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7
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. 79/09-11

13 TONY SMOG TEST ONLY
ABELINO DAMAS,
14 a.k.a. ABELINO ANTONIO DAMAS
6031 Lankershim Blvd., Unit 3
North Hollywood, CA 91605

A C C U S A T I O N

SMOG CHECK

15 Automotive Repair Dealer Reg. No. AG 234567
Smog Check, Test Only, Station License
16 No. TG 234567

17 and

18 ABELINO ANTONIO DAMAS
4729 West Avenue J-13
19 Lancaster, CA 93536

20 Advanced Emission Specialist Technician
License No. EA 141969

21 Respondents.

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23 Complainant alleges:

24 **PARTIES**

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

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1 **Automotive Repair Dealer Registration No. AG 234567**

2 2. On or about August 12, 2004, the Director of Consumer Affairs
3 ("Director") issued Automotive Repair Dealer Registration Number AG 234567 ("registration")
4 to Abelino Damas, also known as Abelino Antonio Damas ("Respondent"), owner of Tony Smog
5 Test Only. Respondent's registration was in full force and effect at all times relevant to the
6 charges brought herein and will expire on July 31, 2008, unless renewed.

7 **Smog Check, Test Only, Station License No. TG 234567**

8 3. On or about August 25, 2004, the Director issued Smog Check, Test Only,
9 Station License Number TG 234567 ("smog check station license") to Respondent.
10 Respondent's smog check station license was in full force and effect at all times relevant to the
11 charges brought herein and will expire on July 31, 2008, unless renewed.

12 **Advanced Emission Specialist Technician License No. EA 141969**

13 4. In or about 2001, the Director issued Advanced Emission Specialist
14 Technician License Number EA 141969 ("technician license") to Respondent. Respondent's
15 technician license was in full force and effect at all times relevant to the charges brought herein
16 and will expire on December 31, 2009, unless renewed.

17 **JURISDICTION**

18 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7
19 provides that the Director may invalidate an automotive repair dealer registration.

20 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
21 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
22 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
23 registration temporarily or permanently.

24 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides,
25 in pertinent part, that the Director has all the powers and authority granted under the Automotive
26 Repair Act for enforcing the Motor Vehicle Inspection Program.

27 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the
28 expiration or suspension of a license by operation of law, or by order or decision of the Director

1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
2 the Director of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

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

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

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

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17 (4) Any other conduct which constitutes fraud.

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

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

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

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

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

. . . .

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1 (c) Violates any of the regulations adopted by the director pursuant to
2 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 technician
8 or station licensee who fraudulently certifies vehicles or participates in the
9 fraudulent inspection of vehicles. A fraudulent inspection includes, but is not
10 limited to, all of the following:

11 (1) Clean piping, as defined by the department . . .

12 13. Health & Saf. Code section 44072.8 states that when a license has been
13 revoked or suspended following a hearing under this article, any additional license issued under
14 this 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
17 may 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 the
19 investigation and enforcement of the case.

20 **VIDEO SURVEILLANCE OF AUGUST 3, 2007**

21 15. On August 3, 2007, representatives of the Bureau conducted a video
22 surveillance operation of Respondent's smog check facility. The surveillance video and
23 information obtained from the Bureau's vehicle information database ("VID") revealed that
24 Respondent issued electronic smog certificates of compliance, certifying that he had tested and
25 inspected the vehicles identified below and that the vehicles were in compliance with applicable
26 laws and regulations. In fact, Respondent allowed an unidentified individual to access the
27 emission inspection system ("EIS") using Respondent's confidential access code and to conduct

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1 smog inspections on the vehicles using clean-piping methods¹, resulting in the issuance of
2 fraudulent certificates of compliance for the vehicles. Further, neither vehicle was present in the
3 test bay at the time of the inspections.

4 Time of Smog Inspection	5 Vehicle Certified & License No.	6 Certificate of Compliance No.	7 Vehicle Actually Tested
8 1. 10:22-10:29	9 1996 GMC Sonoma pick up truck; License # 6M53518	10 MU159210C	11 1996 Chevrolet S10 pick up truck; License # 6K15320
12 2. 18:00-18:09	13 Tan or gold 1987 Acura Integra; License # 4KIJ248	14 MU159218C	15 Dark blue or green sedan

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 16. Respondent's registration is subject to disciplinary action pursuant to Bus.
19 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
20 statements which he knew or in the exercise of reasonable care should have known to be untrue
21 or misleading, as follows:

22 a. Respondent certified that vehicles 1 and 2, identified in paragraph 15
23 above, had passed inspection and were in compliance with applicable laws and regulations. In
24 fact, an unidentified person conducted the inspections using clean-piping methods in order to
25 issue certificates for the vehicles and did not test or inspect the vehicles as required by Health &
26 Saf. Code section 44012.

