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

11 In the Matter of the Accusation Against:

Case No. 79/12-08

12 **DEL ROSA TEST CENTER**
13 **ANIL K. KUMAR, OWNER**
14 **2742 N. Del Rosa Avenue**
San Bernardino, CA 92404
15 **Automotive Repair Dealer Reg. No. ARD 215242**
Smog Check Test Only Station License No. TC
215242,

ACCUSATION

(Smog Check)

16 **ANIL K. KUMAR**
17 **3588 E. Highland Avenue**
Highland, CA 92346
18 **Advanced Emission Specialist Technician**
License No. EA 23301,

19 and

20 **VAN ARTHUR NEAL**
21 **P.O. Box 1062**
Highland, CA 92346
22 **Advanced Emission Specialist Technician**
License No. EA 106526

23 Respondents.
24

25 Complainant alleges:

26 **PARTIES/LICENSE INFORMATION**

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

1 **Del Rosa Test Center; Anil K. Kumar, Owner**

2 2. In or about 2001, the Director of Consumer Affairs ("Director") issued Automotive
3 Repair Dealer Registration Number ARD 215242 ("registration") to Anil K. Kumar ("Respondent
4 Kumar"), owner of Del Rosa Test Center. Respondent's registration was in full force and effect at
5 all times relevant to the charges brought herein and will expire on March 31, 2012, unless
6 renewed.

7 3. On or about March 29, 2001, the Director issued Smog Check Test Only Station
8 License Number TC 215242 ("smog check station license") to Respondent Kumar. Respondent's
9 smog check station license was in full force and effect at all times relevant to the charges brought
10 herein and will expire on March 31, 2012, unless renewed.

11 **Anil K. Kumar**

12 4. In or about 1996, the Director issued Advanced Emission Specialist Technician
13 License Number EA 23301 ("technician license") to Respondent Kumar. Respondent's technician
14 license was in full force and effect at all times relevant to the charges brought herein and will
15 expire on September 30, 2012, unless renewed.

16 **Van Arthur Neal**

17 5. In or about 1997, the Director issued Advanced Emission Specialist Technician
18 License Number EA 106526 ("technician license") to Van Arthur Neal ("Respondent Neal").
19 Respondent's technician license was in full force and effect at all times relevant to the charges
20 brought herein and will expire on January 31, 2013, unless renewed.

21 **JURISDICTION**

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

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

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

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

8 **STATUTORY PROVISIONS**

9 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

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17 (4) Any other conduct that constitutes fraud.

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19 (c) Notwithstanding subdivision (b), the director may suspend, revoke or
20 place on probation the registration for all places of business operated in this state by
21 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
22 engaged in a course of repeated and willful violations of this chapter, or regulations
23 adopted pursuant to it.

22 11. Bus. & Prof. Code section 22, subdivision (a), states:

23 "Board" as used in any provision of this Code, refers to the board in
24 which the administration of the provision is vested, and unless otherwise expressly
25 provided, shall include "bureau," "commission," "committee," "department,"
26 "division," "examining committee," "program," and "agency."

26 12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
27 "license" includes "registration" and "certificate."

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13. Health & Saf. 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.

....

(f) Aids or abets unlicensed persons to evade the provisions of this chapter . . .

14. Health & Saf. Code section 44072.10 states, in pertinent part:

....

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department.

....

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . .

15. Health & Saf. Code section 44072.8 states that 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

16. Bus. & Prof. 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.

1 In fact, Respondent Neal used clean piping methods in order to issue a certificate for the vehicle
2 and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 19. Respondent Kumar's registration is subject to disciplinary action pursuant to Bus. &
6 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
7 constitutes fraud by issuing an electronic smog certificate of compliance for the 1993 Dodge
8 Stealth without ensuring that a bona fide inspection was performed of the emission control
9 devices and systems on the vehicle, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 20. Respondent Kumar's smog check station license is subject to disciplinary action
14 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
15 comply with provisions of that Code, as follows:

16 a. **Section 44012:** Respondent Kumar failed to ensure that emission control tests were
17 performed on the 1993 Dodge Stealth in accordance with procedures prescribed by the
18 department.

19 b. **Section 44014:** Respondent Kumar allowed his manager, Sid Kumar, to assist
20 Respondent Neal in performing a smog inspection on the 1993 Dodge Stealth when, in fact, Sid
21 Kumar was not a licensed smog check technician.

22 c. **Section 44015:** Respondent Kumar issued an electronic smog certificate of
23 compliance for the 1993 Dodge Stealth without ensuring that the vehicle was properly tested and
24 inspected to determine if it was in compliance with 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 21. Respondent Kumar's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent Kumar falsely or fraudulently issued
8 an electronic smog certificate of compliance for the 1993 Dodge Stealth.

9 b. **Section 3340.35, subdivision (c):** Respondent Kumar issued an electronic smog
10 certificate of compliance for the 1993 Dodge Stealth even though the vehicle had not been
11 inspected in accordance with section 3340.42.

12 c. **Section 3340.41, subdivision (c):** Respondent Kumar authorized or permitted his
13 technician, Respondent Neal, and his manager, Sid Kumar, to enter false information into the EIS
14 by entering vehicle identification information or emission control system identification data for a
15 vehicle other than the one being tested.

16 d. **Section 3340.42:** Respondent Kumar failed to ensure that the required smog tests
17 were conducted on the 1993 Dodge Stealth in accordance with the Bureau's specifications.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 22. Respondent Kumar's smog check station license is subject to disciplinary action
21 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
22 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
23 certificate of compliance for the 1993 Dodge Stealth without ensuring that a bona fide inspection
24 was performed of the emission control devices and systems on the vehicle, thereby depriving the
25 People of the State of California of the protection afforded by the Motor Vehicle Inspection
26 Program.

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1 inspections on the vehicles using a different vehicle(s) during the OBD II tests, a method known
2 as "clean plugging",³ resulting in the issuance of fraudulent certificates of compliance for the
3 vehicles.

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 12/15/2010 1611 - 1615	1997 Honda Civic; VIN #1HGEJ6577VL030096	WP897289C
2. 11/17/2010 1151 - 1201	1999 Chevrolet Tahoe; License No. 4GFT433	WP520246C
3. 11/12/2010 1623 - 1630	1996 Mazda B-Series; License No. 8T96815	WP459650C
4. 11/12/2010 1024 - 1032	2002 Nissan Altima; License No. 4XUB157	WP459635C
5. 10/01/2010 1648 - 1652	2000 BMW 528i; VIN #WBADM6342YGU14954	WN946526C
6. 08/24/2010 1125 - 1133	2001 Mitsubishi Galant; License No. 4UKU319	WN359128C
7. 08/23/2010 1118 - 1125	2001 Toyota Corolla; License No. 4MHL469	WN359113C
8. 07/16/2010 1238 - 1245	2000 Chevrolet Suburban; License No. 5APP508	WL665181C

15 **TWELFTH CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 30. Respondent Kumar's registration is subject to disciplinary action pursuant to Bus. &
18 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
19 which he knew or in the exercise of reasonable care should have known to be untrue or
20 misleading, as follows: Respondents Kumar and Neal certified that vehicles 1 through 8,
21 identified in paragraph 29 above, had passed inspection and were in compliance with applicable
22 laws and regulations. In fact, Respondents Kumar and Neal conducted the inspections on the
23 vehicles using clean-plugging methods in that they substituted or used a different vehicle(s)

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25 _____
26 ³ Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
27 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
28 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.

1 during the OBD II functional tests in order to issue smog certificates of compliance for the
2 vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

3 **THIRTEENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 31. Respondent Kumar's registration is subject to disciplinary action pursuant to Bus. &
6 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute
7 fraud by issuing electronic smog certificates of compliance for vehicles 1 through 8, identified in
8 paragraph 29 above, without ensuring that bona fide inspections were performed of the emission
9 control devices and systems on the vehicles, thereby depriving the People of the State of
10 California of the protection afforded by the Motor Vehicle Inspection Program.

11 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

13 32. Respondent Kumar's smog check station license is subject to disciplinary action
14 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
15 comply with the following sections of that Code:

16 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
17 performed on vehicles 1 through 8, identified in paragraph 29 above, in accordance with
18 procedures prescribed by the department.

19 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
20 vehicles 1 through 8, identified in paragraph 29 above, without ensuring that the vehicles were
21 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
22 section 44012.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for vehicles 1 through 8, identified in paragraph 29
9 above.

10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
11 compliance for vehicles 1 through 8, identified in paragraph 29 above, even though the vehicles
12 had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
14 performed on vehicles 1 through 8, identified in paragraph 29 above, in accordance with the
15 Bureau's specifications.

16 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

18 34. Respondent Kumar's smog check station license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
20 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
21 certificates of compliance for vehicles 1 through 8, identified in paragraph 29 above, without
22 ensuring that bona fide inspections were performed of the emission control devices and systems
23 on the vehicles, thereby depriving the People of the State of California of the protection afforded
24 by the Motor Vehicle Inspection Program.

