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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:	Case No. 79/12-148
7TH STREET TEST ONLY **2331 South 7th Street #7** **San Jose, CA 95112** **SHAELYN YO LE, OWNER** **Automotive Repair Dealer Registration No. ARD 263240** **Smog Check Test Only Station License No. TC 263240,** **PABLO SERGIO NEVAREZ** **1387 Canrelian Drive, #2** **San Jose, CA 95122** **Advanced Emission Specialist Technician License No. EA 631779,** **MONTEREY TEST ONLY** **2845 Monterey Road, #21** **San Jose, CA 95111** **SHAELYN YO LE, OWNER** **Automotive Repair Dealer Registration No. ARD 263325** **Smog Check Test Only Station License No. TC 263325**	**ACCUSATION** **SMOG CHECK**

SHAELYN YO LE
2076 Lucretia Avenue, Apt. 205
San Jose, CA 95122
Advanced Emission Specialist Technician
License No. EA 633490

Respondents.

Complainant alleges:

PARTIES

1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

Automotive Repair Dealer Registration 7th Street Test Only

2. On or about September 9, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 263240 ("registration") to Shaelyn Yo Le ("Respondent 7th Street"), doing business as 7th Street Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

Smog Check Test Only Station License 7th Street Test Only

3. On or about September 13, 2010, the Bureau issued Smog Check Test Only Station License Number TC 263240 ("station license") to Respondent 7th Street. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

Advanced Emission Specialist Technician License

4. On or about February 22, 2010, the Bureau issued Advanced Emission Specialist Technician License Number EA 631779 ("technician license") to Pablo Sergio Nevarez ("Respondent Nevarez"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2014, unless renewed.

Automotive Repair Dealer Registration Monterey Test Only

5. On or about September 21, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 263325 ("registration") to Shaelyn Yo Le, doing business as Monterey

Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and was due to expire on September 30, 2011; however, on August 31, 2011, the registration was cancelled.

Smog Check Test Only Station License Monterey Test Only

6. On or about September 22, 2010, the Bureau issued Smog Check Test Only Station License Number TC 263325 ("station license") to Shaelyn Yo Le, doing business as Monterey Test Only. The station license was in full force and effect at all times relevant to the charges brought herein and was due to expire on September 30, 2011; however, the registration was cancelled on August 31, 2011.

Advanced Emission Specialist Technician License

7. On or about August 10, 2011, the Bureau issued Advanced Emission Specialist Technician License Number EA 633490 to Shaelyn Yo Le. The Advanced Emission Specialist Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2014, unless renewed.

STATUTORY PROVISIONS

8. 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.
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> (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 that constitutes fraud.
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> (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 suspend, revoke, or place on probation 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.

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(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation 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.

9. Section 118, subdivision (b) of the Business and Professions Code states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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

16. 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 – AUGUST 2, 2011

17. On or about August 2, 2011, the Bureau performed a video-taped surveillance at Respondent 7th Street's facility, located at 2331 South 7th Street, #7, San Jose, California. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1631 hours and 1744 hours, Respondent Nevarez, performed two (2) 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 compliance with applicable laws and regulations. In fact, Respondent Nevarez performed the smog inspections using the clean piping method[1] 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.

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[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.

Table 1

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
1 8/2/2011 1631 hours to 1644 hours	1982 Buick Regal, License No. 1EZM573	1988 Ford E150 Econoline Van	OE898296
2 8/2/2011 1738 hours to 1744 hours	1992 Ford Explorer, License No. 4YJS643	Unknown	OE898300

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

18. Respondent 7th Street has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 2, 2011, she made statements which she knew or which by exercise of reasonable care she should have known were untrue or misleading when she 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)

19. Respondent 7th Street has subjected her registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about August 2, 2011, she 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.

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THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

20. Respondent 7th Street has subjected her station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 2, 2011, regarding the vehicles set forth in Table 1, above, she violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent 7th Street 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 7th Street failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent 7th Street 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.

FOURTH CAUSE FOR DISCIPLINE

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

21. Respondent 7th Street has subjected her station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 2, 2011, regarding the vehicles set forth in Table 1, above, she violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent 7th Street issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

b. **Section 3340.42**: Respondent 7th Street 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)

22. Respondent 7th Street subjected her station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 2, 2011, regarding the

vehicles set forth in Table 1, above, she 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 systems 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)

23. Respondent Nevarez has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 2, 2011, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

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

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

SEVENTH CAUSE FOR DISCIPLINE

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

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

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

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

c. **Section 3340.42**: Respondent Nevarez 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)

25. Respondent Nevarez has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 2, 2011, 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.

PRIOR CITATION

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

a. On April 28, 2011, the Bureau issued Citation No. M2011-1274 to Respondent Nevarez against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent Nevarez issued a certificate of compliance to a Bureau vehicle with a missing PCV valve. Respondent Nevarez was required to attend an 8-hour training course. Respondent Nevarez appealed this citation on May 23, 2011. The matter is currently pending.

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OTHER MATTERS

27. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Shaelyn Yo Le, doing business 7th Street Test Only, upon a finding that she has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer, including but not limited to Automotive Repair Dealer Registration Number ARD 263325, issued to Shaelyn Yo Le, doing business as Monterey Test Only.

28. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 263240, issued to Shaelyn Yo Le, doing business as 7th Street 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 including but not limited to Smog Check Test Only Station License Number TC 263325, issued to Shaelyn Yo Le, doing business as Monterey Test Only, and Advanced Emission Specialist Technician License Number EA 631779, issued to Shaelyn Yo Le.

29. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 631779, issued to Pablo Sergio Nevarez, 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. Revoking, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 263240, issued to Shaelyn Yo Le, doing business as 7th Street Test Only;

2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Shaelyn Yo Le, including Automotive Repair Dealer Registration Number ARD 263325, issued to Shaelyn Yo Le, doing business as Monterey Test Only;

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3. Revoking or suspending Smog Check Test Only Station License Number TC 263240, issued to Shaelyn Yo Le, doing business as 7th Street Test Only;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Shaelyn Yo Le, including but not limited to Smog Check Test Only Station License Number TC 263325, issued to Shaelyn Yo Le, doing business as Monterey Test Only, and Advanced Emission Specialist Technician License Number EA 633490, issued to Shaelyn Yo Le;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 631779, issued to Pablo Sergio Nevarez;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Pablo Sergio Nevarez;

7. Ordering Shaelyn Yo Le and Pablo Sergio Nevarez 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,

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

DATED: May 25, 2012

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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