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

10  
11 In the Matter of the Accusation Against:

Case No. 79/12-152

12 **AFFORDABLE & QUICK SMOG**  
29900 Mission Blvd.  
13 Hayward, CA 94544  
14 **MALWINDER SINGH, OWNER**  
Automotive Repair Dealer Registration No.  
ARD 264429  
15 Smog Check Test Only Station License No.  
TC 264429

**FIRST AMENDED ACCUSATION**

*Smog Check*

16 and

17 **MALWINDER SINGH**  
27536 La Porte Ave.  
18 Hayward, CA 94545  
19 **Advanced Emission Specialist Technician**  
License No. EA 150724

20 Respondents.

21  
22 Complainant alleges:

23 **PARTIES**

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

26 **Automotive Repair Dealer Registration**

27 2. On or about March 23, 2011, the Bureau issued Automotive Repair Dealer  
28 Registration Number ARD 264429 ("registration") to Malwinder Singh ("Respondent") doing

1 business as Affordable & Quick Smog. The registration was in full force and effect at all times  
2 relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about March 25, 2011, the Bureau issued Smog Check Test Only Station  
5 License Number TC 264429 ("station license") to Respondent. The station license was in full  
6 force and effect at all times relevant to the charges brought herein and will expire on March 31,  
7 2013, unless renewed.

8 **Advanced Emission Specialist Technician License**

9 4. On or about 2007, the Bureau issued Advanced Emission Specialist Technician  
10 License Number EA 150724 ("technician license") to Respondent. The technician license was in  
11 full force and effect at all times relevant to the charges brought herein and will expire on February  
12 24, 2014, unless renewed.

13 **STATUTORY PROVISIONS**

14 5. Section 490 of the Code states:

15 (a) In addition to any other action that a board is permitted to take against a licensee, a  
16 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
17 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
18 or profession for which the license was issued.

19 (b) Notwithstanding any other provision of law, a board may exercise any authority to  
20 discipline a licensee for conviction of a crime that is independent of the authority granted under  
21 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
22 of the business or profession for which the licensee's license was issued.

23 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
24 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
25 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
26 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
27 made suspending the imposition of sentence, irrespective of a subsequent order under the  
28 provisions of Section 1203.4 of the Penal Code.

1 (d) The Legislature hereby finds and declares that the application of this section has been  
2 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
3 554, and that the holding in that case has placed a significant number of statutes and regulations  
4 in question, resulting in potential harm to the consumers of California from licensees who have  
5 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
6 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
7 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not  
8 constitute a change to, but rather are declaratory of, existing law.

9 6. Section **9884.7** of the Business and Professions Code (“Code”) states, in pertinent  
10 part:

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

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

19 ...

20 (4) Any other conduct that constitutes fraud.

21 ...

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

24 ...

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



1 additional license issued under this chapter in the name of the licensee may be likewise revoked  
2 or suspended by the director.

3 13. California Code of Regulations, Title 16, section **3340.30**, states, in pertinent part:

4 A licensed smog check inspector and/or repair technician shall comply with the following  
5 requirements at all times while licensed:

6 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the  
7 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this  
8 article.

9 ...

10 14. California Code of Regulations, Title 16, section **3340.35(c)**, states, in pertinent part:

11 (c) A licensed station shall issue a certificate of compliance or noncompliance to the owner  
12 or operator of any vehicle that has been inspected in accordance with the procedures specified in  
13 section 3340.42 of this article and has all the required emission control equipment and devices  
14 installed and functioning correctly.

15 ...

16 15. California Code of Regulations, Title 16, section **3340.41(c)**, states:

17 No person shall enter into the emissions inspection system any vehicle identification  
18 information or emission control system identification data for any vehicle other than the one  
19 being tested. Nor shall any person knowingly enter into the emissions inspection system any false  
20 information about the vehicle being tested.