27 b. Respondent certified that he performed the smog inspections on vehicles 1
28 and 2, identified in paragraph 15 above, when, in fact, the inspections were performed by an
unidentified individual. Further, Respondent allowed that individual to access the EIS using
Respondent's confidential access code.

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1. Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the Test Analyzer System or EIS to issue a certificate of compliance for another vehicle.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 19. Respondent's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with provisions of California Code of Regulations, title 16, as follows:

- 7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
8 issued electronic smog certificates of compliance for vehicles 1 and 2,
9 identified in paragraph 15 above.
- 10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog
11 certificates of compliance for vehicles 1 and 2, identified in paragraph 15
12 above, even though those vehicles had not been inspected in accordance
13 with section 3340.42.
- 14 c. **Section 3340.41, subdivision (b):** Respondent permitted an unidentified
15 individual to access the EIS using Respondent's confidential access code
16 and to enter false information into the unit concerning the identity of the
17 technician performing the smog tests on vehicles 1 and 2, identified in
18 paragraph 15 above.
- 19 d. **Section 3340.41, subdivision (c):** Respondent permitted an unidentified
20 individual to enter false information into the EIS by entering vehicle
21 identification information or emission control system identification data
22 for vehicles other than the ones being tested.
- 23 e. **Section 3340.42:** Respondent failed to conduct the required smog tests on
24 vehicles 1 and 2, identified in paragraph 15 above, in accordance with the
25 Bureau's specifications.

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FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 15 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

21. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform emission control tests on vehicles 1 and 2, identified in paragraph 15 above, in accordance with procedures prescribed by the department.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

22. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

- a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 15 above.
- b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1 and 2, identified in paragraph 15 above, in accordance with

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1 Health & Saf. Code sections 44012 and 44035, and California Code of
2 Regulations, title 16, section 3340.42.

- 3 c. **Section 3340.41, subdivision (b)**: Respondent permitted an unidentified
4 individual to access the EIS using Respondent's confidential access code
5 and to enter false information into the unit concerning the identity of the
6 technician performing the smog tests on vehicles 1 and 2, identified in
7 paragraph 15 above.
- 8 d. **Section 3340.41, subdivision (c)**: Respondent permitted an unidentified
9 individual to enter false information into the EIS by entering vehicle
10 identification information or emission control system identification data
11 for vehicles other than the ones being tested.
- 12 e. **Section 3340.42**: Respondent failed to conduct the required smog tests on
13 vehicles 1 and 2, identified in paragraph 15 above, in accordance with the
14 Bureau's specifications.

15 **EIGHTH CAUSE FOR DISCIPLINE**

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

17 23. Respondent's technician license is subject to disciplinary action pursuant
18 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
19 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
20 compliance for vehicles 1 and 2, identified in paragraph 15 above, without performing bona fide
21 inspections of the emission control devices and systems on the vehicles, thereby depriving the
22 People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program.

24 **VIDEO SURVEILLANCE OF AUGUST 4, 2007**

25 24. On August 4, 2007, representatives of the Bureau conducted a video
26 surveillance operation of Respondent's smog check facility. The surveillance video and
27 information obtained from the Bureau's VID revealed that Respondent issued electronic smog
28 certificates of compliance, certifying that he had tested and inspected vehicles 4 and 5 identified

1 below and that the vehicles were in compliance with applicable laws and regulations. In fact,
 2 Respondent conducted the inspections using clean-piping methods, resulting in the issuance of
 3 fraudulent certificates of compliance for the vehicles (neither vehicle was present in the test bay
 4 at the time of the inspections). Further, Respondent allowed an unidentified individual to access
 5 the EIS using Respondent's confidential access code during the inspections on vehicles 3 and 5
 6 and to enter data into the EIS while Respondent was present.

