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

12 In the Matter of the Accusation Against:

79/11-27
Case No.

13 **1 ACCURATE SMOG TEST ONLY**
14 **MARIO ALBERTO MATEOS-MONTOYA, OWNER**
15 **1170 E. Santa Clara Street, Unit 30**
16 **San Jose, CA 95116**
17 **Mailing Address:**
18 **1968 S. King Road**
19 **San Jose, CA 95122**
20 **Automotive Repair Dealer Registration No. ARD 252955**
21 **Smog Check, Test Only, Station License No. TC 252955,**

A C C U S A T I O N

SMOG CHECK

22 **MARIO ALBERTO MATEOS-MONTOYA**
23 **1968 S. King Road**
24 **San Jose, CA 95122**
25 **Advanced Emission Specialist Technician License No.**
26 **EA 154633,**

27 **MARIO MARTINEZ MATEOS**
28 **1968 S. King Road**
San Jose, CA 95122
Advanced Emission Specialist Technician License No.
EA 130715,

and

JULIUS LEE PHAM
3385 Sierra Road
San Jose, CA 95132
Advanced Emission Specialist Technician License No.
EA 154542

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **1 Accurate Smog Test Only; Mario Alberto Mateos-Montoya, Owner**

6 2. On or about January 15, 2008, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 252955 (hereinafter "registration") to
8 Mario Alberto Mateos-Montoya ("Respondent Mateos-Montoya"), owner of 1 Accurate Smog
9 Test Only. Respondent's registration was in full force and effect at all times relevant to the
10 charges brought herein and will expire on November 30, 2010, unless renewed.

11 3. On or about April 18, 2008, the Director issued Smog Check, Test Only, Station
12 License Number TC 252955 (hereinafter "smog check station license") to Respondent Mateos-
13 Montoya. Respondent's smog check station license was in full force and effect at all times
14 relevant to the charges brought herein and will expire on November 30, 2010, unless renewed.

15 **Mario Alberto Mateos-Montoya**

16 4. In or about 2007, the Director issued Advanced Emission Specialist Technician
17 License Number EA 154633 (hereinafter "technician license") to Respondent Mateos-Montoya.
18 Respondent's technician license was in full force and effect at all times relevant to the charges
19 brought herein and will expire on December 31, 2011, unless renewed.

20 **Mario Martinez Mateos**

21 5. In or about 2003, the Director issued Advanced Emission Specialist Technician
22 License Number EA 130715 (hereinafter "technician license") to Mario Martinez Mateos
23 ("Respondent Mateos"). Respondent's technician license was in full force and effect at all times
24 relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

25 **Julius Lee Pham**

26 6. In or about 2007, the Director issued Advanced Emission Specialist Technician
27 License Number EA 154542 (hereinafter "technician license") to Julius Lee Pham ("Respondent

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1 Pham"). Respondent's technician license was in full force and effect at all times relevant to the
2 charges brought herein and will expire on April 30, 2011, unless renewed.

3 **JURISDICTION**

4 7. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
5 the Director may revoke an automotive repair dealer registration.

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

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

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

17 **STATUTORY PROVISIONS**

18 11. Bus. & Prof. Code section 9884.7 states, in pertinent part:

19 (a) The director, where the automotive repair dealer cannot show there
20 was a bona fide error, may deny, suspend, revoke, or place on probation the
21 registration of an automotive repair dealer for any of the following acts or omissions
22 related to the conduct of the business of the automotive repair dealer, which are done
23 by the automotive repair dealer or any automotive technician, employee, partner,
24 officer, or member of the automotive repair dealer.

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

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26 (4) Any other conduct that constitutes fraud.

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28 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
place on probation the registration for all places of business operated in this state by

1 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
2 engaged in a course of repeated and willful violations of this chapter, or regulations
3 adopted pursuant to it.

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

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

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

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

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

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

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

23 COST RECOVERY

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

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VID DATA REVIEW

16. On May 10, 2010, the Bureau initiated an investigation against Respondent Mateos-Montoya based on a review of information from the Bureau's Vehicle Information Database ("VID"), which indicated that Respondent may be engaging in fraudulent smog check inspections. That same day, a representative of the Bureau conducted a detailed review of VID data for all smog inspections performed at Respondent Mateos-Montoya's smog check facility for the period of June 1, 2009, through April 30, 2010. The representative found that the 9 vehicles identified below, which were tested by Respondents Mateos-Montoya, Mateos, and Pham, recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II tests¹. The representative obtained information indicating that the codes were not applicable to the vehicles. The Bureau concluded that Respondents performed the smog inspections on the vehicles using a different vehicle(s) during the OBD II tests, a method known as "clean plugging",² resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Technician Performing Test	Certificate No.
1. 06/22/2009 03:27 - 04:02	1996 Ford Mustang; License No. 4RTM414	Pham	WB237485C
2. 07/07/2009 03:23 - 03:52	1997 Chevrolet C1500 pickup; License No. 5P17184	Pham	NM022582C
3. 07/08/2009 02:15 - 02:34	1998 Chrysler Cirrus; License No. 4BHZ507	Pham	NK965640C
4. 07/22/2009 03:33 - 03:46	2000 Volkswagen Jetta; VIN No. 3VWRA29M4YM096310	Pham	NM261010C

¹ The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Technician Performing Test	Certificate No.
5. 07/22/2009 05:58 - 06:12	2001 Ford F150 pickup; License No. 6N86884	Mateos	NM261014C
6. 10/21/2009 11:55 - 12:12	1999 Volkswagen Passat; License No. 5NQR829	Mateos	NO422955C
7. 11/05/2009 03:41 - 04:05	1999 Chevrolet Tahoe; VIN No. 1GNEC13R8XR153302	Mateos-Montoya	NO561940C
8. 02/03/2010 05:00 - 05:20	1998 Chevrolet S10 pickup; License No. 7V88208	Mateos-Montoya	NQ636671C
9. 04/24/2010 11:08 - 11:38	1998 Volkswagen Jetta; License No. 6CMF374	Mateos	NS775958C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

