

BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**KSE ENTERPRISES INC.,  
dba AMERICAN AUTO CARE TIRES & SMOG  
KURT WILLIAM ECCLEFIELD, PRES./CFO  
SHAWNA JEANNE ECCLEFIELD, SECTY**

26440 Jefferson Ave. #D  
Murrieta, CA 92562

Automotive Repair Dealer Registration  
No. ARD 257989  
Smog Check Station License  
No. TC 257989

Case No. 79/12-93

Respondent.

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 12/26/12.

DATED: December 4, 2012

  
\_\_\_\_\_  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 LAURO A. PAREDES  
Deputy Attorney General  
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*Attorneys for Complainant*

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9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
**STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. 79/12-93

13 **KSE ENTERPRISES INC.,**  
14 **dba AMERICAN AUTO CARE TIRES & SMOG**  
**KURT WILLIAM ECCLEFIELD, PRES./CFO**  
15 **SHAWNA JEANNE ECCLEFIELD, SECTY**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

16 **26440 Jefferson Ave. #D**  
**Murrieta, CA 92562**

17 **Automotive Repair Dealer Reg. No. ARD 257989**  
18 **Smog Check Station license No. TC 257989**

19 Respondent.  
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21 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
22 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of  
23 Automotive Repair the parties hereby agree to the following Stipulated Settlement and  
24 Disciplinary Order which will be submitted to the Director for her approval and adoption as the  
25 final disposition of Accusation No. 79/12-93.

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1 **PARTIES**

2 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He  
3 brought this action solely in his official capacity and is represented in this matter by Kamala D.  
4 Harris, Attorney General of the State of California, by Lauro A. Paredes, Deputy Attorney  
5 General.

6 2. Respondent KSE Enterprises Inc., dba American Auto Care Tires & Smog  
7 (Respondent) is representing itself in this proceeding and has chosen not to exercise its right to be  
8 represented by counsel.

9 3. On or about May 1, 2009 the Bureau of Automotive Repair issued Automotive Repair  
10 Dealer Registration No. ARD 257989 to KSE Enterprises Inc., dba American Auto Care Tires &  
11 Smog (Respondent). The Automotive Repair Dealer Registration was in full force and effect at  
12 all times relevant to the charges brought in Accusation No. 79/12-93 and will expire on April 30,  
13 2012, unless renewed.

14 4. On or about May 4, 2009, the Bureau of Automotive Repair issued Smog Check-Test  
15 Only Station license No. TC 257989 to KSE Enterprises Inc., dba American Auto Care Tires &  
16 Smog (Respondent). The Smog Check-Test Only Station license was in full force and effect at  
17 all times relevant to the charges brought in Accusation No. 79/12-93 and will expire on April 30,  
18 2012, unless renewed.

19 **JURISDICTION**

20 5. Accusation No. 79/12-93 was filed before the Director of Consumer Affairs  
21 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against  
22 Respondent. The Accusation and all other statutorily required documents were properly served  
23 on Respondent on April 4, 2012. Respondent timely filed its Notice of Defense contesting the  
24 Accusation.

25 6. A copy of Accusation No. 79/12-93 is attached as exhibit A and incorporated herein  
26 by reference.

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1 for this paragraph, it shall be inadmissible in any legal action between the parties, and the  
2 Director shall not be disqualified from further action by having considered this matter.

3 13. The parties understand and agree that facsimile copies of this Stipulated Settlement  
4 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
5 effect as the originals.

6 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
7 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
8 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
9 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
10 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
11 writing executed by an authorized representative of each of the parties.

12 15. In consideration of the foregoing admissions and stipulations, the parties agree that  
13 the Director may, without further notice or formal proceeding, issue and enter the following  
14 Disciplinary Order:

15 **DISCIPLINARY ORDER**

16 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 257989  
17 and Smog Check-Test Only Station license No. TC 257989, issued to Respondent KSE  
18 Enterprises Inc., dba American Auto Care Tires & Smog (Respondent) are revoked. However,  
19 the revocation is stayed and Respondent is placed on probation for three (3) years on the  
20 following terms and conditions.

21 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 257989 issued  
22 to Respondent KSE Enterprises Inc., dba American Auto Care Tires & Smog is suspended for  
23 three (3) consecutive days beginning on the effective date of this decision.

24 2. **Actual Suspension.** Smog Check-Test Only Station license No. TC 257989 issued to  
25 Respondent KSE Enterprises Inc., dba American Auto Care Tires & Smog is suspended for five  
26 (5) consecutive days beginning on the effective date of this decision.

27 3. **Obey All Laws.** Comply with all statutes, regulations and rules governing  
28 automotive inspections, estimates and repairs.

