

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

In the Matter of the Accusation Against:

NAYARIT SMOG TEST ONLY
REMIGIO NIEBLAS, Owner
3754 North Mission road, Unit B
Pacoima, CA 90031

Automotive Repair Dealer Registration
No. ARD 257321

Smog Check, Test Only, Station License
No. TC 257321

and

MICHAEL SALAZAR REYES
1930 East Avenue, R4
Palmdale, CA 93550

Advanced Emission Specialist Technician
License No. EA 630294

Respondents.

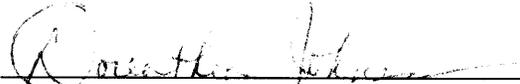
Case No. 79/10-46

DECISION

The attached Stipulated Settlement and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Michael Salazar Reyes, Advanced Emission Specialist Technician License No. EA 630294.

This Decision shall become effective 2/3/12.

DATED: December 28, 2011


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE TULLENERS
Deputy Attorney General
4 State Bar No. 157464
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2578
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:
12 **NAYARIT SMOG TEST ONLY**
3754 North Mission Road, Unit B
13 Pacoima, CA 90031
14 **REMIGIO NIEBLAS, OWNER**
15 **Automotive Repair Dealer Registration**
No. ARD 257321
16 **Smog Check Test Only Station License**
17 No. TC 257321
18 and
19 **MICHAEL SALAZAR REYES**
1930 East Avenue, R4
20 Palmdale, CA 93550
21 **Advanced Emission Specialist Technician**
22 License No. EA 630294
23 Respondents.
24

Case No. 79/10-46
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

27 ///
28 ///

1 PARTIES

2 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair.
3 She brought this action solely in her official capacity and is represented in this matter by
4 Kamala D. Harris, Attorney General of the State of California, by Desiree Tulleners,
5 Deputy Attorney General.

6 2. Respondent Michael Salazar Reyes is represented by Attorney Rene Sanz, Esq.,
7 3580 Wilshire Boulevard, 17th Floor, Los Angeles, CA 90010, telephone number, (213) 637-
8 8563, in this matter.

9 3. On or about June 30, 2008, the Bureau of Automotive Repair (Bureau) issued
10 Advanced Emission Specialist Technician License Number EA 630294 ("technician license")
11 to Michael Salazar Reyes ("Respondent Reyes"). The technician license was in full force
12 and effect at all times relevant to the charges brought in Accusation No. 79/10-46, but
13 expired on October 31, 2010.

14 JURISDICTION

15 4. Accusation No. 79/10-46 was filed before the Director of Consumer Affairs
16 (Director), for the Bureau, and is currently pending against Respondent. The Accusation
17 and all other statutorily required documents were properly served on Respondent on June
18 22, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy
19 of Accusation No. 79/10-46 is attached as Exhibit A, and is incorporated herein by
20 reference.

21 ADVISEMENT AND WAIVERS

22 5. Respondent has carefully read, fully discussed with counsel, and understands the
23 charges and allegations in Accusation No. 79/10-46. Respondent has also carefully read,
24 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
25 Disciplinary Order.

26 6. Respondent is fully aware of his legal rights in this matter, including the right to
27 a hearing on the charges and allegations in the Accusation; the right to be represented by
28 counsel at his own expense; the right to confront and cross-examine the witnesses against

1 him; the right to present evidence and to testify on his own behalf; the right to the issuance
2 of subpoenas to compel the attendance of witnesses and the production of documents; the
3 right to reconsideration and court review of an adverse decision; and all other rights
4 accorded by the California Administrative Procedure Act and other applicable laws.

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

7 **CULPABILITY**

8 8. Respondent admits the truth of each and every charge and allegation in
9 Accusation No. 79/10-46.

10 9. Respondent agrees that his Advanced Emission Specialist Technician License is
11 subject to discipline and agree to be bound by the Director of Consumer Affairs (Director)'s
12 imposition of discipline as set forth in the Disciplinary Order below.

13 **CONTINGENCY**

14 10. This stipulation shall be subject to approval by the Director of Consumer Affairs
15 or his designee. Respondent understands and agrees that counsel for Complainant and the
16 staff of the Bureau of Automotive Repair may communicate directly with the Director and
17 staff of the Department of Consumer Affairs regarding this stipulation and settlement,
18 without notice to or participation by Respondent or his counsel. By signing the stipulation,
19 Respondent understands and agrees that he may not withdraw his agreement or seek to
20 rescind the stipulation prior to the time the Director considers and acts upon it. If the
21 Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement
22 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
23 inadmissible in any legal action between the parties, and the Director shall not be
24 disqualified from further action by having considered this matter.

25 11. The parties understand and agree that facsimile copies of this Stipulated
26 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the
27 same force and effect as the originals.
28

1 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to
2 be an integrated writing representing the complete, final, and exclusive embodiment of their
3 agreement. It supersedes any and all prior or contemporaneous agreements,
4 understandings, discussions, negotiations, and commitments (written or oral). This
5 Stipulated Settlement and Disciplinary Order may not be altered, amended, modified,
6 supplemented, or otherwise changed except by a writing executed by an authorized
7 representative of each of the parties.

