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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. 79/10-04

12 **ENJ SMOG**  
1916 W. Washington Blvd.  
13 Los Angeles, CA 90018  
**JOSEPH C. PARK, OWNER**  
14 Automotive Repair Dealer Registration  
15 No. ARD 248153  
Smog Check, Test Only, Station License  
16 No. TC 248153

**ACCUSATION**

**SMOG CHECK**

17 and

18 **JOSEPH C. PARK**  
1916 W. Washington Blvd.  
19 Los Angeles, CA 90018

20 Advanced Emission Specialist Technician  
License No. EA 020586

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

5 **STATUTORY PROVISIONS**

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

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

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

16 . . . .  
17 (4) Any other conduct which constitutes fraud.  
18 . . . .

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

24 10. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

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

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

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

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

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

12 . . . .

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

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

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

#### 18 COST RECOVERY

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

#### 23 UNDERCOVER OPERATION: 2000 CHRYSLER CIRRUS

24 15. On March 11, 2009, an undercover operator with the Bureau, using the fictitious  
25 name "Angela Fuentes" (hereinafter "operator"), took the Bureau's 2000 Chrysler Cirrus to  
26 Respondent's facility and requested a smog inspection. Two vacuum plugs and an orifice cap had  
27 been installed in place of the PCV valve hose and PCV breather hose on the Bureau-documented  
28 vehicle. The operator signed a work order for the inspection, but did not receive a copy. After  
the inspection was completed, the operator paid the facility \$60.00 and received a copy of Invoice

1 #002253 and a vehicle inspection report signed by Respondent. That same day, electronic smog  
2 Certificate of Compliance #VX700137C was issued for the vehicle.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 16. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
6 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which  
7 he knew or in the exercise of reasonable care should have known to be untrue or misleading.  
8 Respondent certified under penalty of perjury on the vehicle inspection report that he performed  
9 the smog inspection on the Bureau's 2000 Chrysler Cirrus in accordance with all Bureau  
10 requirements and that the vehicle passed the inspection and was in compliance with applicable  
11 laws and regulations. In fact, two vacuum plugs and an orifice cap had been installed in place of  
12 the PCV valve hose and PCV breather hose on the vehicle and as such, the vehicle would not pass  
13 the inspection required by Health & Saf. Code section 44012.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 17. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
17 Code section 9884.7, subdivision (a)(4), in that he committed an act which constitutes fraud.  
18 Respondent issued an electronic smog certificate of compliance for the Bureau's 2000 Chrysler  
19 Cirrus without performing a bona fide inspection of the emission control devices and systems on  
20 the vehicle, thereby depriving the People of the State of California of the protection afforded by  
21 the Motor Vehicle Inspection Program.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Failure to Provide Customer with Copy of Signed Document)**

24 18. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
25 Code section 9884.7, subdivision (a)(3), in that he failed to provide the operator with a copy of  
26 the repair order as soon as the operator signed the document.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Code)**

3 19. Respondent's registration is subject to disciplinary action pursuant to Code section  
4 9884.7, subdivision (a)(6), in that he failed to comply with section 9884.9, subdivision (a), of that  
5 Code in a material respect, as follows: Respondent failed to provide the operator with a written  
6 estimate for parts and/or labor necessary for a specific job prior to performing the smog  
7 inspection on the Bureau's 2000 Chrysler Cirrus.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

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

13 a. **Section 44012, subdivision (f)**: Respondent failed to perform the emission control  
14 tests on the Bureau's 2000 Chrysler Cirrus in accordance with procedures prescribed by the  
15 department.

16 b. **Section 44015, subdivision (b)**: Respondent issued an electronic smog certificate of  
17 compliance for the Bureau's 2000 Chrysler Cirrus without properly testing and inspecting the  
18 vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

19 **SIXTH CAUSE FOR DISCIPLINE**

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

21 21. Respondent's smog check station license is subject to disciplinary action pursuant to  
22 Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with the  
23 following sections of California Code of Regulations, title 16:

24 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an  
25 electronic smog certificate of compliance for the Bureau's 2000 Chrysler Cirrus.

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1 NINTH CAUSE FOR DISCIPLINE

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

3 24. Respondent has subjected his technician license to discipline under Health and Saf.  
4 Code section 44072.2, subdivision (c), in that on or about March 11, 2009, regarding the Bureau's  
5 2000 Chrysler Cirrus, he violated sections of the California Code of Regulations, title 16, as  
6 follows:

7 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued an  
8 electronic smog certificate of compliance for the vehicle.

9 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test the vehicle  
10 in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of  
11 Regulations, title 16, section 3340.42.

12 c. Section 3340.42: Respondent failed to conduct the required smog tests on the vehicle  
13 in accordance with the Bureau's specifications.

14 TENTH CAUSE FOR DISCIPLINE

15 (Dishonesty, Fraud or Deceit)

16 25. Respondent has subjected his technician license to discipline under Health and Saf.  
17 Code section 44072.2, subdivision (d), in that on or about March 11, 2009, he committed an act  
18 involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic  
19 certificate of compliance for the Bureau's 2000 Chrysler Cirrus without performing a bona fide  
20 inspection of the emission control devices and systems on the vehicle, thereby depriving the  
21 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
22 Program.

