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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 First Amended Accusation
Against:

Case No. 79/12-146

13 **4 LESS SMOG CHECK**
14 **TOYLI HOJAGULIYEV, OWNER**
15 **630 East Blithedale**
16 **Mill Valley, CA 94941**
17 **Automotive Repair Dealer Reg. No. ARD**
18 **257509**
19 **Smog Check, Test Only, Station License No. TC**
20 **257509**
21 **and**
22 **RAMIN ALIYEV**
23 **2957 Broadway**
24 **Oakland, CA 94611**
25 **Advanced Emission Specialist Technician**
26 **License No. EA 147215**

FIRST AMENDED ACCUSATION
(Smog Check)

Respondents.

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1 **4 LESS SMOG CHECK LLC**
2 **RAMIN ALIYEV, MEMBER**
3 **630 East Blithedale Ave.**
4 **Mill Valley, CA 94941**
5 **Automotive Repair Dealer Reg. No. ARD**
6 **265747**
7 **Smog Check Test Only Station License No. TC**
8 **265747**

Affiliated Licenses

9 Complainant alleges:

10 **PARTIES**

11 1. John Wallauch ("Complainant") brings this First Amended Accusation solely in his
12 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of
13 Consumer Affairs.

14 **4 Less Smog Check**

15 2. On or about March 12, 2009, the Director of Consumer Affairs ("Director") issued
16 Automotive Repair Dealer Registration Number ARD 257509 to Toyli Hojaguliyev
17 ("Respondent Hojaguliyev"), owner of 4 Less Smog Check. Respondent's ARD 257509
18 registration expired on February 29, 2012.

19 3. On or about March 17, 2009, the Director issued Smog Check, Test Only, Station
20 License Number TC 257509 to Respondent Hojaguliyev. Respondent's TC 257509 smog check
21 station license expired on February 29, 2012.

22 **Ramin Aliyev**

23 4. In or about 2003, the Director issued Advanced Emission Specialist Technician
24 License Number EA 147215 ("technician license") to Ramin Aliyev ("Respondent Aliyev" or
25 "Aliyev"). Respondent's technician license will expire on April 30, 2013, unless renewed.

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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.

....

(4) Any other conduct that constitutes fraud.

....

(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.

12. Code section 22, subdivision (a), states:

“Board” as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

13. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

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

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 Saf. 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 injured.

...

(f) Aids or abets unlicensed persons to evade the provisions of this chapter . . .

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

4 16. Health & Saf. Code section 44014, subdivision (a), states:

5 Except as otherwise provided in this chapter, the testing and repair
6 portion of the program shall be conducted by smog check stations licensed by the
7 department, and by smog check technicians who have qualified pursuant to this
8 chapter.

9 17. Health & Saf. Code section 44032 states, in pertinent part, that "[n]o person shall
10 perform, for compensation, tests or repairs of emission control devices or systems of motor
11 vehicles required by this chapter unless the person performing the test or repair is a qualified
12 smog check technician . . . "

13 18. California Code of Regulations, title 16, section ("Regulation") 3340.41, subdivision
14 (b), states that "[n]o person shall enter into the emissions inspection system any access or
15 qualification number other than as authorized by the bureau, nor in any way tamper with the
16 emissions inspection system."

17 19. Regulation 3340.45 states:

18 All vehicle emission tests, visual inspections of the emissions control
19 systems, functional inspections of the emissions control systems, liquid fuel leak
20 inspections, and visible smoke tests shall be conducted at licensed smog check
21 stations by licensed smog check technicians. The inspections shall be performed in
22 accordance with the Emissions Inspection System test prompts and the inspection
23 requirements and procedures prescribed in the Bureau's Smog Check Inspection
24 Procedures Manual, dated August 2009, which is hereby incorporated by reference.

25 20. Section 1.1.0 of the Bureau's Smog Check Inspection Procedures Manual states, in
26 pertinent part:

27 The individual technician license number and access code together
28 provide access into the Emissions Inspection System (EIS) Smog Check inspection
mode

 The access code is assigned by BAR and is unique to each technician.
Each technician must maintain the security of his or her access code. Disclosure of
one's access code or use of another technician's access code or license information is
prohibited. If the security of your access code has been compromised, or you suspect
another person is using your access code, you must contact your local BAR field
office immediately to have the access code changed.

1 **COST RECOVERY**

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

6 **SURVEILLANCE OPERATION OF NOVEMBER 9, 2011**

7 22. On December 2, 2010, a representative of the Bureau made a field visit at Respondent
8 Hojaguliyev's facility, 4 Less Smog Check located in Mill Valley ("Mill Valley facility"), after
9 the Bureau received an anonymous tip that an unlicensed technician was performing smog
10 inspections. The representative observed an employee, Samin Aliyev ("Samin"), later identified
11 as Respondent Aliyev's brother, performing a functional ignition timing check on a vehicle during
12 a smog inspection. The representative informed Aliyev and Samin that only licensed smog
13 technicians were allowed to perform smog inspections, including the visual and functional
14 portions of the inspection, to enter test data into the Emissions Inspection System ("EIS"), and to
15 issue smog certificates. The representative also told Aliyev that he was prohibited from sharing
16 his confidential access code with anyone.

