

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ATM MOTORS
ANGEL TORRIES, aka
JOSE ANGEL TORRES MEDRANO, Owner
5168 South Vermont Avenue
Los Angeles, California 90037

Automotive Repair Dealer Registration
No. ARD 211032
Smog Check, Test Only, Station License
No. TC 211032

and

JUAN A. RIOS
3703 ½ South Victoria Avenue
Los Angeles, California 90016

Advanced Emission Specialist Technician
License No. EA 631361

Respondents.

Case No. 79/11-94

OAH No. 2011080083

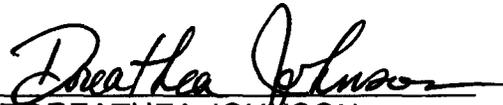
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter; except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on page 4, second line of paragraph 9, of the Proposed Decision is corrected as follows:

The phrase "used fraudulently" is corrected to read "used to fraudulently."

This Decision shall become effective 5/7/12.

DATED: April 2, 2012


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

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Case No. 79/11-94

ATM MOTORS
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Los Angeles, California 90037,
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JOSE ANGEL TORRES MEDRANO, Owner,
Automotive Repair Dealer Registration
No. ARD-211032,
Smog Check Test Only Station License
No. TC-211032,

OAH No. 2011080083

and

JUAN A. RIOS
3703 ½ South Victoria Avenue
Los Angeles, California 90016,
Advanced Emission Specialist Technician
License No. EA-631361,

Respondents.

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on February 10, 2012, in Los Angeles, California. Complainant was represented by William D. Gardner, Deputy Attorney General. The owner of ATM Motors, Angel Torres, aka Jose Angel Torres Medrano (Respondent), was present was represented by Rene Sanz, Attorney at Law.

Oral and documentary evidence was received and argument was heard. The record was closed, and the matter was submitted for decision on February 10, 2012.

FACTUAL FINDINGS

1. On June 21, 2011, Complainant Sherry Mehl filed the Accusation while acting in her official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.

2. On December 19, 2000, the Bureau issued Automotive Repair Dealer (ARD) Registration Number ARD 211032 to Respondent as owner, doing business as ATM Motors. On July 31, 2009, the Bureau issued Smog Check Test Only Station License Number TC 211032 to Respondent. The ARD Registration and Smog Check Test Only Station License will expire on June 30, 2012, unless renewed.

3(a). On September 24, 2009, the Bureau issued Advanced Emission Specialist (AES) Technician License Number EA 631361 to Juan A. Rios, also known as Juan Andres Rios and Juan Andres Rios Veliz (Rios). The AES Technician License was in full force and effect at all relevant times.

3(b). Rios was named as a respondent in this matter. In a Stipulated Settlement and Disciplinary Order executed in September 2011, Rios admitted "the truth of each and every charge and allegation in Accusation No. 79/11-94," and agreed to the revocation of his AES Technician License.

3(c). In a Decision adopting the Stipulated Settlement and Disciplinary Order, effective December 16, 2011, the Bureau revoked Rios' AES Technician License.

4. On December 7, 2010, Bureau representatives conducted a videotaped surveillance operation of ATM Motors (ATM).

5. The surveillance operation and information obtained from the Bureau's Vehicle Information Database (VID) revealed that on December 7, 2010, between 8:31 a.m. and 4:33 p.m., Rios entered information into the Emission Information System (EIS) and the VID, indicating that Rios had conducted smog tests and inspections on four vehicles and issued electronic certificates of compliance certifying that those vehicles had been properly inspected and tested and were in compliance with the applicable laws and regulations. However, the Bureau surveillance revealed that the vehicles were certified using a "clean piping method,"¹ by using the tail pipe emissions of vehicles other than those certified in order to issue the certificates of compliance, as follows:

a. According to information entered by Rios into the EIS and VID using his AES Technician License Number and access code, from 8:31 a.m. to 8:58 a.m., a 1996 Ford Windstar, License Number 4FMB841, was inspected, and was issued Certificate Number WP785959C. The videotaped surveillance revealed that a 2000 Ford Ranger,

¹ California Code of Regulations, title 16, section 3340.1, subdivision (t), states:

"Clean piping," for purposes of Health and Safety Code section 44072.10, subdivision (c)(1), means the use of a sample of exhaust emissions of one vehicle in order to cause the EIS to issue a certificate of compliance for another vehicle.

License Number 6H57317, was used to obtain the sample of exhaust emissions to issue Certificate Number WP785959C.

b. According to information entered by Rios into the EIS and VID using his AES Technician License Number and access code, from 2:16 p.m. to 2:30 p.m., a 2003 Mitsubishi, License Number 5AQV901, was inspected, and was issued Certificate Number WP785964C. The videotaped surveillance revealed that a 2000 Ford Ranger, License Number 6H57317, was used to obtain the sample of exhaust emissions to issue Certificate Number WP785964C.

c. According to information entered by Rios into the EIS and VID using his AES Technician License Number and access code, from 2:35 p.m. to 2:48 p.m., a 1977 Dodge B200 Van, License Number 7T67122, was inspected, and was issued Certificate Number WP785965C. The videotaped surveillance revealed that a 1996 Mitsubishi, License Number 5BGH828, was used to obtain the sample of exhaust emissions to issue Certificate Number WP785965C.

d. According to information entered by Rios into the EIS and VID using his AES Technician License Number and access code, from 4:12 p.m. to 4:33 p.m., a 1996 Chevrolet Astro Minivan, License Number 5KSM333, was inspected, and was issued Certificate Number WP785969C. The videotaped surveillance revealed that a 1997 Chevrolet pickup truck, License Number 7A04365, was used to obtain the sample of exhaust emissions to issue Certificate Number WP785969C.

6. On December 8, 2010, Bureau representatives conducted another videotaped surveillance operation of ATM.

7. The surveillance operation and information obtained from the Bureau's VID revealed that on December 8, 2010, between 10:45 a.m. and 3:54 p.m., Rios entered information into the EIS and the VID, indicating that Rios had conducted smog tests and inspections on four vehicles and issued electronic certificates of compliance for three of those vehicles certifying that those vehicles had been properly inspected and tested and were in compliance with the applicable laws and regulations. However, the Bureau surveillance revealed that the four smog inspections were performed and the three vehicles were certified using a "clean piping method," by using the tail pipe emissions of vehicles other than those certified, as follows:

a. According to information entered by Rios into the EIS and VID using his AES Technician License Number and access code, from 10:45 a.m. to 10:59 a.m., a 1978 Chevrolet G20 Van, License Number 3BUM647, was inspected, but no certificate of compliance was issued. The videotaped surveillance revealed that a 1996 Mitsubishi, License Number 5BGH828, was used to obtain the sample of exhaust emissions for the smog inspection.

b. According to information entered by Rios into the EIS and VID using his AES Technician License Number and access code, from 11:55 a.m. to 12:18 p.m., a 1996 Jeep, License Number 4VCV023, was inspected, and was issued Certificate Number WP785974C. The videotaped surveillance revealed that a 2004 Toyota, License Number 5HLT683, was used to obtain the sample of exhaust emissions to issue Certificate Number WP785974C.

c. According to information entered by Rios into the EIS and VID using his AES Technician License Number and access code, from 3:11 p.m. to 3:26 p.m., a 1985 Chevrolet G30 Van, License Number 2U4537, was inspected, and was issued Certificate Number WP785979C. The videotaped surveillance revealed that a 1996 Mitsubishi, License Number 5BGH828, was used to obtain the sample of exhaust emissions to issue Certificate Number WP785979C.

d. According to information entered by Rios into the EIS and VID using his AES Technician License Number and access code, from 3:31 p.m. to 3:54 p.m., a 1988 Honda, License Number 2KDV866, was inspected, and was issued Certificate Number WP785980C. The videotaped surveillance revealed that a 1996 Mitsubishi, License Number 5BGH828, was used to obtain the sample of exhaust emissions to issue Certificate Number WP785980C.

8. Respondent Torres was not on the premises at ATM on either December 7 or 8, 2010.

9. However, the 1996 Mitsubishi, License Number 5BGH828, which was clean piped by Rios and used fraudulently certify four vehicles, was registered to Respondent Torres.

10. The 2000 Ford Ranger, License Number 6H57317, which was clean piped by Rios and used fraudulently certify two vehicles was registered to Rios from June 30, 2008 through June 30, 2009, and subsequently registered to Pedro Martinez at 5168 S. Vermont Avenue, which is the same address as ATM. Pedro Martinez was registered as a Qualified Smog Technician at ATM from July 17, 2001 through November 18, 2002.

