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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:

Case No. 79/12-01

13 **ORANGEVALE SMOG**
14 **9200 Greenback Lane**
15 **Orangevale, CA 95662**
16 **BENJAMIN JUDAH HEMMER, PARTNER,**
17 **JOSEPH LACY HEMMER, PARTNER**
18 **Automotive Repair Dealer Registration No.**
19 **ARD 253105**
20 **Smog Check Test Only Station License No.**
21 **TC 253105**

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

and

22 **BENJAMIN JUDAH HEMMER**
23 **5745 Raybel Avenue**
24 **Sacramento, CA 95841**
25 **Advanced Emission Specialist Technician**
26 **License No. EA 630550**

Respondents.

27 Complainant alleges:

PARTIES

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

1 (b) Except as provided for in subdivision (c), if an automotive repair
2 dealer operates more than one place of business in this state, the director pursuant to
3 subdivision (a) shall only suspend, revoke, or place on probation the registration of
4 the specific place of business which has violated any of the provisions of this chapter.
5 This violation, or action by the director, shall not affect in any manner the right of the
6 automotive repair dealer to operate his or her other places of business.

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

12 6. Code section 118, subdivision (b) states:

13 The suspension, expiration, or forfeiture by operation of law of a license
14 issued by a board in the department, or its suspension, forfeiture, or cancellation by
15 order of the board or by order of a court of law, or its surrender without the written
16 consent of the board, shall not, during any period in which it may be renewed,
17 restored, reissued, or reinstated, deprive the board of its authority to institute or
18 continue a disciplinary proceeding against the licensee upon any ground provided by
19 law or to enter an order suspending or revoking the license or otherwise taking
20 disciplinary action against the licensee on any such ground.

21 7. Code section 9884.9 states, in pertinent part:

22 (a) The automotive repair dealer shall give to the customer a written
23 estimated price for labor and parts necessary for a specific job. No work shall be done
24 and no charges shall accrue before authorization to proceed is obtained from the
25 customer. No charge shall be made for work done or parts supplied in excess of the
26 estimated price without the oral or written consent of the customer that shall be
27 obtained at some time after it is determined that the estimated price is insufficient and
28 before the work not estimated is done or the parts not estimated are supplied. Written
consent or authorization for an increase in the original estimated price may be
provided by electronic mail or facsimile transmission from the customer. The bureau
may specify in regulation the procedures to be followed by an automotive repair
dealer if an authorization or consent for an increase in the original estimated price is
provided by electronic mail or facsimile transmission. If that consent is oral, the
dealer shall make a notation on the work order of the date, time, name of person
authorizing the additional repairs and telephone number called, if any, together with a
specification of the additional parts and labor and the total additional cost, and shall
do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the
notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or
initials to an acknowledgment of notice and consent, if there is an oral consent of the
customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original
estimated price.

(signature or initials)"

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

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

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

12 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

27 13. Section 44072.8 of the Health and Safety Code states:

28 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.

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1 **COST RECOVERY**

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

6 **UNDERCOVER OPERATION – AUGUST 26, 2010**

7 15. On or about August 26, 2010, a Bureau undercover operator drove a Bureau-
8 documented 1995 Chevrolet Impala to Respondent Orangevale Smog’s facility and requested a
9 smog inspection. The vehicle could not pass the visual portion of a smog inspection because the
10 vehicle’s positive crankcase ventilation (“PCV”) system was missing. The operator signed a
11 work order/estimate but was not provided with a copy of that document prior to the smog
12 inspection. Respondent Hemmer performed the smog inspection and issued electronic Certificate
13 of Compliance No. NW431311 for that vehicle. The operator paid \$68 for the smog inspection
14 and received a copy of an invoice dated August 26, 2010 and the Vehicle Inspection Report.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Misleading Statements)**

17 16. Respondent Orangevale Smog has subjected its registration to discipline under Code
18 section 9884.7, subdivision (a)(1), in that on or about August 26, 2010, it made statements which
19 it knew or which by exercise of reasonable care it should have known were untrue or misleading
20 when it issued electronic Certificate of Compliance No. NW431311 for the 1995 Chevrolet
21 Impala, certifying that the vehicle was in compliance with applicable laws and regulations when,
22 in fact, the vehicle’s PCV system was missing.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Failed to Provide a Copy of a Signed Document)**

25 17. Respondent Orangevale Smog has subjected its registration to discipline under Code
26 section 9884.7, subdivision (a)(3), in that on or about August 26, 2010, it failed to provide the
27 operator with a copy of the work order as soon as he signed the document.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 18. Respondent Orangevale Smog has subjected its registration to discipline under Code
4 section 9884.7, subdivision (a)(4), in that on or about August 26, 2010, it committed acts which
5 constitute fraud by issuing electronic Certificate of Compliance No. NW431311 for the 1995
6 Chevrolet Impala, without performing a bona fide inspection of the emission control devices and
7 systems on that vehicle, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Failure to Provide a Written Estimate)**

11 19. Respondent Orangevale Smog has subjected its registration to discipline under Code
12 section 9884.7, subdivision (a)(6), in that on or about August 26, 2010, it failed to comply with
13 Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated
14 price for parts and labor for a specific job regarding the smog inspection.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Violation of the Motor Vehicle Inspection Program)**

17 20. Respondent Orangevale Smog has subjected its station license to discipline under
18 Health and Safety Code section 44072.2, subdivision (a), in that on or about August 26, 2010,
19 regarding the 1995 Chevrolet Impala, it violated sections of that Code, as follows:

20 a. **Section 44012, subdivision (a):** Respondent Orangevale Smog failed to determine
21 that all emission control devices and systems required by law were installed and functioning
22 correctly in accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondent Orangevale Smog failed to perform
24 emission control tests on that vehicle in accordance with procedures prescribed by the
25 department.

26 c. **Section 44015, subdivision (b):** Respondent Orangevale Smog issued electronic
27 Certificate of Compliance No. NW431311 without properly testing and inspecting the vehicle to
28 determine if it was in compliance with section 44012 of that Code.

1 d. **Section 44059:** Respondent Orangevale Smog willfully made false entries for
2 electronic Certificate of Compliance No. NW431311 by certifying that the vehicle had been
3 inspected as required when, in fact, it had not.

4 **SIXTH CAUSE FOR DISCIPLINE**

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

6 21. Respondent Orangevale Smog has subjected its station license to discipline under
7 Health and Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2010,
8 regarding the 1995 Chevrolet Impala, it violated sections of the California Code of Regulations,
9 title 16, as follows:

10 a. **Section 3340.24, subdivision (c):** Respondent Orangevale Smog falsely or
11 fraudulently issued electronic Certificate of Compliance No. NW431311 without performing a
12 bona fide inspection of the emission control devices and systems on that vehicle as required by
13 Health and Safety Code section 44012.

14 b. **Section 3340.35, subdivision (c):** Respondent Orangevale Smog issued electronic
15 Certificate of Compliance No. NW431311 even though that vehicle had not been inspected in
16 accordance with section 3340.42 of that Code.

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

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 22. Respondent Orangevale Smog has subjected its station license to discipline under
22 Health and Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2010,
23 regarding the 1995 Chevrolet Impala, it committed acts involving dishonesty, fraud or deceit
24 whereby another was injured by issuing electronic Certificate of Compliance No. NW431311 for
25 that vehicle without performing a bona fide inspection of the emission control devices and system
26 on the vehicle, thereby depriving the People of the State of California of the protection afforded
27 by the Motor Vehicle Inspection Program.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 23. Respondent Hemmer has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (a), in that on or about August 26, 2010, regarding
5 the 1995 Chevrolet Impala, he violated sections of that Code, as follows:

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

9 b. **Section 44012, subdivision (f):** Respondent Hemmer failed to perform emission
10 control tests on that vehicle in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent Hemmer failed to perform tests of the emission control
12 devices and systems on that vehicle in accordance with section 44012 of that Code.

13 d. **Section 44059:** Respondent Hemmer willfully made false entries for electronic
14 Certificate of Compliance No. NW431311 by certifying that the vehicle had been inspected as
15 required when, in fact, it had not.

16 **NINTH CAUSE FOR DISCIPLINE**

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

18 24. Respondent Hemmer has subjected his technician license to discipline under Health
19 and Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2010, regarding
20 the 1995 Chevrolet Impala, he violated sections of the California Code of Regulations, title 16, as
21 follows:

22 a. **Section 3340.24, subdivision (c):** Respondent Hemmer falsely or fraudulently issued
23 electronic Certificate of Compliance No. NW431311 without performing a bona fide inspection
24 of the emission control devices and systems on that vehicle as required by Health and Safety
25 Code section 44012.

26 b. **Section 3340.30, subdivision (a):** Respondent Hemmer failed to inspect and test that
27 vehicle in accordance with Health and Safety Code section 44012.
28

1 c. **Section 3340.41, subdivision (c):** Respondent Hemmer entered false information
2 into the Emission Inspection System for electronic Certificate of Compliance No. NW431311 by
3 entering "Pass" for the visual inspection of the PCV system when, in fact, the vehicle could not
4 pass the visual inspection because the vehicle's PCV system was missing.

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

7 **TENTH CAUSE FOR DISCIPLINE**

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

9 25. Respondent Hemmer has subjected his technician license to discipline under Health
10 and Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2010, regarding
11 the 1995 Chevrolet Impala, he committed acts involving dishonesty, fraud or deceit whereby
12 another was injured by issuing electronic Certificate of Compliance No. NW431311 without
13 performing a bona fide inspection of the emission control devices and systems on that vehicle,
14 thereby depriving the People of the State of California of the protection afforded by the Motor
15 Vehicle Inspection Program.

16 **PRIOR CITATIONS**

17 26. To determine the degree of penalty, if any, to be imposed upon Respondents
18 Orangevale Smog and Hemmer, Complainant alleges as follows:

19 a. On June 29, 2009, the Bureau issued Citation No. C09-1432 to Respondent
20 Orangevale Smog against its registration and station licenses for violations of Health and Safety
21 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
22 control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35,
23 subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent
24 Orangevale Smog issued a certificate of compliance to a Bureau vehicle with a missing fuel
25 evaporative storage canister. The Bureau assessed a civil penalty of \$500. Respondent
26 Orangevale Smog complied with this citation on September 3, 2009.

27 b. On September 28, 2009, the Bureau issued Citation No. C2010-0256 to Respondent
28 Orangevale Smog against its registration and station licenses for violations of Health and Safety

1 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
2 control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of
3 compliance to a vehicle improperly tested). Respondent Orangevale Smog issued a certificate of
4 compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a civil penalty
5 of \$1,000. Respondent Orangevale Smog complied with this citation on December 17, 2009.

6 c. On June 8, 2010, the Bureau issued Citation No. C2010-1251 to Respondent
7 Orangevale Smog against its registration and station licenses for violations of Health and Safety
8 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
9 control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of
10 compliance to a vehicle improperly tested). Respondent Orangevale Smog issued a certificate of
11 compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a civil penalty
12 of \$2,500. Respondent Orangevale Smog appealed this citation on August 20, 2010, and the
13 matter is currently pending.

14 d. On June 29, 2009, the Bureau issued Citation No. M09-1433 to Respondent Hemmer
15 against his technician license for violations of Health and Safety Code section 44032, (qualified
16 technicians shall perform tests of emission control systems and devices in accordance with
17 section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”) section
18 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
19 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
20 3340.42). Respondent Hemmer issued a certificate of compliance to a Bureau vehicle with a
21 missing fuel evaporative storage canister. Respondent Hemmer was required to attend an 8-hour
22 training course. Respondent Hemmer complied with this citation on September 17, 2009.

23 **OTHER MATTERS**

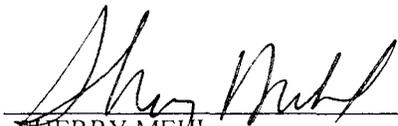
24 27. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
25 or permanently or refuse to validate, the registrations for all places of business operated in this
26 state by Orangevale Smog, upon a finding that it has, or is, engaged in a course of repeated and
27 willful violations of the laws and regulations pertaining to an automotive repair dealer.

28

1 7. Ordering Orangevale Smog and Benjamin Judah Hemmer to pay the Bureau of
2 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3; and,

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

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6 DATED: 7/6/11


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

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