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7

8 **BEFORE THE**
9 **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. 79/14-67

13 **VALLEY SMOG SHOP;**
14 **KIRK ROBERT SIMMONS, OWNER**
15 **2106 E. California**
16 **Bakersfield, CA 93307**

A C C U S A T I O N

(Smog Check)

17 **Automotive Repair Dealer Registration No.**
18 **ARD 266110**
19 **Smog Check Test Only Station License No.**
20 **TC 266110**

21 **KIRK ROBERT SIMMONS**
22 **P.O. Box 71055**
23 **Bakerfield, CA 93387**

24 **Smog Check Inspector License EO 143329**
25 **Smog Check Repair Technician License**
26 **EI143329 (Formerly Advanced Emission**
27 **Specialist Technician License No.**
28 **EA143329)**

Respondent.

Complainant alleges:

PARTIES

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

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1 against an automotive repair dealer or to render a decision temporarily or permanently
2 invalidating (suspending or revoking) a registration.

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

6 8. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
7 [u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
8 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
9 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

10 STATUTORY PROVISIONS

11 9. Code section 9884.7 states, in pertinent part:

12 (a) The director, where the automotive repair dealer cannot show there
13 was a bona fide error, may refuse to validate, or may invalidate temporarily or
14 permanently, the registration of an automotive repair dealer for any of the following
15 acts or omissions related to the conduct of the business of the automotive repair
16 dealer, which are done by the automotive repair dealer or any automotive technician,
17 employee, partner, officer, or member of the automotive repair dealer.

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

21 (4) Any other conduct which constitutes fraud.

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

24 (b) Except as provided for in subdivision (c), if an automotive repair
25 dealer operates more than one place of business in this state, the director pursuant to
26 subdivision (a) shall only invalidate temporarily or permanently the registration of the
27 specific place of business which has violated any of the provisions of this chapter.
28 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.

(c) Notwithstanding subdivision (b), the director may invalidate temporarily or
permanently, 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.

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10. Code section 9884.9 states, in pertinent part:

1 (a) The automotive repair dealer shall give to the customer a written
2 estimated price for labor and parts necessary for a specific job. No work shall be done
3 and no charges shall accrue before authorization to proceed is obtained from the
4 customer. No charge shall be made for work done or parts supplied in excess of the
5 estimated price without the oral or written consent of the customer that shall be
6 obtained at some time after it is determined that the estimated price is insufficient and
7 before the work not estimated is done or the parts not estimated are supplied. Written
8 consent or authorization for an increase in the original estimated price may be
9 provided by electronic mail or facsimile transmission from the customer. The bureau
10 may specify in regulation the procedures to be followed by an automotive repair dealer
11 when an authorization or consent for an increase in the original estimated price is
12 provided by electronic mail or facsimile transmission. If that consent is oral, the dealer
13 shall make a notation on the work order of the date, time, name of person authorizing
14 the additional repairs and telephone number called, if any, together with a
15 specification of the additional parts and labor and the total additional cost.

11. Code section 118, subdivision (b) states: The suspension, expiration, or
12 forfeiture by operation of law of a license issued by a board in the department, or its
13 suspension, forfeiture, or cancellation by order of the board or by order of a court of
14 law, or its surrender without the written consent of the board, shall not, during any
15 period in which it may be renewed, restored, reissued, or reinstated, deprive the board
16 of its authority to institute or continue a disciplinary proceeding against the licensee
17 upon any ground provided by law or to enter an order suspending or revoking the
18 license or otherwise taking disciplinary action against the licensee on any such
19 ground.

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

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

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

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

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

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

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

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1 15. 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,
3 any additional license issued under this chapter in the name of the licensee may be
4 likewise revoked or suspended by the director.

5 REGULATORY PROVISIONS

6 16. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c),
7 states:

8 "The bureau may suspend or revoke the license of or pursue other legal action against a
9 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
10 certificate of noncompliance."

11 17. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
12 shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section
13 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
14 3340.42 of this article."

15 18. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
16 station "shall issue a certificate of compliance or noncompliance to the owner or operator of any
17 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
18 this article and has all the required emission control equipment and devices installed and
19 functioning correctly."