11. Complainant submitted a declaration of Respondent Torres, which had originally been submitted by Respondent Torres in support of his opposition to a Petition for Interim Suspension Order. (Complainant's Exhibit 20.) According to that declaration, Respondent Torres was in El Salvador from November 10, 2010, through February 9, 2011. The declaration further stated that Respondent Torres did not know that his employee, Rios, was doing anything illegal and that Respondent Torres "did not allow or condone any illegal activity at ATM." (*Id.*)

12(a). Complainant did not have an opportunity to cross-examine Respondent Torres about his purported ignorance of illegal activity.

12(b). Respondent Torres declined to take the stand to testify on his own behalf. Pursuant to Government Code section 11513, subdivision (b), Complainant called Respondent Torres to the witness stand to testify on cross examination. Except for stating his name, Respondent Torres refused to answer any questions under oath and instead invoked his Fifth Amendment privilege.²

13(a). Respondent Torres provided no testimony to explain the use of his vehicle in the fraudulent issuance four certificates of compliance. He provided no testimony to shed light on why Pedro Martinez's vehicle was registered at ATM's address and kept at ATM's premises.

13(b). Given the unexplained use of Respondent Torres's and Pedro Martinez's vehicles in the fraudulent issuance of certificates of compliance, Respondent Torres' claimed ignorance of illegal activity becomes questionable and his declaration was given less weight.³

13(c). However, while the evidence raised a doubt regarding his claimed lack of knowledge, the evidence was insufficient to affirmatively establish Respondent Torres' knowledge of the illegal activity on December 7 and 8, 2010.

14. The credible, uncontroverted testimonies of Bureau employees, Albert Ramos and Freddie Moore, established the following: In order to access and enter information into the EIS, an AES Technician must enter his personal identification number (PIN). To prevent fraud, an AES Technician's PIN is kept secret, and they are instructed never to reveal it to anyone. Consequently, an owner of a smog check station cannot access the EIS using the AES Technician's PIN number. However, station owners are expected to track the activities of their employees and are provided means to access EIS machines to supervise their employees. If a smog station owner is not a licensed AES Technician, he may gain access to the EIS using the machine's station manager menu, which allows him to see what is occurring at his station and view the record for each smog check that an AES Technician performs. The station manager cannot do this remotely, but must be present to enter his owner access code. Furthermore, in reviewing just the records, an owner cannot determine whether clean piping has occurred.

² Contrary to Complainant's assertion, no inference may be drawn from a witness's invoking a privilege. (Evid. Code, § 913; See, *Garrity v. New Jersey* (1967) 385 U.S. 493, 17 L.Ed.2d 562, 87 S.Ct. 616; *Spevack v. Klein* (1967) 385 U.S. 511, 17 L.Ed.2d 574, 87 S.Ct. 625.) However, note can be taken of Respondent's failure to explain or deny evidence against him. (Evid. Code, § 413.)

³ Complainant did not withdraw the declaration (Complainant's Exhibit 20) after Respondent Torres refused to submit to cross examination.

15. Respondent Torres presented no evidence regarding what safeguards he would use to prevent recurrence of similar violations by current and future employees.

16. Respondent Torres has no record of prior discipline by the Bureau.

17(a). Complainant submitted as evidence of the costs of investigation and prosecution of this matter a certification of investigation and prosecution costs, signed by Timothy Corcoran, Program Manager I for the Bureau, certifying that the Bureau had incurred \$22,123 in costs for investigative services and Attorney General's legal services through July 31, 2011.⁴

17(b). Complainant also submitted a Certification of Prosecution Costs: Declaration of William Gardner (DAG Declaration), certifying that the Department of Justice, Office of the Attorney General billed the Bureau \$15,177.50 for legal services provided through December 19, 2011.

17(c). There was no evidence that any of the costs were unreasonable.

17(d). The evidence established that Complainant incurred total costs of \$22,123, all of which are deemed reasonable.

LEGAL CONCLUSIONS

1. First and Tenth Causes for Discipline: Cause exists to discipline Respondent Torres's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(1), for his employee's making or authorizing statements he knew, or should have known, to be untrue or misleading, as set forth in Factual Findings 2 through 14, and Legal Conclusion 7.

2. Second and Eleventh Causes for Discipline: Cause exists to discipline Respondent Torres's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(4), for his employee's fraud in issuing certificates of compliance without bona fide inspections, as set forth in Factual Findings 2 through 14, and Legal Conclusion 7.

3. Third and Twelfth Causes for Discipline: Cause exists to revoke or suspend Respondent's smog check station license under Health and Safety Code section 44072.2, subdivision (a), for failure to comply with Health and Safety Code sections 44012, 44015 and 44059, as set forth in Factual Findings 2 through 14, and Legal Conclusions 7.

⁴ This costs certification was admitted as a certified copy of the actual costs incurred by the Bureau, signed by a designated representative of the Bureau. Pursuant to Business and Professions Code section 125.3, the costs certification was considered prima facie evidence of the reasonable costs of investigation and prosecution in this matter.

4. Fourth and Thirteenth Causes for Discipline: Cause exists to revoke or suspend Respondent's smog check station license under Health and Safety Code section 44072.2, subdivision (c), for failure to comply with California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.41, subdivision (c), and 3340.42, as set forth in Factual Findings 2 through 14, and Legal Conclusions 7.

5. Fifth and Fourteenth Causes for Discipline: Cause exists to revoke or suspend Respondent's smog check station license under Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud and deceit, causing injury to another by issuing fraudulent certificates of compliance and depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program, as set forth in Factual Findings 2 through 14, and Legal Conclusions 7.

6. The Sixth, Seventh, Eighth, Fifteenth, Sixteenth and Seventeenth Causes for discipline were leveled at Rios, who executed a Stipulated Settlement and Disciplinary Order, adopted by the Bureau, as set forth in Factual Finding 3.⁵

7(a). Respondent's counsel argued that Respondent Torres should not be held responsible for Rios's actions. However, Complainant argued persuasively that Respondent Torres, dba ATM Motors, is liable for the actions of his employee, Rios. Statutory and case law hold Respondent Torres responsible for the actions of his employee.

7(b). Business and Professions Code, section 9884.7 imposes liability on automotive repair dealers for the violations of their employees "related to the conduct of business of the automotive repair dealer." Specifically, Business and Professions Code section 9884.7, subdivision (a), provides:

The director [of the Department of Consumer Affairs], 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. (Emphasis added.)

In this case, Rios's violations occurred during the performance of smog inspections which were related to the ATM's business and which were subject to the requirements of the Automotive Repair Act (Business and Professions Code sections 9880 et seq.). (See, Health & Safety Code, § 44072.8.) Consequently, the Bureau may discipline the ARD registration of Respondent Torres, dba ATM, for the violations of its employee, Rios, while conducting those smog inspections.

⁵ There was no Ninth Cause for Discipline enumerated in the Accusation.

7(c). Furthermore, Complainant persuasively pointed out that, for public protection purposes, courts have imposed liability on licensees for the unlawful acts of their employees and agents while engaged in the operation of a regulated and licensed business. (*Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App.2d 179, 192 (licensed pharmacy responsible for wrongdoing of employees who were licensed pharmacists); see also *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793; *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) The *Arenstein* Court held that, "if a licensee elects to operate his business through employees, he must be responsible to the licensing authority for their conduct in the exercise of his license," and this holds true even if the licensee "does not authorize the unlawful acts and did not have actual knowledge of the activities." (265 Cal.App.2d 179, 192-193.) The Court noted, "This would be particularly true of a corporate permittee which could act only through its officers, agents or employees." (*Id.*)

In this case, Respondent Torres was not licensed to personally perform smog inspections and chose to operate his smog inspection business through his employee, Rios. Therefore, Respondent Torres had a duty to ensure compliance with the laws and regulations governing his licensed business, and he was responsible for Rios's violations committed in the exercise of his license. As with *Arenstein*, this holds true even if Respondent Torres did not authorize the unlawful acts or have actual knowledge of them. Consequently, the Bureau may discipline the license of Respondent Torres, dba ATM, for the violations of his employee, Rios, while conducting smog inspections.

8. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover reasonable costs of investigation and prosecution of this matter in the amount of \$22,123, as set forth in Factual Finding 17.

9(a). Respondent Torres's licensure required him to monitor his employees' actions to ensure that they were engaging in lawful activity. Respondent Torres failed to meet his responsibility for oversight of the activities of his employee, Rios, who engaged in clean piping and the fraudulent issuance of certificates of compliance. Respondent has shown no remorse for his failed oversight of his employee.

