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7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **SMOG KING**
13 **807-L Davis Street**
Vacaville, CA 95688
14 **Mailing Address:**
2901 Montclair Way
Fairfield, CA 94534
15 **KHALED JARADA, OWNER**
Automotive Repair Dealer Registration No.
16 **ARD 261857**
Smog Check Test Only Station License No.
17 **TC 261857**
18 **and**
19 **RENE TINOCO SERVIN**
70 Cuvaision Lane
20 **American Canyon, CA 94503**
Advanced Emission Specialist Technician
21 **License No. EA 632042**
22 **and**
23 **KHALED JARADA**
2901 Montclair Way
24 **Fairfield, CA 94534**
Advanced Emission Specialist Technician
25 **License No. EA 632536**

Case No. 79/11-77

ACCUSATION
SMOG CHECK

26 Respondents.

28 Complainant alleges:

1 PARTIES

2 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
3 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
4

5 **Automotive Repair Dealer Registration**

6 2. On or about May 5, 2010, the Bureau issued Automotive Repair Dealer Registration
7 Number ARD 261857 ("registration") to Khaled Jarada doing business as Smog King
8 ("Respondent Smog King"). The registration was in full force and effect at all times relevant to
9 the charges brought herein and will expire on April 30, 2011, unless renewed.

10 **Smog Check Test Only Station License**

11 3. On or about July 14, 2010, the Bureau issued Smog Check Test Only Station License
12 Number TC 261857 ("station license") to Smog King. The station license was in full force and
13 effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless
14 renewed.

15 **Advanced Emission Specialist Technician License - Servin**

16 4. On or about May 5, 2010, the Bureau issued Advanced Emission Specialist
17 Technician License Number EA 632042 ("technician license") to Rene Tinoco Servin
18 ("Respondent Servin"). The technician license was in full force and effect at all times relevant to
19 the charges brought herein and will expire on September 30, 2012, unless renewed.

20 **Advanced Emission Specialist Technician License - Jarada**

21 5. On or about September 29, 2010, the Bureau issued Advanced Emission Specialist
22 Technician License Number EA 632536 ("technician license") to Khaled Jarada ("Respondent
23 Jarada"). The technician license was in full force and effect at all times relevant to the charges
24 brought herein and will expire on January 31, 2013, unless renewed.

25 STATUTORY PROVISIONS

26 6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
27 part:
28

1 (a) The director, where the automotive repair dealer cannot show there
2 was a bona fide error, may refuse to validate, or may invalidate temporarily or
3 permanently, the registration of an automotive repair dealer for any of the following
4 acts or omissions related to the conduct of the business of the automotive repair
5 dealer, which are done by the automotive repair dealer or any automotive technician,
6 employee, partner, officer, or member of the automotive repair dealer.

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

10 (4) Any other conduct which constitutes fraud.

11 (b) Except as provided for in subdivision (c), if an automotive repair
12 dealer operates more than one place of business in this state, the director pursuant to
13 subdivision (a) shall only invalidate temporarily or permanently the registration of the
14 specific place of business which has violated any of the provisions of this chapter.
15 This violation, or action by the director, shall not affect in any manner the right of the
16 automotive repair dealer to operate his or her other places of business.

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

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

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

9. Section 44002 of the Health and Safety Code 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.

10. Section 44072.2 of the Health and Safety Code 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:

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

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

4 (d) Commits any act involving dishonesty, fraud, or deceit whereby
5 another is injured.

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

10 12. Section 44072.8 of the Health and Safety Code states:

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

13 **COST RECOVERY**

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

18 **FACTUAL BACKGROUND**

19 14. From November 17, 2010, to January 19, 2011, the Bureau conducted a detailed
20 review of the Vehicle Information Database ("VID") for all smog inspections performed at
21 Respondent Smog King's facility located in Vacaville, California, for the period August 17, 2010,
22 through November 17, 2010. The VID showed that thirty four (34) different vehicles were all
23 certified with the same diagnostic trouble code stored in memory of the power train control
24 module ("PCM") while the original equipment manufacturer ("OEM") service information shows
25 these vehicles do not support the pending code stored in the PCM memory. The vehicles

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1 receiving smog certificates were not tested during the OBD II functional test¹ and another vehicle
 2 was used, constituting clean plugging. Further, Respondent Smog King certified four (4)
 3 additional vehicles with two pending OBD II codes for each vehicle stored in the PCM. The
 4 smog inspections for vehicles 1 through 32 and vehicles 34 through 38 were performed by
 5 Respondent Servin. The smog inspection for vehicle 33 was performed by Respondent Jarada.

6 **TABLE 1**

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Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.	Technician
1. 8/17/2010 1607 – 1619 hours	1999 Chevrolet Blazer, License No. 4RGX338	NW318856C	Servin
2. 8/20/2010 1156 – 1204 hours	2003 Chevrolet Cavalier, VIN #1G1JF52F637217199	NW318897C	Servin
3. 8/24/2010 1528 – 1536 hours	2001 Pontiac Grand Am, License No. 4PUH389	NW376585C	Servin
4. 8/30/2010 1127 – 1133 hours	2001 Chevrolet Monte Carlo, License No. 5GHL381	NW442291C	Servin
5. 9/1/2011 1357 – 1404 hours	1996 Cadillac Eldorado, VIN #1G6EL12Y1TU616022	NW513830C	Servin
6. 9/4/2010 1834 – 1841 hours	1997 Chevrolet Astro, License No. 3WCZ096	NW578937C	Servin
7. 9/8/2010 1611 – 1622 hours	1998 Buick Lesabre, License No. 6JAA855	NW615563C	Servin
8. 9/10/2010 1625 – 1633 hours	1996 Chevrolet C1500, License No. 5WYL504	NW615588C	Servin

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22 ¹ The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97
 23 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from
 24 the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through
 25 the DLC, the BAR-97 analyzer automatically retrieves 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.

