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

12 In the Matter of the Accusation Against:

Case No. 79/10-26

13 **LCD AUTOMOTIVE, LLC**
dba LCD AUTOMOTIVE
14 9020 La Linia
Atascadero, California 93422
15 **DANA P. SMITH, Member**
JAMES J. MERRICK, Member
16 **GABRIEL D. TRUJILLO, Member**

ACCUSATION

17 Automotive Repair Dealer Registration No. ARD 226711
Smog Check Station License No. RC 226711

18 **GABRIEL D. TRUJILLO**
19 1767 Goodman Court
Paso Robles, California 93446

20 Smog Technician License No. EB 023176

21 Respondents.
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23 Sherry Mehl ("Complainant") alleges:

24 **PARTIES**

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

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Automotive Repair Dealer Registration No. ARD 226711

2. On or about December 22, 2003, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 226711 ("registration") to LCD Automotive, LLC, doing business as LCD Automotive ("Respondent") with Dana P. Smith, James J. Merrick, and Gabriel D. Trujillo as Members. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

Smog Check Station License No. RC 226711

3. On or about December 22, 2003, the Director issued Smog Check Station License Number RC 226711 to Respondent. The license will expire on March 31, 2010, unless renewed.

Smog Technician License No. EB 023176

4. In or about 1997, the Director issued Smog Technician License Number EB 023176 to Gabriel D. Trujillo ("Respondent Trujillo"). The license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2010, unless renewed.

STATUTORY PROVISIONS

5. Business and Professions Code ("Code") section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

(4) Any other conduct which constitutes fraud.

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(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

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

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

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

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

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9. Health and Safety Code section 44012(f) states:

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The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, and shall require, at a minimum, for all vehicles that are not diesel-powered, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas. The department shall ensure all of the following:

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(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

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2 10. Health and Safety Code section 44015(b) states, if a vehicle meets the
3 requirements of Section 44012, a smog check station licensed to issue certificates shall issue a
4 certificate of compliance or a certificate of noncompliance.

5 11. Health and Safety Code section 44059 states:

6 The willful making of any false statement or entry with regard to a
7 material matter in any oath, affidavit, certificate of compliance or noncompliance,
8 or application form which is required by this chapter or Chapter 20.3
9 (commencing with Section 9880) of Division 3 of the Business and Professions
10 Code, constitutes perjury and is punishable as provided in the Penal Code.

11 12. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

22 13. Health and Safety Code section 44072.6 provides, in pertinent part,
23 that the expiration or suspension of a license by operation of law, or by order or
24 decision of the Director of Consumer Affairs, or a court of law, or the voluntary
25 surrender of the license shall not deprive the Director of jurisdiction to proceed
26 with disciplinary action.

27 14. Health and Safety Code section 44072.8 states:

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

COST RECOVERY

15. Code section 125.3 provides, in pertinent part, that a Board may request the
administrative law judge to direct a licensee 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.

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VIDEO SURVEILLANCE OPERATION

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May 9, 2008

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16. On or about May 9, 2008, between 1628 hours and 1634 hours, the Bureau performed a videotaped surveillance at Respondent's facility. The surveillance operation and information obtained from the Bureau's VID revealed that Respondent Trujillo certified that he had tested and inspected a 2004 Nissan Maxima, license number 5CFA954, and that the vehicle was in compliance with applicable laws and regulations, when in fact, Respondent Trujillo failed to perform a fuel cap functional test on that vehicle.

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FIRST CAUSE FOR DISCIPLINE

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(Untrue or Misleading Statements)

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17. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about May 9, 2008, it made statements which it knew or which by exercise of reasonable care should have known were untrue or misleading by issuing electronic Certificate of Compliance number NA362044C for a 2004 Nissan Maxima, certifying that the vehicle was inspected in accordance with Bureau requirements, when in fact, the fuel cap functional test had not been performed on that vehicle.

