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7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
**STATE OF CALIFORNIA**

10  
11 In the Matter of the Accusation Against:

Case No. 79/12-33

12 **POPS TEST ONLY SMOG**  
**3901 Wible Road, Unit 5**  
13 **Bakersfield, CA 93309**  
14 **SALOMON JOHN ESCUDERO, OWNER**  
**Automotive Repair Dealer Registration No.**  
**ARD 249216**  
15 **Smog Check Test Only Station License No.**  
**TC 249216,**

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

16  
17 and

18 **SALOMON JOHN ESCUDERO**  
**3901 Wible Road, #5**  
19 **Bakersfield, CA 93309**  
**Advanced Emission Specialist Technician**  
20 **License No. EA 151083**

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

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

26 **Automotive Repair Dealer Registration**

27 2. On or about February 22, 2007, the Bureau issued Automotive Repair Dealer  
28 Registration Number ARD 249216 ("registration") to Salomon John Escudero ("Respondent"),

1 doing business as Pops Test Only Smog. The registration was in full force and effect at all times  
2 relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about June 18, 2008, the Bureau issued Smog Check Test Only Station License  
5 Number TC 249216 ("station license") to Respondent. The station license was in full force and  
6 effect at all times relevant to the charges brought herein and will expire on January 31, 2012,  
7 unless renewed.

8 **Advanced Emission Specialist Technician License**

9 4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist  
10 Technician License Number EA 151083 ("technician license") to Respondent. The technician  
11 license was in full force and effect at all times relevant to the charges brought herein and will  
12 expire on April 30, 2013, unless renewed.

13 **STATUTORY PROVISIONS**

14 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent  
15 part:

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

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

25 (4) Any other conduct that constitutes fraud.

26 (b) Except as provided for in subdivision (c), if an automotive repair  
27 dealer operates more than one place of business in this state, the director pursuant to  
28 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.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or  
place on probation the registration for all places of business operated in this state by  
an automotive repair dealer upon a finding that the automotive repair dealer has, or is,  
engaged in a course of repeated and willful violations of this chapter, or regulations  
adopted pursuant to it.

1           6.     Code section 118, subdivision (b) states:

2                     The suspension, expiration, or forfeiture by operation of law of a license  
3                     issued by a board in the department, or its suspension, forfeiture, or cancellation by  
4                     order of the board or by order of a court of law, or its surrender without the written  
5                     consent of the board, shall not, during any period in which it may be renewed,  
6                     restored, reissued, or reinstated, deprive the board of its authority to institute or  
7                     continue a disciplinary proceeding against the licensee upon any ground provided by  
8                     law or to enter an order suspending or revoking the license or otherwise taking  
9                     disciplinary action against the licensee on any such ground.

7           7.     Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
8                     registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
9                     proceeding against an automotive repair dealer or to render a decision invalidating a registration  
10                    temporarily or permanently.

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

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

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

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

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

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

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

11           11.    Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
12                    expiration or suspension of a license by operation of law, or by order or decision of the Director

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

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

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

#### 6 COST RECOVERY

7 13. Code section 125.3 provides, in pertinent part, that a Board may request the  
8 administrative law judge to direct a licentiate found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

#### 11 UNDERCOVER OPERATION – JUNE 17, 2010

12 14. On or about June 17, 2010, a Bureau undercover operator drove a Bureau-  
13 documented 2000 Toyota Avalon to Respondent's facility and requested a smog inspection. The  
14 vehicle could not pass the visual portion of a smog inspection because the vehicle's positive  
15 crankcase ventilation ("PCV") system was missing. Respondent performed the smog inspection  
16 and issued electronic Certificate of Compliance No. WL138593 for that vehicle. The operator  
17 paid \$50 for the smog inspection and received a copy of Invoice No. 3559 and the Vehicle  
18 Inspection Report ("VIR").

#### 19 FIRST CAUSE FOR DISCIPLINE

##### 20 (Misleading Statements)

21 15. Respondent has subjected his registration to discipline under Code section 9884.7,  
22 subdivision (a)(1), in that on or about June 17, 2010, he made statements which he knew or which  
23 by exercise of reasonable care he should have known were untrue or misleading when he issued  
24 electronic Certificate of Compliance No. WL138593 for the 2000 Toyota Avalon, certifying that  
25 the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's  
26 PCV system was missing.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 18. Respondent has subjected his station license to discipline under Health and Safety  
4 Code section 44072.2, subdivision (c), in that on or about June 17, 2010, regarding the 2000  
5 Toyota Avalon, he violated sections of the California Code of Regulations, title 16, as follows:

6 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
7 electronic Certificate of Compliance No. WL138593 without performing a bona fide inspection of  
8 the emission control devices and systems on that vehicle as required by Health and Safety Code  
9 section 44012.

10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
11 Compliance No. WL138593 even though that vehicle had not been inspected in accordance with  
12 section 3340.42 of that Code.

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
14 inspections on that vehicle in accordance with the Bureau's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 19. Respondent has subjected his station license to discipline under Health and Safety  
18 Code section 44072.2, subdivision (d), in that on or about June 17, 2010, regarding the 2000  
19 Toyota Avalon, he committed acts involving dishonesty, fraud or deceit whereby another was  
20 injured by issuing electronic Certificate of Compliance No. WL138593 for that vehicle without  
21 performing a bona fide inspection of the emission control devices and systems on the vehicle,  
22 thereby depriving the People of the State of California of the protection afforded by the Motor  
23 Vehicle Inspection Program.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 20. Respondent has subjected his technician license to discipline under Health and Safety  
27 Code section 44072.2, subdivision (a), in that on or about June 17, 2010, regarding the 2000  
28 Toyota Avalon, he violated sections of that Code, as follows:

1 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission  
2 control devices and systems required by law were installed and functioning correctly in  
3 accordance with test procedures.

4 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests  
5 on that vehicle in accordance with procedures prescribed by the department.

6 c. **Section 44032:** Respondent failed to perform tests of the emission control devices  
7 and systems on that vehicle in accordance with section 44012 of that Code.

8 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of  
9 Compliance No. WL138593 by certifying that the vehicle had been inspected as required when,  
10 in fact, it had not.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

13 21. Respondent has subjected his technician license to discipline under Health and Safety  
14 Code section 44072.2, subdivision (c), in that on or about June 17, 2010, regarding the 2000  
15 Toyota Avalon, he violated sections of the California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
17 electronic Certificate of Compliance No. WL138593 without performing a bona fide inspection of  
18 the emission control devices and systems on that vehicle as required by Health and Safety Code  
19 section 44012.

20 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle  
21 in accordance with Health and Safety Code section 44012.

22 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the  
23 Emission Inspection System for electronic Certificate of Compliance No. WL138593 by entering  
24 "Pass" for the visual inspection for the PCV system when, in fact, the vehicle could not pass the  
25 visual inspection because the vehicle's PCV system was missing.

26 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
27 inspections on that vehicle in accordance with the Bureau's specifications.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent has subjected his technician license to discipline under Health and Safety  
4 Code section 44072.2, subdivision (d), in that on or about June 17, 2010, regarding the 2000  
5 Toyota Avalon, he committed acts involving dishonesty, fraud or deceit whereby another was  
6 injured by issuing electronic Certificate of Compliance No. WL138593 without performing a  
7 bona fide inspection of the emission control devices and systems on that vehicle, thereby  
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
9 Inspection Program.

10 **PRIOR CITATIONS**

11 23. To determine the degree of penalty, if any, to be imposed upon Respondent,  
12 Complainant alleges as follows:

13 a. On July 30, 2009, the Bureau issued Citation No. C2010-0089 to Respondent against  
14 his registration and station licenses for violations of Health and Safety Code section 44012,  
15 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
16 California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing  
17 a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of  
18 compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a civil penalty  
19 of \$500. Respondent complied with this citation on September 17, 2009.

20 b. On December 30, 2009, the Bureau issued Citation No. C2010-0608 to Respondent  
21 against his registration and station licenses for violations of Health and Safety Code section  
22 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
23 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
24 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a  
25 missing EGR valve. The Bureau assessed a civil penalty of \$1,000. Respondent complied with  
26 this citation on March 10, 2010.

27 c. On July 30, 2009, the Bureau issued Citation No. M2010-0090 to Respondent against  
28 his technician license for violations of Health and Safety Code section 44032, (qualified

1 technicians shall perform tests of emission control systems and devices in accordance with  
2 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
3 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
4 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
5 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV  
6 system. Respondent was required to attend an 8-hour training course. Respondent complied with  
7 this citation on September 13, 2009.

8 d. On December 30, 2009, the Bureau issued Citation No. M2010-0609 to Respondent  
9 against his technician license for violations of Health and Safety Code section 44032, (qualified  
10 technicians shall perform tests of emission control systems and devices in accordance with  
11 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
12 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
13 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
14 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing EGR  
15 valve. Respondent was required to attend a 16-hour training course. Respondent complied with  
16 this citation on April 1, 2010.

17 **OTHER MATTERS**

18 24. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
19 or permanently or refuse to validate, the registrations for all places of business operated in this  
20 state by Salomon John Escudero, upon a finding that he has, or is, engaged in a course of repeated  
21 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

22 25. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station  
23 License Number TC 249216, issued to Salomon John Escudero doing business as Pops Test Only  
24 Smog, is revoked or suspended, any additional license issued under this chapter in the name of  
25 said licensee may be likewise revoked or suspended by the director including but not limited to,  
26 Advanced Emission Specialist Technician License Number EA 151083, issued to Salomon J.  
27 Escudero.

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PRAYER

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 249216, issued to Salomon John Escudero, doing business as Pops Test Only Smog;
2. Revoking, suspending, or placing on probation, any other automotive repair dealer registration issued to Salomon John Escudero;
3. Revoking or suspending Smog Check Test Only Station License Number TC 249216, issued to Salomon John Escudero, doing business as Pops Test Only Smog;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Salomon John Escudero, including but not limited to Advanced Emission Specialist Technician License Number EA 151083, issued to Salomon John Escudero;
5. Ordering Salomon John Escudero 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: \_\_\_\_\_

9/14/11



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

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