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

1	9. 9/15/2010 1607 - 1613 Hours	2002 Chevrolet C1500, License No. 4UNP827	NW696580C	Servin
2	10. 9/24/2010 1808 - 1813 Hours	2000 Chevrolet Impala, License No. 4PBP672	NW819889C	Servin
3	11. 9/29/2010 1011 - 1017 hours	2000 Buick Park Avenue, VIN # 1G4CW52K2Y4126254	NW880681C	Servin
4	12. 9/29/2010 1549 - 1559 hours	1999 Cadillac Eldorado, VIN # 1G6EL12Y8XU610093	NW880686C	Servin
5	13. 8/19/2010 1019 - 1028 hours	2005 Dodge Ram 1500, VIN # 1D7HA18N25S188480	NW318878C	Servin
6	14. 8/19/2010 1618 - 1625 hours	2002 Toyota Rav4, License No. 4YUJ185	NW318887C	Servin
7	15. 8/23/2010 1115 - 1130 hours	1998 Ford Expedition, License No. 5ARP795	NW376569C	Servin
8	16. 8/24/2010 1303 - 1310 hours	2006 Dodge Charger, VIN # 2B3KA53H26H283737.	NW 376578C	Servin
9	17. 8/25/2010 1648 - 1654 hours	2000 Daewoo Leganza, License No. 4LYM018	NW442255C	Servin
10	18. 8/26/2010 1521 - 1528 hours	2005 Chrysler Sebring, License No. 5MEC589	NW442261C	Servin
11	19. 8/28/2010 1554 - 1601 hours	2002 Pontiac Montana, License No. 4YTJ905	NW442284C	Servin
12	20. 9/2/2010 1547 - 1554 hours	2001 Chrysler PT Cruiser, VIN # 3C8FY4BB91T578111	NW513844C	Servin
13	21. 9/3/2010 1240 - 1248 hours	2010 Chrysler 300C, VIN # 2C3CA4CDXAH105498	NW578913C	Servin
14	22. 9/14/2010 1239 - 1246 Hours	2002 Dodge Neon, VIN No. 1B3ES46C02D526280	NW696558C	Servin
15	23. 9/14/2010 1326 - 1332 hours	2003 Jeep Liberty, VIN No. 1J4GL48K83W659085	NW696560C	Servin
16	24. 9/14/2010 1503 - 1510 hours	2004 Chrysler Sebring, License No. 5ZYK419	NW696567C	Servin
17	25. 9/16/2010 1745 - 1750 hours	1996 Volkswagen Cabrio, License No. 6EEV184	NW696598C	Servin
18	26. 9/25/2010 1554 - 1604 hours	2007 Chevrolet Trailblazer, VIN No. 1GNDS13S272104235	NW880654C	Servin
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1	27. 9/29/2010 1716 - 1724 hours	2005 Dodge Ram 1500, License No. 7U58461	NW880688C	Servin
2	28. 10/2/2010 1220 - 1227 hours	2004 Jeep Wrangler, VIN No. 1J4FA39S44P722348	NW944391C	Servin
3	29. 10/2/2010 1255 - 1300 hours	2001 Ford Mustang, License No. 4RPM320	NW944392C	Servin
4	30. 10/5/2010 0939 - 0948 hours	2001 Nissan Altima, License No. 4RWD173	NW982664C	Servin
5	31. 10/7/2010 1123 - 1132 hours	2001 Volkswagen New Beetle, License No. 1BG4ME	NW982683C	Servin
6	32. 10/13/2010 0859 - 0904 hours	2002 Ford Mustang, License No. 4ZEP271	NY090413C	Servin
7	33. 10/14/2010 1748 - 1754 hours	2002 Dodge Neon, License No. 4SPX317	NY140751C	Jarada
8	34. 10/15/2010 1022 - 1031 hours	2002 Kia Sportage, VIN No. KNDJA723925124999	NY140755C	Servin
9	35. 11/16/2010 1325 - 1333 hours	2004 Dodge Ram 1500, VIN No. ID7HA18D74S633754	NY555372C	Servin
10	36. 9/10/2010 1757 - 1807 hours	1998 GMC Explorer, License No. 4CRP314	NW615590C	Servin
11	37. 9/11/2010 1122 - 1136 hours	2006 Chrysler 300C, License No. 5MEJ691	NW615594C	Servin
12	38. 9/11/2010 1744 - 1749 hours	1996 Nissan 240SX, License No. 3SXV845	NW696552C	Servin

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

15. Respondent Smog King has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 17, 2010, through November 16, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading as follows: Respondent Smog King certified that vehicles 1 through 38, identified in Table 1, above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Smog King conducted the inspections on those vehicles using clean plugging methods by substituting or using different vehicles during the

1 OBD II functional tests in order to issue smog certificates of compliance for the 38 vehicles, and
2 did not test or inspect those vehicles as required by Health and Safety Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 16. Respondent Smog King has subjected his registration to discipline under Code
6 section 9884.7, subdivision (a)(4), in that on or about August 17, 2010, through November 16,
7 2010, he committed acts which constitute fraud by issuing electronic certificates of compliance
8 for vehicles 1 through 38, identified in Table 1, above, without performing bona fide inspections
9 of the emission control devices and systems on those vehicles, thereby depriving the People of the
10 State of California of the protection afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 17. Respondent Smog King has subjected his station license to discipline under Health
14 and Safety Code section 44072.2, subdivision (a), in that on or about August 17, 2010, through
15 November 16, 2010, regarding vehicles 1 through 38, identified in Table 1, above, he violated
16 sections of that Code, as follows:

17 a. **Section 44012:** Respondent Smog King failed to ensure that the emission control
18 tests were performed on those vehicles in accordance with procedures prescribed by the
19 department.

20 b. **Section 44015:** Respondent Smog King issued electronic certificates of compliance
21 for those vehicles without ensuring that the vehicles were properly tested and inspected to
22 determine if they were in compliance with Health and Safety Code section 44012.

