

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 MARETTA WARD
Deputy Attorney General
4 State Bar No. 176470
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1384
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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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. 79/12-148

13 **7TH STREET TEST ONLY**
2331 South 7th Street #7
14 San Jose, CA 95112
SHAELYN YO LE, OWNER
Automotive Repair Dealer Registration No.
ARD 263240
15 Smog Check Test Only Station License No.
TC 263240,

FIRST AMENDED ACCUSATION
SMOG CHECK

17 **PABLO SERGIO NEVAREZ**
3710 El Camino Real, Unit K
18 Santa Clara, CA 95051
Advanced Emission Specialist Technician
19 License No. EA 631779 (to be redesignated
upon renewal as EO 631779 and/or EI
20 631779)

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22 **MONTEREY TEST ONLY**
2845 Monterey Road, #21
23 San Jose, CA 95111
SHAELYN YO LE, OWNER
24 Automotive Repair Dealer Registration No.
ARD 263325
25 Smog Check Test Only Station License No.
26 TC 263325

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SHAELYN YO LE
2076 Lucretia Avenue, Apt. 205
San Jose, CA 95122
Advanced Emission Specialist Technician
License No. EA 633490 (to be redesignated
upon renewal as EO 633490 and/or EI
633490)

Respondents.

Complainant alleges:

PARTIES

1. Patrick Dorais (“Complainant”) brings this Accusation solely in his official capacity as the Acting 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 expired on September 30, 2012.

Smog Check Test Only Station License 7th Street Test Only

3. On or about January 19, 2011, 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 expired on September 30, 2012.

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

1 to the charges brought herein and will expire on January 31, 2014, unless renewed. Upon renewal
2 of the license, the license will be redesignated as EO 631779 and/or EI 631779.¹

3 **Automotive Repair Dealer Registration Monterey Test Only**

4 5. On or about September 21, 2010, the Bureau issued Automotive Repair Dealer
5 Registration Number ARD 263325 ("registration") to Shaelyn Yo Le, doing business as Monterey
6 Test Only. The registration was in full force and effect at all times relevant to the charges
7 brought herein and was due to expire on September 30, 2011; however, on August 31, 2011, the
8 registration was cancelled.

9 **Smog Check Test Only Station License Monterey Test Only**

10 6. On or about January 19, 2011, the Bureau issued Smog Check Test Only Station
11 License Number TC 263325 ("station license") to Shaelyn Yo Le, doing business as Monterey
12 Test Only. The station license was in full force and effect at all times relevant to the charges
13 brought herein and was due to expire on September 30, 2011; however, the registration was
14 cancelled on August 31, 2011.

15 **Advanced Emission Specialist Technician License**

16 7. On or about August 10, 2011, the Bureau issued Advanced Emission Specialist
17 Technician License Number EA 633490 to Shaelyn Yo Le. The Advanced Emission Specialist
18 Technician License was in full force and effect at all times relevant to the charges brought herein
19 and will expire on January 31, 2014, unless renewed. Upon renewal of the license, the license will
20 be redesignated as EO 633490 and/or EI 633490.

21 **STATUTORY PROVISIONS**

22 8. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
23 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
24 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
25 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) License.

1 9. Section 9884.7 of the Business and Professions Code (“Code”) states, in pertinent
2 part:

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

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

12 (4) Any other conduct that constitutes fraud.

13 (b) Except as provided for in subdivision (c), if an automotive repair
14 dealer operates more than one place of business in this state, the director pursuant to
15 subdivision (a) shall only suspend, revoke, or place on probation the registration of
16 the specific place of business which has violated any of the provisions of this chapter.
17 This violation, or action by the director, shall not affect in any manner the right of the
18 automotive repair dealer to operate his or her other places of business.

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

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

26 The suspension, expiration, or forfeiture by operation of law of a license
27 issued by a board in the department, or its suspension, forfeiture, or cancellation by
28 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.

