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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 and Petition to
13 Revoke Probation Against:

14 **KHALIL AILABOUNI, OWNER, DOING**
15 **BUSINESS AS PALM SPRINGS SMOG**
16 **TEST CENTER ONLY**
280 W. San Rafael Dr. Unit F
Palm Springs, CA 92262

17 Automotive Repair Dealer Registration No.
ARD 189852
18 Smog Check-Test Only Station License No.
TC 189852,

19 and

20 **SHOUKRY AMIR AILABOUNI**
315 Sepulveda Road
21 Palm Springs, CA 92262

22 Smog Check Inspector License No. EO
146390 (formerly Advanced Emission
23 Specialist Technician License No. EA
146390)

24 Respondents.
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Case No. 79/16-16

OAH No. 2015100026

**FIRST AMENDED ACCUSATION AND
PETITION TO REVOKE PROBATION**

1 Complainant alleges:

2 **PARTIES**

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

6 2. In 1996, the Bureau of Automotive Repair issued Automotive Repair Dealer
7 Registration Number ARD 189852 to Khalil Ailabouni, Owner, doing business as Palm Springs
8 Smog Test Center Only (Palm Springs Smog Test Center Only). The Automotive Repair Dealer
9 Registration was in full force and effect at all times relevant to the charges brought herein and
10 will expire on July 31, 2016, unless renewed.

11 3. On or about July 18, 2000, the Bureau of Automotive Repair issued Smog Check-Test
12 Only Station License Number TC 189852 to Palm Springs Smog Test Center Only. The Smog
13 Check-Test Only Station License was in full force and effect at all times relevant to the charges
14 brought herein and will expire on July 31, 2016, unless renewed.

15 4. In 2003, the Bureau of Automotive Bureau issued Advanced Emission Specialist
16 (EA) Technician License No. EA 146390 to Shoukry Amir Ailabouni (Ailabouni). It expired and
17 was cancelled on July 31, 2013. Under California Code of Regulations, title 16, section 3340.28,
18 subdivision (e), the license was renewed, under Ailabouni's election, as Smog Check Inspector
19 License No. EO 146390, effective July 31, 2013. The Smog Check Inspector License was in full
20 force and effect at all times relevant to the charges brought herein and will expire on January 2,
21 2016, unless renewed.¹

22 5. In a disciplinary action entitled "Palm Springs Smog Test Center Only; Khalil
23 Ailabouni, Owner," Case No. 79/12-48, the Bureau of Automotive Repair issued a Decision and
24 Order effective February 14, 2013, in which Respondent's Automotive Repair Dealer Registration
25 and Smog Check Test Only Station license were revoked. However, the revocation was stayed

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 and Respondent's Automotive Repair Dealer Registration and Smog Check Test Only Station
2 license was placed on probation for three (3) years with certain terms and conditions. A copy of
3 that Decision and Order is attached as Exhibit A and is incorporated by reference.

4 **JURISDICTION AND STATUTORY PROVISIONS FOR ACCUSATION**

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

7 7. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
8 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
9 disciplinary action during the period within which the license may be renewed, restored, reissued
10 or reinstated.

11 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
12 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
13 proceeding against an automotive repair dealer or to render a decision invalidating a registration
14 temporarily or permanently.

15 9. Section 9884.20 of the Code states:

16 "All accusations against automotive repair dealers shall be filed within three years after the
17 performance of the act or omission alleged as the ground for disciplinary action, except that with
18 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,
19 the accusation may be filed within two years after the discovery, by the bureau, of the alleged
20 facts constituting the fraud or misrepresentation."

21 10. Section 9884.22 of the Code states:

22 "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny
23 at any time any registration required by this article on any of the grounds for disciplinary action
24 provided in this article. The proceedings under this article shall be conducted in accordance with
25 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
26 Code, and the director shall have all the powers granted therein.

27 "..."

1 11. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
2 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
3 the Motor Vehicle Inspection Program.

4 12. Section 44072 of the Health and Safety Code states:

5 “Any license issued under this chapter and the regulations adopted pursuant to it may be
6 suspended or revoked by the director. The director may refuse to issue a license to any applicant
7 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted
8 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
9 of the Government Code, and the director shall have all the powers granted therein.”

10 13. Section 44072.4 of the Health and Safety Code states:

11 “The director may take disciplinary action against any licensee after a hearing as provided
12 in this article by any of the following:

13 “(a) Imposing probation upon terms and conditions to be set forth by the director.

14 “(b) Suspending the license.

15 “(c) Revoking the license.”

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

20 15. Section 44072.7 of the Health and Safety Code states:

21 “All accusations against licensees shall be filed within three years after the act or omission
22 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a
23 violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after
24 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation
25 prohibited by that section.”

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28 ///

1 “(4) Any other conduct that constitutes fraud.

2 “...

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

7 20. Section 44012 of the Health and Safety Code states:

8 “The test at the smog check stations shall be performed in accordance with procedures
9 prescribed by the department and may require loaded mode dynamometer testing in enhanced
10 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other
11 appropriate test procedures as determined by the department in consultation with the state board.
12 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
13 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
14 no earlier than January 1, 2013. However, the department, in consultation with the state board,
15 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
16 idle testing for vehicles with onboard diagnostic systems that the department and the state board
17 determine exhibit operational problems. The department shall ensure, as appropriate to the test
18 method, the following:

19 “(a) Emission control systems required by state and federal law are reducing excess
20 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
21 Section 44013.

22 “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
23 the vehicle's emission control system.

24 “(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
25 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
26 mode are tested in accordance with procedures prescribed by the department. In determining how
27 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure
28 that the emission reduction targets for the enhanced program are met.

1 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
2 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
3 compound emissions, in accordance with procedures prescribed by the department.

