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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. 79/12-29

13 **SMOG CENTER**
14 **WLODEK W. ZUROMSKI,**
15 **aka WLODEK WALDEK ZUROMSKI, OWNER**
16 **2241 Monument Boulevard, #VW**
17 **Concord, CA 94520**
18 **Automotive Repair Dealer Reg. No. ARD 220146**
19 **Smog Check Test Only Station License No.**
20 **TC 220146**

FIRST AMENDED ACCUSATION

(SMOG CHECK)

17 **and**

18 **WLODEK WALDEK ZUROMSKI**
19 **5575 Sepulveda Court**
20 **Concord, CA 94521-2445**
21 **Smog Check Inspector License No. EO 29500**
22 **(formerly Advanced Emission Specialist**
23 **Technician License No. EA 29500)**

Respondents.

24 Complainant alleges:

25 **PARTIES**

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

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1 (4) Any other conduct that constitutes fraud.

2

3 (6) Failure in any material respect to comply with the provisions of this
4 chapter or regulations adopted pursuant to it.

5

6 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
7 place on probation the registration for all places of business operated in this state by
8 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
9 engaged in a course of repeated and willful violations of this chapter, or regulations
10 adopted pursuant to it.

11 12. Bus. & Prof. Code section 22, subdivision (a), states:

12 "Board" as used in any provision of this Code, refers to the board in
13 which the administration of the provision is vested, and unless otherwise expressly
14 provided, shall include "bureau," "commission," "committee," "department,"
15 "division," "examining committee," "program," and "agency."

16 13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
17 "license" includes "registration" and "certificate."

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

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

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

25

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 . . .

15. 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

16. 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

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 **UNDERCOVER OPERATION: 1994 TOYOTA TRUCK**

4 17. On December 7, 2010, a representative of the Bureau, acting in an undercover
5 capacity ("representative"), took the Bureau's 1994 Toyota truck to Respondent's facility. The
6 PAIR (pulse air injection reactor system) reed valve assembly had been removed from the
7 Bureau-documented vehicle. The representative requested a smog inspection and provided
8 Respondent with an internet advertisement/coupon from the Website, *PennySaverUSA.com*. The
9 business name listed on the advertisement/coupon was Concord Smog Check. The facility was
10 offering smog inspections for \$26.99 plus \$8.25 for the smog certificate and an ETF (electronic
11 transfer fee) of \$4.76 on most cars, in addition to other costs². Respondent had the representative
12 sign a work order for the inspection. Respondent then wrote \$30 in additional fees on the work
13 order, and told the representative that the inspection would cost a total of \$70 since the vehicle
14 was a truck, was required to be inspected at a test only facility³, and required an EVAP test. The
15 representative authorized the smog inspection for \$70 and received a copy of the work order.
16 After the inspection was completed, the representative paid Respondent \$70 and received copies
17 of an invoice and a vehicle inspection report. That same day, electronic smog Certificate of
18 Compliance [REDACTED] was issued for the vehicle.

19 18. On December 16, 2010, the Bureau inspected the vehicle and found that the PAIR
20 reed valve assembly was still missing.

21 19. In or about January 2011, a representative of the Bureau obtained two advertisements
22 for discounted smog inspections at Respondent's facility, including an advertisement from the
23 January 12, 2011, edition of the *East County Times*. On January 14, 2011, the representative

24 _____
25 ² The advertisement/coupon stated that vans and trucks, test only vehicles, out of state
26 vehicles, and vehicles requiring an EVAP test would cost \$10 extra.

27 ³ California Code of Regulations, title 16, section 3340.1, subdivision (p), defines a "test-only
28 facility" as a facility contracted by the Bureau to test and inspect vehicles. Health & Saf. Code
section 44014.5, subdivision (b), provides, in pertinent part, that the repair of vehicles at test-only
facilities is prohibited.

1 went to Respondent's facility and showed Respondent the two advertisements as well as the
2 advertisement/coupon used during the undercover operation. Respondent verified that all three
3 advertisements were for his facility, Smog Center.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 20. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
7 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which
8 he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as
9 follows: Respondent certified under penalty of perjury on the vehicle inspection report that the
10 Bureau's 1994 Toyota truck had passed the inspection and was in compliance with applicable
11 laws and regulations. In fact, the PAIR reed valve assembly had been removed from the vehicle
12 and as such, the vehicle would not pass the inspection required by Health & Saf. Code section
13 44012.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Record Odometer Reading)**

16 21. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
17 Code section 9884.7, subdivision (a)(2), in that Respondent caused or allowed the representative
18 to sign the work order which did not state the odometer reading of the Bureau's 1994 Toyota
19 truck.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 22. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
23 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes
24 fraud, as follows: Respondent issued an electronic smog certificate of compliance for the
25 Bureau's 1994 Toyota truck without ensuring that a bona fide inspection was performed of the
26 emission control devices and systems on the vehicle, thereby depriving the People of the State of
27 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(False Advertising)**

3 23. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with California
5 Code of Regulations, title 16, section 3371, by publishing, uttering, or making or causing to be
6 published, uttered, or made false or misleading statements or advertising which Respondent
7 knew, or in the exercise of reasonable care should have known to be false or misleading, as
8 follows:

9 a. Respondent falsely represented on the advertisement/coupon, identified in paragraph
10 15 above, that his business name was Concord Smog Check.

11 b. Respondent falsely represented on the advertisement/coupon, identified in paragraph
12 15 above, that his facility was an "inspection and repair station". In fact, Respondent's station is a
13 test-only facility and as such, Respondent is prohibited from performing automotive repairs on
14 vehicles.

15 c. Respondent failed to show his business name on his advertisement in the January 12,
16 2011, edition of the *East County Times*.⁴

17 **FIFTH CAUSE FOR DISCIPLINE**

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

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

22 a. **Section 44012:** Respondent failed to perform the emission control tests on the
23 Bureau's 1994 Toyota Truck in accordance with procedures prescribed by the department.

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26 _____
27 ⁴ California Code of Regulations, title 16, section 3371 states, in pertinent part, that "...
28 advertisements and advertising signs shall clearly show the following: (a) Firm Name and
Address. The dealer's firm name and address as they appear on the State registration certificate as
an automotive repair dealer ..."

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 27. Respondent's inspector license is subject to disciplinary action pursuant to Health &
4 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions
5 of that Code in the following material respects:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the
7 Bureau's 1994 Toyota truck in accordance with procedures prescribed by the department.

8 b. **Section 44059:** Respondent willfully made a false entry on the vehicle inspection
9 report, as set forth in paragraph 18 above.

10 **NINTH CAUSE FOR DISCIPLINE**

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

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

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
17 electronic smog certificate of compliance for the Bureau's 1994 Toyota truck.

18 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
19 1994 Toyota truck in accordance with Health & Saf. Code sections 44012 and 44035, and
20 California Code of Regulations, title 16, section 3340.42.

21 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
22 Bureau's 1994 Toyota truck in accordance with the Bureau's specifications.

23 **TENTH CAUSE FOR DISCIPLINE**

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

25 29. Respondent's inspector license is subject to disciplinary action pursuant to Health &
26 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent,
27 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
28 for the Bureau's 1994 Toyota truck without performing a bona fide inspection of the emission

1 control devices and systems on the vehicle, thereby depriving the People of the State of California
2 of the protection afforded by the Motor Vehicle Inspection Program.

3 **MATTERS IN AGGRAVATION**

4 30. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges as follows:

6 a. On or about September 11, 2008, the Bureau issued Citation No. C09-0234 against
7 Respondent, in his capacity as owner of Smog Center, for violations of Health & Saf. Code
8 section 44012, subdivision (f) (failure to determine that emission control devices and systems
9 required by State and Federal law are installed and functioning correctly in accordance with test
10 procedures); and California Code of Regulations, title 16, section ("Regulation") 3340.35,
11 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
12 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with the
13 ignition timing adjusted beyond specifications. The Bureau assessed civil penalties totaling \$500
14 against Respondent for the violations. Respondent paid the fine on October 17, 2008.

15 b. On or about January 29, 2010, the Bureau issued Citation No. C2010-0779 against
16 Respondent, in his capacity as owner of Smog Center, for violations of Health & Saf. Code
17 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
18 devices according to procedures prescribed by the department); and Regulation 3340.35,
19 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
20 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing
21 fuel evaporative canister. The Bureau assessed civil penalties totaling \$500 against Respondent
22 for the violations. Respondent paid the fine on April 27, 2010.

23 c. On or about July 30, 2010, the Bureau issued Citation No. C2011-0108 against
24 Respondent, in his capacity as owner of Smog Center, for violations of Health & Saf. Code
25 sections 44012, subdivision (f) (failure to determine that emission control devices and systems
26 required by State and Federal law are installed and functioning correctly in accordance with test
27 procedures) and 44002 (failure to provide a customer a written estimate for parts and labor for a
28 specific job); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a

1 vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
2 Bureau undercover vehicle with the ignition timing adjusted beyond specifications. The Bureau
3 assessed civil penalties totaling \$2,000 against Respondent for the violations. Respondent
4 appealed the citation on October 20, 2010.

5 d. On or about November 28, 2001, the Bureau issued Citation No. M02-0350 against
6 Respondent as to his smog check technician license for violations of Health & Saf. Code section
7 44032 (failure to determine that emission control devices and systems required by State and
8 Federal law are installed and functioning correctly in accordance with test procedures); and
9 Regulation 3340.30, subdivision (a) (issuing a certificate of compliance to a vehicle that was
10 improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover
11 vehicle with a functional timing failure (the ignition timing was misadjusted). Respondent was
12 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
13 within 30 days from receipt of the citation. Respondent completed the training on January 8,
14 2002.

15 e. On or about February 5, 2002, the Bureau issued Citation No. M02-0557 against
16 Respondent as to his smog check technician license for violations of Health & Saf. Code sections
17 44032 (failure to determine that emission control devices and systems required by State and
18 Federal law are installed and functioning correctly in accordance with test procedures); and
19 Regulation 3340.30, subdivision (a) (issuing a certificate of compliance to a vehicle that was
20 improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover
21 vehicle with a non-functional exhaust gas recirculation system. Respondent was directed to
22 complete a 16 hour training course and to submit proof of completion to the Bureau within 30
23 days from receipt of the citation. Respondent appealed the citation on March 14, 2002, but
24 completed the training on December 19, 2002.

25 f. On or about September 11, 2008, the Bureau issued Citation No. M09-0235 against
26 Respondent as to his smog check technician license for violations of Health & Saf. Code sections
27 44032 (qualified technicians shall perform tests of emission control systems and devices in
28 accordance with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a)

1 (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf.
2 Code sections 44012 and 44035 and Regulation 3340.42). Respondent had issued a certificate of
3 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
4 specifications. Respondent was directed to complete an 8 hour training course and to submit
5 proof of completion to the Bureau within 30 days from receipt of the citation. Respondent
6 completed the training on October 17, 2008.

7 g. On or about January 29, 2010, the Bureau issued Citation No. M2010-0780 against
8 Respondent as to his smog check technician license for violations of Health & Saf. Code sections
9 44032 (qualified technicians shall perform tests of emission control systems and devices in
10 accordance with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a)
11 (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf.
12 Code sections 44012 and 44035 and Regulation 3340.42). Respondent had issued a certificate of
13 compliance to a Bureau undercover vehicle with a missing fuel evaporative canister. Respondent
14 was directed to complete an 8 hour training course and to submit proof of completion to the
15 Bureau within 30 days from receipt of the citation. Respondent completed the training on April
16 9, 2010.

17 h. On or about July 30, 2010, the Bureau issued Citation No. M2011-0109 against
18 Respondent as to his smog check technician license for violations of Health & Saf. Code sections
19 44032 (qualified technicians shall perform tests of emission control systems and devices in
20 accordance with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a)
21 (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf.
22 Code sections 44012 and 44035 and Regulation 3340.42). Respondent had issued a certificate of
23 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
24 specifications. Respondent was directed to complete a 16 hour training course and to submit
25 proof of completion to the Bureau within 30 days from receipt of the citation. Respondent
26 completed the training on October 15, 2010.

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1 **OTHER MATTERS**

2 31. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 suspend, revoke, or place on probation the registration for all places of business operated in this
4 state by Respondent Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski
5 ("Zuromski"), owner of Smog Center, upon a finding that Respondent has, or is, engaged in a
6 course of repeated and willful violations of the laws and regulations pertaining to an automotive
7 repair dealer.

8 32. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
9 License Number TC 220146, issued to Zuromski, owner of Smog Center, is revoked or
10 suspended, any additional license issued under this chapter in the name of said licensee may be
11 likewise revoked or suspended by the director.

12 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
13 Number EO 29500 (formerly Advanced Emission Specialist Technician License Number EA
14 29500), issued to Zuromski, is revoked or suspended, any additional license issued under this
15 chapter in the name of said licensee may be likewise revoked or suspended by the director.

16 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 220146, issued to Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski, owner of
21 Smog Center;

22 2. Revoking or suspending any other automotive repair dealer registration issued to
23 Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski;

24 3. Revoking or suspending Smog Check Test Only Station License Number TC 220146,
25 issued to Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski, owner of Smog
26 Center;

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1 4. Revoking or suspending Smog Check Inspector License Number EO 29500 (formerly
2 Advanced Emission Specialist Technician License Number EA 29500), issued to Wlodek W.
3 Zuromski, also known as Wlodek Waldek Zuromski);

4 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
5 and Safety Code in the name of Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski;

6 6. Ordering Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski,
7 individually, and as owner of Smog Center, to pay the Director of Consumer Affairs the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3;

10 7. Taking such other and further action as deemed necessary and proper.

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DATED: 11/14/13

PAT DORAIS by Joseph Balatti
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SF2011201529