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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. 79/12-74

13 **JOSE'S SMOG TEST ONLY**
14 **JOSE FLORES RODRIGUEZ, OWNER**
9727 Telfair Ave
15 Pacoima, CA 91331
Mailing Address:
16 7357 Sepulveda Boulevard, #36
Van Nuys, CA 91331
17 **Automotive Repair Dealer Reg. No. ARD 263543**
Smog Check, Test Only, Station License No.
TC 263543

ACCUSATION

(Smog Check)

18 **and**

19 **PEDRO LUIS RIVERA**
10965 Glenoaks Boulevard, Spc. 117
20 **Pacoima, CA 91331**
Advanced Emission Specialist Technician
21 **License No. EA 632642**

22 Respondents.

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24 Complainant alleges:

25 **PARTIES**

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

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1 **Jose's Smog Test Only; Jose Flores Rodriguez, Owner**

2 2. On or about October 28, 2010, the Director of Consumer Affairs ("Director") issued
3 Automotive Repair Dealer Registration Number ARD 263543 ("registration") to Jose Flores
4 Rodriguez ("Respondent Rodriguez"), owner of Jose's Smog Test Only. Respondent's
5 registration expired on October 31, 2011, and was canceled on November 17, 2011.

6 3. On or about October 29, 2010, the Director issued Smog Check, Test Only, Station
7 License Number TC 263543 ("smog check station license") to Respondent Rodriguez.
8 Respondent's smog check station license expired on October 31, 2011, and was canceled on
9 November 17, 2011.

10 **Pedro Luis Rivera**

11 4. On or about November 3, 2010, the Director issued Advanced Emission Specialist
12 Technician License Number EA 632642 ("technician license") to Pedro Luis Rivera ("Respondent
13 Rivera"). Respondent's technician license will expire on December 31, 2012, unless renewed.

14 **JURISDICTION**

15 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
16 the Director may revoke an automotive repair dealer registration.

17 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
18 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
19 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
20 invalidating (suspending or revoking) a registration.

21 7. Bus. & Prof. Code section 118, subdivision (b), states:

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

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1 8. Health and Safety Code (“Health & Saf. Code”) section 44002 provides, in pertinent
2 part, that the Director has all the powers and authority granted under the Automotive Repair Act
3 for enforcing the Motor Vehicle Inspection Program.

4 9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
5 suspension of a license by operation of law, or by order or decision of the Director of Consumer
6 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
7 of jurisdiction to proceed with disciplinary action.

8 **STATUTORY PROVISIONS**

9 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

10 (a) The director, where the automotive repair dealer cannot show there
11 was a bona fide error, may deny, suspend, revoke or place on probation the
12 registration of an automotive repair dealer for any of the following acts or omissions
13 related to the conduct of the business of the automotive repair dealer, which are done
14 by the automotive repair dealer or any automotive technician, employee, partner,
15 officer, or member of the automotive repair dealer.

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

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20 (4) Any other conduct that constitutes fraud.

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

27 11. Code section 22, subdivision (a), states:

28 “Board” as used in any provision of this Code, refers to the board in
which the administration of the provision is vested, and unless otherwise expressly
provided, shall include “bureau,” “commission,” “committee,” “department,”
“division,” “examining committee,” “program,” and “agency.”

12. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes
“registration” and “certificate.”

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1 13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

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

13 14. Health & Saf. Code section 44072.10 states, in pertinent part:

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15 (c) The department shall revoke the license of any smog check technician
16 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
17 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
18 the following:

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20 (4) Intentional or willful violation of this chapter or any regulation,
21 standard, or procedure of the department implementing this chapter . . .

22 15. Health & Saf. Code section 44072.8 states that when a license has been revoked or
23 suspended following a hearing under this article, any additional license issued under this chapter
24 in the name of the licensee may be likewise revoked or suspended by the director.

25 **COST RECOVERY**

26 16. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
27 the administrative law judge to direct a licentiate found to have committed a violation or
28 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
and enforcement of the case.

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1 **FACTUAL BACKGROUND**

2 17. In or about May 2011, the Bureau initiated an investigation of Respondent
3 Rodriguez's smog check station based on a review of information from the Bureau's Vehicle
4 Information Database ("VID"), which indicated that Respondent Rodriguez or his employees may
5 be engaging in fraudulent smog check inspections.

6 18. On May 31, 2011, a representative of the Bureau conducted a detailed review of the
7 VID data for all smog inspections performed at Respondent Rodriguez's facility for the period of
8 April 29, 2011, through May 12, 2011. The representative found that the VID recorded the same
9 diagnostic trouble code ("code") during the OBD II test¹ on the 19 vehicles identified below
10 regardless of the make or model of the vehicle. The representative obtained information
11 indicating that the codes were not applicable to the vehicles. The VID data also showed that
12 Respondent Rivera performed the smog inspections on all 19 vehicles. The Bureau concluded
13 that Respondent Rivera performed the inspections on the vehicles using a method known as
14 "clean plugging",² resulting in the issuance of fraudulent certificates of compliance for the
15 vehicles.

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Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 04/29/2011 0955 - 1006	1997 Honda Odyssey; License No. 3UPY635	OC613248C
2. 04/29/2011 1042 - 1059	1999 Nissan Frontier pickup; License No. 8H09692	OC613250C

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21 ¹ The On Board Diagnostic, generation II (OBD II), functional test is an automated
22 function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to
23 connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC)
24 which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically
retrieves information from the vehicle's on-board computer about the status of the readiness
indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
II functional test, it will fail the overall inspection.

25 ² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

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Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
3. 04/29/2011 1149 -1202	2000 Chevrolet Cavalier; VIN No. 3G1JC1244YS157481	OC679952C
4. 05/03/2011 1337 - 1400	1997 Nissan Quest; License No. 3VWE051	OC679973C
5. 05/03/2011 1740 - 1750	2000 Ford Expedition; License No. 5DUU536	OC679976C
6. 05/03/2011 1800 - 1809	1998 Ford Windstar; License No. 4CAB919	OC679977C
7. 05/04/2011 0835 - 0846	1998 Dodge Caravan; License No. 4ALR791	OC679978C
8. 05/04/2011 1122 - 1130	1998 Honda Accord; License No. 6GLC698	OC679982C
9. 05/04/2011 1231 - 1240	2002 Toyota Corolla; License No. 5BYU868	OC679984C
10. 05/05/2011 1103 - 1117	1997 Ford F150 pickup; License No. 6M44369	OC679989C
11. 05/07/2011 0928 - 0940	2003 Toyota Corolla; License No. 5CUJ597	OC781901C
12. 05/09/2011 1641 - 1657	2000 Chevrolet Express van; License No. 8T29588	OC781912C
13. 05/09/2011 1750 - 1800	2001 Nissan Altima; License No. 4RNT953	OC781915C
14. 05/10/2011 1105 - 1116	1997 Infiniti J30; License No. 3VLW465	OC781918C
15. 05/11/2011 1240 - 1255	2001 Dodge Durango; License No. 4TSX163	OC781925C
16. 05/11/2011 1527 - 1535	1998 Ford Expedition; License No. 4BPV027	None; vehicle failed inspection
17. 05/11/2011 1554 - 1605	1997 Nissan Quest; License No. 6ESB024	OC781929C
18. 05/11/2011 1622 - 1633	1999 Pontiac Grand Am; License No. 6MPF774	OC781930C
19. 05/12/2011 1517 - 1534	1998 Ford Expedition; License No. 4BPV027	OC781941C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

19. Respondent Rodriguez's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Rodriguez's smog check technician, Respondent Rivera, certified that vehicles 1 through 15 and 17 through 19, identified in paragraph 18 above, had

1 passed inspection and were in compliance with applicable laws and regulations. In fact,
2 Respondent Rivera conducted the inspections on the vehicles using clean-plugging methods in
3 that he substituted or used a different vehicle (s) during the OBD II functional tests in order to
4 issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as
5 required by Health & Saf. Code section 44012.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 20. Respondent Rodriguez's registration is subject to disciplinary action pursuant to Bus.
9 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute
10 fraud by issuing electronic smog certificates of compliance for vehicles 1 through 15 and 17
11 through 19, identified in paragraph 18 above, without performing bona fide inspections of the
12 emission control devices and systems on the vehicles, thereby depriving the People of the State of
13 California of the protection afforded by the Motor Vehicle Inspection Program.

14 **THIRD CAUSE FOR DISCIPLINE**

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

16 21. Respondent Rodriguez's smog check station license is subject to disciplinary action
17 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
18 comply with the following sections of that Code:

19 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
20 performed on vehicles 1 through 19, identified in paragraph 18 above, in accordance with
21 procedures prescribed by the department.

22 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
23 vehicles 1 through 15 and 17 through 19, identified in paragraph 18 above, without ensuring that
24 the vehicles were properly tested and inspected to determine if they were in compliance with
25 Health & Saf. Code section 44012.

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1 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
2 of said licensee may be likewise revoked or suspended by the director.

3 29. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
4 Technician License Number EA 632642, issued to Respondent Pedro Luis Rivera, is revoked or
5 suspended, any additional license issued under this chapter in the name of said licensee may be
6 likewise revoked or suspended by the director.

7 **PRAYER**

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

10 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
11 263543, issued to Jose Flores Rodriguez, owner of Jose's Smog Test Only;

12 2. Revoking or suspending any other automotive repair dealer registration issued to Jose
13 Flores Rodriguez;

14 3. Revoking or suspending Smog Check, Test Only, Station License Number
15 TC 263543, issued to Jose Flores Rodriguez, owner of Jose's Smog Test Only;

16 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Jose Flores Rodriguez;

18 5. Revoking or suspending Advanced Emission Specialist Technician License Number
19 EA 632642, issued to Pedro Luis Rivera;

20 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Pedro Luis Rivera;

22 7. Ordering Respondents Jose Flores Rodriguez, owner of Jose's Smog Test Only, and
23 Pedro Luis Rivera, to pay the Director of Consumer Affairs the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3;

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

DATED: 2/3/12


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

LA2012601684