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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. 77/16-49

12 **KHAN BROTHERS INC.**  
13 **dba MIDAS**  
14 **4224 Monterey Highway**  
15 **San Jose CA 95111**  
16 **SHER KHAN- President/Secretary**  
17 **FAYAZ ASGHAR- SECRETARY**  
  
18 **Automotive Repair Dealer No. ARD 263654**  
**Smog Check Station License No. RC 263654**  
  
19 Respondent.

**A C C U S A T I O N**

20 Complainant alleges:

**PARTIES**

21 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as  
22 the Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs.

23 2. On or about November 23, 2010, the Bureau of Automotive Repair issued  
24 Automotive Dealer Registration Number ARD 263654 to Khan Brothers Inc. (Respondent) dba  
25 Midas. The Automotive Dealer Registration was in full force and effect at all times relevant to  
26 the charges brought herein and will expire on November 30, 2016, unless renewed.

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1 3. On or about September 12, 2011, the Bureau of Automotive Repair issued Smog  
2 Check Station License Number RC 263654 to Respondent. The Smog Check Station License was  
3 in full force and effect at all times relevant to the charges brought herein and will expire on  
4 November 30, 2016, unless renewed.

5 4. On or about January 7, 2013, Respondent was STAR certified.

6 **JURISDICTION**

7 5. This Accusation is brought before the Director of the Department of Consumer  
8 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.  
9 All section references are to the Business and Professions Code unless otherwise indicated.

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

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

18 **STATUTORY PROVISIONS**

19 8. Section 9884.7 of the Code states:

20 "(a) The director, where the automotive repair dealer cannot show there was a bona fide  
21 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair  
22 dealer for any of the following acts or omissions related to the conduct of the business of the  
23 automotive repair dealer, which are done by the automotive repair dealer or any automotive  
24 technician, employee, partner, officer, or member of the automotive repair dealer.

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

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1 (2) Causing or allowing a customer to sign any work order that does not state the repairs  
2 requested by the customer or the automobile's odometer reading at the time of repair.

3 (3) Failing or refusing to give to a customer a copy of any document requiring his or her  
4 signature, as soon as the customer signs the document.

5 (4) Any other conduct which constitutes fraud.

6 (5) Conduct constituting gross negligence.

7 (6) Failure in any material respect to comply with the provisions of this chapter or  
8 regulations adopted pursuant to it.

9 (7) Any willful departure from or disregard of accepted trade standards for good and  
10 workmanlike repair in any material respect, which is prejudicial to another without consent of the  
11 owner or his or her duly authorized representative.

12 (8) Making false promises of a character likely to influence, persuade, or induce a customer  
13 to authorize the repair, service, or maintenance of automobiles.

14 ...

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

19 9. Section 9884.8 of the Code states:

20 "All work done by an automotive repair dealer, including all warranty work, shall be  
21 recorded on an invoice and shall describe all service work done and parts supplied. Service work  
22 and parts shall be listed separately on the invoice, which shall also state separately the subtotal  
23 prices for service work and for parts, not including sales tax, and shall state separately the sales  
24 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice  
25 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt  
26 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a  
27 statement indicating whether any crash parts are original equipment manufacturer crash parts of

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1 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be  
2 given to the customer and one copy shall be retained by the automotive repair dealer."

3 10. Section 9884.9 of the Code states:

4 "(a) The automotive repair dealer shall give to the customer a written estimated price for  
5 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue  
6 before authorization to proceed is obtained from the customer. No charge shall be made for work  
7 done or parts supplied in excess of the estimated price without the oral or written consent of the  
8 customer that shall be obtained at some time after it is determined that the estimated price is  
9 insufficient and before the work not estimated is done or the parts not estimated are supplied.  
10 Written consent or authorization for an increase in the original estimated price may be provided  
11 by electronic mail or facsimile transmission from the customer. The bureau may specify in  
12 regulation the procedures to be followed by an automotive repair dealer if an authorization or  
13 consent for an increase in the original estimated price is provided by electronic mail or facsimile  
14 transmission. If that consent is oral, the dealer shall make a notation on the work order of the date,  
15 time, name of person authorizing the additional repairs and telephone number called, if any,  
16 together with a specification of the additional parts and labor and the total additional cost, and  
17 shall do either of the following:

18 "(1) Make a notation on the invoice of the same facts set forth in the notation on the work  
19 order.