20 19. CCR, title 16, section 3340.41, subdivision (c), provides: "No person shall enter into
21 the emissions inspection system any vehicle identification information or emission control system
22 identification data for any vehicle other than the one being tested. Nor shall any person knowingly
23 enter into the emissions inspection system any false information about the vehicle being tested."

24 20. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
25 procedures which apply to all vehicles inspected in the State of California.

26 21. CCR, title 16, section 3340.28, subdivision (e), states that "[u]pon renewal of an
27 unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license
28 issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog
Check Inspector, Smog Check Repair Technician, or both."

1 COST RECOVERY

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

6 FRAUDULENT SMOG CHECK INSPECTION – OCTOBER 19, 2012

7 23. On or about September 25, 2012 through October 1, 2012, Bureau Program
8 Representative I, Fernando Gonzalez (“Gonzalez”), inspected and documented the emission
9 controls on a 2008 Ford. Gonzalez removed the Catalytic Converter (“CAT”) and the Periodic
10 Trap Oxidizer (“PTOX”). Gonzalez then installed a CAT delete system in place of the
11 CAT/PTOX, causing the vehicle to fail a legitimately performed smog inspection. The CAT
12 delete system Gonzalez installed replaced the original CAT/PTOX system with a straight pipe.
13 This system is approved for off road use only.

14 24. On or about October 19, 2012, Bureau Program Representative II, James Smith
15 (“Smith”), released the 2008 Ford to Christopher Petree (“Petree”) at a confidential location in
16 Bakersfield and instructed him to drive the vehicle to Valley Smog Shop and request a smog
17 inspection. Before releasing the vehicle to Petree, Smith visually verified the vehicle was missing
18 the CAT and the PTOX.

19 25. On or about October 19, 2012 Petree drove to Valley Smog Shop and went inside.
20 Petree was greeted by Respondent Simmons. Petree told Respondent Simmons that “Bobby” had
21 sent him. Respondent Simmons told Petree that he was swamped and requested that Petree return
22 in an hour. Petree returned approximately twenty (20) minutes later and Respondent Simmons
23 instructed Petree to pull the 2008 Ford into the smog bay. Petree told Respondent Simmons that
24 the 2008 Ford was missing the Catalytic Converter. Respondent Simmons finished the test and
25 had Petree fill out an invoice. Petree paid Respondent Simmons \$300.00 in cash and Respondent
26 Simmons gave Petree a Vehicle Inspection Report (“VIR”) for the 2008 Ford. Petree then told
27 Respondent Simmons he had a 2001 Ford that needed a smog check but that it was not running.
28 Respondent Simmons told Petree to bring it in and he would take care of it.

1 a. **Section 44012:** Respondent Simmons failed to ensure that the emission control tests
2 on the 2008 Ford were performed in accordance with procedures prescribed by the department.

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

6 **FOURTH CAUSE FOR DISCIPLINE**

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

8 30. Respondent Simmons has subjected his station license to discipline under Health and
9 Safety Code section 44072.2, subdivision (c), in that on or about October 19, 2012, Respondent
10 Simmons failed to comply with provisions of the California Code of Regulations, title 16, as
11 follows:

12 a. **Section 3340.35, subdivision (c):** Respondent Simmons issued electronic Certificate
13 of Compliance No. [REDACTED] for the 2008 Ford even though the vehicle had not been inspected
14 in accordance with section 3340.42 of that Code.

15 b. **Section 3340.42:** Respondent Simmons failed to ensure that the required emission
16 control tests were conducted on the 2008 Ford in accordance with Bureau specifications.

17 **FIFTH CAUSE FOR DISCIPLINE**

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

19 31. Respondent Simmons subjected his station license to discipline under Health and
20 Safety Code section 44072.2, subdivision (d), in that on or about October 19, 2012, Respondent
21 Simmons committed acts involving dishonesty, fraud or deceit whereby another was injured by
22 issuing electronic Certificate of Compliance No. [REDACTED] for the 2008 Ford without
23 performing bona fide inspections of the emission control devices and systems on the vehicle,
24 thereby depriving the People of the State of California of the protection afforded by the Motor
25 Vehicle Inspection Program.

