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

11 In the Matter of the Accusation Against:

Case No. 79/11-61

12 **V I P SMOG TEST ONLY**
11530 Glenoaks Unit #3
13 Pacoima, CA 91331
Mailing Address:
14 11815 Gillmore Street, Apt. #115
North Hollywood, CA 91606
15 **ERICK ELIUD FLORES, OWNER**
Automotive Repair Dealer Registration No. ARD 236996
16 Smog Check Test Only Station License No. TC 236996

ACCUSATION
SMOG CHECK

17 and

18 **ERICK ELIUD FLORES**
13760 Dronfield Avenue
19 Sylmar, CA 91342
Advanced Emission Specialist Technician License
20 No. EA 150017

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

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

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Automotive Repair Dealer Registration

2. On a date uncertain in 2004, the Bureau issued Automotive Repair Dealer Registration Number ARD 236996 (“registration”) to Erick Eliud Flores (“Respondent”) doing business as V I P Smog Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2011.

Smog Check Test Only Station License

3. On or about September 26, 2005, the Bureau issued Smog Check Test Only Station License Number TC 236996 (“station license”) to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2011.

Advanced Emission Specialist Technician License

4. On a date uncertain in 2004, the Bureau issued Advanced Emission Specialist Technician License Number EA 150017 (“technician license”) to Respondent. The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

STATUTORY PROVISIONS

5. Section 9884.7 of the Business and Professions Code (“Code”) states, in pertinent part

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

(4) Any other conduct that constitutes fraud.

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

1 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
2 place on probation the registration for all places of business operated in this state by
3 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
4 engaged in a course of repeated and willful violations of this chapter, or regulations
5 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
20 director thereof, does any of the following:

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

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

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

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

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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
4 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 licensee 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 **FACTUAL BACKGROUND**

10 13. On or about May 6, 2010, the Bureau conducted a detailed review of the Vehicle
11 Information Database ("VID") for all smog inspections performed at Respondent's facility for the
12 period January 1, 2010, through March 10, 2010. The VID showed the same diagnostic trouble
13 code stored in memory of the power train control modules ("PCM") on different vehicles. The
14 following 8 vehicles were all certified with the same pending code stored in the PCM memory
15 while the original equipment manufacturer ("OEM") service information shows these vehicles do
16 not support the pending code stored in the PCM memory for these vehicles. The vehicles
17 receiving smog certificates were not tested during the OBD II functional test¹ and another vehicle
18 was used, constituting clean plugging². All of the following inspections were performed by
19 Respondent.

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

25 ² Clean plugging is the use of the OBD II readiness monitor status and stored fault code
26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
28 control system or component failure.

TABLE 1

| Date & Time of Inspection | Vehicle Certified & License No. | Certificate No. |
|-----------------------------------|--|-----------------|
| 1. 1/13/2010 1223 – 1241 hours | 2003 Mercedes E500, License No. 6AID578 | NQ337956C |
| 2. 1/22/2010 1438 – 1459 hours | 1997 Cadillac Catera, License No. 3UFD798 | NQ338000C |
| 3. 1/26/2010 1547 – 1610 hours | 1996 Dodge Intrepid, License No. 6CBP420 | NQ515074C |
| 4. 2/10/2010 1654 – 1711 hours | 1998 BMW 7-series, License No. 6CMB162 | NQ707249C |
| 5. 2/15/2010 1522 – 1536 hours | 2001 BMW 330CI, VIN# WBABN53421JU33074 | NQ794187C |
| 6. 2/18/2010 1555 – 1610 hours | 1998 BMW 5-series, License No. 5KRX957 | NQ822800C |
| 7. 2/18/2010 1758 – 1813 hours | 2003 BMW 325I, Vin# WBAET37473NJ28280 | NQ860403C |
| 8. 2/24/2010 1616 – 1626 hours | 2004 Chevrolet Corvette, License No. 6CND842 | NQ895792C |

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about January 13, 2010, through February 24, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading as follows: Respondent certified that vehicles 1 through 8, set forth in Table 1, above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using clean plugging methods by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the 8 vehicles, and did not test or inspect those vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

15. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about January 13, 2010, through February 24, 2010, he committed acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 8, set forth in Table 1, above, without performing bona fide inspections of the emission control

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

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 16. Respondent has subjected his station license to discipline under Health and Safety
6 Code section 44072.2, subdivision (a), in that on or about January 13, 2010, through February 24,
7 2010, regarding vehicles 1 through 8, set forth in Table 1, above, he violated sections of that
8 Code, as follows:

9 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
10 performed on vehicles 1 through 8, in accordance with procedures prescribed by the department.

11 b. **Section 44015:** Respondent issued electronic certificates of compliance for vehicles
12 1 through 8, without ensuring that the vehicles were properly tested and inspected to determine if
13 they were in compliance with Health and Safety Code section 44012.

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

17 **FOURTH CAUSE FOR DISCIPLINE**

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

19 17. Respondent has subjected his station license to discipline under Health and Safety
20 Code section 44072.2, subdivision (c), in that on or about January 13, 2010, through February 24,
21 2010, regarding vehicles 1 through 8, set forth in Table 1, above, he violated sections of the
22 California Code of Regulations, title 16, as follows:

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

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

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

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

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

11 21. Respondent has subjected his technician license to discipline under Health and Safety
12 Code section 44072.2, subdivision (d), in that on or about January 13, 2010, through February 24,
13 2010, regarding vehicles 1 through 8, set forth in Table 1, above, he committed acts involving
14 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
15 compliance without performing bona fide inspections of the emission control devices and systems
16 on those vehicles, thereby depriving the People of the State of California of the protection
17 afforded by the Motor Vehicle Inspection Program.

18 **OTHER MATTERS**

19 22. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
20 or permanently or refuse to validate, the registrations for all places of business operated in this
21 state by to Erick Eliud Flores doing business as V I P Smog Test Only, upon a finding that he has,
22 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining
23 to an automotive repair dealer.

24 23. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
25 License Number TC 236996, issued to Erick Eliud Flores doing business as V I P Smog Test
26 Only, is revoked or suspended, any additional license issued under this chapter in the name of
27 said licensee, including but not limited to Advanced Emission Specialist Technician License
28 Number EA 150017, may be likewise revoked or suspended by the director.

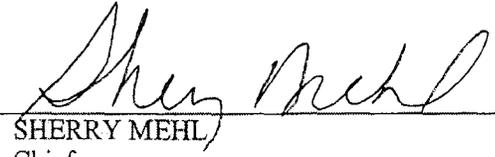
PRAYER

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

1. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 236996, issued to Erick Eliud Flores doing business as V I P Smog Test Only;
2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Erick Eliud Flores;
3. Revoking or suspending Smog Check Test Only Station License Number TC 236996, issued to Erick Eliud Flores doing business as V I P Smog Test Only;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Erick Eliud Flores, including but not limited to Advanced Emission Specialist Technician License Number EA 150017;
5. Ordering Erick Eliud Flores 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,
6. Taking such other and further action as deemed necessary and proper.

DATED: 11/25/11



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

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