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7

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:

13 **ALPHA AUTO LLC,**
14 **dba SUPER SMOG AUTO SERVICE**
15 **CEM HUSEYIN DOMAC, MEMBER**
16 **648 23rd Street**
Richmond, California 94804
Automotive Repair Dealer Reg. No. ARD 258010
Smog Check, Test Only, Station License No.
TC 258010,

17 **CEM HUSEYIN DOMAC**
18 **224 Collins Street**
19 **Richmond, California 94801**
Advanced Emission Specialist Technician
License No. EA 148418,

20 **and**

21 **CIHAN SARIYAR**
22 **5429 Hackney Lane**
23 **El Sobrante, California 94803**
Advanced Emission Specialist Technician
License No. EA 147873

24 Respondents.

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Case No. 79/12-73

A C C U S A T I O N

(Smog Check)

1 **A1 TEST ONLY SMOG STATION**
2 **CIHAN SARIYAR, OWNER**
3 **1790 B Ygnacio Valley Road**
4 **Walnut Creek, California 94598**
5 **Smog Check, Test Only, Station License No.**
6 **TC 244159**

7 **ABES TEST ONLY SMOG STATION**
8 **CIHAN SARIYAR, OWNER**
9 **997 23rd Street**
10 **Richmond, California 94804**
11 **Smog Check, Test Only, Station License No.**
12 **TC 237384**

13 Affiliated Licenses.

14 Complainant alleges:

15 **PARTIES/LICENSE INFORMATION**

16 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
17 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

18 **Alpha Auto LLC dba Super Smog Auto Service**

19 2. On or about May 5, 2009, the Director of Consumer Affairs ("Director") issued
20 Automotive Repair Dealer Registration Number ARD 258010 ("registration") to Alpha Auto LLC
21 ("Respondent Alpha Auto"), doing business as Super Smog Auto Service, with Cem Huseyin
22 Domac ("Respondent Domac" or "Domac") as a member. Respondent Alpha Auto's registration
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 March 31, 2012, unless renewed.

25 3. On or about October 13, 2009, the Director issued Smog Check, Test Only, Station
26 License Number TC 258010 ("smog check station license") to Respondent Alpha Auto.
27 Respondent's smog check station license was in full force and effect at all times relevant to the
28 charges brought herein and will expire on March 31, 2012, unless renewed.

Cem Huseyin Domac

4. In or about 2007, the Director issued Advanced Emission Specialist Technician
License Number EA 148418 ("technician license") to Respondent Domac. Respondent's

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1 technician license was in full force and effect at all times relevant to the charges brought herein
2 and will expire on April 30, 2013, unless renewed.

3 **Cihan Sariyar**

4 5. In or about 2004, the Director issued Advanced Emission Specialist Technician
5 License Number EA 147873 ("technician license") to Cihan Sariyar ("Respondent Sariyar" or
6 "Sariyar"). Respondent's technician license was in full force and effect at all times relevant to the
7 charges brought herein and will expire on December 31, 2012, unless renewed.

8 **Affiliated Licenses:**

9 **A1 Test Only Smog Station**

10 6. On or about April 19, 2006, the Director issued Smog Check, Test Only, Station
11 License No. TC 244159 ("smog check station license") to Respondent Sariyar, owner of A1 Test
12 Only Smog Station. Respondent's smog check station license will expire on March 31, 2012,
13 unless renewed.

14 **Abes Test Only Smog Station**

15 7. On or about February 23, 2005, the Director issued Smog Check, Test Only, Station
16 License Number TC 237384 ("smog check station license") to Respondent Sariyar, owner of
17 Abes Test Only Smog Station. Respondent's smog check station license will expire on January
18 31, 2012, unless renewed.

19 **JURISDICTION**

20 8. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
21 the Director may revoke an automotive repair dealer registration.

22 9. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
23 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
24 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
25 invalidating (revoking or suspending) a registration.

26 10. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
27 part, that the Director has all the powers and authority granted under the Automotive Repair Act
28 for enforcing the Motor Vehicle Inspection Program.

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

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

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

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

12 **COST RECOVERY**

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

17 **UNDERCOVER OPERATION OF SEPTEMBER 23, 2010**

18 **1995 CHEVROLET IMPALA SS**

19 18. On September 23, 2010, an undercover operator of the Bureau (hereinafter
20 "operator") took the Bureau's 1995 Chevrolet Impala SS to Respondent Alpha Auto's facility.
21 The positive crankcase ventilation ("PCV") valve and related hose had been removed from the
22 Bureau-documented vehicle. The operator met with Respondent Sariyar and requested a smog
23 inspection. Sariyar had the operator sign a work order/estimate and gave him a copy. The
24 operator observed Sariyar perform the smog inspection. After the inspection was completed, the
25 operator paid Sariyar \$99.95 and received copies of an invoice and a vehicle inspection report.
26 That same day, electronic smog Certificate of Compliance No. NW712548C was issued for the
27 vehicle.

28 19. On October 26, 2010, the Bureau inspected the vehicle and found that the PCV valve
and related hose were still missing.

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1 section 44012, subdivision (f), of that Code in a material respect, as follows: Respondent failed
2 to perform the visual check of the emission control devices on the Bureau's 1995 Chevrolet
3 Impala SS in accordance with procedures prescribed by the department in that he failed to
4 determine that the PCV valve and related hose had been removed from the vehicle.

5 **SEVENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Regulations Pursuant**
7 **to the Motor Vehicle Inspection Program)**

8 26. Respondent Sariyar's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
10 provisions of California Code of Regulations, title 16, as follows:

11 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
12 1995 Chevrolet Impala SS in accordance with Health & Saf. Code sections 44012 and 44035, and
13 California Code of Regulations, title 16, section 3340.42.

14 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
15 Bureau's 1995 Chevrolet Impala SS in accordance with the Bureau's specifications.

16 **EIGHTH CAUSE FOR DISCIPLINE**

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

18 27. Respondent Sariyar's technician license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
20 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
21 compliance for the Bureau's 1995 Chevrolet Impala SS without performing a bona fide inspection
22 of the emission control devices and systems on the vehicle, thereby depriving the People of the
23 State of California of the protection afforded by the Motor Vehicle Inspection Program.

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

3 **ELEVENTH CAUSE FOR DISCIPLINE**

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

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

8 a. **Section 44012, subdivision (f)**: Respondent failed to ensure that the visual and
9 functional checks of the emission control devices on the Bureau's 1995 Chevrolet Beretta were
10 performed in accordance with procedures prescribed by the department.

11 b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for
12 the Bureau's 1995 Chevrolet Beretta without ensuring that the vehicle was properly tested and
13 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

14 **TWELFTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Regulations Pursuant**
16 **to the Motor Vehicle Inspection Program)**

17 33. Respondent Alpha Auto's smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
19 comply with the following sections of California Code of Regulations, title 16:

20 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
21 of compliance for the Bureau's 1995 Chevrolet Beretta even though the vehicle had not been
22 inspected in accordance with section 3340.42.

23 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
24 conducted on the Bureau's 1995 Chevrolet Beretta in accordance with the Bureau's
25 specifications.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

3 37. Respondent Domac's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
5 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
6 compliance for the Bureau's 1995 Chevrolet Beretta without performing a bona fide inspection of
7 the emission control devices and systems on the vehicle, thereby depriving the People of the State
8 of California of the protection afforded by the Motor Vehicle Inspection Program.

9 **MATTERS IN AGGRAVATION**

10 38. To determine the degree of discipline, if any, to be imposed on Respondents,
11 Complainant alleges as follows:

12 **Respondent Alpha Auto**

13 a. On or about May 5, 2010, the Bureau issued Citation No. C2010-1171 against
14 Respondent Alpha Auto for violations of Health & Saf. Code section 44012, subdivision (f)
15 (failure to perform a visual/functional check of emission control devices according to procedures
16 prescribed by the department); and California Code of Regulations, title 16, section
17 ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was
18 improperly tested). On or about March 25, 2010, Respondent issued a certificate of compliance
19 to a Bureau undercover vehicle with a missing EVAP canister. The Bureau assessed civil
20 penalties totaling \$1,000 against Respondent for the violations. Respondent paid the fine on July
21 6, 2010.

22 **Respondent Domac**

23 b. On or about July 11, 2008, the Bureau issued Citation No. M09-025 against
24 Respondent Domac for violations of Health & Saf. Code section 44032 (qualified technicians
25 shall perform tests of emission control systems and devices in accordance with Health & Saf.
26 Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect,
27 test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
28 Regulation 3340.42). On or about June 27, 2008, while working as a smog check technician at

1 A1 Test Only Smog Station located in Walnut Creek, California, Respondent issued a certificate
2 of compliance to a Bureau undercover vehicle with a missing PCV system. Respondent was
3 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
4 within 30 days from receipt of the citation. Respondent completed the training on February 21,
5 2009.

6 **Respondent Sariyar**

7 c. On or about May 5, 2010, the Bureau issued Citation No. M2010-1172 against
8 Respondent Sariyar for violations of Health & Saf. Code section 44032 (qualified technicians
9 shall perform tests of emission control systems and devices in accordance with Health & Saf.
10 Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect,
11 test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
12 Regulation 3340.42). On or about March 25, 2010, while working as a smog check technician at
13 Super Smog Auto Service, Respondent issued a certificate of compliance to a Bureau undercover
14 vehicle with a missing EVAP canister. Respondent was directed to complete an 8 hour training
15 course and to submit proof of completion to the Bureau within 30 days from receipt of the
16 citation. Respondent completed the training on July 16, 2010.

17 **OTHER MATTERS**

18 39. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
19 suspend, revoke, or place on probation the registration for all places of business operated in this
20 state by Respondent Alpha Auto LLC, doing business as Super Smog Auto Service, upon a
21 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
22 laws and regulations pertaining to an automotive repair dealer.

23 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
24 License Number TC 258010, issued to Respondent Alpha Auto LLC, doing business as Super
25 Smog Auto Service, is revoked or suspended, any additional license issued under this chapter in
26 the name of said licensee may be likewise revoked or suspended by the director.

27 41. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
28 License Number EA 148418, issued to Respondent Cem Huseyin Domac, is revoked or

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

3 42. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
4 License Number EA 147873, issued to Respondent Cihan Sariyar, is revoked or suspended, any
5 additional license issued under this chapter in the name of said licensee, including, but not limited
6 to, Smog Check, Test Only, Station License No. TC 244159 and Smog Check, Test Only, Station
7 License Number TC 237384, may be likewise revoked or suspended by the director.

8 **PRAYER**

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

11 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
12 258010, issued to Alpha Auto LLC, doing business as Super Smog Auto Service;

13 2. Revoking or suspending any other automotive repair dealer registration issued to
14 Alpha Auto LLC;

15 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
16 258010, issued to Alpha Auto LLC, doing business as Super Smog Auto Service;

17 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
18 and Safety Code in the name of Alpha Auto LLC;

19 5. Revoking or suspending Advanced Emission Specialist License Number EA 148418,
20 issued to Cem Huseyin Domac;

21 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
22 and Safety Code in the name of Cem Huseyin Domac;

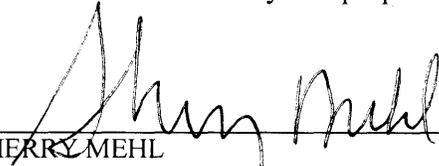
23 7. Revoking or suspending Advanced Emission Specialist License Number EA 147873,
24 issued to Cihan Sariyar;

25 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
26 and Safety Code in the name of Cihan Sariyar, including, but not limited to, Smog Check, Test
27 Only, Station License No. TC 244159 and Smog Check, Test Only, Station License Number TC
28 237384;

1 9. Ordering Alpha Auto LLC, doing business as Super Smog Auto Service, Cem
2 Huseyin Domac, and Cihan Sariyar to pay the Director of Consumer Affairs the reasonable costs
3 of the investigation and enforcement of this case, pursuant to Business and Professions Code
4 section 125.3;

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

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7 DATED: 2/3/12



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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