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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. 79/10-80

13 **CERES SMOG, INC.**
14 **DINESHWAR RAM, PRESIDENT**
15 **1555 Whitmore Avenue, #A**
16 **Ceres, CA 95307**
17 **Automotive Repair Dealer Reg. No. ARD 228953**
18 **Smog Check Station License No. RC 228953**

A C C U S A T I O N

(Smog Check)

16 and

17 **SANJESH PRASAD**
18 **3887 Podocarpus Drive**
19 **Ceres, CA 95307**
20 **Advanced Emission Specialist Technician**
21 **License No. EA 150687**

20 Respondents.

22 Complainant alleges:

23 **PARTIES**

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

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1 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the
2 expiration or suspension of a license by operation of law, or by order or decision of the
3 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license
4 shall not deprive the Director of jurisdiction to proceed with disciplinary action.

5 **STATUTORY PROVISIONS**

6 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

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19 (4) Any other conduct which constitutes fraud.

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

27 10. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
28 "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 Bus. & Prof. Code.

11 11. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

5 12. Health & Saf. Code section 44072.10 states, in pertinent part:

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7 (c) The department shall revoke the license of any smog check
8 technician or station licensee who fraudulently certifies vehicles or participates
9 in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is
not limited to, all of the following:

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11 (4) Intentional or willful violation of this chapter or any regulation,
standard, or procedure of the department implementing this chapter . . .

12 13. Health & Saf. Code section 44072.8 states that when a license has been revoked
13 or suspended following a hearing under this article, any additional license issued under this
14 chapter in the name of the licensee may be likewise revoked or suspended by the director.

15 **COST RECOVERY**

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

20 **FACTUAL BACKGROUND**

21 15. In or about April 2009, a representative of the Bureau (hereinafter
22 “representative”) reviewed information from the Bureau’s vehicle information database
23 (“VID”) pertaining to Respondent Ceres Smog’s smog check activities. The representative
24 found that on April 18, 2009, Respondent Prasad performed a smog inspection on a 1997
25 Dodge Dakota (“Dodge Dakota”), License No. 7T87984, on behalf of Ceres Smog, resulting
26 in the issuance of electronic smog Certificate of Compliance No. N1742542C. The VID data

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1 indicated that the Dodge Dakota had a pending OBD II¹ code of P1384. The representative
2 also found that on April 20, 2009, Prasad performed a smog inspection on a 1997 Dodge
3 Ram ("Dodge Ram"), License No. 5S55670, on behalf of Ceres Smog, resulting in the
4 issuance of electronic smog Certificate of Compliance No. N1742544C. The VID data
5 indicated that the Dodge Ram also had a pending OBDII code of P1384. On April 22, 2009,
6 the Bureau received information indicating that the P1384 fault code was not applicable to
7 either vehicle.

8 16. On April 28, 2009, the representative conducted a scheduled Quality Assurance
9 inspection of Ceres Smog's facility and met with Ram and Prasad. The representative
10 obtained copies of estimates and vehicle inspection reports for the Dodge Dakota and Dodge
11 Ram. Prasad told the representative that the Dodge Ram was owned by an employee of a
12 tire shop that the facility did business with and that the Dodge Dakota was owned by an
13 employee of Ceres Smog. Prasad admitted to the representative that he used another
14 vehicle, a 1999 Jaguar XJ8 ("Jaguar"), during the OBD II portion of the smog inspections
15 on the Dodge Dakota and Dodge Ram. The representative asked Ram and Prasad about the
16 location of the Jaguar and was told that the vehicle belonged to the facility. The
17 representative had Ram connect the Jaguar to the state certified smog machine (Emission
18 Inspection System) and obtain a printout for the OBD II codes. The representative
19 reviewed the printout and found that the Jaguar had a pending OBD II code of P1384.

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

1 FIRST CAUSE FOR DISCIPLINE

2 (Untrue or Misleading Statements)

3 17. Respondent Ceres Smog's registration is subject to disciplinary action pursuant
4 to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
5 authorized statements which it knew or in the exercise of reasonable care should have
6 known to be untrue or misleading, as follows:

7 a. Respondent Ceres Smog's smog check technician, Respondent Prasad, certified
8 under penalty of perjury on the vehicle inspection report for the Dodge Dakota that he
9 performed the smog inspection on the vehicle in accordance with all Bureau requirements
10 and that the vehicle had passed inspection and was in compliance with applicable laws and
11 regulations. In fact, Respondent Prasad conducted the inspection on the Dodge Dakota
12 using clean-plugging methods² in that he used the Jaguar during the OBD II functional test
13 in order to issue a smog certificate of compliance for the Dodge Dakota, and did not test or
14 inspect the Dodge Dakota as required by Health & Saf. Code section 44012.

15 b. Respondent Ceres Smog's smog check technician, Respondent Prasad, certified
16 under penalty of perjury on the vehicle inspection report for the Dodge Ram that he
17 performed the smog inspection on the vehicle in accordance with all Bureau requirements
18 and that the vehicle had passed inspection and was in compliance with applicable laws and
19 regulations. In fact, Respondent Prasad conducted the inspection on the Dodge Ram using
20 clean-plugging methods in that he used the Jaguar during the OBD II functional test in
21 order to issue a smog certificate of compliance for the Dodge Ram, and did not test or
22 inspect the Dodge Ram as required by Health & Saf. Code section 44012.

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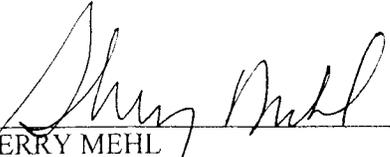
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25 _____
26 ² Clean-plugging is the use of the OBD II readiness monitor status and stored fault
27 code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog
28 certificate to another vehicle that is not in compliance 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.

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

DATED: 5/27/10


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