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SECOND CAUSE FOR DISCIPLINE

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(Fraud)

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18. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about May 9, 2008, it committed acts which constitute fraud by issuing electronic Certificate of Compliance number NA362044C for a 2004 Nissan Maxima, without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program)**

5 19. Respondent's station license is subject to discipline under Health and Safety Code
6 section 44072.2(a), in that on or about May 9, 2008, regarding electronic Certificate of
7 Compliance number NA362044C for a 2004 Nissan Maxima, it violated sections of that Code, as
8 follows:

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

11 b. **Section 44015, subdivision (b):** Respondent issued an electronic certificate of
12 compliance without properly testing and inspecting the vehicle to determine if it was in
13 compliance with section 44012 of that Code.

14 c. **Section 44059:** Respondent willfully made false entries for an electronic
15 certificate of compliance by certifying that the vehicle had been inspected as required, when in
16 fact, it had not.

17 **FOURTH CAUSE FOR DISCIPLINE**

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

19 20. Respondent's station license is subject to discipline under Health and Safety Code
20 section 44072.2(c), in that on or about May 9, 2008, regarding electronic Certificate of
21 Compliance number NA362044C for a 2004 Nissan Maxima, it violated sections of the
22 California Code of Regulations, title 16, as follows:

23 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
24 electronic certificate of compliance without performing a bona fide inspection of the emission
25 control devices and systems on the vehicle as required by Health and Safety Code section 44012.

26 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of
27 compliance even though the vehicle had not been inspected in accordance with section 3340.42
28 of that Code.

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

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 21. Respondent's station license is subject to discipline under Health and Safety Code
6 section 44072.2(d), in that on or about May 9, 2008, he committed acts involving dishonesty,
7 fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance
8 number NA362044C for a 2004 Nissan Maxima, without performing a bona fide inspection of
9 the emission control devices and systems on the vehicle, thereby depriving the People of the
10 State of California of the protection afforded by the Motor Vehicle Inspection Program.

11 **SIXTH CAUSE FOR DISCIPLINE**

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

13 22. Respondent Trujillo's technician license is subject to discipline under Health and
14 Safety Code section 44072.2(a), in that on or about May 9, 2008, regarding the 2004 Nissan
15 Maxima, he violated sections of that Code, as follows:

16 a. Section 44012, subdivision (f): Respondent Trujillo failed to perform emission
17 control tests on the vehicle in accordance with procedures prescribed by the department.

18 b. Section 44032: Respondent Trujillo failed to perform tests of the emission
19 control devices and systems on the vehicle in accordance with section 44012 of that Code, in that
20 he failed to perform the fuel cap functional test.

21 c. Section 44059: Respondent Trujillo willfully made false entries into the EIS for
22 the electronic certificate of compliance by certifying that the vehicle had been inspected as
23 required, when in fact, it had not.

24 **SEVENTH CAUSE FOR DISCIPLINE**

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

26 23. Respondent Trujillo's technician license is subject to discipline under Health and
27 Safety Code section 44072.2(c), in that on or about May 9, 2008, regarding the 2004 Nissan
28 Maxima, he violated sections of the California Code of Regulations, title 16, as follows:

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3 a. Section 3340.24, subdivision (c): Respondent Trujillo falsely or fraudulently
4 issued an electronic certificate of compliance without performing a bona fide inspection of the
5 emission control device and system on the vehicle as required by Health and Safety Code section
6 44012.

7 b. Section 3340.30, subdivision (a): Respondent Trujillo failed to inspect and test
8 the vehicle in accordance with Health and Safety Code section 44012.

9 c. Section 3340.41, subdivision (c): Respondent Trujillo entered false information
10 into the EIS for the vehicle by entering "pass" for the functional portion of the smog test even
11 though he failed to perform the fuel cap functional test on that vehicle.

12 d. Section 3340.42: Respondent Trujillo failed to conduct the required smog tests
13 and inspections on the vehicle in accordance with the Bureau's specifications.

