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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:
**NEWPORT MESA AUTO SERVICE &
SMOG, INC.;**
JEFFREY CARL BLUM,
PRESIDENT/TREASURER;
PAMELA J. BLUM, SECRETARY,
786 West 20th Street
Costa Mesa, CA 92627

**Automotive Repair Dealer Registration No.
ARD 231018**

Smog Check Station License No. RC 231018

**Lamp Station License No. LS 231018, Class
A**

**Brake Station License No. BS 231018, Class
C,**

and

**RONALD MALLEOLO, ADVANCED
EMISSION SPECIALIST TECHNICIAN,
8202 San Luis
Orange, CA 92869**

**Smog Check Repair Technician License No.
EI 149877**

Case No. 79/13-44
**DEFAULT DECISION AND ORDER
ONLY AGAINST RONALD MALLEOLO**

[Gov. Code, §11520]

1 **Smog Check Inspector License No. EO
149877**

2 **Brake Adjuster License No. BA 149877,
3 Class C**

4 **Lamp Adjuster License No. LA 149877,
5 Class A**

6 Respondents.

7 FINDINGS OF FACT

8 1. On or about January 24, 2013, Complainant John Wallauch, in his official capacity as
9 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation
10 No. 79/13-44 against Newport Mesa Auto Service & Smog, Inc., and Ronald Malleolo (Malleolo)
11 before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

12 2. On a date uncertain in 2004, the Bureau issued Smog Check Repair Technician
13 License No. EI 149877 to Malleolo. The smog check repair technician license was in full force
14 and effect at all times relevant to the charges brought herein and will expire on August 31, 2014,
15 unless renewed. On a date uncertain in 2004, the Bureau issued Smog Check Inspector License
16 No. EO 149877 to Malleolo. The smog check inspector license was in full force and effect at all
17 times relevant to the charges brought herein and will expire on August 31, 2014, unless renewed.
18 On a date uncertain in 2004, the Bureau issued Brake Adjuster License No. BA 149877, Class C
19 to Malleolo. The brake adjuster license was in full force and effect at all times relevant to the
20 charges brought herein and will expire on August 31, 2016. On a date uncertain in 2004, the
21 Bureau issued Lamp Adjuster License No. LA 149877, Class A to Malleolo. The lamp adjuster
22 license was in full force and effect at all times relevant to the charges brought herein and expired
23 on August 31, 2012.

24 3. On or about January 24, 2013, Malleolo was served by Certified and First Class Mail
25 copies of the Accusation No. 79/13-44, Statement to Respondent, Notice of Defense, Request for
26 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
27 Malleolo's address of record which, pursuant to Business and Professions Code section 136, and
28

1 title 16, California Code of Regulations, section 3303.3, is required to be reported and maintained
2 with the Bureau. Respondent's address of record was and is:

3 8202 San Luis
4 Orange, CA 92869.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. Government Code section 11506 states, in pertinent part:

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

14 6. Malleolo failed to file a Notice of Defense within 15 days after service upon him of
15 the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 79/13-44.

17 7. California Government Code section 11520 states, in pertinent part:

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

22 8. Pursuant to its authority under Government Code section 11520, the Director after
23 having reviewed the proof of service dated January 24, 2013, finds Malleolo is in default. The
24 Director will take action without further hearing and, based on Accusation, No. 79/13-44, proof
25 of service, and on the Affidavit of Bureau Representative Nicholas H Magaña, finds that the
26 allegations in Accusation are true.

27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Malleolo has subjected his Smog Check
Repair Technician License No. EI 149877; Smog Check Inspector License No. EO 149877;
Brake Adjuster License No. BA 149877, Class C; and Lamp Adjuster License No. LA 149877,
Class A to discipline.

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

2 3. The Director of Consumer Affairs is authorized to revoke Malleolo's Smog Check
3 Repair Technician License No. EI 149877; Smog Check Inspector License No. EO 149877;
4 Brake Adjuster License No. BA 149877, Class C; and Lamp Adjuster License No. LA 149877,
5 Class A based upon the following violations alleged in the Accusation which are supported by the
6 evidence contained in the affidavit of Bureau Representative Nicholas H Magaña in this case:

7 a. Malleolo's Brake Adjuster License and Lamp Adjuster License are subject to
8 disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that he committed acts
9 that constitute fraud by certifying that he inspected cars when in fact no such inspections were
10 performed on them, by issuing certificates of compliance when bona fide smog inspections had
11 not been completed.

12 b. Malleolo's Smog Check Repair Technician License and Smog Check Inspector
13 License are subject to disciplinary action under Health and Safety Code sections 44072.10 and
14 44072.2, subdivision (a), in that he failed to comply with sections 44012 and 44035 of that Code
15 as follows: he failed to perform smog inspections on vehicles in accordance with procedures
16 prescribed by the Department.

17 c. Malleolo's Smog Check Repair Technician License and Smog Check Inspector
18 License are subject to disciplinary action under Health and Safety Code sections 44072.10 and
19 44072.2, subdivision (c), in that he failed to comply with provisions of Title 16, California Code
20 of Regulations, as follows:

21 i. Section 3340.30, subdivision (a): failed to inspect and test vehicles in
22 accordance with Health & Safety Code sections 44012 and 44035, and Title 16, California Code
23 of Regulations, section 3340.42.

24 ii. Section 3340.41, subdivision (c): knowingly entered into the EIS false
25 information about the results for smog inspections for vehicles.

26 iii. Section 3340.42: failed to conduct the required smog tests on vehicles in
27 accordance with the Bureau's specifications.

28

1 d. Malleolo's Smog Check Repair Technician License and Smog Check Inspector
2 License are subject to disciplinary action under Health and Safety Code sections 44072.10 and
3 44072.2, subdivision (c)(1), and the Brake Adjuster License and Lamp Adjuster License are
4 subject to disciplinary action under Section 9889.3, subdivision (d), in that he committed
5 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of
6 compliance for vehicles without performing bona fide inspections of the emission control devices
7 and systems on them, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program.

9 e. Malleolo is subject to disciplinary action for clean-piping under section Health and
10 Safety Code section 44072.10, and Health & Safety Code, § 44072.10, subdivision (c)(1), as
11 defined in title 16, California Code of Regulations, section 3340.1, and his Brake Adjuster
12 License and Lamp Adjuster License are subject to disciplinary action under Code section 9889.3,
13 subdivision (d), in that he used a substitute exhaust emission sample of one vehicle in place of
14 other vehicles' exhaust emission samples in order to cause the EIS to issue certificates of
15 compliance for smog inspections.

16 ORDER

17 IT IS SO ORDERED that Smog Check Repair Technician License No. EI 149877; Smog
18 Check Inspector License No. EO 149877; Brake Adjuster License No. BA 149877, Class C; and
19 Lamp Adjuster License No. LA 149877, Class A, heretofore issued to Malleolo, are revoked. IT
20 IS FURTHER ORDERED that pursuant to Code section 9889.9 any additional license issued
21 under Articles 5 and 6 of Chapter 20.3 in the name of Malleolo are likewise revoked. IT IS
22 FURTHER ORDERED that pursuant to Health & Safety Code section 44072.8 any additional
23 license issued under Chapter 5 of the Health and Safety Code in the name of Malleolo is revoked.

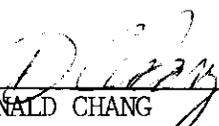
24 Pursuant to Government Code section 11520, subdivision (c), Malleolo may serve a written
25 motion requesting that the Decision be vacated and stating the grounds relied on within seven (7)
26 days after service of the Decision on Respondent. The motion should be sent to the Bureau of
27 Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova,
28

1 CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a
2 showing of good cause, as defined in the statute.

3 This Decision shall become effective on 4/2/13.

4 It is so ORDERED March 8, 2013

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DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

70686661.DOC
DOJ Matter ID:SD2013704758

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

9 **BEFORE THE**
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. 79/13-44

13
14 **NEWPORT MESA AUTO SERVICE &**
SMOG, INC.;
15 **JEFFREY CARL BLUM,**
PRESIDENT/TREASURER;
16 **PAMELA J. BLUM, SECRETARY,**
786 West 20th Street
17 Costa Mesa, CA 92627

ACCUSATION

Smog Check

18 **Automotive Repair Dealer Registration No.**
ARD 231018
19 **Smog Check Station License No. RC 231018**
20 **Lamp Station License No. LS 231018, Class**
A
21 **Brake Station License No. BS 231018, Class**
C,

22
23 and

24 **RONALD MALLEOLO, ADVANCED**
EMISSION SPECIALIST TECHNICIAN,
25 **8202 San Luis**
26 **Orange, CA 92869**
Smog Check Repair Technician License No.
27 **EI 149877**

28

1 **Smog Check Inspector License No. EO**
2 **149877**

3 **Brake Adjuster License No. BA 149877,**
4 **Class C**

5 **Lamp Adjuster License No. LA 149877,**
6 **Class A**

Respondents.

