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

11 In the Matter of the Accusation Against:

12 NEW AGE AUTO REPAIR;  
13 MARIO PEREZ RIVAS  
3817 Sepulveda Blvd. #H  
14 Culver City, CA 90230

15 Automotive Repair Dealer Registration  
No. AC 182754  
16 Smog Check Test and Repair Station License  
No. RC 182754

17 and

18 MARIO PEREZ RIVAS  
19 9625 Birchdale Ave.  
Downey, CA 90240

20 Smog Check Technician License No. EA 022565

21 Respondents.

Case No. 79/08-34

OAH No.

**ACCUSATION**

**(SMOG CHECK)**

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about March 14, 1995, the Bureau of Automotive Repair (Bureau)  
28 issued Automotive Repair Dealer Registration Number AC 182754 to Mario Perez Rivas dba

1 New Age Auto Repair (Respondent). The Automotive Repair Dealer Registration was in full  
2 force and effect at all times relevant to the charges brought herein and will expire on March 31,  
3 2008, unless renewed.

4 3. On or about May 2, 1995, the Bureau issued Smog Check Test and Repair  
5 Station License Number RC 182754 to Respondent. The Smog Check Test and Repair Station  
6 License was in full force and effect at all times relevant to the charges brought herein and will  
7 expire on March 31, 2008, unless renewed.

8 4. In or about 1996, the Bureau issued Smog Check Technician License  
9 Number EA 022565 to Respondent. The Smog Check Technician License was in full force and  
10 effect at all times relevant to the charges brought herein and will expire on July 31, 2008, unless  
11 renewed.

12 **JURISDICTION**

13 5. This Accusation is brought before the Director of Consumer Affairs  
14 (Director) for the Bureau under the authority of the following laws. All section references are to  
15 the Business and Professions Code unless otherwise indicated.

16 **STATUTORY PROVISIONS**

17 6. Section 125.3 of the Code provides, in pertinent part, that a Board may  
18 request the administrative law judge to direct a licentiate found to have committed a violation or  
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
20 and enforcement of the case.

21 7. Section 477 of the Code provides, in pertinent part, that "Board" includes  
22 "bureau," "commission," "committee," "department," "division," "examining committee,"  
23 "program," and "agency." "License" includes certificate, registration or other means to engage  
24 in a business or profession regulated by the Code.

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1           8.       Section 490 of the Code provides, in pertinent part, that a board may  
2 suspend or revoke a license when it finds that the licensee has been convicted of a crime  
3 substantially related to the qualifications, functions or duties of the business or profession for  
4 which the license was issued.

5           9.       Section 9884.7 of the Code states:

6           (a)       The director, where the automotive repair dealer cannot show there  
7 was a bona fide error, may refuse to validate, or may invalidate temporarily or  
8 permanently, the registration of an automotive repair dealer for any of the  
9 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.

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

13           .....

14           (6)       Failure in any material respect to comply with the provisions of  
15 this chapter [the Automotive Repair Act (Bus. & Prof. Code, 9880, et seq.)] or  
regulations adopted pursuant to it.

16           (7)       Any willful departure from or disregard of accepted trade standards  
17 for good and workmanlike repair in any material respect, which is prejudicial to  
another without consent of the owner or his or her duly authorized representative.

18           (8)       Making false promises of a character likely to influence, persuade,  
19 or induce a customer to authorize the repair, service, or maintenance of  
automobiles.

20           10.       Section 9884.8 of the Code states:

21           All work done by an automotive repair dealer, including all warranty  
22 work, shall be recorded on an invoice and shall describe all service work done and  
23 parts supplied. Service work and parts shall be listed separately on the invoice,  
24 which shall also state separately the subtotal prices for service work and for parts,  
25 not including sales tax, and shall state separately the sales tax, if any, applicable to  
26 each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall  
27 clearly state that fact. If a part of a component system is composed of new and  
28 used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The  
invoice shall include a statement indicating whether any crash parts are original  
equipment manufacturer crash parts or nonoriginal equipment manufacturer  
aftermarket crash parts. One copy of the invoice shall be given to the customer  
and one copy shall be retained by the automotive repair dealer.

