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8 **BEFORE THE**
9 **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. 79/12-146

13 **4 LESS SMOG CHECK**
14 **TOYLI HOJAGULIYEV, OWNER**
630 East Blithedale
14 Mill Valley, CA 94941

A C C U S A T I O N
(Smog Check)

15 **Automotive Repair Dealer Reg. No. ARD 257509**
16 **Smog Check, Test Only, Station License No.**
TC 257509

17 **and**

18 **RAMIN ALIYEV**
2957 Broadway
19 **Oakland, CA 94611**

20 **Advanced Emission Specialist Technician**
21 **License No. EA 147215**

22 Respondents.

23 Complainant alleges:

24 **PARTIES**

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

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

2 ...

3 (f) Aids or abets unlicensed persons to evade the provisions of this
4 chapter ...

5 13. Health & Saf. Code section 44072.8 states that when a license has been revoked or
6 suspended following a hearing under this article, any additional license issued under this chapter
7 in the name of the licensee may be likewise revoked or suspended by the director.

8 14. Health & Saf. Code section 44014, subdivision (a), states:

9 Except as otherwise provided in this chapter, the testing and repair
10 portion of the program shall be conducted by smog check stations licensed by the
11 department, and by smog check technicians who have qualified pursuant to this
chapter.

12 15. Health & Saf. Code section 44032 states, in pertinent part, that "[n]o person shall
13 perform, for compensation, tests or repairs of emission control devices or systems of motor
14 vehicles required by this chapter unless the person performing the test or repair is a qualified
15 smog check technician . . . "

16 16. California Code of Regulations, title 16, section ("Regulation") 3340.41, subdivision
17 (b), states that "[n]o person shall enter into the emissions inspection system any access or
18 qualification number other than as authorized by the bureau, nor in any way tamper with the
19 emissions inspection system."

20 17. Regulation 3340.45 states:

21 All vehicle emission tests, visual inspections of the emissions control
22 systems, functional inspections of the emissions control systems, liquid fuel leak
23 inspections, and visible smoke tests shall be conducted at licensed smog check
24 stations by licensed smog check technicians. The inspections shall be performed in
accordance with the Emissions Inspection System test prompts and the inspection
requirements and procedures prescribed in the Bureau's Smog Check Inspection
Procedures Manual, dated August 2009, which is hereby incorporated by reference.

25 18. Section 1.1.0 of the Bureau's Smog Check Inspection Procedures Manual states, in
26 pertinent part:

27 The individual technician license number and access code together
28 provide access into the Emissions Inspection System (EIS) Smog Check inspection
mode . . .

1 The access code is assigned by BAR and is unique to each technician.
2 Each technician must maintain the security of his or her access code. Disclosure of
3 one's access code or use of another technician's access code or license information is
4 prohibited. If the security of your access code has been compromised, or you suspect
5 another person is using your access code, you must contact your local BAR field
6 office immediately to have the access code changed.

4 COST RECOVERY

5 19. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
6 the administrative law judge to direct a licentiate found to have committed a violation or
7 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
8 and enforcement of the case.

9 SURVEILLANCE OPERATION OF NOVEMBER 9, 2011

10 20. On December 2, 2010, a representative of the Bureau made a field visit at Respondent
11 Hojaguliyev's facility, 4 Less Smog Check located in Mill Valley ("Mill Valley facility"), after
12 the Bureau received an anonymous tip that an unlicensed technician was performing smog
13 inspections. The representative observed an employee, Samin Aliyev ("Samin"), later identified
14 as Respondent Aliyev's brother, performing a functional ignition timing check on a vehicle during
15 a smog inspection. The representative informed Aliyev and Samin that only licensed smog
16 technicians were allowed to perform smog inspections, including the visual and functional
17 portions of the inspection, to enter test data into the Emissions Inspection System ("EIS"), and to
18 issue smog certificates. The representative also told Aliyev that he was prohibited from sharing
19 his confidential access code with anyone.

20 21. On November 9, 2011, the Bureau received an anonymous tip that an unlicensed
21 technician was performing smog inspections at a 4 Less Smog Check facility. A Bureau
22 representative accessed the State's Electronic Transmission Management Information System
23 ("ETMIS") and found that there were five "4 Less Smog Check" facilities located in the San
24 Francisco Bay Area. The representative knew that Aliyev worked at the Mill Valley facility as
25 well as 4 Less Smog Check located in San Mateo ("San Mateo facility"). The ETMIS showed
26 that Aliyev worked primarily at the Mill Valley facility. At approximately 0925 hours that same
27 day, the representative conducted a surveillance operation of the San Mateo facility and observed
28 Aliyev and another male in the parking area. The representative called the Bureau's San

1 Francisco field office and received information that between 0926 and 0942 hours, a smog
2 inspection had been performed on a 1997 Toyota RAV 4, License No. 3UAA991, on behalf of
3 Respondent Hojaguliyev at the Mill Valley facility, using Aliyev's confidential access code,
4 resulting in the issuance of electronic smog Certificate of Compliance No. OI314955C. At
5 approximately 1000 hours, the representative drove into the parking lot of the San Mateo facility.
6 The representative went to the testing bay and was greeted by Aliyev. The representative told
7 Aliyev that he thought Aliyev was working at the Mill Valley facility. Aliyev stated that he was
8 working at the Mill Valley facility, but had just arrived in San Mateo from Mill Valley. The
9 representative asked Aliyev if he had performed any smog inspections that day. Aliyev stated
10 that he had conducted an inspection at the Mill Valley facility around 0930 hours. The
11 representative told Aliyev that he had been observing the San Mateo facility between 0925 and
12 0955 hours and had taken photographs of Aliyev in front of the shop. Aliyev admitted that his
13 brother had his confidential access code and had performed the smog inspection that morning at
14 the Mill Valley facility.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 22. Respondent Hojaguliyev's registration is subject to disciplinary action pursuant to
18 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
19 statement which he knew or in the exercise of reasonable care should have known to be untrue or
20 misleading, as follows: Respondent Hojaguliyev's unlicensed technician, Samin, certified that
21 Respondent Aliyev had performed the smog inspection on the 1997 Toyota RAV 4. In fact,
22 Samin accessed the EIS using Aliyev's confidential access code, with Aliyev's knowledge and
23 permission, and conducted the smog inspection on the vehicle.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 23. Respondent Hojaguliyev's registration is subject to disciplinary action pursuant to
27 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
28 constitutes fraud by issuing an electronic smog certificate of compliance for the 1997 Toyota

1 RAV 4 without ensuring that a bona fide inspection was performed of the emission control
2 devices and systems on the vehicle, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program.

4 **THIRD CAUSE FOR DISCIPLINE**

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

6 24. Respondent Hojaguliyev's smog check station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
8 comply with the following sections of that Code:

9 a. **Section 44012**: Respondent Hojaguliyev failed to ensure that the emission control
10 tests were performed on the 1997 Toyota RAV 4 in accordance with procedures prescribed by the
11 department.

12 b. **Section 44014, subdivision (a)**: Respondent Hojaguliyev authorized or permitted
13 Respondent Aliyev's brother, Samin, to conduct the smog inspection on the 1997 Toyota RAV 4
14 when, in fact, Samin was not licensed as a smog check technician.

15 c. **Section 44015**: Respondent Hojaguliyev issued an electronic smog certificate of
16 compliance for the 1997 Toyota RAV 4 without ensuring that the vehicle was properly tested and
17 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Regulations Pursuant**

20 **to the Motor Vehicle Inspection Program)**

21 25. Respondent Hojaguliyev's smog check station license is subject to disciplinary action
22 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
23 comply with provisions of California Code of Regulations, title 16, as follows:

24 a. **Section 3340.35, subdivision (c)**: Respondent Hojaguliyev issued an electronic
25 smog certificate of compliance for the 1997 Toyota RAV 4 even though the vehicle had not been
26 inspected in accordance with section 3340.42.

