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

11
12 In the Matter of the Accusation Against:

Case No. 79/13-19

13 **SMOG PRO;**
ORANGE PARSCO LTD, OWNER;
14 **MEHDI MAHDAVI, PRESIDENT**
883 North Tustin Avenue
15 **Orange, CA 92867**

ACCUSATION

SMOG CHECK

16 **Automotive Repair Dealer Registration No.**
ARD 205977
17 **Smog Check Station License No. TC 205977**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. John Wallauch (Complainant) brings this Accusation solely in his official capacity as
23 the Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs.

24 **Automotive Repair Dealer Registration No. ARD 205977**

25 2. On or about August 27, 1999, the BAR issued Automotive Repair Dealer Registration
26 Number ARD 205977 (registration) to Orange Parsco LTD, Mehdi Mahdavi, President, doing
27 business as Smog Pro (Respondent). The registration was in full force and effect at all times
28 relevant to the charges brought herein and will expire on July 31, 2013, unless renewed.

1 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
2 place on probation the registration for all places of business operated in this state
3 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.

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

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

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

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

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

16

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

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

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

25 11. Health & Saf. Code section 44072.8 states:

26 "When a license has been revoked or suspended following a hearing under this article, any
27 additional license issued under this chapter in the name of the licensee may be likewise revoked
28 or suspended by the director."

1 **STATUTORY PROVISIONS**

2 12. Health & Saf. Code section 44012 provides, in pertinent part, that the test at the smog
3 check stations shall be performed in accordance with procedures prescribed by the department,
4 and pursuant to Section 44013.

5 **REGULATORY PROVISIONS**

6 13. California Code of Regulations, Title 16, (CCR) section 3340.35, provides, in
7 pertinent part, that a licensed station shall issue a certificate of compliance . . . to the owner or
8 operator of any vehicle that has been inspected in accordance with the procedures specified in
9 section 3340.42 of this article and has all the required emission control equipment and devices
10 installed and functioning correctly.

11 14. CCR, section 3340.42, provides, in pertinent part, that smog check stations and smog
12 check technicians shall conduct tests and inspections in accordance with the bureau's BAR 97
13 Emissions Inspection System Specifications referenced in subsections (a) and (b) of Section
14 3340.17.

15 **COST RECOVERY**

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

20 **UNDERCOVER OPERATION – JUNE 20, 2012**

21 16. On or about June 20, 2012, a Bureau undercover operator (operator) drove a Bureau
22 documented 1989 Chevrolet C2500 pickup truck to Respondent's facility and requested a smog
23 inspection. The vehicle was missing the Thermostatic Air Cleaner (TAC) system, rendering the
24 vehicle incapable of passing a smog inspection. The operator completed and signed Estimate No.
25 90271, and was provided with a copy. Respondent performed the smog inspection and issued
26 electronic Certificate of Compliance No. XH914620, certifying that Respondent had tested and
27 inspected the vehicle and that it was in compliance with applicable laws and regulations when, in
28 fact, the vehicle could not have passed the visual portion of the smog inspection because the

1 vehicle's TAC system was missing. The operator paid Respondent \$73.20, and was provided
2 with a copy of Invoice No. 90272 and a Vehicle Inspection Report.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 17. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
6 Code section 9884.7, subdivision (a) (1), in that Respondent made or authorized statements which
7 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
8 set forth in paragraph 16, above. Respondent certified that the Chevrolet had passed inspection
9 and was in compliance with applicable laws and regulations. In fact, Respondent issued a
10 certificate for the vehicle with a missing TAC system, and did not test or inspect the vehicle as
11 required by Health & Saf. Code section 44012.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 18. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
15 Code section 9884.7, subdivision (a) (4), in that Respondent committed acts which constitute
16 fraud, as set forth in paragraph 16, above. Respondent issued an electronic smog certificate of
17 compliance for the Chevrolet without performing a bona fide inspection of the emission control
18 devices and systems on the vehicle, thereby depriving the People of the State of California of the
19 protection afforded by the Motor Vehicle Inspection Program.

20 **THIRD CAUSE FOR DISCIPLINE**

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

22 19. Respondent's smog check station license is subject to disciplinary action pursuant to
23 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
24 provisions of that Code, as set forth in paragraph 16, above.

25 a. **Section 44012:** Respondent failed to perform the emission control tests on the
26 Chevrolet in accordance with procedures prescribed by the department.

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1 by the department), and California Code of Regulations, title 16, section 3340.35, subdivision (c)
2 (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a
3 certificate of compliance to a BAR undercover vehicle with a missing Positive Crankcase
4 Ventilation (PCV) system. The BAR assessed civil penalties totaling \$1000 against Respondent
5 for the violations. Respondent complied with this citation on October, 30, 2003.

6 b. On or about November 2, 2007, the BAR issued Citation No. C08-0443 against
7 Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to
8 determine that emission control devices and systems required by State and Federal law are
9 installed and functioning correctly in accordance with test procedures), and California Code of
10 Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a
11 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover
12 vehicle with the ignition timing adjusted beyond specifications. The BAR assessed civil penalties
13 totaling \$500 against Respondent for the violations. Respondent complied with this citation on
14 November 29, 2007.

15 c. On or about October 27, 2009, the BAR issued Citation No. C2010-0415
16 against Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to
17 determine that emission control devices and systems required by State and Federal law are
18 installed and functioning correctly in accordance with test procedures), and California Code of
19 Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a
20 vehicle that was improperly tested), for issuing a certificate of compliance to a BAR undercover
21 vehicle with the ignition timing adjusted beyond specifications. The BAR assessed civil penalties
22 totaling \$500 against Respondent for the violations. Respondent complied with this citation on
23 November 19, 2009.

24 d. On or about July 15, 2010, the BAR issued Citation No. C2011-0058 against
25 Respondent for violating Health and Safety 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 3340.35, subdivision (c)
28 (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a

1 certificate of compliance to a BAR undercover vehicle with a missing PCV system. The BAR
2 assessed civil penalties totaling \$1,500 against Respondent for the violations. Respondent
3 complied with this citation on August 2, 2010.

4 e. On or about November 10, 2011, the BAR issued Citation No. C2012-0451
5 against Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to
6 perform a visual/functional check of emission control devices according to procedures prescribed
7 by the department), for issuing a certificate of compliance to a Bureau undercover vehicle with a
8 missing PCV system. The BAR assessed civil penalties totaling \$1,500 against Respondent for
9 the violations. Respondent complied with this citation on December 29, 2011.

10 **OTHER MATTERS**

11 23. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the director may
12 suspend, revoke, or place on probation the registrations for all places of business operated in this
13 state by Respondent Orange Parsco LTD, Mehdi Mahdavi, President, upon a finding that he has,
14 or is, engaged in a course of repeated and willful violation of the laws and regulations pertaining
15 to an automotive repair dealer.

16 24. Pursuant to Health and Saf. Code section 44072.8, if Smog Check Test Only Station
17 License Number TC 205977, issued to Respondent Orange Parsco LTD, Mehdi Mahdavi,
18 President, doing business as Smog Pro, is revoked or suspended, any additional license issued
19 under this chapter in the name of said licensees may be likewise revoked or suspended by the
20 director.

21 **PRAAYER**

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

24 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
25 Registration No. ARD 205977, issued to Orange Parsco LTD, Mehdi Mahdavi, President, doing
26 business as Smog Pro;

27 2. Revoking, suspending, or placing on probation any other automotive repair dealer
28 registration issued to Orange Parsco LTD, Mehdi Mahdavi, President;

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- 3. Revoking or suspending Smog Check Test Only Station License Number TC 205977, issued to Orange Parsco LTD, Mehdi Mahdavi, President, doing business as Smog Pro;
- 4. Revoking or suspending any additional license issued under chapter 5, of the Health and Safety Code in the name of Orange Parsco LTD, Mehdi Mahdavi, President;
- 5. Ordering Orange Parsco LTD, Mehdi Mahdavi, President, doing business as Smog Pro to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3;
- 6. Taking such other and further action as deemed necessary and proper.

DATED: 10/11/12

John Wallauch by [Signature]
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
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