7 8 9	Time of Smog Inspection	Vehicle Certified & License No.	Certificate of Compliance No.	Vehicle Actually Tested
10	3. 15:06-15:22	1991 Chevrolet Astro minivan; License #5VGV629	None; vehicle failed smog inspection	White Chrysler sedan
11	4. 16:49-16:58	1988 Ford Ranger pickup; License #7E39853	MU159233C	1996 Chevrolet S10 pickup; License #6K15320
12	5. 17:02-17:24	1988 Ford Mustang; License #4TVL374	MU159234C	1998 Nissan Frontier pickup; License #5V38136

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 25. Respondent's registration is subject to disciplinary action pursuant to Bus.
 16 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
 17 statements which he knew or in the exercise of reasonable care should have known to be untrue
 18 or misleading, as follows: Respondent certified that vehicles 4 and 5, identified in paragraph 24
 19 above, had passed inspection and were in compliance with applicable laws and regulations. In
 20 fact, Respondent used clean-piping methods in order to issue certificates for the vehicles and did
 21 not test or inspect the vehicles as required by Health & Saf. Code section 44012.

22 **TENTH CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 26. Respondent's registration is subject to disciplinary action pursuant to Bus.
 25 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
 26 constitute fraud by issuing electronic smog certificates of compliance for vehicles 4 and 5,
 27 identified in paragraph 24 above, without performing bona fide inspections of the emission

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

3 **ELEVENTH CAUSE FOR DISCIPLINE**

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

5 27. Respondent's smog check station license is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
7 comply with provisions of that Code, as follows:

- 8 a. **Section 44012:** Respondent failed to perform emission control tests on
9 vehicles 3 through 5, identified in paragraph 24 above, in accordance with
10 procedures prescribed by the department.
11 b. **Section 44015:** Respondent issued electronic smog certificates of
12 compliance for vehicles 4 and 5, identified in paragraph 24 above, without
13 properly testing and inspecting the vehicles to determine if they were in
14 compliance with Health & Saf. Code section 44012.

15 **TWELFTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant
17 to the Motor Vehicle Inspection Program)**

18 28. Respondent's smog check station license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
20 comply with provisions of California Code of Regulations, title 16, as follows:

- 21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
22 issued electronic smog certificates of compliance for vehicles 4 and 5,
23 identified in paragraph 24 above.
24 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog
25 certificates of compliance for vehicles 4 and 5, identified in paragraph 24
26 above, even though those vehicles had not been inspected in accordance
27 with section 3340.42.

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1 c. **Section 3340.41, subdivision (c):** Respondent entered false information
2 into the EIS during the smog inspection on vehicle 4, identified in
3 paragraph 24 above, by entering vehicle identification information or
4 emission control system identification data for a vehicle other than the one
5 being tested. Further, Respondent permitted an unidentified individual to
6 enter false information into the EIS during the smog inspections on
7 vehicles 3 and 5, identified in paragraph 24 above, by entering vehicle
8 identification information or emission control system identification data
9 for vehicles other than the ones being tested.

10 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
11 vehicles 3 through 5, identified in paragraph 24 above, in accordance with
12 the Bureau's specifications.

13 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

15 29. Respondent's smog check station license is subject to disciplinary action
16 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
17 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
18 certificates of compliance for vehicles 4 and 5, identified in paragraph 24 above, without
19 performing bona fide inspections of the emission control devices and systems on the vehicles,
20 thereby depriving the People of the State of California of the protection afforded by the Motor
21 Vehicle Inspection Program.

22 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

24 30. Respondent's technician license is subject to disciplinary action pursuant
25 to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
26 section 44012 of that Code, as follows: Respondent failed to perform emission control tests on
27 vehicles 3 through 5, identified in paragraph 24 above, in accordance with procedures prescribed
28 by the department.

1 FIFTEENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Regulations Pursuant
3 to the Motor Vehicle Inspection Program)

4 31. Respondent's technician license is subject to disciplinary action pursuant
5 to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
6 provisions of California Code of Regulations, title 16, as follows:

