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

12 In the Matter of the Accusation Against:

Case No. *79/13-40*

13 **TIMOTHY WAYNE WALLER, OWNER,**
14 **d.b.a. T WALLER SMOG CHECK**
1700 E. Truxton Avenue
15 Bakersfield, CA 93305

A C C U S A T I O N

(Smog Check)

16 **Automotive Repair Dealer Registration**
17 **Number ARD 265479, Smog Check Test**
18 **Only Station License Number TC 265479,**
19 **Smog Check Inspector License Number EO**
20 **631991**

Respondent.

21 Complainant alleges:

PARTIES

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 **Automotive Repair Dealer Registration**

25 2. On or about June 13, 2011, the Bureau issued Automotive Repair Dealer Registration
26 Number ARD 265479 ("registration") to Timothy Wayne Waller ("Respondent"), doing business
27 as T Waller Smog Check. The registration was in full force and effect at all times relevant to the
28 charges brought herein and will expire on June 30, 2013, unless renewed.

1 (4) Any other conduct which constitutes fraud.

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

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

7 (c) Notwithstanding subdivision (b), the director may invalidate
temporarily or permanently, the registration for all places of business operated in this
8 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
9 regulations adopted pursuant to it.

10 9. Code section 118, subdivision (b) states:

11 The suspension, expiration, or forfeiture by operation of law of a license issued by a
board in the department, or its suspension, forfeiture, or cancellation by order of the
12 board or by order of a court of law, or its surrender without the written consent of the
board, shall not, during any period in which it may be renewed, restored, reissued, or
13 reinstated, deprive the board of its authority to institute or continue a disciplinary
proceeding against the licensee upon any ground provided by law or to enter an order
14 suspending or revoking the license or otherwise taking disciplinary action against the
licensee on any such ground.

15 10. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
"commission," "committee," "department," "division," "examining committee," "program,"
16 and "agency." "License" includes certificate, registration or other means to engage in a
business or profession regulated by the Code.
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19 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

20 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
21 thereof, does any of the following:

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

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

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

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

3 13. Section 44072.8 of the Health and Safety Code states:

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

7 COST RECOVERY

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

12 SURVEILLANCE OPERATION – DECEMBER 23, 2011

13 15. On or about December 23, 2011, the Bureau performed a surveillance operation at T
14 Waller Smog Check. The surveillance operation and information obtained from the Bureau's
15 Vehicle Information Database ("VID") revealed that between 10:34 hours and 11:02 hours,
16 Respondent Waller performed a smog inspection that resulted in the issuance of electronic
17 Certificate of Compliance No. XB744364 for a 1994 Acura Integra, License No. 4TDZ646
18 certifying that he had tested and inspected that vehicle and that the vehicle was in compliance
19 with applicable laws and regulations. In fact, Respondent Waller performed the smog inspection
20 using the clean-piping method.¹

21 16. The surveillance operation and information from the VID further revealed that
22 between 1603 hours and 1612 hours, Respondent Waller performed a smog inspection that
23 resulted in the issuance of electronic Certificate of Compliance No. XB744367 for a 2001
24 Hyundai XG300, VIN KMHFU45DX1A085549, certifying that he had tested and inspected that
25 vehicle and that the vehicle was in compliance with applicable laws and regulations. In fact,

26 ¹ "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

1 Respondent Waller performed the smog inspection using the clean-piping method.

2 **SURVEILLANCE OPERATION – DECEMBER 28, 2011**

3 17. On or about December 28, 2011, the Bureau performed a second surveillance
4 operation at T Waller Smog Check. The surveillance operation and information obtained from the
5 Bureau's Vehicle Information Database ("VID") revealed that between 1438 hours and 1504
6 hours, Respondent Waller performed two (2) smog inspections that resulted in the issuance of
7 electronic Certificate of Compliance No. XB744373 for a 1991 Toyota Pickup, license No.
8 4J82019, and the issuance of electronic Certificate of Compliance No. XB744374 for a 1998
9 Lexus ES300, license No. 3XMS170, certifying that he had properly tested and inspected both
10 vehicles and they were in compliance with applicable laws and regulations. In fact, Respondent
11 Waller improperly changed the method of both smog inspections from the required Acceleration
12 Simulation Mode (ASM) test to a Two Speed Idle (TSI) test. Furthermore, the surveillance video
13 does not show the 1991 Toyota Pickup or the 1998 Lexus ES300 at the subject facility at the time
14 of the smog inspections.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Misleading Statements)**

