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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. 79/11-10

12 **S & A TEST ONLY**  
13 **ARTURO GUTIERREZ, OWNER**  
14 **13940 Foothill Blvd., #108**  
**Slymar, CA 91342**  
15 **Automotive Repair Dealer Reg. No. ARD 252457**  
**Smog Check, Test Only, Station License No. TC**  
16 **252457**

**ACCUSATION**

SMOG CHECK

17 **and**

18 **BASEM HANA SABA**  
19 **28277 Foxlane Drive**  
**Canyon Country, CA 91351-2839**  
20 **Advanced Emission Specialist Technician**  
**License No. EA 200077**

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 **S & A Test Only; Arturo Gutierrez, Owner**

27 2. In or about 2007, the Director of Consumer Affairs ("Director") issued Automotive  
28 Repair Dealer Registration Number ARD 252457 (hereinafter "registration") to Arturo Gutierrez

1 ("Respondent Gutierrez"), owner of S & A Test Only. Respondent's registration was in full force  
2 and effect at all times relevant to the charges brought herein and will expire on October 31, 2010,  
3 unless renewed.

4 3. On or about November 8, 2007, the Director issued Smog Check, Test Only, Station  
5 License Number TC 252457 (hereinafter "smog check station license") to Respondent Gutierrez.  
6 Respondent's smog check station license was in full force and effect at all times relevant to the  
7 charges brought herein and will expire on October 31, 2010, unless renewed.

8 **Basem Hana Saba**

9 4. In or about 1998, the Director issued Advanced Emission Specialist Technician  
10 License Number EA 200077 (hereinafter "technician license") to Basem Hana Saba ("Respondent  
11 Saba"). Respondent's technician license was in full force and effect at all times relevant to the  
12 charges brought herein and will expire on June 30, 2012, unless renewed.

13 **JURISDICTION**

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

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

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

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

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

2 . . . .

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:

6 . . . .

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

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

11 **COST RECOVERY**

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

16 **UNDERCOVER OPERATION: 2001 FORD RANGER**

17 15. On December 10, 2009, an undercover operator with the Bureau (hereinafter  
18 "operator") took the Bureau's 2001 Ford Ranger to Respondent Gutierrez's facility and requested  
19 a smog inspection. The positive crankcase ventilation ("PCV") valve on the Bureau-documented  
20 vehicle was missing. The operator signed a work order authorizing the inspection, but did not  
21 receive a copy. After the inspection was completed, the operator paid the facility \$49 and  
22 received copies of an invoice and a vehicle inspection report. The vehicle inspection report  
23 indicated that the smog inspection was performed by Respondent Saba. That same day,  
24 electronic smog Certificate of Compliance #NO972060C was issued for the vehicle.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 16. Respondent Gutierrez's registration is subject to disciplinary action pursuant to Bus.  
28 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a

1 statement which he knew or in the exercise of reasonable care should have known to be untrue or  
2 misleading, as follows: Respondent Gutierrez's technician, Respondent Saba, certified under  
3 penalty of perjury on the vehicle inspection report that the Bureau's 2001 Ford Ranger had passed  
4 inspection and was in compliance with applicable laws and regulations. In fact, the PCV valve on  
5 the vehicle was missing and as such, the vehicle would not pass the inspection required by Health  
6 & Saf. Code section 44012.

7 **SECOND CAUSE FOR DISCIPLINE**

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

9 17. Respondent Gutierrez's registration is subject to disciplinary action pursuant to Bus.  
10 & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent failed to provide the operator  
11 with a copy of the work order as soon as the operator signed the document.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 18. Respondent Gutierrez's registration is subject to disciplinary action pursuant to Bus.  
15 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that  
16 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 2001  
17 Ford Ranger without performing a bona fide inspection of the emission control devices and  
18 systems on the vehicle, thereby depriving the People of the State of California of the protection  
19 afforded by the Motor Vehicle Inspection Program.

20 **FOURTH CAUSE FOR DISCIPLINE**

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

22 19. Respondent Gutierrez's smog check station license is subject to disciplinary action  
23 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
24 comply with the following sections of that Code:

25 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
26 performed on the Bureau's 2001 Ford Ranger in accordance with procedures prescribed by the  
27 department.

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1 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
2 Program.

3 **SEVENTH CAUSE FOR DISCIPLINE**

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

5 22. Respondent Saba's technician license is subject to disciplinary action pursuant to  
6 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
7 provisions of that Code, in the following material respects:

8 a. **Section 44012:** Respondent failed to perform the emission control tests on the  
9 Bureau's 2001 Ford Ranger in accordance with procedures prescribed by the department.

10 b. **Section 44059:** Respondent willfully made a false entry on the vehicle inspection  
11 report, as set forth in paragraph 15 above.

12 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

18 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an  
19 electronic smog certificate of compliance for the Bureau's 2001 Ford Ranger.

20 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's  
21 2001 Ford Ranger in accordance with Health & Saf. Code sections 44012 and 44035, and  
22 Regulation 3340.42.

23 c. **3340.41, subdivision (c):** Respondent knowingly entered into the EIS false  
24 information about the Bureau's 2001 Ford Ranger.

25 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the  
26 Bureau's 2001 Ford Ranger in accordance with the Bureau's specifications.

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1 **NINTH CAUSE FOR DISCIPLINE**

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

3 24. Respondent Saba's technician license is subject to disciplinary action pursuant to  
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,  
5 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of  
6 compliance for the Bureau's 2001 Ford Ranger without performing a bona fide inspection of the  
7 emission control devices and systems on the vehicle, thereby depriving the People of the State of  
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 **VID DATA REVIEW**

10 25. The Bureau initiated an investigation against Respondent Gutierrez based on a review  
11 of information from the Bureau's Vehicle Information Database ("VID"), which indicated that  
12 Respondent may be engaging in fraudulent smog check activities.

13 26. On April 26, 2010, a representative of the Bureau conducted a detailed review of VID  
14 data for all smog inspections performed at Respondent Gutierrez's facility for the period of  
15 January 4, 2010, through January 16, 2010. The representative found that the seven vehicles  
16 identified below recorded the same two diagnostic trouble codes (hereinafter "code") during the  
17 OBD II tests<sup>1</sup> regardless of the make or model of the vehicle. The representative obtained  
18 information indicating that the two codes were not applicable to any of the vehicles, with the  
19 exception of vehicle 3 which recorded only one of the codes. The VID data also indicated that  
20 Respondent Saba had performed the inspections on the seven vehicles.

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24 <sup>1</sup> The On Board Diagnostics (OBD II) functional test is an automated function of the  
25 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an  
26 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is  
27 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves  
28 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.

27. The Bureau concluded that Respondent Saba performed the smog inspections on the seven vehicles using a different vehicle during the OBD II tests, a method known as "clean plugging",<sup>2</sup> resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
1. 01/05/2010 13:54 - 14:04	1998 Chevrolet C1500 pickup; License No. 8T28149	NQ211262C
2. 01/06/2010 09:38 - 09:48	1998 GMC C1500 pickup; License No. 6M27719	NQ211268C
3. 01/06/2010 12:04 - 12:17	1998 Ford Ranger; License No. 5V21605	NQ211270C
4. 01/11/2010 10:20 - 10:38	2001 Kia Sephia; License No. 5XWF963	NQ297402C
5. 01/13/2010 14:06 - 14:13	1997 Ford Aspire; License No. 5WNS794	NQ297423C
6. 01/16/2010 12:42 - 12:49	2003 Toyota Camry; License No. 4ZNL635	NQ297449C
7. 01/16/2010 14:51 - 15:02	1996 Toyota Previa; License No. 4VJV471	NQ406204C

**TENTH CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

28. Respondent Gutierrez's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Gutierrez's technician, Respondent Saba, certified that vehicles 1 through 7, identified in paragraph 27 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Saba conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle (s) during the OBD II functional tests in order to issue smog certificates of compliance for

<sup>2</sup> Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to 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 the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section  
2 44012.

3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 29. Respondent Gutierrez's registration is subject to disciplinary action pursuant to Bus.  
6 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute  
7 fraud by issuing electronic smog certificates of compliance for vehicles 1 through 7, identified in  
8 paragraph 27 above, without performing bona fide inspections of the emission control devices  
9 and systems on the vehicles, thereby depriving the People of the State of California of the  
10 protection afforded by the Motor Vehicle Inspection Program.

11 **TWELFTH CAUSE FOR DISCIPLINE**

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

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

16 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
17 performed on vehicles 1 through 7, identified in paragraph 27 above, in accordance with  
18 procedures prescribed by the department.

19 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for  
20 vehicles 1 through 7, identified in paragraph 27 above, without ensuring that the vehicles were  
21 properly tested and inspected to determine if they were in compliance with Health & Saf. Code  
22 section 44012.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

4 31. Respondent Gutierrez's smog check station license is subject to disciplinary action  
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to  
6 comply with 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 27  
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 27 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 27 above, in accordance with the  
15 Bureau's specifications.

16 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

18 32. Respondent Gutierrez's smog check station license is subject to disciplinary action  
19 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed  
20 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog  
21 certificates of compliance for vehicles 1 through 7, identified in paragraph 27 above, without  
22 performing bona fide inspections of the emission control devices and systems on the vehicles,  
23 thereby depriving the People of the State of California of the protection afforded by the Motor  
24 Vehicle Inspection Program.

25 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

1 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the  
2 emission control tests on vehicles 1 through 7, identified in paragraph 27 above, in accordance  
3 with procedures prescribed by the department.

4 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

7 34. Respondent Saba's technician license is subject to disciplinary action pursuant to  
8 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
9 provisions 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 27  
12 above.

13 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1  
14 through 7, identified in paragraph 27 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 27 above, in accordance with the Bureau's specifications.

18 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

20 35. Respondent Saba's technician license is subject to disciplinary action pursuant to  
21 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,  
22 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of  
23 compliance for vehicles 1 through 7, identified in paragraph 27 above, without performing bona  
24 fide inspections of the emission control devices and systems on the vehicles, thereby depriving  
25 the 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 36. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
3 suspend, revoke, or place on probation the registration for all places of business operated in this  
4 state by Respondent Arturo Gutierrez, owner of S & A Test Only, upon a finding that Respondent  
5 has, or is, engaged in a course of repeated and willful violations of the laws and regulations  
6 pertaining to an automotive repair dealer.

7 37. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
8 License Number TC 252457, issued to Respondent Arturo Gutierrez, owner of S & A Test Only,  
9 is revoked or suspended, any additional license issued under this chapter in the name of said  
10 licensee may be likewise revoked or suspended by the director.

11 38. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist  
12 Technician License Number EA 200077, issued to Basem Hana Saba, is revoked or suspended,  
13 any additional license issued under this chapter in the name of said licensee may be likewise  
14 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. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
19 252457, issued to Arturo Gutierrez, owner of S & A Test Only;

20 2. Revoking or suspending any other automotive repair dealer registration issued to  
21 Arturo Gutierrez;

22 3. Revoking or suspending Smog Check, Test Only, Station License Number  
23 TC 252457, issued to Arturo Gutierrez, owner of S & A Test Only;

24 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
25 and Safety Code in the name of Arturo Gutierrez;

26 5. Revoking or suspending Advanced Emission Specialist Technician License Number  
27 EA 200077, issued to Basem Hana Saba;

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1           6.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
2 and Safety Code in the name of Basem Hana Saba;

3           7.    Ordering Arturo Gutierrez, owner of S & A Test Only, and Basem Hana Saba to pay  
4 the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this  
5 case, pursuant to Business and Professions Code section 125.3;

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

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8 DATED: 8/18/10

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

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