14 **EIGHTH CAUSE FOR DISCIPLINE**

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

16 24. Respondent Trujillo's technician license is subject to discipline under Health and
17 Safety Code section 44072.2(d), in that on or about May 9, 2008, he committed acts involving
18 dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of
19 Compliance number NA362044C without performing a bona fide inspection of the emission
20 control devices and systems on the vehicle, thereby depriving the People of the State of
21 California of the protection afforded by the Motor Vehicle Inspection Program.

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3 **VIDEO SURVEILLANCE OPERATION**

4 **May 19, 2008**

5 25. On or about May 19, 2008, between 1751 hours and 1757 hours, the Bureau
6 performed a videotaped surveillance at Respondent's facility. The surveillance operation and
7 information obtained from the Bureau's Vehicle Database Information ("VID") revealed that
8 Respondent Trujillo performed a smog inspection on a 2001 Chevrolet C1500 truck, license
9 number 7W46946, using the clean piping method¹, and issued Certificate of Compliance number
10 NA709208C.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Misleading Statements)**

13 26. Respondent's registration is subject to discipline under Code section 9884.7(a)(1),
14 in that on or about May 19, 2008, it made statements which it knew or which by exercise of
15 reasonable care should have known were untrue or misleading by issuing Certificate of
16 Compliance number NA709208C for a 2001 Chevrolet C1500 truck, certifying that the vehicle
17 was in compliance with applicable laws and regulations, when in fact, the vehicle had been clean
18 piped.

19 **TENTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 27. Respondent's registration is subject to discipline under Code section 9884.7(a)(4),
22 in that on or about May 19, 2008, it committed acts which constitute fraud by issuing Certificate
23 of Compliance number NA709208C for a 2001 Chevrolet C1500 truck, without performing a
24 bona fide inspection of the emission control devices and systems on that vehicle, thereby
25 depriving the People of the State of California of the protection afforded by the Motor Vehicle

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27 1. "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
28 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not
in compliance or are not present in the smog check area during the time of the certification.

1 Inspection Program.

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3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program)**

5 28. Respondent's station license is subject to discipline under Health and Safety Code
6 section 44072.2(a), in that on or about May 19, 2008, regarding Certificate of Compliance
7 number NA709208C for a 2001 Chevrolet C1500 truck, it violated sections of that Code, as
8 follows:

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

11 b. **Section 44015, subdivision (b):** Respondent issued an electronic certificate of
12 compliance without properly testing and inspecting the vehicle to determine if it was in
13 compliance with section 44012 of that Code.

14 c. **Section 44059:** Respondent willfully made false entries for an electronic
15 certificate of compliance by certifying that the vehicle had been inspected as required, when in
16 fact, it had not.

17 **TWELFTH CAUSE FOR DISCIPLINE**

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

19 29. Respondent's station license is subject to discipline under Health and Safety Code
20 section 44072.2(c), in that on or about May 19, 2008, regarding electronic Certificate of
21 Compliance number NA709208C for a 2001 Chevrolet C1500 truck, it violated sections of the
22 California Code of Regulations, title 16, as follows:

23 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
24 electronic certificate of compliance for a 2001 Chevrolet C1500 truck without performing a bona
25 fide inspection of the emission control devices and systems on the vehicle as required by Health
26 and Safety Code section 44012.

27 b. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
28 Compliance number NA709208C for a 2001 Chevrolet C1500 truck even though the vehicle had

1 not been inspected in accordance with section 3340.42 of that Code.

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3 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
4 inspections on the vehicle in accordance with the Bureau's specifications.

5 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

7 30. Respondent's station license is subject to discipline under Health and Safety Code
8 section 44072.2(d), in that on or about May 19, 2008, it committed acts involving dishonesty,
9 fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance
10 number NA709208C for a 2001 Chevrolet C1500 truck without performing a bona fide
11 inspection of the emission control devices and systems on the vehicle, thereby depriving the
12 People of the State of California of the protection afforded by the Motor Vehicle Inspection
13 Program.

