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

11 In the Matter of the Accusation Against:

Case No. 79/13-10

12 **SIERRA VALERO TEST ONLY**
13 **JOHN D. SHERRY, OWNER**
14 **15750 Arrow Highway Unit "S"**
Fontana, CA 92335
15 **Automotive Repair Dealer Reg. No. ARD 254922**
Smog Check, Test Only, Station License No. TC
254922,

ACCUSATION

SMOG CHECK

16 **JOHN D. SHERRY**
17 **15226 Merrill Avenue**
Fontana, CA 92335
18 **Advanced Emission Specialist Technician**
License No. EA 140472,

19 Respondents.
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21 Complainant alleges:

22 **PARTIES**

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

25 **Sierra Valero Test Only; John D. Sherry, Owner**

26 2. On or about May 21, 2008, the Director of Consumer Affairs ("Director") issued
27 Automotive Repair Dealer Registration Number ARD 254922 (hereinafter "registration") to John
28 D. Sherry ("Respondent John D. Sherry"), owner of Sierra Valero Test Only. Respondent's

1 registration was in full force and effect at all times relevant to the charges brought herein and will
2 expire on May 31, 2013, unless renewed.

3 3. On or about May 26, 2010, the Director issued Smog Check, Test Only, Station
4 License Number TC 254922 (hereinafter "smog check station license") to Respondent John D.
5 Sherry. Respondent's smog check station license was in full force and effect at all times relevant
6 to the charges brought herein and will expire on May 31, 2013, unless renewed.

7 **John D. Sherry**

8 4. In or about 1999, the Director issued Advanced Emission Specialist Technician
9 License Number EA 140472 (hereinafter "technician license") to Respondent John D. Sherry.
10 Respondent's technician license was in full force and effect at all times relevant to the charges
11 brought herein and will expire on July 31, 2013, unless renewed.

12 **JURISDICTION**

13 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
14 the Director may invalidate an automotive repair dealer registration.

15 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
16 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
17 proceeding against an automotive repair dealer or to render a decision invalidating a registration
18 temporarily or permanently.

19 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
20 part, that the Director has all the powers and authority granted under the Automotive Repair Act
21 for enforcing the Motor Vehicle Inspection Program.

22 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
23 suspension of a license by operation of law, or by order or decision of the Director of Consumer
24 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
25 of jurisdiction to proceed with disciplinary action.

26 **STATUTORY PROVISIONS**

27 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

28 (a) The director, where the automotive repair dealer cannot show there

1 was a bona fide error, may refuse to validate, or may invalidate temporarily or
2 permanently, the registration of an automotive repair dealer for any of the following
3 acts or omissions related to the conduct of the business of the automotive repair
4 dealer, which are done by the automotive repair dealer or any automotive technician,
5 employee, partner, officer, or member of the automotive repair dealer.

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

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10 (4) Any other conduct which constitutes fraud.

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12 (c) Notwithstanding subdivision (b), the director may refuse to validate,
13 or may invalidate temporarily or permanently, the registration for all places of
14 business operated in this state by an automotive repair dealer upon a finding that the
15 automotive repair dealer has, or is, engaged in a course of repeated and willful
16 violations of this chapter, or regulations adopted pursuant to it.

17 10. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
18 "bureau," "commission," "committee," "department," "division," "examining committee,"
19 "program," and "agency." "License" includes certificate, registration or other means to engage
20 in a business or profession regulated by the Bus. & Prof. Code.

21 11. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

28

(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 injured . . .

12. Health & Saf. Code section 44072.10 states, in pertinent part:

. . . .

(c) The department shall revoke the license of any smog check technician
or station licensee who fraudulently certifies vehicles or participates in the fraudulent
inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of

1 the following:

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3 (4) Intentional or willful violation of this chapter or any regulation,
4 standard, or procedure of the department implementing this chapter . . .

5 13. Health & Saf. Code section 44072.8 states that when a license has been revoked or
6 suspended following a hearing under this article, any additional license issued under this chapter
7 in the name of the licensee may be likewise revoked or suspended by the director.

8 **COST RECOVERY**

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

13 **VID DATA REVIEW**

14 15. In or about May 2012, the Bureau initiated an investigation against Respondent John
15 D. Sherry based on a review of information from the Bureau's Vehicle Information Database
16 ("VID"), which indicated that Respondent may be engaging in fraudulent smog check activities.

17 16. In May of 2012, a representative of the Bureau conducted a detailed review of VID
18 data for all smog inspections performed at Respondent John D. Sherry's facility for the period of
19 December 22, 2011, through January 7, 2012. The representative found that the ten vehicles
20 identified below recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II
21 tests¹. The representative obtained information indicating that none of these codes were
22 applicable to the vehicles. The VID data also showed that Respondent John D. Sherry had
23 performed the inspections on vehicles 1 through 10.

24 ¹ The On Board Diagnostics (OBD II) functional test is an automated function of the
25 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
26 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
27 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
28 information from the vehicle's on-board computer about the status of the readiness indicators,
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall inspection.

1 17. The Bureau concluded that Respondent John D. Sherry performed the smog
 2 inspections on the ten vehicles using a different vehicle during the OBD II tests, a method known
 3 as "clean plugging",² resulting in the issuance of fraudulent certificates of compliance for the
 4 following vehicles:

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
1. 12/22/2011 11:28-11:39	1996 GMC Yukon, License No. 5KND628	XB756453C
2. 12/22/2011 16:43-16:49	2001 Rav 4, License No. 4PJK477	XB756456C
3. 12/26/2011 14:39-14:46	2001 Mitsubishi Gallant, License No. 4TRS521	XB756460C
4. 12/27/2011 12:22-12:29	1996 Dodge Ram 1500, VIN No. 1B7HC16Y2TS562908	XB756462C
5. 12/27/2011 13:06-13:13	2001 Kia Rio, License No. 6NHW033	XB756463C
6. 12/27/2011 15:14-15:22	2005 Nissan Sentra, License No. 5LXJ216	XB756467C
7. 12/29/2011 12:41-12:50	2002 Toyota Camry Solara, VIN No. 2T1CE22P42C013489	XB 756479C
8. 12/30/2011 10:04-10:10	1996 Plymouth Voyager, License No. 3NUL306	XB756485C
9. 1/2/2012 10:48-10:55	2001 Toyota Camry, License No. 6KCL976	XB756494C
10. 1/7/2012 10:22-10:27	2002 Nissan Sentra, License No. 4YIJ142	XB942323C

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19
20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 18. Respondent John D. Sherry's registration is subject to disciplinary action pursuant to
 23 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
 24

25 ² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
 26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
 27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
 28 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
 control system or component failure.

1 statements which he knew or in the exercise of reasonable care should have known to be untrue or
2 misleading, as follows:

3 a. Respondent John D. Sherry, certified that vehicles 1 through 10, identified in
4 paragraph 17 above, had passed inspection and were in compliance with applicable laws and
5 regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging
6 methods in that he substituted or used a different vehicle during the OBD II functional test in
7 order to issue a smog certificate of compliance for the vehicles, and did not test or inspect the
8 vehicles as required by Health & Saf. Code section 44012.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 19. Respondent John D. Sherry's registration is subject to disciplinary action pursuant to
12 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
13 constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 10,
14 identified in paragraph 17 above, without performing bona fide inspections of the emission
15 control devices and systems on the vehicles, thereby depriving the People of the State of
16 California of the protection afforded by the Motor Vehicle Inspection Program.

17 **THIRD CAUSE FOR DISCIPLINE**

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

19 20. Respondent John D. Sherry's smog check station license is subject to disciplinary
20 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
21 to comply with the following sections of that Code:

22 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
23 performed on vehicles 1 through 10, identified in paragraph 17 above, in accordance with
24 procedures prescribed by the department.

25 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
26 vehicles 1 through 10, identified in paragraph 17 above, without ensuring that the vehicles were
27 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
28 section 44012.

1 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
2 perform the emission control tests on vehicles 1 through 10, identified in paragraph 17 above, in
3 accordance with procedures prescribed by the department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant**
6 **to the Motor Vehicle Inspection Program)**

7 24. Respondent John D. Sherry's technician license is subject to disciplinary action
8 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
9 comply with provisions of California Code of Regulations, title 16, as follows:

10 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
11 electronic smog certificates of compliance for vehicles 1 through 10, identified in paragraph 17
12 above.

13 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
14 through 10, identified in paragraph 17 above, in accordance with Health & Saf. Code sections
15 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

16 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
17 through 10, identified in paragraph 17 above, in accordance with the Bureau's specifications.

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 25. Respondent John D. Sherry's technician license is subject to disciplinary action
21 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
22 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
23 certificates of compliance for vehicles 1 through 10, identified in paragraph 17 above, without
24 performing bona fide inspections of the emission control devices and systems on the vehicles,
25 thereby depriving the People of the State of California of the protection afforded by the Motor
26 Vehicle Inspection Program.

27 **OTHER MATTERS**

28 26. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may

1 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
2 business operated in this state by Respondent John D. Sherry, owner of Sierra Valero Test Only,
3 upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations
4 of the laws and regulations pertaining to an automotive repair dealer.

5 27. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
6 License Number TC 254922, issued to John D. Sherry, owner of Sierra Valero Test Only, is
7 revoked or suspended, any additional license issued under this chapter in the name of said
8 licensee may be likewise revoked or suspended by the director.

9 28. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
10 Technician License Number EA 140472, issued to John D. Sherry, is revoked or suspended, any
11 additional license issued under this chapter in the name of said licensee may be likewise revoked
12 or suspended by the director.

13 **PRAYER**

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

- 16 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
17 Number ARD 254922, issued to John D. Sherry, owner of Sierra Valero Test Only;
- 18 2. Temporarily or permanently invalidating any other automotive repair dealer
19 registration issued to John D. Sherry;
- 20 3. Revoking or suspending Smog Check, Test Only, Station License Number
21 TC 254922, issued to John D. Sherry, owner of Sierra Valero Test Only;
- 22 4. Revoking or suspending Advanced Emission Specialist Technician License Number
23 EA 140472, issued to John D. Sherry;
- 24 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
25 and Safety Code in the name of John D. Sherry;
- 26 6. Ordering Respondent John D. Sherry, individually, and as owner of Sierra Valero
27 Test Only, to pay the Director of Consumer Affairs the reasonable costs of the investigation and
28 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: August 27, 2012

John Wallauch by [Signature]
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

BOG & BAZAHN,

Sierra Valero Test Only Acc.docx