20 "(2) Upon completion of the repairs, obtain the customer's signature or initials to an  
21 acknowledgment of notice and consent, if there is an oral consent of the customer to additional  
22 repairs, in the following language:

23 "I acknowledge notice and oral approval of an increase in the original estimated price.

24 \_\_\_\_\_

25 (signature or initials)"

26 "Nothing in this section shall be construed as requiring an automotive repair dealer to give a  
27 written estimated price if the dealer does not agree to perform the requested repair.

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1           "(b) The automotive repair dealer shall include with the written estimated price a statement  
2 of any automotive repair service that, if required to be done, will be done by someone other than  
3 the dealer or his or her employees. No service shall be done by other than the dealer or his or her  
4 employees without the consent of the customer, unless the customer cannot reasonably be  
5 notified. The dealer shall be responsible, in any case, for any service in the same manner as if the  
6 dealer or his or her employees had done the service.

7           "(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto  
8 body or collision repairs, shall provide an itemized written estimate for all parts and labor to the  
9 customer. The estimate shall describe labor and parts separately and shall identify each part,  
10 indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part  
11 shall be identified on the written estimate and the written estimate shall indicate whether the crash  
12 part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer  
13 aftermarket crash part.

14           "(d) A customer may designate another person to authorize work or parts supplied in excess  
15 of the estimated price, if the designation is made in writing at the time that the initial  
16 authorization to proceed is signed by the customer. The bureau may specify in regulation the  
17 form and content of a designation and the procedures to be followed by the automotive repair  
18 dealer in recording the designation. For the purposes of this section, a designee shall not be the  
19 automotive repair dealer providing repair services or an insurer involved in a claim that includes  
20 the motor vehicle being repaired, or an employee or agent or a person acting on behalf of the  
21 dealer or insurer."

22           11. Section 9884.11 of the Code states that "[e]ach automotive repair dealer shall  
23 maintain any records that are required by regulations adopted to carry out this chapter [the  
24 Automotive Repair Act]. Those records shall be open for reasonable inspection by the chief or  
25 other law enforcement officials. All of those records shall be maintained for at least three years."

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1       12. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

- 5                                ...  
6       “(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.  
7                                ...”

8                                **REGULATORY PROVISIONS**

9       13. California Code of Regulations, title 16, section 3353, states:

10       “No work for compensation shall be commenced and no charges shall accrue without  
11 specific authorization from the customer in accordance with the following requirements:

12       “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written  
13 estimated price for labor and parts for a specific job.

14                                ...  
15       “(c) Additional Authorization. The dealer shall obtain the customer's authorization before  
16 any additional work not estimated is done or parts not estimated are supplied. This authorization  
17 shall be in written, oral, or electronic form, and shall describe additional repairs, parts, labor and  
18 the total additional cost.

19       “(1) If the authorization from the customer for additional repairs, parts, or labor in excess  
20 of the written estimated price is obtained orally, the dealer shall also make a notation on the work  
21 order and on the invoice of the date, time, name of the person authorizing the additional repairs,  
22 and the telephone number called, if any, together with the specification of the additional repairs,  
23 parts, labor and the total additional costs.

24                                ...  
25       “(4) The additional repairs, parts, labor, total additional cost, and a statement that the  
26 additional repairs were authorized either orally, or by fax, or by e-mail shall be recorded on the  
27 final invoice to Section 9884.9 of the Business and Professions Code. All documentation must be  
28 retained pursuant to Section 9884.11 of the Business and Professions Code.

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"e) Revising an Itemized Work Order. If the customer has authorized repairs according to a work order on which parts and labor are itemized, the dealer shall not change the method of repair or parts supplied without the written, oral, electronic authorization of the customer. The authorization shall be obtained from the customer as provided in subsection (c) and Section 9884.9 of the Business and Professions Code.

