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

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

Case No. 79/21-12058

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

15 **JOGINDER SINGH DBA SMOGSTER**
16 **6928 Reseda Blvd**
Reseda, CA 91335

17 **Automotive Repair Dealer Registration No.**
18 **ARD 274480**
19 **Smog Check Station License No. RC 274480**

20 Respondent.

21
22 **PARTIES**

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

26 2. On or about October 11, 2013, the Bureau of Automotive Repair issued Automotive
27 Repair Dealer Registration Number ARD 274480 to Joginder Singh dba Smogster (Respondent).

1 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
2 charges brought herein and will expire on October 31, 2022, unless renewed.

3 3. On or about December 7, 2015, the Bureau of Automotive Repair issued Smog Check
4 Station License Number RC 274480 to Joginder Singh dba Smogster (Respondent). The Smog
5 Check Station License was in full force and effect at all times relevant to the charges brought
6 herein and will expire on October 31, 2022, unless renewed.

7 4. On or about December 14, 2015, the Bureau of Automotive Repair issued a STAR
8 Station Certification to Joginder Singh dba Smogster (Respondent).

9 5. In a disciplinary action titled "In the Matter of the Accusation Against Joginder Singh
10 dba Smogster," Case No. 79/18-588, the Bureau of Automotive Repair issued a Decision and
11 Order, effective June 17, 2019, in which Respondent's Automotive Repair Dealer Registration
12 and Smog Check Station License were revoked. However, the revocations were stayed and
13 Respondent's Automotive Repair Dealer Registration and Smog Check Station License were
14 placed on probation for three (3) years with certain terms and conditions. A copy of that Decision
15 and Order is attached as Exhibit A and is incorporated by reference.

16 **JURISDICTION PROVISIONS FOR ACCUSATION**

17 6. This Accusation is brought before the Director of the Department of Consumer
18 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

19 7. Section 9884.7 of the Code provides that the Director may revoke an automotive
20 repair dealer registration.

21 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
22 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
23 against an automotive repair dealer or to render a decision temporarily or permanently
24 invalidating (suspending or revoking) a registration.

25 9. Health and Safety Code section 44002 provides, in pertinent part, that the Director
26 has all the powers and authority granted under the Automotive Repair Act for enforcing the
27 Motor Vehicle Inspection Program.

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1 I acknowledge notice and oral approval of an increase in the original
2 estimated price.

3 _____
(signature or initials)

4 Nothing in this section shall be construed as requiring an automotive
5 repair dealer to give a written estimated price if the dealer does not agree to perform
6 the requested repair.

7 (b) The automotive repair dealer shall include with the written estimated
8 price a statement of any automotive repair service that, if required to be done, will be
9 done by someone other than the dealer or his or her employees. No service shall be
10 done by other than the dealer or his or her employees without the consent of the
11 customer, unless the customer cannot reasonably be notified. The dealer shall be
12 responsible, in any case, for any service in the same manner as if the dealer or his or
13 her employees had done the service.

14 (c) In addition to subdivisions (a) and (b), an automotive repair dealer,
15 when doing auto body or collision repairs, shall provide an itemized written estimate
16 for all parts and labor to the customer. The estimate shall describe labor and parts
17 separately and shall identify each part, indicating whether the replacement part is
18 new, used, rebuilt, or reconditioned. Each crash part shall be identified on the written
19 estimate and the written estimate shall indicate whether the crash part is an original
20 equipment manufacturer crash part or a nonoriginal equipment manufacturer
21 aftermarket crash part.

22 (d) A customer may designate another person to authorize work or parts
23 supplied in excess of the estimated price, if the designation is made in writing at the
24 time that the initial authorization to proceed is signed by the customer. The bureau
25 may specify in regulation the form and content of a designation and the procedures to
26 be followed by the automotive repair dealer in recording the designation. For the
27 purposes of this section, a designee shall not be the automotive repair dealer
28 providing repair services or an insurer involved in a claim that includes the motor
vehicle being repaired, or an employee or agent or a person acting on behalf of the
dealer or insurer.

14. Section 44012 of the Health and Safety Code states:

“The test at the smog check stations shall be performed in accordance
with procedures prescribed by the department, pursuant to Section 44013, shall
require, at a minimum, loaded mode dynamometer testing in enhanced areas, and
two-speed testing in all other program areas, and shall ensure all of the following:

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

REGULATORY PROVISIONS FOR ACCUSATION

15. California Code of Regulations, title 16, section 3340.35, states:

“....

1 “(c) A licensed station shall issue a certificate of compliance or
2 noncompliance to the owner or operator of any vehicle that has been inspected in
3 accordance with the procedures specified in section 3340.42 of this article and has all
4 the required emission control equipment and devices installed and functioning
5 correctly....”

6 16. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions
7 test methods and procedures which apply to all vehicles inspected in the State of California.

8 17. California Code of Regulations, title 16, section 3340.45, states:

9 “(a) All Smog Check inspections shall be performed in accordance with
10 requirements and procedures prescribed in the following:

11 “(1) Smog Check Inspection Procedures Manual, dated August 2009,
12 which is hereby incorporated by reference. This manual shall be in effect until
13 subparagraph (2) is implemented.

14 “(2) Smog Check Manual, dated 2013, which is hereby incorporated by
15 reference. This manual shall become effective on or after January 1, 2013.”

16 18. California Code of Regulations, title 16, section 3353, states:

17 No work for compensation shall be commenced and no charges shall
18 accrue without specific authorization from the customer in accordance with the
19 following requirements:

20 (a) Estimate for Parts and Labor. Every dealer shall give to each
21 customer a written estimated price for labor and parts for a specific job.

22 **COST RECOVERY FOR ACCUSATION**

23 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
27 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
28 included in a stipulated settlement.

29 **FACTUAL ALLEGATIONS**

30 20. On or around September 2, 2021, a Bureau Representative prepared a Bureau-owned
31 2001 Dodge Ram 1500 (“Dodge”) for an undercover operation. The Bureau Representative
32 performed a smog check inspection on the Dodge, and the Dodge passed the inspection. The
33 Bureau Representative then removed the evaporative (EVAP) canisters from the Dodge. He then

1 performed another smog check inspection, and the Dodge failed the inspection due to the missing
2 EVAP canisters.

3 21. On or around September 16, 2021, an undercover operator drove the Dodge to
4 Respondent's station and requested a smog check inspection. The undercover operator did not
5 receive a written estimate prior to the smog inspection being performed. Respondent then
6 performed a smog check inspection on the Dodge. Respondent issued Certificate of Compliance
7 No. SG900407C to the Dodge. After the inspection, the undercover operator paid a \$50.00 fee
8 and received an estimate, an unnumbered invoice and a Vehicle Inspection Report ("VIR").

9 22. The Dodge was secured in the Bureau's vehicle documentation laboratory until
10 September 20, 2021, when the Bureau Representative inspected the Dodge and verified that the
11 EVAP canisters were still missing. He performed a smog check inspection on the Dodge, and the
12 Dodge failed the inspection due to the missing EVAP canisters.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Violations of Statutes)**

15 23. Respondent's registration is subject to disciplinary action under Business and
16 Professions Code section 9884.7, subdivision (a)(6) in that on or about September 16, 2021,
17 Respondent failed to comply with the following statutes:

- 18 a. **Business and Professions Code section 9884.7, subdivision (a)(6)**: Respondent
19 failed to comply with provisions of the Automotive Repair Act. Complainant
20 incorporates by reference paragraphs 20-22, above, as though fully stated herein.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Violations of Regulations)**

23 24. Respondent's registration is subject to disciplinary action under Business and
24 Professions Code section 9884.7, subdivision (a)(6), in that on or about September 16, 2021,
25 Respondent failed to comply with provisions of California Code of Regulations, title 16, in the
26 following material respects:

- 1 a. **Section 3340.35**: Respondent issued a certificate of compliance to the Dodge
2 without complying with California Code of Regulations, title 16, section 3340.30, in
3 conducting the smog check inspection of the Dodge.
- 4 b. **Sections 3340.42 and 3340.45**: Respondent failed to comply with the smog check
5 inspection regulations and procedures adopted by the Bureau with respect to the smog
6 check inspection of the Dodge.
- 7 c. **Sections 3353(a)**: Respondent failed to provide a customer with an estimate for parts
8 and labor prior to the inspection of the Dodge.

9 Complainant incorporates by reference paragraphs 20-22, above, as though fully stated
10 herein.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 25. Respondent's station license is subject to disciplinary action pursuant to Health and
14 Safety Code section 44072.2, subdivision (a), in that on or about September 16, 2021 regarding
15 the Dodge. Respondent failed to comply with the following sections of the Health and Safety
16 Code:

- 17 a. **Section 44012**: Respondent failed to ensure that the emission control tests were
18 performed on the Dodge in accordance with procedures prescribed by the Bureau.
- 19 b. **Section 44015**: Respondent issued an electronic certificate of compliance for the
20 Dodge without ensuring that the Dodge was properly tested and inspected to
21 determine if it was in compliance with Health and Safety Code section 44012.

22 Complainant incorporates by reference paragraphs 20-22, above, as though fully stated
23 herein

24 **FOURTH CAUSE FOR DISCIPLINE**

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

26 26. Respondent's station license is subject to disciplinary action pursuant to Health and
27 Safety Code section 44072.2, subdivision (c), in that on or about September 16, 2021, regarding
28

1 the Dodge, Respondent failed to comply with the following provisions of the California Code of
2 Regulations, title 16, as follows:

- 3 d. **Section 3340.35**: Respondent issued a certificate of compliance to the Dodge
4 without complying with California Code of Regulations, title 16, section 3340.30, in
5 conducting the smog check inspection of the Dodge.
- 6 e. **Sections 3340.42 and 3340.45**: Respondent failed to comply with the smog check
7 inspection regulations and procedures adopted by the Bureau with respect to the smog
8 check inspection of the Dodge.
- 9 f. **Sections 3353(a)**: Respondent failed to provide a customer with an estimate for parts
10 and labor prior to the inspection of the Dodge.

11 Complainant incorporates by reference paragraphs 20-22, above, as though fully stated
12 herein.

13 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

14 27. This Petition to Revoke Probation is brought before the Director of the Department of
15 Consumer Affairs (Director) for the Bureau of Automotive Repair under the authority of the
16 decision and order *In the Matter of the Accusation Against Joginder Singh dba Smogster, Case*
17 *No. 79/18-588*. Term and Condition 1 states:

18 **Obey All Laws.** During the period of probation, Respondents shall
19 report either by personal appearance or in writing as determined by BAR on schedule
20 set by BAR, but no more frequently than once each calendar quarter, on the methods
21 used and success achieved in maintaining compliance with the terms and conditions
22 of probation.

23 Term and Condition 6 states:

24 **Violation of Probation.** If Respondents violate or fail to comply with
25 the terms and conditions of probation in any respect, the Director, after giving notice
26 and opportunity to be heard may set aside the stay order and carry out the disciplinary
27 order provided in the decision. Once Respondents are served notice of BAR's intent
28 to set aside the stay, the Director shall maintain jurisdiction, and the period of
probation shall be extended until final resolution of the matter.

1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Obey All Laws)**

3 28. At all times after the effective date of Respondent's probation, Condition 1 stated:

4 **Obey All Laws.** During the period of probation, Respondents shall
5 report either by personal appearance or in writing as determined by BAR on schedule
6 set by BAR, but no more frequently than once each calendar quarter, on the methods
used and success achieved in maintaining compliance with the terms and conditions
of probation.

7 29. Respondent's probation is subject to revocation because he failed to comply with
8 Probation Condition 1, referenced above. Complainant incorporates by reference paragraphs 20-
9 22, above, as though fully stated herein.

10 **SECOND CAUSE TO REVOKE PROBATION**

11 **(Violation of Probation)**

12 30. At all times after the effective date of Respondent's probation, Condition 6 stated:

13 **Violation of Probation.** If Respondents violate or fail to comply with
14 the terms and conditions of probation in any respect, the Director, after giving notice
and opportunity to be heard may set aside the stay order and carry out the disciplinary
15 order provided in the decision. Once Respondents are served notice of BAR's intent
to set aside the stay, the Director shall maintain jurisdiction, and the period of
16 probation shall be extended until final resolution of the matter

17 31. Respondent's probation is subject to revocation because he failed to comply with
18 Probation Condition 6, referenced above. Complainant incorporates by reference paragraphs 20-
19 22, above, as though fully stated herein.

20 **OTHER MATTERS**

21 32. Pursuant to Health and Safety Code section 44072.8, Smog Check Station License
22 No. RC 274480, issued to Respondent Joginder Singh dba Smogser, are revoked or suspended,
23 any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety
24 Code in the name of said licensee may be likewise revoked or suspended by the Director.

25 33. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the
26 Director may suspend, revoke, or place on probation the registration for all places of business
27 operated in this state by Joginder Singh, upon a finding the he has, or is, engaged in a course of
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1 repeated and willful violations of the laws and regulations pertaining to an automotive repair
2 dealer;

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
5 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of the
6 Department of Consumer Affairs issue a decision:

7 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
8 No. 79/18-588 and imposing the disciplinary order that was stayed thereby revoking Automotive
9 Repair Dealer Registration No. ARD 274480 issued to Joginder Singh dba Smogster;

10 2. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
11 No. 79/18-588 and imposing the disciplinary order that was stayed thereby revoking Smog Check
12 Station License No. RC 274480 issued to Joginder Singh dba Smogster;

13 3. Revoking or suspending Automotive Repair Dealer Registration No. ARD 274480,
14 issued to Joginder Singh dba Smogster;

15 4. Revoking or suspending Smog Check Station License No. RC 274480, issued to
16 Joginder Singh dba Smogster.

17 5. Revoking or suspending any additional license issued under Ch. 5, Part 5, Div. 26 of
18 the Health and Safety Code in the name of Joginder Singh;

19 6. Ordering Joginder Singh dba Smogster to pay the Director of the Department of
20 Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant
21 to Business and Professions Code section 125.3; and
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7. Taking such other and further action as deemed necessary and proper.

DATED: As of Digital Signature Date

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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