21 **COST RECOVERY**

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

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1 **FACTUAL SUMMARY**

2 17. On or about March 1, 2012, the Bureau's investigative staff conducted an undercover  
3 surveillance operation at Respondent's shop, Affordable & Quick Smog. Respondent was  
4 observed to perform fraudulent smog inspections, as follows:

- 5 a. Fraudulent Inspection 1: Respondent Singh purported to test a 1989 Mazda, license  
6 number 4L07912, entered information in the Emissions Inspection System regarding  
7 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that  
8 Respondent tested was a two-door Honda. The 1989 Mazda was not in the test bay of  
9 the facility at the time of the certification.
- 10 b. Fraudulent Inspection 2: Respondent Singh purported to test a 1991 GMC K30, license  
11 number 5K18579, entered information in the Emissions Inspection System regarding  
12 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that  
13 Respondent tested was a two-door Honda. The 1991 GMC K30 was not in the test bay  
14 of the facility at the time of the certification.
- 15 c. Fraudulent Inspection 3: Respondent Singh purported to test a 1990 Chevrolet C1500  
16 pickup, license number 3Y39424, and entered information in the Emissions Inspection  
17 System regarding said vehicle. In reality, the vehicle that Respondent tested was a two-  
18 door Honda. The 1990 Chevrolet C1500 pickup was not in the test bay of the facility at  
19 the time of the test.
- 20 d. Fraudulent Inspection 4: Respondent Singh purported to test a 1990 Chevrolet C1500  
21 pickup, license number 3Y39424, entered information in the Emissions Inspection  
22 System regarding said vehicle, and issued a certificate for said vehicle. In reality, the  
23 vehicle that Respondent tested was a 1996 Mazda pickup truck. The 1990 Chevrolet  
24 C1500 pickup was not in the test bay of the facility at the time of the certification.
- 25 e. Fraudulent Inspection 5: Respondent Singh purported to test a 1996 Acura Integra,  
26 license number 5FTP770, entered information in the Emissions Inspection System  
27 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
28 that Respondent tested was a 1996 Mazda pickup truck. The 1996 Acura Integra was

1 not in the test bay of the facility at the time of the certification.

- 2 f. Fraudulent Inspection 6: Respondent Singh purported to test a 1999 Honda Accord,  
3 license number 4HDC338, entered information in the Emissions Inspection System  
4 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
5 that Respondent tested was a 1996 Mazda pickup truck. The 1999 Honda Accord was  
6 not in the test bay of the facility at the time of the certification.
- 7 g. Fraudulent Inspection 7: Respondent Singh purported to test a 1999 BMW 3-Series,  
8 license number 4FJY852, entered information in the Emissions Inspection System  
9 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
10 that Respondent tested was a 2001 Oldsmobile Alero. The 1999 BMW 3-Series was  
11 not in the test bay of the facility at the time of the certification.
- 12 h. Fraudulent Inspection 8: Respondent Singh purported to test a 1996 Honda Civic,  
13 license number 6JUH499, entered information in the Emissions Inspection System  
14 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
15 that Respondent tested was a 1996 Mazda pickup truck. The 1996 Honda Civic was not  
16 in the test bay of the facility at the time of the certification.

17 18. On or about March 2, 2012, the Bureau's investigative staff conducted an undercover  
18 surveillance operation at Respondent's shop, Affordable & Quick Smog. Respondent was  
19 observed to perform fraudulent smog inspections, as follows:

- 20 a. Fraudulent Inspection 9: Respondent Singh purported to test a 1997 Infiniti QX4,  
21 license number 5BOX927, entered information in the Emissions Inspection System  
22 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
23 that Respondent tested was a 1996 Mazda pickup truck. The 1997 Infiniti QX4 was not  
24 in the test bay of the facility at the time of the certification.
- 25 b. Fraudulent Inspection 10: Respondent Singh purported to test a 1997 Nissan Altima,  
26 license number 3UVC808, entered information in the Emissions Inspection System  
27 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
28 that Respondent tested was a 1996 Mazda pickup truck. The 1997 Nissan Altima was

1 not in the test bay of the facility at the time of the certification.