9(b). It was established that Respondent Torres was not present when the violations occurred. However, despite his declaration stating his ignorance of the illegal activity, he provided no explanation regarding the use of his vehicle in the fraudulent issuance four certificates of compliance or regarding why Pedro Martinez's vehicle was registered at ATM's address and kept at ATM's premises. Consequently, his claimed ignorance of the wrongdoing is questionable.

9(c). Although Respondent Torres does not have a history of prior discipline, his Smog Check Test Only Station License had been issued less than 18 months prior to the clean piping at his station. Therefore, he does not have a lengthy history of compliance with smog check laws and regulations prior to the violations. Furthermore, Respondent Torres presented no evidence regarding what safeguards he would use to prevent recurrence of

similar violations by current and future employees. This does not bode well for the likelihood of a successful probation.

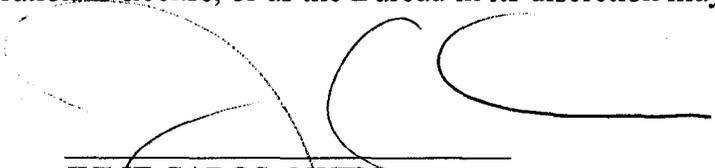
9(d). Given Respondent's supervisory failure, his questionable lack of knowledge, his continued denial of responsibility, his absence of remorse, his lack of proposed safeguards to prevent recurrence, and all of the circumstances of this case, revocation of Respondent's licenses are warranted in order to protect the public health, safety and welfare.

ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. Automotive Repair Dealer Registration Number ARD 211032, issued to Respondent Angel Torres, also known as Jose A. Torres and Jose Angel Torres Medrano, doing business as ATM Motors, is hereby revoked.
2. Pursuant to Business and Professions Code section 9884.7, any additional registrations issued to Respondent Torres are hereby revoked.
3. Smog Check Station License Number TC 211032, issued to Respondent Angel Torres, also known as Jose A. Torres and Jose Angel Torres Medrano, doing business as ATM Motors, is hereby revoked.
4. Pursuant to Health and Safety Code section 44072.8, any additional licenses issued to Respondent Torres are hereby revoked.
5. If Respondent Torres later applies for a new registration or license or reinstatement of his revoked registration and/or licenses, Respondent Torres shall reimburse the Bureau \$22,123 for its investigative and prosecutorial costs in this case, prior to reinstatement or issuance of any registration or license, or as the Bureau in its discretion may otherwise order.

DATED: March 7, 2012



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

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15 **JOSE ANGEL TORRES MEDRANO, OWNER**
Automotive Repair Dealer Registration
16 **No. ARD 211032**
Smog Check Test Only Station License
17 **No. TC 211032,**

ACCUSATION
SMOG CHECK

18 and

19 **JUAN A. RIOS; AKA**
20 **JUAN ANDRES RIOS, AKA**
JUAN ANDRES RIOS VELIZ
21 **3703 1/2 South Victoria Ave**
Los Angeles, CA 90016
22 **Advanced Emission Specialist Technician License**
No. EA 631361

23 Respondents.

24 Complainant alleges:

25 **PARTIES**

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

1 subdivision (a) shall only invalidate temporarily or permanently the registration of the
2 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.

3 (c) Notwithstanding subdivision (b), the director may invalidate
4 temporarily or permanently, the registration for all places of business operated in this
5 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.

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
director thereof, does any of the following:

20 (a) Violates any section of this chapter [the Motor Vehicle Inspection
21 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted
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
another is injured.

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

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
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 licentiate 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 **SURVEILLANCE OPERATION – DECEMBER 7, 2010**

10 13. On or about December 7, 2010, the Bureau performed a video-taped surveillance
11 operation at Respondent ATM's facility. The surveillance operation and information obtained
12 from the Bureau's Vehicle Information Database ("VID") revealed that between 0831 hours and
13 1633 hours, Respondent Rios, with the assistance of an unidentified male ("Doe"), performed
14 four (4) smog inspections that resulted in the issuance of electronic certificates of compliance for
15 the vehicles set forth in Table 1, below, certifying that he had tested and inspected those vehicles
16 and that the vehicles were in compliance with applicable laws and regulations. In fact,
17 Respondent Rios performed the smog inspections using the clean piping method¹ by using the
18 tail pipe emissions of vehicles other than the vehicles being certified in order to issue the
19 electronic certificates of compliance.