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1 injured by issuing electronic Certificate of Compliance No. [REDACTED] for the 2008 Ford without
2 performing bona fide inspections of the emission control devices and systems on the vehicle,
3 thereby depriving the People of the State of California of the protection afforded by the Motor
4 Vehicle Inspection Program.

5 **UNDERCOVER OPERATION – NOVEMBER 6 THROUGH NOVEMBER 27, 2012**

6 35. On or about November 1, 2012, through December 6, 2012, the Bureau's 2001 Ford
7 was in secure storage in the Bureau's Bakersfield Forensic Documentation Laboratory.

8 36. On or about November 6, 2012, Bureau Program Representative II James Smith
9 ("Smith") gave Christopher Petree ("Petree") fictitious registration documents for the 2001 Ford
10 and instructed him to go to Valley Smog Shop and request an illegal smog inspection on the 2001
11 Ford.

12 37. On or about November 6, 2012, Petree walked into Valley Smog Shop and told
13 Respondent Simmons he had the paperwork for the 2001 Ford. Respondent Simmons asked
14 Petree who sent him and Petree replied that he was there before in the 2008 Ford. Petree paid
15 Respondent Simmons \$260.00 and Respondent Simmons told Petree to allow him a couple of
16 days.

17 38. From on or about November 6, 2012 through November 20, 2012, Smith monitored
18 the Bureau's Vehicle Information Database ("VID") and confirmed the 2001 Ford had not been
19 certified.

20 39. On or about November 20, 2012, Petree returned to Valley Smog Shop and asked
21 Respondent Simmons when the certificate for the 2001 Ford would be ready. Respondent
22 Simmons said it would be ready the following Friday.

23 40. On or about November 27, 2012, Respondent Simmons told Petree by telephone that
24 the certificate for the 2001 Ford would be ready by 3:00 p.m. that day. Petree then went to Valley
25 Smog Shop to retrieve the Vehicle Inspection Report ("VIR") from Respondent Simmons. Upon
26 Petree's arrival, Respondent Simmons asked him if the vehicle had failed in September to which
27 Petree responded that it did. Respondent Simmons then handed Petree the VIR and Petree left the
28 facility. Petree then met with Smith and gave him the VIR for the 2001 Ford.

1 TENTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 44. Respondent Simmons has subjected his registration to discipline pursuant to Code
4 section 9884.7, subdivision (a)(4), in that on or about November 27, 2012, Respondent Simmons
5 committed acts which constitute fraud by issuing electronic Certificate of Compliance No.
6 [REDACTED] for the 2001 Ford without performing a bona fide inspection of the emission control
7 devices and systems on the vehicle, thereby depriving the People of the State of California of the
8 protection afforded by the Motor Vehicle Inspection Program.

9 ELEVENTH CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 45. Respondent Simmons has subjected his station license to discipline pursuant to
12 Health and Safety Code section 44072.2, subdivision (a), in that on or about November 27, 2012,
13 Respondent failed to comply with the following sections of that Code:

14 a. **Section 44012, subdivision (a):** Respondent Simmons failed to determine that all
15 emission 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 Simmons failed to perform emission
18 control tests on the 2001 Ford in accordance with procedures prescribed by the department.

19 c. **Section 44015, subdivision (b):** Respondent Simmons issued electronic Certificate
20 of Compliance No. [REDACTED] to the 2001 Ford without properly testing and inspecting the
21 vehicle to determine if it was in compliance with section 44012 of that Code.

22 d. **Section 44059:** Respondent Simmons willfully made false entries for electronic
23 Certificate of Compliance No. [REDACTED] issued to the 2001 Ford by certifying that the vehicle
24 had been inspected as required when, in fact, it had not.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

3 46. Respondent Simmons has subjected his station license to discipline pursuant to
4 Health and Safety Code section 44072.2, subdivision (c), in that on or about November 27, 2012,
5 Respondent Simmons failed to comply with provisions of the California Code of Regulations,
6 title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent Simmons falsely or fraudulently
8 issued electronic Certificate of Compliance No. [REDACTED] to the 2001 Ford without performing
9 a bona fide inspection of the emission control devices and systems on the vehicle as required by
10 Health and Safety Code section 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent Simmons issued electronic Certificate
12 of Compliance No. [REDACTED] to the 2001 Ford even though the vehicle had not been inspected
13 in accordance with section 3340.42 of that Code.