14 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

16 31. Respondent Trujillo's technician license is subject to discipline under Health and
17 Safety Code section 44072.2(a), in that on or about May 19, 2008, regarding electronic
18 Certificate of Compliance number NA709208C for a 2001 Chevrolet C1500 truck, he violated
19 sections of that Code, as follows:

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

22 b. **Section 44032:** Respondent Trujillo failed to perform tests of the emission
23 control devices and systems on the vehicle in accordance with section 44012 of that Code, in that
24 the vehicle had been clean piped.

25 c. **Section 44059:** Respondent Trujillo willfully made false entries into the EIS for
26 the electronic certificate of compliance, by certifying that the vehicle had been inspected as
27 required, when in fact, it had not.

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3 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

5 32. Respondent Trujillo's technician license is subject to discipline under Health and
6 Safety Code section 44072.2(c), in that on or about May 19, 2008, regarding electronic
7 Certificate of Compliance number NA709208C for a 2001 Chevrolet C1500 truck, he violated
8 sections of the California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent Trujillo falsely or fraudulently
10 issued an electronic certificate of compliance without performing a bona fide inspection of the
11 emission control device and system on the vehicle as required by Health and Safety Code section
12 44012.

13 b. **Section 3340.30, subdivision (a):** Respondent Trujillo failed to inspect and test
14 the vehicle in accordance with Health and Safety Code section 44012.

15 c. **Section 3340.41, subdivision (c):** Respondent Trujillo entered false information
16 into the Emission Inspection System ("EIS") for the electronic certificate of compliance by
17 entering vehicle identification information or emission control information for a vehicle other
18 than the vehicle being tested.

19 d. **Section 3340.42:** Respondent Trujillo failed to conduct the required smog tests
20 and inspections on the vehicle in accordance with the Bureau's specifications.

21 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

23 33. Respondent Trujillo's technician license is subject to discipline under Health and
24 Safety Code section 44072.2(d), in that on or about May 19, 2008, he committed acts involving
25 dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of
26 Compliance number NA709208C for a 2001 Chevrolet C1500 truck without performing a bona
27 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
28 People of the State of California of the protection afforded by the Motor Vehicle Inspection

1 Program.

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3 **VIDEO SURVEILLANCE OPERATION**

4 **May 22, 2008**

5 34. On or about May 22, 2008, between 1735 hours and 1739 hours, the Bureau
6 performed a videotaped surveillance of Respondent's facility. The surveillance operation and
7 information obtained from the Bureau's VID revealed that Respondent Trujillo performed a
8 smog inspection on a 1995 BMW M3, license number 4ZMG852 using the clean piping method,
9 and issued Certificate of Compliance number NA709218C.

10 **SEVENTEENTH CAUSE FOR DISCIPLINE**

11 **(Misleading Statements)**

12 35. Respondent's registration is subject to discipline under Code section 9884.7(a)(1),
13 in that on or about May 22, 2008, it made statements which it knew or which by exercise of
14 reasonable care should have known were untrue or misleading by issuing electronic Certificate
15 of Compliance number NA709218C for a 1995 BMW M3, certifying that the vehicle was in
16 compliance with applicable laws and regulations, when in fact, the vehicle had been clean piped.

17 **EIGHTEENTH CAUSE FOR DISCIPLINE**

18 **(Fraud)**

19 36. Respondent's registration is subject to discipline under Code section 9884.7(a)(4),
20 in that on or about May 22, 2008, it committed acts which constitute fraud by issuing electronic
21 Certificate of Compliance number NA709218C for a 1995 BMW M3, without performing a bona
22 fide inspection of the emission control devices and systems on that vehicle, thereby depriving the
23 People of the State of California of the protection afforded by the Motor Vehicle Inspection
24 Program.

25 **NINETEENTH CAUSE FOR DISCIPLINE**

26 **(Violation of the Motor Vehicle Inspection Program)**

27 37. Respondent's station license is subject to discipline under Health and Safety Code
28 section 44072.2(a), in that on or about May 22, 2008, regarding electronic Certificate of

1 Compliance number NA709218C for a 1995 BMW M3, it violated sections of that Code, as
2 follows:

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

5 b. Section 44015, subdivision (b): Respondent issued an electronic certificate of
6 compliance without properly testing and inspecting the vehicle to determine if it was in
7 compliance with section 44012 of that Code.

