those vehicles even though the vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

28. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about November 6, 2007, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 2 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

29. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about November 6, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 2 above, he violated sections of that Code, as follows:

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

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

c. **Section 44059:** Respondent Guevara willfully made false entries for the electronic certificates of compliance by certifying that the 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)

30. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about November 6, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 2 above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Guevara falsely or fraudulently issued electronic certificates of compliance for the vehicles without performing a bona fide inspection of the emission control device and system on the vehicles as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c):** Respondent Guevara entered false information into the EIS for the electronic certificates of compliance by entering vehicle identification information or emission control information for vehicles other than the vehicles being tested.

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

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SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

31. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about November 6, 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 2 above, 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.

VIDEO SURVEILLANCE OPERATION

NOVEMBER 7, 2007

32. On or about November 7, 2007, between 0500 hours and 1900 hours, the Bureau performed a videotaped surveillance at Respondent's facility. The surveillance operation and information obtained from the Bureau's VID revealed that Respondent Guevara performed six (6) smog inspections, resulting in the issuance of four (4) illegal electronic certificates of compliance, certifying that he had tested and inspected the vehicles set forth in Table 3 below, and that those vehicles were in compliance with applicable laws and regulations. In fact, Respondent Guevara performed those smog inspections using the clean piping method by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue those certificates. None of the vehicles certified were in the test bay at the time of the smog inspections.

TABLE 3

Date & Time	Vehicle Certified	Vehicle Actually Tested	Certificate No.	Technician
11/7/2007 1056 - 1109 hours	1994 Chevrolet S10 pickup License No. 6D68543	Ford F150 pickup License No. 8J26055	MW260245C	Guevara

11/7/2007 1118 - 1133 hours	1991 Chevrolet Astro License No. 4YBU949	Chevrolet pickup License No. 8D63278	MW260246C	Guevara
11/7/2007 1502 - 1525 hours	1993 Dodge Caravan License No. 3CFS731	Chevrolet pickup License No. 8D63278 (tailpipe sample) Honda Civic License No. 4ZZD553 (RPM signal)	MW260247C	Guevara
11/7/2007 1534 - 1548 hours	1991 Chevrolet C1500 Tahoe no license plate	Lincoln Navigator License No. 4PCE793	MW260248C	Guevara

SEVENTEENTH CAUSE FOR DISCIPLINE

(Misleading Statements)

33. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about November 7, 2007, Respondent made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing electronic certificates of compliance for the vehicles set forth in Table 3 above, certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Fraud)

34. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about November 7, 2007, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 3 above, 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.

NINETEENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

35. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about November 7, 2007, regarding the electronic

certificates of compliance and the vehicles set forth in Table 3 above, Respondent violated sections of that Code, as follows:

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

b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of compliance for those vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

c. **Section 44059:** Respondent willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

TWENTIETH CAUSE FOR DISCIPLINE

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

36. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about November 7, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 3 above, Respondent violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of compliance for those vehicles even though the vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

37. Respondent' station license is subject to discipline under Health and

Safety Code section 44072.2(d), in that on or about November 7, 2007, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 3 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

38. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about November 7, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 3 above, he violated sections of that Code, as follows:

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

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

c. **Section 44059:** Respondent Guevara willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

TWENTY-THIRD CAUSE FOR DISCIPLINE

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

39. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about November 7, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 3 above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Guevara falsely or

fraudulently issued electronic certificates of compliance for the vehicles without performing a

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bona fide inspection of the emission control device and system on the vehicles as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c):** Respondent Guevara entered false information into the EIS for the electronic certificates of compliance by entering vehicle identification information or emission control information for vehicles other than the vehicles being tested.

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

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

40. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about November 7, 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 3 above, 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

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

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42. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 250690, issued to Jorge Luis Soto, doing business as Quick Smog 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.

43. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 152882, issued to Jorge Luis Soto, 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.

44. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 153826, issued to Stanley Emmanuel Guevara, 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 250690, issued to Jorge Luis Soto, doing business as Quick Smog Test Only;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Jorge Luis Soto;

3. Revoking or suspending Smog Check Test Only Station License Number TC 250690, issued to Jorge Luis Soto, doing business as Quick Smog Test Only;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jorge Luis Soto, doing business as Quick Smog Test Only;

5. Revoking or suspending Advanced Emission Specialist Technician Number EA 152882, issued to Jorge Luis Soto;

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6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jorge Luis Soto;

7. Revoking or suspending Advanced Emission Specialist Technician Number EA 153826, issued to Stanley Emmanuel Guevara;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Stanley Emmanuel Guevara;

9. Ordering Jorge Luis Soto and Stanley Emmanuel Guevara to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 11-21-08

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

LA2008900124
Accusation (kdg)11/13/08

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

In the Matter of the Accusation Against: **QUICK SMOG TEST ONLY** **JORGE LUIS SOTO, Owner** 14525 Nordoff Street Panorama City, California 91402 **Automotive Repair Dealer Registration No. ARD 250690** **Smog Check Test Only Station License No. TC 250690** **JORGE LUIS SOTO** 1624 8th Street San Fernando, California 91340 **Advanced Emission Specialist Technician License No. EA 152882** **STANLEY EMMANUEL GUEVARA** 8809 Etiwanda Ave., #23 Northridge, California 91325 **Advanced Emission Specialist Technician License No. EA 153826** Respondents.	Case No. 79/09-44 **FIRST AMENDED ACCUSATION** SMOG CHECK

Sherry Mehl ("Complainant") alleges:

PARTIES

1. 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 June 6, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 250690 ("registration") to Jorge Luis Soto ("Respondent"), doing business as Quick Smog Test Only. The registration expired on May 31, 2008, and has not been renewed.

Smog Check Test Only Station License

3. On or about June 14, 2007, the Bureau issued Smog Check Test Only Station License Number TC 250690 ("station license") to Respondent. The station license expired on May 31, 2008, and has not been renewed.

Advanced Emission Specialist Technician License No. EA152882

4. On or about September 18, 2006, the Bureau issued Advanced Emission Specialist Technician License Number EA 152882 ("technician license") to Jorge Luis Soto ("Respondent Soto"). The technician license will expire on April 30, 2010, unless renewed.

Advanced Emission Specialist Technician License No. EA 153826

5. On or about November 22, 2006, the Bureau issued Advanced Emission Specialist Technician License Number EA 153826 ("technician license") to Stanley Emmanuel Guevara ("Respondent Guevara"). The technician license will expire on June 30, 2010.

STATUTORY PROVISIONS

6. Business and Professions Code ("Code") section 9884.7 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 refuse to validate, or 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 refuse to 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 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. Health and Safety Code section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

10. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

11. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the

Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

12. Health and Safety Code section 44072.8 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."

13. Section 490 of the Code provides, in pertinent part:

> A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

14. Section 9889.3 of the 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:
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> . . .
>
> (b) Is convicted of any crime substantially related to the qualifications, functions and duties of the licenseholder in question.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 3395.2 provides:

> A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a registrant if to a substantial degree it shows that the registrant is presently or potentially unfit to perform the functions authorized by the registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, any violation of the provisions of Article 3 of Chapter 20.3 of Division 3 of the Business and Professions Code.

COST RECOVERY

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

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SITE INSPECTION - OCTOBER 5, 2007

17. On or about October 5, 2007, between 1300 hours and 1415 hours, the Bureau performed a site inspection at Respondent's facility. The site inspection and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that Respondent Guevara performed a smog inspection resulting in the issuance of an illegal electronic certificate of compliance, certifying that he had tested and inspected the vehicle set forth in Table 1 below, and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent Guevara performed the smog inspection using the clean piping method[1] by using the tail pipe emissions of a vehicle other than the vehicle being certified in order to issue the certificate. The vehicle certified was not in the test bay at the time of the smog inspection.

TABLE 1

Date & Time	Vehicle Certified	Vehicle Actually Tested	Certificate No.	Technician
10/5/2007 1341 - 1356 hours	1991 Dodge Ram pickup License No. 7N18951	1990 Acura Integra	MU907617C	Guevara

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

18. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about October 5, 2007, Respondent made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing an electronic certificate of compliance for the vehicle set forth in Table 1 above, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle had been clean piped.

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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.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

19. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about October 5, 2007, Respondent committed acts which constitute fraud by issuing an electronic certificate of compliance for the vehicle set forth in Table 1 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

20. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about October 5, 2007, regarding the electronic certificate of compliance and the vehicle set forth in Table 1 above, Respondent violated sections of that Code, as follows:

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

b. **Section 44015, subdivision (b):** Respondent issued an electronic certificate of compliance for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

c. **Section 44059:** Respondent willfully made false entries for the electronic certificate of compliance by certifying that the vehicle had been inspected as required when, in fact, it had not.

FOURTH CAUSE FOR DISCIPLINE

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

21. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about October 5, 2007, regarding the electronic certificate of compliance and the vehicle set forth in Table 1 above, Respondent violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic certificate of compliance for the vehicle without performing a bona fide inspection of the emission control device and system on the vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of compliance for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42 of that Code.

c. **Section 3340.42:** Respondent failed to conduct the required smog test and inspection on the vehicle in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

22. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about October 5, 2007, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing an electronic certificate of compliance for the vehicle set forth in Table 1 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

23. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about October 5, 2007, regarding the electronic certificate of compliance and the vehicle set forth in Table 1 above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (f):** Respondent Guevara failed to perform emission control tests on the vehicle set forth above in Table 1 in accordance with procedures prescribed by the department.

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b. **Section 44032:** Respondent Guevara failed to perform tests of the emission control device and system on the vehicle in accordance with section 44012 of that Code, in that the vehicle had been clean piped.

c. **Section 44059:** Respondent Guevara willfully made false entries for the electronic certificate of compliance by 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)

24. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about October 5, 2007, regarding the electronic certificate of compliance and the vehicle set forth in Table 1 above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Guevara falsely or fraudulently issued an electronic certificate of compliance for the vehicle without performing a bona fide inspection of the emission control device and system on the vehicle as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c):** Respondent Guevara entered false information into the EIS for the electronic certificate of compliance by entering vehicle identification information or emission control information for a vehicle other than the vehicle being tested.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

25. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about October 5, 2007, he committed

acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic certificate of compliance for the vehicle set forth in Table 1 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

VIDEO SURVEILLANCE OPERATION

NOVEMBER 6, 2007

26. On or about November 6, 2007, between 0500 hours and 1900 hours, the Bureau performed a videotaped surveillance at Respondent's facility. The surveillance operation and information obtained from the Bureau's VID revealed that Respondent Guevara performed eight (8) smog inspections, resulting in the issuance of six (6) illegal electronic certificates of compliance, certifying that he had tested and inspected the vehicles set forth in Table 2 below, and that those vehicles were in compliance with applicable laws and regulations. In fact, Respondent Guevara performed those smog inspections using the clean piping method by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue those certificates. None of the vehicles certified were in the test bay at the time of the smog inspections.

TABLE 2

Date & Time	Vehicle Certified	Vehicle Actually Tested	Certificate No.	Technician
11/6/2007 1224 - 1238 hours	1995 Toyota Tercel License No. 4JRU233	Mercedes Benz S Class License No. 5RIZ861	MW260239C	Guevara
11/6/2007 1617 - 1634 hours	1990 Lexus LS400 License No. 4STM564	Toyota 4-Runner License No. 3BFN111 (tailpipe sample) Honda Civic License No. 4ZZD553 (RPM signal)	MW260240C	Guevara
11/6/2007 1638 - 1650 hours	1991 Saturn SC License No. 5RCX347	Honda Civic License No. 3VJZ116	MW260241C	Guevara

11/6/2007 1653 - 1704 hours	1998 Honda Accord License No. 5HSE461	Lincoln Navigator License No. 4PCE793	MW260242C	Guevara
11/6/2007 1710 - 1721 hours	2001 Dodge Durango License No. 5KIB994	Lincoln Navigator License No. 4PCE793	MW260243C	Guevara
11/6/2007 1726 - 1741 hours	1993 Chevrolet Lumina APV License No. 5WNS245	Honda Civic License No. 3VJZ116 (tailpipe sample) Honda Civic License No. 4ZZD553 (RPM signal)	MW260244C	Guevara

NINTH CAUSE FOR DISCIPLINE

(Misleading Statements)

27. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about November 6, 2007, Respondent made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing electronic certificates of compliance for the vehicles set forth in Table 2 above, certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

28. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about November 6, 2007, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 2 above, 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.

ELEVENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

29. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about November 6, 2007, regarding the electronic

certificates of compliance and the vehicles set forth in Table 2 above, Respondent violated sections of that Code, as follows:

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

b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of compliance for those vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

c. **Section 44059:** Respondent willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

TWELFTH CAUSE FOR DISCIPLINE

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

30. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about November 6, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 2 above, Respondent violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of compliance for those vehicles even though the vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

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THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

31. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about November 6, 2007, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 2 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

32. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about November 6, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 2 above, he violated sections of that Code, as follows:

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

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

c. **Section 44059:** Respondent Guevara willfully made false entries for the electronic certificates of compliance by certifying that the 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)

33. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(e), in that on or about November 6, 2007, regarding the

electronic certificates of compliance and the vehicles set forth in Table 2 above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Guevara falsely or fraudulently issued electronic certificates of compliance for the vehicles without performing a bona fide inspection of the emission control device and system on the vehicles as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c):** Respondent Guevara entered false information into the EIS for the electronic certificates of compliance by entering vehicle identification information or emission control information for vehicles other than the vehicles being tested.

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

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

34. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about November 6, 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 2 above, 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.

VIDEO SURVEILLANCE OPERATION

NOVEMBER 7, 2007

35. On or about November 7, 2007, between 0500 hours and 1900 hours, the Bureau performed a videotaped surveillance at Respondent's facility. The surveillance operation and information obtained from the Bureau's VID revealed that Respondent Guevara performed

six (6) smog inspections, resulting in the issuance of four (4) illegal electronic certificates of compliance, certifying that he had tested and inspected the vehicles set forth in Table 3 below, and that those vehicles were in compliance with applicable laws and regulations. In fact, Respondent Guevara performed those smog inspections using the clean piping method by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue those certificates. None of the vehicles certified were in the test bay at the time of the smog inspections.

TABLE 3

Date & Time	Vehicle Certified	Vehicle Actually Tested	Certificate No.	Technician
11/7/2007 1056 - 1109 hours	1994 Chevrolet S10 pickup License No. 6D68543	Ford F150 pickup License No. 8J26055	MW260245C	Guevara
11/7/2007 1118 - 1133 hours	1991 Chevrolet Astro License No. 4YBU949	Chevrolet pickup License No. 8D63278	MW260246C	Guevara
11/7/2007 1502 - 1525 hours	1993 Dodge Caravan License No. 3CFS731	Chevrolet pickup License No. 8D63278 (tailpipe sample) Honda Civic License No. 4ZZD553 (RPM signal)	MW260247C	Guevara
11/7/2007 1534 - 1548 hours	1991 Chevrolet C1500 Tahoe no license plate	Lincoln Navigator License No. 4PCE793	MW260248C	Guevara

SEVENTEENTH CAUSE FOR DISCIPLINE

(Misleading Statements)

36. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about November 7, 2007, Respondent made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing electronic certificates of compliance for the vehicles set forth in Table 3 above, certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

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EIGHTEENTH CAUSE FOR DISCIPLINE

(Fraud)

37. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about November 7, 2007, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 3 above, 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.

NINETEENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

38. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about November 7, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 3 above, Respondent violated sections of that Code, as follows:

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

b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of compliance for those vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

c. **Section 44059:** Respondent willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

TWENTIETH CAUSE FOR DISCIPLINE

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

39. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about November 7, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 3 above, Respondent violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of compliance for those vehicles even though the vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

40. Respondent' station license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about November 7, 2007, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 3 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

41. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about November 7, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 3 above, he violated sections of that Code, as follows:

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

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

c. **Section 44059:** Respondent Guevara willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

TWENTY-THIRD CAUSE FOR DISCIPLINE

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

42. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about November 7, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table 3 above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Guevara falsely or fraudulently issued electronic certificates of compliance for the vehicles without performing a bona fide inspection of the emission control device and system on the vehicles as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c):** Respondent Guevara entered false information into the EIS for the electronic certificates of compliance by entering vehicle identification information or emission control information for vehicles other than the vehicles being tested.

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

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

43. Respondent Guevara's technician license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about November 7, 2007, he committed

acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 3 above, 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.

CRIMINAL CONVICTION

MAY 27, 2009

44. On or about May 27, 2009, in the criminal proceeding entitled *the People of the State of California vs. Jorge Luis Soto* in the Superior Court, County of Los Angeles, California, Case No. BA348714, Respondent Soto was convicted by a plea of guilty of a violation of Penal Code section 502(C)(1), (computer crimes). The circumstances of this crime are that Respondent Soto used a computer to defraud and wrongfully control or obtain money, property or data in doing illegal smog checks on November 7, 2007, as set forth in more detail in Paragraph 35 above. The Court sentenced Respondent Soto to three years of probation, to perform community service, to pay restitution and fines to the court, and to comply with other terms and conditions.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

45. Respondent Soto has subjected his registration to discipline under sections 490 and 9889.3(b) of the Code and section 44072.(2)(b) of the Health and Safety Code in that he was convicted of an offense substantially related to the qualifications, functions and duties of Automotive Repair Dealer within the meaning of California Code of Regulations, title 16, section 3395.2, as set forth more particularly in Paragraph 44, above.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

46. Respondent Soto has subjected his station license to discipline under sections 490 and 9889.3(b) of the Code and section 44072.(2)(b) of the Health and Safety Code in that he was convicted of an offense substantially related to the qualifications, functions and

duties of Smog Check Test Only Station within the meaning of California Code of Regulations, title 16, section 3395.2, as set forth more particularly in Paragraph 44, above.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

47. Respondent Soto has subjected his technician license to discipline under sections 490 and 9889.3(b) of the Code and section 44072.(2)(b) of the Health and Safety Code in that he was convicted of an offense substantially related to the qualifications, functions and duties of Advanced Emission Specialist Technician within the meaning of California Code of Regulations, title 16, section 3395.2, as set forth more particularly in Paragraph 44, above.

CRIMINAL CONVICTION

MAY 27, 2009

48. On or about May 27, 2009, in the criminal proceeding entitled *the People of the State of California vs. Stanley Emmanuel Guevara* in the Superior Court, County of Los Angeles, California, Case No. BA348714, Respondent Guevara was convicted by a plea of guilty of a violation of Penal Code section 502(C)(1), (computer crimes). The circumstances of this crime are that Respondent Guevara used a computer to defraud and wrongfully control or obtain money, property or data in doing illegal smog checks on November 6, 2007, as set forth in more detail in Paragraph 26 above. The Court sentenced Respondent Soto to three years of probation, to perform community service, to pay restitution and fines to the court, and to comply with other terms and conditions.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

49. Respondent Guevara has subjected his Advanced Emission Specialist Technician License to discipline under sections 490 and 9889.3(b) of the Code and section 44072.(2)(b) of the Health and Safety Code in that he was convicted of an offense substantially related to the qualifications, functions and duties of Advanced Emission Specialist Technician within the meaning of California Code of Regulations, title 16, section 3395.2, as set forth more particularly in Paragraph 47, above.

OTHER MATTERS

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

51. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 250690, issued to Jorge Luis Soto, doing business as Quick Smog 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.

52. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 152882, issued to Jorge Luis Soto, 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.

53. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 153826, issued to Stanley Emmanuel Guevara, 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 250690, issued to Jorge Luis Soto, doing business as Quick Smog Test Only;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Jorge Luis Soto;

3. Revoking or suspending Smog Check Test Only Station License Number TC 250690, issued to Jorge Luis Soto, doing business as Quick Smog Test Only;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jorge Luis Soto, doing business as Quick Smog Test Only;

5. Revoking or suspending Advanced Emission Specialist Technician Number EA 152882, issued to Jorge Luis Soto;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jorge Luis Soto;

7. Revoking or suspending Advanced Emission Specialist Technician Number EA 153826, issued to Stanley Emmanuel Guevara;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Stanley Emmanuel Guevara;

9. Ordering Jorge Luis Soto and Stanley Emmanuel Guevara to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 10/12/09

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

LA2008900124
First Amended Accusation (mb) 09/23/09