- 2 c. Fraudulent Inspection 11: Respondent Singh purported to test a 1994 Ford Mustang,  
3 license number 3JSZ737, entered information in the Emissions Inspection System  
4 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
5 that Respondent tested was a 1996 Mazda pickup truck. The 1994 Ford Mustang was  
6 not in the test bay of the facility at the time of the certification.
- 7 d. Fraudulent Inspection 12: Respondent Singh purported to test a 1994 Toyota Camry,  
8 license number 4USZ095, entered information in the Emissions Inspection System  
9 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
10 that Respondent tested was a 1996 Mazda pickup truck. The 1994 Toyota Camry was  
11 not in the test bay of the facility at the time of the certification.
- 12 e. Fraudulent Inspection 13: Respondent Singh purported to test a 1989 Chevrolet C1500  
13 truck, license number AYASAD, entered information in the Emissions Inspection  
14 System regarding said vehicle, and issued a certificate for said vehicle. In reality, the  
15 vehicle that Respondent tested was a 1996 Mazda pickup truck. The 1989 Chevrolet  
16 C1500 truck was not in the test bay of the facility at the time of the certification.
- 17 f. Fraudulent Inspection 14: Respondent Singh purported to test a 1996 Honda Accord,  
18 license number 4XWB964, entered information in the Emissions Inspection System  
19 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
20 that Respondent tested was a 1997 Nissan Quest. The 1996 Honda Accord was not in  
21 the test bay of the facility at the time of the certification.
- 22 g. Fraudulent Inspection 15: Respondent Singh purported to test a 2000 Chevrolet  
23 Venture FWD, license number 7F18980, entered information in the Emissions  
24 Inspection System regarding said vehicle, and issued a certificate for said vehicle. In  
25 reality, the vehicle that Respondent tested was a 1996 Mazda pickup truck. The 2000  
26 Chevrolet Venture FWD was not in the test bay of the facility at the time of the  
27 certification.
- 28 h. Fraudulent Inspection 16: Respondent Singh purported to test a 1987 Mazda B-Series

1 truck, license number 4P07890, entered information in the Emissions Inspection System  
2 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle  
3 that Respondent tested was a 1986 Ford Bronco. The 1987 Mazda B-Series truck was  
4 not in the test bay of the facility at the time of the certification.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Misleading Statements - Registration)**

7 19. Respondent has subjected his registration to discipline under Code section 9884.7,  
8 subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable  
9 care he should have known were untrue or misleading, as set forth above in paragraphs 17-18.  
10 Respondent fraudulently purported to test vehicles in Fraudulent Inspections 1-16, and certified  
11 that the vehicles in Fraudulent Inspections 1-2 and 4-16 passed inspection and were in  
12 compliance with applicable laws and regulations. In fact, Respondent conducted the inspections  
13 on those vehicles using clean-piping methods.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraud - Registration)**

16 20. Respondent has subjected his registration to discipline under Code section 9884.7,  
17 subdivision (a)(4), in that he committed acts which constitute fraud, as set forth above in  
18 paragraphs 17-18.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Failure to Comply With Chapter - Registration)**

21 21. Respondent has subjected his registration to discipline under Code section 9884.7,  
22 subdivision (a)(6), in that he failed to comply with laws and regulations pertaining to the  
23 performance of smog checks, as set forth above in paragraphs 17-18.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Violation of the Motor Vehicle Inspection Program – Station License)**

26 22. Respondent has subjected his station license to discipline under Health and Safety  
27 Code section 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and  
28 applicable regulations, as set forth above in paragraphs 17-18, as follows:

1 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
2 performed on those vehicles in accordance with procedures prescribed by the department.

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

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

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

13 e. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
14 compliance even though those vehicles had not been inspected in accordance with section  
15 3340.42.

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

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Dishonesty, Fraud or Deceit – Station License)**

20 23. Respondent subjected his station license to discipline under Health and Safety Code  
21 section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit,  
22 whereby another was injured by issuing electronic certificates of compliance for vehicles without  
23 performing bona fide inspections of the emission control devices and system on the vehicles,  
24 thereby depriving the People of the State of California of the protection afforded by the Motor  
25 Vehicle Inspection Program, as set forth above in paragraphs 17-18.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program – Technician License)**

3 24. Respondent has subjected his technician license to discipline under Health and Safety  
4 Code section 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and  
5 applicable regulations, as set forth above in paragraphs 17-18, as follows:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
7 performed on those vehicles in accordance with procedures prescribed by the department.

