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

12 In the Matter of the Accusation Against:

Case No. 79/11-102

13 **EZ SMOG CHECK**
14 **EZAT SETAYESH, OWNER**
15 **2231 El Camino Real**
San Clemente, CA 92672
16 **Mailing Address:**
27200 La Paz Road, Suite D
17 **Mission Viejo, CA 92692**
Automotive Repair Dealer Reg. No. ARD 217728
18 **Smog Check Test Only Station License No. TC**
217728

19 **ACCUSATION**
(Smog Check)

20 Respondent.

21 Complainant alleges:

22 **PARTIES**

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

25 2. In or about 2001, the Director of Consumer Affairs ("Director") issued Automotive
26 Repair Dealer Registration Number ARD 217728 ("registration") to Ezat Setayesh
27 ("Respondent"), owner of EZ Smog Check. Respondent's registration was in full force and effect

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1 at all times relevant to the charges brought herein and will expire on August 31, 2011, unless
2 renewed.

3 3. On or about July 29, 2002, the Director issued Smog Check Test Only Station
4 License Number TC 217728 ("smog check station license") to Respondent. Respondent's smog
5 check station license was in full force and effect at all times relevant to the charges brought herein
6 and will expire on August 31, 2011, unless renewed.

7 JURISDICTION

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

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

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

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

21 STATUTORY PROVISIONS

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

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

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

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(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct that constitutes fraud.

....

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

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

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

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

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

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

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

....

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

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

12. Health & Saf. Code section 44072.10 states, in pertinent part:

....

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

....

1 (4) Intentional or willful violation of this chapter or any regulation,
standard, or procedure of the department implementing this chapter . . .

2 13. Health & Saf. Code section 44072.8 states that when a license has been revoked or
3 suspended following a hearing under this article, any additional license issued under this chapter
4 in the name of the licensee may be likewise revoked or suspended by the director.

5 **COST RECOVERY**

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

10 **UNDERCOVER OPERATION: 1988 TOYOTA COROLLA**

11 15. On September 3, 2010, an undercover operator of the Bureau (hereinafter "operator")
12 took the Bureau's 1988 Toyota Corolla to Respondent's facility and requested a smog inspection.
13 The air injection (AI) system was missing. The operator signed a written estimate for the
14 inspection, but was not given a copy at that time. After the inspection was completed, the
15 operator paid \$74.75 and received copies of an invoice and a vehicle inspection report. The
16 vehicle inspection report indicated that the smog inspection was performed by Respondent's
17 technician, Sohrab Shad. That same day, electronic smog Certificate of Compliance No.
18 WN512527C was issued for the vehicle.

19 16. On September 22, 2010, the Bureau inspected the vehicle and found that the AI
20 system was still missing.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 17. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section
24 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew, or
25 in the exercise of reasonable care should have known to be untrue or misleading, as follows:
26 Respondent's smog check technician, Sohrab Shad, certified under penalty of perjury on the
27 vehicle inspection report that the Bureau's 1988 Toyota Corolla had passed the inspection and
28 was in compliance with applicable laws and regulations. In fact, the AI system had been removed

1 from the vehicle and as such, the vehicle would not pass the inspection required by Health & Saf.
2 Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Provide Customer with Copy of Signed Document)**

5 18. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
6 Code section 9884.7, subdivision (a)(3), in that Respondent failed to provide the operator with a
7 copy of the written estimate as soon as the operator signed the document.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 19. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
11 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes
12 fraud, as follows: Respondent issued an electronic smog certificate of compliance for the
13 Bureau's 1988 Toyota Corolla without ensuring that a bona fide inspection was performed of the
14 emission control devices and systems on the vehicle, thereby depriving the People of the State of
15 California of the protection afforded by the Motor Vehicle Inspection Program.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

18 20. Respondent's smog check station license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
20 following sections of that Code:

21 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
22 performed on the Bureau's 1988 Toyota Corolla in accordance with procedures prescribed by the
23 department.

24 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
25 the Bureau's 1988 Toyota Corolla without ensuring that the vehicle was properly tested and
26 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an
8 electronic smog certificate of compliance for the Bureau's 1988 Toyota Corolla.

9 b. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
10 of compliance for the Bureau's 1988 Toyota Corolla even though the vehicle had not been
11 inspected in accordance with section 3340.42.

12 c. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
13 conducted on the Bureau's 1988 Toyota Corolla in accordance with the Bureau's specifications.

14 **SIXTH CAUSE FOR DISCIPLINE**

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

16 22. Respondent's smog check station license is subject to disciplinary action pursuant to
17 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
18 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an
19 electronic smog certificate of compliance for the Bureau's 1988 Toyota Corolla without ensuring
20 that a bona fide inspection was performed of the emission control devices and systems on the
21 vehicle, thereby depriving the People of the State of California of the protection afforded by the
22 Motor Vehicle Inspection Program.

23 **MATTERS IN AGGRAVATION**

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

26 a. On or about May 21, 2007, the Bureau issued Citation No. C07-0922 against
27 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
28 determine that emission control devices and systems required by State and Federal law are

1 installed and functioning correctly in accordance with test procedures); and California Code of
2 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
3 compliance to a vehicle that was improperly tested). Respondent had issued a certificate of
4 compliance to a Bureau undercover vehicle with a missing fuel evaporative system charcoal
5 canister. The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.
6 Respondent complied with the citation on June 25, 2007.

7 b. On or about January 3, 2008, the Bureau issued Citation No. C08-0599 against
8 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
9 perform a visual/functional check of emission control devices according to procedures prescribed
10 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
11 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
12 Bureau undercover vehicle with a non-functional EGR valve. The Bureau assessed civil penalties
13 totaling \$1,000 against Respondent for the violations. Respondent complied with the citation on
14 January 30, 2008.

15 c. On or about January 29, 2010, the Bureau issued Citation No. C2010-0768 against
16 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
17 perform a visual/functional check of emission control devices according to procedures prescribed
18 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
19 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
20 Bureau undercover vehicle with a missing positive crankcase ventilation ("PCV") system. The
21 Bureau assessed civil penalties totaling \$500 against Respondent for the violations. Respondent
22 complied with the citation on March 8, 2010.

23 d. On or about June 10, 2010, the Bureau issued Citation No. C2010-1269 against
24 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
25 perform a visual/functional check of emission control devices according to procedures prescribed
26 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
27 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
28 Bureau undercover vehicle with a missing PCV system. The Bureau assessed a civil penalty of

1 \$1,500 against Respondent for the violations. Respondent complied with the citation on July 14,
2 2010.

3 **OTHER MATTERS**

4 24. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
5 suspend, revoke, or place on probation the registration for all places of business operated in this
6 state by Respondent Ezat Setayesh, owner of EZ Smog Check, upon a finding that Respondent
7 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
8 pertaining to an automotive repair dealer.

9 25. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
10 License Number TC 217728, issued to Respondent Ezat Setayesh, owner of EZ Smog Check, is
11 revoked or suspended, any additional license issued under this chapter in the name of said
12 licensee may be likewise revoked or suspended by the director.

13 **PRAYER**

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

- 16 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
17 217728, issued to Ezat Setayesh, owner of EZ Smog Check;
- 18 2. Revoking or suspending any other automotive repair dealer registration issued to Ezat
19 Setayesh;
- 20 3. Revoking or suspending Smog Check Test Only Station License Number TC 217728,
21 issued to Ezat Setayesh, owner of EZ Smog Check;
- 22 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of Ezat Setayesh;
- 24 5. Ordering Ezat Setayesh, owner of EZ Smog Check, to pay the Director of Consumer
25 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
26 Business and Professions Code section 125.3;

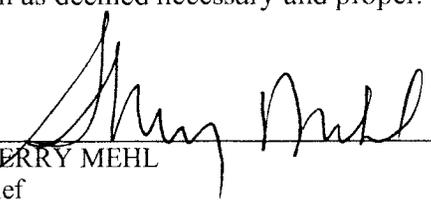
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6. Taking such other and further action as deemed necessary and proper.

DATED: 6/29/11



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SD2011700392