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

10
11 In the Matter of the Accusation Against:

Case No. 79/12-06

12 **ADVANCED SMOG TEST ONLY CENTER**
9614 East Garvey, Unit C
13 El Monte, CA 91733
FERNANDO JACINTO, OWNER
14 **Automotive Repair Dealer Registration No.**
ARD 254132
15 **Smog Check Test Only Station License No.**
TC 254132

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

16 and

17
18 **PETER ALFONSO**
25344 Pennsylvania Ave, #1
Lomita, CA 90717
19 **Advanced Emission Specialist Technician**
License No. EA 632902,

20 and

21
22 **GHEVOND VAHE AVEDIAN**
1940 Hilldale Drive
La Canada, CA 91011
23 **Advanced Emission Specialist Technician**
License No. EA 631628

24 Respondents.

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27 Complainant alleges:
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PARTIES

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

4 **Automotive Repair Dealer Registration**

5 2. On or about March 19, 2008, the Bureau issued Automotive Repair Dealer
6 Registration Number ARD 254132 (“registration”) to Fernando Jacinto doing business as
7 Advanced Smog Test Only Center (“Respondent Advanced Smog”). The registration was in full
8 force and effect at all times relevant to the charges brought herein and will expire on February 29,
9 2012, unless renewed.

10 **Smog Check Test Only Station License**

11 3. On or about March 20, 2008, the Bureau issued Smog Check Test Only Station
12 License Number TC 254132 (“station license”) to Respondent Advanced Smog. The station
13 license was in full force and effect at all times relevant to the charges brought herein and will
14 expire on February 29, 2012, unless renewed.

15 **Advanced Emission Specialist Technician License**

16 4. On or about March 2, 2011, the Bureau issued Advanced Emission Specialist
17 Technician License Number EA 632902 (“technician license”) to Peter Alfonso (“Respondent
18 Alfonso”). The technician license was in full force and effect at all times relevant to the charges
19 brought herein and will expire on March 31, 2013, unless renewed.

20 **Advanced Emission Specialist Technician License**

21 5. On or about January 7, 2010, the Bureau issued Advanced Emission Specialist
22 Technician License Number EA 631628 (“technician license”) to Ghevond Vahe Avedian
23 (“Respondent Avedian”). The technician license was in full force and effect at all times relevant
24 to the charges brought herein and will expire on January 31, 2012, unless renewed.

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1 10. Section 44072.2 of the Health and Safety Code 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.

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

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

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

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

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

20 COST RECOVERY

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

25 **SURVEILLANCE OPERATION – MAY 17, 2011**

26 14. On or about May 17, 2011, the Bureau performed a video-taped surveillance at
27 Respondent Advanced Smog's facility. The surveillance operation and information obtained
28 from the Bureau's Vehicle Information Database ("VID") revealed that between 1109 hours and
1707 hours, Respondent Alfonso and Respondent Avedian, with the assistance of Fernando
Jacinto, who is not a licensed smog technician, performed five (5) smog inspections that resulted
in the issuance of electronic certificates of compliance for the vehicles set forth in Table 1, below,
certifying that they had tested and inspected those vehicles and that the vehicles were in

1 compliance with applicable laws and regulations. In fact, Respondent Alfonso and Respondent
 2 Avedian performed the smog inspections using the clean piping method¹ by using the tail pipe
 3 emissions of vehicles other than the vehicles being certified in order to issue the electronic
 4 certificates of compliance. The vehicles certified were not in the test bay at the time of the smog
 5 inspections.

6 **Table 1**

7 Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2009 Toyota Yaris, VIN No. JTD8T903491300436	1999 Ford Escort, License No. 5GBU744	WV409899C	Respondent Alfonso and Jacinto performed inspection.
2 5/17/2011 1109 hours to 1126 hours	2009 Toyota Yaris VIN No. JTDBT903491300436	1999 Ford Escort, License No. 5GBU744	WV471602C	Respondent Alfonso and Jacinto performed the inspection a second time. The VIN # was entered into the EIS incorrectly for the first test.
3 5/17/2011 1339 hours to 1344 hours	2000 Hyundai Accent License No. 4LVM098	1999 Ford Escort, License No. 5GBU744	WV471603C	Respondent Alfonso and Jacinto performed the inspection.
3 5/17/2011 1347 hours to 1353 hours	1995 Acura Integra, License No. 3LCW263	1999 Mazda 626, License No. 4FXV803 or 1999 Ford Escort, License No. 5GBU744	WV471605C	Respondent Avedian and Jacinto performed the inspection.
4 5/17/2011 1625 hours to 1641 hours	1991 Mercedes 300SL, License No. 5ROZ487	2001 Toyota Sienna, License No. 4MRP772	WV471606C	Respondent Avedian and Jacinto performed the inspection.
5 5/17/2011 1651 hours To 1707 hours				

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.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 15. Respondent Advanced Smog has subjected his registration to discipline under Code
4 section 9884.7, subdivision (a)(1), in that on or about May 17, 2011, he made statements which
5 he knew or which by exercise of reasonable care he should have known were untrue or
6 misleading when he issued electronic certificates of compliance for the vehicles set forth in Table
7 1, above, certifying that those vehicles were in compliance with applicable laws and regulations
8 when, in fact, the vehicles had been clean piped.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 16. Respondent Advanced Smog has subjected his registration to discipline under Code
12 section 9884.7, subdivision (a)(4), in that on or about May 17, 2011, he committed acts which
13 constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table
14 1, above, without performing bona fide inspections of the emission control devices and systems
15 on those vehicles, thereby depriving the People of the State of California of the protection
16 afforded by the Motor Vehicle Inspection Program.

17 **THIRD CAUSE FOR DISCIPLINE**

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

19 17. Respondent Advanced Smog has subjected his station license to discipline under
20 Health and Safety Code section 44072.2, subdivision (a), in that on or about May 17, 2011,
21 regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

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

25 b. **Section 44012, subdivision (f):** Respondent Advanced Smog failed to perform
26 emission control tests on those vehicles in accordance with procedures prescribed by the
27 department.
28

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

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

7 **FOURTH CAUSE FOR DISCIPLINE**

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

9 18. Respondent Advanced Smog has subjected his station license to discipline under
10 Health and Safety Code section 44072.2, subdivision (c), in that on or about May 17, 2011,
11 regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of
12 Regulations, title 16, as follows:

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

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

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

22 **FIFTH CAUSE FOR DISCIPLINE**

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

24 19. Respondent Advanced Smog subjected his station license to discipline under Health
25 and Safety Code section 44072.2, subdivision (d), in that on or about May 17, 2011, regarding the
26 vehicles set forth in Table 1, above, he committed acts involving dishonesty, fraud or deceit
27 whereby another was injured by issuing electronic certificates of compliance for those vehicles
28 without performing bona fide inspections of the emission control devices and system on those

1 vehicles, thereby depriving the People of the State of California of the protection afforded by the
2 Motor Vehicle Inspection Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 20. Respondent Alfonso has subjected his technician license to discipline under Health
6 and Safety Code section 44072.2, subdivision (a), in that on or about May 17, 2011, regarding
7 vehicles 1, 2, and 3, set forth in Table 1, above, he violated sections of that Code, as follows:

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

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

13 c. **Section 44014:** Respondent Alfonso allowed Fernando Jacinto, who is not a licensed
14 smog technician, to participate in the smog inspections of those vehicles.

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

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

21 **SEVENTH CAUSE FOR DISCIPLINE**

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

23 21. Respondent Alfonso has subjected his technician license to discipline under Health
24 and Safety Code section 44072.2, subdivision (c), in that on or about May 17, 2011, regarding
25 vehicles 1, 2, and 3, set forth in Table 1, above, he violated sections of the California Code of
26 Regulations, title 16, as follows:

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

1 control devices and systems on those vehicles as required by Health and Safety Code section
2 44012.

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

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

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

10 **EIGHTH CAUSE FOR DISCIPLINE**

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

12 22. Respondent Alfonso has subjected his technician license to discipline under Health
13 and Safety Code section 44072.2, subdivision (d), in that on or about May 17, 2011, he
14 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
15 electronic certificates of compliance for vehicles 1, 2, and 3, set forth in Table 1, above, without
16 performing bona fide inspections of the emission control devices and systems on those vehicles,
17 thereby depriving the People of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Aiding and Abetting an Unlicensed Person)**

21 23. Respondent Alfonso has subjected his technician license to discipline under Health
22 and Safety Code section 44072.2, subdivision (f), in that on or about May 17, 2011, he aided and
23 abetted Fernando Jacinto, who is not licensed as a smog technician, to evade the provisions of this
24 chapter by allowing Jacinto to participate in the performance of the smog inspections on vehicles
25 1, 2, and 3, set forth in Table 1, above.

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1 that he has, or is, engaged in a course of repeated and willful violations of the laws and
2 regulations pertaining to an automotive repair dealer.

3 29. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
4 License Number TC 254132, issued to Fernando Jacinto doing business as Advanced Smog Test
5 Only Center, is revoked or suspended, any additional license issued under this chapter in the
6 name of said licensee may be likewise revoked or suspended by the director.

7 30. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
8 Technician License Number EA 632902, issued to Peter Alfonso, is revoked or suspended, any
9 additional license issued under this chapter in the name of said licensee may be likewise revoked
10 or suspended by the director.

11 31. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
12 Technician License Number EA 631628, issued to Ghevond Vahe Avedian, is revoked or
13 suspended, any additional license issued under this chapter in the name of said licensee may be
14 likewise revoked or suspended by the director.

15 **PRAYER**

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

18 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
19 Registration Number ARD 254132, issued to Fernando Jacinto doing business as Advanced
20 Smog Test Only Center;

21 2. Revoking, suspending, or placing on probation any other automotive repair dealer
22 registration issued in the name Fernando Jacinto;

23 3. Revoking or suspending Smog Check Test Only Station License Number TC 254132,
24 issued to Fernando Jacinto doing business as Advanced Smog Test Only Center;

25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
26 & Safety Code in the name of Fernando Jacinto;

27 5. Revoking or suspending Advanced Emission Specialist Technician License Number
28 EA 632902, issued to Peter Alfonso;

1 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 & Safety Code in the name of Peter Alfonso;

3 7. Revoking or suspending Advanced Emission Specialist Technician License Number
4 EA 631628, issued to Ghevond Vahe Avedian;

5 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 & Safety Code in the name of Ghevond Vahe Avedian;

7 9. Ordering Fernando Jacinto, Peter Alfonso, and Ghevond Vahe Avedian to pay the
8 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
9 case, pursuant to Business and Professions Code section 125.3; and,

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

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13 DATED: _____

7/20/11



14 SHERRY MEHL
15 Chief
16 Bureau of Automotive Repair
17 Department of Consumer Affairs
18 State of California
19 *Complainant*

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