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

10 In the Matter of the Accusation Against:

Case No. 79/12-104

11 **SMOG QUIK**  
12 **7555 Auburn Boulevard, Unit B**  
13 **Citrus Heights, CA 95610**  
14 **DALE L. MERCER, Owner**  
15 **Automotive Repair Dealer Registration No.**  
16 **ARD 232421**  
17 **Smog Check Test Only Station License No.**  
18 **TC 232421**

**DEFAULT DECISION AND ORDER**  
**FOR RESPONDENT SMOG QUIK**

[Gov. Code, §11520]

19 **And**

20 **DALE L. MERCER**  
21 **6427 Oak Creek Way**  
22 **Citrus Heights, CA 95621**  
23 **Advanced Emission Specialist Technician**  
24 **License No. EA 109104**

25 Respondents.

26 FINDINGS OF FACT

27 1. On or about March 21, 2012, Complainant John Wallauch, in his official capacity as  
28 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation  
No. 79/12-104 against Dale L. Mercer, Smog Quik (Respondent Smog Quik) before the Director  
of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about January 1, 2004, the Bureau of Automotive Repair (Bureau) issued  
Automotive Repair Dealer Registration No. ARD 232421 to Respondent Smog Quik. The  
Automotive Repair Dealer Registration expired on March 31, 2010, and has not been renewed.

1           3.    On or about September 16, 2004, the Bureau of Automotive Repair issued Smog  
2 Check Test Only Station License No. TC 232421 to Respondent Smog Quik. The Smog Check.  
3 Test Only Station License expired on March 31, 2010, and has not been renewed.

4           4.    On or about March 30, 2012, Respondent Smog Quik was served by Certified and  
5 First Class Mail copies of the Accusation No. 79/12-104, Statement to Respondent, Notice of  
6 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,  
7 11507.6, and 11507.7) at Respondent Smog Quik's address of record which, pursuant to Business  
8 and Professions Code section 136, is required to be reported and maintained with the Bureau.  
9 Respondent's address of record was and is: 7555 Auburn Boulevard, Unit B, Citrus Heights, CA  
10 95610.

11           5.    Service of the Accusation was effective as a matter of law under the provisions of  
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
13 124.

14           6.    On or about April 13, 2012, the aforementioned documents were returned by the U.S.  
15 Postal Service marked "Not Deliverable as Addressed Unable to Forward." The address on the  
16 documents was the same as the address on file with the Bureau. Respondent Smog Quik failed to  
17 maintain an updated address with the Bureau and the Bureau has made attempts to serve  
18 Respondent Smog Quik at the address on file. Respondent has not made itself available for  
19 service and therefore, has not availed itself of its right to file a notice of defense and appear at  
20 hearing.

21           7.    Government Code section 11506 states, in pertinent part:

22                   (c) The respondent shall be entitled to a hearing on the merits if the respondent  
23 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
24 of the accusation not expressly admitted. Failure to file a notice of defense shall  
25 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
26 may nevertheless grant a hearing.

27           8.    Respondent Smog Quik failed to file a Notice of Defense within 15 days after service  
28 upon it of the Accusation, and therefore waived its right to a hearing on the merits of Accusation  
No. 79/12-104.

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1 9. California Government Code section 11520 states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense or to appear at the  
3 hearing, the agency may take action based upon the respondent's express admissions  
4 or upon other evidence and affidavits may be used as evidence without any notice to  
5 respondent.

6 10. Pursuant to its authority under Government Code section 11520, the Director after  
7 having reviewed the proof of service dated March 30, 2012, signed by Tracy Cortez, and the  
8 returned envelope, finds Respondent Smog Quik is in default. The Director will take action  
9 without further hearing and, based on Accusation, No. 79/12-104, proof of service and on the  
10 Affidavit of Bureau Representative Roger Lehman, finds that the allegations in Accusation are  
11 true.

12 11. Taking official notice of its own internal records, pursuant to Business and  
13 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
14 and Enforcement is \$905.00 as of April 18, 2012.

15 DETERMINATION OF ISSUES

16 1. Based on the foregoing findings of fact, Respondent Dale L. Mercer, Smog Quik has  
17 subjected its Automotive Repair Dealer Registration No. ARD 232421 and Smog Check Test  
18 Only License No. TC 232421 to discipline.

19 2. The agency has jurisdiction to adjudicate this case by default.

20 3. The Director of Consumer Affairs is authorized to revoke Respondent Payless Smog's  
21 Automotive Repair Dealer Registration and Smog Check Test Only License based upon the  
22 following violations alleged in the Accusation which are supported by the evidence contained in  
23 the affidavit of Bureau Representative Roger Lehman in this case:

24 a. Respondent Smog Quik's station registration and license are subject to discipline pursuant  
25 to Health and Safety Code section 44050(e), in that on or about January 27, 2010, the Bureau  
26 issued Citation No. C2010-0740 to Respondent Smog Quik against its station license for  
27 violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional  
28 check of emission control devices), and California Code of Regulations, title 16, section  
3340.35(c) (issuing a certificate of compliance to a vehicle improperly tested). On or about

1 March 17, 2010, the Bureau served Respondent Smog Quik with the citation, assessing an  
2 administrative fine in the amount of \$2,500. However, Respondent Smog Quik failed to appeal  
3 the citation or pay the administrative fine within thirty (30) days of service of the citation.

4 ORDER

5 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 232421 and  
6 Smog Check Test Only License No. TC 232421, heretofore issued to Respondent Dale L. Mercer,  
7 Smog Quik, are revoked.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
9 written motion requesting that the Decision be vacated and stating the grounds relied on within  
10 seven (7) days after service of the Decision on Respondent. The motion should be sent to the  
11 Bureau of Automotive Repair, ATTN: Tim Corcoran, 10220 Systems Parkway, Sacramento, CA  
12 95827. The agency in its discretion may vacate the Decision and grant a hearing on a showing of  
13 good cause, as defined in the statute.

14 This Decision shall become effective on 3/18/13.

15 It is so ORDERED MAR 20 2013

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17   
18 DONALD CHANG  
19 Assistant Chief Counsel  
20 Department of Consumer Affairs

21 default decision\_LIC.rtf  
22 DOJ Matter ID:SA2012105020

23 Attachment:  
24 Exhibit A: Accusation  
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7 *Attorneys for Complainant.*

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. 79/12-104

13 **SMOG QUIK**  
14 7555 Auburn Boulevard, Unit B  
Citrus Heights, CA 95610  
15 **DALE L. MERCER, Owner**  
Automotive Repair Dealer Registration No. ARD  
232421  
16 Smog Check Test Only Station License No. TC  
232421

**ACCUSATION**  
SMOG CHECK

17  
18 **And**

19 **DALE L. MERCER**  
6427 Oak Creek Way  
20 Citrus Heights, CA 95621  
21 **Advanced Emission specialist Technician License**  
No. EA 109104

22 Respondents.

23  
24 John Wallauch ("Complainant") alleges:

25 **PARTIES**

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

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1 Code section 44032 (qualified technicians shall perform tests of emission control systems and  
2 devices in accordance with section 44012 of that Code), and California Code of Regulations, title  
3 16, section 3340.30(a) (qualified technicians shall inspect, test, and repair vehicles in accordance  
4 with sections 44012 and 44035 of the Health and Safety Code, and California Code of  
5 Regulations, title 16, section 3340.42). On or about March 17, 2010, the Bureau served  
6 Respondent with the citation, requiring Respondent to complete a 68-hour Clean Air Course.  
7 However, Respondent did not appeal the citation within thirty (30) days of service nor has the  
8 Respondent complied with the citation by completing the required training.

9 **OTHER MATTERS**

10 13. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station  
11 License Number TC 232421, issued to Dale L. Mercer, is revoked or suspended, any additional  
12 license issued under this chapter in the name of said licensee may be likewise revoked or  
13 suspended by the director.

14 14. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist  
15 Technician License Number EA 109104, issued to Dale L. Mercer, is revoked or suspended, any  
16 additional license issued under this chapter in the name of said licensee may be likewise revoked  
17 or suspended by the director.

18 **PRAYER**

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

21 1. Revoking or suspending Smog Check Test Only Station License Number  
22 TC 232421, issued to Dale L. Mercer, doing business as Smog Quik;

23 2. Revoking or suspending Advanced Emission Specialist Technician License  
24 Number EA109104, issued to Dale L. Mercer;

25 3. Revoking or suspending any additional license issued under Chapter 5 of the  
26 Health and Safety Code in the name of Dale L. Mercer;

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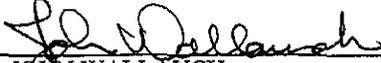
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4. Ordering Dale L. Mercer to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: MARCH 21, 2012



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

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