- 7 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently
8 issued electronic smog certificates of compliance for vehicles 4 and 5,
9 identified in paragraph 24 above.
- 10 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test
11 vehicles 3 through 5, identified in paragraph 24 above, in accordance with
12 Health & Saf. Code sections 44012 and 44035, and California Code of
13 Regulations, title 16, section 3340.42.
- 14 c. Section 3340.41, subdivision (c): Respondent entered false information
15 into the EIS during the smog inspection on vehicle 4, identified in
16 paragraph 24 above, by entering vehicle identification information or
17 emission control system identification data for a vehicle other than the one
18 being tested. Further, Respondent permitted an unidentified individual to
19 enter false information into the EIS during the smog inspections on
20 vehicles 3 and 5, identified in paragraph 24 above, by entering vehicle
21 identification information or emission control system identification data
22 for vehicles other than the ones being tested.
- 23 d. Section 3340.42: Respondent failed to conduct the required smog tests on
24 vehicles 3 through 5, identified in paragraph 24 above, in accordance with
25 the Bureau's specifications.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent's technician license is subject to disciplinary action pursuant
4 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
5 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
6 compliance for vehicles 4 and 5, identified in paragraph 24 above, without performing bona fide
7 inspections of the emission control devices and systems on the vehicles, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **VIDEO SURVEILLANCE OF SEPTEMBER 7, 2007**

11 33. On September 7, 2007, representatives of the Bureau conducted a video
12 surveillance operation of Respondent's smog check facility. The surveillance video and
13 information obtained from the Bureau's VID revealed that Respondent issued electronic smog
14 Certificate of Compliance # MU503548C, certifying that he had tested and inspected a 1987
15 Jaguar XJ6, License # 2DBN667 (hereinafter "vehicle 6") and that the vehicle was in compliance
16 with applicable laws and regulations. In fact, Respondent conducted the inspection on vehicle 6
17 using the exhaust emissions of a 1994 Nissan Pathfinder, otherwise known as clean-piping,
18 resulting in the issuance of a fraudulent certificate of compliance for vehicle 6. Further, vehicle 6
19 was not present in the test bay at the time of the inspection.

20 **SEVENTEENTH CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 34. Respondent's registration is subject to disciplinary action pursuant to Bus.
23 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
24 statement which he knew or in the exercise of reasonable care should have known to be untrue or
25 misleading, as follows: Respondent certified that vehicle 6, identified in paragraph 33 above,
26 had passed inspection and was in compliance with applicable laws and regulations. In fact,
27 Respondent conducted the inspection using clean-piping methods in order to issue a certificate

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1 for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section
2 44012.

3 **EIGHTEENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 35. Respondent's registration is subject to disciplinary action pursuant to Bus.
6 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which
7 constitutes fraud by issuing an electronic smog certificate of compliance for vehicle 6, identified
8 in paragraph 33 above, without performing a bona fide inspection of the emission control devices
9 and systems on the vehicle, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **NINETEENTH CAUSE FOR DISCIPLINE**

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

13 36. Respondent's smog check station license is subject to disciplinary action
14 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
15 comply with provisions of that Code, as follows:

- 16 a. **Section 44012:** Respondent failed to perform the emission control tests
17 on vehicle 6, identified in paragraph 33 above, in accordance with
18 procedures prescribed by the department.
- 19 b. **Section 44015:** Respondent issued an electronic smog certificate of
20 compliance for vehicle 6, identified in paragraph 33 above, without
21 properly testing and inspecting the vehicle to determine if it was in
22 compliance with Health & Saf. Code section 44012.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 37. Respondent's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with provisions of California Code of Regulations, title 16, as follows:

- 7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
8 issued an electronic smog certificate of compliance for vehicle 6,
9 identified in paragraph 33 above.
- 10 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog
11 certificate of compliance for vehicle 6, identified in paragraph 33 above,
12 even though the vehicle had not been inspected in accordance with section
13 3340.42.
- 14 c. **Section 3340.41, subdivision (c):** Respondent entered false information
15 into the EIS by entering vehicle identification information or emission
16 control system identification data for a vehicle other than the one being
17 tested.
- 18 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
19 vehicle 6, identified in paragraph 33 above, in accordance with the
20 Bureau's specifications.

21 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

23 38. Respondent's smog check station license is subject to disciplinary action
24 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
25 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
26 certificate of compliance for vehicle 6, identified in paragraph 33 above, without performing a
27 bona fide inspection of the emission control devices and systems on the vehicle, thereby

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1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

5 39. Respondent's technician license is subject to disciplinary action pursuant
6 to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
7 section 44012 of that Code, as follows: Respondent failed to perform the emission control tests
8 on vehicle 6, identified in paragraph 33 above, in accordance with procedures prescribed by the
9 department.

