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

11 In the Matter of the Accusation Against:

Case No. 79/10-54

12 **DISCOUNT SMOG CHECK CENTERS #3,**  
13 **6055 Dougherty Road**  
**Dublin, California 94568**  
14 **STEVEN GABRIEL ESPINOZA, OWNER**  
**Automotive Repair Dealer Registration No.**  
15 **ARD 247901**  
**Smog Check Test Only Station License No.**  
16 **TC 247901,**

**A C C U S A T I O N**  
**S M O G C H E C K**

17 and

18 **STEVEN GABRIEL ESPINOZA**  
**689 San Miguel Avenue**  
19 **Sunnyvale, CA 94568**  
**Advanced Emission Specialist Technician**  
20 **License No. EA 152567**

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

7 (c) Notwithstanding subdivision (b), the director may invalidate  
8 temporarily or permanently, the registration for all places of business operated in this  
9 state by an automotive repair dealer upon a finding that the automotive repair dealer  
10 has, or is, engaged in a course of repeated and willful violations of this chapter, or  
11 regulations adopted pursuant to it.

12 6. Code section 9884.9, subdivision (a), states:

13 (a) The automotive repair dealer shall give to the customer a written  
14 estimated price for labor and parts necessary for a specific job. No work shall be done  
15 and no charges shall accrue before authorization to proceed is obtained from the  
16 customer. No charge shall be made for work done or parts supplied in excess of the  
17 estimated price without the oral or written consent of the customer that shall be  
18 obtained at some time after it is determined that the estimated price is insufficient and  
19 before the work not estimated is done or the parts not estimated are supplied. Written  
20 consent or authorization for an increase in the original estimated price may be  
21 provided by electronic mail or facsimile transmission from the customer. The bureau  
22 may specify in regulation the procedures to be followed by an automotive repair  
23 dealer if an authorization or consent for an increase in the original estimated price is  
24 provided by electronic mail or facsimile transmission. If that consent is oral, the  
25 dealer shall make a notation on the work order of the date, time, name of person  
26 authorizing the additional repairs and telephone number called, if any, together with a  
27 specification of the additional parts and labor and the total additional cost, and shall  
28 do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the  
notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or  
initials to an acknowledgment of notice and consent, if there is an oral consent of the  
customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original  
estimated price.

\_\_\_\_\_  
(signature or initials)"

Nothing in this section shall be construed as requiring an automotive  
repair dealer to give a written estimated price if the dealer does not agree to perform  
the requested repair.

7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
2 temporarily or permanently.

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

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

10 10. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

25 12. Section 44072.8 of the Health and Safety Code states:

26 "When a license has been revoked or suspended following a hearing under this article, any  
27 additional license issued under this chapter in the name of the licensee may be likewise revoked  
28 or suspended by the director."

#### COST RECOVERY

13 Code section 125.3 provides, in pertinent part, that a Board may request the  
14 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **UNDERCOVER OPERATION – MARCH 5, 2009**

4 14. On March 5, 2009, a Bureau undercover operator (“operator”) drove a Bureau-  
5 documented 1998 Nissan Altima to Respondent’s facility for a smog inspection. The vehicle  
6 could not pass a smog inspection because the vehicle’s ignition timing was adjusted beyond the  
7 manufacturer’s specifications. The operator signed a work order; however, she was not provided  
8 with a copy of the document prior to the performance of the smog inspection. Fernando  
9 Solorzano, a licensed smog technician, performed the smog inspection and issued electronic  
10 Certificate of Compliance No. NI350931C, certifying that he had tested and inspected the 1998  
11 Nissan Altima and that the vehicle was in compliance with applicable laws and regulations. In  
12 fact, the vehicle could not have passed the functional portion of the smog inspection because the  
13 vehicle’s ignition timing was adjusted beyond the manufacturer’s specifications.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 15. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,  
17 subdivision (a)(1), in that on or about March 5, 2009, Respondent made or authorized statements  
18 which he knew or in the exercise of reasonable care he should have known to be untrue or  
19 misleading, by issuing electronic Certificate of Compliance No. NI350931C for the 1998 Nissan  
20 Altima, certifying that the vehicle was in compliance with applicable laws and regulations. In  
21 fact, the vehicle could not have passed the functional portion of the smog inspection because the  
22 vehicle’s ignition timing was adjusted beyond the manufacturer’s specifications.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Failure to Record Odometer Reading on Signed Document)**

25 16. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,  
26 subdivision (a)(2), in that on or about March 5, 2009, Respondent failed to set forth the vehicle’s  
27 current odometer reading on the work order signed by the operator.

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1 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate  
2 of Compliance No. NI350931C for the 1998 Nissan Altima without performing a bona fide  
3 inspection of the emission control devices and systems on that vehicle, thereby depriving the  
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
5 Program.

6 **PRIOR CITATIONS**

7 23. To determine the degree of discipline, if any, to be imposed on Respondent,  
8 Complainant alleges as follows:

9 a. On or about February 4, 2008, the Bureau issued Citation No. C08-0663 against  
10 Respondent's registration and station licenses for violations of Health & Safety Code section  
11 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices  
12 according to procedures prescribed by the department); and, California Code of Regulations, title  
13 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a  
14 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover  
15 vehicle with a missing PCV system. The Bureau assessed civil penalties totaling \$500 against  
16 Respondent for the violations. Respondent complied with this citation on March 25, 2008.

17 b. On or about June 27, 2008, the Bureau issued Citation No. C08-1150 against  
18 Respondent's registration and station licenses for violations of Health & Safety Code section  
19 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices  
20 according to procedures prescribed by the department), and Regulation 3340.35, subdivision (c)  
21 (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a  
22 certificate of compliance to a Bureau undercover vehicle with a missing air suction system reed  
23 valve assembly. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the  
24 violations. Respondent complied with this citation on September 3, 2008.

25 c. On or about June 27, 2008, the Bureau issued Citation No. M08-1151 against  
26 Respondent's technician license for violations of Health and Safety Code section 44032 (qualified  
27 technicians shall perform tests of the emission control systems and devices in accordance with  
28 section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test,

1 and repair vehicles in accordance with Health and Safety Code sections 44012, 44035, and  
2 Regulation 3340.42) for issuing a certificate of compliance to a Bureau undercover vehicle with a  
3 missing air suction system reed valve assembly. The Bureau directed Respondent to complete an  
4 8-hour training course. Respondent complied with this citation on August 6, 2008.

5 d. On or about November 10, 2008, the Bureau issued Citation No. C09-0559 against  
6 Respondent's registration and smog station licenses for violations of Health & Safety Code  
7 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control  
8 devices according to procedures prescribed by the department), and Regulation 3340.35,  
9 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for  
10 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing  
11 adjusted beyond the manufacturer's specifications. The Bureau assessed civil penalties totaling  
12 \$2,000 against Respondent for the violations. Respondent complied with this citation on  
13 January 9, 2009.

14 e. On or about November 10, 2008, the Bureau issued Citation No. M09-0560 against  
15 Respondent's technician license for violations of Health and Safety Code section 44032 (qualified  
16 technicians shall perform tests of the emission control systems and devices in accordance with  
17 section 44012) and Regulation section 3340.30, subdivision (a) (qualified technicians shall  
18 inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012,  
19 44035, and Regulation 3340.42) for issuing a certificate of compliance to a Bureau undercover  
20 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau  
21 directed Respondent to complete a 16-hour training course. Respondent complied with this  
22 citation on January 4, 2009.

### 23 OTHER MATTERS

24 24. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
25 or permanently or refuse to validate, the registrations for all places of business operated in this  
26 state by to Steven Gabriel Espinoza doing business as Discount Smog Check Centers #3, upon a  
27 finding that he has, or is, engaged in a course of repeated and willful violations of the laws and  
28 regulations pertaining to an automotive repair dealer.

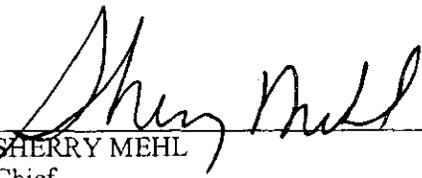


1           7.     Ordering Steven Gabriel Espinoza to pay the Bureau of Automotive Repair the  
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
3 Professions Code section 125.3; and,

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

6  
7  
8 DATED: \_\_\_\_\_

2/22/10

  
SHERRY MEHL

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

*Complainant*

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