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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. 79/10-84

13 **ALL SMOG TEST ONLY CENTER**
14 **521 East Los Angeles Ave. #G**
15 **Simi Valley, CA 93065**
16 **ANDRE RAFI MARDIAN, OWNER**
17 **Automotive Repair Dealer Registration**
18 **No. ARD 239246,**
19 **Smog Check Test Only Station License**
20 **No. TC 239246**

A C C U S A T I O N

S M O G C H E C K

and

21 **ANDRE RAFI MARDIAN**
22 **25122-H Steinbeck Avenue**
23 **Stevenson Ranch, CA 91381**
24 **Advanced Emission Specialist Technician**
25 **License No. EA 151225**

Respondents.

26 Complainant alleges:

27 **PARTIES**

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

Automotive Repair Dealer Registration

2. On or about June 10, 2005, the Bureau issued Automotive Repair Dealer Registration Number ARD 239246 ("registration") to Andre Rafi Mardian ("Respondent") doing business as

1 All Smog Test Only Center. The registration was in full force and effect at all times relevant to
2 the charges brought herein and will expire on May 31, 2010, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about June 15, 2005, the Bureau issued Smog Check Test Only Station License
5 Number TC 239246 ("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, 2010, unless
7 renewed.

8 **Advanced Emission Specialist Technician License**

9 4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist
10 Technician License Number EA 151225 ("technician license") to Respondent. The technician
11 license was in full force and effect at all times relevant to the charges brought herein and will
12 expire on December 31, 2010, unless renewed.

13 **STATUTORY PROVISIONS**

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

16 (a) The director, where the automotive repair dealer cannot show there
17 was a bona fide error, may refuse to validate, or may invalidate temporarily or
18 permanently, the registration of an automotive repair dealer for any of the following
19 acts or omissions related to the conduct of the business of the automotive repair
20 dealer, which are done by the automotive repair dealer or any automotive technician,
21 employee, partner, officer, or member of the automotive repair dealer.

22 (4) Any other conduct which constitutes fraud.

23 (6) Failure in any material respect to comply with the provisions of this
24 chapter [the Automotive Repair Act (Bus. & Prof. Code, 9880, et seq.)] or
25 regulations adopted pursuant to it.

26 (b) Except as provided for in subdivision (c), if an automotive repair
27 dealer operates more than one place of business in this state, the director pursuant to
28 subdivision (a) shall only invalidate temporarily or 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.

(c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, 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.

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6. Code section 9884.9, subdivision (a) states:

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 if 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, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order .

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

(signature or initials)"

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

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

8. 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 Code.

1 evaporative canister was missing. The operator did not sign or receive an estimate prior to the
2 smog inspection. Respondent performed the smog inspection and issued electronic Certificate of
3 Compliance No. NM682481 for that vehicle even though the vehicle could not have passed the
4 visual portion of the inspection. The operator paid \$60 for the smog inspection and received a
5 copy of an unnumbered invoice and the Vehicle Inspection Report ("VIR").

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Misleading Statements)**

8 15. Respondent has subjected his registration to discipline under Code section 9884.7,
9 subdivision (a)(1), in that on or about August 27, 2009, he made statements which he knew or
10 which by exercise of reasonable care he should have known were untrue or misleading when he
11 issued electronic Certificate of Compliance No. NM682481 for the 1999 Suzuki Grand Vitara,
12 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
13 the vehicle's fuel evaporative canister was missing.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Provide Written Estimate/Written Authorization)**

16 16. Respondent has subjected his registration to discipline under Code section 9884.7,
17 subdivision (a)(6), in that on or about August 27, 2009, Respondent failed to comply with Code
18 section 9884.9, subdivision (a), as follows:

19 a. Respondent failed to provide the operator with a written estimated price for parts and
20 labor for a specific job.

21 b. Respondent failed to obtain the operator's written authorization prior to
22 commencement of repairs.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 17. Respondent has subjected his registration to discipline under Code section 9884.7,
26 subdivision (a)(4), in that on or about August 27, 2009, he committed acts which constitute fraud
27 by issuing electronic Certificate of Compliance No. NM682481 for the 1999 Suzuki Grand
28 Vitara, without performing a bona fide inspection of the emission control devices and systems on

1 that vehicle, thereby depriving the People of the State of California of the protection afforded by
2 the Motor Vehicle Inspection Program.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 18. Respondent has subjected his station license to discipline under Health and Safety
6 Code section 44072.2, subdivision (a), in that on or about August 27, 2009, regarding the 1999
7 Suzuki Grand Vitara, he violated sections of that Code, as follows:

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

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

13 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
14 Compliance No. NM682481 without properly testing and inspecting the vehicle to determine if it
15 was in compliance with section 44012 of that Code.

16 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
17 Compliance No. NM682481, certifying that the vehicle had been inspected as required when, in
18 fact, it had not.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 19. Respondent has subjected his station license to discipline under Health and Safety
22 Code section 44072.2, subdivision (c), in that on or about August 27, 2009, regarding the 1999
23 Suzuki Grand Vitara, he violated sections of the California Code of Regulations, title 16, as
24 follows:

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
26 electronic Certificate of Compliance No. NM682481 without performing a bona fide inspection
27 of the emission control devices and systems on that vehicle as required by Health and Safety
28 Code section 44012.

1 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
2 Compliance No. NM682481, certifying that the vehicle had been inspected as required when, in
3 fact, it had not.

4 **EIGHTH CAUSE FOR DISCIPLINE**

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

6 22. Respondent has subjected his technician license to discipline under Health and Safety
7 Code section 44072.2, subdivision (c), in that on or about August 27, 2009, regarding the 1999
8 Suzuki Grand Vitara, he violated sections of the California Code of Regulations, title 16, as
9 follows:

10 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
11 electronic Certificate of Compliance No. NM682481 without performing a bona fide inspection
12 of the emission control devices and systems on that vehicle as required by Health and Safety
13 Code section 44012.

14 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle
15 in accordance with Health and Safety Code section 44012.

16 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
17 Emission Inspection System ("EIS") for electronic Certificate of Compliance No. NM682481 by
18 entering "Pass" for the fuel evaporative controls when, in fact, that those components were
19 missing from the vehicle.

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

22 **NINTH CAUSE FOR DISCIPLINE**

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

24 23. Respondent has subjected his technician license to discipline under Health and Safety
25 Code section 44072.2, subdivision (d), in that on or about August 27, 2009, he committed acts
26 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
27 Certificate of Compliance No. NM682481 for the 1999 Suzuki Grand Vitara, without performing
28 a bona fide inspection of the emission control devices and systems on that vehicle, thereby

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

3 **PRIOR CITATIONS**

4 24. To determine the degree of penalty, if any, to be imposed upon Respondent
5 Complainant alleges as follows:

6 a. On September 21, 2006, the Bureau issued Citation No. C07-0113 to Respondent
7 against his registration and station licenses for violations of Health and Safety Code section
8 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
9 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
10 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
11 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
12 manufacturer's specifications. The Bureau assessed a civil penalty of \$500. Respondent
13 complied with this citation on October 9, 2006.

14 b. On September 19, 2006, the Bureau issued Citation No. M07-0114 to Respondent
15 against his technician license for violations of Health and Safety Code section 44032, (qualified
16 technicians shall perform tests of emission control systems and devices in accordance with
17 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
18 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
19 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
20 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's
21 specifications. Respondent was required to attend an 8-hour training course. Respondent
22 complied with this citation on October 25, 2006.

23 c. On December 21, 2006, the Bureau issued Citation No. C07-0410 to Respondent
24 against his registration and station licenses for violations of Health and Safety Code section
25 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
26 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
27 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
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1 missing positive crankcase ventilation system. The Bureau assessed a civil penalty of \$1,000.
2 Respondent complied with this citation on February 26, 2007.

3 d. On December 21, 2006, the Bureau issued Citation No. M07-0411 to Respondent
4 against his technician license for violations of Health and Safety Code section 44032, (qualified
5 technicians shall perform tests of emission control systems and devices in accordance with
6 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
7 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
8 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
9 compliance to a Bureau vehicle with a missing positive crankcase ventilation system.
10 Respondent was required to attend a 16-hour training course. Respondent complied with this
11 citation on March 21, 2007.

12 e. On March 23, 2007, the Bureau issued Citation No. C07-0668 to Respondent against
13 his registration and station licenses for violations of Health and Safety Code section 44012,
14 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
15 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
16 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
17 missing air injection system. The Bureau assessed a civil penalty of \$2,000. The citation was
18 appealed on May 1, 2007, then withdrawn on January 3, 2008. Respondent complied with this
19 citation on January 9, 2008.

20 f. On March 23, 2007, the Bureau issued Citation No. M07-0669 to Respondent against
21 his technician license for violations of Health and Safety Code section 44032, (qualified
22 technicians shall perform tests of emission control systems and devices in accordance with
23 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
24 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
25 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
26 compliance to a Bureau vehicle with a missing air injection system. Respondent was required to
27 complete a Basic Clean Air Car Course. Respondent complied with this citation on May 25, 2007.

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1 g. On November 21, 2008, the Bureau issued Citation No. C09-0654 to Respondent
2 against his registration and station licenses for violations of Health and Safety Code section
3 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
4 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
5 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
6 missing positive crankcase ventilation system. The Bureau assessed a civil penalty of \$500.
7 Respondent complied with this citation on January 21, 2009.

8 **OTHER MATTERS**

9 25. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
10 or permanently or refuse to validate, the registrations for all places of business operated in this
11 state by Andre Rafi Mardian doing business as All Smog Test Only Center, upon a finding that he
12 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
13 pertaining to an automotive repair dealer.

14 26. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
15 License Number TC 239246, issued to Andre Rafi Mardian doing business as All Smog Test
16 Only Center, is revoked or suspended, any additional license issued under this chapter in the
17 name of said licensee may be likewise revoked or suspended by the director, including but not
18 limited to Advanced Emission Specialist Technician License Number EA 151225.

19 **PRAYER**

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

- 22 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
23 Number ARD 239246, issued to Andre Rafi Mardian doing business as All Smog Test Only
24 Center;
- 25 2. Temporarily or permanently invaliding any other automotive repair dealer registration
26 issued to Andre Rafi Mardian;
- 27 3. Revoking or suspending Smog Check Test Only Station License Number TC 239246,
28 issued to Andre Rafi Mardian doing business as All Smog Test Only Center;

1 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 & Safety Code in the name of Andre Rafi Mardian, including but not limited to Advanced
3 Emission Specialist Technician License Number EA 151225;

4 5. Ordering Andre Rafi Mardian to pay the Bureau of Automotive Repair the reasonable
5 costs of the investigation and enforcement of this case, pursuant to Business and Professions
6 Code section 125.3; and,

7 6. Taking such other and further action as deemed necessary and proper.
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9

10 DATED: _____

6/14/10



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

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