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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. 79/10-73

12 **MANTECA TEST ONLY CENTER**
13 **178 Button Avenue**
Manteca, CA 95336
14 **ZAKARIA SULEIMAN SHABBAR, OWNER**
Automotive Repair Dealer Registration
15 **No. ARD 250011**
Smog Check Test Only Station License
16 **No. TC 250011**

A C C U S A T I O N
S M O G C H E C K

17 and

18 **ZAKARIA SULEIMAN SHABBAR**
1186 Jasper Court
19 **Manteca, CA 95336**
Advanced Emission Specialist Technician License
20 **No. EA 150186**

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

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

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1 (c) Notwithstanding subdivision (b), the director may invalidate
2 temporarily or permanently, the registration for all places of business operated in this
3 state by an automotive repair dealer upon a finding that the automotive repair dealer
4 has, or is, engaged in a course of repeated and willful violations of this chapter, or
5 regulations adopted pursuant to it."

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

10 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
11 "commission," "committee," "department," "division," "examining committee," "program," and
12 "agency." "License" includes certificate, registration or other means to engage in a business or
13 profession regulated by the Code.

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

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

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1 11. Section 44072.8 of the Health and Safety Code states:

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

5 **COST RECOVERY**

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

10 **UNDERCOVER OPERATION – SEPTEMBER 3, 2009**

11 12. On or about September 3, 2009, a Bureau undercover operator drove a Bureau-
12 documented 2004 Dodge Neon to Respondent's facility and requested a smog inspection. The
13 vehicle could not pass the visual portion of a smog inspection because the vehicle was equipped
14 with non-approved aftermarket exhaust headers. The operator signed a work order and was
15 provided with a copy of the document. Respondent performed the smog inspection and issued
16 electronic Certificate of Compliance No. NM691698 for that vehicle; however, Respondent failed
17 to perform a proper visual inspection of the vehicle. The operator paid \$59.50 for the smog
18 inspection and received a copy of Invoice No. 2565 and the Vehicle Inspection Report ("VIR").

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Misleading Statements)**

21 13. Respondent has subjected his registration to discipline under Code section 9884.7,
22 subdivision (a)(1), in that on or about September 3, 2009, he made statements which he knew or
23 which by exercise of reasonable care he should have known were untrue or misleading when he
24 issued electronic Certificate of Compliance No. NM691698 for the 2004 Dodge Neon, certifying
25 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle
26 was equipped with non-approved aftermarket exhaust headers.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 14. Respondent has subjected his registration to discipline under Code section 9884.7,
4 subdivision (a)(4), in that on or about September 3, 2009, he committed acts which constitute
5 fraud by issuing electronic Certificate of Compliance No. NM691698 for the 2004 Dodge Neon,
6 without performing a bona fide inspection of the emission control devices and systems on that
7 vehicle, thereby depriving the People of the State of California of the protection afforded by the
8 Motor Vehicle Inspection Program.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 15. Respondent has subjected his station license to discipline under Health and Safety
12 Code section 44072.2, subdivision (a), in that on or about September 3, 2009, regarding the 2004
13 Dodge Neon, he violated sections of that Code, as follows:

14 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
15 control devices and systems required by law were installed and functioning correctly in
16 accordance with test procedures.

17 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
18 on that vehicle in accordance with procedures prescribed by the department.

19 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
20 Compliance No. NM691698 without properly testing and inspecting the vehicle to determine if it
21 was in compliance with section 44012 of that Code.

22 d. **Section 44059:** Respondent willfully made false entries for the electronic Certificate
23 of Compliance No. NM691698, certifying that the vehicle had been inspected as required when,
24 in fact, it had not.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 16. Respondent has subjected his station license to discipline under Health and Safety
4 Code section 44072.2, subdivision (c), in that on or about September 3, 2009, regarding the 2004
5 Dodge Neon, he violated sections of the California Code of Regulations, title 16, as follows:

6 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
7 electronic Certificate of Compliance No. NM691698 without performing a bona fide inspection
8 of the emission control devices and systems on that vehicle as required by Health and Safety
9 Code section 44012.

10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
11 Compliance No. NM691698 even though that vehicle had not been inspected in accordance with
12 section 3340.42 of that Code.

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
14 inspections on that vehicle in accordance with the Bureau's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 17. Respondent subjected his station license to discipline under Health and Safety Code
18 section 44072.2, subdivision (d), in that on or about September 3, 2009, regarding the 2004
19 Dodge Neon, he committed acts involving dishonesty, fraud or deceit whereby another was
20 injured by issuing electronic Certificate of Compliance No. NM691698 without performing a
21 bona fide inspection of the emission control devices and system on that vehicle, thereby depriving
22 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 18. Respondent has subjected his technician license to discipline under Health and Safety
27 Code section 44072.2, subdivision (a), in that on or about September 3, 2009, regarding the 2004
28 Dodge Neon, he violated sections of that Code, as follows:

1 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
2 control devices and systems required by law were installed and functioning correctly in
3 accordance with test procedures.

4 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
5 on that vehicle in accordance with procedures prescribed by the department.

6 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
7 and systems on that vehicle in accordance with section 44012 of that Code.

8 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
9 Compliance No. NM691698, certifying that the vehicle had been inspected as required when, in
10 fact, it had not.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

13 19. Respondent has subjected his technician license to discipline under Health and Safety
14 Code section 44072.2, subdivision (c), in that on or about September 3, 2009, regarding the 2004
15 Dodge Neon, he violated sections of the California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic Certificate of Compliance No. NM691698 without performing a bona fide inspection
18 of the emission control devices and systems on that vehicle as required by Health and Safety
19 Code section 44012.

20 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle
21 in accordance with Health and Safety Code section 44012.

22 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
23 Emission Inspection System for electronic Certificate of Compliance No. NM691698 by entering
24 "Pass" for the visual inspection portion of the smog inspection when, in fact, the vehicle should
25 not have passed the visual portion of the smog inspection because it was equipped with non-
26 approved aftermarket exhaust headers.

27 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and
28 inspections on that vehicle in accordance with the Bureau's specifications.

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 20. Respondent has subjected his technician license to discipline under Health and Safety
4 Code section 44072.2, subdivision (d), in that on or about September 3, 2009, regarding the 2004
5 Dodge Neon, he committed acts involving dishonesty, fraud or deceit whereby another was
6 injured by issuing electronic Certificate of Compliance No. NM691698 without performing a
7 bona fide inspection of the emission control devices and systems on that vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **PRIOR CITATIONS**

11 21. To determine the degree of penalty, if any, to be imposed upon Respondent,
12 Complainant alleges as follows:

13 a. On September 9, 2008, the Bureau issued Citation No. C09-0213 to Respondent
14 against his registration and station licenses for violations of Health and Safety Code section
15 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
16 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
17 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
18 certificate of compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a
19 civil penalty of \$500. Respondent complied with this citation on October 14, 2008.

20 b. On December 17, 2008, the Bureau issued Citation No. C09-0733 to Respondent
21 against his registration and station licenses for violations of Health and Safety Code section
22 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
23 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
24 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
25 missing thermostatic air cleaner hot air tube. The Bureau assessed a civil penalty of \$1,000.
26 Respondent complied with this citation on February 9, 2009.

27 c. On April 29, 2009, the Bureau issued Citation No. C09-1243 to Respondent against
28 his registration and station licenses for violations of Health and Safety Code section 44012,

1 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
2 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
3 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
4 missing fuel evaporative storage canister. The Bureau assessed a civil penalty of \$2,000.
5 Respondent complied with this citation on June 1, 2009.

6 d. On October 18, 2005, the Bureau issued Citation No. M06-0213 to Respondent
7 against his technician license for violations of Health and Safety Code section 44032, (qualified
8 technicians shall perform tests of emission control systems and devices in accordance with
9 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
10 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
11 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
12 compliance to a Bureau vehicle with a missing air injection system. Respondent was required to
13 attend an 8-hour training course. Respondent complied with this citation on December 13, 2005.

14 e. On September 9, 2008, the Bureau issued Citation No. M09-0214 to Respondent
15 against his technician license for violations of Health and Safety Code section 44032, (qualified
16 technicians shall perform tests of emission control systems and devices in accordance with
17 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
18 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
19 the Health and Safety Code, and Regulation, section 3340.42). Respondent issued a certificate of
20 compliance to a Bureau vehicle with a missing PCV system. Respondent was required to attend
21 an 8-hour training course. Respondent complied with this citation on October 2, 2008.

22 f. On December 17, 2008, the Bureau issued Citation No. M09-0734 to Respondent
23 against his technician license for violations of Health and Safety Code section 44032, (qualified
24 technicians shall perform tests of emission control systems and devices in accordance with
25 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
26 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
27 the Health and Safety Code, and Regulation, section 3340.42). Respondent issued a certificate of
28 compliance to a Bureau vehicle with a missing thermostatic air cleaner hot air tube. Respondent

1 was required to attend a 16-hour training course. Respondent complied with this citation on
2 February 12, 2009.

3 g. On April 29, 2009, the Bureau issued Citation No. M09-1244 to Respondent against
4 his technician license for violations of Health and Safety Code section 44032, (qualified
5 technicians shall perform tests of emission control systems and devices in accordance with
6 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
7 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
8 the Health and Safety Code, and Regulation, section 3340.42). Respondent issued a certificate of
9 compliance to a Bureau vehicle with a missing fuel evaporative storage canister. Respondent was
10 required to attend a clean air car course. Respondent complied with this citation on June 28,
11 2009.

12 **OTHER MATTERS**

13 22. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
14 or permanently or refuse to validate, the registrations for all places of business operated in this
15 state by to Zakaria Suleiman Shabbar doing business as Manteca Test Only Center, upon a
16 finding that he has, or is, engaged in a course of repeated and willful violations of the laws and
17 regulations pertaining to an automotive repair dealer.

18 23. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
19 License Number TC 250011, issued to Zakaria Suleiman Shabbar doing business as Manteca Test
20 Only Center, is revoked or suspended, any additional license issued under this chapter in the
21 name of said licensee including, but not limited to Advanced Emission Specialist Technician
22 License Number EA 150186, may be likewise revoked or suspended by the director.

23 **PRAYER**

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

26 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
27 Number ARD 250011, issued to Zakaria Suleiman Shabbar doing business as Manteca Test Only
28 Center;

1 2. Temporarily or permanently invaliding any other automotive repair dealer registration
2 issued in the name of Zakaria Suleiman Shabbar;

3 3. Revoking or suspending Smog Check Test Only Station License Number TC 250011,
4 issued to Zakaria Suleiman Shabbar doing business as Manteca Test Only Center;

5 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 & Safety Code in the name of Zakaria Suleiman Shabbar;

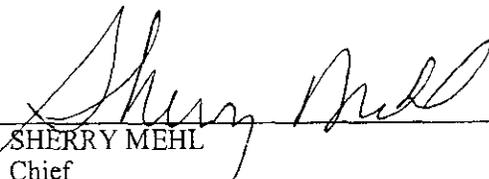
7 5. Rcvoking or suspending Advanced Emission Specialist Technician License Number
8 EA 150186, issued to Zakaria Suleiman Shabbar

9 6. Ordering Zakaria Suleiman Shabbar to pay the Bureau of Automotive Repair the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 125.3; and,

12 7. Taking such other and further action as deemed necessary and proper.

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16 DATED: _____

4/20/10



SHERRY MEHL

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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