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11. Section 9884.9(a) of the Code states:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

I acknowledge notice and oral approval of an increase in the original estimated price.

\_\_\_\_\_  
(signature or initials)

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

12. Section 9884.13 of the Code 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.

13. California Code of Regulations, title 16, section 3340.15, subsection (i) states:

A licensed smog check station shall not sublet inspections or repairs required as part of the Smog Check Program, except for the following:

(1) Repairs of a vehicle's exhaust system which are normally performed by muffler shops, provided that the malfunction has

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been previously diagnosed by the specific smog check station originally authorized by the customer to perform repairs to the vehicle.

(2) Repairs of those individual components that have been previously diagnosed as being defective and that have been removed by the specific smog check station originally authorized by the customer to perform repairs to the vehicle.

14. California Code of Regulations, title 16, section 3340.30, subsection (a)

states:

A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article [Mandatory Emissions Inspection Standards and Test Procedures].

15. California Code of Regulations, title 16, section 3340.41, subsection (c),

states:

No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

16. California Code of Regulations, title 16, section 3340.41, subsection (d),

states:

The specifications and procedures required by Section 44016 of the Health and Safety Code shall be the vehicle manufacturer's recommended procedures for emission problem diagnosis and repair or the emission diagnosis and repair procedures found in industry-standard reference manuals and periodicals published by nationally recognized repair information providers. Smog check stations and smog check technicians shall, at a minimum, follow the applicable specifications and procedures when diagnosing defects or performing repairs for vehicles that fail a smog check test.

17. California Code of Regulations, title 16, section 3353, states:

No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:

(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written estimated price for labor and parts for a specific job.

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18. California Code of Regulations, title 16, section 3356, subsection (a)

states:

All invoices for service and repair work performed, and parts supplied, as provided for in Section 9884.8 of the Business and Professions Code, shall comply with the following:

(1) The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau's records. If the automotive repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b) of Section 3371 of this chapter.

(2) The invoice shall separately list, describe and identify all of the following:

(A) All service and repair work performed, including all diagnostic and warranty work, and the price for each described service and repair.

(B) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part. The description of each part shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

(C) The subtotal price for all service and repair work performed.

(D) The subtotal price for all parts supplied, not including sales tax.

(E) The applicable sales tax, if any.

19. California Code of Regulations, title 16, section 3371, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:

(a) Firm Name and Address. The dealer's firm name and address as they appear on the State registration certificate as an automotive repair dealer; and

(b) Telephone Number. If a telephone number appears in an advertisement or on an advertising sign, this number shall be the same number as that listed for the dealer's firm name and address in the telephone directory, or in the telephone company records if such number is assigned to the dealer subsequent to the publication of such telephone directory.

20. California Code of Regulations, title 16, section 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or

1 information which will cause any such document to be false or misleading, or  
2 where the tendency or effect thereby would be to mislead or deceive customers,  
prospective customers, or the public.”

3 21. California Health and Safety Code section 44016 provides that licensed  
4 repair facilities shall perform all repairs in accordance with manufacturers’ specifications and  
5 procedures.

6 **UNDERCOVER VEHICLE OPERATION No. 1:**

7 **MARCH 23, 2006 TO MARCH 27, 2006**

8 22. On or about the dates from March 23, 2006 March 27, 2006, Bureau  
9 Program Representative Arnulfo Santana (Representative Santana) conducted an undercover  
10 vehicle operation at New Age Auto Repair (New Age Auto). The Bureau’s vehicle, a 1986  
11 Chevrolet Monte Carlo (1986 Chevrolet), California License No. 1RCE654, was prepared by  
12 Bureau Representative Steven M. Gauronski (Representative Gauronski) of the Rialto  
13 Documentation Laboratory. Representative Gauronski prepared the 1986 Chevrolet by creating  
14 an open electrical ground in the throttle position sensor circuit.

