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

In the Matter of the Accusation Against: **ADVANCED SMOG CENTER** **1881 Walters Court, Suite F** **Fairfield, CA 94533** **KENNETH F. WUORI, AKA** **KENNETH FLOYD WUORI, OWNER** **Automotive Repair Dealer Registration No. ARD 253746** **Smog Check Test Only Station License No. TC 253746** **and** **KENNETH FLOYD WUORI, AKA** **KENNETH F. WUORI** **57 Barcelona Court** **Fairfield, CA 94533** **Advanced Emission Specialist Technician License No. EA 153230** Respondents.	Case No. 79/12-31 **ACCUSATION** **SMOG CHECK**

Complainant alleges:

PARTIES

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

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Automotive Repair Dealer Registration

2. On or about February 22, 2008, the Bureau issued Automotive Repair Dealer Registration Number ARD 253746 ("registration") to Kenneth F. Wuori, also known as Kenneth Floyd Wuori ("Respondent"), doing business as Advanced Smog Center. The registration will expire on January 31, 2012, unless renewed.

Smog Check Test Only Station License

3. On or about February 26, 2008, the Bureau issued Smog Check Test Only Station License Number TC 253746 ("station license") to Respondent. The station license will expire on January 31, 2012, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 2006, the Bureau issued Advanced Emission Specialist Technician License Number EA 153230 ("technician license") to Respondent. The technician license will expire on December 31, 2011, unless renewed.

STATUTORY PROVISIONS

5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
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> (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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> (4) Any other conduct that constitutes fraud.
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> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.
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> (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 118, subdivision (b) states:

> The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

7. 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.

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

9. 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.

10. Section 44072.2 of the Health and Safety Code 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:
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> (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.
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> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

11. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director

of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

12. Section 44072.8 of the Health and Safety Code states:

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

COST RECOVERY

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

UNDERCOVER OPERATION – DECEMBER 10, 2010

14. On or about December 10, 2010, a Bureau undercover operator drove a Bureau-documented 1994 Toyota truck to Respondent's facility and requested a smog inspection. The vehicle could not pass the visual portion of a smog inspection because the vehicle's pulse air injection reactor system was missing. The operator signed and received a copy of the work order prior to the smog inspection. Respondent performed the smog inspection and issued electronic Certificate of Compliance No. NY807492C for that vehicle. The operator paid $48 for the smog inspection and received a copy of Invoice No. 26103 and the Vehicle Inspection Report.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

15. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about December 10, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic Certificate of Compliance No. NY807492C for the 1994 Toyota truck, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's pulse air injection reactor system was missing.

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SECOND CAUSE FOR DISCIPLINE

(Fraud)

16. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about December 10, 2010, he committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NY807492C for the 1994 Toyota truck without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

17. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 10, 2010, regarding the 1994 Toyota truck, he violated sections of that Code, as follows:

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

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

c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate of Compliance No. NY807492C without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

d. **Section 44059**: Respondent willfully made false entries for the electronic Certificate of Compliance No. NY807492C, certifying that the vehicle had been inspected as required when, in fact, it had not.

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FOURTH CAUSE FOR DISCIPLINE

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

18. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about December 10, 2010, regarding the 1994 Toyota truck, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. NY807492C without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of Compliance No. NY807492C even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

19. Respondent subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 10, 2010, regarding the 1994 Toyota truck, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NY807492C for that vehicle without performing a bona fide inspection of the emission control devices and system on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

20. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 10, 2010, regarding the 1994 Toyota truck, he violated sections of that Code, as follows:

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

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

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

d. **Section 44059**: Respondent willfully made false entries for electronic Certificate of Compliance No. NY807492C, certifying that the vehicle had been inspected as required when, in fact, it had not.

SEVENTH CAUSE FOR DISCIPLINE

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

21. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about December 10, 2010, regarding the 1994 Toyota truck, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. NY807492C without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c)**: Respondent entered false information into the Emission Inspection System for electronic Certificate of Compliance No. NY807492C by entering "Pass" for the visual inspection of the air injection system when, in fact, the vehicle could not pass that portion of the inspection because the vehicle's pulse air injection reactor system was missing.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

22. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 10, 2010, regarding the 1994 Toyota truck, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NY807492C without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

PRIOR CITATIONS

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

a. On February 11, 2009, the Bureau issued Citation No. C09-0925 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of $500. Respondent complied with this citation on March 18, 2009.

b. On October 15, 2009, the Bureau issued Citation No. C2010-0375 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of $1,000. Respondent complied with this citation on November 25, 2009.

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c. On September 3, 2010, the Bureau issued Citation No. C2011-0248 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing EVAP canister. The Bureau assessed a civil penalty of $2,500. Respondent complied with this citation on October 20, 2010.

d. On February 11, 2009, the Bureau issued Citation No. M09-0926 to Respondent against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications. Respondent was required to attend an 8-hour training course. Respondent complied with this citation on March 11, 2009.

e. On October 15, 2009, the Bureau issued Citation No. M2010-0376 to Respondent against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications. Respondent was required to attend a 16-hour training course. Respondent complied with this citation on November 19, 2009.

f. On September 3, 2010, the Bureau issued Citation No. M2011-0249 to Respondent against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with

section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing EVAP canister. Respondent was required to attend a 68-hour training course. Respondent complied with this citation on October 31, 2010.

OTHER MATTERS

24. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by to Kenneth F. Wuori, also known as Kenneth Floyd Wuori, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

25. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 253746, issued to Kenneth F. Wuori, also known as Kenneth Floyd Wuori, doing business as Advanced Smog Center, is revoked or suspended, any additional license issued under this chapter in the name of said licensee including, but not limited to Advanced Emission Specialist Technician License Number EA 153230, issued to Kenneth Floyd Wuori, also known as Kenneth F. Wuori, may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking, suspending, or placing on probation, Automotive Repair Dealer Registration Number ARD 253746, issued to Kenneth F. Wuori, also known as Kenneth Floyd Wuori, doing business as Advanced Smog Center;

2. Revoking, suspending, or placing on probation, any other automotive repair dealer registration issued to Kenneth F. Wuori, also known as Kenneth Floyd Wuori;

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3. Revoking or suspending Smog Check Test Only Station License Number TC 253746, issued to Kenneth F. Wuori, also known as Kenneth Floyd Wuori, doing business as Advanced Smog Center;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Kenneth F. Wuori, also known as Kenneth Floyd Wuori including, but not limited to, Advanced Emission Specialist Technician License Number EA 153230;

5. Ordering Kenneth F. Wuori, also known as Kenneth Floyd Wuori to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 9/14/11

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

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