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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 Against:

Case No. 77/13-21

13 **ALS AUTO CLINIC**
14 **ALI SAKHA, OWNER**
6615 N. Blackstone, #110
Fresno, CA 93710

A C C U S A T I O N

15 **Automotive Repair Dealer Reg. No. ARD 236758**
16 **Smog Check Station License No. RC 236758**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
21 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

22 2. In or about 2004, the Director of Consumer Affairs ("Director") issued Automotive
23 Repair Dealer Registration Number ARD 236758 ("registration") to Ali Sakha ("Respondent"),
24 owner of Als Auto Clinic. Respondent's registration was in full force and effect at all times
25 relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

26 3. On or about March 16, 2009, the Director issued Smog Check Station License Number RC
27 236758 to Respondent. Respondent's smog check station license was in full force and effect at all

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times relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

JURISDICTION

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

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

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

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

STATUTORY AND REGULATORY PROVISIONS

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

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke or place on probation the registration of an automotive repair dealer for any of the following acts or omissions 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.

(1) Making or authorizing in any manner or by any means whatever any 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.

....

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document

(4) Any other conduct that constitutes fraud.

....

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it . . .

9. Bus. & Prof. Code section 9884.7, subdivision (c), states, in pertinent part, that 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 the laws and regulations pertaining to an automotive repair dealer.

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

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge 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 . . .

11. Bus. & Prof. Code section 22, subdivision (a), states:

"Board" as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes "registration" and "certificate."

13. 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:

....

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

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

4 15. California Code of Regulations, title 16, section ("Regulation") 3303, subdivision (j),
5 states:

6 "Authorization" means consent. Authorization shall consist of the
7 customer's signature on the work order, taken before repair work begins.
8 Authorization shall be valid without the customer's signature only when oral or
9 electronic authorization is documented in accordance with applicable sections of
10 these regulations.

11 16. Regulation 3356 states, in pertinent part:

12 (a) All invoices for service and repair work performed, and parts
13 supplied, as provided for in Section 9884.8 of the Business and Professions Code,
14 shall comply with the following:

15

16 (2) The invoice shall separately list, describe and identify all of the
17 following:

18 (A) All service and repair work performed, including all diagnostic and
19 warranty work, and the price for each described service and repair.

20 (B) Each part supplied, in such a manner that the customer can
21 understand what was purchased, and the price for each described part. The description
22 of each part shall state whether the part was new, used, reconditioned, rebuilt, or an
23 OEM crash part, or a non-OEM aftermarket crash part . . .

24 COST RECOVERY

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

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1 **UNDERCOVER OPERATION #1: 2000 PONTIAC TRANS AM**

2 18. On May 17, 2011, an undercover operator with the Bureau ("operator") took the
3 Bureau's 2000 Pontiac Trans Am to Respondent's facility. The front brake pads on the Bureau-
4 documented vehicle were worn and in need of replacement. The operator requested a brake
5 inspection on the vehicle and presented Respondent with a coupon or advertisement from the
6 Fresno Bee for Als Auto Clinic. Respondent was offering a "brake special" for \$35.95, plus
7 parts, "most cars", which included resurfacing the drums or rotors and repacking the wheel
8 bearings, if needed. Respondent had the operator sign an estimate for the inspection, but did not
9 provide her with a copy until after the work was completed. A few minutes later, Respondent
10 told the operator that the front pads and rotors were "no good". Respondent had the operator sign
11 the same estimate, authorizing additional repairs on the vehicle, the replacement of the front
12 brake pads and rotors. The operator left the vehicle at the facility.

13 19. On May 18, 2011, the operator went to the facility to retrieve the vehicle, paid
14 \$238.02 for the repairs, and was given a copy of an invoice. The operator asked Respondent why
15 the rotors needed replacement instead of machining. Respondent told the operator that the front
16 brake rotors had too many "hot spots" and could not be machined.

17 20. On May 19, 2011, the Bureau inspected the vehicle using the invoice for comparison
18 and found that Respondent's facility performed an unnecessary repair.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 21. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
22 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
23 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
24 follows:

25 a. Respondent represented to the operator following the brake inspection on the
26 Bureau's 2000 Pontiac Trans Am that the front brake rotors were no good. In fact, the front brake
27 rotors were new, were within manufacturer's specifications, and were not in need of servicing or
28 replacement at the time the vehicle was taken to Respondent's facility.

