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

11 In the Matter of the Accusation Against:

12 **AMIR SAIFULLAH SHAN**
13 **DBA GOLDEN STAR SMOG**
14 **2484 Olivera Road**
15 **Concord, CA 94520**

16 **Mailing Address:**
17 **2505 Bugle Way**
18 **Antioch, CA 94531**

19 **Automotive Repair Dealer No. ARD 266219**
20 **Smog Check Test Only Station License No. 266219**

21 **YUSUF RAYHAT KHALID HUSSAIN**
22 **115 Frisbee St.**
23 **Vallejo, CA 94590**

24 **Smog Check Inspector (EO) license No. EO634973**

25 Respondents.

Case Number: *79/16-7674*

ACCUSATION
Smog Check

26 Complainant alleges:

27 **PARTIES**

28 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.

Automotive Repair Dealer Registration

2. On or about August 11, 2011, the Bureau issued Automotive Repair Dealer Registration Number ARD 266219 ("Registration") to Amir Saifullah Shan ("Respondent Shan")

1 doing business as Golden Star Smog. The registration was in full force and effect at all times
2 relevant to the charges brought herein and will expire on August 31, 2017, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about August 25, 2011, the Bureau issued Smog Check Station License
5 Number TC 266219 (“smog station license”) to Respondent Shan. The smog station license was
6 in full force and effect at all times relevant to the charges brought herein and will expire on
7 August 31, 2017, unless renewed.

8 **Smog Check Inspector License**

9 4. On or about November 26, 2012, the Director issued Smog Check Inspector License
10 EO 634973 to Yusaf Rayhat Khalid Hussain (Respondent Hussain). Respondent Hussain’s Smog
11 Check Inspector License will expire on December 31, 2016, unless renewed.

12 **JURISDICTION**

13 5. This Accusation is brought before the Director of the Department of Consumer
14 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

15 **STATUTORY AND REGULATORY PROVISIONS**

16 6. Section 9884.7 of the Business and Professions Code (“Code”) states, in pertinent
17 part:

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

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

26 ...

27 (4) Any other conduct that constitutes fraud.

28 ...

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

3 ...

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

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

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

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

17 10. Section **44059** of the Health and Safety Code states, in pertinent part:

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

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

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

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

28 ...

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

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

3 ...

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

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

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

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

14 14. California Code of Regulations, title 16, section **3340.24**, states:

15 "... (c) The bureau may suspend or revoke the license of or pursue other legal action
16 against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of
17 compliance or a certificate of noncompliance. . ."

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

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

21 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
22 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
23 article.

24 ...

25 16. California Code of Regulations, title 16, section **3340.41(c)**, states:

26 "No person shall enter into the emissions inspection system any vehicle identification
27 information or emission control system identification data for any vehicle other than the one
28

1 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
2 information about the vehicle being tested.”

3 17. California Code of Regulations, title 16, section **3340.42**, states, in pertinent part that
4 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
5 section 3340.45.”

6 18. California Code of Regulations, title 16, section **3340.45**, states:

7 (a) All Smog Check inspections shall be performed in accordance with requirements and
8 procedures prescribed in the following:

9 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
10 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

11 (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
12 manual shall become effective on or after January 1, 2013.

13 FACTUAL SUMMARY

14 19. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
15 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
16 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
17 hybrid vehicles.

18 20. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
19 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
20 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
21 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
22 vehicle. The bar code scanner is used to input technician information, the vehicle identification
23 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
24 Reports.

25 21. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
26 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
27 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
28

1 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
2 number of specific data values each PCM uses related to emissions controls.

3 22. As part of the BAR-OIS smog inspections, the technician also performs a visual and
4 functional test on the vehicle being inspected. The visual inspection of the emission control
5 components verifies the required emission control devices are present and properly connected and
6 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
7 makes the determination whether or not the vehicle passes the inspection based on the results of
8 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
9 compliance is issued. The information from the smog inspection is then transmitted to the
10 Vehicle Information Data (VID).

11 23. The Bureau can access the VID to view test data on smog check inspections
12 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
13 particular vehicle which has been tested.

14 24. The Bureau has become aware of several methods used by Smog Check stations and
15 Smog Check technicians to issue improper/fraudulent smog certificates of compliance. One
16 method is known as clean plugging. Clean plugging involves using another vehicle's properly
17 functioning OBD II system, or another source, to generate passing diagnostic readings for the
18 purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog
19 compliance and/or are not present for testing.

20 25. The Bureau initiated an investigation of Respondent Shan's smog station, Golden Star
21 Smog. Beginning on or about May 4, 2016 and continuing until about May 17, 2016,
22 Respondents¹ were found to have performed ten fraudulent smog inspections using clean-
23 plugging methods. Clean-plugging is the practice of testing one OBD II system (a system that
24 would pass the smog inspection), for the purpose of fraudulently issuing a smog certificate of
25 compliance to another vehicle that would not pass the smog inspection and/or is not present for
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27
28 ¹ Respondent Hussain performed the smog tests on behalf of Respondent Shan.