8 c. Section 44059: Respondent willfully made false entries for the electronic
9 certificate of compliance by certifying that the vehicle had been inspected as required, when in
10 fact, it had not.

11 **TWENTY CAUSE FOR DISCIPLINE**

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

13 38. Respondent's station license is subject to discipline under Health and Safety Code
14 section 44072.2(c), in that on or about May 22, 2008, regarding electronic Certificate of
15 Compliance number NA709218C for a 1995 BMW M3, it violated sections of the California
16 Code of Regulations, title 16, as follows:

17 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued an
18 electronic certificate of compliance without performing a bona fide inspection of the emission
19 control devices and systems on the vehicle as required by Health and Safety Code section 44012.

20 b. Section 3340.35, subdivision (c): Respondent issued an electronic certificate of
21 compliance even though the vehicle had not been inspected in accordance with section 3340.42
22 of that Code.

23 c. Section 3340.42: Respondent failed to conduct the required smog tests and
24 inspections on the vehicle in accordance with the Bureau's specifications.

25 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

27 39. Respondent's station license is subject to discipline under Health and Safety Code
28 section 44072.2(d), in that on or about May 22, 2008, it committed acts involving dishonesty,

1 fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance
2 number NA709218C for a 1995 BMW M3 without performing a bona fide inspection of the
3 emission control devices and systems on the vehicle, thereby depriving the People of the State of
4 California of the protection afforded by the Motor Vehicle Inspection Program.

5 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

7 40. Respondent Trujillo's technician license is subject to discipline under Health and
8 Safety Code section 44072.2(a), in that on or about May 22, 2008, regarding electronic
9 Certificate of Compliance number NA709218C for a 1995 BMW M3, he violated sections of
10 that Code, as follows:

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

13 b. **Section 44032:** Respondent Trujillo failed to perform tests of the emission
14 control devices and systems on the vehicle in accordance with section 44012 of that Code, in that
15 the vehicle had been clean piped.

16 c. **Section 44059:** Respondent Trujillo willfully made false entries into the EIS for
17 the electronic certificate of compliance by certifying that the vehicle had been inspected as
18 required, when in fact, it had not.

19 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

21 41. Respondent Trujillo's technician license is subject to discipline under Health and
22 Safety Code section 44072.2(c), in that on or about May 22, 2008, regarding electronic
23 Certificate of Compliance number NA709218C for a 1995 BMW M3, he violated sections of the
24 California Code of Regulations, title 16, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent Trujillo falsely or fraudulently
26 issued an electronic certificate of compliance without performing a bona fide inspection of the
27 emission control device and system on the vehicle as required by Health and Safety Code section
28 44012.

1 in that on or about May 23, 2008, it made statements which it knew or which by exercise of
2 reasonable care should have known were untrue or misleading, in that it issued electronic
3 Certificate of Compliance number NA709220C for a 2002 Acura 3.2 TL, certifying that the
4 vehicle was inspected in accordance with Bureau requirements, when in fact, the fuel cap
5 functional test had not been performed on that vehicle.

6 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 45. Respondent's registration is subject to discipline under Code section 9884.7(a)(4),
9 in that on or about May 23, 2008, it committed acts which constitute fraud by issuing electronic
10 Certificate of Compliance number NA709220C for a 2002 Acura 3.2 TL, without performing a
11 bona fide inspection of the emission control devices and systems on that vehicle, thereby
12 depriving the People of the State of California of the protection afforded by the Motor Vehicle
13 Inspection Program.

14 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

15 **(Violation of the Motor Vehicle Inspection Program)**

16 46. Respondent's station license is subject to discipline under Health and Safety Code
17 section 44072.2(a), in that on or about May 23, 2008, regarding electronic Certificate of
18 Compliance number NA709220C for a 2002 Acura 3.2 TL, it violated sections of that Code, as
19 follows:

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

22 b. **Section 44015, subdivision (b):** Respondent issued an electronic certificate of
23 compliance without properly testing and inspecting the vehicle to determine if it was in
24 compliance with section 44012 of that Code.

