

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

In the Matter of the Accusation Against:

**1 ACCURATE SMOG TEST ONLY
MARIO ALBERTO MATEOS-MONTOYA,
Owner**

San Jose, California 95122
Automotive Repair Dealer Registration
No. ARD 252955
Smog Check, Test Only, Station License
No. TC 252955

MARIO ALBERTO MATEOS-MONTOYA
Advanced Emission Specialist Technician
License No. EA 154633

MARIO MARTINEZ MATEOS
Advanced Emission Specialist Technician
License No. 130715

and

JULIUS LEE PHAM
Advanced Emission Specialist Technician
License No. EA 154542

Respondents.

Case No. 79/11-27

OAH No. 2010120462

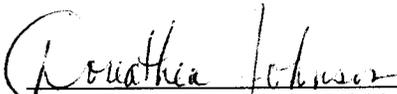
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on page 6, 6th line of paragraph 3 under Legal Conclusions, of the Proposed Decision is corrected as follows:

The word "bee" between the words "not" and "Inspected" is corrected to read "been."

This Decision shall become effective 7/12/11.

DATED: June 13, 2011



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Case Nos. 79/11-27

OAH No. 2010120462

PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on March 23 and May 10, 2011.

Brett Kingsbury, Deputy Attorney General, represented Complainant Sherry Mehl, Chief of the Bureau of Automotive Repair.

Jeff Kravitz, Attorney at Law, represented Respondents 1 Accurate Smog Test Only, Mario Alberto Mateos-Montoya, owner; Mario Martinez Mateos; and Julius Lee Pham.

The record closed on May 10, 2011.

FACTUAL FINDINGS

1. Complainant Sherry Mehl filed the Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
2. On January 15, 2008, the Director of Consumer Affairs (Director) issued Automotive Repair Dealer Registration License Number ARD 252955 to Mario Alberto Mateos-Montoya (Respondent Mateos-Montoya), owner of 1 Accurate Smog Test Only. Unless renewed, the license will expire on November 30, 2011.
3. On April 18, 2008, the Director issued Smog Check, Test Only, Station License Number TC 252955 to Respondent Mateos-Montoya. Unless renewed, the license will expire on November 30, 2011.
4. In 2007, the Director issued Advanced Emission Specialist Technician License Number EA 154633 to Respondent Mateos-Montoya. Unless renewed, the license will expire on December 31, 2011.
5. In 2003, the Director issued Advanced Emission Specialist Technician License Number EA 130715 to Mario Martinez Mateos (Respondent Mateos). Unless renewed, the license will expire on July 31, 2011.
6. In 2007, the Director issued Advanced Emission Specialist Technician License Number EA 154542 to Julius Lee Pham (Respondent Pham). Unless renewed, the license will expire on April 30, 2011.
7. On May 10, 2010, the Bureau initiated an investigation against Respondent Mateos-Montoya's business, 1 Accurate Smog Test Only, based on a review of information from the Bureau's Vehicle Information Database (VID) that indicated that fraudulent smog check inspections might be occurring at that location.
8. Martin Sexton is a Program Representative I with the Bureau and an expert in automobile repair and smog test systems. Sexton's review of data for the period of June 1, 2009, through April 30, 2010, revealed that On Board Diagnostic, Generation II (OBD II) codes that did not apply to the specific vehicles being inspected at 1 Accurate were present in the memory of the power train control module (PCM) on nine different vehicles. The nine vehicles were all certified with pending codes that did not apply to them stored in the PCM memory. The Original Equipment Manufacturer (OEM) service information showed that the vehicles did not support the stored codes. Sexton therefore concluded that the nine vehicles, although they received smog certificates, were not the vehicles actually tested. Instead,

another vehicle was used during the OBD II functional test, a method commonly known as "clean plugging." Sexton was a credible and persuasive witness in every respect.

Respondent Pham

9. On June 22, 2009, Respondent Pham inspected a 1996 Ford Mustang, license number 4RTM414. He issued smog certificate number WB237485C. The BAR97 Test Detail shows codes PO300, PO302, PO100 and PO110 were stored in the PCM memory of the vehicle at the time of certification. However, service information shows that codes PO100 and PO110 do not apply to a 1996 Ford Mustang with a 3.8 liter engine.

10. On July 7, 2009, Respondent Pham inspected a 1997 Chevrolet C1500 pickup, license number 5P17184. He issued smog certificate number NM022582C. The BAR97 Test Detail shows code P1298 was stored in the PCM memory of the vehicle at the time of certification. However, service information shows that code P1298 does not apply to a 1997 Chevrolet C1500 pickup with a 5.7 liter engine.

11. On July 8, 2009, Respondent Pham inspected a 1998 Chrysler Cirrus, license number 4BHZ507. He issued smog certificate number NK965640C. The BAR97 Test Detail shows codes P0700 and P1739 were stored in the PCM memory of the vehicle at the time of certification. However, service information shows that codes P0700 and P1739 do not apply to a 1998 Chrysler Cirrus with a 2.5 liter engine.

12. On July 22, 2009, Respondent Pham inspected a 2000 Volkswagen Jetta, license number 4RTM414. He issued smog certificate number WB237485C. The BAR97 Test Detail shows codes PO700 and P1739 were stored in the PCM memory of the vehicle at the time of certification. However, service information shows that code P1739 does not apply to a 2000 Volkswagen Jetta with a 2.0 liter engine.

Respondent Mateos

13. On July 22, 2009, Respondent Mateos inspected a 2001 Ford F150 pickup, license number 6N86884. He issued smog certificate number NM261014C. The BAR97 Test Detail shows codes PO700 and P1739 were stored in the PCM memory of the vehicle at the time of certification. However, service information shows that codes PO200 and P1739 do not apply to a 2001 Ford F150 pickup with a 4.2 liter engine.

14. On October 21, 2009, Respondent Mateos inspected a 1999 Volkswagen Passat, license number 5NQR829. He issued smog certificate number NO422955C. The BAR97 Test Detail shows codes PO141 and P1870 were stored in the PCM memory of the vehicle at the time of certification. However, service information shows that code P1870 does not apply to a 1999 Volkswagen Passat with a 1.8 liter engine.

15. On April 24, 2010, Respondent Mateos inspected a 1998 Volkswagen Jetta, license number 6CMF374. He issued smog certificate number NS775958C. The BAR97

Test Detail shows code P1456 was stored in the PCM memory of the vehicle at the time of certification. However, service information shows that code P1456 does not apply to a 1998 Volkswagen Jetta with a 2.0 liter engine.

Respondent Mateos-Montoya

16. On November 5, 2009, Respondent Mateos-Montoya inspected a 1999 Chevrolet Tahoe, VIN number 1GNEC13R8XR153302. He issued smog certificate number NO561940C. The BAR97 Test Detail shows code PO128 was stored in the PCM memory of the vehicle at the time of certification. However, service information shows that code PO128 does not apply to a 1999 Chevrolet Tahoe with a 2.0 liter engine.

17. On February 3, 2010, Respondent Mateos-Montoya inspected a 1998 Chevrolet S10 pickup, license number 7V88208. He issued smog certificate number NQ636671C. The BAR97 Test Detail shows code P1559 was stored in the PCM memory of the vehicle at the time of certification. However, service information shows that code P1559 does not apply to a 1998 Chevrolet S10 pickup with a 2.2 liter engine.

Respondents' evidence

18. Respondent Mateos-Montoya acquired 1 Accurate from his father (Respondent Mateos) because he obtained his license and "was ready to operate a business." He is no longer performing smog tests himself because he is attending school. During the time that the nine vehicles in question were tested, he was performing smog tests at the rate of about 30 per week. Respondent Mateos-Montoya testified that he does not try to pass every single car, has never clean plugged, and has never instructed anyone who works for him to violate the rules.