8 13. In consideration of the foregoing admissions and stipulations, the parties agree
9 that the Director may, without further notice or formal proceeding, issue and enter the
10 following Disciplinary Order:

11 **DISCIPLINARY ORDER**

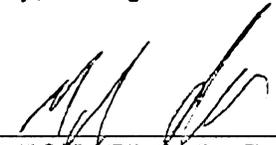
12 ***IT IS HEREBY ORDERED*** that Advanced Emission Specialist Technician License
13 Number EA 630294 issued to Michael Salazar Reyes is revoked.

14 ***IT IS FURTHER ORDERED*** that Respondent Reyes shall repay the Bureau its costs
15 of the investigation and prosecution of this case in the amount of eight thousand one
16 hundred ninety nine and seventy-six cents (\$8199.76) at the time of submitting any petition
17 for reinstatement or applying for any new license or registration or relicensure to the
18 Bureau.

19 **ACCEPTANCE**

20 I have carefully read the above Stipulated Settlement and Disciplinary Order. I
21 understand the stipulation and the effect it will have on my Advanced Emission Specialist
22 Technician License. I enter into this Stipulated Settlement and Disciplinary Order
23 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
24 of the Director of Consumer Affairs.

25 DATED: 8-24-11

26 
27 MICHAEL SALAZAR REYES
28 Advanced Emission Specialist Technician License
Respondent

1 ///
2 ///
3 ///
4 ///
5 ///

6 I have read and fully discussed with Respondent Michael Salazar Reyes on behalf of
7 his Advance Emission Specialist Technician License the terms and conditions and other
8 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
9 form and content.

10 DATED: 8/24/11 
11 RENE SANZ, ESQ.
12 Attorney for Respondent

13
14
15 **ENDORSEMENT**

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

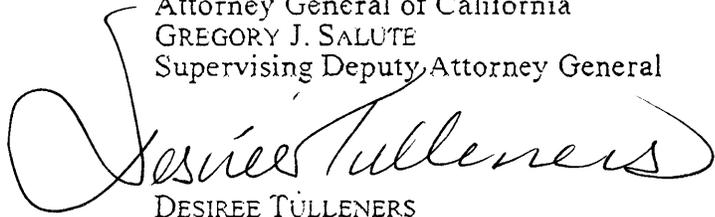
18 Dated: August 24, 2011 Respectfully Submitted,
19
20 KAMALA D. HARRIS
21 Attorney General of California
22 GREGORY J. SALUTE
23 Supervising Deputy Attorney General
24 
25 DESIREE TULENERS
26 Deputy Attorney General
27 Attorneys for Complainant
28

Exhibit A

Accusation No. 79/10-46

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE TULLENERS
Deputy Attorney General
4 State Bar No. 157464
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2578
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
9 **STATE OF CALIFORNIA**

10
11 In the Matter of the Accusation Against:

Case No. 79/10-46

12 **NAYARIT SMOG TEST ONLY**
3754 North Mission Rd., Unit B
13 **Los Angeles, CA 90031**
REMIGIO NIEBLAS, OWNER
14 **Automotive Repair Dealer Registration**
No. ARD 257321
15 **Smog Check Test Only Station License**
No. TC 257321

A C C U S A T I O N
S M O G C H E C K

16 **and**

17 **MICHAEL SALAZAR REYES**
18 **1930 East Avenue, R4**
Palmdale, CA 93550
19 **Advanced Emission Specialist Technician**
License No. EA 630294

20 Respondents.
21

22
23 Complainant alleges:

24 **PARTIES**

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

27 ///

28 ///

1 (c) Notwithstanding subdivision (b), the director may invalidate
2 temporarily or permanently, the registration for all places of business operated in this
3 state by an automotive repair dealer upon a finding that the automotive repair dealer
4 has, or is, engaged in a course of repeated and willful violations of this chapter, or
5 regulations adopted pursuant to it.

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

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

14 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
15 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
16 the Motor Vehicle Inspection Program.

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

28 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
expiration or suspension of a license by operation of law, or by order or decision of the Director
of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
the Director of jurisdiction to proceed with disciplinary action.

///

///

1 11. Section 44072.8 of the Health and Safety Code states:

2 "When a license has been revoked or suspended following a hearing under this article, any
3 additional license issued under this chapter in the name of the licensee may be likewise revoked
4 or suspended by the director."

5 **COST RECOVERY**

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

10 **SURVEILLANCE OPERATION – JUNE 4, 2009**

11 13. On or about June 4, 2009, the Bureau performed a videotaped surveillance at
12 Respondent Nayarit's facility. The surveillance operation and information obtained from the
13 Bureau's Vehicle Information Database ("VID") revealed that from approximately 1028 hours to
14 1703 hours, Respondent Reyes performed six (6) smog inspections that resulted in the issuance of
15 six (6) electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying
16 that he had tested and inspected those vehicles and that the vehicles were in compliance with
17 applicable laws and regulations. In fact, Respondent Reyes performed the smog inspections using
18 the clean piping method¹ by using the tail pipe emissions of vehicles other than the vehicles being
19 certified in order to issue the electronic certificates of compliance. The vehicles certified were
20 not in the test bay at the time of the smog inspections.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ¹ "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings
27 of another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not
28 in compliance or are not present in the smog check area during the time of the certification.

Table 1

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
6/4/2009 1028 hours to 1043 hours	1990 Ford Lic. No. 5DHK563	2003 Nissan Lic. No. 7B09576	VZ891797C
6/4/2009 1538 hours to 1548 hours	2005 Toyota No License Plate	2003 Honda Lic. No. 6HHH725	VZ991501C
6/4/2009 1557 hours to 1610 hours	1994 Toyota Lic. No. 3JAC063	2003 Nissan Lic. No. 7B09576	VZ991502C
6/4/2009 1615 hours to 1626 hours	2001 Lexus Lic. No. 5GIU817	2003 Honda Lic. No. 6HHH725	VZ991503C
6/4/2009 1637 hours to 1647 hours	1994 Toyota Lic. No. 4EGB757	2003 Nissan Lic. No. 7B09576	VZ991504C
6/4/2009 1651 hours to 1703 hours	2001 Chevrolet 3QSZ912	2003 Nissan Lic. No. 7B09576 and 2003 Honda Lic. No. 6HHH725	VZ991505C

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14. Respondent Nayarit has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about June 4, 2009, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

1 vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations,
2 title 16, as follows:

3 a. **Section 3340.24, subdivision (c):** Respondent Nayarit falsely or fraudulently issued
4 electronic certificates of compliance without performing bona fide inspections of the emission
5 control devices and systems on those vehicles as required by Health and Safety Code section
6 44012.

7 b. **Section 3340.35, subdivision (c):** Respondent Nayarit issued electronic certificates
8 of compliance even though those vehicles had not been inspected in accordance with section
9 3340.42 of that Code.

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

12 **FIFTH CAUSE FOR DISCIPLINE**

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

14 18. Respondent Nayarit subjected his station license to discipline under Health and Safety
15 Code section 44072.2, subdivision (d), in that on or about June 4, 2009, regarding the vehicles set
16 forth in Table 1, above, he committed acts involving dishonesty, fraud or deceit whereby another
17 was injured by issuing electronic certificates of compliance for those vehicles without performing
18 bona fide inspections of the emission control devices and systems on those vehicles, thereby
19 depriving the People of the State of California of the protection afforded by the Motor Vehicle
20 Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**

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

23 19. Respondent Reyes has subjected his technician license to discipline under Health and
24 Safety Code section 44072.2, subdivision (a), in that on or about June 4, 2009, regarding the
25 vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

26 a. **Section 44012, subdivision (a):** Respondent Reyes failed to determine that all
27 emission control devices and systems required by law were installed and functioning correctly in
28 accordance with test procedures.

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 21. Respondent Reyes has subjected his technician license to discipline under Health and
4 Safety Code section 44072.2, subdivision (d), in that on or about June 4, 2009, he committed acts
5 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
6 certificates of compliance for the vehicles set forth in Table 1, above, without performing bona
7 fide inspections of the emission control devices and systems on those 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 22. Pursuant to Code section 9884.7, subdivision (c), the Director may invalidate
12 temporarily or permanently or refuse to validate, the registrations for all places of business
13 operated in this state by Remigio Nieblas, doing business as Nayarit Smog Test Only, upon a
14 finding that he has, or is, engaged in a course of repeated and willful violations of the laws and
15 regulations pertaining to an automotive repair dealer.

16 23. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only
17 Station License Number TC 257321, issued to Remigio Nieblas, doing business as Nayarit Smog
18 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
19 of said licensee may be likewise revoked or suspended by the director.

20 24. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission
21 Specialist Technician License Number EA 630294, issued to Michael Salazar Reyes, is revoked
22 or suspended, any additional license issued under this chapter in the name of said licensee may be
23 likewise revoked or suspended by the director.

24 **PRAYER**

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

27 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
28 Number ARD 257321, issued to Remigio Nieblas, doing business as Nayarit Smog Test Only;

1 2. Temporarily or permanently invalidating any other automotive repair dealer
2 registration issued to Remigio Nieblas;

3 3. Revoking or suspending Smog Check Test Only Station License Number TC 257321,
4 issued to Remigio Nieblas, doing business as Nayarit Smog Test Only;

5 4. Revoking or suspending any additional license issued under this chapter in the name
6 of Remigio Nieblas;

7 5. Revoking or suspending Advanced Emission Specialist Technician License Number
8 EA 630294, issued to Michael Salazar Reyes;

9 6. Revoking or suspending any additional license issued under this chapter in the name
10 of Michael Salazar Reyes;

11 7. Ordering Remigio Nieblas and Michael Salazar Reyes to pay the Bureau of
12 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
13 pursuant to Business and Professions Code section 125.3; and,

14 8. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: _____

1/13/10



SHERRY MEHL

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

21
22
23
24
25
26
27 LA2009603923
28 10519882.doc