25 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

27 35. Respondent Kumar's technician license is subject to disciplinary action pursuant to
28 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with

1 section 44012 of that Code, in a material respect, as follows: Respondent failed to perform the
2 emission control tests on vehicles 1 through 4 and 6 through 8, identified in paragraph 29 above,
3 in accordance with procedures prescribed by the department.

4 **EIGHTEENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant**
6 **to the Motor Vehicle Inspection Program)**

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

10 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
11 electronic smog certificates of compliance for vehicles 1 through 4 and 6 through 8, identified in
12 paragraph 29 above.

13 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
14 through 4 and 6 through 8, identified in paragraph 29 above, in accordance with Health & Saf.
15 Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

16 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
17 through 4 and 6 through 8, identified in paragraph 29 above, in accordance with the Bureau's
18 specifications.

19 **NINETEENTH CAUSE FOR DISCIPLINE**

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

21 37. Respondent Kumar's technician license is subject to disciplinary action pursuant to
22 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
23 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
24 compliance for vehicles 1 through 4 and 6 through 8, identified in paragraph 29 above, without
25 performing bona fide inspections of the emission control devices and systems on the vehicles,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

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

3 **MATTERS IN AGGRAVATION**

4 41. To determine the degree of discipline, if any, to be imposed on Respondents Kumar
5 and Neal, Complainant alleges as follows:

6 **Respondent Kumar**

7 a. On or about August 22, 2008, the Bureau issued Citation No. C09-0174 against
8 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
9 determine that emission control devices and systems required by State and Federal law are
10 installed and functioning correctly in accordance with test procedures), and California Code of
11 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
12 compliance to a vehicle that was improperly tested). Respondent had issued a certificate of
13 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
14 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for the
15 violations. Respondent complied with the citation (paid the fine) on September 25, 2008.

16 **Respondent Neal**

17 b. On or about August 22, 2008, the Bureau issued Citation No. M09-0175 against
18 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
19 perform tests of emission control systems and devices in accordance with Health & Saf. Code
20 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
21 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
22 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
23 vehicle with the ignition timing adjusted beyond specifications. Respondent was directed to
24 complete an 8 hour training course and to submit proof of completion to the Bureau within 30
25 days from receipt of the citation. Respondent complied with the citation (completed the required
26 training) on September 21, 2008.

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1 OTHER MATTERS

2 42. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 suspend, revoke or place on probation the registration for all places of business operated in this
4 state by Respondent Anil K. Kumar, owner of Del Rosa Test Center, upon a finding that
5 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
6 regulations pertaining to an automotive repair dealer.

7 43. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
8 License Number TC 215242, issued to Respondent Anil K. Kumar, owner of Del Rosa Test
9 Center, is revoked or suspended, any additional license issued under this chapter in the name of
10 said licensee may be likewise revoked or suspended by the Director.

11 44. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
12 Technician License Number EA 23301, issued to Respondent Anil K. Kumar, is revoked or
13 suspended, any additional license issued under this chapter in the name of said licensee may be
14 likewise revoked or suspended by the Director.

15 45. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
16 Technician License Number EA 106526, issued to Respondent Van Arthur Neal, is revoked or
17 suspended, any additional license issued under this chapter in the name of said licensee may be
18 likewise revoked or suspended by the Director.

19 PRAYER

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

- 22 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
23 215242, issued to Anil K. Kumar, owner of Del Rosa Test Center;
- 24 2. Revoking or suspending any other automotive repair dealer registration issued to Anil
25 K. Kumar;
- 26 3. Revoking or suspending Smog Check Test Only Station License Number TC 215242,
27 issued to Anil K. Kumar, owner of Del Rosa Test Center;

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1 4. Revoking or suspending Advanced Emission Specialist Technician License Number
2 EA 23301, issued to Anil K. Kumar;

3 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
4 and Safety Code in the Anil K. Kumar;

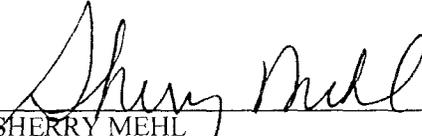
5 6. Revoking or suspending Advanced Emission Specialist Technician License Number
6 EA 106526, issued to Van Arthur Neal;

7 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
8 and Safety Code in the name of Van Arthur Neal;

9 8. Ordering Anil K. Kumar, individually, and as owner of Del Rosa Test Center, and
10 Van Arthur Neal to pay the Bureau of Automotive Repair the reasonable costs of the investigation
11 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

12 9. Taking such other and further action as deemed necessary and proper.

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14 DATED: 7/26/11


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

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