4 (e) For diesel-powered vehicles, a visual inspection is made of emission control devices
5 and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
6 department, that may include, but are not limited to, onboard diagnostic testing. The test may
7 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
8 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

13 (g) A determination as to whether the motor vehicle complies with the emission standards
14 for that vehicle's class and model-year as prescribed by the department.

15 (h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a
16 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
17 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
18 would have passed a tailpipe test.

19 (i) The test procedures may authorize smog check stations to refuse the testing of a vehicle
20 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
21 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle
22 from compliance with all applicable requirements of this chapter.”

23 21. Section 44015 of the Health and Safety Code states:

24 (a) A licensed smog check station shall not issue a certificate of compliance, except as
25 authorized by this chapter, to any vehicle that meets the following criteria:

26 (1) A vehicle that has been tampered with.

27 (2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of
28 Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision

1 (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error
2 can explain the irregularity, or whether the vehicle otherwise meets smog check requirements,
3 allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a
4 referee or another smog check station.

5 “(3) A vehicle that, prior to repairs, has been initially identified by the smog check station
6 as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated
7 test-only facility, or a test-and-repair station that is both licensed and certified pursuant to
8 Sections 44014 and 44014.2.

9 “(4) A vehicle described in subdivision (c).

10 “(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
11 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

12 “(c)(1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity
13 authorized to perform referee functions for a vehicle that has been properly tested but does not
14 meet the applicable emission standards when it is determined that no adjustment or repair can be
15 made that will reduce emissions from the inspected motor vehicle without exceeding the
16 applicable repair cost limit established under Section 44017 and that every defect specified by
17 paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision
18 (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph
19 shall be accepted in lieu of a certificate of compliance for the purposes of compliance with
20 Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No
21 repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the
22 applicable repair cost limit specified in Section 44017.

23 “(2) An economic hardship extension shall be issued, upon request of a qualified low-
24 income motor vehicle owner, by an entity authorized to perform referee functions, for a motor
25 vehicle that has been properly tested but does not meet the applicable emission standards when it
26 is determined that no adjustment or repair can be made that will reduce emissions from the
27 inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant
28 to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section

1 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that
2 the low-income vehicle owner would suffer an economic hardship if the extension is not issued,
3 and that all appropriate emissions-related repairs up to the amount of the applicable repair cost
4 limit in Section 44017.1 have been performed.

5 “(d) No repair cost waiver or economic hardship extension shall be issued under any of the
6 following circumstances:

7 “(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in
8 the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship
9 extension may be issued to a motor vehicle owner only once for a particular motor vehicle
10 belonging to that owner. However, a repair cost waiver or economic hardship extension may be
11 issued for a motor vehicle that participated in a previous waiver or extension program prior to
12 January 1, 1998, as determined by the department. For waivers or extensions issued in the
13 program operative on or after January 1, 1998, a waiver or extension may be issued for a motor
14 vehicle only once per owner.

15 “(2) Upon initial registration of all of the following:

16 “(A) A direct import motor vehicle.

17 “(B) A motor vehicle previously registered outside this state.

18 “(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

19 “(D) A motor vehicle that has had an engine change.

20 “(E) An alternate fuel vehicle.

21 “(F) A specially constructed vehicle.

22 “(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance
23 shall be valid for 90 days.

24 “(f) Excluding any vehicle whose transfer of ownership and registration is described in
25 subdivision (d) of Section 4000.1 of the Vehicle Code, and except as otherwise provided in
26 Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle
27 dealer shall be responsible for having a smog check inspection performed on, and a certificate of
28 compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate

1 issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle
2 is sold and registered to a retail buyer, whichever occurs first.

3 “(g) A test may be made at any time within 90 days prior to the date otherwise required.”

4 22. Section 44035 of the Health and Safety Code states:

5 “(a) A smog check station's license or a qualified smog check technician's qualification may
6 be suspended or revoked by the department, after a hearing, for failure to meet or maintain the
7 standards prescribed for qualification, equipment, performance, or conduct. The department shall
8 adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses
9 and qualifications and the conduct of the hearings.

10 “(b) The department or its representatives, including quality assurance inspectors, shall be
11 provided access to licensed stations for the purpose of examining property, station equipment,
12 repair orders, emissions equipment maintenance records, and any emission inspection items, as
13 defined by the department.”

14 23. Section 44072.2 of the Health and Safety Code states:

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

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

21 "...

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

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

24 "...."

25 24. Section 44072.10 of the Health and Safety Code states:

26 "...

1 “(c) The department shall revoke the license of any smog check technician or station
2 licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles.

3 A fraudulent inspection includes, but is not limited to, all of the following:

4 “(1) Clean piping, as defined by the department.

5 “(2) Tampering with a vehicle emission control system or test analyzer system.

6 “(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or
7 falsely fail an inspection.

8 “(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure
9 of the department implementing this chapter.”

10 REGULATORY PROVISIONS

11 25. California Code of Regulations, title 16, section 3340.1. states:

12 “... ”

13 “‘Clean piping,’ for the purposes of Health and Safety Code section 44072.10(c)(1), means
14 the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in
15 order to cause the EIS to issue a certificate of compliance for the test vehicle.

16 “... ”

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

21 27. California Code of Regulations, title 16, section 3340.35, subdivision (c) states:

22 “... ”

23 “(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner
24 or operator of any vehicle that has been inspected in accordance with the procedures specified in
25 section 3340.42 of this article and has all the required emission control equipment and devices
26 installed and functioning correctly. The following conditions shall apply:

27 “(1) Customers shall be charged the same price for certificates as that paid by the licensed
28 station; and

1 “(2) Sales tax shall not be assessed on the price of certificates.

2 “....”