17 23. On November 9, 2011, the Bureau received an anonymous tip that an unlicensed
18 technician was performing smog inspections at a 4 Less Smog Check facility. A Bureau
19 representative accessed the State's Electronic Transmission Management Information System
20 ("ETMIS") and found that there were five "4 Less Smog Check" facilities located in the San
21 Francisco Bay Area. The representative knew that Aliyev worked at the Mill Valley facility as
22 well as 4 Less Smog Check located in San Mateo ("San Mateo facility"). The ETMIS showed
23 that Aliyev worked primarily at the Mill Valley facility. At approximately 0925 hours that same
24 day, the representative conducted a surveillance operation of the San Mateo facility and observed
25 Aliyev and another male in the parking area. The representative called the Bureau's San
26 Francisco field office and received information that between 0926 and 0942 hours, a smog
27 inspection had been performed on a 1997 Toyota RAV 4, License No. 3UAA991, on behalf of
28 Respondent Hojaguliyev at the Mill Valley facility, using Aliyev's confidential access code,

1 resulting in the issuance of electronic smog Certificate of Compliance No. OI314955C. At
2 approximately 1000 hours, the representative drove into the parking lot of the San Mateo facility.
3 The representative went to the testing bay and was greeted by Aliyev. The representative told
4 Aliyev that he thought Aliyev was working at the Mill Valley facility. Aliyev stated that he was
5 working at the Mill Valley facility, but had just arrived in San Mateo from Mill Valley. The
6 representative asked Aliyev if he had performed any smog inspections that day. Aliyev stated
7 that he had conducted an inspection at the Mill Valley facility around 0930 hours. The
8 representative told Aliyev that he had been observing the San Mateo facility between 0925 and
9 0955 hours and had taken photographs of Aliyev in front of the shop. Aliyev admitted that his
10 brother had his confidential access code and had performed the smog inspection that morning at
11 the Mill Valley facility.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 24. Respondent Hojaguliyev's ARD registration is subject to disciplinary action pursuant
15 to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent Hojaguliyev made or
16 authorized a statement which he knew or in the exercise of reasonable care should have known to
17 be untrue or misleading, as follows: Respondent Hojaguliyev's unlicensed technician, Samin,
18 certified that Respondent Aliyev had performed the smog inspection on the 1997 Toyota RAV 4.
19 In fact, Samin accessed the EIS using Aliyev's confidential access code, with Aliyev's knowledge
20 and permission, and conducted the smog inspection on the vehicle.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 25. Respondent Hojaguliyev's ARD registration is subject to disciplinary action pursuant
24 to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent Hojaguliyev
25 committed an act that constitutes fraud by issuing an electronic smog certificate of compliance for
26 the 1997 Toyota RAV 4 without ensuring that a bona fide inspection was performed of the
27 emission control devices and systems on the vehicle, thereby depriving the People of the State of
28 California of the protection afforded by the Motor Vehicle Inspection Program.

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 26. Respondent Hojaguliyev's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent Hojaguliyev
5 failed to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent Hojaguliyev failed to ensure that the emission control
7 tests were performed on the 1997 Toyota RAV 4 in accordance with procedures prescribed by the
8 department.

9 b. **Section 44014, subdivision (a):** Respondent Hojaguliyev authorized or permitted
10 Respondent Aliyev's brother, Samin, to conduct the smog inspection on the 1997 Toyota RAV 4
11 when, in fact, Samin was not licensed as a smog check technician.

12 c. **Section 44015:** Respondent Hojaguliyev issued an electronic smog certificate of
13 compliance for the 1997 Toyota RAV 4 without ensuring that the vehicle was properly tested and
14 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**
17 **to the Motor Vehicle Inspection Program)**

18 27. Respondent Hojaguliyev's smog check station license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent Hojaguliyev
20 failed to comply with provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.35, subdivision (c):** Respondent Hojaguliyev issued an electronic
22 smog certificate of compliance for the 1997 Toyota RAV 4 even though the vehicle had not been
23 inspected in accordance with section 3340.42.

24 b. **Section 3340.41, subdivision (b):** Respondent Hojaguliyev authorized or permitted
25 Respondent Aliyev's brother, Samin, to access the EIS using Aliyev's technician license and
26 confidential access code and to enter false information into the unit concerning the identity of the
27 technician performing the smog test on the 1997 Toyota RAV 4.

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1 c. **Section 3340.42:** Respondent Hojaguliyev failed to ensure that the required smog
2 tests were conducted on the 1997 Toyota RAV 4 in accordance with the Bureau's specifications.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 28. Respondent Hojaguliyev's smog check station license is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent Hojaguliyev
7 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an
8 electronic smog certificate of compliance for the 1997 Toyota RAV 4 without ensuring that a
9 bona fide inspection was performed of the emission control devices and systems on the vehicle,
10 thereby depriving the People of the State of California of the protection afforded by the Motor
11 Vehicle Inspection Program.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Aiding or Abetting Unlicensed Persons)**

14 29. Respondent Hojaguliyev's smog check station license is subject to disciplinary action
15 pursuant to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent Hojaguliyev
16 aided and abetted Respondent Aliyev's brother, Samin, an unlicensed technician, to evade the
17 provisions of the Motor Vehicle Inspection Program, as set forth above.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 30. Respondent Aliyev's technician license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
22 section 44014, subdivision (a), of that Code, as follows: Respondent authorized or permitted his
23 brother, Samin, to conduct the smog inspection on the 1997 Toyota RAV 4 when, in fact, Samin
24 was not licensed as a smog check technician.

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9. Revoking or suspending Advanced Emission Specialist Technician License Number EA 147215, issued to Ramin Aliyev;

10. Ordering Ramin Aliyev and Toyli Hojagulyev to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3;

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

DATED: November 16, 2012

John Wallauch by Jorge Balatti
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SF2012401239