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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. 79/11-75

13 **CALIFORNIA SMOG & REPAIR**  
1647 Front Street, Sp. A  
Livingston, CA 95334  
14 **DIONISIO DIAZ BUSTOS, PARTNER**  
**ISIDRO L. SOLORIO**  
15 Automotive Repair Dealer Registration No.  
ARD 206200  
16 Smog Check Station License No. RC 206200

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

17 and

18 **DIONISIO DIAZ BUSTOS**  
877 Maple Court  
19 Livingston, CA 95334  
Advanced Emission Specialist Technician  
20 License No. EA 038100

21 Respondents.

22  
23 Complainant alleges:

24 **PARTIES**

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

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1 (c) Notwithstanding subdivision (b), the director may invalidate  
2 temporarily or permanently, the registration for all places of business operated in this  
3 state by an automotive repair dealer upon a finding that the automotive repair dealer  
4 has, or is, engaged in a course of repeated and willful violations of this chapter, or  
5 regulations adopted pursuant to it.

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

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

14 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
15 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
16 the Motor Vehicle Inspection Program.

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

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1 11. Section 44072.8 of the Health and Safety Code states:

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

4 **COST RECOVERY**

5 12. Code section 125.3 provides, in pertinent part, that a Board may request the  
6 administrative law judge to direct a licensee found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case.

9 **FACTUAL BACKGROUND**

10 13. The Bureau conducted a detailed review of the Vehicle Information Database  
11 ("VID") for all smog inspections performed at Respondent California Smog's facility for the  
12 period March 1, 2010, through May 25, 2010. The VID showed that two different diagnostic  
13 trouble codes stored in memory of the power train control module ("PCM") on two different  
14 vehicles. Vehicles 1 and 2, set forth in the Table 1, below, were both certified with the pending  
15 codes stored in the PCM memory while the original equipment manufacturer ("OEM") service  
16 information shows these two vehicles do not support the pending codes stored in the PCM  
17 memory. The vehicles receiving smog certificates were not tested during the OBD II functional  
18 test<sup>1</sup> and another vehicle was used, constituting clean plugging<sup>2</sup>. Respondent Bustos performed  
19 both smog inspections.

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22 <sup>1</sup> The On Board Diagnostics (OBD II) functional test is an automated function of the  
23 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an  
24 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is  
25 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves  
26 information from the vehicle's on-board computer about the status of the readiness indicators,  
27 trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II  
28 functional test, it will fail the overall inspection.

<sup>2</sup> Clean plugging is the use of the OBD II readiness monitor status and stored fault code  
(trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to  
another vehicle that is not in compliance due to a failure to complete the minimum number of self  
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission  
control system or component failure.

TABLE 1

Date and Time	Vehicle Certified	Certificate No.	Technician
1. 3/3/2010 1413 – 1429 hours	2002 GMC K1500 Denali License No. 4WYP528	NQ970441C	Bustos
2. 3/9/2010 0925 – 0934 hours	2002 Nissan Maxima License No. 4WKS403	NS051521C	Bustos

**FIRST CAUSE FOR DISCIPLINE**

**(Misleading Statements)**

14. Respondent California Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about March 3, 2010, and March 9, 2010, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading as follows: Respondent California Smog certified that vehicles 1 and 2, identified in Table 1, above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent California Smog conducted the inspections on those vehicles using clean plugging methods by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for those vehicles, and did not test or inspect the vehicles as required by Health and Safety Code section 44012.

**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

15. Respondent California Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about March 3, 2010, and March 9, 2010, it committed acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 and 2, identified in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 18. Respondent California Smog subjected its station license to discipline under Health  
6 and Safety Code section 44072.2, subdivision (d), in that on or about March 3, 2010, and March  
7 9, 2010, regarding vehicles 1 and 2, identified in Table 1, above, it committed acts involving  
8 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of  
9 compliance for those vehicles without performing bona fide inspections of the emission control  
10 devices and system on the vehicles, thereby depriving the People of the State of California of the  
11 protection afforded by the Motor Vehicle Inspection Program.