3 28. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

4 “... ”

5 “(c) No person shall enter into the emissions inspection system any vehicle identification
6 information or emission control system identification data for any vehicle other than the one being
7 tested. Nor shall any person knowingly enter into the emissions inspection system any false
8 information about the vehicle being tested.

9 “....”

10 29. California Code of Regulations, title 16, section 3340.42 states:

11 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
12 section 3340.45.

13 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test
14 methods:

15 “(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year
16 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-
17 mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen
18 emissions, as contained in the bureau's specifications referenced in subsection (a) of Section
19 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test
20 equipment, including a chassis dynamometer, certified by the bureau.

21 “On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection
22 shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table
23 (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby
24 incorporated by reference. If the emissions standards for a specific vehicle are not included in this
25 table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE
26 I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured
27 emissions are less than or equal to the applicable emission standards specified in the applicable
28 table.

1 “(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-
2 year vehicles, except diesel-powered, registered in all program areas of the state, except in those
3 areas of the state where the enhanced program has been implemented. The two-speed idle mode
4 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
5 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of
6 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall
7 be measured and compared to the emission standards set forth in this section and as shown in
8 TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less
9 than or equal to the applicable emissions standards specified in Table III.

10 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
11 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
12 The OBD test failure criteria are specified in section 3340.42.2.

13 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
14 receive the following:

15 “(1) A visual inspection of emission control components and systems to verify the vehicle's
16 emission control systems are properly installed.

17 “(2) A functional inspection of emission control systems as specified in the Smog Check
18 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
19 operation.

20 “. . .”

21 30. California Code of Regulations, title 16, section 3395.4 states:

22 “In reaching a decision on a disciplinary action under the Administrative Procedure Act
23 (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of
24 Administrative Hearing, the Bureau of Automotive Repair shall consider the disciplinary
25 guidelines entitled ‘Guidelines for Disciplinary Penalties and Terms of Probation’ [May, 1997]
26 which are hereby incorporated by reference. The ‘Guidelines for Disciplinary Penalties and Terms
27 of Probation’ are advisory. Deviation from these guidelines and orders, including the standard
28 terms of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion

1 determines that the facts of the particular case warrant such deviation -for example: the presence
2 of mitigating factors; the age of the case; evidentiary problems.”

3 COSTS

4 31. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
9 included in a stipulated settlement.

10 CLEAN PIPING

11 32. At all times alleged in this Accusation, Ailabouni and Khalil Ailabouni were acting in
12 the course and within the scope of a technician, employee, partner, officer, or member of Palm
13 Springs Smog Test Center Only.

14 33. On February 24-25, 2015, a Bureau representative conducted video surveillance at
15 Palm Springs Smog Test Center Only. The Bureau representative used a vehicle that was
16 equipped with a video camera and video recording equipment. Before the surveillance began, the
17 Bureau representative verified that the clock of the video recording equipment was in sync with
18 the Vehicle Information Database clock. When the recording stopped for the day, the Bureau
19 representative created several DVDs from the video surveillance. After the Bureau representative
20 made copies of the DVDs, the Bureau representative placed the originals in an envelope that was
21 sealed and tagged. The Bureau representative transferred custody of the envelope containing the
22 DVDs to another Bureau representative, who then secured the envelope with the DVDs in an
23 evidence locker at the Bureau's Riverside field office.

24 34. Clean Pipe 1 – Ferrari 360

25 The BAR97 Test Detail from the Vehicle Information Database shows that on February
26 24, 2015, from 1152 hours to 1202 hours, Palm Springs Smog Test Center Only and Ailabouni
27 performed a smog check inspection on a 2000 Ferrari 360 Modena/Spider, MN License #JEN006,
28 (Ferrari 360). The Ferrari 360 was issued Certificate of Compliance #YP082892C.

1 35. On the video surveillance of February 24, 2015, at 1139 hours a dark colored
2 BMW 3-Series, with exterior paint graphics including blue and red stripes advertising for Palm
3 Springs Smog and Palm Springs Auto Care (Ailabouni's BMW)² enters the smog bay at Palm
4 Springs Smog Test Center Only's smog station. Ailabouni's BMW is in the smog bay during the
5 recorded time of the Ferrari 360's certified smog inspection. Ailabouni's BMW leaves the smog
6 bay at 1345 hours.

7 36. The Ferrari 360 is never observed in the smog bay of Palm Springs Smog Test Center
8 Only's smog station during the recorded time of the smog check inspection and did not receive
9 the required tailpipe emissions inspection. Palm Springs Smog Test Center Only and Ailabouni
10 clean-piped the Ferrari 360 by using the exhaust sample of Ailabouni's BMW.

11 37. Clean Pipe 2 – Honda Accord

12 The BAR97 Test Detail from the Vehicle Information Database shows that on February
13 24, 2015, from 1425 hours to 1433 hours, Palm Springs Smog Test Center Only and Ailabouni
14 performed a smog check inspection on a 2000 Honda Accord, CA License #4JOA416, (Accord).
15 The Accord was issued Certificate of Compliance #YP082893C.

16 38. On the video surveillance of February 24, 2015, at 1426 hours Ailabouni's BMW
17 enters the smog bay at Palm Springs Smog Test Center Only's smog station. Ailabouni's BMW
18 is in the smog bay during the record time of the Accord's certified smog inspection.

19 39. However, the Accord was never observed in the smog bay during the recorded time of
20 the smog check inspection and did not receive the required tailpipe emissions inspection. Palm
21 Springs Smog Test Center Only and Ailabouni clean-piped the Accord using the exhaust sample
22 of Ailabouni's BMW.

23 40. Clean Pipe 3 – 2001 Dodge Ram 1500 2WD

24 The BAR97 Test Detail from the Vehicle Information Database shows that on February
25 24, 2015, from 1438 hours to 1445 hours, Palm Springs Smog Test Center Only and Ailabouni
26

27 _____
28 ² Ailabouni owned this BMW 3-Series.