19. Respondent Mateos testified that he has a smog test license, a business license, a smog test station license and is authorized to repair vehicles and conduct brake and lamp inspections. He once received a citation concerning the operation of a smog check test station at another location.

Currently, Respondent Mateos owns Precision Auto Repair and he occasionally works at the shop owned by his son, Respondent Mateos-Montoya. He has a "rough idea" about what clean plugging is. He testified that he has never done it or asked anyone else to do it.

20. Respondent Pham testified that he has been convicted of insurance fraud and perjury. He does not recall whether the perjury was committed in court or out of court. Respondent Pham has read about clean plugging, but claims he has never done it or witnessed it being done. He testified that he has never passed a car on a smog test when he knew that the car should not have passed.

21. None of the Respondents specifically recalled any of the nine vehicles that are the subject of this matter.

22. Martin Olsen testified as an expert on Respondents' behalf. Olsen has over 30 years experience in automotive repair. He is certified as a master auto technician. Olsen currently works at Precision Auto Repair (which is owned by Respondent Mateos). He witnessed clean plugging once at a different shop where he was visiting a friend. He is also aware of the technique of clean piping, but stated that he has never clean piped a vehicle.

23. Olsen opined that the information obtained by Maddox concerning the nine vehicles in this matter might have been generated for reasons other than that the vehicles were clean plugged. He offered a few scenarios, including one that would involve the switching out computers from vehicles. His theories were far-fetched, speculative, and not persuasive to overcome the clear evidence presented by Maddox that clean plugging had occurred as regards the nine vehicles.

24. In addition, Olsen's credibility was negatively affected by his background. He testified that he has been convicted of a felony violation of possession of methamphetamine and drug paraphernalia. (He may have other convictions as well, but could not recall them.) Further, Olsen's smog technician license has been disciplined. In a stipulated settlement signed July 24, 2002 (Case No. 79/02-48; OAH No. N2002030104), Olsen admitted certifying a 1977 Dodge Van without performing a bona fide inspection of its emission control devices and systems.

Costs

25. Complainant submitted a certification of costs showing the Bureau has incurred costs totaling \$5,158.34 of investigative services by Bureau staff. In addition, Deputy Attorney General Kingsbury submitted a declaration signed March 2, 2011, stating that the Bureau has been billed \$8,520 in legal fees by the Department of Justice, Office of the Attorney General. The costs incurred are found to be reasonable given the nature of the case and the lack of evidence to the contrary. It is therefore determined that the claimed costs, which total \$13,678.34, are reasonable.

26. Mr. Kingsbury's declaration also states that he estimates an additional five hours will be billed to the Bureau for his legal services. The equivocation in the estimate of hours prevents a finding of reasonableness as to an additional amount of \$850.00.

LEGAL CONCLUSIONS

1. Business and Professions Code section 9884.7 contains descriptions of acts or omissions that are grounds for the invalidation of an automotive repair dealer registration. A registration may be invalidated under subdivision (a)(1) if the holder of the registration has

made or authorized the making of untrue or misleading statements and under subdivision (a)(4) if the holder of the registration has committed conduct which constitutes fraud.

2. Health and Safety Code section 44072.2 sets forth the grounds for discipline of smog check station licenses and technician licenses. A license may be disciplined under subdivision (a) if the licensee has violated any provisions of the Motor Vehicle Inspection Program as set forth in Health and Safety Code section 44000 et seq.; under subdivision (c) if the licensee has violated any of the regulations adopted to implement the inspection program as set forth in California Code of Regulations, title 16, section 3300 et seq.; and under subdivision (d) if the licensee has committed any act involving dishonesty, fraud, or deceit whereby another is injured.

3. California Code of Regulations, title 16, section 3340.24, subdivision (c), prohibits false or fraudulent issuance of a certificate of compliance. Section 3340.30, subdivision (a), prohibits failing to inspect and test vehicles in accordance with Health and Safety Code section 44012, which sets forth the tests that are to be conducted as part of a smog inspection. Section 3340.35, subdivision (c), prohibits issuing certificate of compliance when vehicles have not been inspected in accordance with section 3340.42. Section 3340.42 sets forth the mandatory emissions inspection standards and test procedures.