7 Complainant alleges:

8 **PARTIES**

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

11 2. **Newport Mesa.** On or about January 21, 2004, the Bureau issued Automotive Repair
12 Dealer Registration No. ARD 231018 to Respondent Newport Mesa Auto Service & Smog, Inc.;
13 Jeffrey Carl Blum, President/Treasurer; Pamela J. Blum, Secretary (Newport Mesa). The
14 registration was in full force and effect at all times relevant to the charges brought herein and
15 expired on December 31, 2012. On or about May 3, 2004, the Bureau issued Smog Check Station
16 License No. RC 231018 to Newport Mesa. The license was in full force and effect at all times
17 relevant to the charges brought herein and expired on December 31, 2012. On or about February
18 20, 2004, the Bureau issued Lamp Station License No. LS 231018, Class A to Newport Mesa.
19 The lamp station license was in full force and effect at all times relevant to the charges brought
20 herein and expired on December 31, 2012. On or about February 20, 2004, the Bureau issued
21 Brake Station License No. BS 231018, Class C to Newport Mesa. The lamp station license was
22 in full force and effect at all times relevant to the charges brought herein and expired on
23 December 31, 2012.

24 3. **Ronald Malleolo.** On a date uncertain in 2004, the Bureau issued Smog Check
25 Repair Technician License No. EI 149877 to Ronald Malleolo (Malleolo). The smog check
26 repair technician license was in full force and effect at all times relevant to the charges brought
27 herein and will expire on August 31, 2014, unless renewed. On a date uncertain in 2004, the
28 Bureau issued Smog Check Inspector License No. EO 149877 to Malleolo. The smog check

1 inspector license was in full force and effect at all times relevant to the charges brought herein
2 and will expire on August 31, 2014, unless renewed. On a date uncertain in 2004, the Bureau
3 issued Brake Adjuster License No. BA 149877, Class C to Malleolo. The brake adjuster license
4 was in full force and effect at all times relevant to the charges brought herein and will expire on
5 August 31, 2016. On a date uncertain in 2004, the Bureau issued Lamp Adjuster License No. LA
6 149877, Class A to Malleolo. The lamp adjuster license was in full force and effect at all times
7 relevant to the charges brought herein and expired on August 31, 2012.

8 JURISDICTION

9 4. This Accusation is brought before the Director of Consumer Affairs (Director) for the
10 Bureau of Automotive Repair, under the authority of the following laws.

11 5. Section 118 of the Code states:

12 "...

13 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
14 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
15 order of a court of law, or its surrender without the written consent of the board, shall not, during
16 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
17 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
18 provided by law or to enter an order suspending or revoking the license or otherwise taking
19 disciplinary action against the licensee on any such ground.

20 "...."

21 6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
22 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
23 proceeding against an automotive repair dealer or to render a decision invalidating a registration
24 temporarily or permanently.

25 7. Section 9884.20 of the Code states:

26 "All accusations against automotive repair dealers shall be filed within three years after the
27 performance of the act or omission alleged as the ground for disciplinary action, except that with
28 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,

1 the accusation may be filed within two years after the discovery, by the bureau, of the alleged
2 facts constituting the fraud or misrepresentation.”

3 8. Section 9884.22 states

4 “(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny
5 at any time any registration required by this article on any of the grounds for disciplinary action
6 provided in this article. The proceedings under this article shall be conducted in accordance with
7 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
8 Code, and the director shall have all the powers granted therein.

9 “....”

10 9. Section 9889.5 of the Code states:

11 “The director may take disciplinary action against any licensee after a hearing as provided
12 in this article by any of the following:

13 “(a) Imposing probation upon terms and conditions to be set forth by the director.

14 “(b) Suspending the license.

15 “(c) Revoking the license.”

16 10. Section 9889.7 of the Code states

17 “The expiration or suspension of a license by operation of law or by order or decision of the
18 director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
19 the director of jurisdiction to proceed with any investigation of or action or disciplinary
20 proceedings against such licensee, or to render a decision suspending or revoking such license.”

21 11. Section 9889.8 of the Code states:

22 “All accusations against licensees shall be filed within three years after the act or omission
23 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a
24 violation of subdivision (d) of Section 9889.3, the accusation may be filed within two years after
25 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation
26 prohibited by that section.”

27 ///

28 ///

1 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and
2 'agency.'

3 "(b) Whenever the regulatory program of a board that is subject to review by the Joint
4 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2
5 (commencing with Section 473), is taken over by the department, that program shall be
6 designated as a 'bureau.'"

7 18. Section 477 of the Code states:

8 As used in this division:

9 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
10 'examining committee,' 'program,' and 'agency.'

11 "(b) 'License' includes certificate, registration or other means to engage in a
12 business or profession regulated by this code."

13 19. Section 9884.7 of the Code states:

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

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

22 "...

23 "(4) Any other conduct that constitutes fraud.

24 "...

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

1 20. Section 9889.3 of the Code states:

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

4 "(a) Violates any section of the Business and Professions Code that relates to his or her
5 licensed activities.

6 "..."

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

8 "..."

9 21. Section 9889.9 of the Code states:

10 "When any license has been revoked or suspended following a hearing under the provisions
11 of [Article 7 of the Automotive Repair Act], any additional license issued under Articles 5 and 6
12 of [Chapter 20.3] in the name of the licensee may be likewise revoked or suspended by the
13 director."

14 22. Section 44072.2 of the Health and Safety Code states:

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

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

21 "..."

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

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

24 "..."

25 23. Section 44072.10 of the Health and Safety Code states, in pertinent part:

26 "..."

27 ///

28 ///

1 Mesa's smog station. The following is a comparison of the reported data from various smog
2 inspections Newport Mesa and Malleolo represented they performed with the actual observations
3 of Bureau staff.

4 27. Improper Inspection 1 - Ford Ranger

5 Between 1013 and 1019 hours, Newport Mesa and Malleolo inspected and passed a 2002
6 Ford Ranger, CA license # 1101593 using the Two-Speed Idle test. During the surveillance,
7 Bureau staff saw the Maxima back out of the smog station driveway as the Ford Ranger entered
8 the driveway. The Ford Ranger was parked at the entrance of the test bay area while the Maxima
9 was parked on the street. At 1011 hours, Malleolo sat in the front left seat of the Maxima. Then,
10 he got out of the Maxima and entered the test bay. At 1016 hours, he removed a sample probe
11 from the left side test bay wall and walked to the back of the Ford Ranger in a motion consistent
12 with inserting the exhaust sample probe into the tailpipe. At 1019 hours, he walked to the back of
13 the Ford Ranger, bent over in a motion consistent with removing the exhaust sample probe, and
14 walked back into the left side test bay area. At 1023 hours, the Ford Ranger drove out of the
15 smog station driveway. At no point was it operated on the dynamometer rollers. The required
16 test type for this make and model was the ASM procedure, not the Two-Speed Idle test.

17 28. Clean Pipe 1 - Ford Excursion

18 Between 1034 hours and 1039 hours, Newport Mesa and Malleolo inspected and issued
19 certificate of compliance #XJ983688C to a 2004 Ford Excursion, VIN 1FTPX12584NC51530.
20 During the surveillance, however, Bureau staff saw Malleolo get into a Maxima parked on the
21 street and drive away at 1030 hours. The Maxima entered the smog station driveway and parked
22 in the test bay area over the dynamometer. Malleolo got out of the Maxima and entered the left
23 side test bay area. At 1037 hours, Malleolo inserted into the Maxima's tailpipe a sample probe
24 hanging on the left side test bay wall. He then got into the Maxima through the left front door.
25 At 1038 hours, he got out of the car, went to the rear, and removed the sample probe. At 1039
26 hours, the sample probe hung on the left side test bay wall. At 1040 hours, Malleolo was inside
27 of the left side test area.

28 ///

1 29. Days later, Bureau staff reviewed the testing history for the 2004 Ford Excursion.
2 According to the VID, in 2008, the vehicle was tested and certified as a 2004 Ford F-150.
3 Neither a 2004 Ford Excursion nor a 2004 Ford F-150 was in the test bay or at the facility during
4 the time of certification. Newport Mesa and Malleolo clean piped the 2004 Ford Excursion or the
5 2004 Ford F-150 using the exhaust sample of the Maxima.

6 30. Also, Bureau staff performed an internet used vehicle search, using the same VIN
7 number for the 2004 Ford Excursion. They found that as of September 12, 2012, it was
8 advertised for sale by a company called Certified Auto, but it was listed as a Ford F-150.

9 31. Clean Pipe 2 – Mercedes Benz E320

10 Between 1045 hours and 1052 hours, Newport Mesa and Malleolo inspected and issued
11 certificate of compliance #XJ983689C to a 2002 Mercedes Benz E320, VIN
12 WDBJF82J92X063257. During the surveillance, however, Bureau staff saw that at 1045 hours,
13 the Maxima had not moved since the previous inspection. At 1048 hours, Malleolo took the
14 sample probe from the left side wall, walked to the back of the Maxima, and inserted the sample
15 probe into the Maxima's tailpipe. At 1050 hours, he got out of the Maxima, went to the back of
16 the Maxima, and removed the sample probe. At 1052 hours, the test finished, the Maxima was
17 still in the test bay area, and Malleolo walked out of the left side test area. The 2002 Mercedes
18 Benz E320 was not in the test bay or at the facility during the time of certification. Newport
19 Mesa and Malleolo clean piped the car using the exhaust sample of the Maxima.

20 32. Days later, Bureau staff performed an internet used vehicle search, using the same
21 VIN number for the 2002 Mercedes Benz E320. They found that as of September 12, 2012, it
22 was advertised for sale by a company called Certified Auto.

23 33. Clean Pipe 3 – 2005 Toyota Tundra

24 Between 1057 hours and 1103 hours, Newport Mesa and Malleolo inspected and issued
25 certificate of compliance # XJ983690C to a 2005 Toyota Tundra, VIN 5TBRT341X5S469435.
26 During the surveillance, however, Bureau staff saw at 1052 hours that the Maxima had not moved
27 since the previous inspection. At 1100 hours, Malleolo took the sample probe from the left side
28 wall, walked to the rear of the Maxima, bent over, and then stood up without the sample probe in

1 an action consistent with inserting the sample probe into the Maxima's tailpipe. Malleolo got into
2 the Maxima through the left front door. At 1103 hours, the sample probe was seen in the
3 Maxima's tailpipe and Malleolo removed the probe. The sample probe hung on the left side wall,
4 and Malleolo was in the left side test area. The 2005 Toyota Tundra was not in the test bay or at
5 the facility during the time of certification. Newport Mesa and Malleolo clean piped the car using
6 the exhaust sample of the Maxima.

7 34. Days later, Bureau staff performed an internet used vehicle search, using the same
8 VIN number for the 2005 Toyota Tundra. They found that as of September 12, 2012, it was
9 advertised for sale by a company called Certified Auto.

10 35. Improper Inspection 2 – 2004 Toyota Highlander

11 Between 1131 hours and 1138 hours, Newport Mesa and Malleolo inspected and issued
12 certificate of compliance # XJ983693C to a 2004 Toyota Highlander, CA License #5JVM544
13 using the TSI procedure. During the surveillance, however, Bureau staff saw the Toyota
14 Highlander at 1117 hours drive into the smog station driveway. At 1136 hours, it was in the test
15 bay area. At 1137 hours, Malleolo removed a sample probe from the Toyota Highlander. At no
16 point was it operated on the dynamometer rollers. The required test type for this make and model
17 was the ASM procedure, not the Two-Speed Idle test.

18 36. Clean Pipe 4 – Ford Mustang

19 Between 1143 hours and 1148 hours, Newport Mesa and Malleolo inspected and issued
20 certificate of compliance # XJ983694C to a 2004 Ford Mustang, VIN 1FAFP44614F197569.
21 During surveillance, however, Bureau staff saw Malleolo get into the Maxima at 1139 hours,
22 drive into the test bay area, get out of the car, and enter the left side test area. At 1147 hours,
23 Malleolo was in the left side test bay area and the sample probe was not hanging on the wall. At
24 1148 hours, he walked to the back of Maxima, bent down in an action consistent with removing a
25 sample probe from a tailpipe, returned to the left side test area, and hung the sample probe on the
26 left side wall. The 2004 Ford Mustang was not in the test bay or at the facility during the time of
27 certification. Newport Mesa and Malleolo clean piped the 2004 Ford Mustang using the exhaust
28 sample of the Maxima.

1 37. Days later, Bureau staff performed an internet used vehicle search, using the same
2 VIN number for the 2004 Ford Mustang. They found that as of September 12, 2012, it was
3 advertised for sale by a company called Certified Auto.

4 38. Clean Pipe 5 – Honda Ridgeline

5 Between 1154 hours and 1159 hours, Newport Mesa and Malleolo inspected and issued
6 certificate of compliance # XJ983695C to a 2006 Honda Ridgeline, VIN 2HJYK16526H548152.
7 During surveillance, however, Bureau staff saw that at 1154 hours the Maxima was still in the test
8 bay and the sample probe hung on the left side wall. At 1155 hours, Malleolo entered the left side
9 test bay area. At 1157 hours, he took the sample probe from the wall, walked to the back of the
10 Maxima, bent over, stood up without the sample probe in an action consistent with inserting the
11 sample probe into the Maxima's tailpipe, and got into the Maxima through the left front door. At
12 1158 hours, he got out of the car and moved to the left side test area. At 1200 hours, he walked to
13 the back of the Maxima, bent down in an action consistent with removing a sample probe from
14 the tailpipe, returned to the left side test area, and hung the sample probe on the left side wall. He
15 got back into the car and drove forward into the shop area. The 2006 Honda Ridgeline was not in
16 the test bay or at the facility during the time of certification. Newport Mesa and Malleolo clean
17 piped the 2006 Honda Ridgeline using the exhaust sample from the Maxima.

18 39. Days later, Bureau staff performed an internet used vehicle search, using the same
19 VIN number for the 2006 Honda Ridgeline. They found that as of September 12, 2012, it was
20 advertised for sale by a company called Certified Auto.

21 40. Clean Pipe 6 – Mercedes Benz S500

22 Between 1310 hours and 1315 hours, Newport Mesa and Malleolo inspected and issued
23 certificate of compliance # XJ983696C to a 2002 Mercedes Benz S500, VIN
24 WDBNG75J82A242171. During surveillance, however, Bureau staff saw the Maxima back out
25 of the driveway and leave the smog station at 1247 hours. At 1302 hours, the Maxima entered the
26 driveway and moved into position in the test bay area over the dynamometer. At 1312 hours,
27 Malleolo went to the back of the Maxima, bent down in an action consistent with inserting or
28 removing a sample probe into or out of the tailpipe, and returned to the left side test area. At

1 1315 hours, the Maxima was in the test bay. The Mercedes Benz S500 was not in the test bay or
2 at the facility during the time of certification. Newport Mesa and Malleolo clean piped the
3 Mercedes Benz S500 using the exhaust sample of the Maxima.

4 41. Days later, Bureau staff performed an internet used vehicle search, using the same
5 VIN number for the Mercedes Benz S500. They found that as of September 12, 2012, it was
6 advertised for sale by a company called Premium Finance.

7 42. Clean Pipe 7 – BMW 3-Series

8 Between 1321 hours and 1328 hours, Newport Mesa and Malleolo inspected and issued
9 certificate of compliance # XJ983697C to a 1993 BMW 3-Series, VIN WBABF4313PEK08015.
10 During surveillance, however, Bureau staff saw that the Maxima was still in the test bay at 1321
11 hours. At 1325 hours, someone moved to the back of the Maxima, bent down in an action
12 consistent with inserting a sample probe into the tailpipe, and returned to the left side test area.
13 At 1327 hours, Malleolo moved toward the back of the Maxima, bent down in an action
14 consistent with removing a sample probe from a tailpipe, and hung the sample probe on the left
15 side bay wall. At 1328 hours, the Maxima was still in the test bay. The BMW 3-Series was not
16 in the test bay or at the facility during the time of certification. Newport Mesa and Malleolo clean
17 piped the BMW 3-Series using the exhaust sample of the Maxima.

18 43. Days later, Bureau staff performed an internet used vehicle search, using the same
19 VIN number for the BMW 3-Series. They found that as of September 12, 2012, it was advertised
20 for sale by a company called Premium Finance.

21 44. All of the August 31, 2012, illegal inspections described above are set forth in the
22 following table and were performed under Malleolo's license number. The seven clean piping
23 inspections appear in bold, and the two remaining improper inspections are underlined:

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TEST	TEST TIMES/ TEST #	VEHICLE IN EIS DATA & LICENSE OR VIN#	VEHICLE ACTUALLY TESTED & LICENSE #	CERT. ISSUED	DETAILS
1	1013-1019 hours improper test # 1.	2002 Ford Ranger, license # 1101593	2002 Ford Ranger, license # 1101593	No certificate required or issued.	Malleolo performed a TSI test instead of the required ASM test.
2	1131-1138 hours. improper test # 2.	2004 Toyota Highlander, license # 5JVM544	2004 Toyota Highlander, CA license # 5JVM544	XJ983693C	Malleolo performed a TSI test instead of the required ASM test
3	1034-1039 hours fraudulent test # 1	2004 Ford Excursion, VIN 1FTPX12584NCSJ 530	2004 Nissan Maxima SE, CA license 5EEW153	XJ983688C	Malleolo used the Maxima in place of the Ford Excursion/F-150. The Ford was not observed at all during the surveillance period.
4	1045-1052 hours. fraudulent test # 2	2002 Mercedes Benz E320, VIN WDBJF82J92X063157	2004 Nissan Maxima SE, CA license 5EEW153	XJ983689C	Malleolo used the Maxima in place of the Mercedes Benz E320. The Mercedes Benz E320 was not observed at all during the surveillance period.
5	1057-1103 hours. fraudulent test #3	2005 Toyota Tundra, VIN STBRT341XSS469435	2004 Nissan Maxima SE, CA license 5EEW153	XJ983690C	Malleolo used the Maxima in place of the Toyota Tundra. The Toyota Tundra was not observed at all during the surveillance period.
6	1143-1148 hours. fraudulent test # 4.	2004 Ford Mustang, VIN 1FAPP44614F197569	2004 Nissan Maxima SE, CA license 5EEW153	XJ983694C	Malleolo used the Maxima in place of the Ford Mustang. The Ford Mustang was not observed at all during the surveillance period.
7	1154-1159 hours. fraudulent test # 5	2006 Honda Ridgeline, VIN 2HJYK16526H548152	2004 Nissan Maxima SE, CA license 5EEW153	XJ983695C	Malleolo used the Maxima in place of the Honda Ridgeline. The Honda Ridgeline was not observed at all during the surveillance period.
8	1310-1315 hours. fraudulent test # 6.	2002 Mercedes Benz S500, VIN WDBNG75J82A24217	2004 Nissan Maxima SE, CA license 5EEW153	XJ983696C	Malleolo used the Maxima in place of the Mercedes Benz S500. The Mercedes Benz S500 was not observed at all during the surveillance period.
9	1321-1328 hours. fraudulent test #7.	1993 BMW 3-Series, VIN WBABF4313PEK08015	2004 Nissan Maxima SE, CA license 5EEW153	XJ983697C	Malleolo used the Maxima in place of the BMW 3-Series. The BMW 3- Series was not observed at all during the surveillance period.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

45. Newport Mesa's Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(1), and the Lamp Station License and Brake Station License are subject to

1 disciplinary action under Code section 9889.3, subdivision (a), in that Newport Mesa made or
2 authorized statements which Newport Mesa knew or in the exercise of reasonable care should
3 have known to be untrue or misleading as follows: Newport Mesa's smog check technician,
4 Malleolo, certified that they inspected the cars described in paragraph 44, tests 3-9, when in fact
5 those cars were not inspected.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Fraud)

8 46. Newport Mesa's Registration is subject to disciplinary action under Code section
9 9884.7, subdivision (a)(4), and the Lamp Station License and Brake Station License are subject to
10 disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that Newport Mesa
11 committed acts that constitute fraud by certifying that Newport Mesa inspected the cars in
12 paragraph 44, tests 3-9, when in fact no such inspections were performed on them, by issuing
13 certificates of compliance when bona fide smog inspections had not been completed.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Violations of the Motor Vehicle Inspection Program)

16 47. Newport Mesa's Smog Check Station License is subject to disciplinary action under
17 Health and Safety Code sections 44072.10 and 44072.2, subdivision (a), in that Newport Mesa
18 failed to comply with the following sections of that Code:

19 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
20 on all the vehicles in paragraph 44 in accordance with procedures prescribed by the Department.

21 b. **Section 44015**: issued a certificate of compliance for the vehicles in paragraph 44,
22 tests 2-9, without properly testing and inspecting them to determine if they were in compliance
23 with Health & Safety Code section 44012.

24 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
25 equipment, performance, or conduct by failing to properly perform a smog inspection on all the
26 vehicles in paragraph 44 or certifying that such tests had been performed, when in fact they were
27 never performed.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 48. Newport Mesa's Smog Check Station License is subject to disciplinary action under
4 Health & Safety Code section 44072.10 and 44072.2, subdivision (c), in that Newport Mesa
5 failed to comply with the following sections of Title 16, California Code of Regulations:

6 a. **Section 3340.35, subdivision (c)**: failed to inspect and test all the vehicles in
7 paragraph 44 in accordance with the procedures specified in section 3340.42 of the Regulations
8 and failed to ensure that these vehicles had all the required emission control equipment and
9 devices installed and functioning correctly.

10 b. **Section 3340.41, subdivision (c)**: knowingly entered into the EIS false information
11 about the vehicles in paragraph 44, tests 3-9, providing results for smog inspections which were
12 not actually performed.

13 c. **Section 3340.42**: failed to conduct the required smog tests on all the vehicles in
14 paragraph 44 in accordance with the Bureau's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 49. Newport Mesa's Smog Check Station License is subject to disciplinary action under
18 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), and the Lamp Station
19 License and Brake Station License are subject to disciplinary action under Code section 9889.3,
20 subdivision (d), in that Newport Mesa committed dishonest, fraudulent, or deceitful acts whereby
21 another is injured by issuing smog certificates of compliance for the vehicles in paragraph 44,
22 tests 3-9 without performing bona fide inspections of the emission control devices and systems on
23 them, thereby depriving the People of the State of California of the protection afforded by the
24 Motor Vehicle Inspection Program.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Clean Piping)

3 50. Newport Mesa's Smog Check Station license is subject to disciplinary action for
4 clean piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in title 16,
5 California Code of Regulations, section 3340.1, and the Lamp Station License and Brake Station
6 License are subject to disciplinary action under Code section 9889.3, subdivision (d), in that
7 Newport Mesa used a substitute exhaust emission sample of one vehicle in place of another
8 vehicle's exhaust emission sample in order to cause the EIS to issue a certificate of compliance
9 for the inspections described in paragraph 44, tests 3-9.

10 SEVENTH CAUSE FOR DISCIPLINE

11 (Fraud)

12 51. Malleolo's Brake Adjuster License and Lamp Adjuster License are subject to
13 disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that he committed acts
14 that constitute fraud by certifying that he inspected the cars in paragraph 44, tests 3-9, when in
15 fact no such inspections were performed on them, by issuing certificates of compliance when
16 bona fide smog inspections had not been completed.

17 EIGHTH CAUSE FOR DISCIPLINE

18 (Violations of the Motor Vehicle Inspection Program)

19 52. Malleolo's Smog Check Repair Technician License and Smog Check Inspector
20 License are subject to disciplinary action under Health and Safety Code sections 44072.10 and
21 44072.2, subdivision (a), in that he failed to comply with sections 44012 and 44035 of that Code
22 as follows: he failed to perform the smog inspections on all of the vehicles in paragraph 44 in
23 accordance with procedures prescribed by the Department.