15 23. Representative Santana then instructed Bureau Operator Maria T. Aleman  
16 (Ms. Aleman) to drive the 1986 Chevrolet to New Age Auto and to ask for a smog inspection.  
17 Representative Santana instructed Ms. Aleman to authorize any diagnosis and/or repairs that any  
18 employee of New Age Auto said were necessary for the 1986 Chevrolet to pass a smog  
19 inspection. A New Age Auto employee named “Tony” told Ms. Aleman that the 1986 Chevrolet  
20 would not pass inspection because the “check engine” light was on. Tony gave Ms. Aleman an  
21 estimate of \$60 to perform a diagnosis to find out why the check engine light was on. Ms.  
22 Aleman signed a work order for the diagnosis and Tony gave her a copy of this work order.

23 24. Later that same day, March 23, 2006, Tony called Ms. Aleman and told  
24 her that some electrical problems needed to be fixed for \$185.00. Ms. Aleman authorized these  
25 repairs over the phone. On March 24, 2006, the next day, Tony told Ms. Aleman that the vehicle  
26 also needed a manifold absolute pressure sensor, oxygen sensor, tune-up and oil change, at a total  
27 cost of \$542.00, in order to pass smog inspection. Ms. Aleman authorized these repairs over the  
28 phone.



1 false data into a state database about the reason why the manifold absolute pressure sensor and  
2 oxygen sensor needed replacement.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failure to Properly Document Invoice)**

5 30. Respondent is subject to discipline under Code section 9884.7,  
6 subsection (a)(1); Code section 9884.7, subsection (a)(6); and California Code of Regulations,  
7 title 16, section 3373, for failing to document the correct estimate and for failing to document  
8 repair of the TPS circuit on the 1986 Chevrolet on or about March 23, 2006, to March 27, 2006.

9 **UNDERCOVER VEHICLE OPERATION No. 2:**

10 **MAY 4, 2006 TO MAY 9, 2006**

11 31. On or about the dates from May 4, 2006 to May 9, 2006, Representative  
12 Santana conducted a second undercover vehicle operation. The vehicle used for this operation  
13 was a 1984 Chevrolet Monte Carlo (1984 Chevrolet), California License No. 2RXZ614. Bureau  
14 Representative Daniel Woods (Representative Woods) of the Rialto Documentation Laboratory  
15 prepared the 1984 Chevrolet by breaking the ground wire to the mixture control solenoid, which  
16 caused the "Check Engine" light to come on. This condition also caused the vehicle to fail the  
17 smog inspection as a Gross Polluter.

18 32. Representative Santana instructed Bureau Operator Debra Hooper  
19 (Operator Hooper) to drive to New Age Auto to ask for a smog inspection, and to authorize any  
20 diagnosis and repair that a New Age Auto employee represents as necessary for the 1984  
21 Chevrolet to pass inspection. On May 4, 2006, Operator Hooper dealt with two New Age Auto  
22 employees, identified as "Mario" and "Tony" by the names on their shirts.

23 33. The 1984 Chevrolet was inspected and Operator Hooper was provided  
24 with a work order to sign. After the inspection, Tony informed Ms. Hooper that the 1984  
25 Chevrolet had failed the smog inspection, and that a \$60.00 diagnosis was necessary to determine  
26 the cause. Tony gave Operator Hooper a second work order for the diagnosis, but did not ask her  
27 to sign it. Operator Hooper authorized the work. Tony later called Operator Hooper and told her  
28 that the exhaust gas recirculation valve and the mixture control solenoid needed to be replaced,

1 and the carburetor needed to be rebuilt. Tony told Operator Hooper that these repairs were  
2 necessary for the 1984 Chevrolet to pass smog inspection. Operator Hooper authorized the  
3 repairs, and subsequently paid Tony a total of \$661.31 for the smog inspection and repairs. A  
4 second inspection was performed on May 9, 2006. The 1984 Chevrolet passed this inspection.  
5 However, a certificate of compliance was not issued because the vehicle had to be certified at a  
6 Test-Only station.

