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

10 In the Matter of the Accusation Against:

11 **VISTA TEST ONLY, INC. DBA VISTA**
12 **TEST ONLY CENTER; SISAK**
13 **KESHISHYAN; SIRANUSH**
14 **KESHISHYAN**
2655 E. Colorado Blvd, #D
Pasadena, CA 91107

15 **Automotive Repair Dealer Registration No.**
16 **ARD 251558**
17 **Smog Check, Test Only, Station License No.**
18 **TC 251558**

19 **SISAK KESHISHYAN**
18 **1961 Brigden Road**
19 **Pasadena, CA 91104**
20 **Advanced Emission Specialist Technician,**
21 **EA 154395 (to be redesignated upon renewal**
22 **as EO 154395 and/or EI 154395)**

21 Respondents.

Case No. 79/13-79

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 against an automotive repair dealer or to render a decision invalidating a registration temporarily
2 or permanently.

3 8. Health and Safety Code section 44002, provides, in pertinent part, that the Director
4 has all the powers and authority granted under the Automotive Repair Act for enforcing the
5 Motor Vehicle Inspection Program.

6 9. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration
7 or suspension of a license by operation of law, or by order or decision of the Director of
8 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
9 Director of jurisdiction to proceed with a disciplinary action.

10 10. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
11 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
12 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
13 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

14 **STATUTORY PROVISIONS**

15 11. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
16 cancellation of a license shall not deprive the Board, Registrar, or Director of jurisdiction to
17 proceed with a disciplinary action during the period within which the license may be renewed,
18 restored, reissued or reinstated.

19 12. Section 477 states, in pertinent part:

20 (a) “Board” includes “bureau,” “commission,” “committee,” “department,”
21 “division,” “examining committee,” “program,” and “agency.”

22 (b) “License” includes certificate, registration or other means to engage in a
23 business or profession regulated by the Code.

24 13. Section 9884.7 states, in pertinent part:

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

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

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(4) Any other conduct that constitutes fraud.

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

....

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation 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 suspend, revoke, or place on probation 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.

14. Section 9884.9 states, in pertinent part:

(a) 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 when 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 . . .

REGULATORY PROVISIONS

15. Health and Safety Code Section 44002 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.

16. Health and Safety Code Section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures

1 prescribed by the department and may require loaded mode dynamometer testing in
2 enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic
3 system, or other appropriate test procedures as determined by the department in
4 consultation with the state board. The department shall implement testing using
5 onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle
6 testing, on model year 2000 and newer vehicles only, beginning no earlier than
7 January 1, 2013. However, the department, in consultation with the state board, may
8 prescribe alternative test procedures that include loaded mode dynamometer or two-
9 speed idle testing for vehicles with onboard diagnostic systems that the department
10 and the state board determine exhibit operational problems. The department shall
11 ensure, as appropriate to the test method, the following:

12 (a) Emission control systems required by state and federal law are reducing
13 excess emissions in accordance with the standards adopted pursuant to subdivisions
14 (a) and (c) of Section 44013.

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16 (f) A visual or functional check is made of emission control devices specified by
17 the department, including the catalytic converter in those instances in which the
18 department determines it to be necessary to meet the findings of Section 44001. The
19 visual or functional check shall be performed in accordance with procedures
20 prescribed by the department.

21 17. Health and Safety Code Section 44015 states, in pertinent part:

22 (b) If a vehicle meets the requirements of Section 44012, a smog check station
23 licensed to issue certificates shall issue a certificate of compliance or a certificate of
24 noncompliance.

25 18. Health and Safety Code Section 44032 states:

26 No person shall perform, for compensation, tests or repairs of emission control
27 devices or systems of motor vehicles required by this chapter unless the person
28 performing the test or repair is a qualified smog check technician and the test or
repair is performed at a licensed smog check station. Qualified technicians shall
perform tests of emission control devices and systems in accordance with Section
44012.

19. Health and Safety Code section 44072.2 states:

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 Safety Code, § 44000, et seq.)] and the regulations adopted pursuant to it,
which related to the licensed activities.

. . . .

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

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

1 injured.

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3 (h) Violates or attempts to violate the provisions of this chapter relating to the
4 particular activity for which he or she is licensed.

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

9 21. Health and Safety Code section 44072.8 states:

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

13 22. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides, in
14 pertinent part, that a licensed technician shall inspect, test and repair vehicles in accordance with
15 section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and
16 section 3340.42 of the California Code of Regulations.