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

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

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

18 e. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those  
19 vehicles in accordance with Health and Safety Code section 44012.

20 f. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
21 compliance even though those vehicles had not been inspected in accordance with section  
22 3340.42.

23 g. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
24 inspections on those vehicles in accordance with the Bureau's specifications.

25 **SEVENTH CAUSE FOR DISCIPLINE**

26 **(Dishonesty, Fraud or Deceit – Technician License)**

27 25. Respondent subjected his technician license to discipline under Health and Safety  
28 Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or

1 deceit, whereby another was injured by issuing electronic certificates of compliance for vehicles  
2 without performing bona fide inspections of the emission control devices and systems on the  
3 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
4 Motor Vehicle Inspection Program, as set forth above in paragraphs 17-18.

5 **EIGHTH CAUSE FOR DISCIPLINE**

6 **(Criminal Convictions)**

7 26. Respondent has subjected his Registration, Station License and Technician License to  
8 discipline under Code section 490 and Health and Safety Code section 44072.2, subdivision (b),  
9 in that Malwinder Singh has been convicted of crimes substantially related to the qualifications,  
10 functions, or duties of said Registration and Licenses. The circumstances are as follows:

11 27. On or about August 23, 2012, in Alameda Superior Court case number 443208,  
12 Respondent Malwinder Singh was convicted of three counts of having violated California Vehicle  
13 Code section 4463 (forgery of documents). The convictions were based on the events  
14 summarized above in paragraphs 17-18. Respondent was ordered, as a condition of probation,  
15 not to work as a smog technician, as an employee or employer or a smog technician, or in any  
16 capacity at a business that performs smog checks.

17 **DISCIPLINARY CONSIDERATIONS**

18 28. To determine the degree of discipline, if any, to be imposed on Respondent,  
19 Complainant alleges aggravating circumstances as follows:

20 29. On or about September 15, 2011, Respondent was issued Citation No. C2012-0224  
21 based on his failure to perform a visual/functional check of emission control devices during a  
22 vehicle inspection, in violation of California Health and Safety Code section 44012(f).

23 30. On or about September 15, 2011, Respondent was issued Citation No. M2012-0225  
24 based on his failure to perform an adequate test of a vehicle's emissions control system, in  
25 violation of California Health and Safety Code section 44032.

26 31. On or about October 5, 2011, Respondent attended a Citation Conference with  
27 Bureau personnel to discuss Citations C2012-0224 and M2012-0225. At that time, Respondent  
28 was admonished that future violations of the laws pertaining to Smog inspections would result in

1 legal action against him.

2 **OTHER MATTERS**

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

7 33. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station  
8 License Number TC 264429, issued to Malwinder Singh, doing business as Affordable & Quick  
9 Smog, is revoked or suspended, any additional license issued under this chapter in the name of  
10 said licensee may be likewise revoked or suspended by the director.

11 34. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist  
12 Technician License Number EA 150724, issued to Malwinder Singh, is revoked or suspended,  
13 any additional license issued under this chapter in the name of said licensee may be likewise  
14 revoked or suspended by the director.

15 **PRAYER**

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

18 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
19 Registration Number ARD 264429, issued to Malwinder Singh, doing business as Affordable &  
20 Quick Smog;

21 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
22 registration issued to Malwinder Singh;

23 3. Revoking or suspending Smog Check Test Only Station License Number TC 264429,  
24 issued to Malwinder Singh, doing business as Affordable & Quick Smog;

25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
26 and Safety Code in the name of Malwinder Singh;

27 5. Revoking or suspending Advanced Emission Specialist Technician License Number  
28 EA 150724, issued to Malwinder Singh;

1           6.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
2 and Safety Code in the name of Malwinder Singh;

3           7.    Ordering Malwinder Singh to pay the Bureau of Automotive Repair the reasonable  
4 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
5 Code section 125.3; and,

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

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8 DATED: 9/4/12

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

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