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

10
11 In the Matter of the Accusation Against:

Case No. 79/12-162

12 **CALIFORNIA SMOG TEST ONLY**
13 **7304 Indiana Ave, Unit 9**
Riverside, CA 92504
14 **OMAR KHODR KHALED, OWNER**
Automotive Repair Dealer Registration No.
ARD 246797
15 **Smog Check Test Only Station License No.**
TC 246797,

A C C U S A T I O N
S M O G C H E C K

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17
18 Respondent.

19 Complainant alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On a date uncertain in 2006, the Bureau issued Automotive Repair Dealer
25 Registration Number ARD 246797 ("registration") to Omar Khodr Khaled ("Respondent"), doing
26 business as California Smog Test Only. The registration was in full force and effect at all times
27 relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.

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1 6. Code section 9884.9 states, in pertinent part:

2 (a) The automotive repair dealer shall give to the customer a written
3 estimated price for labor and parts necessary for a specific job. No work shall be done
4 and no charges shall accrue before authorization to proceed is obtained from the
5 customer. No charge shall be made for work done or parts supplied in excess of the
6 estimated price without the oral or written consent of the customer that shall be
7 obtained at some time after it is determined that the estimated price is insufficient and
8 before the work not estimated is done or the parts not estimated are supplied. Written
9 consent or authorization for an increase in the original estimated price may be
10 provided by electronic mail or facsimile transmission from the customer. The bureau
11 may specify in regulation the procedures to be followed by an automotive repair
12 dealer if an authorization or consent for an increase in the original estimated price is
13 provided by electronic mail or facsimile transmission. If that consent is oral, the
14 dealer shall make a notation on the work order of the date, time, name of person
15 authorizing the additional repairs and telephone number called, if any, together with a
16 specification of the additional parts and labor and the total additional cost, and shall
17 do either of the following:

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

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

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

25 _____
26 (signature or initials)"

27 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
28 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.

 9. Section 44002 of the Health and Safety Code 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.

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1 10. Section 44072.2 of the Health and Safety Code states, in pertinent part:

2 The director may suspend, revoke, or take other disciplinary action
3 against a license as provided in this article if the licensee, or any partner, officer, or
4 director thereof, does any of the following:

5 (a) Violates any section of this chapter [the Motor Vehicle Inspection
6 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted
7 pursuant to it, which related to the licensed activities.

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

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

12 11. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
13 expiration or suspension of a license by operation of law, or by order or decision of the Director
14 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
15 the Director of jurisdiction to proceed with disciplinary action.

16 12. Section 44072.8 of the Health and Safety Code states:

17 When a license has been revoked or suspended following a hearing under
18 this article, any additional license issued under this chapter in the name of the
19 licensee may be likewise revoked or suspended by the director.

20 **COST RECOVERY**

21 13. Code section 125.3 provides, in pertinent part, that a Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 **UNDERCOVER OPERATION – OCTOBER 25, 2011**

26 14. On or about October 25, 2011, a Bureau undercover operator drove a Bureau-
27 documented 2001 Ford Ranger to Respondent's facility and requested a smog inspection. The
28 vehicle could not pass the visual portion of a smog inspection because the vehicle's positive
crankcase ventilation ("PCV") system was missing. The operator did not sign or receive an
estimate prior to the smog inspection. Armen Isagulyan, a licensed smog technician, performed
the smog inspection and issued electronic Certificate of Compliance No. WZ906538 for that

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1 vehicle. The operator paid \$48 for the smog inspection and received a copy of Invoice No. 2489
2 and the Vehicle Inspection Report.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Misleading Statements)**

5 15. Respondent has subjected his registration to discipline under Code section 9884.7,
6 subdivision (a)(1), in that on or about October 25, 2011, he made statements which he knew or
7 which by exercise of reasonable care he should have known were untrue or misleading when he
8 issued electronic Certificate of Compliance No. WZ906538 for the 2001 Ford Ranger, certifying
9 that the vehicle was in compliance with applicable laws and regulations when, in fact, the
10 vehicle's PCV system was missing.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 16. Respondent has subjected his registration to discipline under Code section 9884.7,
14 subdivision (a)(4), in that on or about October 25, 2011, he committed acts which constitute fraud
15 by issuing electronic Certificate of Compliance No. WZ906538 for the 2001 Ford Ranger without
16 performing a bona fide inspection of the emission control devices and systems on that vehicle,
17 thereby depriving the People of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Code)**

21 17. Respondent has subjected his registration to discipline pursuant to Code section
22 9884.7, subdivision (a)(6), in that on or about October 25, 2011, Respondent failed to comply
23 with section 9884.9, subdivision (a) of that code by failing to provide the operator with a written
24 estimated priced for parts and labor for a specific job.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 18. Respondent has subjected his station license to discipline under Health and Safety
4 Code section 44072.2, subdivision (a), in that on or about October 25, 2011, regarding the 2001
5 Ford Ranger, he violated sections of that Code, as follows:

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

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

11 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
12 Compliance No. WZ906538 without properly testing and inspecting the vehicle to determine if it
13 was in compliance with section 44012 of that Code.

14 **FIFTH CAUSE FOR DISCIPLINE**

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

16 19. Respondent has subjected his station license to discipline under Health and Safety
17 Code section 44072.2, subdivision (c), in that on or about October 25, 2011, regarding the 2001
18 Ford Ranger, he violated sections of the California Code of Regulations, title 16, as follows:

19 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
20 Compliance No. WZ906538 even though that vehicle had not been inspected in accordance with
21 section 3340.42 of that Code.

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

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 20. Respondent has subjected his station license to discipline under Health and Safety
27 Code section 44072.2, subdivision (d), in that on or about October 25, 2011, regarding the 2001
28 Ford Ranger, he committed acts involving dishonesty, fraud or deceit whereby another was

1 injured by issuing electronic Certificate of Compliance No. WZ906538 for that vehicle without
2 performing a bona fide inspection of the emission control devices and systems on the vehicle,
3 thereby depriving the People of the State of California of the protection afforded by the Motor
4 Vehicle Inspection Program.

5 **PRIOR CITATIONS**

6 21. To determine the degree of penalty, if any, to be imposed upon Respondent,
7 Complainant alleges as follows:

8 a. On December 31, 2009, the Bureau issued Citation No. C2010-0617 to Respondent
9 against his registration and station licenses for violations of Health and Safety Code section
10 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
11 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
12 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
13 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
14 manufacturer's specifications. The Bureau assessed a civil penalty of \$500. Respondent
15 complied with this citation on January 25, 2010.

16 b. On August 30, 2010, the Bureau issued Citation No. C2011-0229 to Respondent
17 against his registration and station licenses for violations of Health and Safety Code section
18 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
19 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
20 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
21 missing fuel evaporative canister. The Bureau assessed a civil penalty of \$1,500. Respondent
22 complied with this citation on September 28, 2010.

23 c. On March 8, 2011, the Bureau issued Citation No. C2011-1033 to Respondent against
24 his registration and station licenses for violations of Health and Safety Code section 44012,
25 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
26 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 the

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1 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil
2 penalty of \$2,500. Respondent complied with this citation on April 8, 2011.

3 **OTHER MATTERS**

4 22. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
5 or permanently or refuse to validate, the registrations for all places of business operated in this
6 state by Omar Khodr Khaled, upon a finding that he has, or is, engaged in a course of repeated
7 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

8 23. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
9 License Number TC 246797, issued to Omar Khodr Khaled, doing business as California Smog
10 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
11 of said licensee may be likewise revoked or suspended by the director.

12 **PRAYER**

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

- 15 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
16 Registration Number ARD 246797, issued to Omar Khodr Khaled, doing business as California
17 Smog Test Only;
- 18 2. Revoking, suspending, or placing on probation any other automotive repair dealer
19 registration issued to Omar Khodr Khaled;
- 20 3. Revoking or suspending Smog Check Test Only Station License Number TC 246797,
21 issued to Omar Khodr Khaled, doing business as California Smog Test Only;
- 22 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 & Safety Code in the name of Omar Khodr Khaled;

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1 5. Ordering Omar Khodr Khaled 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 6. Taking such other and further action as deemed necessary and proper.
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8 DATED: June 7 2012


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

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