17 23. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides, in
18 pertinent part, that a licensed station shall issue a certificate of compliance or noncompliance to
19 the owner or operator of any vehicle that has been inspected in accordance with the procedures
20 specified in section 3340.42 of the California Code of Regulations and have all the required
21 emission control equipment and devices installed and functioning correctly.

22 24. California Code of Regulations, title 16, section 3340.41, subdivision (c), states that
23 no person shall enter into the emissions inspection system any vehicle identification information
24 or emission control system identification data for any vehicle other than the one being tested. Nor
25 shall any person knowingly enter into the emissions inspection system any false information
26 about the vehicle being tested.

27 25. California Code of Regulations, title 16, section 3340.42 provides, in pertinent part:

28 (e) In addition to the test methods prescribed in this section, the following tests
shall apply to all vehicles, except diesel-powered vehicles, during the Smog Check
inspection:

(1) A visual inspection of the vehicle's emissions control systems. During the

1 visual inspection, the technician shall verify that the following emission control
2 devices, as applicable, are properly installed on the vehicle:

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4 (C) crankcase emissions controls, including positive crankcase ventilation,

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6 (I) any emissions control systems that are not otherwise prompted by the Emissions
7 Inspection System, but listed as a requirement by the vehicle manufacturer.

8 COST RECOVERY

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

13 UNDERCOVER OPERATION – OCTOBER 18, 2012

14 27. On or about October 18, 2012, a Bureau undercover operator (“Operator”) drove a
15 Bureau documented 2000 Ford to Vista Test Only Center and requested a smog inspection. The
16 Positive Crankcase Ventilation (“PCV”) components had been removed, causing the vehicle to be
17 incapable of passing a smog inspection. The Operator was not provided with a written estimate
18 and did not sign a work order prior to the smog inspection. Respondent’s smog check technician
19 performed the smog inspection and issued electronic Certificate of Compliance No. [REDACTED],
20 certifying that he had tested and inspected the vehicle and that it was in compliance with
21 applicable laws and regulations when the vehicle could not have passed the visual portion of the
22 smog inspection because the PCV components had been removed. The Operator paid
23 Respondent \$48.00 and was provided with a copy of Invoice No. [REDACTED] as well as a Vehicle
24 Inspection Report.

25 FIRST CAUSE FOR DISCIPLINE

26 (Untrue or Misleading Statements)

27 28. Respondent’s Registration is subject to discipline under section 9884.7, subdivision
28 (a)(1), in that on or about October 18, 2012, Respondent made statements which he knew or
which by exercise of reasonable care should have known to be untrue or misleading by issuing

1 electronic Certificate of Compliance No. [REDACTED] for the Bureau's 2000 Ford, certifying that
2 the vehicle was in compliance with applicable laws and regulations when the vehicle could not
3 have passed the visual portion of the smog inspection because PCV components had been
4 removed from the vehicle.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 29. Respondent's Registration is subject to discipline under section 9884.7, subdivision
8 (a)(4), and Respondent's Station License is subject to discipline pursuant to Health & Safety
9 Code section 44072.2, subdivision (d), in that on or about October 18, 2012, Respondent
10 committed acts constituting fraud whereby another was injured by issuing electronic Certificate
11 of Compliance No. [REDACTED] for the 2000 Ford without performing a bona fide inspection of the
12 emission control devices and systems on the vehicle, thereby depriving the People of the State of
13 California of the protection afforded by the Motor Vehicle Inspection Program.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Automotive Repair Act)**

16 30. Respondent's Registration is subject to discipline under section 9884.7, subdivision
17 (a)(6), in that on or about October 18, 2012, Respondent failed to comply with the following
18 section of the Automotive Repair Act:

19 a. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with a
20 written estimated price for parts and labor for a specific job.

21 **FOURTH CAUSE FOR DISCIPLINE**

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

23 31. Respondent's Station License is subject to discipline pursuant to Health & Safety
24 Code section 44072.2, subdivision (a), in that on or about October 18, 2012, regarding the 2000
25 Ford, Respondent failed to comply with the following sections of the Health and Safety Code:

26 a. **Section 44012, subdivision (f):** Respondent failed to perform emission control
27 inspections of the vehicle in accordance with procedures prescribed by the department.

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DISCIPLINE CONSIDERATIONS: PRIOR CITATIONS

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2 36. To determine the degree of discipline, if any, to be imposed on Respondents,
3 Complainant alleges the following:

4 a. On or about May 16, 2011, the Bureau issued Citation No. C2011-1326 against
5 Respondent for violating Health and Safety Code section 44012(f) (failure to determine the
6 emission control devices and systems required by State and Federal law are installed and
7 functioning correctly in accordance with test procedures). The Bureau assessed civil penalties
8 totaling \$1000 against Respondent for the violations. Respondent complied with this citation on
9 June 17, 2011.

10 b. On or about November 10, 2011, the Bureau issued Citation No. C2012-0449 against
11 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a
12 visual/functional check of emission control devices according to procedures prescribed by the
13 department). The Bureau assessed civil penalties totaling \$1,500 against Respondent for the
14 violations. Respondent complied with this citation on December 22, 2011.

15 c. On or about February 3, 2012, the Bureau issued Citation No. C2012-0804 against
16 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a visual
17 check of emission control devices according to procedures prescribed by the department). The
18 Bureau assessed civil penalties totaling \$1,500 against Respondent for the violations. Respondent
19 complied with this citation on March 16, 2012.

20 d. On or about May 16, 2011, the Bureau issued Citation No. M2011-1327 against
21 Respondent Sisak's Technician License for violating Health and Safety Code section 44032
22 (Qualified technicians shall perform tests of emission control systems and devices in accordance
23 with section 44012 of the H&S Code). Respondent was required to attend an 8-hour training
24 course. On or about June 3, 2011, Respondent completed the required training course.

25 e. On or about November 10, 2011, the Bureau issued Citation No. M2012-0450 against
26 Respondent Sisak's Technician License for violating Health and Safety Code section 44032
27 (Qualified technicians shall perform tests of emission control systems and devices in accordance
28

1 with section 44012 of the H&S Code). Respondent was required to attend a 16-hour training
2 course. On or about December 22, 2011, Respondent completed the required training course.

3 f. On or about February 3, 2012, the Bureau issued Citation No. M2012-0805 against
4 Respondent Sisak's Technician License for violating Health and Safety Code section 44032
5 (Qualified technicians shall perform tests of emission control systems and devices in accordance
6 with section 44012 of the H&S Code). Respondent was required to attend a 68-hour training
7 course. On or about April 13, 2012, Respondent completed the required training course.

8 **OTHER MATTERS**

9 37. Pursuant to section 9884.7, subdivision (c), the director may suspend, revoke, or
10 place on probation the registrations for all places of business operated in this state by Vista Test
11 Only Inc., Sisak Keshishyan – President and Siranush Keshishyan – Secretary/Treasurer, upon a
12 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
13 laws and regulations pertaining to an automotive repair dealer.

14 38. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
15 Station License Number TC 251558, issued to Vista Test Only Inc., Sisak Keshishyan – President
16 and Siranush Keshishyan – Secretary/Treasurer, doing business as Vista Test Only Center, is
17 revoked or suspended, any additional license issued under this chapter in the name of said
18 licensees may be likewise revoked or suspended by the director.

19 39. Pursuant to Health and Safety Code section 44072.8, if Respondent Sisak
20 Keshishyan's Technician License(s), currently designated as EA 154395 and redesignated upon
21 timely renewal as EO 154395 and/or EI 154395 is/are revoked or suspended, any additional
22 license issued under this chapter in the name of said licensee may be likewise revoked or
23 suspended by the director.

24 **PRAYER**

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

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- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 251558, issued to Vista Test Only Inc., Sisak Keshishyan - President and Siranush Keshishyan –
3 Secretary/Treasurer, doing business as Vista Test Only Center;
- 4 2. Revoking or suspending any other automotive repair dealer registration issued to
5 Vista Test Only Inc., Sisak Keshishyan - President and Siranush Keshishyan –
6 Secretary/Treasurer;
- 7 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
8 251558, issued to Vista Test Only Inc., Sisak Keshishyan - President and Siranush Keshishyan –
9 Secretary/Treasurer, doing business as Vista Test Only Center;
- 10 4. Revoking or suspending any additional license issued under chapter 5 of the Health
11 and Safety Code in the name of Vista Test Only Inc., Sisak Keshishyan - President and Siranush
12 Keshishyan – Secretary/Treasurer;
- 13 5. Revoking or suspending Sisak Keshishyan’s Technician License(s), currently
14 designated as EA 154395 and as redesignated upon his timely renewal as EO 154395 and/or EI
15 154395;
- 16 6. Revoking or suspending any additional license issued under chapter 5 of the Health
17 and Safety Code in the name of Sisak Keshishyan;
- 18 7. Ordering Vista Test Only Inc., Sisak Keshishyan - President and Siranush Keshishyan
19 – Secretary/Treasurer to pay the Bureau of Automotive Repair the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3; and,
- 22 8. Taking such other and further action as deemed necessary and proper.

23
24 DATED: May 9, 2013


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

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