23 PRIOR CITATIONS

24 26. To determine the degree of discipline, if any, to be imposed on Respondent,  
25 Complainant alleges as follows:

26 a. On or about October 19, 2007, the Bureau issued Citation No. C08-0390 against  
27 Respondent's registration and station license for violations of Health & Saf. Code section 44012,  
28 subdivision (f) (failure to determine that emission control devices and systems required by State

1 and Federal law are installed and functioning correctly in accordance with test procedures), and  
2 California Code of Regulations, title 16 ("Regulation") 3340.35, subdivision (c) (issuing a  
3 certificate of compliance to a vehicle that was improperly tested). Respondent had issued a  
4 certificate of compliance to a Bureau undercover vehicle with a missing Fuel Evaporative System  
5 Canister. The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.  
6 Respondent complied with this citation on January 31, 2008.

7 b. On or about October 19, 2007, the Bureau issued Citation No. M08-0392 against  
8 Respondent's technician license for violations of Health & Safety Code section 44032, (failure to  
9 perform a visual/functional check of emission control devices according to procedures prescribed  
10 by the department), and Regulation 3340.30, subdivision (a) (issuing a certificate of compliance  
11 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a  
12 Bureau undercover vehicle with a missing Fuel Evaporative System Canister. The Bureau  
13 directed Respondent to complete an 8-hour training course. Respondent complied with this  
14 citation on January 15, 2008.

15 c. On or about April 10, 2008, the Bureau issued Citation No. C08-0900 against  
16 Respondent's registration and station license for violations of Health & Saf. Code section 44012,  
17 subdivision (f), and Regulation 3340.35, subdivision (c). Respondent had issued a certificate of  
18 compliance to a Bureau undercover vehicle with a missing PCV valve system. The Bureau  
19 assessed civil penalties totaling \$1,000 against Respondent for the violations. Respondent  
20 complied with this citation on May 25, 2008.

21 d. On or about April 10, 2008, the Bureau issued Citation No. M08-0901 against  
22 Respondent's technician license for violations of Health & Saf. Code section 44032 and  
23 Regulation 3340.30, subdivision (a). Respondent had issued a certificate of compliance to a  
24 Bureau undercover vehicle with a missing PCV Valve System. The Bureau directed Respondent  
25 to complete a 16-hour training course. Respondent complied with this citation on May 21, 2008.

26 e. On or about November 17, 2008, the Bureau issued Citation No. C09-0595 against  
27 Respondent's registration and station license for violations of Health & Saf. Code section 44012,  
28 subdivision (f), and Regulation 3340.35, subdivision (c). Respondent had issued a certificate of

1 compliance to a Bureau undercover vehicle with a missing AIR system. The Bureau assessed  
2 civil penalties totaling \$2,000 against Respondent for the violations. Respondent complied with  
3 this citation on December 26, 2008.

4 f. On or about November 17, 2008, the Bureau issued Citation No. M09-0596 against  
5 Respondent's technician license for violations of Health & Saf. Code section 44032 and  
6 Regulation 3340.30, subdivision (a). Respondent had issued a certificate of compliance to a  
7 Bureau undercover vehicle with a missing AIR system. The Bureau directed Respondent to  
8 complete a 68-hour training course. Respondent complied with this citation on January 28, 2009.

#### 9 OTHER MATTERS

10 27. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
11 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of  
12 business operated in this state by Respondent Joseph C. Park, owner of ENJ Smog, upon a  
13 finding that said Respondent has, or is, engaged in a course of repeated and willful violations of  
14 the laws and regulations pertaining to an automotive repair dealer.

15 28. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
16 License Number TC 248153, issued to Joseph C. Park, owner of ENJ Smog, is revoked or  
17 suspended, any additional license issued under this chapter in the name of said licensee may be  
18 likewise revoked or suspended by the director.

19 29. Under Health and Saf. Code section 44072.8, if Advanced Emission Specialist  
20 Technician License Number EA 020586, issued to Joseph C. Park, is revoked or suspended, any  
21 additional license issued under this chapter in the name of said licensee may be likewise revoked  
22 or suspended by the director.

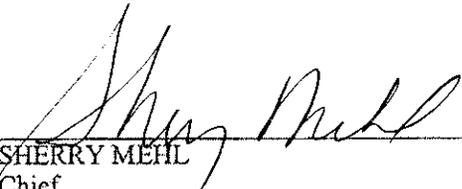
#### 23 PRAYER

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

26 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration  
27 Number ARD 248153, issued to Joseph C. Park, owner of ENJ Smog;

- 1           2.   Temporarily or permanently invalidating any other automotive repair dealer
- 2 registration issued to Joseph C. Park, owner of ENJ Smog;
- 3           3.   Revoking or suspending Smog Check, Test Only, Station License Number
- 4 TC 248153, issued to Joseph C. Park, owner of ENJ Smog;
- 5           4.   Revoking or suspending any additional license issued under Chapter 5 of the Health
- 6 and Safety Code in the name of Joseph C. Park, owner of ENJ Smog;
- 7           5.   Revoking or suspending Advanced Emission Specialist Technician License Number
- 8 EA 020586, issued to Joseph C. Park;
- 9           6.   Revoking or suspending any additional license issued under Chapter 5 of the Health
- 10 and Safety Code in the name of Joseph C. Park;
- 11           7.   Ordering Respondent Joseph C. Park to pay the Director of Consumer Affairs the
- 12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
- 13 Professions Code section 125.3; and
- 14           8.   Taking such other and further action as deemed necessary and proper.

15  
16 DATED: 7/28/09

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

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