7           34. Representative Santana reviewed the Vehicle Information Database data  
8 that had been entered for the May 4, 2006 inspection and the May 9, 2006 inspection. The data  
9 for the May 4, 2006 inspection indicated that the 1984 Chevrolet failed due to high emissions  
10 (Gross Polluter) and a "check engine" malfunction. The data also stated that engine speed failure  
11 was the reason for the ignition timing failure. Finally, the data indicate the smog inspection was  
12 conducted at New Age Auto by Mario Rivas.

13           35. The data for the May 9, 2006 inspection indicated that this inspection was  
14 also performed at New Age Auto by Mario Rivas. The vehicle was tested in Pretest Mode. As  
15 noted above, the vehicle passed the inspection but was not issued a certificate of compliance  
16 because it had to be certified at a Test-Only station.

17           36. On May 18, 2006, the 1984 Chevrolet was returned to Representative  
18 Woods at the Rialto Documentation Laboratory. After examining the vehicle, Representative  
19 Woods determined that the exhaust gas recirculation valve and the mixture control solenoid were  
20 replaced, but that these parts did not need to be replaced. Representative Woods also found that  
21 the carburetor had been unnecessarily overhauled, the mixture control solenoid was not adjusted  
22 properly, and the carburetor had not been overhauled correctly. The misadjusted control solenoid  
23 caused the vehicle to run poorly and to fail a smog inspection that Representative Woods  
24 performed (after all the repairs) due to high tailpipe emissions. Also, the gas cap was missing.  
25 (New Age Auto had called Operator Hooper to request that she bring the 1984 Chevrolet back to  
26 get the gas cap, but Operator Hooper never returned with the vehicle.) In conclusion,  
27 Representative Woods determined that the 1984 Chevrolet was still in a failing mode, and that a  
28 "Pass" should not have been entered in the Vehicle Inspection Report.

1 **FIFTH CAUSE OF ACTION**

2 **(False and Misleading Statements)**

3 37. Respondent is subject to disciplinary action under Code section 9884.7,  
4 subsection (a)(1); Code section 9884.7, subsection (a)(7); Code section 9884.7, subsection (a)(8);  
5 Health and Safety Code section 44016; and California Code of Regulations, title 16, section  
6 3371, for making false and misleading statements to Operator Hooper on or about May 4, 2006,  
7 in order to entice her to authorize unnecessary repairs, including the replacement of the mixture  
8 control solenoid and the exhaust gas recirculation valve, and the rebuilding of the carburetor.

9 **SIXTH CAUSE OF ACTION**

10 **(Performing Unnecessary and Improper Repairs)**

11 38. Respondent is subject to disciplinary action under Code section 9884.7,  
12 subsection (a)(1); Code section 9884.7, subsection (a)(6); Code section 9884.7, subsection (a)(7)  
13 and California Code of Regulations, title 16, sections 3340.30, subsection (a) and 3340.41,  
14 subsection (d), for performing unnecessary and improper repairs on the 1986 Chevrolet.

15 **SEVENTH CAUSE OF ACTION**

16 **(Failure to Properly Document Invoice)**

17 39. Respondent is subject to discipline under Code section 9884.7,  
18 subsection (a)(1); Code section 9884.7, subsection (a)(6); and California Code of Regulations,  
19 title 16, section 3373, for failing to document the correct estimate for repairs to the 1984  
20 Chevrolet on or about May 4, 2006 to May 9, 2006.

