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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:

13 **AAA SPEEDY SMOG**  
590 Saratoga Avenue  
San Jose, CA 95129  
14 **MILUS SOLAKOV, OWNER**  
Automotive Repair Dealer Registration  
15 No. 229060  
Smog Check Test Only Station License  
16 No. TC 229060

17 and

18 **ANGEL LUIS BERNABE**  
5471 Don Juan Circle  
19 San Jose, CA 95123  
Advanced Emission Specialist Technician  
20 License No. EA 631056

21 Respondents.

Case No. 79111-74

ACCUSATION  
SMOG CHECK

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.

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1 the specific place of business which has violated any of the provisions of this chapter.  
2 This violation, or action by the director, shall not affect in any manner the right of the  
3 automotive repair dealer to operate his or her other places of business.

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

9  
10 6. Code section 118, subdivision (b) states:

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

19  
20 7. Code section 9884.9 states, in pertinent part:

21 (a) The automotive repair dealer shall give to the customer a written  
22 estimated price for labor and parts necessary for a specific job. No work shall be done  
23 and no charges shall accrue before authorization to proceed is obtained from the  
24 customer. No charge shall be made for work done or parts supplied in excess of the  
25 estimated price without the oral or written consent of the customer that shall be  
26 obtained at some time after it is determined that the estimated price is insufficient and  
27 before the work not estimated is done or the parts not estimated are supplied. Written  
28 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  
director thereof, does any of the following:

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

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

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

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

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

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

27     ///

28     ///

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 – MAY 15, 2010**

7 15. On or about May 15, 2010, a Bureau undercover operator drove a Bureau-  
8 documented 1996 Honda Accord to Respondent AAA's facility and requested a smog inspection.  
9 The vehicle could not pass the visual portion of a smog inspection because the vehicle's fuel  
10 evaporative emissions canister (EVAP) assembly was missing. The operator signed a work order  
11 but was not provided with an estimate prior to the smog inspection. Respondent Bernabe  
12 performed the smog inspection and issued electronic Certificate of Compliance No. NU021941  
13 for that vehicle. The operator paid \$68 for the smog inspection and received a copy of an invoice  
14 dated May 15, 2010 and the Vehicle Inspection Report ("VIR").

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Misleading Statements)**

17 16. Respondent AAA has subjected his registration to discipline under Code section  
18 9884.7, subdivision (a)(1), in that on or about May 15, 2010, he made statements which he knew  
19 or which by exercise of reasonable care he should have known were untrue or misleading when  
20 he issued electronic Certificate of Compliance No. NU021941 for the 1996 Honda Accord,  
21 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,  
22 the vehicle's EVAP assembly was missing.

23 **SECOND CAUSE FOR DISCIPLINE**

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

25 17. Respondent AAA has subjected his registration to discipline under Code section  
26 9884,7, subdivision (a)(3), in that on or about May 15, 2010, Respondent failed to provide the  
27 operator with a copy of the work order as soon as she signed the document.  
28



1 d. **Section 44059:** Respondent AAA willfully made false entries for electronic  
2 Certificate of Compliance No. NU021941, certifying that the vehicle had been inspected as  
3 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 AAA has subjected his station license to discipline under Health and  
7 Safety Code section 44072.2, subdivision (c), in that on or about May 15, 2010, regarding the  
8 1996 Honda Accord, he violated sections of the California Code of Regulations, title 16, as  
9 follows:

10 a. **Section 3340.24, subdivision (c):** Respondent AAA falsely or fraudulently issued  
11 electronic Certificate of Compliance No. NU021941 without performing a bona fide inspection of  
12 the emission control devices and systems on that vehicle as required by Health and Safety Code  
13 section 44012.

14 b. **Section 3340.35, subdivision (c):** Respondent AAA issued electronic Certificate of  
15 Compliance No. NU021941 even though that vehicle had not been inspected in accordance with  
16 section 3340.42 of that Code.

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

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 22. Respondent AAA subjected his station license to discipline under Health and Safety  
22 Code section 44072.2, subdivision (d), in that on or about May 15, 2010, regarding the 1996  
23 Honda Accord, he committed acts involving dishonesty, fraud or deceit whereby another was  
24 injured by issuing electronic Certificate of Compliance No. NU021941 for that vehicle without  
25 performing a bona fide inspection of the emission control devices and system on the vehicle,  
26 thereby depriving the People of the State of California of the protection afforded by the Motor  
27 Vehicle Inspection Program.

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 23. Respondent Bernabe has subjected his technician license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (a), in that on or about May 15, 2010, regarding the  
5 1996 Honda Accord, he violated sections of that Code, as follows:

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

11 c. **Section 44032:** Respondent Bernabe 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 Bernabe willfully made false entries for electronic  
14 Certificate of Compliance No. NU021941, 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 Bernabe has subjected his technician license to discipline under Health  
19 and Safety Code section 44072.2, subdivision (c), in that on or about May 15, 2010, regarding the  
20 1996 Honda Accord, he violated sections of the California Code of Regulations, title 16, as  
21 follows:

22 a. **Section 3340.24, subdivision (c):** Respondent Bernabe falsely or fraudulently issued  
23 electronic Certificate of Compliance No. NU021941 without performing a bona fide inspection of  
24 the emission control devices and systems on that vehicle as required by Health and Safety Code  
25 section 44012.

26 b. **Section 3340.30, subdivision (a):** Respondent Bernabe 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 Bernabe entered false information into  
2 the Emission Inspection System for electronic Certificate of Compliance No. NU021941 by  
3 entering "Pass" for the visual inspection of the fuel evaporative controls when, in fact, the vehicle  
4 could not pass the visual inspection because the vehicle's EVAP assembly was missing.

5 d. **Section 3340.42:** Respondent Bernabe 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 Bernabe has subjected his technician license to discipline under Health  
10 and Safety Code section 44072.2, subdivision (d), in that on or about May 15, 2010, regarding the  
11 1996 Honda Accord, he committed acts involving dishonesty, fraud or deceit whereby another  
12 was injured by issuing electronic Certificate of Compliance No. NU021941 without performing a  
13 bona fide inspection of the emission control devices and systems on that vehicle, thereby  
14 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
15 Inspection Program.

16 **PRIOR CITATIONS**

17 26. To determine the degree of penalty, if any, to be imposed upon Respondent,  
18 Complainant alleges as follows:

19 a. On October 12, 2005, the Bureau issued Citation No. C06-0202 to Respondent AAA  
20 against his registration and station licenses for violations of Health and Safety Code section  
21 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
22 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)  
23 (issuing a certificate of compliance to a vehicle improperly tested). Respondent AAA issued a  
24 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the  
25 manufacturer's specifications. The Bureau assessed a civil penalty of \$500. Respondent AAA  
26 complied with this citation on November 9, 2005.

27 b. On February 13, 2009, the Bureau issued Citation No. C09-0935 to Respondent AAA  
28 against his registration and station licenses for violations of Health and Safety Code section

1 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
2 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
3 improperly tested). Respondent AAA issued a certificate of compliance to a Bureau vehicle with  
4 a missing positive crankcase ventilation valve. The Bureau assessed a civil penalty of \$500.  
5 Respondent AAA complied with this citation on March 20, 2009.

6 c. On October 8, 2009, the Bureau issued Citation No. C2010-0343 to Respondent AAA  
7 against his registration and station licenses for violations of Health and Safety Code section  
8 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
9 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
10 improperly tested). Respondent AAA issued a certificate of compliance to a Bureau vehicle with  
11 the ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a  
12 civil penalty of \$1,000. Respondent AAA complied with this citation on November 9, 2009.

13 d. On January 26, 2010, the Bureau issued Citation No. C2010-0727 to Respondent  
14 AAA against his registration and station licenses for violations of Health and Safety Code section  
15 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
16 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
17 improperly tested). Respondent AAA issued a certificate of compliance to a Bureau vehicle with  
18 a missing pulsed secondary air injection/air suction system. The Bureau assessed a civil penalty  
19 of \$2,000. Respondent AAA complied with this citation on February 18, 2010.

20 e. On October 8, 2009, the Bureau issued Citation No. M2010-0344 to Respondent  
21 Bernabe against his technician license for violations of Health and Safety Code section 44032,  
22 (qualified technicians shall perform tests of emission control systems and devices in accordance  
23 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")  
24 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
25 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
26 3340.42). Respondent Bernabe issued a certificate of compliance to a Bureau vehicle with the  
27 ignition timing adjusted beyond the manufacturer's specifications. Respondent Bernabe was  
28

1 required to attend an 8-hour training course. Respondent Bernabe complied with this citation on  
2 November 11, 2009.

3 f. On January 26, 2010, the Bureau issued Citation No. M2010-0728 to Respondent  
4 Bernabe against his technician license for violations of Health and Safety Code section 44032,  
5 (qualified technicians shall perform tests of emission control systems and devices in accordance  
6 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")  
7 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
8 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
9 3340.42). Respondent Bernabe issued a certificate of compliance to a Bureau vehicle with a  
10 missing pulsed secondary air injection/air suction system. Respondent Bernabe was required to  
11 attend a 16-hour training course. Respondent complied with this citation on March 17, 2010.

#### 12 OTHER MATTERS

13 27. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
14 or permanently or refuse to validate, the registrations for all places of business operated in this  
15 state by to Milus K. Solakov doing business as AAA Speedy Smog, upon a finding that he has, or  
16 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to  
17 an automotive repair dealer.

18 28. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station  
19 License Number TC 229060, issued to Milus K. Solakov doing business as AAA Speedy Smog,  
20 is revoked or suspended, any additional license issued under this chapter in the name of said  
21 licensee may be likewise revoked or suspended by the director.

22 29. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist  
23 Technician License Number EA 631056, issued to Angel Luis Bernabe, is revoked or suspended,  
24 any additional license issued under this chapter in the name of said licensee may be likewise  
25 revoked or suspended by the director.

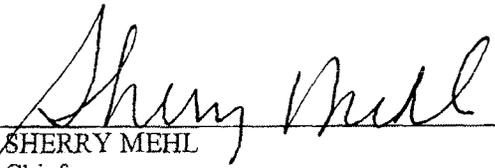
#### 26 PRAYER

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

- 1           1.    Revoking, suspending, or placing on probation Automotive Repair Dealer  
2 Registration Number ARD 229060, issued to Milus K. Solakov doing business as AAA Speedy  
3 Smog;
- 4           2.    Revoking, suspending, or placing on probation any additional automotive repair  
5 dealer registration issued to Milus K. Solakov doing business as AAA Speedy Smog;
- 6           3     Revoking or suspending Smog Check Test Only Station License Number TC 229060,  
7 issued to Milus K. Solakov doing business as AAA Speedy Smog;
- 8           4.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
9 and Safety Code in the name of Milus K. Solakov doing business as AAA Speedy Smog;
- 10          5.    Revoking or suspending Advanced Emission Specialist Technician License Number  
11 EA 631056, issued to Angel Luis Bernabe;
- 12          6.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
13 and Safety Code in the name of Angel Luis Bernabe;
- 14          7.    Ordering Milus K. Solakov and Angel Luis Bernabe to pay the Bureau of Automotive  
15 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to  
16 Business and Professions Code section 125.3; and,
- 17          8.    Taking such other and further action as deemed necessary and proper.

18  
19  
20  
21 DATED: \_\_\_\_\_

3/7/11

  
SHERRY MEHL

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

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