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

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| In the Matter of the Accusation Against:<br><br>**CROWN TEST ONLY**<br>**170 North Arrowhead, Unit B**<br>**Rialto, CA 92376**<br>**ALFRED MARTIN ESCOBAR, OWNER**<br>**Automotive Repair Dealer Registration No. ARD 257299**<br>**Smog Check Test Only Station License No. TC 257299**<br><br>**and**<br><br>**MICHAEL BRYAN KIRK**<br>**13110 Riesling Drive**<br>**Rancho Cucamonga, CA 91739**<br>**Advanced Emissions Specialist Technician License No. EA 630465**<br><br>**and**<br><br>**MARK NAGY SAAD HABIB**<br>**7817 Celeste Avenue**<br>**Fontana, CA 92336**<br>**Advanced Emissions Specialist Technician License No. EA 630833**<br><br>Respondents. | 79/11-22<br>Case No.<br><br>**ACCUSATION**<br><br>**SMOG CHECK** |

Complainant alleges:

## PARTIES

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.

**Automotive Repair Dealer Registration**

2. On or about February 10, 2009, the Bureau issued Automotive Repair Dealer Registration Number ARD 257299 ("registration") to Alfred Martin Escobar ("Respondent Crown") doing business as Crown Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2010, unless renewed.

**Smog Check Test Only Station License**

3. On or about February 26, 2009, the Bureau issued Smog Check Test Only Station License Number TC 257299 ("station license") to Respondent Crown. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2011, unless renewed.

**Advanced Emission Specialist Technician License**

4. On or about September 12, 2008, the Bureau issued Advanced Emission Specialist Technician License Number EA 630465 ("technician license") to Michael Bryan Kirk. The technician license was in full force and effect at all times relevant to the charges brought herein and expired on June 30, 2010.

**Advanced Emission Specialist Technician License**

5. On or about February 18, 2009, the Bureau issued Advanced Emission Specialist Technician License Number EA 630833 ("technician license") to Mark Nagy Saad Habib. The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

## STATUTORY PROVISIONS

6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation, the registration of an automotive repair dealer for any of the following acts or omissions

related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

(4) Any other conduct which constitutes fraud.

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

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

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

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

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

10. Section 44072.2 of the Health and Safety Code 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.

11. 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.

12. Section 44072.8 of the Health and Safety Code states:

"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

13. 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.

## SURVEILLANCE OPERATION – JUNE 26, 2009

14. On or about June 26, 2009, the Bureau performed a videotaped surveillance at Respondent Crown's facility. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1413 hours and 1548 hours, Respondent Habib, using the personal access code of Respondent Kirk, performed three (3) smog inspections that resulted in the issuance of electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent performed the smog inspections using the clean piping method[1] by using the tail pipe emissions

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

of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

**Table 1**

| Date and Test Times | Vehicle Certified | Vehicle Actually Tested | Certificate Issued | Details |
|---|---|---|---|---|
| 6/26/2009 1413 hours to 1419 hours | 1999 BMW 5 series | Dodge Neon | WB202840C | Respondent Habib performed test using Respondent Kirk's access code |
| 6/26/2009 1427 hours to 1434 hours | 2002 Acura RSX | Dodge Neon | WB202841C | Respondent Habib performed test using Respondent Kirk's access code |
| 6/26/2009 1540 hours to 1548 hours | 2001 Saturn L300 | Dodge Neon | WB202843C | Respondent Habib performed test using Respondent Kirk's access code |

## FIRST CAUSE FOR DISCIPLINE

**(Misleading Statements)**

15. Respondent Crown has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about June 26, 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.

## SECOND CAUSE FOR DISCIPLINE

**(Fraud)**

16. Respondent Crown has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about June 26, 2009, he committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## THIRD CAUSE FOR DISCIPLINE

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

17. Respondent Crown has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about June 26, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Crown failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b):** Respondent Crown issued electronic certificates of compliance without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

d. **Section 44059:** Respondent Crown willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

## FOURTH CAUSE FOR DISCIPLINE

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

18. Respondent Crown has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about June 26, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

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

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

## FIFTH CAUSE FOR DISCIPLINE

**(Dishonesty, Fraud or Deceit)**

19. Respondent Crown subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about June 26, 2009, regarding the vehicles set forth in Table 1, above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and system on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## SIXTH CAUSE FOR DISCIPLINE

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

20. Respondent Habib has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about June 26, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Habib failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44032:** Respondent Habib failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code, in that the vehicle had been clean piped.

d. **Section 44059:** Respondent Habib willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

## SEVENTH CAUSE FOR DISCIPLINE

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

21. Respondent Habib has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about June 26, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.30, subdivision (a):** Respondent Habib failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.

c. **Section 3340.41, subdivision (c):** Respondent Habib entered false information into the Emission Inspection System ("EIS") for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified.