1 performed a smog check inspection on a 2001 Dodge Ram 1500 2WD, CA License #56034B1,
2 (Ram). The Ram was issued Certificate of Compliance #YP082894C.

3 41. On the video surveillance of February 24, 2015, Ailabouni's BMW is in the smog bay
4 during the record time of the Ram's certified smog inspection.

5 42. However, the Ram was never observed in the smog bay during the recorded time of
6 the smog check inspection and did not receive the required tailpipe emissions inspection. Palm
7 Springs Smog Test Center Only and Ailabouni clean-piped the Ram using the exhaust sample of
8 Ailabouni's BMW.

9 43. Clean Pipe 4 – Lincoln Continental

10 The BAR97 Test Detail from the Vehicle Information Database shows that on February
11 24, 2015, from 1621 hours to 1629 hours, Palm Springs Smog Test Center Only and Ailabouni
12 performed a smog check inspection on a 1997 Lincoln Continental, VIN
13 #1LNLM97V8VY659018 (Continental). The Continental was issued Certificate of Compliance
14 #YP082895C.

15 44. On the video surveillance of February 24, 2015, Ailabouni's BMW is in the smog bay
16 during the record time of the Continental's certified smog inspection.

17 45. However, the Continental was never observed in the smog bay during the recorded
18 time of the smog check inspection and did not receive the required tailpipe emissions inspection.
19 Palm Springs Smog Test Center Only and Ailabouni clean-piped the Continental using the
20 exhaust sample of Ailabouni's BMW.

21 46. Clean Pipe 5 – Toyota Camry Solara

22 The BAR97 Test Detail from the Vehicle Information Database shows that on February
23 24, 2015, from 1634 hours to 1645 hours, Palm Springs Smog Test Center Only and Ailabouni
24 performed a smog check inspection on a 2003 Toyota Camry Solara, CA License #5BBH366
25 (Solara). The Solara was issued Certificate of Compliance #YP082896C.

26 47. On the video surveillance of February 24, 2015, Ailabouni's BMW is in the smog bay
27 during the record time of the Solara's certified smog inspection.

28

1 48. However, the Solara was never observed in the smog bay during the recorded time of
2 the smog check inspection and did not receive the required tailpipe emissions inspection. Palm
3 Springs Smog Test Center Only and Ailabouni clean-piped the Solara using the exhaust sample of
4 Ailabouni's BMW.

5 49. Clean Pipe 6 – Honda Civic

6 The BAR97 Test Detail from the Vehicle Information Database shows that on February
7 24, 2015, from 1652 hours to 1657 hours, Palm Springs Smog Test Center Only and Ailabouni
8 performed a smog check inspection on a 1999 Honda Civic, CA License #5CBY390 (Civic). The
9 Civic was issued Certificate of Compliance #YP082897C.

10 50. On the video surveillance of February 24, 2015, Ailabouni's BMW is in the smog bay
11 during the record time of the Civic's certified smog inspection.

12 51. However, the Civic was never observed in the smog bay during the recorded time of
13 the smog check inspection and did not receive the required tailpipe emissions inspection. Palm
14 Springs Smog Test Center Only and Ailabouni clean-piped the Civic using the exhaust sample of
15 Ailabouni's BMW.

16 52. Clean Pipe 7 – Ford Mustang

17 The BAR97 Test Detail from the Vehicle Information Database shows that on February
18 24, 2015, from 1704 hours to 1711 hours, Palm Springs Smog Test Center Only and Ailabouni
19 performed a smog check inspection on a 1995 Ford Mustang, CA License #4RXH847 (Mustang).
20 The Mustang was issued Certificate of Compliance #YP082898C.

21 53. On the video surveillance of February 24, 2015, at 1704 hours a white Chevrolet
22 Tahoe (the Tahoe) enters the smog bay. It remained in the smog bay during the record time of the
23 Mustang's certified smog inspection.

24 54. However, the Mustang was never observed in the smog bay during the recorded time
25 of the smog check inspection and did not receive the required tailpipe emissions inspection. Palm
26 Springs Smog Test Center Only and Ailabouni clean-piped the Mustang using the exhaust sample
27 of the Tahoe.

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1 55. Clean Pipe 8 – Ford F150 Regular Cab Short

2 The BAR97 Test Detail from the Vehicle Information Database shows that on February
3 24, 2015, from 1716 hours to 1727 hours, Palm Springs Smog Test Center Only and Ailabouni
4 performed a smog check inspection on a 1998 Ford F150 Regular Cab Short, CA License
5 #7T67720 (Ford F150 Regular Cab Short). The Ford F150 Regular Cab Short was issued
6 Certificate of Compliance #YP082899C.

7 56. On the video surveillance of February 24, 2015, the Tahoe is in the smog bay during
8 the record time of the Ford F150 Regular Cab Short's certified smog inspection.

9 57. However, the Ford F150 Regular Cab Short was never observed in the smog bay
10 during the recorded time of the smog check inspection and did not receive the required tailpipe
11 emissions inspection. Palm Springs Smog Test Center Only and Ailabouni clean-piped the Ford
12 F150 Regular Cab Short using the exhaust sample of the Tahoe.

13 58. Clean Pipe 9 – Chevrolet C1500 Silverado 2WD

14 The BAR97 Test Detail from the Vehicle Information Database shows that on February
15 25, 2015, from 1314 hours to 1327 hours, Palm Springs Smog Test Center Only and Ailabouni
16 performed a smog check inspection on a 2004 Chevrolet C1500 Silverado 2WD, CA License
17 #01233F1 (Chevrolet C1500 Silverado 2WD). The Chevrolet C1500 Silverado 2WD was issued
18 Certificate of Compliance #YP082900C.

19 59. On the video surveillance of February 25, 2015, Ailabouni's BMW is in the smog bay
20 during the record time of the Chevrolet C1500 Silverado 2WD's certified smog inspection.

21 60. However, the Chevrolet C1500 Silverado 2WD was never observed in the smog bay
22 during the recorded time of the smog check inspection and did not receive the required tailpipe
23 emissions inspection. Palm Springs Smog Test Center Only and Ailabouni clean-piped the
24 Chevrolet C1500 Silverado 2WD using the exhaust sample of Ailabouni's BMW.

25 61. Clean Pipe 10 – Toyota Camry

26 The BAR97 Test Detail from the Vehicle Information Database shows that on February
27 25, 2015, from 1411 hours to 1421 hours, Palm Springs Smog Test Center Only and Ailabouni
28

1 performed a smog check inspection on a 1997 Toyota Camry, CA License #3UGD344 (Camry).
2 The Camry was issued Certificate of Compliance #YP208201C.

3 62. On the video surveillance of February 25, 2015, Ailabouni's BMW is in the smog bay
4 during the record time of the Camry's certified smog inspection.

5 63. However, the Camry was never observed in the smog bay during the recorded time of
6 the smog check inspection and did not receive the required tailpipe emissions inspection. Palm
7 Springs Smog Test Center Only and Ailabouni clean-piped the Camry using the exhaust sample
8 of Ailabouni's BMW.

9 64. Clean Pipe 11 – Ford Expedition

10 The BAR97 Test Detail from the Vehicle Information Database shows that on February
11 25, 2015, from 1441 hours to 1453 hours, Palm Springs Smog Test Center Only and Ailabouni
12 performed a smog check inspection on a 1999 Ford Expedition, CA License #6HYT000
13 (Expedition). The Expedition was issued Certificate of Compliance #YP208202C.

14 65. On the video surveillance of February 25, 2015, Ailabouni's BMW is in the smog bay
15 during the record time of the Expedition's certified smog inspection.

16 66. However, the Expedition was never observed in the smog bay during the recorded
17 time of the smog check inspection and did not receive the required tailpipe emissions inspection.
18 Palm Springs Smog Test Center Only and Ailabouni clean-piped the Expedition using the exhaust
19 sample of Ailabouni's BMW.

20 67. Clean Pipe 12 – Ford F250

21 The BAR97 Test Detail from the Vehicle Information Database shows that on February
22 25, 2015, from 1506 hours to 1546 hours, Palm Springs Smog Test Center Only and Ailabouni
23 performed a smog check inspection on a 1990 Ford F250, CA License #7S06800 (Ford F250).
24 The Ford F250 was issued Certificate of Compliance #YP208203C.

25 68. On the video surveillance of February 25, 2015, Ailabouni's BMW and a Chevrolet
26 Astro Van, CA License #6GXT503 (the Van) is in the smog bay during the record time of the
27 Ford F250 certified smog inspection.

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69. However, the Ford F250 was never observed in the smog bay during the recorded time of the smog check inspection and did not receive the required tailpipe emissions inspection. Palm Springs Smog Test Center Only and Ailabouni clean-piped the Ford F250 using the exhaust sample of Ailabouni's BMW and the Van.

70. The following table is a summary of the clean-piping performed by Palm Springs Smog Test Center Only and Ailabouni during the time of the surveillance:

TABLE 1

	Date & Time of Inspection as Certified in the VID	Information of Certified Vehicle and Smog Certificate of Compliance #	Vehicle certified observed in Smog Bay?	Vehicle Observed in Smog Bay During Time of Inspection
1	February 24, 2015, from 1152 hours to 1202 hours	2000 Ferrari 360 Modena/Spider; #YP082892C	No	Ailabouni's BMW
2	February 24, 2015, from 1425 hours to 1433 hours	2000 Honda Accord; #YP082893C	No	Ailabouni's BMW
3	February 24, 2015, from 1438 hours to 1445 hours	2001 Dodge Ram 1500 2WD; #YP082894C	No	Ailabouni's BMW
4	February 24, 2015, from 1621 hours to 1629 hours	1997 Lincoln Continental; #YP082895C	No	Ailabouni's BMW
5	February 24, 2015, from 1634 hours to 1645 hours	2003 Toyota Camry Solara; #YP082896C	No	Ailabouni's BMW
6	February 24, 2015, from 1652 hours to 1657 hours	1999 Honda Civic; #YP082897C	No	Ailabouni's BMW
7	February 24, 2015, from 1704 hours to 1711 hours	1995 Ford Mustang; #YP082898C	No	the Tahoe
8	February 24, 2015, from 1716 hours to 1727 hours	1998 Ford F150 Regular Cab Short; #YP082899C	No	the Tahoe
9	February 25, 2015, from 1314 hours to 1327 hours	2004 Chevrolet C1500 Silverado 2WD; #YP082900C	No	Ailabouni's BMW
10	February 25, 2015, from	1997 Toyota	No	Ailabouni's

	1411 hours to 1421 hours	Camry; #YP208201C		BMW
11	February 25, 2015, from 1441 hours to 1453 hours	1999 Ford Expedition; #YP208202C	No	Ailabouni's BMW
12	February 25, 2015, from 1506 hours to 1546 hours	1990 Ford F250; #YP208203C	No	Ailabouni's BMW and the Van

UNDERCOVER OPERATION

71. Between July and August 2015, a Bureau undercover operator conducted an undercover operation that involved Palm Springs Smog Test Center Only's performance of a smog check inspection. The undercover operation involved two Bureau-documented vehicles: 2001 Honda and a 2003 Honda. For the 2001 Honda, the following malfunctions were introduced on the vehicle: removal of the catalytic converter and two heated oxygen sensors. In this condition, the Bureau-documented 2001 Honda would not pass a proper smog check inspection because of failures during the visual and functional inspections. For the 2003 Honda, the following malfunctions were introduced on the vehicle: removal of the catalytic converter and two heated oxygen sensors. In this condition, the Bureau-documented 2003 Honda would not pass a proper smog check inspection because of failures during the visual and functional inspections.

72. On July 27, 2015, at 1120 hours, the undercover operator received fictitious billing notices for the two Bureau-documented vehicles and instructions to take these notices to a facility called Rudy's and request smog certificates. The undercover operator drove to Rudy's and spoke with Diego about getting smog certificates of compliance for the two Bureau-documented vehicles. The undercover operator gave Diego the billing notices. Diego said he would contact the undercover operator with more information. At 1131 hours, the undercover operator left the facility. At 1525 hours, Diego called the undercover operator and said the price for each inspection was \$450.00, which the undercover operator authorized. At 1607 hours, Diego called the undercover operator and asked the undercover operator to photograph the odometer readings for the vehicle, which the undercover operator did. At 1646 hours, Diego called and told the undercover operator the vehicles would be completed later that day.

1 73. On July 28, 2015, Diego called and told the undercover operator that there was a
2 problem with the paperwork. Diego said he would correct the problem and contact the
3 undercover operator.

4 74. On August 3, 2015, Diego called and told the undercover operator that the smog
5 certifications of compliance for the two Bureau-documented vehicles were issued. The
6 undercover operator drove to Rudy's and spoke with Diego. Diego showed the undercover
7 operator two Vehicle Inspection Reports. According to the certifications on these Vehicle
8 Inspection Reports, on July 27, 2015, Palm Springs Smog Test Center Only and Ailabouni
9 performed these smog check inspections that led to the issuance of smog certificates of
10 compliance. The Vehicle Inspection Report for the Bureau-documented 2001 Honda had the
11 wrong Vehicle Identification Number and license plate number. The Vehicle Inspection Report
12 for the Bureau-documented 2003 Honda had the wrong Vehicle Identification Number. The
13 undercover operator told Diego that he could not accept the paperwork because of the wrong
14 information. Diego kept the paperwork. Diego said he would get a different smog check station
15 to do the inspections. Later that day, Diego called the undercover operator and said to check the
16 Bureau's website because the smog inspections would be listed. Diego said a technician at a
17 different shop did the inspections and processed the registration documents through the
18 Department of Motor Vehicles.

19 75. On August 4, 2015, the undercover operator contacted Diego and said the smog check
20 inspections for the Bureau-documented vehicles were not listed on the Bureau's website. Diego
21 asked the undercover operator to speak with the smog check technician who performed the
22 inspections, who Diego put on the phone. This unidentified man said he performed the
23 inspections and that the undercover operator owed him money. The man told the undercover
24 operator that the Bureau's website was unreliable, the vehicles passed inspection, and he
25 processed the registration so there would "be no problem." Diego then got back on the phone and
26 asked the undercover operator when they could expect payment for the inspections. The
27 undercover operator said he would pay them on August 6, 2015.

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1 or authorized statements which Palm Springs Smog Test Center Only knew or in the exercise of
2 reasonable care should have known to be untrue or misleading.

3 82. Palm Springs Smog Test Center Only certified that the vehicle(s) in Table 1 and the
4 Undercover Operation above had passed inspection and were in compliance with all applicable
5 laws and regulations, when in fact and in truth Palm Springs Smog Test Center Only inspected the
6 vehicle(s) using the clean piping method to issue certificates of compliance.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Violations of Motor Vehicle Inspection Program)**

9 83. Complainant re-alleges and incorporates by reference the allegations set forth above
10 in the foregoing paragraphs.

11 84. Palm Springs Smog Test Center Only's Station License is subject to disciplinary
12 action under Health and Safety Code sections 44072.10, subdivision (c), and 44072.2, subdivision
13 (a), in that Palm Springs Smog Test Center Only failed to comply with the following sections of
14 that Code:

15 a. **Section 44012**: Palm Springs Smog Test Center Only failed to perform the
16 test(s) of the emission control systems and devices on the vehicle(s) described in Table 1 and the
17 Undercover Operation in accordance with procedures prescribed by the Department.

18 b. **Section 44015**: Palm Springs Smog Test Center Only issued certificates of
19 compliance for the vehicle(s) described in Table 1 and the Undercover Operation without properly
20 testing and inspecting them to determine if they complied with Health & Safety Code section
21 44012.

22 c. **Section 44035**: Palm Springs Smog Test Center Only failed to meet or
23 maintain the standards prescribed for qualification, equipment, performance, or conduct by failing
24 to properly perform smog inspection(s) on the vehicle(s) described in Table 1 and the Undercover
25 Operation or certifying that such test(s) had been properly performed, when in fact they were not
26 properly performed.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 85. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in the foregoing paragraphs.

5 86. Palm Springs Smog Test Center Only's Station License is subject to disciplinary
6 action under Health and Safety Code sections 44072.10, subdivision(c) and 44072.2, subdivision
7 (a), in that Palm Springs Smog Test Center Only failed to comply with the following sections of
8 California Code of Regulations, title 16:

9 a. **Section 3340.35, subdivision (c):** Palm Springs Smog Test Center Only failed
10 to inspect and test the vehicle(s) described in Table 1 and the Undercover Operation in
11 accordance with the procedures specified in section 3340.42 of the Regulations and failed to
12 ensure that the vehicle(s) had all the required emission control equipment and devices installed
13 and functioning correctly.

14 b. **Section 3340.41, subdivision (c):** Palm Springs Smog Test Center Only
15 knowingly entered into the Emissions Inspection System false information about the vehicle(s)
16 described in Table 1 and the Undercover Operation, providing results for smog inspection(s)
17 which were not properly performed.

