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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **EATON AUTO DIAGNOSTICS, INC.,** **dba HIGH ST SMOG CHECK** **NICHOLAS YAKOUBOVSKY, PRESIDENT and SECRETARY** **ELENA YAKOUBOVSKY, TREASURER** **4321 San Leandro Street** **Oakland, CA 94601** **Mailing Address:** **71 Wild Oak Lane** **Danville, CA 94506** **Automotive Repair Dealer Reg. No. ARD 261712** **Smog Check, Test Only, Station License No. TC 261712** **and** **SALOKHIDDIN FAKHRIEV** **375 Colusa Avenue, #2** **Kensington, CA 94707** **Advanced Emission Specialist Technician License No. EA 630209** Respondents.	Case No. 79/12-50 **FIRST AMENDED ACCUSATION** **(Smog Check)**

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Complainant alleges:

PARTIES

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

Eaton Auto Diagnostics, Inc. dba High St. Smog Check

2. On or about April 23, 2010, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 261712 (hereinafter "registration") to Eaton Auto Diagnostics, Inc. ("Respondent Eaton"), doing business as High St Smog Check, with Nicholas Yakoubovsky as president and secretary and Elena Yakoubovsky as treasurer. Respondent's registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

3. On or about April 26, 2010, the Director issued Smog Check, Test Only, Station License Number TC 261712 (hereinafter "smog check station license") to Respondent Eaton. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

Salokhiddin Fakhriev

4. On or about May 19, 2008, the Director issued Advanced Emissions Specialist Technician License Number EA 630209 (hereinafter "technician license") to Salokhiddin Fakhriev ("Respondent Fakhriev"). Respondent's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2013, unless renewed.

JURISDICTION

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

6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary

proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (revoking or suspending) a registration.

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

8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
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> . . . .
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> (4) Any other conduct that constitutes fraud.
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> . . . .
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> (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.

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

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11. Health & Saf. Code section 44072.2 states, in pertinent part:

> 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 thereof, does any of the following:
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> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
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> . . . .
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> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

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

COST RECOVERY

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

VID DATA REVIEW

14. On November 30, 2010, a representative of the Bureau initiated an investigation against Respondents Eaton and Fakhriev based on a review of information from the Bureau's Vehicle Information Database ("VID"), which indicated that Respondents may be engaging in fraudulent smog check activities. On November 30, 2010, and June 30, 2011, the representative conducted detailed reviews of VID data for all smog inspections performed at Respondent Eaton's facility for the period of May 2010 through June 30, 2011. The representative found that vehicles 1 through 12 identified below, all of which were tested by Respondent Fakhriev, recorded certain

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diagnostic trouble codes (hereinafter "code") during the OBD II tests[1]. The representative obtained information indicating that the codes were not applicable to the vehicles. The Bureau concluded that Respondent Fakhriev performed the smog inspections on the vehicles using a different vehicle during the OBD II tests, a method known as "clean plugging",[2] resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified	Certificate No.
1. 06/03/2010 17:32 – 17:40	2002 Chevrolet Venture FWD; License No. 5VEZ178	NU346373C
2. 06/12/2010 10:50 – 10:56	1999 Suzuki Esteem; License No. 6GMT520	NU398749C
3. 07/15/2010 15:46 – 15:51	2000 Daewoo Lanos; License No. 5DDC564	NU898206C
4. 07/15/2010 18:32- 18:39	1998 Nissan Maxima; License No. 4ACH930	NU898214C
5. 07/15/2010 18:45 – 18:51	1997 Buick LaSabre; License No. ABM0470	NU898215C
6. 07/19/2010 19:09 – 19:15	1996 Ford Thunderbird; License No. 5WVP857	NU930238C
7. 08/23/2010 12:25 – 12:30	1996 Mitsubishi Eclipse; no plates	NW380986C
8. 08/28/2010 10:59 – 11:06	1997 GMC Suburban; License No. 5JJT644	NW448598C
9. 08/30/2010 17:05 – 17:13	2001 Dodge Stratus 4-DR; License No. 4SVX210	NW489982C
10. 10/07/2010 17:54 – 18:20	1997 Ford F150 regular cab short; License No. 5K50471	NY033482C
11. 12/30/2010 14:39 – 14:46	2003 Ford Windstar wagon; License No. 5ANE584	WR203843C

[1] The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

[2] Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

Date & Time of Inspection	Vehicle Certified	Certificate No.
12. 04/05/2011 17:13 – 17:18	2000 Hyundai Accent/Brio; License No. 6ESH595	OC357043C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

15. Respondent Eaton's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Eaton's technician, Respondent Fakhriev, certified under penalty of perjury on the vehicle inspection reports for vehicles 1 through 10, identified in paragraph 14 above[3], that he performed the smog inspections on the vehicles in accordance with all Bureau requirements and that the vehicles had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

b. Respondent Eaton's technician, Respondent Fakhriev, certified that vehicles 11 and 12, identified in paragraph 14 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

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[3] On June 3, 2011, the representative made a field visit at Respondent Eaton's facility and obtained copies of invoices and vehicle inspection reports for vehicles 1 through 10.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

16. Respondent Eaton's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 12, identified in paragraph 14 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent failed to ensure that the emission control tests on vehicles 1 through 12, identified in paragraph 14 above, were performed in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 1 through 12, identified in paragraph 14 above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health & Saf. Code section 44012.

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FOURTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 through 12, identified in paragraph 14 above, even though the vehicles had not been inspected in accordance with section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 12, identified in paragraph 14 above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

19. Respondent Eaton's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 12, identified in paragraph 14 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

20. Respondent Fakhriev's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform the emission control tests on vehicles 1 through 12, identified in paragraph 14 above, in accordance with procedures prescribed by the department.

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SEVENTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 through 12, identified in paragraph 14 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 12, identified in paragraph 14 above, in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

22. Respondent Fakhriev's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 12, identified in paragraph 14 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

23. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Eaton Auto Diagnostics, Inc., doing business as High St Smog Check, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

24. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TC 261712, issued to Respondent Eaton Auto Diagnostics, Inc., doing business

as High St Smog Check, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

25. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 630209, issued to Salokhiddin Fakhriev, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 261712, issued to Eaton Auto Diagnostics, Inc., doing business as High St Smog Check;

2. Revoking or suspending any other automotive repair dealer registration issued to Eaton Auto Diagnostics, Inc;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 261712, issued to Eaton Auto Diagnostics, Inc., doing business as High St Smog Check;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Eaton Auto Diagnostics, Inc;

5. Revoking or suspending Advanced Emissions Specialist Technician License Number EA 630209, issued to Salokhiddin Fakhriev;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Salokhiddin Fakhriev;

7. Ordering Respondents Eaton Auto Diagnostics, Inc., doing business as High St Smog Check, and Salokhiddin Fakhriev to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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8. Taking such other and further action as deemed necessary and proper.

DATED: 1/13/12

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

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