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

12 In the Matter of the Accusation Against:

Case No. 79/11-03

13 **SMOG ZONE TEST ONLY SMOG STATION**
14 **MIKAIL JEBRIAL, OWNER**
15 **1199 San Pablo Avenue**
16 **Berkeley, CA 94706**
17 **Automotive Repair Dealer Reg. No. ARD 241014**
18 **Smog Check, Test Only, Station License No. TC**
19 **241014**

ACCUSATION

(Smog Check)

20 **and**

21 **MIKAIL JEBRIAL**
22 **620 Lexington Avenue, Unit C**
23 **El Cerrito, CA 94530**
24 **Advanced Emission Specialist Technician**
25 **License No. EA 150510**

26 Respondents.

27 Complainant alleges:

28 **PARTIES**

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

2. On or about September 13, 2005, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 241014 (hereinafter "registration") to Mikail Jebrial ("Respondent"), owner of Smog Zone Test Only Smog Station. Respondent's

1 registration was in full force and effect at all times relevant to the charges brought herein and will
2 expire on August 31, 2010, unless renewed.

3 3. On or about October 6, 2005, the Director issued Smog Check, Test Only, Station
4 License Number TC 241014 (hereinafter "smog check station license") to Respondent.
5 Respondent's smog check station license was in full force and effect at all times relevant to the
6 charges brought herein and will expire on August 31, 2010, unless renewed.

7 4. In or about 2004, the Director issued Advanced Emission Specialist Technician
8 License Number EA 150510 (hereinafter "technician license") to Respondent. Respondent's
9 technician license will expire on April 30, 2011, unless renewed.

10 **JURISDICTION**

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

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

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

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

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

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

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

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

13 COST RECOVERY

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

18 FACTUAL BACKGROUND

19 15. On April 1, 2010, the Bureau initiated an investigation against Respondent based on a
20 review of information from the Bureau's Vehicle Information Database ("VID") which indicated
21 that Respondent may be engaging in fraudulent smog check inspections.

22 16. From April 1, 2010, to April 14, 2010, a representative of the Bureau conducted a
23 detailed review of the VID data for all smog inspections performed at Respondent's facility for
24 the period of March 1, 2009, through February 28, 2010. The representative found that the VID
25 recorded the same diagnostic trouble code (hereinafter "code") during the OBD II test¹ on 19

26 ¹ The On Board Diagnostic, generation II (OBD II), functional test is an automated
27 function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to
28 connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC)
which is 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.

1 different vehicles regardless of the make or model of the vehicle, including the 7 vehicles
2 identified below. The Bureau obtained information indicating that the code was not applicable to
3 any of the 7 vehicles. All 7 smog inspections were performed by Respondent.

4 17. The Bureau concluded that Respondent performed the smog inspections on the 7
5 vehicles using a method known as "clean plugging",² resulting in the issuance of fraudulent
6 certificates of compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
1. 10/04/2009 12:25 - 12:46	2002 Volvo S60, FWD; License No. 6AIX040	NO128443C
2. 12/03/2009 15:32 - 15:42	2003 Dodge Durango 2WD; License No. 6ECW003	NO845741C
3. 12/12/2009 17:09 - 17:33	2000 Plymouth Neon; License No. 5FJA197	NO941089C
4. 01/04/2010 15:53 - 16:06	1998 Volkswagen Passat; License No. 4HEV714	NQ197508C
5. 01/11/2010 18:03 - 18:15	1998 Saturn SC; no plates	NQ301561C
6. 02/06/2010 11:31 - 12:06	2000 Jeep Grand Cherokee 2WD; License No. 5SOZ567	NQ665668C
7. 02/21/2010 12:20 - 12:40	2003 Dodge Dakota; License No. 7A29842	NQ887307C

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 18. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
20 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
21 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
22 follows: Respondent certified that vehicles 1 through 7, identified in paragraph 17 above, had
23 passed inspection and were in compliance with applicable laws and regulations. In fact,

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

1 Respondent conducted the inspections on the vehicles using clean-plugging methods in that he
2 substituted or used a different vehicle (s) during the OBD II functional tests in order to issue
3 smog certificates of compliance for the 7 vehicles, and did not test or inspect the 7 vehicles as
4 required by Health & Saf. Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 19. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
8 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute
9 fraud by issuing electronic smog certificates of compliance for vehicles 1 through 7, identified in
10 paragraph 17 above, without performing bona fide inspections of the emission control devices
11 and systems on the vehicles, thereby depriving the People of the State of California of the
12 protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 20. Respondent's smog check station license is subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
17 following sections of that Code:

18 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
19 performed on vehicles 1 through 7, identified in paragraph 17 above, in accordance with
20 procedures prescribed by the department.

21 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
22 vehicles 1 through 7, identified in paragraph 17 above, without ensuring that the vehicles were
23 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
24 section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 21. Respondent's smog check station license is subject to disciplinary action pursuant to
5 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 issued
8 electronic smog certificates of compliance for vehicles 1 through 7, identified in paragraph 17
9 above.

10 b. **Section 3340.35, subdivision (c)**: Respondent issued electronic smog certificates of
11 compliance for vehicles 1 through 7, identified in paragraph 17 above, even though the vehicles
12 had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
14 conducted on vehicles 1 through 7, identified in paragraph 17 above, in accordance with the
15 Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 22. Respondent's smog check station license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
20 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
21 compliance for vehicles 1 through 7, identified in paragraph 17 above, without performing bona
22 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
23 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
24 Program.

25 **SIXTH CAUSE FOR DISCIPLINE**

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

27 23. Respondent's technician license is subject to disciplinary action pursuant to Health &
28 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section

1 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission
2 control tests on vehicles 1 through 7, identified in paragraph 17 above, in accordance with
3 procedures prescribed by the department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

10 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
11 electronic smog certificates of compliance for vehicles 1 through 7, identified in paragraph 17
12 above.

13 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
14 through 7, identified in paragraph 17 above, in accordance with Health & Saf. Code sections
15 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

16 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
17 through 7, identified in paragraph 17 above, in accordance with the Bureau's specifications.

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 25. Respondent's technician license is subject to disciplinary action pursuant to Health &
21 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent,
22 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
23 for vehicles 1 through 7, identified in paragraph 17 above, without performing bona fide
24 inspections of the emission control devices and systems on the vehicles, thereby depriving the
25 People of the State of California of the protection afforded by the Motor Vehicle Inspection
26 Program.

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1 OTHER MATTERS

2 26. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
4 business operated in this state by Respondent Mikail Jebrial, owner of Smog Zone Test Only
5 Smog Station, upon a finding that Respondent has, or is, engaged in a course of repeated and
6 willful violations of the laws and regulations pertaining to an automotive repair dealer.

7 27. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
8 License Number TC 241014, issued to Respondent Mikail Jebrial, owner of Smog Zone Test
9 Only Smog Station, is revoked or suspended, any additional license issued under this chapter in
10 the name of said licensee may be likewise revoked or suspended by the director.

11 28. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
12 Technician License Number EA 150510, issued to Respondent Mikail Jebrial is revoked or
13 suspended, any additional license issued under this chapter in the name of said licensee may be
14 likewise revoked or suspended by the director.

15 PRAYER

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

18 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
19 Number ARD 241014, issued to Mikail Jebrial, owner of Smog Zone Test Only Smog Station;

20 2. Temporarily or permanently invalidating any other automotive repair dealer
21 registration issued to Mikail Jebrial;

22 3. Revoking or suspending Smog Check, Test Only, Station License Number
23 TC 241014, issued to Mikail Jebrial, owner of Smog Zone Test Only Smog Station;

24 4. Revoking or suspending Advanced Emission Specialist Technician License Number
25 EA 150510, issued to Mikail Jebrial;

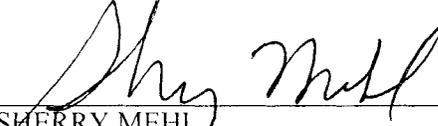
26 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
27 and Safety Code in the name of Mikail Jebrial;

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1 6. Ordering Respondent Mikail Jebrial, individually, and as owner of Smog Zone Test
2 Only Smog Station, to pay the Director of Consumer Affairs the reasonable costs of the
3 investigation and enforcement of this case, pursuant to Business and Professions Code section
4 125.3;

5 7. Taking such other and further action as deemed necessary and proper.

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7 DATED: 4/16/10


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

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