18 c. **Section 3340.42:** Palm Springs Smog Test Center Only failed to conduct the
19 required smog test(s) on the vehicle(s) described in Table 1 and the Undercover Operation in
20 accordance with the Bureau's specifications.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Dishonesty, Fraud, Deceit)**

23 87. Complainant re-alleges and incorporates by reference the allegations set forth above
24 in the foregoing paragraphs.

25 88. Palm Springs Smog Test Center Only's Registration is subject to disciplinary action
26 under Code section 9884.7, subdivision (a)(4), and Palm Springs Smog Test Center Only's
27 Station License is subject to disciplinary action under Health and Safety Code sections 44072.10,
28 subdivision (c) and 44072.2, subdivision (d), in that Palm Springs Smog Test Center Only

1 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog
2 inspection certificate(s) for the vehicle(s) described in Table 1 and the Undercover Operation
3 without performing bona fide inspection(s) of the emission control devices and systems on them,
4 thereby depriving the People of the State of California of the protection afforded by the Motor
5 Vehicle Inspection Program.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Clean Piping)**

8 89. Complainant re-alleges and incorporates by reference the allegations set forth above
9 in the foregoing paragraphs.

10 90. Palm Springs Smog Test Center Only's Station license is subject to disciplinary
11 action for clean piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in
12 California Code of Regulations, title 16, section 3340.1, in that Palm Springs Smog Test Center
13 Only used a substitute exhaust emission sample of one vehicle in place of another vehicle's
14 exhaust emission sample in order to cause the Emissions Inspection System to issue certificates of
15 compliance for the inspection(s) described in Table 1 and the Undercover Operation.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Violation of Motor Vehicle Inspection Program)**

18 91. Complainant re-alleges and incorporates by reference the allegations set forth above
19 in the foregoing paragraphs.

20 92. Ailabouni's license is subject to disciplinary action under Health and Safety Code
21 sections 44072.10, subdivision (c) and 44072.2, subdivision (a), in that he failed to comply with
22 the following sections of that Code:

23 a. **Section 44012:** Ailabouni failed to perform the test(s) of the emission control
24 systems and devices on the vehicle(s) described in Table 1 and the Undercover Operation in
25 accordance with procedures prescribed by the Department.

26 b. **Section 44015:** Ailabouni issued certificate(s) of compliance for the vehicle(s)
27 described in Table 1 and the Undercover Operation without properly testing and inspecting them
28 to determine if they complied with Health & Safety Code section 44012.

1 fraudulent, or deceitful acts whereby another is injured by issuing smog inspection certificate(s)
2 for the vehicle(s) described in Table 1 and the Undercover Operation without performing bona
3 fide inspections of the emission control devices and systems on them, thereby depriving the
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection
5 Program.

6 **NINTH CAUSE FOR DISCIPLINE**

7 **(Clean Piping)**

8 97. Complainant re-alleges and incorporates by reference the allegations set forth above
9 in the foregoing paragraphs.

10 98. Ailabouni's license is subject to disciplinary action under Health & Safety Code, §
11 44072.10, subdivision (c)(1), as defined in California Code of Regulations, title 16, section
12 3340.1, in that Ailabouni used a substitute exhaust emission sample of one vehicle in place of
13 another vehicle's exhaust emission sample in order to cause the Emissions Inspection System to
14 issue certificate(s) of compliance for the inspection(s) described in Table 1 and the Undercover
15 Operation.

16 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

17 99. This Petition to Revoke Probation is brought before the Director of Consumer Affairs
18 (Director) for the Bureau of Automotive Repair under Probation Term and Condition (a) of the
19 Decision and Order "Palm Springs Smog Test Center Only; Khalil Ailabouni, Owner," Case No.
20 79/12-48. That term and condition states:

21 "During the period of probation, respondent shall . . . [c]omply with all statutes, regulations
22 and rules governing automotive inspections, estimates, and repairs."

23 **CAUSE TO REVOKE PROBATION**

24 **(Obey All Laws)**

25 100. Complainant re-alleges and incorporates by reference the allegations set forth above
26 in the foregoing paragraphs.

27 101. At all times after the effective date of Palm Springs Smog Test Center Only's
28 probation, Condition (a) stated:

1 "During the period of probation, respondent shall: . . . [c]omply with all statutes, regulations
2 and rules governing automotive inspections, estimates and repairs."

3 102. Palm Springs Smog Test Center Only's probation is subject to revocation because
4 Palm Springs Smog Test Center Only violated Probation Condition (a), referenced above. Palm
5 Springs Smog Test Center Only violated the following statutes, regulations, and rules governing
6 automotive inspections, estimates, and repairs:

- 7 a Code section 9884.7, subdivision (a)(1).
- 8 b. Health and Safety Code section 44012.
- 9 c. Health and Safety Code section 44015.
- 10 d. Health and Safety Code section 44035.
- 11 e. California Code of Regulations, title 16, Section 3340.35, subdivision (c).
- 12 f. California Code of Regulations, title 16, Section 3340.41, subdivision (c).
- 13 g. California Code of Regulations, title 16, Section 3340.42.
- 14 h. Code section 9884.7, subdivision (a)(4).
- 15 i. Health and Safety Code section 44072.10, subdivision (c).
- 16 j. Health and Safety Code section 44072.2, subdivision (d).

17 **DISCIPLINARY CONSIDERATIONS**

18 103. To determine the degree of discipline, if any, Complainant alleges the following:

19 a. On or about July 17, 2002, the Bureau issued Citation No. C03-0094 to Palm Springs
20 Smog Test Center Only for violations of Health and Safety Code section 44012, subdivision (f)
21 (failure to perform a visual/functional check of emission control devices according to procedures
22 prescribed by the department), and California Code of Regulations, title 16, section 3340.35,
23 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). Palm
24 Springs Smog Test Center Only issued a certificate of compliance to a Bureau vehicle with the
25 ignition timing adjusted beyond the manufacturer's specifications and a nonfunctional gas cap.
26 The Bureau assessed civil penalties totaling \$500. Palm Springs Smog Test Center Only
27 complied with this citation on September 4, 2002, and it is now final.

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1 b. On or about October 17, 2002, the Bureau issued Citation No. C03-0484 to Palm
2 Springs Smog Test Center Only for violations of Health and Safety Code section 44012,
3 subdivision (f) (failure to perform a visual/functional check of emission control devices according
4 to procedures prescribed by the department), and California Code of Regulations, title 16, section
5 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly
6 tested). Palm Springs Smog Test Center Only issued a certificate of compliance to a Bureau
7 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau
8 assessed civil penalties totaling \$1,000. On or about November 27, 2002, Palm Springs Smog
9 Test Center Only appealed the citation. A hearing was held on August 25, 2003. The citation
10 was upheld and the penalty was reduced to \$500. Palm Springs Smog Test Center Only complied
11 with this citation on February 3, 2004, and it is now final.

12 c. On or about May 15, 2009, the Bureau issued Citation No. C09-1311 to Palm Springs
13 Smog Test Center Only for violations of Health and Safety Code section 44012, subdivision (f)
14 (failure to perform a visual/functional check of emission control devices according to procedures
15 prescribed by the department), and California Code of Regulations, title 16, section 3340.35,
16 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). Palm
17 Springs Smog Test Center Only issued a certificate of compliance to a Bureau vehicle with a
18 missing fuel vapor canister. The Bureau assessed civil penalties totaling \$500. Palm Springs
19 Smog Test Center Only complied with this citation on July 14, 2009, and it is now final.

20 d. On or about October 27, 2009, the Bureau issued Citation No. C2010-0409 to Palm
21 Springs Smog Test Center Only for violations of Health and Safety Code section 44012,
22 subdivision (f) (failure to perform a visual/functional check of emission control devices according
23 to procedures prescribed by the department), and California Code of Regulations, title 16, section
24 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly
25 tested). Palm Springs Smog Test Center Only issued a certificate of compliance to a Bureau
26 vehicle with a missing exhaust gas recirculation valve, and failed to perform the low pressure fuel
27 evaporative test and gas cap test. The Bureau assessed civil penalties totaling \$2,000. Palm
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1 Springs Smog Test Center Only complied with this citation on January 11, 2010, and it is now
2 final.

3 e. On or about August 23, 2010, the Bureau issued Citation No. C2011-0206 to Palm
4 Springs Smog Test Center Only for violations of Health and Safety Code section 44012,
5 subdivision (f) (failure to perform a visual/functional check of emission control devices according
6 to procedures prescribed by the department), and California Code of Regulations, title 16, section
7 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly
8 tested). Palm Springs Smog Test Center Only issued a certificate of compliance to a Bureau
9 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau
10 assessed civil penalties totaling \$2,500. On or about October 21, 2010, Palm Springs Smog Test
11 Center Only appealed the citation. On December 17, 2011, this citation was upheld. Palm
12 Springs Smog Test Center Only complied with this citation on March 12, 2012, and it is now
13 final.

14 OTHER MATTERS

15 104. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke, or
16 place on probation the registration for all places of business operated in this State by Palm Springs
17 Smog Test Center Only upon a finding that Palm Springs Smog Test Center Only has, or is,
18 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
19 automotive repair dealer.

20 105. Under Health & Safety Code section 44072.8, if Palm Springs Smog Test Center
21 Only's Station License is revoked or suspended, the Director may likewise revoke or suspend any
22 additional license issued under Chapter 5 of the Health and Safety Code in the name of Palm
23 Springs Smog Test Center Only.

24 106. Under Health & Safety Code section 44072.8, if Shoukry Amir Ailabouni's license is
25 revoked or suspended, the Director may likewise revoke or suspend any additional license issued
26 under Chapter 5 of the Health and Safety Code in the name of Shoukry Amir Ailabouni.

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1 PRAYER

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

5 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
6 No. 79/12-48 and imposing the disciplinary order that was stayed thereby revoking Automotive
7 Repair Dealer Registration No. ARD 189852 and Smog Check-Test Only Station License No. TC
8 189852 issued to Khalil Ailabouni, Owner, doing business as Palm Springs Smog Test Center
9 Only;

10 2. Revoking or suspending Automotive Repair Dealer Registration No. ARD 189852,
11 issued to Khalil Ailabouni, Owner, doing business as Palm Springs Smog Test Center Only;

12 3. Revoking or suspending the registration for all places of business operated in this
13 state by Khalil Ailabouni, Owner, doing business as Palm Springs Smog Test Center Only;

14 4. Revoking or suspending Smog Check-Test Only Station License No. TC 189852,
15 issued to Khalil Ailabouni, Owner, doing business as Palm Springs Smog Test Center Only;

16 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Khalil Ailabouni, Owner, doing business as Palm Springs Smog
18 Test Center Only;

19 6. Revoking or suspending Smog Check Inspector License No. EO 146390, issued to
20 Shoukry Amir Ailabouni;

21 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
22 and Safety Code in the name of Shoukry Amir Ailabouni;

23 8. Ordering Khalil Ailabouni, Owner, doing business as Palm Springs Smog Test Center
24 Only; and Shoukry Amir Ailabouni to pay the Director of Consumer Affairs the reasonable costs
25 of the investigation and enforcement of this case, pursuant to Business and Professions Code
26 section 125.3; and

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

DATED: March 1, 2016

Patrick Dorais

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

SD2015801389
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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/12-48