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

## EIGHTH CAUSE FOR DISCIPLINE

**(Dishonesty, Fraud or Deceit)**

22. Respondent Habib has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about June 26, 2009, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles,

thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## NINTH CAUSE FOR DISCIPLINE

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

23. Respondent Kirk has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about June 26, 2009, he violated California Code of Regulations, title 16, section 3340.41, subdivision (b) by allowing Respondent Habib to use Kirk's personal access code to perform the inspections set forth in Table 1, above.

## SURVEILLANCE OPERATION – JULY 21, 2009

24. On or about July 21, 2009, the Bureau performed a second videotaped surveillance at Respondent Crown's facility. The surveillance operation and information obtained from the Bureau's VID revealed that between 1200 hours and 1248 hours, Respondent Habib, using the personal access code of Respondent Kirk, performed three (3) smog inspections that resulted in the issuance of electronic certificates of compliance for the vehicles set forth in Table 2, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Habib performed the smog inspections using the clean piping method by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

**Table 2**

| Date and Test Times | Vehicle Certified | Vehicle Actually Tested | Certificate Issued | Details |
|---|---|---|---|---|
| 7/21/2009 1200 hours to 1207 hours | 2001 GMC C1500 Yukon | 2000 Toyota Corolla | NM221009C | Respondent Habib performed test using Respondent Kirk's access code |
| 7/21/2009 1216 hours to 1220 hours | 1996 Acura 2.5 TL | 2000 Toyota Corolla | NM221010C | Respondent Habib performed test using Respondent Kirk's access code |

| | | | | |
|---|---|---|---|---|
| 7/21/2009 1240 hours to 1248 hours | 2003 Chevrolet Monte Carlo | 2000 Toyota Corolla | NM221011C | Respondent Habib performed test using Respondent Kirk's access code |

## TENTH CAUSE FOR DISCIPLINE

**(Misleading Statements)**

25. Respondent Crown has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about July 21, 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 to the vehicles set forth in Table 2, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

## ELEVENTH CAUSE FOR DISCIPLINE

**(Fraud)**

26. Respondent Crown has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about July 21, 2009, he committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 2, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## TWELFTH CAUSE FOR DISCIPLINE

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

27. Respondent Crown has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 21, 2009, regarding the vehicles set forth in Table 2, above, he violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Crown failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b):** Respondent Crown issued electronic certificates of compliance without properly testing and inspecting those vehicles to determine if they were in compliance with section 44012 of that Code.

d. **Section 44059:** Respondent Crown willfully made false entries for electronic certificates of compliance, by certifying that those vehicles had been inspected as required when, in fact, they had not.

## THIRTEENTH CAUSE FOR DISCIPLINE

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

28. Respondent Crown has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about July 21, 2009, regarding the vehicles set forth in Table 2, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

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

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

## FOURTEENTH CAUSE FOR DISCIPLINE

**(Dishonesty, Fraud or Deceit)**

29. Respondent Crown has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 21, 2009, regarding the vehicles set forth in Table 2, above, he committed acts involving dishonesty, fraud or deceit

whereby another was injured by issuing electronic certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## FIFTEENTH CAUSE FOR DISCIPLINE

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

30. Respondent Habib has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 21, 2009, regarding the vehicles set forth in Table 2, above, he violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Habib failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44032:** Respondent Habib failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code, in that the vehicles had been clean piped.

d. **Section 44059:** Respondent Habib willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

## SIXTEENTH CAUSE FOR DISCIPLINE

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

31. Respondent Habib has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about July 21, 2009, regarding the vehicles set forth in Table 2, above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Habib falsely or fraudulently issued the electronic certificates of compliance without performing bona fide inspections of the

emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.

b. **Section 3340.30, subdivision (a):** Respondent Habib failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.

c. **Section 3340.41, subdivision (c):** Respondent Habib entered false information into the EIS for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified.

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

## SEVENTEENTH CAUSE FOR DISCIPLINE

**(Dishonesty, Fraud or Deceit)**

32. Respondent Habib has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 21, 2009, regarding the vehicles set forth in Table 2, above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## EIGHTEENTH CAUSE FOR DISCIPLINE

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

33. Respondent Kirk has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about July 21, 2009, he violated California Code of Regulations, title 16, section 3340.41, subdivision (b) by allowing Respondent Habib to use Kirk's personal access code to perform the inspections set forth in Table 2, above.