23 c. **Section 44059:** Respondent Smog King willfully made false entries for the electronic
24 certificates of compliance by certifying that those vehicles had been inspected as required when,
25 in fact, they had not.

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1 November 16, 2010, regarding vehicles 1 through 32 and vehicles 34 through 38, identified in
2 Table 1, above, Respondent Servin failed to comply with section 44012 of that Code in a material
3 respect, as follows: Respondent Servin failed to perform the emission control tests on those
4 vehicles in accordance with procedures prescribed by the department.

5 **SEVENTH CAUSE FOR DISCIPLINE**

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

7 21. Respondent Servin has subjected his technician license to discipline under Health and
8 Safety Code section 44072.2, subdivision (c), in that on or about August 17, 2010, through
9 November 16, 2010, regarding vehicles 1 through 32 and vehicles 34 through 38, identified in
10 Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

11 a. **Section 3340.24, subdivision (c):** Respondent Servin falsely or fraudulently issued
12 electronic certificates of compliance without performing bona fide inspections of the emission
13 control devices and systems on those vehicles as required by Health and Safety Code section
14 44012.

15 b. **Section 3340.30, subdivision (a):** Respondent Servin failed to inspect and test those
16 vehicles in accordance with Health and Safety Code section 44012.

17 c. **Section 3340.42:** Respondent Servin failed to conduct the required smog tests and
18 inspections on those vehicles in accordance with the Bureau's specifications.

19 **EIGHTH CAUSE FOR DISCIPLINE**

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

21 22. Respondent Servin has subjected his technician license to discipline under Health and
22 Safety Code section 44072.2, subdivision (d), in that on or about August 17, 2010, through
23 November 16, 2010, regarding vehicles 1 through 32 and vehicles 34 through 38, identified in
24 Table 1, above, he committed acts involving dishonesty, fraud or deceit whereby another was
25 injured by issuing electronic certificates of compliance without performing bona fide inspections
26 of the emission control devices and systems on those vehicles, thereby depriving the People of the
27 State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 vehicle, thereby depriving the People of the State of California of the protection afforded by the
2 Motor Vehicle Inspection Program.

3 **OTHER MATTERS**

4 26. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
5 or may invalidate temporarily or permanently, the registrations for all places of business operated
6 in this state by Khaled Jarada doing business as Smog King upon a finding that he has, or is,
7 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
8 automotive repair dealer.

9 27. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
10 License Number TC 261857, issued to Khaled Jarada doing business as Smog King, is revoked or
11 suspended, any additional license issued under this chapter in the name of said licensee, including
12 but not limited to Advanced Emission Specialist Technician License Number EA 632536, may be
13 likewise revoked or suspended by the director.

14 28. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
15 Technician License Number EA 632042, issued to Rene Tinoco Servin, is revoked or suspended,
16 any additional license issued under this chapter in the name of said licensee may be likewise
17 revoked or suspended by the director.

18 **PRAYER**

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

21 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
22 Registration Number ARD 261857, issued to Khaled Jarada doing business as Smog King;

23 2. Revoking, suspending, or placing on probation any other automotive repair dealer
24 registration issued in the name Khaled Jarada;

25 3. Revoking or suspending Smog Check Test Only Station License Number TC 261857,
26 issued to Khaled Jarada doing business as Smog King;

1 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Khaled Jarada, including but not limited to Advanced Emission
3 Specialist Technician License Number EA 632536;

4 5. Revoking or suspending Advanced Emission Specialist Technician License Number
5 EA 632042, issued to Rene Tinoco Servin;

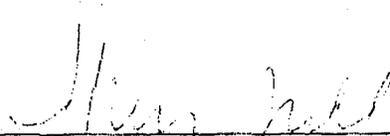
6 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
7 and Safety Code in the name of Rene Tinoco Servin;

8 7. Ordering Khaled Jarada and Rene Tinoco Servin to pay the Bureau of Automotive
9 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to
10 Business and Professions Code section 125.3; and,

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

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13
14 DATED: _____

3/17/11



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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