1 testing. The vehicle receiving the certificate of compliance is not actually tested during the smog
2 inspection.

3 26. A Bureau representative reviewed data for vehicles inspected by Respondent Hussain
4 and certified by Respondent Shan. The data revealed that the ten vehicles that were purportedly
5 tested by Respondents were not and could not have been connected to the DAD when they were
6 being certified because the OBD-II data purportedly transmitted by those vehicles could not have
7 actually been transmitted by those vehicles.

8 27. Respondents clean plugged and issued fraudulent certificates of compliance to the
9 following ten vehicles:

10
11 a) Clean Plug #1- 2007 Chevrolet Colorado

12

Certificate #	eVIN	Protocol	PID count
ZB020775C			
Fraudulent Passing Inspection (3/26/2016)	1FAHP60A22Y115994	JPWM1850	21
Expected OBDII Value	1GCCS199978188317	JVPW	19

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18 b) Clean Plug #2- 2006 Toyota Highlander

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Certificate #	eVIN	Protocol	PID count
ZB370363C			
Fraudulent Passing Inspection (4/1/2016)	2B3KA53H68H128451	ICAN11bt500	43
Expected OBDII Value	JTEGD21A360143342	I914	17

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c) Clean Plug #3- 2000 Mazda MPV Wagon

Certificate #	eVIN	Protocol	PID count
ZB370373C			
Fraudulent Passing Inspection (4/2/2016)	KL1TD56606B641101	KWPF8FE9	36
Expected OBDII Value	Not Reported	I914	20

d) Clean Plug #4- 2001 Toyota Sienna LE/XLE

Certificate #	eVIN	Protocol	PID count
ZB370374C			
Fraudulent Passing Inspection (4/2/2016)	KL1TD56606B641101	KWPF8FE9	36
Expected OBDII Value	Not Reported	I914	20

e) Clean Plug #5- 2001 Chevrolet Silverado C1500

Certificate #	eVIN	Protocol	PID count
ZB667304C			
Fraudulent Passing Inspection (4/8/2016)	1D7HU18N58J173893	ICAN11bt500	44
Expected OBDII Value	1GCEC19T81Z330790	JVPW	23

f) Clean Plug #6- 2002 Toyota Sienna LE/XLE

Certificate #	eVIN	Protocol	PID count
ZB667337C			
Fraudulent Passing Inspection (4/15/2016)	1J4NT2GA5AD520335	ICAN11bt500	36
Expected OBDII Value	Not Reported	I914	20

g) Clean Plug #7- 2000 Chevrolet Silverado C1500

Certificate #	eVIN	Protocol	PID count
ZB667341C			
Fraudulent Passing Inspection (4/15/2016)	2C3CCAEG3FH920892	ICAN11bt500	43
Expected OBDII Value	Not Reported	JVPW	22

h) Clean Plug #8- 2010 Chevrolet Cobalt LT

Certificate #	eVIN	Protocol	PID count
ZB962496C			
Fraudulent Passing Inspection (4/25/2016)	2GCEC19V941148966	JVPW1850	22
Expected OBDII Value	1G1AD5F5XA7175513	ICAN11bt5	38/7

i) Clean Plug #9- 2008 Dodge Charger CA

Certificate #	eVIN	Protocol	PID count
ZD245866C			
Fraudulent Passing Inspection (4/29/2016)	2HNYD18866H533086	I9140808	25
Expected OBDII Value	2B3KA43G08H206269	ICAN11bt5	43

j) Clean Plug #10- 2004 Chevrolet Tahoe K1500 CA

Certificate #	eVIN	Protocol	PID count
ZD245868C			
Fraudulent Passing Inspection (4/29/2016)	JTEES42A182076707	ICAN11bt500	46
Expected OBDII Value	1GNEK13T34R103188	JVPW	22

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements - Registration)**

3 28. Respondent Shan has subjected his registration to discipline under Code sections 494
4 and 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of
5 reasonable care he should have known were untrue or misleading, as set forth above in
6 paragraphs 25-27, above. Respondents fraudulently purported to test the 10 vehicles, and
7 certified that the 10 vehicles passed inspection and were in compliance with applicable laws and
8 regulations. In fact, Respondents conducted the inspections on those vehicles using clean-
9 plugging methods.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud - Registration)**

12 29. Respondent Shan has subjected his registration to discipline under Code sections 494
13 and 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud, as set forth
14 above in paragraphs 25-27, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Violation of the Motor Vehicle Inspection Program – Smog Station License)**

17 30. Respondent Shan has subjected his station license to discipline under Health and
18 Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he violated sections
19 of that Code and applicable regulations, as set forth above in paragraphs 25-27, as follows:

20 a. **Section 44012:** Respondent Shan failed to ensure that the emission control tests were
21 performed on those vehicles in accordance with procedures prescribed by the department.

