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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. 79/11-95

12 **MAGIC SMOG**
11683 Rancho Road, Unit #1
13 Adelanto, CA 92301
14 **SULTAN S. QOTAMI, OWNER**
Automotive Repair Dealer Registration
No. **ARD 251324**
15 Smog Check Test Only Station License
No. **TC 251324**
16

A C C U S A T I O N
S M O G C H E C K

17 and

18 **SULTAN S. QOTAMI**
16584 Hastings Place
19 Victorville, CA 92395
Advanced Emission Specialist Technician
License No. **EA 151751**
20

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

24 1. Sherry Mehl ("Complainant") brings this Accusation solely in her 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 July 11, 2007, the Bureau issued Automotive Repair Dealer Registration
28 Number ARD 251324 ("registration") to Sultan S. Qotami doing business as Magic Smog

1 ("Respondent"). The registration was in full force and effect at all times relevant to the charges
2 brought herein and will expire on July 31, 2011, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about August 7, 2007, the Bureau issued Smog Check Test Only Station
5 License Number TC 251324 ("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 July 31,
7 2011, unless renewed.

8 **Advanced Emission Specialist Technician License**

9 4. On a date uncertain in 2006, the Bureau issued Advanced Emission Specialist
10 Technician License Number EA 151751 ("technician license") to Respondent. The technician
11 license was in full force and effect at all times relevant to the charges brought herein and will
12 expire on January 31, 2012, unless renewed.

13 **STATUTORY PROVISIONS**

14 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
15 part:

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

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

25 (4) Any other conduct that constitutes fraud.

26 (b) Except as provided for in subdivision (c), if an automotive repair
27 dealer operates more than one place of business in this state, the director pursuant to
28 subdivision (a) shall only suspend, revoke, or place on probation the registration of
the 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
automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or
place on probation the registration for all places of business operated in this 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 regulations
adopted pursuant to it.

1 6. Code section 118, subdivision (b) states:

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

7 7. Code section 9884.9 states, in pertinent part:

8 (a) The automotive repair dealer shall give to the customer a written
9 estimated price for labor and parts necessary for a specific job. No work shall be done
10 and no charges shall accrue before authorization to proceed is obtained from the
11 customer. No charge shall be made for work done or parts supplied in excess of the
12 estimated price without the oral or written consent of the customer that shall be
13 obtained at some time after it is determined that the estimated price is insufficient and
14 before the work not estimated is done or the parts not estimated are supplied. Written
15 consent or authorization for an increase in the original estimated price may be
16 provided by electronic mail or facsimile transmission from the customer. The bureau
17 may specify in regulation the procedures to be followed by an automotive repair
18 dealer if an authorization or consent for an increase in the original estimated price is
19 provided by electronic mail or facsimile transmission. If that consent is oral, the
20 dealer shall make a notation on the work order of the date, time, name of person
21 authorizing the additional repairs and telephone number called, if any, together with a
22 specification of the additional parts and labor and the total additional cost, and shall
23 do either of the following:

16 (1) Make a notation on the invoice of the same facts set forth in the
17 notation on the work order .

18 (2) Upon completion of the repairs, obtain the customer's signature or
19 initials to an acknowledgment of notice and consent, if there is an oral consent of the
20 customer to additional repairs, in the following language:

20 "I acknowledge notice and oral approval of an increase in the original
21 estimated price.

22 _____
23 (signature or initials)"

24 Nothing in this section shall be construed as requiring an automotive
25 repair dealer to give a written estimated price if the dealer does not agree to perform
26 the requested repair.

26 8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
27 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
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1 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

3 9. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
4 "commission," "committee," "department," "division," "examining committee," "program," and
5 "agency." "License" includes certificate, registration or other means to engage in a business or
6 profession regulated by the Code.

7 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
8 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
9 the Motor Vehicle Inspection Program.

10 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

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

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

25 COST RECOVERY

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

3 **UNDERCOVER OPERATION – JUNE 22, 2010**

4 15. On or about June 22, 2010, a Bureau undercover operator drove a Bureau-
5 documented 2002 Dodge Ram to Respondent's facility and requested a smog inspection. The
6 vehicle could not pass the visual portion of a smog inspection because the vehicle's positive
7 crankcase ventilation (PCV) system was missing. The operator did not sign nor was he provided
8 with an estimate prior to the smog inspection. Respondent performed the smog inspection and
9 issued electronic Certificate of Compliance No. WL143743C for that vehicle. The operator paid
10 \$60 for the smog inspection and received a copy of Invoice No. 4762 and the Vehicle Inspection
11 Report ("VIR").

