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

11
12 In the Matter of the Accusation and Petition to
Revoke Probation Against:
13 **SMOG TIME, INC., DBA**
14 **SMOG TIME**
15 **4360 Campus Drive, Suite E**
Newport Beach, CA 92660
16 **ISHRAT MALIK, PRES/SEC/TRES**
Automotive Repair Dealer Registration No.
ARD 221752
17 **Smog Check Test Only Station License No.**
TC 221752
18
19 Respondent.

Case No. 79/12-126

**ACCUSATION AND PETITION
TO REVOKE PROBATION
SMOG CHECK**

20 Complainant alleges:

21 **PARTIES**

22 1. John Wallauch ("Complainant") brings this Accusation and Petition to Revoke
23 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair
24 ("Bureau"), Department of Consumer Affairs.

25 **Automotive Repair Dealer Registration**

26 2. On a date uncertain in 2002, the Bureau issued Automotive Repair Dealer
27 Registration Number ARD 221752 ("registration") to Smog Time Inc., ("Respondent"), doing
28 business as Smog Time, with Ishrat Malik as President, Secretary, and Treasurer. The

1 registration was in full force and effect at all times relevant to the charges brought herein and will
2 expire on May 31, 2012, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about May 31, 2002, the Bureau issued Smog Check Test Only Station License
5 Number TC 221752 ("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 May 31, 2012, unless
7 renewed.

8 **Prior Discipline**

9 4. In a disciplinary action entitled "In the Matter of the Accusation Against Smog
10 Time," Case No.79/09-73, the Bureau issued a Decision and Order effective June 26, 2009, in
11 which Respondent's Automotive Repair Dealer Registration No. ARD 221752 and Smog Check
12 Test Only Station License No. TC 221752 was revoked. A copy of that Decision and Order is
13 attached as **Exhibit A** and is incorporated by reference. Respondent's registration and station
14 licenses were suspended for a period of fifteen (15) days beginning June 26, 2009, and the
15 revocations were stayed and the registration and station licenses were placed on probation for
16 three (3) years with certain terms and conditions including Term 3, set forth as follows:

17 **Term 3 - Obey all Laws:** Respondents shall comply with all statutes, regulations, and
18 rules governing automotive inspections, estimates, and repairs.

19 **STATUTORY PROVISIONS**

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

22 (a) The director, where the automotive repair dealer cannot show there
23 was a bona fide error, may refuse to validate, or may invalidate temporarily or
24 permanently, the registration of an automotive repair dealer for any of the following
25 acts or omissions related to the conduct of the business of the automotive repair
26 dealer, which are done by the automotive repair dealer or any automotive technician,
27 employee, partner, officer, or member of the automotive repair dealer.

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

(4) Any other conduct which constitutes fraud.

1 (b) Except as provided for in subdivision (c), if an automotive repair
2 dealer operates more than one place of business in this state, the director pursuant to
3 subdivision (a) shall only refuse to validate, or shall only invalidate temporarily or
4 permanently 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.

5 (c) Notwithstanding subdivision (b), the director may refuse to validate,
6 or may invalidate temporarily or permanently, the registration for all places of
7 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.

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

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

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

19 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

20 The director may suspend, revoke, or take other disciplinary action
21 against a license as provided in this article if the licensee, or any partner, officer, or
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
pursuant to it, which related to the licensed activities.

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

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

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

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

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

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

7 **COST RECOVERY**

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

12 **ACCUSATION**

13 **UNDERCOVER OPERATION OCTOBER 4, 2011**

14 13. On or about October 4, 2011, a Bureau undercover operator (“operator”) drove a
15 Bureau-documented 1997 Cadillac Seville STS to Respondent’s facility for a smog inspection.
16 The vehicle could not pass the visual portion of the smog inspection because the vehicle’s
17 positive crankcase ventilation (“PCV”) system was missing. The operator signed and received a
18 copy of Estimate No. 2181 prior to the smog inspection. Jose Armando Ceja, a licensed smog
19 technician, performed the smog inspection and issued Certificate of Compliance No. WZ570316.
20 The operator paid Respondent \$78.20 for the smog inspection and received a copy of Invoice No.
21 2181 and a Vehicle Inspection Report.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Misleading Statements)**

24 14. Respondent has subjected its registration to discipline under Code section 9884.7,
25 subdivision (a)(1), in that on or about October 4, 2011, it made statements which it knew or
26 which by exercise of reasonable care it should have known were untrue or misleading when it
27 issued electronic Certificate of Compliance No. WZ570316 for the 1997 Cadillac Seville STS,

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1 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
2 the vehicle's PCV system was missing.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 15. Respondent has subjected its registration to discipline under Code section 9884.7,
6 subdivision (a)(4), in that on or about October 4, 2011, it committed acts which constitute fraud
7 by issuing electronic Certificate of Compliance No. WZ570316 for the 1997 Cadillac Seville
8 STS, without performing a bona fide inspection of the emission control devices and systems on
9 that vehicle, thereby depriving the People of the State of California of the protection afforded by
10 the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 16. Respondent has subjected its station license to discipline under Health and Safety
14 Code section 44072.2, subdivision (a), in that on or about October 4, 2011, regarding the 1997
15 Cadillac Seville STS, it violated sections of that Code, as follows:

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

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

21 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
22 Compliance No. WZ570316 without properly testing and inspecting the vehicle to determine if it
23 was in compliance with section 44012 of that Code.

24 **FOURTH CAUSE FOR DISCIPLINE**

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

26 17. Respondent has subjected its station license to discipline under Health and Safety
27 Code section 44072.2, subdivision (c), in that on or about October 4, 2011, regarding the 1997

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1 Cadillac Seville STS, it violated sections of the California Code of Regulations, title 16, as
2 follows:

3 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
4 Compliance No. WZ570316 even though that vehicle had not been inspected in accordance with
5 section 3340.42 of that Code.

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

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 18. Respondent subjected its station license to discipline under Health and Safety Code
11 section 44072.2, subdivision (d), in that on or about October 4, 2011, regarding the 1997 Cadillac
12 Seville STS, it committed acts involving dishonesty, fraud or deceit whereby another was injured
13 by issuing electronic Certificate of Compliance No. WZ570316 for that vehicle without
14 performing a bona fide inspection of the emission control devices and systems on the vehicle,
15 thereby depriving the People of the State of California of the protection afforded by the Motor
16 Vehicle Inspection Program.

17 **PETITION TO REVOKE PROBATION**

18 19. The allegations of paragraphs 1 through 18 of the accusation above are incorporated
19 herein by reference as though fully set forth and are realleged.

20 25. Grounds exist to revoke the probation and reimpose the order of revocation of
21 Respondent's Automotive Repair Dealer Registration No. ARD 221752 and Smog Check Test
22 Only Station License No. TC 221752, in that Respondent failed to comply with all statutes,
23 regulations, and rules governing estimates and inspections as required by **Term 3** of the terms of
24 the probation under Decision and Order, Case No. 79/09-73, as set forth in paragraphs 13 through
25 18 of the accusation above.

26 **OTHER MATTERS**

27 20. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
28 or permanently, the registrations for all places of business operated in this state by Smog Time,

1 Inc., upon a finding that it has, or is, engaged in a course of repeated and willful violations of the
2 laws and regulations pertaining to an automotive repair dealer.

3 21. Under section 44072.8 of the Health and Safety Code, if Smog Check Test Only
4 Station License No. TC 221752, issued to Smog Time, Inc., doing business as Smog Time, is
5 revoked or suspended, any additional license issued under this chapter in the name of said
6 licensee may be likewise revoked or suspended by the director.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
9 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of
10 Consumer Affairs issue a decision:

11 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
12 No. 79/09-73 and imposing the disciplinary order that was stayed thereby revoking Automotive
13 Repair Dealer Registration No. ARD 221752 issued to Smog Time Inc., doing business as Smog
14 Time;

15 2. Revoking, suspending, or placing on probation Automotive Repair Dealer
16 Registration No. ARD 221752, issued to Smog Time Inc., doing business as Smog Time;

17 3. Revoking, suspending, or placing on probation any other automotive repair dealer
18 registration issued to Smog Time, Inc.;

19 4. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
20 No. 79/09-73 and imposing the disciplinary order that was stayed there by revoking Smog Check
21 Test Only Station License No. TC 221752, issued to Smog Time Inc., doing business as Smog
22 Time;

23 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
24 and Safety Code in the name of Smog Time, Inc.;

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1 6. Ordering Smog Time, Inc., to pay the Bureau of Automotive Repair the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3; and,

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

7 DATED: 4/27/12

8 John Wallauch by Doug Balatti
9 JOHN WALLAUCH Doug BALATTI
10 Chief ASST. CHIEF
11 Bureau of Automotive Repair
12 Department of Consumer Affairs
13 State of California
14 Complainant

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