## SURVEILLANCE OPERATION – SEPTEMBER 2, 2009

34. On or about September 2, 2009, the Bureau performed a third videotaped surveillance at Respondent Crown's facility. The surveillance operation and information obtained from the Bureau's VID revealed that between 2010 hours and 2056 hours, Respondent

Kirk performed four (4) smog inspections that resulted in the issuance of electronic certificates of compliance for the vehicles set forth in Table 3, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Kirk performed the smog inspections using the clean piping method by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

**Table 3**

| Date and Test Times | Vehicle Certified | Vehicle Actually Tested | Certificate Issued |
|---|---|---|---|
| 9/2/2009 2010 hours to 2017 hours | 1992 Chevrolet C1500 | Chevrolet S10 | WD147116C |
| 9/2/2009 2025 hours to 2036 hours | 2001 Nissan Pathfinder | Honda Accord | WD147117C |
| 9/2/2009 2040 hours to 2046 hours | 1991 Honda Accord | Chevrolet S10 | WD147118C |
| 9/2/2009 2050 hours To 2056 hours | 1987 Toyota pickup | Chevrolet S10 | WD147119C |

## NINETEENTH CAUSE FOR DISCIPLINE

**(Misleading Statements)**

35. Respondent Crown has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about September 2, 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 3, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

## TWENTIETH CAUSE FOR DISCIPLINE

**(Fraud)**

36. Respondent Crown has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about September 2, 2009, he committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 3, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## TWENTY-FIRST CAUSE FOR DISCIPLINE

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

37. Respondent Crown has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about September 2, 2009, regarding the vehicles set forth in Table 3, above, he violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Crown failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b):** Respondent Crown issued electronic certificates of compliance without properly testing and inspecting those vehicles to determine if they were in compliance with section 44012 of that Code.

d. **Section 44059:** Respondent Crown willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

## TWENTY-SECOND CAUSE FOR DISCIPLINE

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

38. Respondent Crown has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about September 2, 2009, regarding

the vehicles set forth in Table 3, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

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

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

## TWENTY-THIRD CAUSE FOR DISCIPLINE

**(Dishonesty, Fraud or Deceit)**

39. Respondent Crown subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about September 2, 2009, regarding the vehicles set forth in Table 3, above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and system on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## TWENTY-FOURTH CAUSE FOR DISCIPLINE

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

40. Respondent Kirk has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about September 2, 2009, regarding the vehicles set forth in Table 3, above, he violated sections of that Code, as follows:

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

b. **Section 44012, subdivision (f)**: Respondent Kirk failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44032:** Respondent Kirk failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code, in that the vehicle had been clean piped.

d. **Section 44059:** Respondent Kirk willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

## TWENTY-FIFTH CAUSE FOR DISCIPLINE

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

41. Respondent Kirk has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about September 2, 2009, regarding the vehicles set forth in Table 3, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.30, subdivision (a):** Respondent Kirk failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.

c. **Section 3340.41, subdivision (c):** Respondent Kirk entered false information into the EIS for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified.

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

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## TWENTY-SIXTH CAUSE FOR DISCIPLINE

**(Dishonesty, Fraud or Deceit)**

42. Respondent Kirk has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about September 2, 2009, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 3, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## OTHER MATTERS

43. Under Code section 9884.7, subdivision (c), the director may deny, suspend, revoke, or place on probation, the registrations for all places of business operated in this state by Alfred Martin Escobar, doing business as Crown Test Only, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

44. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 257299, issued to Alfred Martin Escobar, doing business as Crown Test Only, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

45. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 630465, issued to Michael Bryan Kirk, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

46. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 630833, issued to Mark Nagy Saad Habib, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

## PRAYER

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

1. Suspend, revoke, or place on probation Automotive Repair Dealer Registration Number ARD 257299, issued to Alfred Martin Escobar, doing business as Crown Test Only;

2. Suspend, revoke, or place on probation any other automotive repair dealer registration issued in the name of Alfred Martin Escobar;

3. Revoking or suspending Smog Check Test Only Station License Number TC 257299, issued to Alfred Martin Escobar, doing business as Crown Test Only;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Alfred Martin Escobar;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630465, issued to Michael Bryan Kirk;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Michael Bryan Kirk;

7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630833, issued to Mark Nagy Saad Habib;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Mark Nagy Saad Habib;

9. Ordering Alfred Martin Escobar, Michael Bryan Kirk, and Mark Nagy Saad Habib to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

10. Taking such other and further action as deemed necessary and proper.

DATED: 9/16/10

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

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