...  
14. California Code of Regulations, title 16, section 3356, states:

"a) All invoices for service and repair work performed, and parts supplied, as provided for in Section 9884.8 of the Business and Professions Code, shall comply with the following:

(1) The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau's records. If the automotive repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b) of Section 3371 of this chapter.

(2) The invoice shall separately list, describe and identify all of the following:

(A) All service and repair work performed, including all diagnostic and warranty work, and the price for each described service and repair.

(B) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part. The description of each part shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

(C) The subtotal price for all service and repair work performed.

(D) The subtotal price for all parts supplied, not including sales tax.

(E) The applicable sales tax, if any.

...  
15. California Code of Regulations, title 16, section 3358, states:

"Each automotive repair dealer shall maintain legible copies of the following records for not less than three years:

1       "(a) All invoices relating to automotive repair including invoices received from other  
2 sources for parts and/or labor.

3       "(b) All written estimates pertaining to work performed.

4       "(c) All work orders and/or contracts for repairs, parts and labor. All such records shall be  
5 open for reasonable inspection and/or reproduction by the bureau or other law enforcement  
6 officials during normal business hours."

7       16. California Code of Regulations, title 16, section 3371, states:

8       "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false  
9 or misleading statement or advertisement which is known to be false or misleading, or which by  
10 the exercise of reasonable care should be known to be false or misleading. Advertisements and  
11 advertising signs shall clearly show the following:

12       "(a) Firm Name and Address. The dealer's firm name and address as they appear on the  
13 State registration certificate as an automotive repair dealer; and

14       "(b) Telephone Number. If a telephone number appears in an advertisement or on an  
15 advertising sign, this number shall be the same number as that listed for the dealer's firm name  
16 and address in the telephone directory, or in the telephone company records if such number is  
17 assigned to the dealer subsequent to the publication of such telephone directory."

18       17. California Code of Regulations, title 16, section 3373, states:

19       "No automotive repair dealer or individual in charge shall, in filling out an  
20 estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this  
21 chapter, withhold therefrom or insert therein any statement or information which will cause any  
22 such document to be false or misleading, or where the tendency or effect thereby would be to  
23 mislead or deceive customers, prospective customers, or the public."

24                                   **COSTS**

25       18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
26 administrative law judge to direct a licentiate found to have committed a violation or violations of  
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
28 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being



1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
2 included in a stipulated settlement.

3 **2002 GMC Yukon**

4 19. On or about June 23, 2015, Customer A took their 2002 GMC Yukon ("Yukon") to  
5 Respondent's Midas shop for repairs. Respondent performed an oil and filter change, differential  
6 fluid service, transfer case oil service, valve cover gasket replacement, cooling system fluid  
7 exchange, power steering fluid exchange, axle seal replacement, serpentine belt replacement and a  
8 brake fluid exchange.

9 20. On or about July 30, 2015, Respondent performed an oil and filter change on the  
10 Yukon. Customer A returned to Respondent's shop on or about August 24, 2015 for an  
11 inspection of a whine noise from the transmission area and no reverse gear operation of the  
12 Yukon. Respondent subsequently replaced the transmission with a used unit as goodwill due to  
13 the fluid being overfilled causing internal damage.

14 21. Customer A returned to Respondent's shop on or about October 22, 2015 where they  
15 replaced the rear main seal, right front axle seal, intake manifold gasket and water pump on the  
16 Yukon.

17 22. Customer A towed the Yukon to Respondent's shop on or about November 25, 2015  
18 due to a no start condition. The Yukon was at Respondent's shop for 6 days before Customer A  
19 was able to pick it up.

20 23. Unbeknownst to Customer A, the Yukon fell off a lift while it was being worked on.  
21 This caused significant damage to the vehicle. Respondent did not inform Customer A that the  
22 Yukon fell off a lift and was damaged. Respondent attempted to fix the damage without  
23 informing Customer A. Respondent worked on the Yukon without Customer A's knowledge or  
24 consent. Respondent did not fix all of the damage to the Yukon.