17 18. Respondent has subjected its registration to discipline under Code section 9884.7,
18 subdivision (a)(1), in that on or about December 23, 2011, Respondent made statements which he
19 knew, or which by exercise of reasonable care should have known, were untrue or misleading
20 when he issued electronic certificates of compliance for the 1994 Acura Integra and 2001
21 Hyundai XG300, certifying that the vehicles were in compliance with applicable laws and
22 regulations when, in fact, the vehicles had been clean-piped.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 19. Respondent has subjected his registration to discipline under Code section 9884.7,
26 subdivision (a)(4), in that on or about December 23, 2011 and December 28, 2011, Respondent
27 committed acts which constitute fraud by issuing electronic certificates of compliance for the
28 vehicles set forth in Paragraphs 15 through 17 above, without performing bona fide inspections of

1 the emission control devices and systems on the vehicle, thereby depriving the People of the State
2 of California of the protection afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 20. Respondent has subjected his station license to discipline under Health and Safety
6 Code section 44072.2, subdivision (a), in that on or about December 23, 2011 and December 28,
7 2011, regarding the vehicles set forth in Paragraphs 15 through 17 above, Respondent violated
8 sections of that Code, as follows:

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

11 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
12 compliance without properly testing and inspecting the vehicles to determine if they were in
13 compliance with section 44012 of that Code.

14 **FOURTH CAUSE FOR DISCIPLINE**

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

16 21. Respondent has subjected its station license to discipline under Health and Safety
17 Code section 44072.2, subdivision (c), in that on or about December 23, 2011 and December 28,
18 2011, regarding the vehicles set forth in Paragraphs 15 through 17 above, Respondent violated
19 sections of the California Code of Regulations, title 16, as follows:

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

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

25 **FIFTH CAUSE FOR DISCIPLINE**

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

27 22. Respondent has subjected his station license to discipline under Health and Safety
28 Code section 44072.2, subdivision (d), in that on or about December 23, 2011 and December 28,

1 2011, regarding the vehicles set forth in Paragraphs 15 through 17 above, Respondent committed
2 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
3 certificates of compliance for the vehicles without performing bona fide inspections of the
4 emission control devices and systems on the vehicles, thereby depriving the People of the State of
5 California of the protection afforded by the Motor Vehicle Inspection Program.

6 **SIXTH CAUSE FOR DISCIPLINE**

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

8 23. Respondent Waller has subjected his inspector license to discipline under Health and
9 Safety Code section 44072.2, subdivision (a), in that on or about December 23, 2011 and
10 December 28, 2011, regarding the vehicles set forth in Paragraphs 15 through 17 above, he
11 violated sections of that Code, as follows:

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

14 b. **Section 44032:** Respondent failed to perform tests of the emission control
15 devices and systems on the vehicles in accordance with section 44012 of that Code, in that the
16 vehicles had been clean piped.

17 **SEVENTH CAUSE FOR DISCIPLINE**

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

19 24. Respondent Waller has subjected his inspector license to discipline under Health
20 and Safety Code section 44072.2, subdivision (c), in that on or about December 23, 2011 and
21 December 28, 2011, regarding the vehicles set forth in Paragraphs 15 through 17 above, he
22 violated sections of the California Code of Regulations, title 16, as follows:

23 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the
24 vehicles in accordance with Health and Safety Code section 44012.

25 b. **Section 3340.41, subdivision (c):** Respondent entered false information into
26 the Emission Inspection System for the electronic certificates of compliance by entering vehicle
27 emission control information for vehicles other than the vehicles being certified.

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- 1 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
2 Number ARD 265479, issued to Timothy Wayne Waller, doing business as T Waller Smog
3 Check;
4 2. Revoking, suspending or placing on probation any other automotive repair dealer
5 registration issued in the name Timothy Wayne Waller;
6 3. Revoking or suspending Smog Check Test Only Station License Number TC 265479,
7 issued to Timothy Wayne Waller, doing business as T Waller Smog Check;
8 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
9 and Safety Code in the name of Timothy Wayne Waller;
10 5. Revoking or suspending Smog Check Inspector License Number EO 631991, issued
11 to Timothy Wayne Waller;
12 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
13 and Safety Code in the name of Timothy Wayne Waller;
14 7. Ordering Timothy Wayne Waller to pay the Bureau of Automotive Repair the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3; and,
17 8. Taking such other and further action as deemed necessary and proper.

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DATED: April 22, 2013 John Wallauch by Doug Balatti
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant