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7

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

11 In the Matter of the Accusation Against:

Case No. **79/14-115**

12 **RECO SMOG**
13 **MOHAMMED SALEEM KHAN, Owner**
14 **1645 Tully Road**
San Jose, CA 95122
15 **Automotive Repair Dealer Registration No. ARD**
241095
16 **Smog Check, Test Only, Station License No. TC**
241095

ACCUSATION

17 And

18 **MOHAMMED SALEEM KHAN**
19 **4192 Crescendo Ave.**
20 **San Jose, CA 95136**
Smog Check Inspector License No. 146101

21 Respondents.
22

23
24 Patrick Dorais ("Complainant") alleges:

25 **PARTIES**

26 1. Complainant Patrick Dorais brings this Accusation solely in his official capacity as
27 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
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...

(4) Any other conduct that constitutes fraud.

...

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

...

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

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

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

8. Section **44012** of the Health and Safety Code requires that tests at smog check stations be performed in accordance with procedures prescribed by the department.

9. Section **44015(b)** of the Health and Safety Code states:

If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

10. Section **44059** of the Health and Safety Code states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

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1 11. Section **44072.2** of the Health and Safety Code states, in pertinent part:

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

5 (a) Violates any section of this chapter and the regulations adopted pursuant to it, which
6 related to the licensed activities.

7 . . .

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

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

10 . . .

11 (h) Violates or attempts to violate the provisions of this chapter relating to the particular
12 activity for which he or she is licensed.

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

17 13. Section **44072.8** of the Health and Safety Code states:

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

21 14. California Code of Regulations, Title 16, section **3340.24(c)**, states:

22 The bureau may suspend or revoke the license of or pursue other legal action against a
23 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
24 certificate of noncompliance.

25 15. California Code of Regulations, Title 16, section **3340.30**, states, in pertinent part:

26 A licensed smog check inspector and/or repair technician shall comply with the following
27 requirements at all times while licensed:

28 (a) A licensed technician shall inspect, test and repair vehicles, as applicable, in accordance

1 with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code,
2 and section 3340.42 of this article.

3 . . .

4 16. California Code of Regulations, Title 16, section **3340.35(c)**, states, in pertinent part:

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

9 . . .

10 17. California Code of Regulations, Title 16, section **3340.41(c)**, states:

11 No person shall enter into the emissions inspection system any vehicle identification
12 information or emission control system identification data for any vehicle other than the one
13 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
14 information about the vehicle being tested.

15 COST RECOVERY

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

20 UNDERCOVER OPERATION

21 19. On or about December 20, 2013, a Bureau undercover operator ("operator") drove a
22 1999 Chevrolet to Respondent's smog check station and requested a smog inspection. As part of
23 the Bureau's documentation of the vehicle, the vehicle's positive crankcase ventilation ("PCV")
24 system was missing, rendering the vehicle incapable of passing the visual portion of the smog
25 inspection. Respondent Mohammed Khan began the smog inspection on the vehicle and another
26 individual completed the inspection, and issued electronic Certificate of Compliance Number
27 [REDACTED], certifying that Mohammed Khan had tested and inspected the vehicle and that it was
28 in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the

1 visual portion of the smog inspection because the vehicle's PCV system was missing.

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Untrue or Misleading Statements -- Registration)**

4 20. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
5 that Respondent made or authorized statements which it knew or in the exercise of reasonable
6 care should have known to be untrue or misleading by issuing electronic Certificate of
7 Compliance Number [REDACTED] for the 1999 Chevrolet, certifying that the vehicle was in
8 compliance with applicable laws and regulations, when, in fact, the vehicle could not have passed
9 the visual portion of the smog inspection because the vehicle's PCV system was missing.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud -- Registration)**

12 21. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
13 that Respondent committed acts which constitute fraud by issuing electronic Certificate of
14 Compliance Number [REDACTED] for the 1999 Chevrolet without performing a bona fide
15 inspection of the emission control devices and systems on the vehicle, thereby depriving the
16 People of the State of California of the protection afforded by the Motor Vehicle Inspection
17 Program.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Failure to Comply With Chapter - Registration)**

20 22. Respondent's registration is subject to discipline under Code section 9884.7,
21 subdivision (a)(6), in that Respondent failed to comply with laws and regulations pertaining to the
22 performance of smog checks, as set forth above in paragraph 19.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Violation of the Motor Vehicle Inspection Program -- Station License)**

25 23. Respondent's station license is subject to discipline under Health and Safety Code
26 section 44072.2, subdivisions (a) and (c), in that Respondent violated sections of that Code and
27 applicable regulations, as set forth above in paragraph 19, as follows:

28 a. **Section 44012:** Respondent failed to ensure that the emission control tests were

1 performed on the vehicle in accordance with procedures prescribed by the department.

2 b. **Section 44015:** Respondent issued an electronic certificate of compliance for the
3 vehicle without ensuring that the vehicle was properly tested and inspected to determine if it was
4 in compliance with Health and Safety Code section 44012.

5 c. **Section 44059:** Respondent willfully made false entries for the electronic certificate
6 of compliance by certifying that the vehicle had been inspected as required when, in fact, it had
7 not.

8 d. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
9 electronic certificate of compliance for the vehicle without a performing bona fide inspection of
10 the emission control devices and systems on the vehicle as required by Health and Safety Code
11 section 44012.

12 e. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of
13 compliance even though the vehicle had not been inspected in accordance with section 3340.42.

14 f. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS.

15 g. **Section 3340.42:** Respondent failed to conduct the required smog tests and
16 inspections on the vehicle in accordance with the Bureau's specifications.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Dishonesty, Fraud or Deceit – Station License)**

19 24. Respondent's station license is subject to discipline under Health and Safety Code
20 section 44072.2, subdivision (d), in that Respondent committed acts involving dishonesty, fraud
21 or deceit, whereby another was injured by issuing an electronic certificate of compliance for the
22 vehicle without performing bona fide inspections of the emission control devices and system on
23 the vehicle, thereby depriving the People of the State of California of the protection afforded by
24 the Motor Vehicle Inspection Program, as set forth above in paragraph 19.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Violations of the Motor Vehicle Inspection Program – Inspector License)**

27 25. Respondent Mohammed Khan's inspector license is to discipline under Health and
28 Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of that Code

1 and applicable regulations, as set forth above in paragraph 19, as follows:

2 a. **Section 44012:** Respondent Mohammed Khan failed to ensure that the emission
3 control tests were performed on the vehicle in accordance with procedures prescribed by the
4 department.

5 b. **Section 44015:** Respondent Mohammed Khan issued an electronic certificate of
6 compliance for the vehicle without ensuring that the vehicle was properly tested and inspected to
7 determine if they were in compliance with Health and Safety Code section 44012.

8 c. **Section 44059:** Respondent Mohammed Khan willfully made false entries for the
9 electronic certificate of compliance by certifying that the vehicle had been inspected as required
10 when, in fact, it had not.

11 d. **Section 3340.24, subdivision (c):** Respondent Mohammed Khan falsely or
12 fraudulently issued an electronic certificate of compliance for the vehicle without performing
13 bona fide inspections of the emission control devices and systems on the vehicle as required by
14 Health and Safety Code section 44012.

15 e. **Section 3340.30, subdivision (a):** Respondent Mohammed Khan failed to inspect
16 and test the vehicle in accordance with Health and Safety Code section 44012.

17 f. **Section 3340.35, subdivision (c):** Respondent Mohammed Khan issued an electronic
18 certificate of compliance even though the vehicle had not been inspected in accordance with
19 section 3340.42.

20 g. **Section 3340.41, subdivision (c):** Respondent Mohammed Khan entered false
21 information into the EIS.

22 h. **Section 3340.42:** Respondent Mohammed Khan failed to conduct the required smog
23 tests and inspections on the vehicle in accordance with the Bureau's specifications.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Dishonesty, Fraud or Deceit – Inspector License)**

26 26. Respondent Mohammed Khan's inspector license is to discipline under Health and
27 Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
28 fraud or deceit, whereby another was injured by issuing an electronic certificate of compliance for

1 the vehicle without performing bona fide inspections of the emission control devices and systems
2 on the vehicle, thereby depriving the People of the State of California of the protection afforded
3 by the Motor Vehicle Inspection Program, as set forth above in paragraph 19.

4 **DISCIPLINARY CONSIDERATIONS**

5 27. To determine the degree of discipline, if any, to be imposed on Respondent,
6 Complainant alleges aggravating circumstances as follows:

7 October 5, 2009 Citations:

8 28. On or about October 5, 2009, Respondent Reco Smog was issued Citation No.
9 C2010-0324 based on Respondent's failure to perform a visual/functional check of emission
10 control devices during a vehicle inspection, in violation of California Health and Safety Code
11 section 44012(f), and based on Respondent's issuance of a Certificate of Compliance to a vehicle
12 which had not been properly tested, in violation of California Code of Regulation, Title 16,
13 section 3340.35(c).

14 29. On or about October 5, 2009, Respondent Mohammed Khan was issued Citation No.
15 M2010-0325 based on his failure to perform a visual/functional check of emission control devices
16 during a vehicle inspection, in violation of California Health and Safety Code section 44012(f).

17 February 10, 2010 Citations:

18 30. On or about February 10, 2010, Respondent Reco Smog was issued Citation No.
19 C2010-0819 based on Respondent's failure to perform a functional check of emission control
20 devices during a vehicle inspection, in violation of California Health and Safety Code section
21 44012(f), and based on Respondent's issuance of a Certificate of Compliance to a vehicle which
22 had not been properly tested, in violation of California Code of Regulation, Title 16, section
23 3340.35(c).

24 31. On or about February 10, 2010, Respondent Mohammed Khan was issued Citation
25 No. M2010-0820 based on his failure to perform a functional check of emission control devices
26 during a vehicle inspection, in violation of California Health and Safety Code section 44012(f).

27 June 3, 2011 Citations:

28 32. On or about June 3, 2011, Respondent Reco Smog was issued Citation No. C2011-

1 1446 based on Respondent's failure to perform a visual/functional check of emission control
2 devices during a vehicle inspection, in violation of California Health and Safety Code section
3 44012(f).

4 33. On or about June 3, 2011, Respondent Mohammed Khan was issued Citation No.
5 M2011-1447 based on his failure to perform a visual/functional check of emission control devices
6 during a vehicle inspection, in violation of California Health and Safety Code section 44012(f).

7 August 2, 2013 Citations:

8 34. On or about August 2, 2013, Respondent Reco Smog was issued Citation No. C2014-
9 0084 based on Respondent's failure to perform a visual/functional check of emission control
10 devices during a vehicle inspection, in violation of California Health and Safety Code section
11 44012(f).

12 35. On or about August 2, 2011, Respondent Mohammed Khan was issued Citation No.
13 M2014-0085 based on his failure to perform a visual/functional check of emission control devices
14 during a vehicle inspection, in violation of California Health and Safety Code sections 44012(f),
15 44302 and 44040.

16 **OTHER MATTERS**

17 36. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
18 probation the registrations for all places of business operated in this state by Mohammed Khan,
19 upon a finding that Mohammed Khan has, or is, engaged in a course of repeated and willful
20 violation of the laws and regulations pertaining to an automotive repair dealer.

21 37. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only
22 Station License Number TC 241095, issued to Reco Smog, Mohammed Saleem Khan, Owner, is
23 revoked or suspended, any additional license issued under this chapter in the name of said
24 licensee may be likewise revoked or suspended by the director.

25 38. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
26 (EO) License Number 146101, issued to Mohammed Saleem Khan, is revoked or suspended, any
27 additional license issued under this chapter in the name of said licensee may be likewise revoked
28 or suspended by the director.

1 PRAYER

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

- 4 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
5 Registration No. ARD 241095, issued to Reco Smog, Mohammed Saleem Khan, Owner;
6 2. Revoking, suspending, or placing on probation any other automotive repair dealer
7 registration issued to Mohammed Saleem Khan;
8 3. Revoking, suspending, or placing on probation Smog Check, Test Only Station
9 License Number TC 241095, issued to Reco Smog, Mohammed Saleem Khan, Owner;
10 4. Revoking, suspending, or placing on probation Smog Check Inspector (EO)
11 License Number 146101, issued to Mohammed Saleem Khan;
12 5. Revoking, suspending, or placing on probation any additional license issued under
13 chapter 5, of the Health and Safety Code in the name Mohammed Saleem Khan;
14 6. Ordering Mohammed Saleem Khan to pay the Director of Consumer Affairs the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
16 125.3; and,
17 7. Taking such other and further action as deemed necessary and proper.

18
19 DATED: April 11, 2014


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