25 24. Customer A had Respondent perform an oil and filter change on December 7, 2015.

26 25. On or about December 7, 2015, Customer A was contacted by a former employee of  
27 Respondent, who advised Customer A that the Yukon fell of the lift while being worked on in the  
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1 November 25 to December 1, 2015 time period. The former employee forwarded some pictures  
2 of the Yukon to Customer A.

3 26. Customer A returned to Respondent's facility on or about December 8, 2015 and  
4 inquired about the Yukon falling off the lift. Respondent denied that the Yukon fell off the lift.  
5 Only after Customer A showed Respondent the pictures provided by the former employee, did  
6 Respondent acknowledge that the Yukon fell off the lift.

7 27. In or around December, 2016, Customer A filed a complaint with the BAR. A  
8 representative of the BAR contacted Respondent and requested to review the facility's work  
9 orders and invoices for repairs performed on the Yukon from June 2015 through December 2015.  
10 Respondent provided some of the requested documents but did not have all of the documents that  
11 the BAR representative requested. Respondent was required by law and regulation to maintain  
12 and provide all of the documents that were requested by the BAR representative.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Misleading Statements)

15 28. Respondent has subjected its registration to discipline under Code section 9884.7,  
16 subdivision (a)(1), in that it made statements which it knew or which by exercise of reasonable  
17 care should have known were untrue or misleading, as set forth above in paragraphs 23-27.  
18 Respondent denied the Yukon fell off the lift when in fact it did.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Fraud)

21 29. Respondent has subjected its registration to discipline under Code section 9884.7,  
22 subdivision (a)(4), in that it committed acts which constitute fraud, as set forth above in  
23 paragraphs 23-27, above. Respondent attempted to conceal the fact that the Yukon fell off the lift  
24 and was damaged. Respondent worked on the Yukon without customer A's consent to conceal  
25 the damage it caused to the vehicle.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Violations of Statutes and Regulations)

3 30. Respondent has subjected its registration to discipline under Code section 9884.7,  
4 subdivision (a)(6) in that Respondent failed in a material respect to comply with the provisions of  
5 the Automotive Repair Act and the Regulations adopted pursuant to it as follows:

6 a) Respondent violated section 9884.9(a) of the code and California Code of Regulations  
7 Title 16, section 3353(c)(1) in that Respondent failed to document customer authorization for  
8 repairs which exceeded the original estimate. The original estimate for the June 23, 2015 repairs  
9 on the Yukon was for \$25.55. A revised estimate of \$282.08 was signed by customer A. The  
10 revised estimates of \$466.47 and \$748.55 for the June 23, 2015 repairs on the Yukon failed to  
11 include any notations regarding customer authorization.

12 b) Respondent violated section 9884.8 of the code and California Code of Regulations Title  
13 16, section 3356(a) in that Respondent failed to describe the service work performed and the parts  
14 supplied. Respondent failed to separately document/itemize parts used and services rendered in  
15 the repairs of the Yukon beginning on or about August 24, 2015.

16 c) Respondent violated section 9884.8 of the code and California Code of Regulations Title  
17 16, section 3356(a) in that Respondent failed to describe the service work performed and the parts  
18 supplied. Respondent failed to separately document/itemize parts used and services rendered in  
19 the repair of the Yukon on or about October 22, 2015.

20 d) Respondent violated section 9884.9(a) of the code and California Code of Regulations  
21 Title 16, section 3353 in that Respondent failed to obtain authorization to perform repairs on the  
22 Yukon after it fell off the lift in or around November, 2015. Respondent performed repairs on the  
23 Yukon without Customer A's knowledge or consent.

24 e) Respondent violated California Code of Regulations Title 16, sections 3371 and 3373 in  
25 that Respondent created an invoice that was misleading. The December 1, 2015 invoice indicated  
26 that only a fuel pump was removed and replaced on the Yukon. In fact, the Yukon fell off the lift  
27 and numerous additional repairs were performed but not mentioned on the invoice. Respondent  
28 also orally denied that the Yukon off the lift when in fact it did.

1 f) Respondent violated section 9884.11 of the code and California Code of Regulations  
2 Title 16, section 3358 in that Respondent failed to maintain estimates/repair orders for a period of  
3 three years. Respondent failed to maintain all estimates/repair orders involving its work on the  
4 Yukon. Respondent failed to provide work orders/estimates for the August 27, October 22,  
5 November 25-December 1, and December 7, 2015 repairs on the Yukon.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 (Dishonesty, Fraud or Deceit)

8 31. Respondent has subjected its station license to discipline under Health and Safety  
9 Code section 44072.2, subdivision (d), in that it committed acts involving dishonesty, fraud or  
10 deceit, whereby another was injured as set forth above in paragraphs 23-27, above. Respondent  
11 attempted to conceal the fact that the Yukon fell off the lift and was damaged. Respondent  
12 worked on the Yukon without customer A's consent to conceal the damage it caused to the  
13 vehicle. Respondent did not fix the damage that it caused to the Yukon.

14 **2016 UNDERCOVER RUN (CHEVROLET LUMINA)**

15 32. In December 2015, a BAR representative inspected and documented a 1998 Chevrolet  
16 Lumina ("Lumina"). The Lumina's Secondary Ignition System, the Fuel System and Engine  
17 Control System were found to be in good working order. The BAR representative introduced a  
18 malfunction by making an open circuit in the 5 volt reference wire to the Throttle Position Sensor,  
19 Exhaust Gas Recirculation Valve, and Manifold Absolute Pressure Sensor. The open circuit  
20 caused the Check Engine Light (also known as Malfunction Indicator Lamp or "MIL") to  
21 illuminate in the dash. The only repair needed to fix the illuminated Check Engine Light was to  
22 repair the open 5 volt reference wire. The Throttle Position Sensor, Exhaust Gas Recirculation  
23 Valve, and Manifold Absolute Pressure Sensor were in good working order.

24 33. On January 25, 2016, a BAR operator took the Lumina to Respondent's shop and  
25 informed Respondent that the Lumina's Check Engine Light was on and that she needed a smog  
26 check. Respondent informed the operator the Check Engine Light must be diagnosed before the  
27 smog check could be performed. The operator authorized and signed the work order to diagnose  
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1 the check engine light for \$120. The operator was not given a copy of the work order that she  
2 signed.

3 34. Respondent told the operator that the Lumina's Exhaust Gas Recirculation Valve and  
4 Throttle Position Sensor needed to be replaced to repair the Check Engine Light. Respondent told  
5 the operator the parts were not functioning. Respondent told the operator the cost of the repair  
6 would be \$642 plus tax. The operator authorized the repair.

7 35. On January 26, 2016, the BAR operator called Respondent to check on the status of  
8 the Lumina. Respondent told the operator the replacement of the Exhaust Gas Recirculation  
9 Valve and Throttle Position Sensor repaired the check engine light. Respondent told the operator  
10 the smog test was not done and the vehicle must be driven a few days before the smog test could  
11 be performed. Respondent told the operator the water pump is leaking and the engine is leaking  
12 oil. Respondent told the operator: "The leaking water pump may cause stress on the engine  
13 during the smog test and it may not let the vehicle pass the smog test." Respondent told the  
14 operator the cost of the Exhaust Gas Recirculation Valve and Throttle Position Sensor repairs is  
15 \$682.47.

16 36. On January 26, 2016, the BAR operator went to Respondent's shop to pick up the  
17 Lumina. Respondent informed the operator: "If you don't fix the water pump you won't pass  
18 the smog test." Respondent again informed the operator that: "The leaking water pump may put  
19 stress on the engine during the smog test and it may not pass the smog test." Respondent told the  
20 BAR operator it would cost \$400 to repair the water pump. The operator declined these repairs.  
21 The operator paid Respondent \$682.47 for the repairs already performed. Respondent gave the  
22 operator invoice [REDACTED] and a worksheet titled "Co-Brand Visual Courtesy Check [REDACTED]."

