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

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In the Matter of the Accusation Against:
UNISMOG
12134 Washington Boulevard
Culver City, CA 90066
Mailing Address:
P.O. Box 66361
Los Angeles, CA 90066
DON B. SHARMA, OWNER
Automotive Repair Dealer Registration No.
ARD 252138
Smog Check, Test Only, Station License No.
TC 252138,

and

DON B. SHARMA
P.O. Box 66361
Los Angeles, CA 90066
Advanced Emission Specialist Technician
License No. EA 630248

Respondent.

Case No. 79/12-81

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

Complainant alleges:

PARTIES

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

1 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
2 place on probation the registration for all places of business operated in this state by
3 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
4 engaged in a course of repeated and willful violations of this chapter, or regulations
5 adopted pursuant to it.

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

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

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

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

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

21 (a) Violates any section of this chapter [the Motor Vehicle Inspection
22 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted
23 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
27 another is injured.

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

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

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

4 **COST RECOVERY**

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

9 **UNDERCOVER OPERATION – JULY 13, 2011**

10 13. On or about July 13, 2011, a Bureau undercover operator drove a Bureau-documented
11 1992 Toyota Corolla to Respondent's facility and requested a smog inspection. The vehicle could
12 not pass a smog inspection because the vehicle's ignition timing was adjusted beyond the
13 manufacturer's specification. The operator signed a work order but was not provided with an
14 estimate prior to the smog inspection. Respondent performed the smog inspection and issued
15 electronic Certificate of Compliance No. WX123512C for that vehicle. The operator paid \$50 for
16 the smog inspection and received a copy of an invoice dated July 13, 2011.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Misleading Statements)**

19 14. Respondent has subjected his registration to discipline under Code section 9884.7,
20 subdivision (a)(1), in that on or about July 13, 2011, he made statements which he knew or which
21 by exercise of reasonable care he should have known were untrue or misleading when he issued
22 electronic Certificate of Compliance No. WX123512C for the 1992 Toyota Corolla, certifying
23 that the vehicle was in compliance with applicable laws and regulations when, in fact, the
24 vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 15. Respondent has subjected his registration to discipline under Code section 9884.7,
28 subdivision (a)(4), in that on or about July 13, 2011, he committed acts which constitute fraud by

1 issuing electronic Certificate of Compliance No. WX123512C for the 1992 Toyota Corolla
2 without performing a bona fide inspection of the emission control devices and systems on that
3 vehicle, thereby depriving the People of the State of California of the protection afforded by the
4 Motor Vehicle Inspection Program.

5 **THIRD CAUSE FOR DISCIPLINE**

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

7 16. Respondent has subjected his station license to discipline under Health and Safety
8 Code section 44072.2, subdivision (a), in that on or about July 13, 2011, regarding the 1992
9 Toyota Corolla, he violated sections of that Code, as follows:

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

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

15 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
16 Compliance No. WX123512C without properly testing and inspecting the vehicle to determine if
17 it was in compliance with section 44012 of that Code.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 17. Respondent has subjected his station license to discipline under Health and Safety
21 Code section 44072.2, subdivision (c), in that on or about July 13, 2011, regarding the 1992
22 Toyota Corolla, he violated sections of the California Code of Regulations, title 16, as follows:

23 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
24 Compliance No. WX123512C even though that vehicle had not been inspected in accordance
25 with section 3340.42 of that Code.

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

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 18. Respondent subjected his station license to discipline under Health and Safety Code
4 section 44072.2, subdivision (d), in that on or about July 13, 2011, regarding the 1992 Toyota
5 Corolla, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
6 issuing electronic Certificate of Compliance No. WX123512C for that vehicle without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **SIXTH CAUSE FOR DISCIPLINE**

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

12 19. Respondent has subjected his technician license to discipline under Health and Safety
13 Code section 44072.2, subdivision (a), in that on or about July 13, 2011, regarding the 1992
14 Toyota Corolla, he violated sections of that Code, as follows:

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

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

20 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
21 and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle
22 could not pass the functional portion of the inspection because the vehicle's ignition timing was
23 adjusted beyond the manufacturer's specifications.

24 **SEVENTH CAUSE FOR DISCIPLINE**

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

26 20. Respondent has subjected his technician license to discipline under Health and Safety
27 Code section 44072.2, subdivision (c), in that on or about July 13, 2011, regarding the 1992
28 Toyota Corolla, he violated sections of the California Code of Regulations, title 16, as follows:

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

3 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the
4 Emission Inspection System for electronic Certificate of Compliance No. WX123512C by
5 entering "Pass" for the functional portion of the smog inspection when, in fact, the vehicle could
6 not pass the functional inspection because the vehicle's ignition timing was adjusted beyond the
7 manufacturer's specifications.

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

10 **EIGHTH CAUSE FOR DISCIPLINE**

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

12 21. Respondent has subjected his technician license to discipline under Health and Safety
13 Code section 44072.2, subdivision (d), in that on or about July 13, 2011, regarding the 1992
14 Toyota Corolla, he committed acts involving dishonesty, fraud or deceit whereby another was
15 injured by issuing electronic Certificate of Compliance No. WX123512C without performing a
16 bona fide inspection of the emission control devices and systems on that vehicle, thereby
17 depriving the People of the State of California of the protection afforded by the Motor Vehicle
18 Inspection Program.

19 **PRIOR CITATIONS**

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

22 a. On November 28, 2007, the Bureau issued Citation No. C08-0520 to Respondent
23 against his registration and station licenses for violations of Health and Safety Code section
24 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
25 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
26 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
27 certificate of compliance to a Bureau vehicle with a missing evaporative fuel canister. The

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1 Bureau assessed a civil penalty of \$500. Respondent complied with this citation on December 26,
2 2007.

3 b. On December 29, 2008, the Bureau issued Citation No. C09-0747 to Respondent
4 against his registration and station licenses for violations of Health and Safety Code section
5 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
6 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
7 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
8 missing AIR system. The Bureau assessed a civil penalty of \$500. Respondent complied with
9 this citation on February 9, 2009.

10 c. On October 5, 2010, the Bureau issued Citation No. C2011-0396 to Respondent
11 against his registration and station licenses for violations of Health and Safety Code section
12 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
13 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
14 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
15 missing evaporative control charcoal canister. The Bureau assessed a civil penalty of \$2,500.
16 Respondent appealed this citation on November 8, 2010. The decision became effective on
17 December 17, 2011, and Respondent paid the citation on January 17, 2012.

18 d. On April 14, 2011, the Bureau issued Citation No. C2011-1194 to Respondent against
19 his registration and station licenses for violations of Health and Safety Code section 44012,
20 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
21 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
22 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
23 missing PCV system. The Bureau assessed a civil penalty of \$1,500. Respondent appealed this
24 citation on June 23, 2011. The decision became effective on December 17, 2011, and Respondent
25 paid the citation on January 17, 2012.

26 e. On April 14, 2011, the Bureau issued Citation No. M2011-1195 to Respondent
27 against his technician license for violations of Health and Safety Code section 44032, (qualified
28 technicians shall perform tests of emission control systems and devices in accordance with

1 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
2 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
3 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
4 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV
5 system. Respondent appealed this citation on June 23, 2011. The decision became effective on
6 December 17, 2011. As of February 9, 2012, Respondent had not completed training.

7 OTHER MATTERS

8 23. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
9 or permanently or refuse to validate, the registrations for all places of business operated in this
10 state by Don B. Sharma, upon a finding that he has, or is, engaged in a course of repeated and
11 willful violations of the laws and regulations pertaining to an automotive repair dealer.

12 24. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
13 License Number TC 252138, issued to Don B. Sharma, doing business as Unismog, is revoked or
14 suspended, any additional license issued under this chapter in the name of said licensee including,
15 but not limited to Advanced Emission Specialist Technician License Number EA 630248, may be
16 likewise revoked or suspended by the director.

17 PRAYER

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

20 1. Revoking, suspending, or placing on probation Automotive Repair Dealer

21 Registration Number ARD 252138, issued to Don B. Sharma, doing business as Unismog;

22 2. Revoking, suspending, or placing on probation any other automotive repair dealer
23 registration issued in the name Don B. Sharma;

24 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
25 252138, issued to Don B. Sharma, doing business as Unismog;

26 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
27 & Safety Code in the name of Don B. Sharma including, but not limited to Advanced Emission
28 Specialist Technician License Number EA 630248;

1 5. Ordering Don B. Sharma 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: 2/21/12



DOUG BALATTI
Assistant Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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