Respondent Mateos-Montoya

UNTRUE OR MISLEADING STATEMENTS

4. Cause to discipline Respondent Mateos-Montoya's registration exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that he certified that certain vehicles had passed inspection and were in compliance with applicable laws and regulations when that was not true. (Findings 8, 16 and 17.)

5. Cause to discipline Respondent Mateos-Montoya's registration exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that two of his technician employees certified that certain vehicles had passed inspection and were in compliance with applicable laws and regulations when that was not true. (Findings 8 through 15.)

FRAUD

6. Cause to discipline Respondent Mateos-Montoya's registration exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Respondent issued electronic smog certificates of compliance for nine vehicles without performing bona fide inspections of the vehicles, which deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. (Findings 8 through 17.)

VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM

7. Cause for disciplinary action against Respondent Mateos-Montoya's smog check station license exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that it was established that he violated Health and Safety Code sections 44012 and 44015. (Findings 8 through 17.)

8. Cause for disciplinary action against Respondent Mateos-Montoya's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that it was established that he violated Health and Safety Code section 44012. (Findings 8, 16 and 17.)

VIOLATIONS OF REGULATIONS PURSUANT TO THE MOTOR VEHICLE INSPECTION PROGRAM

9. Cause for disciplinary action against Respondent Mateos-Montoya's smog check station license exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that it was established that he violated California Code of Regulations, title 16, sections 3340.24, subdivision (c); 3340.35, subdivision (c); and 3340.42. (Findings 8 through 17.)

10. Cause for disciplinary action against Respondent Mateos-Montoya's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that it was established that he violated California Code of Regulations, title 16, sections 3340.24, subdivision (c); 3340.30, subdivision (a); and 3340.42. (Findings 8, 16 and 17.)

DISHONESTY, FRAUD, OR DECEIT

11. Cause for disciplinary action against Respondent Mateos-Montoya's smog check station license exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that, by issuing a false certificate of compliance Respondent committed an act involving dishonesty, fraud, or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program. (Findings 8 through 17.)

12. Cause for disciplinary action against Respondent Mateos-Montoya's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that, by issuing a false certificate of compliance Respondent committed an act involving dishonesty, fraud, or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program. (Findings 8, 16 and 17.)

Respondent Mateos

VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM

13. Cause for disciplinary action against Respondent Mateos's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that it was established that Respondent violated Health and Safety Code section 44012. (Findings 8, 13 and 14.)

VIOLATIONS OF REGULATIONS PURSUANT TO THE MOTOR VEHICLE INSPECTION PROGRAM

14. Cause for disciplinary action against Respondent Mateos's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that it was established that Respondent violated California Code of Regulations, title 16, sections 3340.24, subdivision (c); 3340.30, subdivision (a); and 3340.42. (Findings 8, 13 and 14.)

DISHONESTY, FRAUD, OR DECEIT

15. Cause for disciplinary action against Respondent Mateo's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that, by issuing a false certificate of compliance Respondent committed an act involving dishonesty, fraud, or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program. (Findings 8, 13 and 14.)

Respondent Pham

VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM

16. Cause for disciplinary action against Respondent Pham's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that it was established that Respondent violated Health and Safety Code sections 44012, subdivisions (a) and (f); 44015, subdivision (b); and 44059. (Findings 8 through 12.)

VIOLATIONS OF REGULATIONS PURSUANT TO THE MOTOR VEHICLE INSPECTION PROGRAM

17. Cause for disciplinary action against Respondent Pham's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that it was established that Respondent violated California Code of Regulations, title 16, sections 3340.24, subdivision (c); 3340.30, subdivision (a); and 3340.42. (Findings 8 through 12.)

DISHONESTY, FRAUD OR DECEIT

18. Cause for disciplinary action against Respondent Pham's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that, by issuing a false certificate of compliance Respondent committed an act involving dishonesty, fraud, or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program. (Findings 8 through 12.)

Other Matters

19. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Mateos-Montoya, owner of 1 Accurate Smog Test Only, upon a finding that he has engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer. Cause for such discipline exists by reason of the matters set forth in Findings 8 through 17.

20. Pursuant to Health and Safety Code section 44072.8, if Respondent Mateos-Montoya's station license number, or his technician license number, or Respondent Mateo's technician license number, or Respondent Pham's technician license number, is revoked or suspended, the Director may revoke or suspend any additional license issued in the same name under Chapter 5 of the Health and Safety Code.

Penalty Determination

21. Each Respondent falsely certified that vehicles passed the California smog test. All denied any knowledge of clean plugging the vehicles, and yet the evidence that the vehicles had been clean plugged during testing by Respondents was clear. No evidence of mitigation was offered; instead, an expert witness with dubious credentials and speculative explanations was presented. In these circumstances, the public interest requires revocation.

Cost Recovery

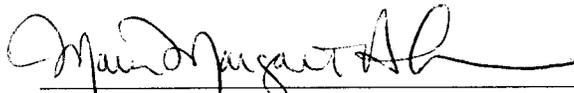
22. Business and Professions Code section 125.3 provides that a licensing agency may order a licensee who has committed a violation of the law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Subdivision (c) provides that a certified copy of the costs constitutes prima facie evidence of the reasonable costs. By reason of the matters set forth in Finding 25, cause exists to require Respondents to pay investigative and enforcement costs of \$13,678.34.

ORDER

1. Automotive Repair Dealer Registration number ARD 252955, issued to Mario Alberto Mateos-Montoya, owner of 1 Accurate Smog Test Only, is revoked.

2. Any other automotive repair dealer registration issued to Mario Alberto Mateos-Montoya is revoked.
3. Smog Check, Test Only, Station License Number TC 252955, issued to Mario Alberto Mateos-Montoya, owner of 1 Accurate Smog Test Only, is revoked.
4. Advanced Emission Specialist Technician License Number EA 154633, issued to Mario Alberto Mateos-Montoya, is revoked.
5. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Mario Alberto Mateos-Montoya, is revoked.
6. Advanced Emission Specialist Technician License Number EA 130715, issued to Mario Martinez Mateos, is revoked.
7. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Mario Martinez Mateos, is revoked.
8. Advanced Emission Specialist Technician License Number EA 154542, issued to Julius Lee Pham, is revoked.
9. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Julius Lee Pham, is revoked.
10. Mario Alberto Mateos-Montoya, individually, and as owner of 1 Accurate Smog Test only, Mario Martinez Mateos, and Julius Lee Pham, are ordered to pay the Director of Consumer Affairs \$13,678.34 as reimbursement of the reasonable costs of investigation and enforcement of this case.

DATED: May 25, 2011



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

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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:

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,**

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.

79/11-27

Case No.

A C C U S A T I O N

SMOG CHECK

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

28 ///

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.

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

28

(4) Any other conduct that constitutes fraud.

.....

(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.

15

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 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.

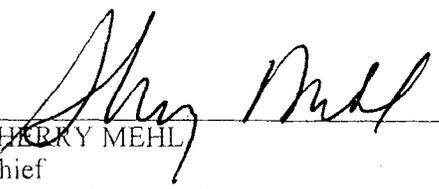
24 34. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
25 Technician License Number EA 130715, issued to Mario Martinez Mateos, is revoked or
26 suspended, any additional license issued under this chapter in the name of said licensee may be
27 likewise revoked or suspended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

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

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

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5 DATED: 10/13/10



6 SHERRY MEHL
7 Chief
8 Bureau of Automotive Repair
9 Department of Consumer Affairs
10 State of California
11 *Complainant*

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