22 b. **Section 3340.24, subdivision (c):** Respondent Shan falsely or fraudulently issued
23 electronic certificates of compliance for those vehicles without performing bona fide inspections
24 of the emission control devices and systems on the vehicles as required by Health and Safety
25 Code section 44012.

26 c. **Section 3340.42:** Respondent Shan failed to conduct the required smog tests and
27 inspections on those vehicles in accordance with the Bureau's specifications.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit – Smog Station License)**

3 31. Respondent Shan subjected his station license to discipline under Health and Safety
4 Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts involving
5 dishonesty, fraud or deceit, whereby another was injured by issuing electronic certificates of
6 compliance for vehicles without performing bona fide inspections of the emission control devices
7 and systems on the vehicles, thereby depriving the People of the State of California of the
8 protection afforded by the Motor Vehicle Inspection Program, as set forth above in paragraphs
9 25-27, above.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

12 32. Respondent Hussain has subjected his Smog Check Inspector license to discipline
13 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
14 violated sections of that Code and applicable regulations, as set forth above in paragraphs 25-27,
15 as follows:

16 a. **Section 44012:** Respondent Hussain failed to ensure that the emission control tests
17 were performed on those vehicles in accordance with procedures prescribed by the department.

18 b. **Section 44059:** Respondent Hussain willfully made false entries for the electronic
19 certificates of compliance by certifying that those vehicles had been inspected as required when,
20 in fact, they had not.

21 c. **Section 3340.24, subdivision (c):** Respondent Hussain falsely or fraudulently issued
22 electronic certificates of compliance for those vehicles without performing bona fide inspections
23 of the emission control devices and systems on the vehicles as required by Health and Safety
24 Code section 44012.

25 d. **Section 3340.30, subdivision (a):** Respondent Hussain failed to inspect and test
26 those vehicles in accordance with Health and Safety Code section 44012 and California code of
27 Regulations title 16, section 3340.42.

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1 e. **Section 3340.41, subdivision (c):** Respondent Hussain entered vehicle identification
2 information for a vehicle other than the one being tested into the emissions inspection system.
3 Respondent Hussain knowingly entered false information about the vehicle being tested into the
4 emissions inspection system.

5 f. **Section 3340.42:** Respondent Hussain failed to conduct the required smog tests and
6 inspections on those vehicles in accordance with the Bureau's specifications.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit – Smog Check License)**

9 33. Respondent Hussain subjected his Smog Check Inspector License to discipline under
10 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
11 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
12 certificates of compliance for vehicles without performing bona fide inspections of the emission
13 control devices and systems on the vehicles, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
15 in paragraphs 25-27.

16 **OTHER MATTERS**

17 34. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
18 or place on probation the registration for all places of business operated in this state by
19 Respondent Shan, upon a finding that Respondent Shan has, or is, engaged in a course of repeated
20 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

21 35. Pursuant to Health & Safety Code section 44072.8, if Respondent Shan's Station
22 License is revoked or suspended, any additional license issued under chapter 5 of the Motor
23 Vehicle Inspection Program in the name of said licensee may be likewise revoked or suspended
24 by the director.

25 36. Pursuant to Health & Safety Code section 44072.8, if Respondent Hussain's Smog
26 Check Inspector License is revoked or suspended, any additional license issued under chapter 5 of
27 the Motor Vehicle Inspection Program in the name of said licensee may be likewise revoked or
28 suspended by the director.

PRAYER

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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 or suspending Automotive Repair Dealer Registration Number ARD 266219 issued to Amir Saifullah Shan doing business as Golden Star Smog;
2. Revoking or suspending Smog Check Test Only Station License Number TC 266219 issued to Amir Saifullah Shan doing business as Golden Star Smog;
3. Revoking or suspending any additional Automotive Repair Dealer Registration, Smog Check Station License, Smog Check Inspector License, or Smog Check Repair Technician license, issued to Amir Saifullah Shan;
4. Ordering Amir Saifullah Shan 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;
5. Revoking or suspending Smog Check Inspector License EO 634973 issued to Yusaf Rayhat Khalid Hussain;
6. Revoking or suspending any additional Smog Check Station License, Smog Check Inspector License, or Smog Check Repair Technician License, issued to Yusaf Rayhat Khalid Hussain;
7. Ordering Yusaf Rayhat Khalid Hussain 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;
8. Taking such other and further action as deemed necessary and proper.

DATED: 12-27-16

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