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

12 In the Matter of the Accusation Against:

Case No. 79/08-21

13 LAKEWOOD AUTO REPAIR
KENNETH WILLIAM PAIGE, OWNER
14 103 E. Elm Street
Lodi, California 95240

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

15 Automotive Repair Dealer Reg. No. AM 197653
16 Smog Check Station License No. RM 197653

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

24 **Automotive Repair Dealer Registration No. AM 197653**

25 2. In or about 1997 or 1998, the Director of Consumer Affairs ("Director")
26 issued Automotive Repair Dealer Registration Number AM 197653 to Kenneth William Paige
27 ("Respondent"), owner of Lakewood Auto Repair. Respondent's automotive repair dealer

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1 registration was in full force and effect at all times relevant to the charges brought herein and will
2 expire on December 31, 2007, unless renewed.

3 **Smog Check Station License No. RM 197653**

4 3. On or about January 21, 1998, the Director issued Smog Check Station
5 License Number RM 197653 to Respondent. Respondent's smog check station license was in
6 full force and effect at all times relevant to the charges brought herein and will expire on
7 December 31, 2007, unless renewed.

8 **JURISDICTION**

9 4. Business and Professions Code ("Bus. & Prof. Code") section 9884.7
10 provides that the Director may invalidate an automotive repair dealer registration.

11 5. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
12 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
13 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
14 registration temporarily or permanently.

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

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

22 **STATUTORY AND REGULATORY PROVISIONS**

23 **Statutory Provisions**

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

25 (a) The director, where the automotive repair dealer cannot show there
26 was a bona fide error, may refuse to validate, or may invalidate temporarily or
27 permanently, the registration of an automotive repair dealer for any of the
28 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 (1) Making or authorizing in any manner or by any means whatever any
2 statement written or oral which is untrue or misleading, and which is known, or
3 which by the exercise of reasonable care should be known, to be untrue or
4 misleading.

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6 (4) Any other conduct which constitutes fraud.

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8 (c) Notwithstanding subdivision (b), the director may refuse to
9 validate, or may invalidate temporarily or permanently, the registration
10 for all places of business operated in this state by an automotive repair
11 dealer upon a finding that the automotive repair dealer has, or is, engaged
12 in a course of repeated and willful violations of this chapter, or regulations
13 adopted pursuant to it.

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

18 10. 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,
21 officer, or 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 (d) Commits any act involving dishonesty, fraud, or deceit whereby
27 another is injured.

28

(f) Aids or abets unlicensed persons to evade the provisions of this
chapter . . .

11. 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.

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1 **FACTUAL BACKGROUND**

2 16. On April 14, 2006, Bureau Representative Tim Schaumburg
3 (“Schaumburg”) conducted a Consumer Assistance Program (“CAP”) inspection at Respondent’s
4 facility. Schaumburg obtained copies of Respondent’s records relating to repairs performed on
5 consumer Shu Wang’s (“Wang”) 1990 Nissan Pathfinder (hereinafter “1990 Nissan”), including
6 Respondent’s Invoice No. 000102468, dated March 8, 2006, totaling \$551.17. The invoice
7 indicated that the harmonic balancer assembly had been replaced on the 1990 Nissan.

8 17. On April 28, 2006, Bureau Representative Timothy Bowden (“Bowden”)
9 inspected the 1990 Nissan and determined that the harmonic balancer assembly had not been
10 recently replaced.

11 18. On May 15, 2006, the harmonic balancer assembly was removed from the
12 1990 Nissan and inspected by Bowden and Bureau Representative Jim Ainsworth (“Ainsworth”).
13 Bowden and Ainsworth found rust, oxidized paint, buildup of dirt, and corrosion in certain areas
14 of the assembly, indicating that the component had not been replaced as invoiced.

15 19. On May 4, 2006, Bowden inspected a 1982 Jeep CJ7 (hereinafter “1982
16 Jeep”) owned by Consumer Phyllis Hoerth (“Hoerth”). During the inspection, Hoerth provided
17 Bowden with Invoice Number 000102276, totaling \$2,301.24, prepared by Respondent. The
18 invoice indicated that from February 8, 2006, to March 15, 2006, Respondent’s facility
19 performed repairs on the 1982 Jeep to correct an oil leak. The invoice also indicated that Hoerth
20 had paid \$1,876.19 toward the repairs and that CAP had paid the remaining balance of \$425.05.
21 Hoerth told Bowden that she had authorized the facility to replace the timing cover gasket,
22 among other gaskets, seals, and covers, in addition to repairing an oil leak on the 1982 Jeep.
23 Bowden determined following his inspection that the timing cover gasket had not been replaced
24 as invoiced and that the engine continued to leak oil.

25 20. On May 9, 2006, Bureau Representative William Espinosa inspected the
26 1982 Jeep and confirmed that the timing cover gasket had not been replaced as invoiced.

27 21. On June 9, 2006, Bowden spoke to Respondent’s smog check technician,
28 Shoukat Din (“Din”), regarding the repair of the 1982 Jeep and the 1990 Nissan. That same day,

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SECOND CAUSE FOR DISCIPLINE

(Fraud)

24. Respondent's automotive repair dealer 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, as follows:

a. Respondent charged the State of California and/or consumer Wang for replacing the harmonic balancer assembly on consumer Wang's 1990 Nissan Pathfinder when, in fact, that part was not replaced on the vehicle.

b. Respondent charged the State of California and consumer Hoerth for replacing the timing cover gasket on Hoerth's 1982 Jeep CJ7 when, in fact, that part was not replaced on the vehicle.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

25. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with Code section 44014, subdivision (a), as follows: Respondent allowed unlicensed individuals, including, but not limited to, Hull Bun, to diagnose and repair vehicles that failed smog check inspections, including consumer Wang's 1990 Nissan Pathfinder, as set forth in paragraphs 21 and 22 above.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

26. Respondent'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, as set forth in paragraph 24 above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Aiding or Abetting Unlicensed Persons)**

3 27. Respondent's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and
5 abetted unlicensed persons, including, but not limited to, Hull Bun, by allowing Bun and others
6 to diagnose and repair vehicles that failed smog check inspections, including consumer Wang's
7 1990 Nissan Pathfinder, as set forth in paragraphs 21 and 22 above.

8 **OTHER MATTERS**

9 28. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
10 Director may refuse to validate or may invalidate temporarily or permanently, the registrations
11 for all places of business operated in this state by Respondent Kenneth William Paige, owner of
12 Lakewood Auto Repair, upon a finding that said Respondent has, or is, engaged in a course of
13 repeated and willful violations of the laws and regulations pertaining to an automotive repair
14 dealer.

15 29. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station
16 License Number RM 197653, issued to Respondent Kenneth William Paige, owner of
17 Lakewood Auto Repair, is revoked or suspended, any additional license issued under this chapter
18 in the name of said licensee may be likewise revoked or suspended by the Director.

19 **PRAYER**

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

22 1. Temporarily or permanently invalidating Automotive Repair Dealer
23 Registration Number AM 197653, issued to Kenneth William Paige, owner of Lakewood Auto
24 Repair;

25 2. Temporarily or permanently invalidating any other automotive repair
26 dealer registration issued to Kenneth William Paige;

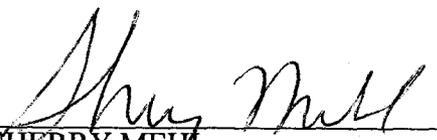
27 3. Revoking or suspending Smog Check Station License Number
28 RM 197653, issued to Kenneth William Paige, owner of Lakewood Auto Repair;

1 4. Revoking or suspending any additional license issued under Chapter 5 of
2 the Health and Safety Code in the name of Kenneth William Paige;

3 5. Ordering Respondent Kenneth William Paige, owner of Lakewood Auto
4 Repair, to pay the Director of Consumer Affairs the reasonable costs of the investigation and
5 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

7 DATED: 9-21-07.

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9 SHERRY MEHL
10 Chief
11 Bureau of Automotive Repair
12 Department of Consumer Affairs
13 State of California

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28 Complainant