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Misleading Statements)**

14 16. Respondent has subjected his registration to discipline under Code section 9884.7,
15 subdivision (a)(1), in that on or about June 22, 2010, he made statements which he knew or which
16 by exercise of reasonable care he should have known were untrue or misleading when he issued
17 electronic Certificate of Compliance No. WL143743C for the 2002 Dodge Ram, certifying that
18 the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's
19 PCV system was missing.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 17. Respondent has subjected his registration to discipline under Code section 9884.7,
23 subdivision (a)(4), in that on or about June 22, 2010, he committed acts which constitute fraud by
24 issuing electronic Certificate of Compliance No. WL143743C for the 2002 Dodge Ram without
25 performing a bona fide inspection of the emission control devices and systems on that vehicle,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 18. Respondent has subjected his station license to discipline under Health and Safety
4 Code section 44072.2, subdivision (a), in that on or about June 22, 2010, regarding the 2002
5 Dodge Ram, he violated sections of that Code, as follows:

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

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

11 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
12 Compliance No. WL143743C without properly testing and inspecting the vehicle to determine if
13 it was in compliance with section 44012 of that Code.

14 d. **Section 44059:** Respondent willfully made false entries for the electronic Certificate
15 of Compliance No. WL143743C, certifying that the vehicle had been inspected as required when,
16 in fact, it had not.

17 **FOURTH CAUSE FOR DISCIPLINE**

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

19 19. Respondent has subjected his station license to discipline under Health and Safety
20 Code section 44072.2, subdivision (c), in that on or about June 22, 2010, regarding the 2002
21 Dodge Ram, he violated sections of the California Code of Regulations, title 16, as follows:

22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
23 electronic Certificate of Compliance No. WL143743C without performing a bona fide inspection
24 of the emission control devices and systems on that vehicle as required by Health and Safety
25 Code section 44012.

26 b. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
27 Compliance No. WL143743C even though that vehicle had not been inspected in accordance with
28 section 3340.42 of that Code.

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

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 20. Respondent subjected his station license to discipline under Health and Safety Code
6 section 44072.2, subdivision (d), in that on or about June 22, 2010, regarding the 2002 Dodge
7 Ram, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
8 issuing electronic Certificate of Compliance No. WL143743C for that vehicle without performing
9 a bona fide inspection of the emission control devices and system on the vehicle, thereby
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle
11 Inspection Program.

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 21. Respondent has subjected his technician license to discipline under Health and Safety
15 Code section 44072.2, subdivision (a), in that on or about June 22, 2010, regarding the 2002
16 Dodge Ram, he violated sections of that Code, as follows:

17 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
18 control devices and systems required by law were installed and functioning correctly in
19 accordance with test procedures.

20 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
21 on that vehicle in accordance with procedures prescribed by the department.

22 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
23 and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle
24 could not pass the visual portion of the inspection because the PCV system was missing.

25 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
26 Compliance No. WL143743C, certifying that the vehicle had been inspected as required when, in
27 fact, it had not.

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1 SEVENTH CAUSE FOR DISCIPLINE

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

3 22. Respondent has subjected his technician license to discipline under Health and Safety
4 Code section 44072.2, subdivision (c), in that on or about June 22, 2010, regarding the 2002
5 Dodge Ram, he violated sections of the California Code of Regulations, title 16, as follows:

6 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
7 electronic Certificate of Compliance No. WL143743C without performing a bona fide inspection
8 of the emission control devices and systems on that vehicle as required by Health and Safety
9 Code section 44012.

10 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle
11 in accordance with Health and Safety Code section 44012.

12 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
13 Emission Inspection System for electronic Certificate of Compliance No. WL143743C by
14 entering "Pass" for the visual inspection portion of the smog inspection when, in fact, the vehicle
15 could not pass the visual inspection because the vehicle's PCV system was missing.

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

18 EIGHTH CAUSE FOR DISCIPLINE

19 (Dishonesty, Fraud or Deceit)

20 23. Respondent has subjected his technician license to discipline under Health and Safety
21 Code section 44072.2, subdivision (d), in that on or about June 22, 2010, regarding the 2002
22 Dodge Ram, he committed acts involving dishonesty, fraud or deceit whereby another was
23 injured by issuing electronic Certificate of Compliance No. WL143743C without performing a
24 bona fide inspection of the emission control devices and systems on that vehicle, thereby
25 depriving the People of the State of California of the protection afforded by the Motor Vehicle
26 Inspection Program.