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

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

5 13. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
6 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
7 the Motor Vehicle Inspection Program.

8 14. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

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

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

COST RECOVERY

27 17. Code section 125.3 provides, in pertinent part, that a Board may request the
28 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.

1 **SURVEILLANCE OPERATION – AUGUST 2, 2011**

2 18. On or about August 2, 2011, the Bureau performed a video-taped surveillance at
3 Respondent 7th Street’s facility, located at 2331 South 7th Street, #7, San Jose, California. The
4 surveillance operation and information obtained from the Bureau’s Vehicle Information Database
5 (“VID”) revealed that between 1631 hours and 1744 hours, Respondent Nevarez, performed two
6 (2) smog inspections that resulted in the issuance of electronic certificates of compliance for the
7 vehicles set forth in Table 1, below, certifying that they had tested and inspected those vehicles
8 and that the vehicles were in compliance with applicable laws and regulations. In fact,
9 Respondent Nevarez performed the smog inspections using the clean piping method² by using the
10 tail pipe emissions of vehicles other than the vehicles being certified in order to issue the
11 electronic certificates of compliance. The vehicles certified were not in the test bay at the time of
12 the smog inspections.

13
14 **Table 1**

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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

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23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Misleading Statements)**

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26 ² “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.

1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.35, subdivision (c):** Respondent 7th Street issued electronic certificates
8 of compliance even though those vehicles had not been inspected in accordance with section
9 3340.42 of that Code.

10 b. **Section 3340.42:** Respondent 7th Street failed to conduct the required smog tests and
11 inspections on those vehicles in accordance with the Bureau's specifications.

12 **FIFTH CAUSE FOR DISCIPLINE**

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

14 23. Respondent 7th Street subjected her station license to discipline under Health and
15 Safety Code section 44072.2, subdivision (d), in that on or about August 2, 2011, regarding the
16 vehicles set forth in Table 1, above, she committed acts involving dishonesty, fraud or deceit
17 whereby another was injured by issuing electronic certificates of compliance for those vehicles
18 without performing bona fide inspections of the emission control devices and systems on those
19 vehicles, thereby depriving the People of the State of California of the protection afforded by the
20 Motor Vehicle Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**

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

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

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

1 **PRIOR CITATION**

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

4 a. On April 28, 2011, the Bureau issued Citation No. M2011-1274 to Respondent
5 Nevarez against his technician license for violations of Health and Safety Code section 44032,
6 (qualified technicians shall perform tests of emission control systems and devices in accordance
7 with section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”)
8 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
9 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
10 3340.42). Respondent Nevarez issued a certificate of compliance to a Bureau vehicle with a
11 missing PCV valve. Respondent Nevarez was required to attend an 8-hour training course.
12 Respondent Nevarez appealed this citation on May 23, 2011. The matter is currently pending.

13 **OTHER MATTERS**

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

21 29. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
22 License Number TC 263240, issued to Shaelyn Yo Le, doing business as 7th Street Test Only is
23 revoked or suspended, any additional license issued under this chapter in the name of said
24 licensee may be likewise revoked or suspended by the director including but not limited to Smog
25 Check Test Only Station License Number TC 263325, issued to Shaelyn Yo Le, doing business
26 as Monterey Test Only, and Advanced Emission Specialist Technician License Number EA
27 633490, issued to Shaelyn Yo Le (to be redesignated upon renewal as EO 633490 and/or EI
28 633490).

1 30. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
2 Technician License Number EA 631779, (to be redesignated upon renewal as EO 631779 and/or
3 EI 631779.) issued to Pablo Sergio Nevarez, is revoked or suspended, any additional license
4 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
5 the director.

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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;

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 (to redesignated upon renewal as EO 633490 and/or EI 633490).;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 631779, (to be redesignated as EO 631779 and/or EI 631779 upon renewal) 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.

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DATED: October 30, 2013



PATRICK DORAIS
Acting Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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