17. Respondent Mateos-Montoya's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Mateos-Montoya certified that vehicles 7 and 8, identified in paragraph 16 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

b. Respondent Mateos-Montoya's technicians, Respondents Pham and Mateos, certified that vehicles 1 through 6 and 9, identified in paragraph 16 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents Pham and Mateos conducted the inspections on the vehicles using clean-plugging methods in that they substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.24, subdivision (c)**: Respondent Mateos-Montoya falsely or
8 fraudulently issued electronic smog certificates of compliance for vehicles 1 through 9, identified
9 in paragraph 16 above.

10 b. **Section 3340.35, subdivision (c)**: Respondent Mateos-Montoya issued electronic
11 smog certificates of compliance for vehicles 1 through 9, identified in paragraph 16 above, even
12 though the vehicles had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.42**: Respondent Mateos-Montoya failed to conduct the required smog
14 tests on vehicles 7 and 8, identified in paragraph 16 above, in accordance with the Bureau's
15 specifications. Further, Respondent Mateos-Montoya failed to ensure that Respondents Pham and
16 Mateos conducted the required smog tests on vehicles 1 through 6 and 9 in accordance with the
17 Bureau's specifications.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 21. Respondent Mateos-Montoya's smog check station license is subject to disciplinary
21 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
22 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
23 smog certificates of compliance for vehicles 1 through 9, identified in paragraph 16 above,
24 without performing bona fide inspections of the emission control devices and systems on the
25 vehicles, thereby depriving the People of the State of California of the protection afforded by the
26 Motor Vehicle Inspection Program.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 22. Respondent Mateos-Montoya's technician license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
5 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
6 perform the emission control tests on vehicles 7 and 8, identified in paragraph 16 above, in
7 accordance with procedures prescribed by the department.

8 SEVENTH CAUSE FOR DISCIPLINE

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

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

14 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued
15 electronic smog certificates of compliance for vehicles 7 and 8, identified in paragraph 16 above.

16 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test vehicles 7
17 and 8, identified in paragraph 16 above, in accordance with Health & Saf. Code sections 44012
18 and 44035, and California Code of Regulations, title 16, section 3340.42.

19 c. Section 3340.42: Respondent failed to conduct the required smog tests on vehicles 7
20 and 8, identified in paragraph 16 above, in accordance with the Bureau's specifications.

21 EIGHTH CAUSE FOR DISCIPLINE

22 (Dishonesty, Fraud or Deceit)

23 24. Respondent Mateos-Montoya's technician license is subject to disciplinary action
24 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
25 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
26 certificates of compliance for vehicles 7 and 8, identified in paragraph 16 above, without
27 performing bona fide inspections of the emission control devices and systems on the vehicles,

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

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 25. Respondent Mateo's technician license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
7 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
8 emission control tests on vehicles 5, 6, and 9, identified in paragraph 16 above, in accordance
9 with procedures prescribed by the department.

10 **TENTH CAUSE FOR DISCIPLINE**

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

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

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic smog certificates of compliance for vehicles 5, 6, and 9, identified in paragraph 16
18 above.

19 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 5, 6,
20 and 9, identified in paragraph 16 above, in accordance with Health & Saf. Code sections 44012
21 and 44035, and California Code of Regulations, title 16, section 3340.42.

22 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 5,
23 6, and 9, identified in paragraph 16 above, in accordance with the Bureau's specifications.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

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

26 27. Respondent Mateo's technician license is subject to disciplinary action pursuant to
27 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
28 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of

1 compliance for vehicles 5, 6, and 9, identified in paragraph 16 above, without performing bona
2 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
3 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 **TWELFTH CAUSE FOR DISCIPLINE**

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

7 28. Respondent Pham's technician license is subject to disciplinary action pursuant to
8 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
9 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
10 emission control tests on vehicles 1 through 4, identified in paragraph 16 above, in accordance
11 with procedures prescribed by the department.

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

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

18 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
19 electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 16
20 above.

21 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
22 through 4, identified in paragraph 16 above, in accordance with Health & Saf. Code sections
23 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

24 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
25 through 4, identified in paragraph 16 above, in accordance with the Bureau's specifications.

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1 FOURTEENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 30. Respondent Pham's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
5 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
6 compliance for vehicles 1 through 4, identified in paragraph 16 above, without performing bona
7 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
8 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 OTHER MATTERS

11 31. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
12 suspend, revoke, or place on probation the registration for all places of business operated in this
13 state by Respondent Mario Alberto Mateos-Montoya, owner of 1 Accurate Smog Test Only, upon
14 a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
15 laws and regulations pertaining to an automotive repair dealer.

16 32. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
17 License Number TC 252955, issued to Respondent Mario Alberto Mateos-Montoya, owner of 1
18 Accurate Smog Test Only, is revoked or suspended, any additional license issued under this
19 chapter in the name of said licensee may be likewise revoked or suspended by the director.

20 33. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
21 Technician License Number EA 154633, issued to Respondent Mario Alberto Mateos-Montoya,
22 is revoked or suspended, any additional license issued under this chapter in the name of said
23 licensee may be likewise revoked or suspended by the Director.

24 34. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
25 Technician License Number EA 130715, issued to Mario Martinez Mateos, is revoked or
26 suspended, any additional license issued under this chapter in the name of said licensee may be
27 likewise revoked or suspended by the Director.

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Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
Business and Professions Code section 125.3;

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

DATED: 10/13/10



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

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