24 NINTH CAUSE FOR DISCIPLINE

25 (Failure to Comply with the Regulations of the Motor Vehicle Inspection Program)

26 53. Malleolo's Smog Check Repair Technician License and Smog Check Inspector
27 License are subject to disciplinary action under Health and Safety Code sections 44072.10 and
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1 44072.2, subdivision (c), in that he failed to comply with provisions of Title 16, California Code
2 of Regulations, as follows:

3 a. Section 3340.30, subdivision (a): failed to inspect and test all the vehicles in
4 paragraph 44 in accordance with Health & Safety Code sections 44012 and 44035, and Title 16,
5 California Code of Regulations, section 3340.42.

6 b. Section 3340.41, subdivision (c): knowingly entered into the EIS false information
7 about the results for the smog inspections for the vehicles in paragraph 44, tests 3-9.

8 c. Section 3340.42: failed to conduct the required smog tests on all the vehicles in
9 paragraph 44 in accordance with the Bureau's specifications.

10 **TENTH CAUSE FOR DISCIPLINE**

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

12 54. Malleolo's Smog Check Repair Technician License and Smog Check Inspector
13 License are subject to disciplinary action under Health and Safety Code sections 44072.10 and
14 44072.2, subdivision (c)(1), and the Brake Adjuster License and Lamp Adjuster License are
15 subject to disciplinary action under Section 9889.3, subdivision (d), in that he committed
16 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of
17 compliance for the vehicles in paragraph 44, tests 3-9 without performing bona fide inspections of
18 the emission control devices and systems on them, thereby depriving the People of the State of
19 California of the protection afforded by the Motor Vehicle Inspection Program.

20 **ELEVENTH CAUSE FOR DISCIPLINE**

21 **(Clean Piping)**

22 55. Malleolo is subject to disciplinary action for clean piping under section Health and
23 Safety Code section 44072.10, and Health & Safety Code, § 44072.10, subdivision (c)(1), as
24 defined in title 16, California Code of Regulations, section 3340.1, and the Lamp Station License
25 and Brake Station License are subject to disciplinary action under Code section 9889.3,
26 subdivision (d), in that he used a substitute exhaust emission sample of one vehicle in place of
27 another vehicle's exhaust emission sample in order to cause the EIS to issue a certificate of
28 compliance for the inspections described in paragraph 44, tests 3-9.

1 **OTHER MATTERS**

2 56. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or
3 place on probation the registration for all places of business operated in this state by Newport
4 Mesa upon a finding that Newport Mesa has, or is, engaged in a course of repeated and willful
5 violations of the laws and regulations pertaining to an automotive repair dealer.

6 57. Pursuant to Code section 9889.9, if a license is revoked or suspended following a
7 hearing under Article 7 of the Automotive Repair Act, any additional license issued under
8 Articles 5 and 6 of Chapter 20.3 in the name of Newport Mesa may be likewise revoked or
9 suspended.

10 58. Pursuant to Code section 9889.9, if a license is revoked or suspended following a
11 hearing under Article 7 of the Automotive Repair Act, any additional license issued under
12 Articles 5 and 6 of Chapter 20.3 in the name of Malleolo may be likewise revoked or suspended

13 59. Pursuant to Health & Safety Code section 44072.8, if Newport Mesa's Smog Check
14 Station License is revoked or suspended, the Director may likewise revoke or suspend any
15 additional license issued under Chapter 5 of the Health and Safety Code in the name of Newport
16 Mesa.

17 60. Pursuant to Health & Safety Code section 44072.8, if Malleolo's license is revoked or
18 suspended, the Director may likewise revoke or suspend any additional license issued under
19 Chapter 5 of the Health and Safety Code in the name of Malleolo.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 231018 issued to Newport Mesa;

25 2. Revoking or suspending Smog Check Station License Number RC 231018, issued to
26 Newport Mesa;

27 3. Revoking or suspending Lamp Station License Number LS 231018, Class A, issued
28 to Newport Mesa;

1 4. Revoking or suspending Brake Station License No. BS 231018, Class C, issued to
2 Newport Mesa;

3 5. Revoking or suspending Smog Check Inspector License Number EO 149877, issued
4 to Malleolo;

5 6. Revoking or suspending Smog Check Repair Technician License Number EI 149877,
6 issued to Malleolo;

7 ~~7. Revoking or suspending Brake Adjuster License No. BA 149877, Class C, issued to~~
8 ~~Malleolo;~~

9 8. Revoking or suspending Lamp Adjuster License Number LA 149877, Class A, issued
10 to Malleolo;

11 9. Ordering Newport Mesa and Malleolo to pay the Bureau of Automotive Repair the
12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 125.3; and

14 10. Taking such other and further action as deemed necessary and proper.
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16

17 DATED: 1-24-13

18 John Wallauch by Doug Balala
19 JOHN WALLAUCH
20 Chief
21 Bureau of Automotive Repair
22 Department of Consumer Affairs
23 State of California
24 Complainant

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