14 c. **Section 3340.42:** Respondent Simmons failed to conduct the required smog tests and
15 inspections on the 2001 Ford in accordance with the Bureau's specifications.

16 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

18 47. Respondent Simmons subjected his station license to discipline pursuant to Health
19 and Safety Code section 44072.2, subdivision (d), in that on or about November 27, 2012,
20 Respondent Simmons committed acts involving dishonesty, fraud or deceit whereby another was
21 injured by issuing electronic Certificate of Compliance No. [REDACTED] to the 2001 Ford without
22 performing a bona fide inspection of the emission control devices and systems on the vehicle,
23 thereby depriving the People of the State of California of the protection afforded by the Motor
24 Vehicle Inspection Program.

25 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

27 48. Respondent Simmons has subjected his technician licenses to discipline pursuant to
28 Health and Safety Code section 44072.2, subdivision (a), in that on or about November 27, 2012,

1 he failed to comply with the following sections of that Code:

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

5 b. **Section 44012, subdivision (f):** Respondent Simmons failed to perform emission
6 control tests on the 2001 Ford in accordance with procedures prescribed by the department.

7 c. **Section 44032:** Respondent Simmons failed to perform tests of the emission control
8 devices and systems on the 2001 Ford in accordance with section 44012 of that Code, in that the
9 vehicle had been clean piped.

10 d. **Section 44059:** Respondent Simmons willfully made false entries for electronic
11 Certificate of Compliance No. [REDACTED] issued for the 2001 Ford by certifying that the vehicle
12 had been inspected as required when, in fact, it had not.

13 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

15 49. Respondent Simmons has subjected his technician licenses to discipline pursuant to
16 Health and Safety Code section 44072.2, subdivision (c), in that on or about November 27, 2012,
17 he failed to comply with provisions of the California Code of Regulations, title 16, as follows:

18 a. **Section 3340.24, subdivision (c):** Respondent Simmons falsely or fraudulently
19 issued electronic Certificate of Compliance No. [REDACTED] for the 2001 Ford without performing
20 a bona fide inspection of the emission control devices and systems on the vehicle as required by
21 Health and Safety Code section 44012.

22 b. **Section 3340.30, subdivision (a):** Respondent Simmons failed to inspect and test the
23 2001 Ford in accordance with Health and Safety Code section 44012.

24 c. **Section 3340.41, subdivision (c):** Respondent Simmons entered false information
25 into the Emission Inspection System for the 2001 Ford by entering vehicle emission control
26 information for a vehicle other than the vehicle being certified.

27 d. **Section 3340.42:** Respondent Simmons failed to conduct the required smog tests and
28 inspections on the 2001 Ford in accordance with the Bureau's specifications.

1 SIXTEENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 50. Respondent Simmons has subjected his technician licenses to discipline pursuant to
4 Health and Safety Code section 44072.2, subdivision (d), in that on or about November 27, 2012,
5 Respondent Simmons committed acts involving dishonesty, fraud or deceit whereby another was
6 injured by issuing electronic Certificate of Compliance No. [REDACTED] for the 2001 Ford without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 DISCIPLINE CONSIDERATIONS

11 51. To determine the degree of discipline, if any, to be imposed on Respondent,
12 Complainant alleges that on or about August 30, 2001, in a prior action, the Bureau of
13 Automotive Repair issued Citation Number M02-0098 to Respondent and ordered him to
14 complete an 8-hour training course. The training was completed on October 12, 2001. That
15 Citation is now final and is incorporated by reference as if fully set forth.

16 52. To determine the degree of discipline, if any, to be imposed on Respondent,
17 Complainant alleges that on or about July 8, 2008, in a prior action, the Bureau of Automotive
18 Repair issued Citation Number M09-010 to Respondent and ordered him to complete an 8-hour
19 training course. The training was completed on August 27, 2008. That Citation is now final and
20 is incorporated by reference as if fully set forth.

21 OTHER MATTERS

22 53. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
23 or permanently or refuse to validate, the registrations for all places of business operated in this
24 state by Kirk Robert Simmons, upon a finding that he has, or is, engaged in a course of repeated
25 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

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

DATED: December 13, 2013

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

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