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7

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 and Petition to Revoke  
Probation Against:  
13 **CALI SMOG**  
14 **HECTOR TRUJILLO,**  
15 **a.k.a. HECTOR TRUJILLO, JR., OWNER**  
297 E. 3rd Street  
16 San Bernardino, CA 92410  
Mailing Address:  
17 15325 Via Rio  
Moreno Valley, CA 92555  
18 Automotive Repair Dealer Reg. No. ARD 254053  
Smog Check, Test Only, Station License No. TC 254053  
19  
20 **and**  
21 **HECTOR TRUJILLO, JR.**  
15400 Avenida De Portugal  
22 Moreno Valley, CA 92555  
Advanced Emission Specialist Technician License No.  
EA 141262  
23 Respondents.

Case No. 79/11-60

**ACCUSATION AND  
PETITION TO REVOKE  
PROBATION**  
  
(Smog Check)

24 Complainant alleges:

25 **PARTIES**

26 1. Sherry Mehl ("Complainant") brings this Accusation and Petition to Revoke  
27 Probation solely in her official capacity as the Chief of the Bureau of Automotive Repair  
28 ("Bureau"), Department of Consumer Affairs.

1           2.    On or about March 13, 2008, the Director of Consumer Affairs ("Director") issued  
2 Automotive Repair Dealer Registration Number ARD 254053 ("registration") to Hector Trujillo,  
3 also known as Hector Trujillo, Jr. ("Respondent"), owner of Cali Smog. The registration was  
4 immediately revoked; however, the revocation was stayed and Respondent was placed on  
5 probation for three (3) years on terms and conditions, as forth in paragraph 7 below.  
6 Respondent's registration will expire on March 31, 2011, unless renewed.

7           3.    On or about April 15, 2008, the Director issued Smog Check, Test Only, Station  
8 License Number TC 254053 ("smog check station license") to Respondent. The smog check  
9 station license was immediately revoked; however, the revocation was stayed and Respondent  
10 was placed on probation for three (3) years on terms and conditions, as set forth in paragraph 7  
11 below. Respondent's smog check station license will expire on March 31, 2011, unless renewed.

12           4.    In or about 1999, the Director issued Advanced Emission Specialist Technician  
13 License Number EA 141262 ("technician license") to Respondent. Respondent's technician  
14 license will expire on September 30, 2011, unless renewed.

15                           **PRIOR REGISTRATION/SMOG CHECK STATION LICENSE**

16           5.    On or about September 30, 2004, the Director issued Automotive Repair Dealer  
17 Registration Number AH 235228 to Respondent, owner of The Smog Shop. On March 3, 2008,  
18 Respondent's registration was revoked, as set forth in paragraph 7 below.

19           6.    On or about May 10, 2005, the Director issued Smog Check Station License Number  
20 TH 235228 to Respondent, owner of The Smog Shop. On March 3, 2008, Respondent's smog  
21 check station license was revoked, as set forth in paragraph 7 below.

22                           **DISCIPLINARY HISTORY**

23           7.    On or about March 3, 2008, pursuant to the Stipulated Settlement and Disciplinary  
24 Order adopted as the Decision of the Director in the consolidated disciplinary proceedings titled  
25 "In the Matter of the Accusation Against: Hector Trujillo, Jr. dba the Smog Shop", Case No.  
26 79/07-69, and "In the Matter of the Statement of Issues Against: Cali Smog, Hector Trujillo,  
27 Owner", Case No. 79/07-69 S, the Director revoked Respondent's Automotive Repair Dealer  
28 Registration Number AH 235228 and Smog Check Station License Number TH 235228. The

1 Director further ordered that upon successful completion of all licensing requirements, a  
2 registration and smog check station license shall be issued to Respondent as owner of Cali Smog  
3 and automatically revoked. However, the revocations will be stayed and Respondent placed on  
4 probation for three (3) years on terms and conditions.

5 **JURISDICTION**

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

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

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

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

19 **STATUTORY PROVISIONS**

20 12. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

27 . . . . .

28 (4) Any other conduct that constitutes fraud.

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(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.

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

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

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

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

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

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

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

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

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

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

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1 COST RECOVERY

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

6 ACCUSATION

7 UNDERCOVER OPERATION: 1997 NISSAN PATHFINDER

8 18. On July 15, 2010, an undercover operator with the Bureau ("operator") took the  
9 Bureau's 1997 Nissan Pathfinder to Respondent's facility and requested a smog inspection. The  
10 ignition timing on the Bureau-documented vehicle was not adjusted to manufacturer's  
11 specifications in that it was set to 26 degrees before top dead center (BTDC); the manufacturer's  
12 specifications are 15 degrees BTDC. The operator signed and received a copy of a written  
13 estimate for the inspection. After the inspection was completed, the operator paid the facility \$50  
14 and received copies of an invoice and a vehicle inspection report ("VIR"). The VIR indicated  
15 that Respondent's technician, Ruth Ema Trujillo, had performed the smog inspection on the  
16 vehicle. That same day, electronic smog Certificate of Compliance No. WL679404C was issued  
17 for the vehicle.

18 19. On July 29, 2010, the Bureau inspected the vehicle and found that the ignition timing  
19 had not been adjusted and was still set to 26 degrees BTDC.

20 FIRST CAUSE FOR DISCIPLINE

21 (Untrue or Misleading Statements)

22 20. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
23 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which  
24 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as  
25 follows: Respondent's technician, Ruth Ema Trujillo, certified under penalty of perjury on the  
26 VIR that the Bureau's 1997 Nissan Pathfinder had passed the inspection and was in compliance  
27 with applicable laws and regulations. In fact, the ignition timing on the vehicle was not adjusted

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1 to manufacturer's specifications, as set forth in paragraphs 18 and 19 above. As such, the vehicle  
2 would not pass the inspection required by Health & Saf. Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 21. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
6 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes  
7 fraud by issuing an electronic smog certificate of compliance for the Bureau's 1997 Nissan  
8 Pathfinder without performing a bona fide inspection of the emission control devices and systems  
9 on the vehicle, thereby depriving the People of the State of California of the protection afforded  
10 by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

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

16 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
17 performed on the Bureau's 1997 Nissan Pathfinder in accordance with procedures prescribed by  
18 the department.

19 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for  
20 the Bureau's 1997 Nissan Pathfinder without properly testing and inspecting the vehicle to  
21 determine if it was in compliance with Health & Saf. Code section 44012.

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1 after giving notice and opportunity to be heard, temporarily or permanently invalidate (suspend or  
2 revoke) Respondent's registration and suspend or revoke his smog check station license.

3 27. Grounds exist to revoke Respondent's probation and reimpose the order of revocation  
4 of Respondent's registration and smog check station license as follows:

5 **CAUSE TO REVOKE PROBATION**

6 **(Failure to Obey all Laws)**

7 28. Condition 1 of Respondent's probation states that Respondent shall comply with all  
8 statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

9 29. Respondent's probation is subject to revocation in that he failed to comply with all  
10 statutes, regulations, and rules governing automotive inspections, as set forth in paragraphs 18  
11 through 24 above.

12 **OTHER MATTERS**

13 30. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
14 suspend, revoke or place on probation the registration for all places of business operated in this  
15 state by Respondent Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog,  
16 upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations  
17 of the laws and regulations pertaining to an automotive repair dealer.

18 31. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
19 License Number TC 254053, issued to Respondent Hector Trujillo, also known as Hector  
20 Trujillo, Jr., owner of Cali Smog, is revoked or suspended, any additional license issued under  
21 this chapter in the name of said licensee, including, but not limited to, Advanced Emission  
22 Specialist Technician License Number EA 141262, may be likewise revoked or suspended by the  
23 Director.

24 **PRAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
28 254053, issued to Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog;

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2. Revoking probation and reimposing the order of revocation of Automotive Repair Dealer Registration Number ARD 254053, issued to Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog;

3. Revoking or suspending any other automotive repair dealer registration issued to Hector Trujillo, also known as Hector Trujillo, Jr.;

4. Revoking or suspending Smog Check, Test Only, Station License Number TC 254053, issued to Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog;

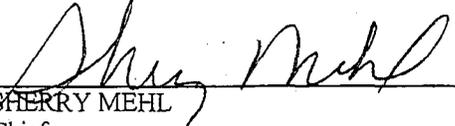
5. Revoking probation and reimposing the order of revocation of Smog Check, Test Only, Station License Number TC 254053, issued to Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog, including, but not limited to, Advanced Emission Specialist Technician License Number EA 141262;

7. Ordering Hector Trujillo, also known as Hector Trujillo, Jr., owner of Cali Smog, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 1/25/11



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

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