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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. 79/13-89

13 **SUN AUTOMOTIVE REPAIR;**
14 **DIB M. SALEH**
27178 E. 3rd
Highland, CA 92346
15 **Automotive Repair Dealer Registration**
No. ARD 198721
16 **Smog Check Station License**
No. RC 198721

ACCUSATION

Smog Check

17 and

18 **MAZEN D. SALEH**
27178 E. 3rd
Highland, CA 92346
19 **Smog Check Inspector License**
No. EO 140079
20 **Smog Check Repair Technician License**
No. EI 140079
21 **(formerly Advanced Emissions Specialist**
Technician License No. EA 140079)

22 Respondents.
23

24 Complainant alleges:

25 **PARTIES**

26 1. John Wallauch (Complainant) brings this Accusation solely in his official capacity
27 as the Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs.

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1 automotive repair dealer or to render a decision temporarily or permanently invalidating
2 (suspending or revoking) a registration.

3 7. Health and Safety Code section 440022 provides that the Director has all the powers
4 and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle
5 Inspection Program.

6 8. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
7 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
8 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
9 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

10 STATUTORY PROVISIONS

11 9. Section 9884.7 of the Code states, in pertinent part:

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

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

17 ...

18 (4) Any other conduct which constitutes fraud.

19 ...

20 (6) Failure in any material respect to comply with the provisions of this chapter [the
21 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations
22 adopted pursuant to it.

22 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
23 than one place of business in this state, the director pursuant to subdivision (a) shall only refuse to
24 validate, or shall only invalidate temporarily or permanently the registration of the specific place
25 of business which has violated any of the provisions of this chapter. This violation, or action by
26 the director, shall not affect in any manner the right of the automotive repair dealer to operate his
27 or her other places of business.

26 (c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate
27 temporarily or permanently, the registration for all places of business operated in this state by an
28 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.”

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1 10. Section 9884.13 of the Code provides that the expiration of a valid registration
2 shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an
3 automotive repair dealer or to render a decision invalidating a registration temporarily or
4 permanently.

5 11. Section 477, subdivision (a) of the Code provides, in pertinent part, that "Board"
6 includes "bureau," "commission," "committee," "department," "division," "examining
7 committee," "program," and "agency." Subdivision (b) provides that "License" includes
8 certificate, registration or other means to engage in a business or profession regulated by the
9 Code.

10 12. Section 118(b) of the Code states:

11 "The suspension, expiration, or forfeiture by operation of law of a license issued by a board
12 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
13 of a court of law, or its surrender without the written consent of the board, shall not, during any
14 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
15 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
16 provided by law or to enter an order suspending or revoking the license or otherwise taking
17 disciplinary action against the licensee on any such ground".

18 13. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

25

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

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

28 14. Health and Safety 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.

 15. Health and Safety Code section 44072.8 states:

 "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

1 or suspended by the director.”

2 VID DATA REVIEW

3 16. Beginning in June of 2012, a representative of BAR conducted a detailed review of
4 VID data for all smog inspections performed at Respondent RC for the period of February 28,
5 2012, through April 18, 2012.

6 17. The review of the OBD II functional tests² showed a pattern of the same OBD II
7 diagnostic trouble codes (P0700, P0740 and P0841), stored in the memory of the power train
8 control module (PCM) on thirty- two (32) different vehicles that received smog certificates in the
9 two (2) month period. The BAR specifically examined the VID data, in detail, for ten (10) of the
10 vehicles that were certified from February 28, 2012, to April 12, 2012, and it was determined that
11 none of them support the P0700 OBD II code. Vehicles numbered 1, 2, 3 and 5, 6, 7 did not
12 support the P0740 OBD II code. Vehicles numbered 2 through 10 also did not support the P0841
13 OBD II code, as set forth in Table 1 in paragraph 18 below. All ten (10) vehicles were certified
14 with pending OBD II codes stored in the PCM memory that, according to the original equipment
15 manufacturer (OEM) service information, are not supported.

16 18. The VID data also showed that all the inspections on these vehicles were performed
17 under the technician license of Respondent Saleh. The BAR concluded that Respondent Saleh
18 performed the smog inspections on the vehicles using a different vehicle(s) during the OBD II
19 tests, a method known as “clean plugging,”³ resulting in the issuance of fraudulent certificates of
20 compliance for the vehicles that were tested, as outlined in the following table.

21 ² The On Board Diagnostic, generation II (“OBD II”), functional test is an automated
22 function of the BAR-97 Emissions Inspection System analyzer (“EIS”). The EIS includes a
23 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
24 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
25 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
26 Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically
27 retrieves information from the vehicle’s on-board computer about the status of the readiness
28 indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
29 II functional test, it will fail the overall inspection.

30 ³ Clean-plugging is the use of the OBD II readiness monitor status and stored code status
31 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that
32 is not in compliance due to the noncompliant vehicle’s failure to complete the minimum number
33 of self tests, known as monitors, or due to the presence of a stored fault code that indicates an
34 emission control system or component failure. Clean plugging occurs during the inspection of a
35 (continued...)

OBDII Clean Plug Table No. 1

Vehicle Certified								
#	Test Date Start-End	Year	Make	Model	License #	Unsupported Code	Certificate #	Tech. Id. #
1	2/28/2012 1001 - 1012	2002	Lexus	ES300	4WKE677	P0700, P0740	XD108100C	140079
2	3/8/2012 1047 - 1101	1999	Chevrolet	Cavalier	6MXH836	P0700, P0740, P0841	XD896963C	140079
3	3/13/2012 1311 - 1330	2004	Pontiac	Grand Prix	6FJM047	P0700, P0740, P0841	XD896974C	140079
4	3/13/2012 1435 - 1450	2001	Oldsmobile	Bravada	4RLM293	P0700, P0841	XD896976C	140079
5	3/22/2012 0922 - 0945	2004	Toyota	Sienna	UGOLADY	P0700, P0740, P0841	XD896984C	140079
6	3/26/2012 1338 - 1407	2005	Toyota	Camry	5MDB696	P0700, P0740, P0841	XD896991C	140079
7	3/28/2012 1323 - 1333	2005	Hyundai	Accent	5MDL099	P0700, P0740, P0841	XD896993C	140079
8	4/4/2012 1622 - 1637	2004	Nissan	Quest	5GUE955	P0700, P0841	XF630402C	140079
9	4/5/2012 1620 - 1634	1999	Chevrolet	Camaro	4DYJ854	P0700, P0841	XF630405C	140079
10	4/12/2012 1339 - 1348	2000	Nissan	Frontier	7X20089	P0700, P0841	XF630410C	140079

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

19. Respondent ARD's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that, Respondent RC and/or Respondent Saleh made or authorized statements which they knew, or in the exercise of reasonable care should have known to be untrue or misleading as follows:

Respondent RC certified that vehicles 1 through 10, identified in Table 1 of paragraph 18 above, had passed inspection and were in compliance with applicable laws and regulations. In

vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters information into the EIS for the vehicle the technician wishes to certify, and then plugs the OBD II system connector from the EIS into another vehicle that has a properly functioning OBD II system for the purpose of obtaining a "Passing" OBD II functional test result.

1 fact, Respondent RC and Respondent Saleh conducted the inspections on the vehicles using
2 clean-plugging methods, in that, a different vehicle(s) was substituted during the OBD II
3 functional tests in order to issue smog certificates of compliance for the vehicles, and the vehicles
4 were not tested or inspected, as required by Health and Safety Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 ***(Fraud)***

7 20. Respondent ARD's registration is subject to disciplinary action pursuant to Code
8 section 9884.7, subdivision (a)(4), in that, Respondent RC and/or Respondent Saleh committed
9 acts that constitute fraud by issuing electronic smog certificates of compliance for the vehicles 1
10 through 10, identified in Table 1 of paragraph 18 above, without performing bona fide inspections
11 of the emission control devices and systems on the vehicles, thereby depriving the People of the
12 State of California of the protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

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

18 a. Section 44012: Respondent RC failed to ensure that all emission control
19 devices and systems required by law for vehicles 1 through 10, identified in Table 1 of paragraph
20 18 above, were installed and functioning correctly in accordance with test procedures.

21 b. Section 44012, subdivision (f): Respondent RC failed to ensure that the
22 emission control tests were performed on vehicles 1 through 10, identified in Table 1 of
23 paragraph 18 above, in accordance with procedures prescribed by the department.

24 c. Section 44015, subdivision (b): Respondent RC issued electronic smog
25 certificates of compliance for vehicles 1 through 10, identified in Table 1 of paragraph 18 above,
26 without ensuring that the vehicles were properly tested and inspected to determine if they were in
27 compliance with Health & Safety Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

6 a. Section 3340.24, subdivision (c): Respondent RC falsely or fraudulently
7 issued electronic smog certificates of compliance for vehicles 1 through 10, identified in Table 1
8 of paragraph 18 above.

9 b. Section 3340.35, subdivision (c): Respondent RC issued electronic smog
10 certificates of compliance for vehicles 1 through 10, identified in Table 1 of paragraph 18 above,
11 even though the vehicles had not been inspected in accordance with section 3340.42.

12 c. Section 3340.42: Respondent RC failed to ensure that the required smog tests
13 were conducted on vehicles 1 through 10, identified in Table 1 of paragraph 18 above, in
14 accordance with the BAR's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 23. Respondent RC's smog check station license is subject to disciplinary action pursuant
18 to Health & Safety Code section 44072.2, subdivision (d), in that, Respondent RC committed
19 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
20 certificates of compliance for the vehicles 1 through 10, identified in Table 1 of paragraph 18
21 above, without performing bona fide inspections of the emission control devices and systems on
22 the vehicles, thereby depriving the People of the State of California of the protection afforded by
23 the Motor Vehicle Inspection Program.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 24. Respondent Saleh's technician licenses are subject to disciplinary action pursuant to
27 Health & Safety Code section 44072.2, subdivision (a), in that, Respondent Saleh failed to
28 comply with the following sections of that Code:

