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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

Case No. 79/18-5130

13 **ACCUSATION AND PETITION TO**
14 **REVOKE PROBATION**

14 **CHANG SIK KIM DBA KIMS AUTO**
15 **REPAIR**
16 **5121 E. Florence Ave.**
17 **Bell, CA 90201**

16 **Automotive Repair Dealer Registration No.**
17 **ARD 99676**
18 **Lamp Station License No. LS 99676, Class A**
19 **Smog Check Test and Repair Station**
20 **License No. RC 99676**

19 **and**

20 **CHANG SIK KIM**
21 **Smog Check Inspector License No.**
22 **EO 111109**
23 **Smog Check Repair Technician License No.**
24 **EI 111109 (formerly Advanced Emission**
25 **Specialist Technician EA 111109)**
26 **Lamp Adjuster License No. LA 111109,**
27 **Class A**

28 Respondent.

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1 Complainant alleges:

2 **PARTIES**

3 1.e Patrick Dorais (Complainant) brings this Accusation and Petition to Revoke
4 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair,
5 Department of Consumer Affairs.

6 2. In 1983, the Bureau of Automotive Repair issued Automotive Repair Dealer
7 Registration Number ARD 99676 to Chang Sik Kim ("Respondent") dba Kims Auto Repair. The
8 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
9 charges brought herein and will expire on January 31, 2019, unless renewed.

10 3. On or about September 12, 2007, the Bureau of Automotive Repair issued Smog
11 Check Station License Number RC 99676 to Respondent dba Kims Auto Repair. The Smog
12 Check Station License was in full force and effect at all times relevant to the charges brought
13 herein and will expire on January 31, 2019, unless renewed.

14 4. On or about September 19, 1988, the Bureau of Automotive Repair issued Lampe
15 Station License Number LS 99676, class A, to Respondent dba Kims Auto Repair. The Lamp
16 Station License was in full force and effect at all times relevant to the charges brought herein and
17 will expire on January 31, 2019, unless renewed.

18 5.e On or about September 19, 1988, the Bureau of Automotive Repair issued Brakee
19 Station License Number BS 99676, class C, to Respondent dba Kims Auto Repair. The Brake
20 Station License was due to expire on January 31, 2018; however, it was revoked on October 13,
21 2017.

22 6. In 1996, the Bureau issued Advanced Emission Specialist Technician License EAe
23 111109 to Respondent. Said license expired on July 31,2012, was cancelled the same day, and
24 renewed pursuant to Respondent's election as Smog Check Inspector License No. EO 111109 and
25 Smog Check Repair Technician License No. EJ 111109, effective July 31, 2012. Smog Check
26 Inspector License EO 111109 and Smog Check Repair Technician License No. EI 111109 were

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1 in full force and effect at all times relevant to the charges brought herein and will expire on July
2 31, 2020, unless renewed.¹

3 7. In 1988, the Bureau of Automotive Repair issued Lamp Adjuster License Number LAO
4 111109, class A, to Respondent. The Lamp Adjuster License expired on July 31, 2017, and was
5 cancelled on September 3, 2017.

6 8. In 1988, the Bureau of Automotive Repair issued Brake Adjuster License Number
7 BA 111109, class c, to Respondent. The Brake Adjuster License expired on July 31, 2017, and
8 was revoked on October 13, 2017.

9 9. In a disciplinary action entitled "In the Matter of the Accusation Against Chang Siko
10 Kim dba Kims Auto Repair," Case No. 79/16-139, the Bureau of Automotive Repair issued a
11 Decision and Order, effective October 13, 2017, in which Respondent's Automotive Repair
12 Dealer Registration, Smog Check Station License, Lamp Station License, Smog Check Inspector
13 License, and Smog Check Repair Technician License were revoked. However, the revocation of
14 said licenses was stayed and Respondent's Automotive Repair Dealer Registration, Smog Check
15 Station License, Lamp Station License, Smog Check Inspector License, and Smog Check Repair
16 Technician License were placed on probation for three (3) years with certain terms and
17 conditions.² A copy of that Decision and Order is attached as Exhibit A and is incorporated by
18 reference.

19 **JURISDICTION, STATUTORY & REGULATORY PROVISIONS FOR ACCUSATION**

20 10.o Business and Professions Code ("BPC") section 9884.13 provides, in pertinent part,
21 that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed
22 with a disciplinary proceeding against an automotive repair dealer or to render a decision
23 temporarily or permanently invalidating (suspending or revoking) a registration.

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25 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28, 3340.29 and
26 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist
27 Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license
and and/or Smog Check Repair Technician (EI) license.

28 ² Pursuant to the Decision and Order, Respondent's Brake Station License and Brakeo
Adjuster License were also revoked, but the revocation of those licenses was not stayed.

1 11.o Health and Safety Code (“HSC”) section 44002 provides, in pertinent part, that the
2 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
3 the Motor Vehicle Inspection Program.

4 12.o Section 44072.6 of the HSC provides, in pertinent part, that the expiration or
5 suspension of a license by operation of law, or by order or decision of the Director of Consumer
6 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
7 of jurisdiction to proceed with disciplinary action.

8 13.o Section 9884.7 of the BPC states, in pertinent part:o

9 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
10 error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an
11 automotive repair dealer for any of the following acts or omissions related to the conduct of the
12 business of the automotive repair dealer, which are done by the automotive repair dealer or any
13 automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

17
18 (6) Failure in any material respect to comply with the provisions of this chapter or
19 regulations adopted pursuant to it.”

20 14.o Section 9882.22 of the BPC states, in pertinent part:o

21 The willful making of any false statement or entry with regard to a material matter in any
22 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
23 by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the
24 Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

25 15. o Section 44072.2 of the HSC states, in pertinent part:o

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

1 “(a) Violates any section of this chapter and the regulations adopted pursuant to it, which
2 related to the licensed activities.

3 ...

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

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6 16.e Section 44012, subdivision (f), of the HSC states:e

7 A visual or functional check is made of emission control devices specified by the
8 department, including the catalytic converter in those instances in which the department
9 determines it to be necessary to meet the findings of Section 44001. The visual or functional
10 check shall be performed in accordance with procedures prescribed by the department.

11 17.e Section 44015, subdivision (b), of the HSC provides that a certificate of compliance
12 shall be issued if a vehicle meets the requirements of HSC section 40012.

13 18.e Section 44059 of the HSC provides:e

14 The willful making of any false statement or entry with regard to a material matter in any
15 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
16 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
17 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

18 19.e Section 44032 of the HSC states, in pertinent part, “all tests must be conducted ine
19 accordance with section 44012 (i.e. Motor Vehicle Inspection Program Requirements).

20 20.e California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),e
21 states:

22 “The bureau may suspend or revoke the license of or pursue other legal action against a
23 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
24 certificate of noncompliance.”

25 21.e CCR, title 16, section 3340.30, subdivision (a), states in pertinent part:e

26 “A licensed smog check inspector and/or repair technician shall comply with the following
27 requirements at all times while licensed:

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 26.e Respondent has subjected his registration to discipline under BPC section 9884.7,e
4 subdivision (a)(1), in that he made statements which were known to be untrue or misleading or,
5 which by exercise of reasonable care should have been known to be untrue or misleading, when
6 issuing an electronic certificate of compliance to an undercover Bureau vehicle. Complainant
7 refers to, and by this reference incorporates, the allegations contained in paragraph 25, inclusive,
8 as though set forth fully herein.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Material Violation of Automotive Repair Act)**

11 27.e Respondent has subjected his registration to discipline under BPC section 9884.7,e
12 subdivision (a)(6), in conjunction with BPC section 9882.22 in that he willfully made a
13 false statement or entry with regard to a material matter in a certificate of compliance required by
14 Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety
15 Code. Complainant refers to, and by this reference incorporates, the allegations contained in
16 paragraph 25, inclusive, as though set forth fully herein.

17 **THIRD CAUSE FOR DISCIPLINE**

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

19 28.e Respondent has subjected his station license to discipline under HSC sectione
20 44072.2, subdivision (a), in that, when issuing an electronic certificate of compliance to the
21 undercover Bureau vehicle identified in paragraph 25, above, Respondent violated the following
22 sections of the HSC:

23 a.e **Section 44012(f):** Respondent failed to properly perform the visual and/or functionale
24 inspection of the vehicle.

25 b.e **Section 44015, subdivision (b):** Respondent issued an electronic certificate of e
26 compliance without properly testing and inspecting the vehicle to determine if it was in
27 compliance with section 44012 of the HSC.
28

1 c.e **Section 44059:** Respondent willfully made false entries for the electronic certificates
2 of compliance by certifying that the vehicle had been inspected as required when, in fact, it had
3 not.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 29.e Respondent has subjected his station license to discipline under HSC section
7 44072.2, subdivision (c), in that when issuing an electronic certificate of compliance to the
8 undercover Bureau vehicle identified in paragraph 25, above, Respondent violated the following
9 sections of title 16 of the CCR:

10 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
11 electronic certificate of compliance without performing a bona fide inspection of the emission
12 control devices and systems on the vehicle as required by HSC section 44012.

13 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of
14 compliance even though the vehicle had not been inspected in accordance with section 3340.42 of
15 the HSC.

16 c. **Section 3340.42:** Respondent failed to conduct the required smog test and inspection
17 on the vehicle in accordance with the Bureau's specifications.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 e 30. Respondent has subjected his smog check inspector and smog check repair licenses to
21 discipline under HSC section 44072.2, subdivision (a), in that, Respondent violated the following
22 sections of the HSC with respect to his inspection of the undercover Bureau vehicle identified in
23 paragraph 25, above:

24 a. **Section 44015, subdivision (b):** Respondent issued an electronic certificate of
25 compliance without properly testing and inspecting the vehicle to determine if it was in
26 compliance with section 44012 of the HSC.

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1 e 38. Pursuant to BPC section 9889.9, if the Lamp Station License and/or Lamp Adjustere
2 License issued to Chang Sik Kim is revoked or suspended, any additional licenses issued under
3 Articles 5 and 6 of [the Automotive Repair Act] in the name of the licensee may be likewise
4 revoked or suspended by the director.

5 PRAYER

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

8 1.e Revoking or suspending the following licenses issued to Chang Kim Sung: ARDe
9 99676; Smog Check Station License Number RC 99676; Lamp Station License Number LS
10 99676, class A; Smog Check Inspector License No. EO 111109; and Smog Check Repair
11 Technician License No. EI 111109;

12 2. Ordering Chang Kim Sung to pay the Bureau of Automotive Repair the reasonable
13 costs of the investigation and enforcement of the Accusation portion of this case, pursuant to
14 Business and Professions Code section 125.3;

15 3. Revoking the probation that was granted by the Bureau in Case No. 79/16-139
16 and imposing the disciplinary order that was stayed thereby revoking the following registration
17 and licenses issued to Chang Kim Sung: ARD 99676; Smog Check Station License Number RC
18 99676; Lamp Station License Number LS 99676, class A; Smog Check Inspector License No. EO
19 111109; Smog Check Repair Technician License No. EI 111109; and Lamp Adjuster License
20 Number LA 111109, class A;

21 4. Revoking or suspending the registrations for all places or business operated in these
22 state by Chang Sik Kim pursuant to BPC section 9884.7, subdivision (c);

23 5. Revoking or suspending any and all additional licenses issued under Chapter 5 of Part
24 5 of Division 26 of the HSC in the name of Chang Sik Kim pursuant to HSC section 44072.8;

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