10 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant
12 to the Motor Vehicle Inspection Program)**

13 40. Respondent's technician license is subject to disciplinary action pursuant
14 to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
15 provisions of California Code of Regulations, title 16, as follows:

- 16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
17 issued an electronic smog certificate of compliance for vehicle 6,
18 identified in paragraph 33 above.
- 19 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
20 vehicle 6, identified in paragraph 33 above, in accordance with Health &
21 Saf. Code sections 44012 and 44035, and California Code of Regulations,
22 title 16, section 3340.42.
- 23 c. **Section 3340.41, subdivision (c):** Respondent entered false information
24 into the EIS by entering vehicle identification information or emission
25 control system identification data for a vehicle other than the one being
26 tested.

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1 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
2 vehicle 6, identified in paragraph 33 above, in accordance with the
3 Bureau's specifications.

4 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

6 41. Respondent's technician license is subject to disciplinary action pursuant
7 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
8 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
9 certificate of compliance for vehicle 6, identified in paragraph 33 above, without performing a
10 bona fide inspection of the emission control devices and systems on the vehicle, thereby
11 depriving the People of the State of California of the protection afforded by the Motor Vehicle
12 Inspection Program.

13 **VIDEO SURVEILLANCE OF SEPTEMBER 8, 2007**

14 42. On September 8, 2007, representatives of the Bureau conducted a video
15 surveillance operation of Respondent's smog check facility. The surveillance video and
16 information obtained from the Bureau's VID revealed that Respondent issued electronic smog
17 certificates of compliance, certifying that he had tested and inspected the vehicles identified
18 below and that the vehicles were in compliance with applicable laws and regulations. In fact,
19 Respondent conducted the inspection on vehicle 7 using clean-piping methods, resulting in the
20 issuance of a fraudulent certificate of compliance for the vehicle, and allowed an unidentified
21 individual to enter data into the EIS during the smog inspection. Further, Respondent allowed
22 that same individual to access the EIS using Respondent's confidential access code and to
23 conduct the smog inspections on vehicles 8 through 10 using clean-piping methods, resulting in
24 the issuance of fraudulent certificates of compliance for the vehicles. None of the vehicles were
25 present in the test bay at the time of the inspections.

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Time of Smog Inspection	Vehicle Certified & License No.	Certificate of Compliance No.	Vehicle Actually Tested
7. 09:45-09:56	1988 Ford Aerostar van; License #2HFN520	MU630703C	1992 Mitsubishi Montero; License #2ZUZ909
8. 12:44-12:51	1998 Dodge Durango; License #4TNG010	MU630714C	1998 Jeep Cherokee; License #4TZF821
9. 17:34-17:45	1986 Chevrolet Astro van; License #4BXP888	MU630723C	1994 Toyota pickup; License #7H69537
10. 18:21-18:36	1988 Toyota Supra; License #5MAS454	MU630725C	1995 Infiniti J30

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent certified that vehicle 7, identified in paragraph 42 above, had passed inspection and was in compliance with applicable laws and regulations. In fact, Respondent used clean-piping methods in order to issue a certificate for vehicle 7 and did not test or inspect the vehicle as required by Health & Saf. Code section 44012. Further, Respondent allowed an unidentified person to enter data into the EIS during the smog inspection on the vehicle.

b. Respondent certified that vehicles 8 through 10, identified in paragraph 42 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent allowed an unidentified person to perform the smog inspections on vehicles 8 through 10, using clean-piping methods in order to issue certificates for the vehicles, and as such, vehicles 8 through 10 were not tested or inspected as required by Health & Saf. Code section 44012. Further, Respondent allowed an unidentified person to enter data into the EIS during the smog inspection on vehicle 8.

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1 c. Respondent certified that he performed the smog inspections on vehicles 8
2 through 10, identified in paragraph 42 above, when, in fact, the inspections were performed by an
3 unidentified individual using Respondent's confidential access code.

4 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 44. Respondent's registration is subject to disciplinary action pursuant to Bus.
7 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
8 constitute fraud by issuing electronic smog certificates of compliance for vehicles 7 through 10,
9 identified in paragraph 42 above, without performing bona fide inspections of the emission
10 control devices and systems on the vehicles, thereby depriving the People of the State of
11 California of the protection afforded by the Motor Vehicle Inspection Program.