23 37. Invoice [REDACTED] states "Estimate Approval:" "Original Approval Date: 1/25/2016  
24 5:35:00 PM Reason: LOWER CONTROL ARM". The operator called the subject at 1330 hours  
25 (01:30 PM) and authorized the Exhaust Gas Recirculation Valve and Throttle Position Sensor  
26 replacement. The operator was not told or asked anything about a lower control arm. The time  
27 recorded on the invoice and the item approved "Lower Control Arm" are false and misleading.

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1 38. The "CoBrand Visual Courtesy Check" sheet lists the following items in need of  
2 service; "wiper blades are torn, engine air filter is restricted, engine oil is leaking, power steering  
3 is leaking, engine coolant is leaking and driveline axle boot is torn". Under the section labeled  
4 "Technician Notes" the following repairs are recommended; "Rec the driver side axle and axle  
5 seal, p/side axle seal, power steering pump leaking, valve covers leaking, tune up, air filter, water  
6 pump leaking also."

7 39. On February 1, 2016, a BAR Representative re-inspected the Lumina using a copy of  
8 the invoice [REDACTED] and Co-Brand Visual Courtesy Check [REDACTED] as references. The  
9 representative found that Respondent's repairs to the Lumina were not necessary to correct the  
10 illuminated Check Engine Light. Specifically, the Exhaust Gas Recirculation Valve and Throttle  
11 Position Sensor did not need to be replaced. The only repair the vehicle required to correct the  
12 illuminated Check Engine Light was to locate and repair the open 5 volt reference wire. The  
13 inspection revealed the open 5 volt reference wire was repaired, although there is no mention of  
14 the repair on invoice [REDACTED]. The BAR operator was not told and did not authorize a repair to  
15 the 5 volt reference wire.

16 40. The representative found all of the items listed as in need of service or repairs on the  
17 Co-Brand Visual Courtesy Check [REDACTED], as described in paragraph 39, above, to be in good  
18 working condition, and not in need of service or repair.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 (Misleading Statements)

21 41. Respondent has subjected its registration to discipline under Code section 9884.7,  
22 subdivision (a)(1), in that it made statements which it knew or which by exercise of reasonable  
23 care should have known were untrue or misleading, as set forth above in paragraphs 33-41.  
24 Respondent told the BAR operator the exhaust gas recirculation valve and throttle position sensor  
25 were not operating properly and needed to be replaced to repair the vehicle. The exhaust gas  
26 recirculation valve and throttle position sensor were in good working order and not in need of  
27 repair/replacement. Respondent told the BAR operator the water pump was leaking. The water  
28 pump was not leaking and was functioning properly. The "Co-Brand Visual Courtesy Check"

1 listed numerous items as in need of service or repair. All of the items listed were in good working  
2 condition, and not in need of service/repair.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 (Fraud)

5 42. Respondent has subjected its registration to discipline under Code section 9884.7,  
6 subdivision (a)(4), in that it committed acts which constitute fraud, as set forth above in  
7 paragraphs 33-41, above. Respondent charged the operator for \$682.47 in repairs that were not  
8 needed. Respondent told the operator that other work on the Lumina was needed when in fact it  
9 was not.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 (Failing to Give an Estimate to the Customer)

12 43. Respondent has subjected its registration to discipline under Code section 9884.7,  
13 subdivision (a)(3), in that it failed to give a customer a copy of a document requiring his or her  
14 signature, as soon as the customer signed the document. Respondent failed to provide a copy of  
15 the signed estimate/work order which the BAR operator was asked to sign as described in  
16 paragraph 34, above.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 (Violations of Statutes and Regulations)

19 44. Respondent has subjected its registration to discipline under Code section 9884.7,  
20 subdivision (a)(6) in that Respondent failed in a material respect to comply with the provisions of  
21 the Automotive Repair Act and the Regulations adopted pursuant to it as follows:

22 a) Respondent violated section 9884.9 of the code and California Code of Regulations Title  
23 16, section 3353(a) by failing to give the BAR operator a copy of the written estimate that she  
24 signed as described in paragraph 34, above.