21 **UNDERCOVER VEHICLE OPERATION No. 3:**

22 **OCTOBER 25, 2006 TO OCTOBER 30, 2006**

23 40. On or about the dates from October 25, 2006 to October 30, 2006,  
24 Mr. Santana conducted a third undercover vehicle operation. The vehicle used for this operation  
25 was a 1992 Toyota Corolla (1992 Toyota), California License No. 2ZHN581. Representative  
26 Gauronski of the Rialto Documentation Laboratory prepared the 1992 Toyota Corolla by  
27 installing a defective oxygen sensor and a defective exhaust gas recirculation vacuum modulator.  
28 This condition caused the 1992 Toyota to fail to smog inspection as a Gross Polluter and also

1 caused the "check engine light to be illuminated. Representative Santana directed Bureau  
2 Operator Jerry E. Cole (Operator Cole) to go to New Age Auto to ask for a smog inspection, and  
3 to authorize any repairs that New Age Auto employees represented as necessary for the 1992  
4 Toyota to pass smog inspection.

5           41.     Operator Cole went to New Age Auto on October 25, 2006, and dealt with  
6 two employees of New Age Auto, identified as "Mario" and "Tony" by the names on their shirts.  
7 Tony gave Operator Cole a work order to sign to authorize the smog inspection. After the  
8 inspection, Tony informed Operator Cole that the 1992 Toyota had failed the inspection, and that  
9 a \$65.00 diagnosis was necessary to determine the cause. Operator Cole authorized this \$65.00  
10 diagnosis and then received a copy of a second work order. Tony later called Operator Cole and  
11 told him that the exhaust gas recirculation valve sensor, oxygen sensor, and throttle body needed  
12 to be replaced, and that the vehicle needed a complete tune-up in order to pass smog inspection.  
13 Operator Cole authorized these repairs. Before Operator Cole picked up the 1992 Toyota, Tony  
14 called again to say that he was adding an additional \$60.00 to the final bill because the 1992  
15 Toyota had to be taken to a Test-Only station to get tested and certified. On October 30, 2006,  
16 Operator Cole picked up the 1992 Toyota from New Age Auto, and paid Tony a total of \$626.00  
17 in cash for the smog inspections and repairs. Operator Cole gave Representative Santana  
18 relevant documents, including the invoice (No. 004578, dated October 30, 20096, for \$566.50);  
19 two New Age Auto Vehicle Inspection Reports, one dated October 25, 2006, with result of gross  
20 polluter, and one dated October 28, 2006 with the result of "Pass"; and a Vehicle Inspection  
21 Report from Smogs Just Smogs VII with the result of "Pass" and Certificate No. VB783503  
22 printed on it.

23           42.     Representative Santana later reviewed the Vehicle Information Database  
24 data for the inspections performed on the 1992 Toyota between October 25, 2006 and October  
25 30, 2006. The data for the October 25, 2006 inspection indicates that it was performed at New  
26 Age Auto by Mario Rivas, and that it failed inspection due to high emissions (Gross Polluter)  
27 and a malfunctioning "check engine" light.

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1 check inspection to a Test-Only station named Smogs Just Smogs VII, and increased the bill by  
2 \$60.00, without first obtaining the customer's consent and authorization.

3 **TENTH CAUSE OF ACTION**

4 **(Performing Unnecessary Repairs)**

5 48. Respondent is subject to disciplinary action under Code section 9884.7,  
6 subsection (a)(6); and California Code of Regulations, title 16, sections 3340.30, subsection (a)  
7 and 3340.41, subsection (d), for performing unnecessary repairs on the 1992 Toyota, specifically,  
8 the unnecessary replacement of spark plugs, distributor cap, ignition wires, ignition rotor, and the  
9 air and fuel filters.

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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 or suspending Automotive Repair Dealer Registration Number AC 182754, issued to Respondent;

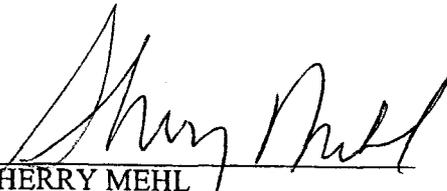
2. Revoking or suspending Smog Check Test and Repair Station License Number RC 182754, issued to Respondent;

3. Revoking or suspending Smog Check Technician License Number EA 022565, issued to Respondent;

4. Ordering Respondent 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

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

DATED: 11-27-07

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

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