1           4.    **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning  
2 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be  
3 conspicuously displayed in a location open to and frequented by customers and shall remain  
4 posted during the entire period of actual suspension.

5           5.    **Reporting.** Respondent or Respondent's authorized representative must report in  
6 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the  
7 Bureau, but no more frequently than each quarter, on the methods used and success achieved in  
8 maintaining compliance with the terms and conditions of probation.

9           6.    **Report Financial Interest.** Within 30 days of the effective date of this action, report  
10 any financial interest which any partners, officers, or owners of the Respondent facility may have  
11 in any other business required to be registered pursuant to Section 9884.6 of the Business and  
12 Professions Code.

13           7.    **Random Inspections.** Provide Bureau representatives unrestricted access to inspect  
14 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

15           8.    **Jurisdiction.** If an accusation is filed against Respondent during the term of  
16 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter  
17 until the final decision on the accusation, and the period of probation shall be extended until such  
18 decision.

19           9.    **Violation of Probation.** Should the Director of Consumer Affairs determine that  
20 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
21 after giving notice and opportunity to be heard temporarily or permanently invalidate the license  
22 and registrations issued to Respondent.

23           10. **Cost Recovery.** Payment to the Bureau of the full amount of \$1,580.00 shall be  
24 received no later than 12 months before probation terminates. Respondent may pay costs in 24  
25 equal monthly installments. Failure to complete payment of cost recovery within this time frame  
26 shall constitute a violation of probation which may subject Respondent's registration and license

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1 to outright revocation; however, the Director or the Director's Bureau of Automotive Repair  
2 designee may elect to continue probation until such time as reimbursement of the entire cost  
3 recovery amount has been made to the Bureau.

4 **ACCEPTANCE**

5 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
6 stipulation and the effect it will have on my Automotive Repair Dealer Registration, and Smog  
7 Check-Test Only Station license. I enter into this Stipulated Settlement and Disciplinary Order  
8 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
9 Director of Consumer Affairs.

10  
11 DATED:

8/30/12



KSE ENTERPRISES INC., DBA AMERICAN AUTO  
CARE TIRES & SMOG  
By KURT WILLIAM ECCLEFIELD, PRES./CFO  
*Respondent*

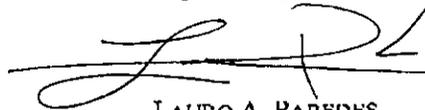
15 **ENDORSEMENT**

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
17 submitted for consideration by the Director of Consumer Affairs.

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19 Dated:

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
LINDA K. SCHNEIDER  
Supervising Deputy Attorney General



LAURO A. PAREDES  
Deputy Attorney General  
*Attorneys for Complainant*

**Exhibit A**

**Accusation No. 79/12-93**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
4 State Bar No. 132645  
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7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
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15 **KURT WILLIAM ECCLEFIELD, PRES./CFO**  
16 **SHAWNA JEANNE ECCLEFIELD, SECTY**  
26440 Jefferson Avenue, #D  
17 Murrieta, CA 92562  
Automotive Repair Dealer Reg. No. ARD 257989  
Smog Check Station License No. RC 257989

**A C C U S A T I O N**  
(Smog Check)

Respondent.

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19  
20 Complainant alleges:

21 **PARTIES/LICENSE INFORMATION**

- 22 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity  
23 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
- 24 2. On or about May 1, 2009, the Director of Consumer Affairs ("Director") issued  
25 Automotive Repair Dealer Registration Number ARD 257989 ("registration") to KSE Enterprises  
26 Inc. ("Respondent"), doing business as American Auto Care Tires & Smog, with Kurt William  
27 Ecclefield as president and chief financial officer and Shawna Jeanne Ecclefield as secretary.

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1 Respondent's registration was in full force and effect at all times relevant to the charges brought  
2 herein and will expire on April 30, 2012, unless renewed.

3 3. On or about May 4, 2009, the Director issued Smog Check Station License Number  
4 RC 257989 to Respondent. Respondent's smog check station license was in full force and effect  
5 at all times relevant to the charges brought herein and will expire on April 30, 2012, unless  
6 renewed.

### 7 JURISDICTION

8 4. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that  
9 the Director may revoke an automotive repair dealer registration.

10 5. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a  
11 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary  
12 proceeding against an automotive repair dealer or to render a decision temporarily or permanently  
13 invalidating (revoking or suspending) a registration.

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

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

### 21 STATUTORY PROVISIONS

22 8. Bus. & Prof. Code section 9884.7 states, in pertinent part:

23 (a) The director, where the automotive repair dealer cannot show there  
24 was a bona fide error, may deny, suspend, revoke, or place on probation the  
25 registration of an automotive repair dealer for any of the following acts or omissions  
26 related to the 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.

27 (1) Making or authorizing in any manner or by any means whatever any  
28 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 or regulations adopted pursuant to it.

....

(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.

9. Bus. & Prof. 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.”

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

11. 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 . . .

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

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1 **COST RECOVERY**

2 13. 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 **UNDERCOVER OPERATION: 1999 TOYOTA SIENNA**

7 14. On October 3, 2011, an undercover operator with the Bureau ("operator") took the  
8 Bureau's 1999 Toyota Sienna to Respondent's facility and requested a smog inspection. The fuel  
9 evaporative (EVAP) canister had been removed from the Bureau-documented vehicle. The  
10 operator was not provided with a written estimate for the inspection. After the inspection was  
11 completed, the operator paid the facility \$35.20 and received copies of an invoice and a vehicle  
12 inspection report. The vehicle inspection report indicated that the smog inspection was  
13 performed by Respondent's smog check technician, Antonio Orozco, resulting in the issuance of  
14 electronic smog Certificate of Compliance No. WZ447671C.

15 15. On October 4, 2011, the Bureau inspected the vehicle and found that the fuel  
16 evaporative canister was still missing.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 16. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
20 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which  
21 it knew, or in the exercise of reasonable care should have known to be untrue or misleading, as  
22 follows: Respondent's smog check technician, Antonio Orozco, certified under penalty of perjury  
23 on the vehicle inspection report that the Bureau's 1999 Toyota Sienna had passed the smog  
24 inspection and was in compliance with applicable laws and regulations. In fact, the fuel  
25 evaporative canister had been removed from the vehicle and as such, the vehicle would not pass  
26 the inspection required by Health & Saf. Code section 44012.

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1 or about August 26, 2009, Respondent issued a certificate of compliance to a Bureau undercover  
2 vehicle with a missing fuel evaporative charcoal canister. The Bureau assessed civil penalties  
3 totaling \$500 against Respondent for the violations. Respondent paid the fine on December 7,  
4 2009.

5 b. On or about April 7, 2010, the Bureau issued Citation No. C2010-1045 against  
6 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
7 perform a visual/functional check of emission control devices according to procedures prescribed  
8 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance  
9 to a vehicle that was improperly tested). On or about February 25, 2010, Respondent issued a  
10 certificate of compliance to a Bureau undercover vehicle with a missing fuel evaporative charcoal  
11 canister. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the  
12 violations. Respondent paid the fine on June 14, 2010.

13 c. On or about November 8, 2010, the Bureau issued Citation No. C2011-0594 against  
14 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
15 perform a visual/functional check of emission control devices according to procedures prescribed  
16 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance  
17 to a vehicle that was improperly tested). On or about October 13, 2010, Respondent issued a  
18 certificate of compliance to a Bureau undercover vehicle with a missing positive crankcase  
19 ventilation system. The Bureau assessed civil penalties totaling \$2,500 against Respondent for  
20 the violations. Respondent paid the fine on December 28, 2010.

#### 21 OTHER MATTERS

22 23. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
23 suspend, revoke, or place on probation the registration for all places of business operated in this  
24 state by Respondent KSE Enterprises, Inc., doing business as American Auto Care Tires & Smog,  
25 upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations  
26 of the laws and regulations pertaining to an automotive repair dealer.

27 24. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License  
28 Number RC 257989, issued to Respondent KSE Enterprises, Inc., doing business as American

1 Auto Care Tires & Smog, is revoked or suspended, any additional license issued under this  
2 chapter in the name of said licensee may be likewise revoked or suspended by the director.

3 PRAYER

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

- 6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
7 257989, issued to KSE Enterprises, Inc., doing business as American Auto Care Tires & Smog;
- 8 2. Revoking or suspending any other automotive repair dealer registration issued to KSE  
9 Enterprises, Inc.;
- 10 3. Revoking or suspending Smog Check Station License Number RC 257989, issued to  
11 KSE Enterprises, Inc., doing business as American Auto Care Tires & Smog;
- 12 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
13 and Safety Code in the name of KSE Enterprises, Inc.;
- 14 5. Ordering KSE Enterprises, Inc., doing business as American Auto Care Tires &  
15 Smog, to pay the Director of Consumer Affairs the reasonable costs of the investigation and  
16 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 17 6. Taking such other and further action as deemed necessary and proper.

18  
19 DATED: 3/6/12

20 *John Wallauch by Doug Balati*  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
Complainant  
ASSIST. CHIEF

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