

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

In the Matter of the Accusation Against:

CARLOS JAIME GABALDON

18755 Alderbury Drive
Rowland Heights, CA 91748

Advanced Emission Specialist Technician
License No. EA 630001

Case No. 79/11-81

OAH No. L-2011040846

Respondents.

DECISION

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

This Decision shall become effective 12/14/11.

DATED: November 3, 2011



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHIAPPELLE
Supervising Deputy Attorney General
3 RENE JUDKIEWICZ
Deputy Attorney General
4 State Bar No. 141773
300 So. Spring Street, Suite 1702
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Attorneys for Complainant

7
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 **CARLOS JAIME GABALDON**
14 **18755 Alderbury Drive**
15 **Rowland Heights, CA 91748**
16 **Advanced Emission Specialist Technician**
17 **No. EA 630001**

Case No. 79/11-81

OAH No. L-2011040846

18 **STIPULATED SETTLEMENT AND**
19 **DISCIPLINARY ORDER**

20 Respondent.

21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 PARTIES

24 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair
25 (Bureau). She brought this action solely in her official capacity and is represented in this matter
26 by Kamala D. Harris, Attorney General of the State of California, by Rene Judkiewicz, Deputy
27 Attorney General.

28 2. Respondent Carlos Jaime Gabaldon (Respondent) is representing himself in this
proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about February 21, 2008, the Bureau issued Advanced Emission Specialist
Technician No. EA 630001 to Respondent. The Advanced Emission Specialist Technician was in

1 full force and effect at all times relevant to the charges brought in Accusation No. 79/11-81 and
2 will expire on January 31, 2012, unless renewed.

3 JURISDICTION

4 4. Accusation No. 79/11-81 was filed before the Director of Consumer Affairs
5 (Director), for the Bureau, and is currently pending against Respondent. The Accusation and all
6 other statutorily required documents were properly served on Respondent on April 1, 2011.
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 79/11-81 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 79/11-81. Respondent has also carefully read, and understands the effects of this
12 Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
17 the attendance of witnesses and the production of documents; the right to reconsideration and
18 court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 79/11-81.

25 9. Respondent agrees that his Advanced Emission Specialist Technician is subject to
26 discipline and he agrees to be bound by the Director's probationary terms as set forth in the
27 Disciplinary Order below.

28 ///

1 issued to Respondent Carlos Jaime Gabaldon is suspended for fifteen (15) days, to be served
2 beginning on the effective date of the decision.

3 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
4 automotive inspections, estimates and repairs.

5 3. **Reporting.** Respondent or Respondent's authorized representative must report in
6 person or in writing as prescribed by the Bureau, on a schedule set by the Bureau, but no more
7 frequently than each quarter, on the methods used and success achieved in maintaining
8 compliance with the terms and conditions of probation.

9 4. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
10 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

11 5. **Jurisdiction.** If an accusation is filed against Respondent during the term of
12 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
13 until the final decision on the accusation, and the period of probation shall be extended until such
14 decision.

15 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
16 Respondent has failed to comply with the terms and conditions of probation, the Department may,
17 after giving notice and opportunity to be heard, petition to revoke the license.

18 7. **Continuing Education Courses.** During the period of probation, Respondent shall
19 attend and successfully complete a Bureau-certified Advanced Clean Air Car Course. Said
20 course shall be completed and proof of completion submitted to the Bureau within six (6) months
21 of the effective date of this decision and order. If proof of completion of the course is not
22 furnished to the Bureau within the 6-month period, Respondent's license shall be immediately
23 suspended until such proof is received.

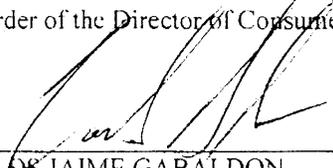
24 8. **Cost Recovery.** Payment to the Bureau of the full amount of cost recovery, which is
25 \$2,961.42 in Bureau costs and \$2,305 in Attorney General's Office costs, amounting to \$5,266.42
26 in total costs, shall be received no later than six (6) months before probation terminates. Failure
27 to complete payment of cost recovery within this time frame shall constitute a violation of
28 probation which may subject Respondent's license to outright revocation; however, the Director

1 or the Director's Bureau designee may elect to continue probation until such time as
2 reimbursement of the entire cost recovery amount has been made to the Bureau.

