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9 **BEFORE THE**
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. 79/12-93

13
14 **KSE ENTERPRISES INC.,**
dba AMERICAN AUTO CARE TIRES & SMOG
15 **KURT WILLIAM ECCLEFIELD, PRES./CFO**
SHAWNA JEANNE ECCLEFIELD, SECTY
16 **26440 Jefferson Avenue, #D**
Murrieta, CA 92562
17 **Automotive Repair Dealer Reg. No. ARD 257989**
Smog Check Station License No. RC 257989

A C C U S A T I O N
(Smog Check)

18 Respondent.

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20 Complainant alleges:

21 **PARTIES/LICENSE INFORMATION**

- 22 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
23 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
24 2. On or about May 1, 2009, the Director of Consumer Affairs ("Director") issued
25 Automotive Repair Dealer Registration Number ARD 257989 ("registration") to KSE Enterprises
26 Inc. ("Respondent"), doing business as American Auto Care Tires & Smog, with Kurt William
27 Ecclefield as president and chief financial officer and Shawna Jeanne Ecclefield as secretary.

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1 Respondent's registration was in full force and effect at all times relevant to the charges brought
2 herein and will expire on April 30, 2012, unless renewed.

3 3. On or about May 4, 2009, the Director issued Smog Check Station License Number
4 RC 257989 to Respondent. Respondent's smog check station license was in full force and effect
5 at all times relevant to the charges brought herein and will expire on April 30, 2012, unless
6 renewed.

7 JURISDICTION

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

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

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

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

21 STATUTORY PROVISIONS

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

23 (a) The director, where the automotive repair dealer cannot show there
24 was a bona fide error, may deny, suspend, revoke, or place on probation the
25 registration of an automotive repair dealer for any of the following acts or omissions
26 related to the conduct of the business of the automotive repair dealer, which are done
27 by the automotive repair dealer or any automotive technician, employee, partner,
28 officer, or member of the automotive repair dealer.

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

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(4) Any other conduct that constitutes fraud.

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

....

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an 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.

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

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

10. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

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

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

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

....

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

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

12. 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 **COST RECOVERY**

2 13. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **UNDERCOVER OPERATION: 1999 TOYOTA SIENNA**

7 14. On October 3, 2011, an undercover operator with the Bureau ("operator") took the
8 Bureau's 1999 Toyota Sienna to Respondent's facility and requested a smog inspection. The fuel
9 evaporative (EVAP) canister had been removed from the Bureau-documented vehicle. The
10 operator was not provided with a written estimate for the inspection. After the inspection was
11 completed, the operator paid the facility \$35.20 and received copies of an invoice and a vehicle
12 inspection report. The vehicle inspection report indicated that the smog inspection was
13 performed by Respondent's smog check technician, Antonio Orozco, resulting in the issuance of
14 electronic smog Certificate of Compliance No. WZ447671C.

15 15. On October 4, 2011, the Bureau inspected the vehicle and found that the fuel
16 evaporative canister was still missing.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 16. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
20 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which
21 it knew, or in the exercise of reasonable care should have known to be untrue or misleading, as
22 follows: Respondent's smog check technician, Antonio Orozco, certified under penalty of perjury
23 on the vehicle inspection report that the Bureau's 1999 Toyota Sienna had passed the smog
24 inspection and was in compliance with applicable laws and regulations. In fact, the fuel
25 evaporative canister had been removed from the vehicle and as such, the vehicle would not pass
26 the inspection required by Health & Saf. Code section 44012.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

4 20. Respondent's smog check station license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the
6 following sections of California Code of Regulations, title 16:

7 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
8 of compliance for the Bureau's 1999 Toyota Sienna even though the vehicle had not been
9 inspected in accordance with section 3340.42.

10 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
11 conducted on the Bureau's 1999 Toyota Sienna in accordance with the Bureau's specifications.

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 21. Respondent's smog check station license is subject to disciplinary action pursuant to
15 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
16 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an
17 electronic smog certificate of compliance for the Bureau's 1999 Toyota Sienna without ensuring
18 that a bona fide inspection was performed of the emission control devices and systems on the
19 vehicle, thereby depriving the People of the State of California of the protection afforded by the
20 Motor Vehicle Inspection Program.

21 **MATTERS IN AGGRAVATION**

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

24 a. On or about September 29, 2009, the Bureau issued Citation No. C2010-0268 against
25 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
26 perform a visual/functional check of emission control devices according to procedures prescribed
27 by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35,
28 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On

1 or about August 26, 2009, Respondent issued a certificate of compliance to a Bureau undercover
2 vehicle with a missing fuel evaporative charcoal canister. The Bureau assessed civil penalties
3 totaling \$500 against Respondent for the violations. Respondent paid the fine on December 7,
4 2009.

5 b. On or about April 7, 2010, the Bureau issued Citation No. C2010-1045 against
6 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
7 perform a visual/functional check of emission control devices according to procedures prescribed
8 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
9 to a vehicle that was improperly tested). On or about February 25, 2010, Respondent issued a
10 certificate of compliance to a Bureau undercover vehicle with a missing fuel evaporative charcoal
11 canister. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the
12 violations. Respondent paid the fine on June 14, 2010.

13 c. On or about November 8, 2010, the Bureau issued Citation No. C2011-0594 against
14 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
15 perform a visual/functional check of emission control devices according to procedures prescribed
16 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
17 to a vehicle that was improperly tested). On or about October 13, 2010, Respondent issued a
18 certificate of compliance to a Bureau undercover vehicle with a missing positive crankcase
19 ventilation system. The Bureau assessed civil penalties totaling \$2,500 against Respondent for
20 the violations. Respondent paid the fine on December 28, 2010.

21 OTHER MATTERS

22 23. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
23 suspend, revoke, or place on probation the registration for all places of business operated in this
24 state by Respondent KSE Enterprises, Inc., doing business as American Auto Care Tires & Smog,
25 upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations
26 of the laws and regulations pertaining to an automotive repair dealer.

27 24. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
28 Number RC 257989, issued to Respondent KSE Enterprises, Inc., doing business as American

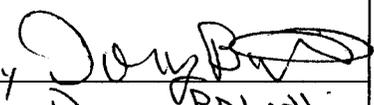
1 Auto Care Tires & Smog, is revoked or suspended, any additional license issued under this
2 chapter in the name of said licensee may be likewise revoked or suspended by the director.

3 PRAYER

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

- 6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 257989, issued to KSE Enterprises, Inc., doing business as American Auto Care Tires & Smog;
- 8 2. Revoking or suspending any other automotive repair dealer registration issued to KSE
9 Enterprises, Inc.;
- 10 3. Revoking or suspending Smog Check Station License Number RC 257989, issued to
11 KSE Enterprises, Inc., doing business as American Auto Care Tires & Smog;
- 12 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
13 and Safety Code in the name of KSE Enterprises, Inc.;
- 14 5. Ordering KSE Enterprises, Inc., doing business as American Auto Care Tires &
15 Smog, to pay the Director of Consumer Affairs the reasonable costs of the investigation and
16 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 17 6. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 3/6/12

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

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