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

In the Matter of the Accusation Against:

**LOS ANGELES SMOG CENTER;
ESTHER PARK, AKA ESTHER
HUEJUNG PARK**
5552 W. Manchester Ave., Unit B
Los Angeles, CA 90045

Automotive Repair Dealer Registration No.
ARD 261816
Smog Check, Test Only, Station License No.
TC 261816

and

MARTIN CHEN
5336 Virginia Avenue
Los Angeles, CA 90029

Advanced Emission Specialist Technician
License No. EA 631325

Respondents.

Case No. 79/11-82

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

1 FINDINGS OF FACT

2 1. On or about May 4, 2011, Complainant Sherry Mehl, in her former official capacity
3 as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed
4 Accusation No. 79/11-82 against Los Angeles Smog Center; Esther Park, aka Esther Huejung
5 Park (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

6 **Automotive Repair Dealer Registration**

7 2. On or about May 4, 2010, the Bureau issued Automotive Repair Dealer Registration
8 Number ARD 261816 (ARD registration) to Esther Park, also known as Esther Huejung Park,
9 doing business as Los Angeles Smog Center (Respondent Los Angeles Smog/Park). The ARD
10 registration, which was in full force and effect at all times relevant to the charges brought herein,
11 was suspended by the Bureau on May 13, 2011. This lapse in licensure, however, pursuant to
12 Business and Professions Code section 118(b) does not deprive the Bureau of its authority to
13 institute or continue this disciplinary proceeding.

14 **Smog Check Test Only Station License**

15 3. On or about May 18, 2010, the Bureau issued Smog Check Test Only Station License
16 Number TC 261816 (station license) to Respondent Los Angeles Smog/Park. The station license,
17 which was in full force and effect at all times relevant to the charges brought herein, was
18 suspended by the Bureau on May 13, 2011. This lapse in licensure, however, pursuant to
19 Business and Professions Code section 118(b) does not deprive the Bureau of its authority to
20 institute or continue this disciplinary proceeding.

21 **Advanced Emission Specialist Technician License**

22 4. On or about September 14, 2009, the Bureau issued Advanced Emission Specialist
23 Technician License Number EA 631325 (technician license) to Martin Chen (Respondent Chen).
24 The technician license, which was in full force and effect at all times relevant to the charges
25 brought herein, was suspended by the Bureau on May 13, 2011. This lapse in licensure, however,
26 pursuant to Business and Professions Code section 118(b) does not deprive the Bureau of its
27 authority to institute or continue this disciplinary proceeding.

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1 5. On or about May 17, 2011, Respondents were served by Certified and First Class
2 Mail copies of the Accusation No. 79/11-82, Statement to Respondent, Notice of Defense,
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
4 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
5 Code section 136, is required to be reported and maintained with the Bureau. Respondents'
6 addresses of record were and are:

7 5552 W. Manchester Ave., Unit B
8 Los Angeles, CA 90045 (as to Respondent Los Angeles Smog/Park);

9 and

10 5336 Virginia Avenue
11 Los Angeles, CA 90029 (as to Respondent Chen).

12 6. Service of the Accusation was effective as a matter of law under the provisions of
13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
14 124.

15 7. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts
18 of the accusation not expressly admitted. Failure to file a notice of defense shall
19 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
20 may nevertheless grant a hearing.

21 8. Both Respondents failed to file a Notice of Defense within 15 days after service upon
22 them of the Accusation, and therefore waived their respective rights to a hearing on the merits of
23 Accusation No. 79/11-82.

24 9. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent.

29 10. Pursuant to its authority under Government Code section 11520, the Director after
30 having reviewed the proof of service dated May 17, 2011 signed by Thurman Peden, and the
31 corresponding USPS Track & Confirm Notices evidencing the successful delivery thereof, finds

1 Respondents are in default. The Director will take action without further hearing and, based on
2 Accusation No. 79/11-82, proof of service and on the Affidavit of Bureau Representative Raul
3 Galvan finds that the allegations in Accusation are true.

4 11. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$25,211.49.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Los Angeles Smog/Park has
9 subjected its ARD registration and station license to discipline; and Respondent Chen has
10 subjected his technician license to discipline.

11 2. The agency has jurisdiction to adjudicate this case by default.

12 3. The Director of Consumer Affairs is authorized to revoke Respondent Los Angeles
13 Smog/Park's ARD registration and station license; and Respondent Chen's technician license,
14 based upon the following violations alleged in the Accusation, which are supported by the
15 evidence contained in the affidavit of Bureau Representative Paul Gavin in this case:

16 a. Misleading Statements [pursuant to Code section 9884.7(a)(1)]; Fraud [pursuant to
17 Code section 9884.7(a)(4)]; Violation of the Motor Vehicle Inspection Program [pursuant to
18 Health and Safety Code section 44072.2(a), for violating the following sections of that Code:
19 44012(a) and (f), 44014, 44015(b), 44032 and 44059]; Violations of Regulations Pursuant to the
20 Motor Vehicle Inspection Program [pursuant to Health and Safety Code section 44072.2(c), for
21 violating the following sections of the California Code of Regulations, title 16: 3340.24(c),
22 3340.30(a), 3340.35(c), 3340.41(c) and 3340.42]; and Dishonesty, Fraud or Deceit [pursuant to
23 Health and Safety Code section 44072.2(d)].

24 ORDER

25 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 261816 and
26 Smog Check Test Only Station License Number TC 261816 issued to Respondent Los Angeles
27 Smog/Park; and Advanced Emission Specialist Technician License Number EA 631325 issued to
28 Respondent Chen are all revoked.

1 Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a
2 written motion requesting that the Decision be vacated and stating the grounds relied on within
3 seven (7) days after service of the Decision on Respondents. The motion should be sent to the
4 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 N. Mather Blvd., Rancho
5 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing
6 on a showing of good cause, as defined in the statute.

7 This Decision shall become effective on 12/20/12.

8 It is so ORDERED November 2, 2012

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11 _____
12 DOREATHEA JOHNSON
13 Deputy Director, Legal Affairs
14 Department of Consumer Affairs
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25 default decision_LIC.rtf
DOJ Matter ID:LA2011501350

26 Attachment:
27 Exhibit A: Accusation
28

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY
Deputy Attorney General
4 State Bar No. 131800
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-2558
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10 Case No. 79/11-82

11 In the Matter of the Accusation Against:
12 **LOS ANGELES SMOG CENTER**
5552 W. Manchester Ave., Unit B
13 Los Angeles, CA 90045
ESTHER PARK, AKA
14 **ESTHER HUEJUNG PARK, OWNER**
Automotive Repair Dealer Registration
15 No. ARD 261816
Smog Check Test Only Station License
16 No. TC 261816
17 and
18 **MARTIN CHEN**
5336 Virginia Avenue
19 Los Angeles, CA 90029
Advanced Emission Specialist Technician
20 License No. EA 631325
21 Respondents.

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 This violation, or action by the director, shall not affect in any manner the right of the
2 automotive repair dealer to operate his or her other places of business.

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

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

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

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

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

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

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

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

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

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
3 this article, any additional license issued under this chapter in the name of the
licensee may be likewise revoked or suspended by the director.

4 **COST RECOVERY**

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

9 **SURVEILLANCE OPERATION – OCTOBER 26, 2010**

10 13. On or about October 26, 2010, the Bureau performed a surveillance operation at
11 Respondent Los Angeles Smog's facility. The surveillance operation and information obtained
12 from the Bureau's Vehicle Information Database ("VID") revealed that between 0949 hours and
13 1706 hours, Respondent Chen performed eleven (11) smog inspections that resulted in the
14 issuance of electronic certificates of compliance for the vehicles set forth in Table 1, below,
15 certifying that he had tested and inspected those vehicles and that the vehicles were in compliance
16 with applicable laws and regulations. In fact, Respondent Chen performed the smog inspections
17 using the clean piping method¹ by using the tail pipe emissions of vehicles other than the
18 vehicles being certified in order to issue the electronic certificates of compliance. The vehicles
19 certified were not in the test bay at the time of the smog inspections.

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

Table 1

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Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
10/26/2010 0949 hours to 1010 hours	1985 Chevrolet pickup C50, License Plate No. 2N43988	1998 Honda, License Plate No. 4GKR583	WP250431
10/26/2010 1019 hours to 1034 hours	2000 Honda Accord, License Plate No. 5URW785	2002 Pontiac, License Plate No. 6AIV928	WP250432
10/26/2010 1045 hours to 1104 hours	2000 Toyota Avalon, License Plate No. 4NDK092	2002 Mazda, License Plate No. 6LWH101	WP250433
10/26/2010 1110 hours to 1136 hours	2000 Chevrolet Camaro License Plate No. 6BUY868	2002 Pontiac, License Plate No. 6AIV928	WP250434
10/26/2010 1152 hours to 1210 hours	2004 Chevrolet Malibu, License Plate No. 5RIL275	2002 Pontiac, License Plate No. 6AIV928	WP250435
10/26/2010 1337 hours to 1400 hours	1996 Dodge Ram 2500, License Plate No. 7H15625	2002 Pontiac, License Plate No. 6AIV928	WP250436
10/26/2010 1417 hours to 1448 hours	1992 Honda Accord, License Plate No. 6BTC624	1989 Nissan, License Plate No. 4ZWF646	WP250437
10/26/2010 1455 hours to 1521 hours	1996 Chevrolet Caprice, License Plate No. 3TTJ204	2002 Pontiac, License Plate No. 6AIV928	WP250438
10/26/2010 1536 hours to 1555 hours	1997 Infinity I30, License Plate No. 4SJB767	2002 Pontiac, License Plate No. 6AIV928	WP250439
10/26/2010 1604 hours to 1623 hours	1996 Saturn SL, License Plate No. 3PKP765	2002 Pontiac, License Plate No. 6AIV928	WP250440
10/26/2010 1640 hours to 1706 hours	1985 Chevrolet C20, License Plate No. 6Z12230	1989 Nissan, License Plate No. 4ZWF646	WP250441

1 FIRST CAUSE FOR DISCIPLINE

2 (Misleading Statements)

3 14. Respondent Los Angeles Smog has subjected her registration to discipline under
4 Code section 9884.7, subdivision (a)(1), in that on or about October 26, 2010, she made
5 statements which she knew or which by exercise of reasonable care she should have known were
6 untrue or misleading when she issued electronic certificates of compliance for the vehicles set
7 forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws
8 and regulations when, in fact, those vehicles had been clean piped.

9 SECOND CAUSE FOR DISCIPLINE

10 (Fraud)

11 15. Respondent Los Angeles Smog has subjected her registration to discipline under
12 Code section 9884.7, subdivision (a)(4), in that on or about October 26, 2010, she committed acts
13 which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in
14 Table 1, above, without performing bona fide inspections of the emission control devices and
15 systems on those vehicles, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program.

17 THIRD CAUSE FOR DISCIPLINE

18 (Violation of the Motor Vehicle Inspection Program)

19 16. Respondent Los Angeles Smog has subjected her station license to discipline under
20 Health and Safety Code section 44072.2, subdivision (a), in that on or about October 26, 2010,
21 regarding the vehicles set forth in Table 1, above, she violated sections of that Code, as follows:

22 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
23 performed on those vehicles in accordance with procedures prescribed by the department.

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

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1 c. **Section 44059:** Respondent Los Angeles Smog willfully made false entries for the
2 electronic certificates of compliance by certifying that those vehicles had been inspected as
3 required when, in fact, they had not.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 17. Respondent Los Angeles Smog has subjected her station license to discipline under
7 Health and Safety Code section 44072.2, subdivision (c), in that on or about October 26, 2010,
8 regarding the vehicles set forth in Table 1, above, she violated sections of the California Code of
9 Regulations, title 16, as follows:

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

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

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

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 18. Respondent Los Angeles Smog has subjected her station license to discipline under
22 Health and Safety Code section 44072.2, subdivision (d), in that on or about October 26, 2010,
23 regarding the vehicles set forth in Table 1, above, she committed acts involving dishonesty, fraud
24 or deceit whereby another was injured by issuing electronic certificates of compliance for those
25 vehicles without performing bona fide inspections of the emission control devices and system on
26 those vehicles, 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 d. Section 3340.42: Respondent Chen failed to conduct the required smog tests and
2 inspections on those vehicles in accordance with the Bureau's specifications.

3 **EIGHTH CAUSE FOR DISCIPLINE**

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

5 21. Respondent Chen has subjected his technician license to discipline under Health and
6 Safety Code section 44072.2, subdivision (d), in that on or about October 26, 2010, he committed
7 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
8 certificates of compliance for the vehicles set forth in Table 1, above, without performing bona
9 fide inspections of the emission control devices and systems on those vehicles, thereby depriving
10 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
11 Program.

12 **OTHER MATTERS**

13 22. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
14 or may invalidate temporarily or permanently, the registrations for all places of business operated
15 in this state by Esther Park, also known as Esther Huehung Park doing business as Los Angeles
16 Smog Center upon a finding that she has, or is, engaged in a course of repeated and willful
17 violations of the laws and regulations pertaining to an automotive repair dealer.

18 23. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
19 License Number TC 261816, issued to Esther Park, also known as Esther Huehung Park doing
20 business as Los Angeles Smog Center, is revoked or suspended, any additional license issued
21 under this chapter in the name of said licensee may be likewise revoked or suspended by the
22 director.

23 24. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
24 Technician License Number EA 631325, issued to Martin Chen, is revoked or suspended, any
25 additional license issued under this chapter in the name of said licensee may be likewise revoked
26 or suspended by the director.

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1 PRAYER

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

4 1. Revoking, suspending, or placing on probation, Automotive Repair Dealer
5 Registration Number ARD 261816, issued to Esther Park, also known as Esther Huehung Park
6 doing business as Los Angeles Smog Center;

7 2. Revoking, suspending, or placing on probation, any other automotive repair dealer
8 registration issued to Esther Park, also known as Esther Huehung Park;

9 3. Revoking or suspending Smog Check Test Only Station License Number TC 261816,
10 issued to Esther Park, also known as Esther Huehung Park doing business as Los Angeles Smog
11 Center;

12 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
13 and Safety Code in the name of Esther Park, also known as Esther Huejung Park;

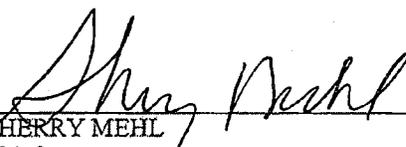
14 5. Revoking or suspending Advanced Emission Specialist Technician License Number
15 EA 631325, issued to Martin Chen;

16 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Martin Chen;

18 7. Ordering Esther Park, also known as Esther Huejung Park and Martin Chen to pay the
19 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
20 case, pursuant to Business and Professions Code section 125.3; and,

21 8. Taking such other and further action as deemed necessary and proper.
22

23 DATED: 5/4/11

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

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