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

11
12 In the Matter of the Accusation Against:

Case No. 79/10-85

13 **SOTO SMOG INCORPORATED**
14 **GEORGE SEROUR NAKHLA, President**
918 N. Soto Street
15 Los Angeles, CA 90033
Automotive Repair Dealer License No. ARD 223617
16 **Smog Check Station No. TC 223617**

A C C U S A T I O N

SMOG CHECK

17 Respondent.

18
19 Sherry Mehl ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the Chief of the
22 Bureau of Automotive Repair I/M Smog ("Bureau"), Department of Consumer Affairs.

23 **Automotive Repair Dealer Registration No. ARD 223617**

24 2. On or about October 24, 2002, the Bureau issued Automotive Repair Dealer
25 Registration No. ARD 223617 ("registration") to Soto Smog Incorporated ("Respondent") with
26 George Serour Nakhla as the President. The registration will expire on or about
27 September 30, 2010, unless renewed.

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1 against an automotive repair dealer or to render a decision invalidating a registration temporarily
2 or permanently.

3 6. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
4 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
5 the Motor Vehicle Inspection Program.

6 7. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

20 9. Section 44072.8 of the Health and Safety Code states:

21 "When a license has been revoked or suspended following a hearing under this article, any
22 additional license issued under this chapter in the name of Soto Smog Incorporated may be
23 likewise revoked or suspended by the director."

24 COST RECOVERY

25 10. Code section 125.3 provides, in pertinent part, that a 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.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Chapter Requirements)**

3 14. Respondent's station license is subject to discipline under Health and Safety Code
4 section 44072.2(a), in that on or about September 9, 2009, regarding the 1987 Chevrolet Nova, it
5 failed to comply with the following sections of that Code:

6 a. Section 44012(a): Respondent failed to determine that all emission control devices and
7 systems required by law were installed and functioning correctly in accordance with test
8 procedures.

9 b. Section 44012(f): Respondent failed to perform emission control tests on the vehicle in
10 accordance with procedures prescribed by the department.

11 c. Section 44015(b): Respondent issued electronic Certificate of Compliance No.
12 WD293462 without properly testing and inspecting the vehicle to determine if it was in
13 compliance with Code section 44012.

14 d. Section 44059: Respondent willfully made false entries for electronic Certificate of
15 Compliance No. WD293462 by certifying that the vehicle had been tested and inspected as
16 required, when in fact, it had not.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations)**

19 15. Respondent's station license is subject to discipline under Health and Safety Code
20 section 44072.2(c), in that on or about September 9, 2009, regarding the 1987 Chevrolet Nova, it
21 failed to comply with provisions of California Code of Regulations, title 16, as follows:

22 a. Section 3340.24(c): Respondent falsely or fraudulently issued electronic Certificate of
23 Compliance No. WD293462, in that the vehicle could not pass the visual portion of the smog
24 inspection because the vehicle's EGR system was missing.

25 b. Section 3340.35(c): Respondent issued electronic Certificate of Compliance No.
26 WD293462 even though the vehicle had not been tested and inspected in accordance with the
27 procedures specified in Code section 3340.42.

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1 c. Section 3340.42: Respondent failed to conduct the required smog tests and inspections
2 on the vehicle in accordance with the Bureau's specifications.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 16. Respondent's station license is subject to discipline under Health and Safety Code
6 section 44072.2(d), in that on or about September 9, 2009, it committed acts involving
7 dishonesty, fraud, or deceit whereby another was injured by issuing electronic Certificate of
8 Compliance No. WD293462 for the 1987 Chevrolet Nova without performing a bona fide
9 inspection of the emission control devices and systems on that vehicle, thereby depriving the
10 People of the State of California of the protection afforded by the Motor Vehicle Inspection
11 Program.

12 **PRIOR CITATIONS**

13 17. To determine the degree of discipline, if any, Complainant alleges the following:

14 **Automotive Repair Dealer Registration and Smog Check Test Only Station License
May 23, 2008**

15 a. On or about May 23, 2008, the Bureau issued Citation No. C08-1040 against
16 Respondent's registration and station licenses for violations of Health and Safety Code section
17 44012(f) (failure to perform a visual/functional check of emission control devices according to
18 procedures prescribed by the department), and California Code of Regulations, title 16, section
19 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
20 issuing a certificate of compliance to a Bureau undercover vehicle that was missing the positive
21 crankcase ventilation system. The Bureau assessed civil penalties totaling \$500 against
22 Respondent for the violations. Respondent complied with this citation on July 8, 2008.

23 **November 24, 2008**

24 b. On or about November 24, 2008, the Bureau issued Citation No. C09-0660 against
25 Respondent's registration and station licenses for violations of Health and Safety Code section
26 44012(f) (failure to perform a visual/functional check of emission control devices according to
27 procedures prescribed by the department), and California Code of Regulations, title 16, section
28 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for

1 issuing a certificate of compliance to a Bureau undercover vehicle that was missing an
2 evaporative canister. The Bureau assessed civil penalties totaling \$1,000 against Respondent for
3 the violations. Respondent complied with this citation on January 16, 2009.

4 **May 19, 2009**

5 c. On or about May 19, 2009, the Bureau issued Citation No. C09-1335 against
6 Respondent's registration and station licenses for violations of Health and Safety Code section
7 44012(f) (failure to perform a visual/functional check of emission control devices according to
8 procedures prescribed by the department), and California Code of Regulations, title 16, section
9 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
10 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing
11 adjusted beyond the manufacturer's specifications. The Bureau assessed civil penalties totaling
12 \$2,000 against Respondent for the violations. Respondent complied with this citation on
13 July 15, 2009.

14 **OTHER MATTERS**

15 18. Under Code section 9884.7(c), the director may invalidate temporarily or
16 permanently or refuse to validate, the registrations for all places of business operated in this state
17 by Soto Smog Incorporated, upon a finding that it has, or is, engaged in a course of repeated and
18 willful violation of the laws and regulations pertaining to an automotive repair dealer.

19 19. Under Health and Safety Code section 44072.8, if Smog Check Station License
20 Number TC 223617, issued to Soto Smog Incorporated, is revoked or suspended, any additional
21 license issued under this chapter in the name of Soto Smog Incorporated may be likewise revoked
22 or suspended by the director.

23 **PRAYER**

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

26 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration No.
27 ARD 223617, issued to Soto Smog Incorporated;

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1 2. Temporarily or permanently invalidating any other automotive repair dealer
2 registration issued to Soto Smog Incorporated;

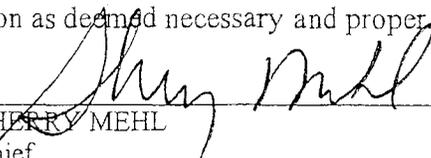
3 3. Revoking or suspending Smog Check Test Only Station License Number
4 TC 223617, issued to Soto Smog Incorporated;

5 4. Revoking or suspending any additional license issued under Chapter 5 of
6 Health and Safety Code in the name of Soto Smog Incorporated;

7 5. Ordering Soto Smog Incorporated to pay the Director of Consumer Affairs the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
9 125.3; and,

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

11 DATED: 6/23/10



SHERRY MEHL
Chief
Bureau of Automotive Repair I/M Smog
Department of Consumer Affairs
State of California
Complainant

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