

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
Deputy Attorney General
4 State Bar No. 193338
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5341
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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. 79/10-21

13 **GALT AUTO SERVICE**
103 4th Street
14 **Galt, California 95632**
Automotive Repair Dealer Registration
15 **No. ARD 237935**
Smog Check Station License No. RC 237935,

A C C U S A T I O N

16 **and**

SMOG CHECK

17 **LUPE PEREZ NARANJO**
300 Oberlin Way
18 **Galt, California 95632**
Advanced Emission Specialist Technician
19 **License No. EA 153752**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

26 **Automotive Repair Dealer Registration**

27 2. On or about May 2, 2005, the Bureau issued Automotive Repair Dealer Registration
28 Number ARD 237935 ("registration") to Lupe Perez Naranjo ("Respondent"), doing business as

1 Galt Auto Service. The registration was in full force and effect at all times relevant to the charges
2 brought herein and will expire on February 28, 2010, unless renewed.

3 **Smog Check Station License**

4 3. On or about May 5, 2005, the Bureau issued Smog Check Station License Number
5 RC 237935 ("station license") to Respondent. The station license was in full force and effect at
6 all times relevant to the charges brought herein and will expire on February 28, 2010, unless
7 renewed.

8 **Advanced Emission Specialist Technician**

9 4. On or about September 25, 2006, the Bureau issued Advanced Emission Specialist
10 Technician License Number EA 153752 ("technician license") to Respondent. The technician
11 license was in full force and effect at all times relevant to the charges brought herein and will
12 expire on December 31, 2010, unless renewed.

13 **STATUTORY PROVISIONS**

14 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
15 part:

16 (a) The director, where the automotive repair dealer cannot show there
17 was a bona fide error, may refuse to validate, or may invalidate temporarily or
18 permanently, the registration of an automotive repair dealer for any of the following
19 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.

20 (1) Making or authorizing in any manner or by any means whatever any
21 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.

22 (3) Failing or refusing to give to a customer a copy of any document
requiring his or her signature, as soon as the customer signs the document.

23 (4) Any other conduct which constitutes fraud.

24 (b) Except as provided for in subdivision (c), if an automotive repair
25 dealer operates more than one place of business in this state, the director pursuant to
26 subdivision (a) shall only invalidate temporarily or permanently the registration of the
27 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.

28 (c) Notwithstanding subdivision (b), the director may invalidate
temporarily or permanently, the registration for all places of business operated in this

1 state by an automotive repair dealer upon a finding that the automotive repair dealer
2 has, or is, engaged in a course of repeated and willful violations of this chapter, or
3 regulations adopted pursuant to it.

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

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

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

15 9. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

26 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
27 expiration or suspension of a license by operation of law, or by order or decision of the Director
28 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.

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

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."

1 **COST RECOVERY**

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

6 **UNDERCOVER OPERATION - JANUARY 28, 2009**

7 13. On January 28, 2009, a Bureau undercover using the alias Ronnie L. Brooks
8 (“operator”) drove a Bureau-documented 1998 Ford Explorer to Respondent’s facility for a smog
9 inspection. The vehicle could not pass a smog inspection because the vehicle’s positive
10 crankcase ventilation (“PCV”) system was missing. The operator signed an estimate; however,
11 the operator was not provided with a copy of the estimate prior to the performance of the smog
12 inspection. Respondent performed the smog inspection and issued electronic Certificate of
13 Compliance No. NG694631, certifying that he had tested and inspected the 1998 Ford Explorer
14 and that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle
15 could not have passed the visual portion of the smog inspection because the vehicle’s PCV
16 system was missing.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 14. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,
20 subdivision (a)(1), in that on or about January 28, 2009, Respondent made or authorized
21 statements which he knew or in the exercise of reasonable care he should have known to be
22 untrue or misleading by issuing electronic Certificate of Compliance No. NG694631 for the 1998
23 Ford Explorer, certifying that the vehicle was in compliance with applicable laws and regulations.
24 In fact, the vehicle could not have passed the visual portion of the smog inspection because the
25 vehicle’s PCV system was missing.

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1 of Compliance No. NG694631 for the 1998 Ford Explorer without performing a bona fide
2 inspection of the emission control devices and systems on that vehicle, thereby depriving the
3 People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 **EIGHTH CAUSE FOR DISCIPLINE**

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

7 21. Respondent's technician license is subject to discipline pursuant to Health and Safety
8 Code section 44072.2, subdivision (a), in that on or about January 28, 2009, regarding the 1998
9 Ford Explorer, he failed to comply with the following sections of that Code:

10 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
11 control devices and systems required by law were installed and functioning correctly in
12 accordance with test procedures.

13 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
14 in accordance with procedures prescribed by the department.

15 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
16 and systems in accordance with section 44012 of that Code.

17 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
18 Compliance No. NG694631, certifying that the vehicle had been inspected as required when, in
19 fact, it had not.

20 **NINTH CAUSE FOR DISCIPLINE**

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

22 22. Respondent's technician license is subject to discipline pursuant to Health and Safety
23 Code section 44072.2, subdivision (c), in that on or about January 28, 2009, regarding the 1998
24 Ford Explorer, he violated the following sections of the California Code of Regulations, title 16:

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
26 electronic Certificate of Compliance No. NG694631 without performing a bona fide inspection of
27 the emission control devices and systems on that vehicle as required by Health and Safety Code
28 section 44012.

1 penalties totaling \$500 against Respondent for the violations. Respondent complied with this
2 citation on August 21, 2008.

3 b. On or about August 28, 2008, the Bureau issued Citation No. C09-0195 against
4 Respondent's registration and station licenses for violations of Health and Safety Code section
5 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices
6 according to procedures prescribed by the department), and California Code of Regulations, title
7 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a
8 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover
9 vehicle with a missing hot air tube for the thermostatic air cleaner. The Bureau assessed civil
10 penalties totaling \$1,000 against Respondent for the violations. Respondent complied with this
11 citation on October 22, 2008.

12 c. On or about November 18, 2008, the Bureau issued Citation No. C09-0618 against
13 Respondent's registration and station licenses for violations of Health and Safety Code section
14 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices
15 according to procedures prescribed by the department), and California Code of Regulations, title
16 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a
17 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover
18 vehicle with a non-functional exhaust gas recirculation system. The Bureau assessed civil
19 penalties totaling \$2,000 against Respondent for the violations. Respondent complied with this
20 citation on January 13, 2009.

21 d. On or about June 27, 2008, the Bureau issued Citation No. M08-1155 against
22 Respondent's technician license for violations of Health and Safety Code section 44032 (qualified
23 technicians shall perform tests of emission control devices according to procedures in accordance
24 with section 44012), and California Code of Regulations, title 16, section ("Regulation") 3340.30,
25 subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with
26 44012 and 44035 of the Health and Safety Code, and California Code of Regulations, title 16,
27 section 3340.42), for issuing a certificate of compliance to a Bureau undercover vehicle with a
28 missing hot air tube for the thermostatic air cleaner. The Bureau required Respondent to

1 complete an 8-hour training course. Respondent complied with this citation on September 18,
2 2008.

3 e. On or about August 28, 2008, the Bureau issued Citation No. M09-0196 against
4 Respondent's technician license for violations of Health and Safety Code section 44032 (qualified
5 technicians shall perform tests of emission control devices according to procedures in accordance
6 with section 44012), and California Code of Regulations, title 16, section ("Regulation") 3340.30,
7 subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with
8 44012 and 44035 of the Health and Safety Code, and California Code of Regulations, title 16,
9 section 3340.42), for issuing a certificate of compliance to a Bureau undercover vehicle with a
10 missing thermostatic air cleaner. The Bureau required Respondent to complete an 16-hour
11 training course. Respondent complied with this citation on October 13, 2008.

12 f. On or about November 18, 2008, the Bureau issued Citation No. M09-0619 against
13 Respondent's technician license for violations of Health and Safety Code section 44032 (qualified
14 technicians shall perform tests of emission control devices according to procedures in accordance
15 with section 44012), and California Code of Regulations, title 16, section ("Regulation") 3340.30,
16 subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with
17 44012 and 44035 of the Health and Safety Code, and California Code of Regulations, title 16,
18 section 3340.42), for issuing a certificate of compliance to a Bureau undercover vehicle with a
19 non-functional exhaust gas recirculation system. The Bureau required Respondent to complete a
20 Clean Air Car Course. Respondent complied with this citation on March 16, 2009.

21 OTHER MATTERS

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

27 26. Under Health and Safety Code section 44072.8, if Smog Check Station License
28 Number RC 237935, issued to Lupe Perez Naranjo doing business as Galt Auto Service, is

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

3 27. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
4 Technician License Number EA 153752, issued to Lupe Perez Naranjo, is revoked or suspended,
5 any additional license issued under this chapter in the name of said licensee may be likewise
6 revoked or suspended by the director.

7 **PRAYER**

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

10 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
11 Number ARD 237935, issued to Lupe Perez Naranjo doing business as Galt Auto Service;

12 2. Temporarily or permanently invaliding any other registration issued to Lupe Perez
13 Naranjo;

14 3. Revoking or suspending Smog Check Station License Number RC 237935, issued to
15 Lupe Perez Naranjo doing business as Galt Auto Service;

16 4. Revoking or suspending any additional license issued under this chapter in the name
17 of Lupe Perez Naranjo;

18 5. Revoking or suspending Advanced Emission Specialist Technician License Number
19 EA 153752, issued to Lupe Perez Naranjo.

20 6. Revoking or suspending any additional license issued under this chapter in the name
21 of Lupe Perez Naranjo;

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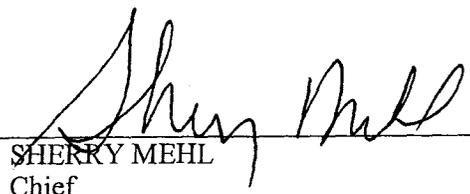
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7. Ordering Lupe Perez Naranjo to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 10/5/09



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

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