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PRIOR CITATIONS

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2 24. To determine the degree of penalty, if any, to be imposed upon Respondent,
3 Complainant alleges as follows:

4 a. On October 21, 2008, the Bureau issued Citation No. C09-0386 to Respondent
5 against his registration and station licenses for violations of Health and Safety Code section
6 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
7 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
8 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
9 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
10 manufacturer's specifications. The Bureau assessed a civil penalty of \$500. Respondent
11 complied with this citation on November 25, 2008.

12 b. On October 1, 2009, the Bureau issued Citation No. C2010-0309 to Respondent
13 against his registration and station licenses for violations of Health and Safety Code section
14 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
15 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
16 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the
17 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil
18 penalty of \$1,000. Respondent complied with this citation on October 21, 2009.

19 c. On February 9, 2010, the Bureau issued Citation No. C2010-0809 to Respondent
20 against his registration and station licenses for violations of Health and Safety Code section
21 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
22 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
23 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
24 missing evaporative charcoal canister. The Bureau assessed a civil penalty of \$2,000.
25 Respondent complied with this citation on March 10, 2010.

26 d. On October 21, 2008, the Bureau issued Citation No. M09-0387 to Respondent
27 against his technician license for violations of Health and Safety Code section 44032, (qualified
28 technicians shall perform tests of emission control systems and devices in accordance with

1 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
2 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
3 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
4 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's
5 specifications. Respondent was required to attend an 8-hour training course. Respondent
6 complied with this citation on December 1, 2008.

7 e. On October 1, 2009, the Bureau issued Citation No. M2010-0310 to Respondent
8 against his technician license for violations of Health and Safety Code section 44032, (qualified
9 technicians shall perform tests of emission control systems and devices in accordance with
10 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
11 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
12 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
13 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's
14 specifications. Respondent was required to attend a 16-hour training course. Respondent
15 complied with this citation on November 2, 2009.

16 f. On February 9, 2010, the Bureau issued Citation No. M2010-0810 to Respondent
17 against his technician license for violations of Health and Safety Code section 44032, (qualified
18 technicians shall perform tests of emission control systems and devices in accordance with
19 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
20 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
21 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
22 compliance to a Bureau vehicle with a missing evaporative charcoal canister. Respondent was
23 required to attend a 68-hour training course. Respondent complied with this citation on March
24 10, 2010.

25 OTHER MATTERS

26 25. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
27 or permanently or refuse to validate, the registrations for all places of business operated in this
28 state by to Sultan S. Qotami doing business as Magic Smog, upon a finding that he has, or is,

1 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
2 automotive repair dealer.

3 26. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
4 License Number TC 251324, issued to Sultan S. Qotami doing business as Magic Smog, is
5 revoked or suspended, any additional license issued under this chapter in the name of said
6 licensee including, but not limited to Advanced Emission Specialist Technician License Number
7 EA 151751, issued to Sultan S. Qotami, 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 following the hearing, the Director of Consumer Affairs issue a decision:

11 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
12 Number ARD 251324, issued to Sultan S. Qotami doing business as Magic Smog;

13 2. Revoking, suspending or placing on probation any other automotive repair dealer
14 registration issued in the name of Sultan S. Qotami;

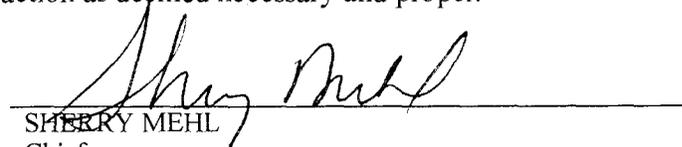
15 3. Revoking or suspending Smog Check Test Only Station License Number TC 251324,
16 issued to Sultan S. Qotami doing business as to Magic Smog;

17 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
18 & Safety Code in the name of Sultan S. Qotami including, but not limited to Advanced Emission
19 Specialist Technician License Number EA 151751;

20 5. Ordering Sultan S. Qotami to pay the Bureau of Automotive Repair the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
22 Code section 125.3; and,

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

24 DATED: 6/10/11



25 SHERRY MEHL
26 Chief
27 Bureau of Automotive Repair
28 Department of Consumer Affairs
State of California
Complainant

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