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 19. Respondent Bustos has subjected his technician license to discipline under Health and  
15 Safety Code section 44072.2, subdivision (a), in that on or about, March 3, 2010, and March 9,  
16 2010, regarding vehicles 1 and 2, identified in Table 1, above, Respondent Bustos failed to  
17 comply with section 44012 of that Code in a material respect, as follows: Respondent Bustos  
18 failed to perform the emission control tests on vehicles 1 and 2, in accordance with procedures  
19 prescribed by the department.

20 **SEVENTH CAUSE FOR DISCIPLINE**

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

22 20. Respondent Bustos has subjected his technician license to discipline under Health and  
23 Safety Code section 44072.2, subdivision (c), in that on or about March 3, 2010, and March 9,  
24 2010, regarding vehicles 1 and 2, identified in Table 1, above, he violated sections of the  
25 California Code of Regulations, title 16, as follows:

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

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

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

5 c. **Section 3340.42:** Respondent Bustos failed to conduct the required smog tests and  
6 inspections on those vehicles in accordance with the Bureau's specifications.

7 **EIGHTH CAUSE FOR DISCIPLINE**

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

9 21. Respondent Bustos has subjected his technician license to discipline under Health and  
10 Safety Code section 44072.2, subdivision (d), in that on or about March 3, 2010, and March 9,  
11 2010, regarding vehicles 1 and 2, identified in Table 1, above, he committed acts involving  
12 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of  
13 compliance without performing bona fide inspections of the emission control devices and systems  
14 on those vehicles, thereby depriving the People of the State of California of the protection  
15 afforded by the Motor Vehicle Inspection Program.

16 **OTHER MATTERS**

17 22. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,  
18 or may invalidate temporarily or permanently, the registrations for all places of business operated  
19 in this state by California Smog & Repair, upon a finding that it has, or is, engaged in a course of  
20 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
21 dealer.

22 23. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License  
23 Number RC 206200, issued to California Smog & Repair, is revoked or suspended, any additional  
24 license issued under this chapter in the name of said licensee may be likewise revoked or  
25 suspended by the director.

26 24. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist  
27 Technician License Number EA 038100, issued to Dionisio Diaz Bustos, is revoked or  
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1 suspended, any additional license issued under this chapter in the name of said licensee may be  
2 likewise revoked or suspended by the director.

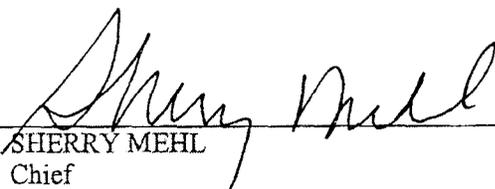
3 PRAYER

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

- 6 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
7 Registration Number ARD 206200, issued to California Smog & Repair;
- 8 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
9 registration issued to California Smog & Repair;
- 10 3. Revoking or suspending Smog Check Station License Number RC 206200, issued to  
11 California Smog & Repair;
- 12 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
13 and Safety Code in the name of California Smog & Repair;
- 14 5. Revoking or suspending Advanced Emission Specialist Technician License Number  
15 EA 038100, issued to Dionisio Diaz Bustos;
- 16 6. Revoking or suspending any additional license issued under Chapter 5 of the Health  
17 and Safety Code in the name of Dionisio Diaz Bustos;
- 18 7. Ordering California Smog & Repair and Dionisio Diaz Bustos, to pay the Bureau of  
19 Automotive Repair the reasonable costs of the investigation and enforcement of this case,  
20 pursuant to Business and Professions Code section 125.3; and,
- 21 8. Taking such other and further action as deemed necessary and proper.

22  
23  
24 DATED: \_\_\_\_\_

3/9/11

  
SHERRY MEHL

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

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