25 c. **Section 44059:** Respondent willfully made false entries into the EIS for an
26 electronic certificate of compliance by certifying that the vehicle had been inspected as required,
27 when in fact, it had not.

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3 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

5 47. Respondent's station license is subject to discipline under Health and Safety Code
6 section 44072.2(c), in that on or about May 23, 2008, regarding electronic Certificate of
7 Compliance number NA709220C for a 2002 Acura 3.2 TL, it violated sections of the California
8 Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
10 electronic certificate of compliance without performing a bona fide inspection of the emission
11 control devices and systems on the vehicle as required by Health and Safety Code section 44012.

12 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of
13 compliance even though the vehicle had not been inspected in accordance with section 3340.42
14 of that Code.

15 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
16 inspections on the vehicle in accordance with the Bureau's specifications.

17 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

19 48. Respondent's station license is subject to discipline under Health and Safety Code
20 section 44072.2(d), in that on or about May 23, 2008, he committed acts involving dishonesty,
21 fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance
22 number NA709220C for a 2002 Acura 3.2 TL, without performing a bona fide inspection of the
23 emission control devices and systems on the vehicle, thereby depriving the People of the State of
24 California of the protection afforded by the Motor Vehicle Inspection Program.

25 **THIRTIETH CAUSE FOR DISCIPLINE**

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

27 49. Respondent Trujillo's technician license is subject to discipline under Health and
28 Safety Code section 44072.2(a), in that on or about May 23, 2008, regarding the 2002 Acura 3.2

1 TL, he violated sections of that Code, as follows:

2 ///

3
4 a. **Section 44012, subdivision (f):** Respondent Trujillo failed to perform emission
5 control tests on the vehicle in accordance with procedures prescribed by the department.

6 b. **Section 44032:** Respondent Trujillo failed to perform tests of the emission
7 control devices and systems on the vehicle in accordance with section 44012 of that Code, in that
8 he failed to perform the fuel cap functional test.

9 c. **Section 44059:** Respondent Trujillo entered false information into the EIS for the
10 electronic certificate of compliance by certifying that the vehicle had been inspected as required,
11 when in fact, it had not.

12 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

14 50. Respondent Trujillo's technician license is subject to discipline under Health and
15 Safety Code section 44072.2(c), in that on or about May 23, 2008, regarding the 2002 Acura
16 3.2 TL, he violated sections of the California Code of Regulations, title 16, as follows:

17 a. **Section 3340.24, subdivision (c):** Respondent Trujillo falsely or fraudulently
18 issued an electronic certificate of compliance without performing a bona fide inspection of the
19 emission control device and system on the vehicle as required by Health and Safety Code section
20 44012.

21 b. **Section 3340.30, subdivision (a):** Respondent Trujillo failed to inspect and test
22 the vehicle in accordance with Health and Safety Code section 44012.

23 c. **Section 3340.41, subdivision (c):** Respondent Trujillo entered false information
24 into the EIS for the vehicle, by entering "pass" for the functional portion of the smog test even
25 though he failed to perform the fuel cap functional test on the vehicle.

26 d. **Section 3340.42:** Respondent Trujillo failed to conduct the required smog tests
27 and inspections in accordance with the Bureau's specifications.

28 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

2 51. Respondent Trujillo's technician license is subject to discipline under Health and
3 Safety Code section 44072.2(d), in that on or about May 23, 2008, he committed acts involving
4 dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of
5 Compliance number NA709220C for a 2002 Acura 3.2 TL without performing a bona fide
6 inspection of the emission control devices and systems on the vehicle, thereby depriving the
7 People of the State of California of the protection afforded by the Motor Vehicle Inspection
8 Program.