1 b. Respondent falsely represented to the operator following the brake repairs on the
2 Bureau's 2000 Pontiac Trans Am that the front brake rotors had too many "hot spots" and could
3 not be machined.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 22. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
7 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud,
8 as follows: Respondent made a false or misleading representation to the operator regarding the
9 condition of the front brake rotors on the Bureau's 2000 Pontiac Trans Am, as set forth in
10 subparagraph 21 (a) above, in order to induce the operator to authorize and pay for an
11 unnecessary repair on the vehicle, then sold the operator the unnecessary repair, the replacement
12 of the front brake rotors.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 23. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
16 Code section 9884.7, subdivision (a)(3), in that Respondent failed to provide the operator with a
17 copy of the estimate for the brake inspection on the Bureau's 2000 Pontiac Trans Am as soon as
18 the operator signed the document.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violations of Regulations)**

21 24. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
22 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation
23 3356, subdivision (a)(2)(B), in a material respect, as follows: Respondent failed to state on the
24 invoice whether the front brake pads and rotors on the Bureau's 2000 Pontiac Trans Am were
25 new, used, reconditioned, or rebuilt.

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UNDERCOVER OPERATION #2: 1996 TOYOTA CAMRY

25. On July 20, 2011, an undercover operator with the Bureau ("operator") took the Bureau's 1996 Toyota Camry to Respondent's facility. The front brake pads on the Bureau-documented vehicle were worn and in need of replacement. The operator met with Respondent and requested a brake inspection on the vehicle. Respondent told the operator that there was no charge for the inspection, but it would be an hour before he could perform the work. The operator told Respondent that she would call him back, then left the vehicle at the facility. Respondent did not have the operator sign a work order or provide her with a written estimate for the inspection.

26. At approximately 1100 hours that same day, Respondent called the operator and told her that the vehicle needed front brake pads, but the rear brakes were fine, and that the repairs would cost \$245. The operator authorized the additional work.

27. On July 21, 2011, the operator went to the facility to retrieve the vehicle, paid \$261.81 for the repairs, and received a copy of an invoice. The invoice indicated that the front brake rotors had been replaced on the vehicle in addition to the front brake pads. The operator asked Respondent why he replaced the rotors. Respondent told the operator that the rotors were "no good".

28. On July 22, 2011, the Bureau inspected the vehicle using the invoice for comparison and found that Respondent's facility performed an unnecessary repair.

FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

29. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent represented to the operator following the brake repairs on the Bureau's 1996 Toyota Camry that the front brake rotors were no good. In fact, the front brake rotors were new and were not in need of replacement at the time the vehicle was taken to Respondent's facility.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Bus. & Prof. Code)**

3 30. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9,
5 subdivision (a), in the following material respects:

6 a. Respondent failed to provide the operator with a written estimate for the brake
7 inspection on the Bureau's 1996 Toyota Camry, and failed to have the operator sign a work order
8 authorizing the inspection.

9 b. Respondent failed to obtain the operator's authorization for the replacement of the
10 front brake rotors on the Bureau's 1996 Toyota Camry.

11 c. Respondent failed to document on the invoice the operator's authorization for
12 replacement of the front brake pads on the Bureau's 1996 Toyota Camry.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Violations of Regulations)**

15 31. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
16 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation
17 3356, subdivision (a)(2)(B), in a material respect, as follows: Respondent failed to state on the
18 invoice whether the front brake pads and rotors on the Bureau's 1996 Toyota Camry were new,
19 used, reconditioned, or rebuilt.

20 **UNDERCOVER OPERATION #3: 1995 FORD EXPLORER**

21 32. On October 18, 2011, an undercover operator with the Bureau ("operator") had the
22 Bureau's 1995 Ford Explorer towed to Respondent's facility (the operator rode to the facility with
23 the tow truck driver). The front brake pads on the Bureau-documented vehicle were worn and in
24 need of replacement and the fuel pump inertia switch was disconnected, preventing the vehicle
25 from starting. The operator met with Respondent and asked him to diagnose the no start
26 condition and inspect the brakes on the vehicle. Respondent told the operator that there was no
27 charge for the inspection, but the diagnosis would cost \$70. The operator signed and received a
28 copy of a written estimate for the diagnosis and inspection and left the facility.

1 33. At approximately 1600 hours that same day, Respondent called the operator and told
2 her that the vehicle needed rear brake pads and a fuel pump and that the repairs would cost \$637
3 (labor and parts). After the operator agreed to the price, Respondent told her that the repairs *were*
4 *already completed*.

5 34. On October 20, 2011, the operator went to the facility, paid Respondent \$665.40 for
6 the repairs, and received a copy of an invoice. The invoice indicated that front brake pads and
7 fuel pump were replaced on the vehicle. The operator asked Respondent if the rear brakes were
8 bad. Respondent told the operator that his previous statement was a mistake and that the front
9 brake pads needed replacement, not the rear brake pads. The operator then asked Respondent
10 about the condition of the front brake rotors. Respondent told the operator that the rotors needed
11 machining.

12 35. On October 24, 2011, the Bureau inspected the vehicle using the invoice for
13 comparison and found that the fuel pump inertia switch had been reconnected, although that
14 repair had not been recorded on the invoice. The Bureau also found that Respondent performed
15 an unnecessary repair on the vehicle and had not machined the front brake rotors.

16 **EIGHTH CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 36. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
19 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
20 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
21 follows:

22 a. Respondent represented to the operator following the repairs on the Bureau's 1995
23 Ford Explorer that the vehicle needed a fuel pump. In fact, the fuel pump assembly was new, was
24 in good condition, and was not in need of servicing or replacement at the time the vehicle was
25 taken to Respondent's facility.

26 b. Respondent represented to the operator following the repairs on the Bureau's 1995
27 Ford Explorer that the front brake rotors had been machined. In fact, the front brake rotors had
28 not been resurfaced or machined, sanded, or cleaned.

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 37. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud,
5 as follows: Respondent replaced the fuel pump assembly on the Bureau's 1995 Ford Explorer
6 without the operator's knowledge or authorization. Further, the fuel pump assembly was not in
7 need of replacement, as set forth in subparagraph 36 (a) above.

8 **TENTH CAUSE FOR DISCIPLINE**

9 **(Violations of the Bus. & Prof. Code)**

10 38. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
11 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9,
12 subdivision (a), in a material respect, as follows: Respondent failed to obtain the operator's
13 authorization for the replacement of the front brake pads and fuel pump assembly on the Bureau's
14 1995 Ford Explorer.

15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 **(Violations of Regulations)**

17 39. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
18 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation
19 3356, subdivisions (a)(2)(A) and (a)(2)(B), in the following material respects:

20 a. **Subdivision (a)(2)(A):** Respondent failed to record on the invoice the repair of the
21 fuel pump inertia switch on the Bureau's 1995 Ford Explorer.

22 b. **Subdivision (a)(2)(B):** Respondent failed to state on the invoice whether the front
23 brake pads and fuel pump assembly on the Bureau's 1995 Ford Explorer were new, used,
24 reconditioned, or rebuilt.

25 **TWELFTH CAUSE FOR DISCIPLINE**

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

27 40. Respondent's smog check station license is subject to disciplinary action pursuant to
28 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,

1 fraudulent, or deceitful acts whereby another was injured, as set forth in paragraphs 22 and 37
2 above.

3 **OTHER MATTERS**

4 41. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
5 suspend, revoke, or place on probation the registration for all places of business operated in this
6 state by Respondent Ali Sakha, owner of Als Auto Clinic, upon a finding that Respondent has, or
7 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
8 an automotive repair dealer.

9 42. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
10 Number RC 236758, issued to Ali Sakha, owner of Als Auto Clinic, is revoked or suspended, any
11 additional license issued under this chapter in the name of said licensee may be likewise revoked
12 or suspended by the director.

13 **PRAYER**

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

16 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
17 236758, issued to Ali Sakha, owner of Als Auto Clinic;

18 2. Revoking or suspending any other automotive repair dealer registration issued to Ali
19 Sakha;

20 3. Revoking or suspending Smog Check Station License Number RC 236758, issued to
21 Ali Sakha, owner of Als Auto Clinic;

22 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of Ali Sakha;

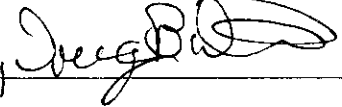
24 5. Ordering Ali Sakha, owner of Als Auto Clinic, to pay the Director of Consumer
25 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
26 Business and Professions Code section 125.3;

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

DATED: November 16, 2012

John Wallauch by 

JOHN WALLAUCH

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

SA2012105058