27 b. **Section 3340.41, subdivision (b)**: Respondent Hojaguliyev authorized or permitted
28 Respondent Aliyev's brother, Samin, to access the EIS using Aliyev's technician license and

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2 confidential access code and to enter false information into the unit concerning the identity of the
3 technician performing the smog test on the 1997 Toyota RAV 4.

4 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
5 conducted on the 1997 Toyota RAV 4 in accordance with the Bureau's specifications.

6 **FIFTH CAUSE FOR DISCIPLINE**

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

8 26. Respondent Hojaguliyev's smog check station license is subject to disciplinary action
9 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
10 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
11 certificate of compliance for the 1997 Toyota RAV 4 without ensuring that a bona fide inspection
12 was performed of the emission control devices and systems on the vehicle, thereby depriving the
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Aiding or Abetting Unlicensed Persons)**

17 27. Respondent Hojaguliyev's smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and
19 abetted Respondent Aliyev's brother, Samin, an unlicensed technician, to evade the provisions of
20 the Motor Vehicle Inspection Program, as set forth above.

21 **SEVENTH CAUSE FOR DISCIPLINE**

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

23 28. Respondent Aliyev's technician license is subject to disciplinary action pursuant to
24 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
25 section 44014, subdivision (a), of that Code, as follows: Respondent authorized or permitted his
26 brother, Samin, to conduct the smog inspection on the 1997 Toyota RAV 4 when, in fact, Samin
27 was not licensed as a smog check technician.

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2 **EIGHTH CAUSE FOR DISCIPLINE**

3 **(Failure to Comply with Regulations Pursuant**
4 **to the Motor Vehicle Inspection Program)**

5 29. Respondent Aliyev's technician license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
7 provisions of California Code of Regulations, title 16, Section 3340.41, subdivision (b), as
8 follows: Respondent authorized or permitted his brother, Samin, to access the EIS using
9 Respondent's technician license and confidential access code and to enter false information into
10 the unit concerning the identity of the technician performing the smog test on the 1997 Toyota
11 RAV 4.

12 **NINTH CAUSE FOR DISCIPLINE**

13 **(Aiding or Abetting Unlicensed Persons)**

14 30. Respondent Aliyev's technician license is subject to disciplinary action pursuant to
15 Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and abetted his
16 brother, Samin, an unlicensed technician, to evade the provisions of the Motor Vehicle Inspection
17 Program, as set forth above.

18 **OTHER MATTERS**

19 31. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
20 suspend, revoke, or place on probation the registration for all places of business operated in this
21 state by Respondent Toyli Hojagulyev, owner of 4 Less Smog Check, upon a finding that
22 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
23 regulations pertaining to an automotive repair dealer.

24 32. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
25 License Number TC 257509, issued to Respondent Toyli Hojagulyev, owner of 4 Less Smog
26 Check, is revoked or suspended, any additional license issued under this chapter in the name of
27 said licensee may be likewise revoked or suspended by the director.

28 33. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist

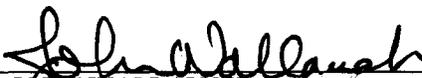
1 Technician License Number EA 147215, issued to Ramin Aliyev, is revoked or suspended, any
2 additional license issued under this chapter in the name of said licensee may be likewise revoked
3 or suspended by the director.

4 **PRAYER**

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

- 7 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
8 257509, issued to Toyli Hojagulyev, owner of 4 Less Smog Check;
- 9 2. Revoking or suspending any other automotive repair dealer registration issued to
10 Toyli Hojagulyev;
- 11 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
12 257509, issued to Toyli Hojagulyev, owner of 4 Less Smog Check;
- 13 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
14 and Safety Code in the name of Toyli Hojagulyev;
- 15 5. Revoking or suspending Advanced Emission Specialist Technician License Number
16 EA 147215, issued to Ramin Aliyev;
- 17 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
18 and Safety Code in the name of Ramin Aliyev;
- 19 7. Ordering Toyli Hojagulyev, owner of 4 Less Smog Check, and Ramin Aliyev, to pay
20 the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
21 case, pursuant to Business and Professions Code section 125.3;
- 22 8. Taking such other and further action as deemed necessary and proper.

23
24 DATED: May 23, 2012


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant