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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:
13 **CHRIS & GEORGES TEST ONLY**
14 **GEORGE K. GEORGIOU, OWNER**
2520 West Street
Oakland, CA 94612-1128
15 **Automotive Repair Dealer Reg. No. ARD 173287**
16 **Smog Check, Test Only, Station License No.**
17 **TC 173287**
18 **and**
19 **GEORGE KYRIAKOS GEORGIOU**
19044 Mayberry Drive
Castro Valley, CA 94546
20 **Advanced Emission Specialist Technician**
21 **License No. EA 059660**
22 Respondents.

Case No. 79/12-167

ACCUSATION

Smog Check

23 Complainant alleges:

24 **PARTIES**

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

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

3 **STATUTORY PROVISIONS**

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

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

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

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15 (4) Any other conduct that constitutes fraud.

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

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

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

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

12. 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.

. . . .

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

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

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

7 **COST RECOVERY**

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

12 **VID DATA REVIEW**

13 15. In or about August 2011, a representative of the Bureau conducted a detailed review
14 of data from the Bureau's VID (vehicle information database) for all smog inspections performed
15 at Respondent's facility for the period of August 2010 through August 2011. The representative
16 found that vehicles 1 through 3 and 5 through 7, identified below, recorded the same two
17 diagnostic trouble codes ("code") during the OBD II tests¹ regardless of the make or model of the
18 vehicle. The representative obtained information indicating that one or both of the codes were
19 not applicable to the vehicles. The representative also found that vehicle 4 recorded certain codes
20 during the OBD II test that were not applicable to the vehicle (codes different from those
21 recorded during the inspections on vehicles 1 through 3 and 5 through 7). The VID data showed
22 that Respondent conducted the inspections on all seven vehicles.

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24 ¹ 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.

Date & Time of Inspection	Vehicle Certified	Certificate No.
1. 06/20/2011 11:03 - 11:14	2001 Nissan Pathfinder 2WD; License No. 5CYV425	OE190978C
2. 06/30/2011 13:07 - 13:16	2001 Nissan Pathfinder 4WD, License No. 4UJB926	OE396805C
3. 07/08/2011 11:00 - 11:11	2003 GMC Envoy 2WD; License No. 5CWG115	OE396830C
4. 07/13/2011 12:30 - 12:47	1997 Mitsubishi Montero; License No. 3WST737	OE550103C
5. 07/30/2011 10:31 - 10:45	1997 Mitsubishi Galant; License No. 4UUM589	OE844617C
6. 08/16/2011 15:11 - 15:16	2001 Toyota Highlander 4WD; License No. 4UGM027	OG029041C
7. 08/17/2011 13:34 - 13:44	2000 Dodge Dakota pickup 2WD; License No. 8H12416	OG029046C

16. The representative also obtained VID data showing that other smog check facilities had performed smog inspections on vehicles 2, 5, and 7, identified in paragraph 15 above, prior to the inspections referenced in paragraph 15, and that vehicles 2, 5, and 7 had failed the prior inspections due, in part, to the OBD/MIL (malfunction indicator light) functional tests. The VID data indicated that the MIL had been commanded on during the inspections, that the technician performing the inspections had entered data into the Emissions Inspection System ("EIS") showing that the vehicles had failed the MIL functional check, and/or that certain codes were stored in the vehicles' PCM (power train control module) which were different from the codes stored in the vehicle's PCM during the inspections referenced in paragraph 15. The Bureau concluded that Respondent performed the smog inspections on the seven vehicles identified in paragraph 15 above using a different vehicle during the OBD II tests, a method known as "clean plugging",² resulting in the issuance of fraudulent certificates of compliance for the vehicles.

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² 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 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
2 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
3 Program.

4 **SIXTH CAUSE FOR DISCIPLINE**

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

6 23. Respondent's technician license is subject to disciplinary action pursuant to Health &
7 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
8 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission
9 control tests on vehicles 1 through 7, identified in paragraph 15 above, in accordance with
10 procedures prescribed by the department.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

17 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1
18 through 7, identified in paragraph 15 above, in accordance with Health & Saf. Code sections
19 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

20 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 1
21 through 7, identified in paragraph 15 above, in accordance with the Bureau's specifications.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 25. Respondent's technician license is subject to disciplinary action pursuant to Health &
25 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent,
26 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
27 for vehicles 1 through 7, identified in paragraph 15 above, without performing bona fide
28 inspections of the emission control devices and systems on the vehicles, thereby depriving the

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

3 **MATTERS IN AGGRAVATION**

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

6 a. On or about June 17, 2002, the Bureau issued Citation No. C02-1116 against
7 Respondent, in his capacity as owner of Chris & Georges Test Only, for violations of Health &
8 Saf. Code section 44012, subdivision (f) (failure to determine that emission control devices and
9 systems required by State and Federal law are installed and functioning correctly in accordance
10 with test procedures); and California Code of Regulations, title 16, section (“Regulation”)
11 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly
12 tested). On or about June 5, 2002, Respondent had issued a certificate of compliance to a Bureau
13 undercover vehicle with a tampered emission control system (misadjusted base ignition timing).
14 The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.
15 Respondent paid the fine on July 23, 2002.

16 b. On or about May 4, 2010, the Bureau issued Citation No. C2010-1156 against
17 Respondent, in his capacity as owner of Chris & Georges Test Only, for violations of Health &
18 Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
19 control devices according to procedures prescribed by the department); and Regulation 3340.35,
20 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On
21 or about March 24, 2010, Respondent had issued a certificate of compliance to a Bureau
22 undercover vehicle with a missing fuel evaporative canister. The Bureau assessed civil penalties
23 totaling \$1,000 against Respondent for the violations. Respondent paid the fine on June 9, 2010.

24 c. On or about June 17, 2002, the Bureau issued Citation No. M02-1117 against
25 Respondent's technician license for violations of Health & Saf. Code section 44032 (failure to
26 determine that emission control devices and systems required by State and Federal law are
27 installed and functioning correctly in accordance with test procedures); and Regulation 3340.30,
28 subdivision (a) (issuing a certificate of compliance to a vehicle that was improperly tested). On

1 or about June 5, 2002, Respondent had issued a certificate of compliance to a Bureau undercover
2 vehicle with a tampered emission control system (misadjusted base ignition timing). Respondent
3 was directed to complete an 8 hour training course and to submit proof of completion to the
4 Bureau within 30 days from receipt of the citation. Respondent completed the training on July
5 30, 2002.

6 d. On or about May 4, 2010, the Bureau issued Citation No. M2010-1157 against
7 Respondent's technician license for violations of Health & Saf. Code section 44032 (qualified
8 technicians shall perform tests of emission control systems and devices in accordance with Health
9 & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall
10 inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035
11 and Regulation 3340.42). On or about March 24, 2010, Respondent had issued a certificate of
12 compliance to a Bureau undercover vehicle with a missing fuel evaporative canister. Respondent
13 was directed to complete an 8 hour training course and to submit proof of completion to the
14 Bureau within 30 days from receipt of the citation. Respondent completed the training on June
15 10, 2010.

16 OTHER MATTERS

17 27. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
18 suspend, revoke, or place on probation the registration for all places of business operated in this
19 state by Respondent George K. Georgiou, also known as George Kyriakos Georgiou, owner of
20 Chris & Georges Test Only, upon a finding that Respondent has, or is, engaged in a course of
21 repeated and willful violations of the laws and regulations pertaining to an automotive repair
22 dealer.

23 28. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
24 License Number TC 173287, issued to Respondent George K. Georgiou, also known as George
25 Kyriakos Georgiou, owner of Chris & Georges Test Only, is revoked or suspended, any
26 additional license issued under this chapter in the name of said licensee may be likewise revoked
27 or suspended by the director.

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

DATED: June 16, 2012



JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SF2012401453