9 **2002 TOYOTA SIENNA**

10 52. On or about May 23, 2008, between 1018 hours and 1022 hours, the Bureau
11 performed a videotaped surveillance at Respondent's facility. The surveillance operation and
12 information obtained from the Bureau's VID revealed that Respondent Trujillo certified that he
13 had tested and inspected a 2002 Toyota Sienna, license number 4XR474, and that the vehicle
14 was in compliance with applicable laws and regulations, when in fact, Respondent Trujillo failed
15 to perform a visual smoke functional test on that vehicle.

16 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 53. Respondent's registration is subject to discipline under Code section 9884.7(a)(1),
19 in that on or about May 23, 2008, it made statements which it knew or which by exercise of
20 reasonable care should have known were untrue or misleading, in that it issued electronic
21 Certificate of Compliance number NA709221C for a 2002 Toyota Sienna, certifying that the
22 vehicle was inspected in accordance with Bureau requirements, when in fact, the visual smoke
23 functional test had not been performed on that vehicle.

24 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 54. Respondent's registration is subject to discipline under Code section 9884.7(a)(4),
27 in that on or about May 23, 2008, it committed acts which constitute fraud by issuing electronic
28 Certificate of Compliance number NA709221C for a 2002 Toyota Sienna, without performing a

1 bona fide inspection of the emission control devices and systems on that vehicle, thereby
2 depriving the People of the State of California of the protection afforded by the Motor Vehicle
3 Inspection Program.

4 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

5 **(Violation of the Motor Vehicle Inspection Program)**

6 55. Respondent's station license is subject to discipline under Health and Safety Code
7 section 44072.2(a), in that on or about May 23, 2008, regarding electronic Certificate of
8 Compliance number NA709221C for a 2002 Toyota Sienna, it violated sections of that Code, as
9 follows:

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

12 b. **Section 44015, subdivision (b)**: Respondent issued an electronic certificate of
13 compliance without properly testing and inspecting the vehicle to determine if it was in
14 compliance with section 44012 of that Code.

15 c. **Section 44059**: Respondent willfully made false entries into the EIS for the
16 electronic certificate of compliance by certifying that the vehicle had been inspected as required,
17 when in fact, it had not.

18 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

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

20 56. Respondent's station license is subject to discipline under Health and Safety Code
21 section 44072.2(c), in that on or about May 23, 2008, regarding electronic Certificate of
22 Compliance number NA709221C for a 2002 Toyota Sienna, it violated sections of the California
23 Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an
25 electronic certificate of compliance without performing a bona fide inspection of the emission
26 control devices and systems on the vehicle as required by Health and Safety Code section 44012.

27 b. **Section 3340.35, subdivision (c)**: Respondent issued an electronic certificate of
28 compliance even though the vehicle had not been inspected in accordance with section 3340.42

1 of that Code.

2 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
3 inspections on the vehicle in accordance with the Bureau's specifications.

4 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

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

6 57. Respondent's station license is subject to discipline under Health and Safety Code
7 section 44072.2(d), in that on or about May 23, 2008, he committed acts involving dishonesty,
8 fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance
9 number NA709221C for a 2002 Toyota Sienna, without performing a bona fide inspection of the
10 emission control devices and systems on the vehicle, thereby depriving the People of the State of
11 California of the protection afforded by the Motor Vehicle Inspection Program.

12 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

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

14 58. Respondent Trujillo's technician license is subject to discipline under Health and
15 Safety Code section 44072.2(a), in that on or about May 23, 2008, regarding a 2002 Toyota
16 Sienna, he violated sections of that Code, as follows:

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

19 b. **Section 44032:** Respondent Trujillo failed to perform tests of the emission
20 control devices and systems on the vehicle in accordance with section 44012 of that Code, in that
21 he failed to perform the visual smoke functional test.

22 c. **Section 44059:** Respondent Trujillo entered false information into the EIS for the
23 electronic certificate of compliance issued for the vehicle, by certifying that the vehicle had been
24 inspected as required, when in fact, it had not.

25 **THIRTY-NINTH CAUSE FOR DISCIPLINE**

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

27 59. Respondent Trujillo's technician license is subject to discipline under Health and
28 Safety Code section 44072.2(c), in that on or about May 23, 2008, regarding the 2002 Toyota

1 Sienna, he violated sections of the California Code of Regulations, title 16, as follows:

2 a. Section 3340.24, subdivision (c): Respondent Trujillo falsely or fraudulently
3 issued an electronic certificate of compliance without performing a bona fide inspection of the
4 emission control device and system on the vehicle as required by Health and Safety Code section
5 44012.

6 b. Section 3340.30, subdivision (a): Respondent Trujillo failed to inspect and test
7 the vehicle in accordance with Health and Safety Code section 44012.

8 c. Section 3340.41, subdivision (c): Respondent Trujillo entered false information
9 into the EIS for the vehicle by entering "pass" for the functional portion of the smog test even
10 though he failed to perform a visual smoke functional test on the vehicle.

11 d. Section 3340.42: Respondent Trujillo failed to conduct the required smog tests
12 and inspections in accordance with the Bureau's specifications.

13 **FORTIETH CAUSE FOR DISCIPLINE**

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

15 60. Respondent Trujillo's technician license is subject to discipline under Health and
16 Safety Code section 44072.2(d), in that on or about May 23, 2008, he committed acts involving
17 dishonesty, fraud or deceit whereby another was injured by issuing Certificate of Compliance
18 number NA709221C for a 2002 Toyota Sienna without performing a bona fide inspection of the
19 emission control devices and systems on the vehicle, thereby depriving the People of the State of
20 California of the protection afforded by the Motor Vehicle Inspection Program.

21 **OTHER MATTERS**

22 61. Under Code section 9884.7, subdivision (c), the director may invalidate or refuse
23 to validate, temporarily or permanently, the registrations for all places of business operated in
24 this state by LCD Automotive, LLC, doing business as LCD Automotive, upon a finding that it
25 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
26 pertaining to an automotive repair dealer.

27 62. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
28 License Number RC 226711, issued to LCD Automotive, LLC, doing business as LCD

1 Automotive, is revoked or suspended, any additional license issued under this chapter in the
2 name of said licensee may be likewise revoked or suspended by the director.

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4 63. Under Health and Safety Code section 44072.8, if Smog Check Technician
5 License Number EB 023176, issued to Gabriel D. Trujillo, is revoked or suspended, any
6 additional license issued under this chapter in the name of said licensee may be likewise revoked
7 or suspended by the director.

8 **PRAYER**

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

11 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
12 Number ARD 226711, issued to LCD Automotive, LLC, doing business as LCD Automotive;

13 2. Temporarily or permanently invalidating any other automotive repair dealer
14 registration issued to LCD Automotive, LLC, doing business as LCD Automotive;

15 3. Revoking or suspending Smog Check Station License Number RC 226711, issued
16 to LCD Automotive, LLC, doing business as LCD Automotive;

17 4. Revoking or suspending any additional license issued under Chapter 5 of
18 the Health and Safety Code in the name of LCD Automotive, LLC, doing business as LCD
19 Automotive;

20 5. Revoking or suspending Smog Technician License Number EB 023176, issued to
21 Gabriel David Trujillo;

22 6. Revoking or suspending any additional license issued under Chapter 5 of
23 the Health and Safety Code in the name of Gabriel David Trujillo;

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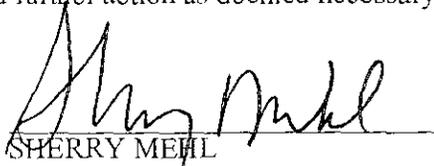
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4 7. Ordering LCD Automotive, LLC, doing business as LCD Automotive, and
5 Gabriel David Trujillo to pay the Director of Consumer Affairs the reasonable costs of the
6 investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

8 DATED: 10/15/09

9 
10 SHERRY MEHL
11 Chief
12 Bureau of Automotive Repair
13 Department of Consumer Affairs
14 State of California
15 Complainant

14 LA2008900645
15 Accusation (kdg)8/13/09

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