3
4 ACCEPTANCE

5 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
6 stipulation and the effect it will have on my Advanced Emission Specialist Technician. I enter
7 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
8 and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

9
10 DATED: 10-8-11


11 CARLOS JAIME GABALDON
12 Respondent

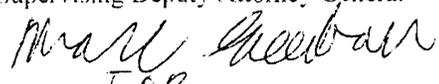
13 ENDORSEMENT

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

16 Dated:

17 Respectfully submitted,

18 KAMALA D. HARRIS
19 Attorney General of California
20 KAREN B. CHAPPELLE
21 Supervising Deputy Attorney General


22 FOR
23 RENE JUDKIEWICZ
24 Deputy Attorney General
25 Attorneys for Complainant

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14 18755 Alderbury Drive
Rowland Heights, CA 91748
Advanced Emission Specialist Technician
License No. EA 630001
15 Respondent.

Case No. 79111-81
ACCUSATION
SMOG CHECK

16
17 Complainant alleges:

18 **PARTIES**

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

21 **Advanced Emission Specialist Technician License**

22 2. On or about February 21, 2008, the Bureau issued Advanced Emission Specialist
23 Technician License Number EA 630001 ("technician license") to Carlos Jaime Gabaldon
24 ("Respondent"). The technician license was in full force and effect at all times relevant to the
25 charges brought herein and will expire on January 31, 2012, unless renewed.

26 ///
27 ///
28 ///

1 SECOND CAUSE FOR DISCIPLINE

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

3 11. Respondent has subjected his technician license to discipline under Health and Safety
4 Code section 44072.2, subdivision (c), in that on or about September 27, 2010, regarding the
5 1997 Honda Accord, he violated sections of the California Code of Regulations, title 16, as
6 follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
8 electronic Certificate of Compliance Number WN865524C without performing a bona fide
9 inspection of the emission control devices and systems on that vehicle as required by Health and
10 Safety Code section 44012.

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

13 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
14 Emission Inspection System for electronic Certificate of Compliance Number WN865524C by
15 entering "Pass" for the fuel evaporative controls even though the EVAP system was missing from
16 this vehicle.

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

19 THIRD CAUSE FOR DISCIPLINE

20 (Dishonesty, Fraud or Deceit)

21 12. Respondent has subjected his technician license to disciplinary action pursuant to
22 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 27, 2010,
23 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
24 electronic Certificate of Compliance No. WN865524C for the 1997 Honda Accord without
25 performing a bona fide inspection of the emission control devices and systems on that vehicle,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

1 PRIOR CITATIONS

2 13. To determine the degree of penalty, if any, to be imposed upon Respondent,
3 Complainant alleges as follows:

4 a. On October 8, 2008, the Bureau issued Citation No. M09-0319 to Respondent against
5 his technician license for violations of Health and Safety Code section 44032, (qualified
6 technicians shall perform tests of emission control systems and devices in accordance with
7 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
8 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
9 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
10 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV
11 system. Respondent was required to attend an 8-hour training course. Respondent complied with
12 this citation on November 23, 2008.

13 b. On February 13, 2009, the Bureau issued Citation No. M09-0944 to Respondent
14 against his technician license for violations of Health and Safety Code section 44032, (qualified
15 technicians shall perform tests of emission control systems and devices in accordance with
16 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
17 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
18 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
19 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing air
20 pump. Respondent was required to attend a 16-hour training course. Respondent appealed this
21 citation on March 20, 2009; however, training was completed on August 20, 2009, and
22 Respondent withdrew the appeal on October 8, 2009.

23 c. On May 14, 2009, the Bureau issued Citation No. M09-1304 to Respondent against
24 his technician license for violations of Health and Safety Code section 44032, (qualified
25 technicians shall perform tests of emission control systems and devices in accordance with
26 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
27 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
28 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section

1 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV
2 system. Respondent was required to attend a 68-hour training course. Respondent appealed this
3 citation on June 25, 2009; however, training was completed on January 27, 2010, and Respondent
4 withdrew the appeal on February 2, 2010.

5 OTHER MATTERS

6 14. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
7 Technician License Number EA 630001, issued to Carlos Jaime Gabaldon, is revoked or
8 suspended, any additional license issued under this chapter in the name of said licensee may be
9 likewise revoked or suspended by the director.

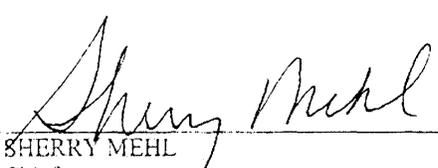
10 PRAYER

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

- 13 1. Revoking or suspending Advanced Emission Specialist Technician License Number
14 EA 630001, issued to Carlos Jaime Gabaldon;
- 15 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
16 & Safety Code in the name of Carlos Jaime Gabaldon;
- 17 3. Ordering Carlos Jaime Gabaldon to pay the Bureau of Automotive Repair the
18 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 125.3; and,
- 20 4. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: _____

3/23/11


24 SHERRY MEHL
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant

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