25 b) Respondent violated section 9884.8 of the code by failing to describe all of the work  
26 performed on the invoice with regard to the Lumina. Respondent failed to state on the invoice the  
27 diagnosis of the Check Engine Light, Exhaust Gas Recirculation Valve and Throttle Position  
28 Sensor. Respondent failed state on the invoice that the 5 volt reference wire was repaired.

1 c) Respondent violated California Code of Regulations Title 16, section 3371 in that  
2 Respondent made untrue or misleading statements as set forth above in paragraphs 33-41.  
3 Respondent told the BAR operator the Exhaust Gas Recirculation Valve and Throttle Position  
4 Sensor were not operating properly and needed to be replaced to repair the vehicle. The Exhaust  
5 Gas Recirculation Valve and Throttle Position Sensor were in good working order and not in need  
6 of repair/replacement. Respondent told the BAR operator the water pump was leaking. The  
7 water pump was not leaking and was functioning properly. The "Co-Brand Visual Courtesy  
8 Check" listed numerous items as in need of service or repair. All of the items listed were found  
9 to be in good working condition, and not in need of service/repair. Respondent knew or should  
10 have known these statements were untrue or misleading.

11 c) Respondent violated California Code of Regulations Title 16, section 3373 in that  
12 respondent created a false or misleading invoice as described in paragraph 38, above.

13 **NINTH CAUSE FOR DISCIPLINE**

14 (Dishonesty, Fraud or Deceit)

15 4. Respondent has subjected his station license to discipline under Health and Safety  
16 Code section 44072.2, subdivision (d), in that it committed acts involving dishonesty, fraud or  
17 deceit, whereby another was injured as set forth above in paragraphs 33-41. Respondent told the  
18 BAR operator the exhaust gas recirculation valve and throttle position sensor were not operating  
19 properly and needed to be replaced to repair the vehicle. The exhaust gas recirculation valve and  
20 throttle position sensor were in good working order and not in need of repair/replacement.  
21 Respondent told the BAR operator the water pump was leaking. The water pump was not leaking  
22 and was functioning properly. The "Co-Brand Visual Courtesy Check" listed numerous items as  
23 in need of service or repair. All of the items listed were found to be in good working condition,  
24 and not in need of service/repair.

25 **DISCIPLINARY CONSIDERATIONS**

26 45. To determine the degree of discipline, if any, Complainant alleges that on July 20,  
27 2015, a Pro-Active Conference was performed with the Respondent's manager, Armando  
28 Brambila. The Pro-Active Conference warned Armando Brambila of violations found during a



1 prior Complainant Investigation alleging they failed to properly diagnosis an intermittent stalling  
2 problem and sold needless repairs.

3 46. To determine the degree of discipline, if any, Complainant alleges that on  
4 September 16, 2015, a Pro-Active Conference was performed at the subject facility with the  
5 service manager Alex Salazar. The Pro-Active Conference warned Alex Salazar of violations  
6 found during a Complainant Investigation alleging the subject damaged a vehicle's computer  
7 controls while repairing the vehicle for a no start problem. The subject failed to repair the no start  
8 problem.

9 **OTHER MATTERS**

10 47. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,  
11 or place on probation the registration for all places of business operated in this state by  
12 Respondent, upon a finding that Respondent has, or is, engaged in a course of repeated and willful  
13 violations of the laws and regulations pertaining to an automotive repair dealer.

14 48. Pursuant to Health & Safety Code section 44072.8, if Respondent's Station License is  
15 revoked or suspended, any additional license issued under this chapter in the name of said  
16 licensee may be likewise revoked or suspended by the director.

17 **PRAAYER**

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 or suspending Automotive Dealer Registration Number ARD 263654,  
21 issued to Khan Brothers Inc.;

22 2. Revoking or suspending any other Automotive Dealer Registration, issued to Khan  
23 Brothers Inc.;

24 3. Revoking or suspending Smog Check Station License Number RC 263654, issued to  
25 Khan Brothers Inc.;

26 4. Revoking or suspending any other Smog Check Station License issued to Khan  
27 Brothers Inc.;

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5. Ordering Khan Brothers Inc. to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: March 28, 2016



PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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