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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. 79/12-86

13 **MAIN STREET SMOG**
2204 E. Main Street, #B
14 **Visalia, CA 93292**
DAVID ALVAREZ, PARTNER
ALFREDO CASTELLANOS, PARTNER
15 **Automotive Repair Dealer Registration No.**
ARD 236430
16 **Smog Check Test Only Station License No.**
TC 236430

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

18 **DAVID ALVAREZ**
15168 Oak Ranch Drive
19 **Visalia, CA 93292**
Advanced Emission Specialist Technician License
20 **No. EA 630753**

21 Respondents.

22
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 This violation, or action by the director, shall not affect in any manner the right of the
2 automotive repair dealer to operate his or her other places of business.

3 (c) Notwithstanding subdivision (b), the director may invalidate
4 temporarily or permanently, the registration for all places of business operated in this
5 state by an automotive repair dealer upon a finding that the automotive repair dealer
6 has, or is, engaged in a course of repeated and willful violations of this chapter, or
7 regulations adopted pursuant to it.

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

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

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

19 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

10. Section 44072.6 of the Health and Safety Code 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.

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1 11. Section 44072.8 of the Health and Safety Code states:

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

4 **COST RECOVERY**

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

9 **UNDERCOVER OPERATION – SEPTEMBER 8, 2011**

10 13. On or about September 8, 2011, a Bureau undercover operator drove a Bureau-
11 documented 1987 Toyota pickup to Respondent Main Street's facility and requested a smog
12 inspection. The vehicle could not pass the visual portion of a smog inspection because the
13 vehicle's EGR valve was missing. The operator signed a work order and received a copy of the
14 document. Respondent Alvarez performed the smog inspection and issued electronic Certificate
15 of Compliance No. WZ210166C for that vehicle. The operator paid \$50 for the smog inspection
16 and received a copy of Invoice No. 15316 and the Vehicle Inspection Report.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Misleading Statements)**

19 14. Respondent Main Street has subjected its registration to discipline under Code section
20 9884.7, subdivision (a)(1), in that on or about September 8, 2011, it made statements which it
21 knew or which by exercise of reasonable care it should have known were untrue or misleading
22 when it issued electronic Certificate of Compliance No. WZ210166C for the 1987 Toyota pickup,
23 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
24 the vehicle's EGR valve was missing.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 15. Respondent Main Street has subjected its registration to discipline under Code section
28 9884.7, subdivision (a)(4), in that on or about September 8, 2011, it committed acts which

1 constitute fraud by issuing electronic Certificate of Compliance No. WZ210166C for the 1987
2 Toyota pickup, without performing a bona fide inspection of the emission control devices and
3 systems on that vehicle, thereby depriving the People of the State of California of the protection
4 afforded by the Motor Vehicle Inspection Program.

5 **THIRD CAUSE FOR DISCIPLINE**

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

7 16. Respondent Main Street has subjected its station license to discipline under Health
8 and Safety Code section 44072.2, subdivision (a), in that on or about September 8, 2011,
9 regarding the 1987 Toyota pickup, it violated sections of that Code, as follows:

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

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

15 c. **Section 44015, subdivision (b):** Respondent Main Street issued electronic
16 Certificate of Compliance No. WZ210166C without properly testing and inspecting the vehicle to
17 determine if it was in compliance with section 44012 of that Code.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 17. Respondent Main Street has subjected its station license to discipline under Health
21 and Safety Code section 44072.2, subdivision (c), in that on or about September 8, 2011,
22 regarding the 1987 Toyota pickup, it violated sections of the California Code of Regulations, title
23 16, as follows:

24 a. **Section 3340.35, subdivision (c):** Respondent Main Street issued electronic
25 Certificate of Compliance No. WZ210166C even though that vehicle had not been inspected in
26 accordance with section 3340.42 of that Code.

27 b. **Section 3340.42:** Respondent Main Street failed to conduct the required smog tests
28 and inspections on that vehicle in accordance with the Bureau's specifications.

1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 18. Respondent Main Street has subjected its station license to discipline under Health
4 and Safety Code section 44072.2, subdivision (d), in that on or about September 8, 2011
5 regarding the 1987 Toyota pickup, it committed acts involving dishonesty, fraud or deceit
6 whereby another was injured by issuing electronic Certificate of Compliance No. WZ210166C to
7 that vehicle without performing a bona fide inspection of the emission control devices and
8 systems on the vehicle, thereby depriving the People of the State of California of the protection
9 afforded by the Motor Vehicle Inspection Program.

10 **SIXTH CAUSE FOR DISCIPLINE**

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

12 19. Respondent Alvarez has subjected his technician license to discipline under Health
13 and Safety Code section 44072.2, subdivision (a), in that on or about September 8, 2011,
14 regarding the 1987 Toyota pickup, he violated sections of that Code, as follows:

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

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

20 c. **Section 44032:** Respondent Alvarez failed to perform tests of the emission control
21 devices and systems on that vehicle in accordance with section 44012 of that Code.

22 **SEVENTH CAUSE FOR DISCIPLINE**

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

24 20. Respondent Alvarez has subjected his technician license to discipline under Health
25 and Safety Code section 44072.2, subdivision (c), in that on or about September 8, 2011,
26 regarding the 1987 Toyota pickup, he violated sections of the California Code of Regulations,
27 title 16, as follows:

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

3 b. **Section 3340.41, subdivision (c):** Respondent Alvarez entered false information into
4 the Emission Inspection System for electronic Certificate of Compliance No. WZ210166C by
5 entering "Pass" for the visual inspection portion of the smog inspection when, in fact, the vehicle
6 could not pass the visual inspection because the vehicle's EGR valve was missing.

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

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

11 21. Respondent Alvarez has subjected his technician license to discipline under Health
12 and Safety Code section 44072.2, subdivision (d), in that on or about September 8, 2011,
13 regarding the 1987 Toyota pickup, he committed acts involving dishonesty, fraud or deceit
14 whereby another was injured by issuing electronic Certificate of Compliance No. WZ210166C
15 without performing a bona fide inspection of the emission control devices and systems on that
16 vehicle, thereby depriving the People of the State of California of the protection afforded by the
17 Motor Vehicle Inspection Program.

18 **PRIOR CITATIONS**

19 22. To determine the degree of penalty, if any, to be imposed upon Respondent,
20 Complainant alleges as follows:

21 a. On September 22, 2006, the Bureau issued Citation No. C2007-0119 to Respondent
22 Main Street against its registration and station licenses for violations of Health and Safety Code
23 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
24 devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35,
25 subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent
26 Main Street issued a certificate of compliance to a Bureau vehicle with the ignition timing
27 adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of
28 \$1,000. Respondent Main Street complied with this citation on November 27, 2006.

1 b. On September 10, 2009, the Bureau issued Citation No. C2010-0201 to Respondent
2 Main Street against its registration and station licenses for violations of Health and Safety Code
3 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
4 devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a
5 vehicle improperly tested). Respondent Main Street issued a certificate of compliance to a
6 Bureau vehicle with a missing EGR valve. Further, Respondent Main Street failed to perform the
7 LPFT test. The Bureau assessed a civil penalty of \$1,000. Respondent Main Street complied
8 with this citation on November 12, 2009.

9 c. On June 14, 2010, the Bureau issued Citation No. C2010-1285 to Respondent Main
10 Street against its registration and station licenses for violations of Health and Safety Code section
11 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
12 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
13 improperly tested). Respondent Main Street issued a certificate of compliance to a Bureau
14 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau
15 assessed a civil penalty of \$2,000. Respondent Main Street complied with this citation on August
16 16, 2010.

17 d. On January 19, 2011, the Bureau issued Citation No. C2011-0821 to Respondent
18 Main Street against its registration and station licenses for violations of Health and Safety Code
19 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
20 devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a
21 vehicle improperly tested). Respondent Main Street issued a certificate of compliance to a
22 Bureau vehicle with a missing fuel evaporation charcoal canister. The Bureau assessed a civil
23 penalty of \$2,500. Respondent Main Street complied with this citation on March 9, 2011.

24 e. On January 19, 2011, the Bureau issued Citation No. M2011-0822 to Respondent
25 Alvarez against his technician license for violations of Health and Safety Code section 44032,
26 (qualified technicians shall perform tests of emission control systems and devices in accordance
27 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
28 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in

1 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
2 3340.42). Respondent Alvarez issued a certificate of compliance to a Bureau vehicle with a
3 missing fuel evaporative charcoal canister. Respondent Alvarez was required to attend an 8-hour
4 training course. Respondent Alvarez complied with this citation on March 18, 2011.

5 **OTHER MATTERS**

6 23. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
7 or may invalidate temporarily or permanently, the registrations for all places of business operated
8 in this state by Main Street Smog, upon a finding that it has, or is, engaged in a course of repeated
9 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

10 24. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
11 License Number TC 236430, issued to Main Street Smog, is revoked or suspended, any additional
12 license issued under this chapter in the name of said licensee may be likewise revoked or
13 suspended by the director.

14 25. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
15 Technician License Number EA 630753, issued to David Alvarez, is revoked or suspended, any
16 additional license issued under this chapter in the name of said licensee may be likewise revoked
17 or suspended by the director.

18 **PRAYER**

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

21 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
22 Number ARD 236430, issued to Main Street Smog;

23 2. Revoking, suspending or placing on probation any other automotive repair dealer
24 registration issued in to Main Street Smog;

25 3. Revoking or suspending Smog Check Test Only Station License Number TC 236430,
26 issued to Main Street Smog;

27 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
28 and Safety Code in the name of Main Street Smog;

- 1 5. Revoking or suspending Advanced Emission Specialist Technician License Number
- 2 EA 630753, issued to David Alvarez;
- 3 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 4 and Safety Code in the name of David Alvarez;
- 5 7. Ordering Main Street Smog and David Alvarez to pay the Bureau of Automotive
- 6 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to
- 7 Business and Professions Code section 125.3; and,
- 8 8. Taking such other and further action as deemed necessary and proper.

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DATED: 2/23/12

John Wallauch by Dave Balatt
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Dave Balatt
Assist. Chief

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