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

Table 1

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
NO. 1 12/7/2010 0831 hours to 0858 hours	1996 Ford Windstar, License No. 4FMB841	2000 Ford Ranger, License No. 6H57317	WP785959C	Respondent Rios and Doe performed the inspection. Certified vehicle not seen.
NO. 2 12/7/2010 1416 hours To 1430 hours	2003 Mitsubishi, License No. 5AQV901	2000 Ford Ranger, License No. 6H57317	WP785964C	Respondent Rios and Doe performed the inspection. Certified vehicle not seen.
NO. 3 12/7/2010 1435 hours to 1448 hours	1977 Dodge B200 Van, License No. 7T67122	1996 Mitsubishi, License No. 5BGH828	WP785965C	Respondent Rios and Doe performed the inspection. Certified vehicle was seen on the premises but not on the dynamometer.
NO. 4 12/7/2010 1612 hours to 1633 hours	1996 Chevrolet Asto Minivan, License No. 5KSM333	1997 Chevrolet pickup, License No. 7A04365	WP785969C	Respondent Rios and Doe performed the inspection. Certified vehicle not seen.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14. Respondent ATM has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about December 7, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

15. Respondent ATM has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about December 7, 2010, he committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems

1 on those vehicles, thereby depriving the People of the State of California of the protection
2 afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 16. Respondent ATM has subjected his station license to discipline under Health and
6 Safety Code section 44072.2, subdivision (a), in that on or about December 7, 2010, regarding the
7 vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

8 a. **Section 44012:** Respondent ATM failed to ensure that the emission control tests
9 were performed on those vehicles in accordance with procedures prescribed by the department.

10 b. **Section 44015, subdivision (b):** Respondent ATM issued electronic certificates of
11 compliance without properly testing and inspecting the vehicles to determine if they were in
12 compliance with section 44012 of that Code.

13 c. **Section 44059:** Respondent ATM willfully made false entries for the electronic
14 certificates of compliance by certifying that those vehicles had been inspected as required when,
15 in fact, they had not.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

18 17. Respondent ATM has subjected his station license to discipline under Health and
19 Safety Code section 44072.2, subdivision (c), in that on or about December 7, 2010, regarding the
20 vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations,
21 title 16, as follows:

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

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

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

3 **FIFTH CAUSE FOR DISCIPLINE**

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

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

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 19. Respondent Rios has subjected his technician license to discipline under Health and
15 Safety Code section 44072.2, subdivision (a), in that on or about December 7, 2010, regarding the
16 vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

17 a. **Section 44012:** Respondent Rios failed to ensure that the emission control tests were
18 performed on those vehicles in accordance with procedures prescribed by the department.

19 b. **Section 44032:** Respondent Rios failed to perform tests of the emission control
20 devices and systems on those vehicles in accordance with section 44012 of that Code, in that the
21 vehicles had been clean piped.

22 c. **Section 44059:** Respondent Rios willfully made false entries for the electronic
23 certificates of compliance by certifying that those vehicles had been inspected as required when,
24 in fact, they had not.

25 **SEVENTH CAUSE FOR DISCIPLINE**

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

27 20. Respondent Rios has subjected his technician license to discipline under Health and
28 Safety Code section 44072.2, subdivision (c), in that on or about December 7, 2010, regarding the

1 vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations,
2 title 16, as follows:

3 a. **Section 3340.24, subdivision (c):** Respondent Rios falsely or fraudulently issued
4 electronic certificates of compliance without performing bona fide inspections of the emission
5 control devices and systems on those vehicles as required by Health and Safety Code section
6 44012.

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

9 c. **Section 3340.41, subdivision (c):** Respondent Rios entered false information into the
10 Emission Inspection System ("EIS") for the electronic certificates of compliance by entering
11 vehicle emission control information for vehicles other than the vehicles being certified.

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

14 **EIGHTH CAUSE FOR DISCIPLINE**

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

16 21. Respondent Rios has subjected his technician license to discipline under Health and
17 Safety Code section 44072.2, subdivision (d), in that on or about December 7, 2010, he
18 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
19 electronic certificates of compliance for the vehicles set forth in Table 1, above, without
20 performing bona fide inspections of the emission control devices and systems on those vehicles,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 **SURVEILLANCE OPERATION – DECEMBER 8, 2010**

24 22. On or about December 8, 2010, the Bureau performed a video-taped surveillance
25 operation at Respondent ATM's facility. The surveillance operation and information obtained
26 from the Bureau's VID revealed that between 1045 hours and 1554 hours, Respondent Rios
27 performed four (4) smog inspections and three (3) of those inspections resulted in the issuance of
28 electronic certificates of compliance for the vehicles set forth in Table 2, below, certifying that he

1 had tested and inspected those vehicles and that the vehicles were in compliance with applicable
 2 laws and regulations. Doe assisted Respondent Rios regarding the inspections to vehicles 1, 3,
 3 and 4, set forth in Table 2, below. In fact, Respondent Rios performed the smog inspections
 4 using the clean piping method by using the tail pipe emissions of vehicles other than the vehicles
 5 being certified in order to issue the electronic certificates of compliance. Vehicle 1 was false
 6 failed and no certificate of compliance was issued. Further, vehicle 1 was not on the premises
 7 when the false fail test was performed.

8 **Table 2**

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
NO. 1 12/8/2010 1045 hours to 1059 hours	1978 Chevrolet G20 Van, License No. 3BUM647	1996 Mitsubishi, License No. 5BGH828	No certificate issued	Respondent Rios and Doe performed the inspection. Vehicle was false failed. Vehicle not seen.
NO. 2 12/8/2010 1155 hours to 1218 hours	1996 Jeep, License No. 4VCV023	2004 Toyota, License No. 5HLT683	WP785974C	Respondent Rios performed the inspection. The driver of the Toyota performed the trace drive. Certified vehicle not seen.
NO. 3 12/8/2010 1511 hours to 1526 hours	1985 Chevrolet G30 Van, License No. 2U42537	1996 Mitsubishi, License No. 5BGH828	WP785979C	Respondent Rios and Doe performed the inspection. Certified vehicle not seen.
NO. 4 12/8/2010 1531 hours to 1554 hours	1988 Honda, License No. 2KDV866	1996 Mitsubishi, License No. 5BGH828	WP785980C	Respondent Rios and Doe performed the inspection. Certified vehicle not seen.

22
23 **TENTH CAUSE FOR DISCIPLINE**

24 **(Misleading Statements)**

25 23. Respondent ATM has subjected his registration to discipline under Code section
 26 9884.7, subdivision (a)(1), in that on or about December 8, 2010, he made statements which he
 27 knew or which by exercise of reasonable care he should have known were untrue or misleading
 28 when he issued electronic certificates of compliance for vehicles 2, 3, and 4, set forth in Table 2,

1 above, certifying that those vehicles were in compliance with applicable laws and regulations
2 when, in fact, those vehicles had been clean piped.

3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 24. Respondent ATM has subjected his registration to discipline under Code section
6 9884.7, subdivision (a)(4), in that on or about December 8, 2010, he committed acts which
7 constitute fraud by issuing electronic certificates of compliance for vehicles 2, 3, and 4, set forth
8 in Table 2, above, without performing bona fide inspections of the emission control devices and
9 systems on those vehicles, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **TWELFTH CAUSE FOR DISCIPLINE**

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

13 25. Respondent ATM has subjected his station license to discipline under Health and
14 Safety Code section 44072.2, subdivision (a), in that on or about December 8, 2010, regarding the
15 vehicles set forth in Table 2, above, he violated sections of that Code, as follows:

16 a. **Section 44012:** Respondent ATM failed to ensure that the emission control tests
17 were performed on those vehicles in accordance with procedures prescribed by the department.

18 b. **Section 44015, subdivision (b):** Respondent ATM issued electronic certificates of
19 compliance for vehicles 2, 3, and 4, without properly testing and inspecting the vehicles to
20 determine if they were in compliance with section 44012 of that Code.

21 c. **Section 44059:** Respondent ATM willfully made false entries for the electronic
22 certificates of compliance for vehicles 2, 3, and 4, by certifying that those vehicles had been
23 inspected as required when, in fact, they had not.

24 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

26 26. Respondent ATM has subjected his station license to discipline under Health and
27 Safety Code section 44072.2, subdivision (c), in that on or about December 8, 2010, regarding the
28

1 vehicles set forth in Table 2, above, he violated sections of the California Code of Regulations,
2 title 16, as follows:

3 a. **Section 3340.24, subdivision (c):** Respondent ATM falsely or fraudulently issued
4 electronic certificates of compliance for vehicles 2, 3, and 4, without performing bona fide
5 inspections of the emission control devices and systems on those vehicles as required by Health
6 and Safety Code section 44012.

7 b. **Section 3340.35, subdivision (c):** Respondent ATM issued electronic certificates of
8 compliance for vehicles 2, 3, and 4, even though those vehicles had not been inspected in
9 accordance with section 3340.42 of that Code.

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

12 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

14 27. Respondent ATM has subjected his station license to discipline under Health and
15 Safety Code section 44072.2, subdivision (d), in that on or about December 8, 2010, regarding the
16 vehicles set forth in Table 2, above, he committed acts involving dishonesty, fraud or deceit
17 whereby another was injured by issuing electronic certificates of compliance for vehicles 2, 3,
18 and 4, without performing bona fide inspections of the emission control devices and system on
19 those vehicles, thereby depriving the People of the State of California of the protection afforded
20 by the Motor Vehicle Inspection Program.

21 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

23 28. Respondent Rios has subjected his technician license to discipline under Health and
24 Safety Code section 44072.2, subdivision (a), in that on or about December 8, 2010, regarding the
25 vehicles set forth in Table 2, above, he violated sections of that Code, as follows:

26 a. **Section 44012:** Respondent Rios failed to ensure that the emission control tests were
27 performed on those vehicles in accordance with procedures prescribed by the department.
28

1 electronic certificates of compliance for vehicles 2, 3, and 4, set forth in Table 2, above, without
2 performing bona fide inspections of the emission control devices and systems on those vehicles,
3 thereby depriving the People of the State of California of the protection afforded by the Motor
4 Vehicle Inspection Program.

5 **OTHER MATTERS**

6 31. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
7 or may invalidate temporarily or permanently, the registrations for all places of business operated
8 in this state by Angel Torres, also known as Jose A. Torres and Jose Angel Torres Medrano doing
9 business as ATM Motors upon a finding that he has, or is, engaged in a course of repeated and
10 willful violations of the laws and regulations pertaining to an automotive repair dealer.

11 32. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
12 License Number TC 211032, issued to Angel Torres, also known as Jose A. Torres and Jose
13 Angel Torres Medrano doing business as ATM Motors, is revoked or suspended, any additional
14 license issued under this chapter in the name of said licensee may be likewise revoked or
15 suspended by the director.

16 33. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
17 Technician License Number EA 631361, issued to Juan A. Rios, also known as Juan Andres Rios,
18 and Juan Andres Rios Veliz, is revoked or suspended, any additional license issued under this
19 chapter in the name of said licensee may be likewise revoked or suspended by the director.

20 **PRAYER**

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

23 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
24 Registration Number ARD 211032, issued to Angel Torres, also known as Jose A. Torres and
25 Jose Angel Torres Medrano doing business as ATM Motors;

26 2. Revoking, suspending, or placing on probation any other automotive repair dealer
27 registration issued in the name Angel Torres, also known as Jose A. Torres and Jose Angel Torres
28 Medrano;

1 3. Revoking or suspending Smog Check Test Only Station License Number TC 211032,
2 issued to Angel Torres, also known as Jose A. Torres and Jose Angel Torres Medrano doing
3 business as ATM Motors;

4 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
5 and Safety Code in the name of Angel Torres, also known as Jose A. Torres and Jose Angel
6 Torres Medrano;

7 5. Revoking or suspending Advanced Emission Specialist Technician License Number
8 EA 631361, issued to Juan A. Rios, also known as Juan Andres Rios, and Juan Andres Rios
9 Veliz;

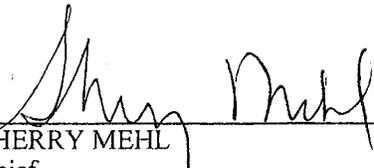
10 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
11 and Safety Code in the name of Juan A. Rios, also known as Juan Andres Rios, and Juan Andres
12 Rios Veliz;

13 7. Ordering Angel Torres, also known as Jose A. Torres and Jose Angel Torres Medrano
14 and Juan A. Rios, also known as Juan Andres Rios, and Juan Andres Rios Veliz to pay the Bureau
15 of Automotive Repair the reasonable costs of the investigation and enforcement of this case,
16 pursuant to Business and Professions Code section 125.3; and,

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

18
19
20
21 DATED: _____

6/21/11



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

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