12 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

14 45. Respondent's smog check station license is subject to disciplinary action
15 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
16 comply with provisions of that Code, as follows:

- 17 a. **Section 44012:** Respondent failed to perform emission control tests on
18 vehicles 7 through 10, identified in paragraph 42 above, in accordance
19 with procedures prescribed by the department.
- 20 b. **Section 44015:** Respondent issued electronic smog certificates of
21 compliance for vehicles 7 through 10, identified in paragraph 42 above,
22 without properly testing and inspecting the vehicles to determine if they
23 were in compliance with Health & Saf. Code section 44012.

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

3 **THIRTIETH CAUSE FOR DISCIPLINE**

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

5 48. Respondent's technician license is subject to disciplinary action pursuant
6 to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
7 section 44012 of that Code, as follows: Respondent failed to perform emission control tests on
8 vehicles 7 through 10, identified in paragraph 42 above, in accordance with procedures
9 prescribed by the department.

10 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant
12 to the Motor Vehicle Inspection Program)**

13 49. Respondent's technician license is subject to disciplinary action pursuant
14 to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
15 provisions of California Code of Regulations, title 16, as follows:

- 16 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently
17 issued electronic smog certificates of compliance for vehicles 7 through
18 10, identified in paragraph 42 above.
- 19 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test
20 vehicles 7 through 10, identified in paragraph 42 above, in accordance
21 with Health & Saf. Code sections 44012 and 44035, and California Code
22 of Regulations, title 16, section 3340.42.
- 23 c. **Section 3340.41, subdivision (c)**: Respondent allowed an unidentified
24 individual to enter false information into the EIS by entering vehicle
25 identification information or emission control system identification data
26 for vehicles other than the ones being tested.

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1 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
2 vehicles 7 through 10, identified in paragraph 42 above, in accordance
3 with the Bureau's specifications.

4 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

6 50. Respondent's technician license is subject to disciplinary action pursuant
7 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
8 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
9 compliance for vehicles 7 through 10, identified in paragraph 42 above, without performing bona
10 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
11 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
12 Program.

13 **OTHER MATTERS**

14 51. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
15 Director may invalidate temporarily or permanently, the registrations for all places of business
16 operated in this state by Respondent Abelino Damas, also known as Abelino Antonio Damas,
17 owner of Tony Smog Test Only, upon a finding that said Respondent has, or is, engaged in a
18 course of repeated and willful violations of the laws and regulations pertaining to an automotive
19 repair dealer.

20 52. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test
21 Only, Station License Number TG 234567, issued to Respondent Abelino Damas, also known as
22 Abelino Antonio Damas, owner of Tony Smog Test Only, is revoked or suspended, any
23 additional license issued under this chapter in the name of said licensee may be likewise revoked
24 or suspended by the Director.

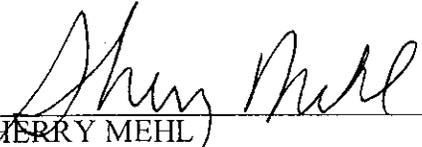
25 53. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission
26 Specialist Technician License Number EA 141969, issued to Respondent Abelino Damas, also
27 known as Abelino Antonio Damas, is revoked or suspended, any additional license issued under
28 this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

1 PRAYER

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

- 4 1. Temporarily or permanently invalidating Automotive Repair Dealer
5 Registration Number AG 234567, issued to Abelino Damas, also known as Abelino Antonio
6 Damas, owner of Tony Smog Test Only;
- 7 2. Temporarily or permanently invalidating any other automotive repair
8 dealer registration issued to Abelino Damas, also known as Abelino Antonio Damas;
- 9 3. Revoking or suspending Smog Check, Test Only, Station License Number
10 TG 234567, issued to Abelino Damas, also known as Abelino Antonio Damas, owner of Tony
11 Smog Test Only;
- 12 4. Revoking or suspending Advanced Emission Specialist Technician
13 License Number EA 141969, issued to Abelino Damas, also known as Abelino Antonio Damas;
- 14 5. Revoking or suspending any additional license issued under Chapter 5 of
15 the Health and Safety Code in the name of Abelino Damas, also known as Abelino Antonio
16 Damas;
- 17 6. Ordering Respondent Abelino Damas, also known as Abelino Antonio
18 Damas, individually, and as owner of Tony Smog Test Only, to pay the Director of Consumer
19 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
20 Business and Professions Code section 125.3;
- 21 7. Taking such other and further action as deemed necessary and proper.

22 DATED: 8-13-08

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24 SHERRY MEHL
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant