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

11
12 In the Matter of the Accusation Against:
13 **JOE'S SMOG TEST ONLY**
YOUSEF K. ZEIT, OWNER
14 **147 East Baseline Street, #E**
San Bernardino, CA 92410
15
Automotive Repair Dealer Registration No.
16 **ARD 266397**
Smog Check, Test Only, Station License No.
17 **TC 266397**
18 **YOUSEF K. ZEIT**
3845 Polk Street, Apt. # 57
19 **Riverside, CA 92505**
20 **Advanced Emission Specialist Technician**
License No. EA 632736
21
22 Respondents.

Case No. 79/13-05
ACCUSATION
Smog Check

23
24
25 Complainant alleges:

26 **PARTIES**

27 1. John Wallauch (Complainant) brings this Accusation solely in his official capacity as
28 the Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs.

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

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

15

16 (4) Any other conduct that constitutes fraud.

17

18 (6) Failure in any material respect to comply with the provisions of this
19 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
20 regulations adopted pursuant to it.

21

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

27 10. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
28 "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 Bus. & Prof. Code.

11. Health & Saf. Code section 44072.2 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:

(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.

.....

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
3 is injured.

4

5 12. Health & Saf. Code section 44072.8 states:

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

9 13. Health & Saf. Code section 44072.10 states, in pertinent part:

10

11 (c) The department shall revoke the license of any smog check technician or
12 station licensee who fraudulently certifies vehicles or participates in the fraudulent
inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
the following:

13

14 (4) Intentional or willful violation of this chapter or any regulation, standard,
or procedure of the department implementing this chapter.

15
16 14. Health & Saf. Code section 44012 provides, in pertinent part, that the test at the smog
17 check stations shall be performed in accordance with procedures prescribed by the department,
18 pursuant to Section 44013.

19 **REGULATORY PROVISIONS**

20 15. California Code of Regulations, title 16, section 3340.24 (c), states:

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

24 16. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

25 "A smog check technician shall comply with the following requirements at all times while
26 licensed.

27 ///

28 ///

1 22. Beginning in February of 2012, a representative of the BAR conducted a detailed
2 review of VID data for all smog inspections performed at Respondent's automotive repair
3 dealership for the period of October 1, 2011 through March 26, 2012. The review showed a
4 pattern of OBD II¹ diagnostic trouble codes stored in the memory of the power train control
5 module (PCM) on different vehicles that received smog certificates in the six month period. The
6 BAR specifically examined the VID data, in detail, for nine (9) of the vehicles that were certified
7 from October 22, 2011 to March 9, 2012 and it was determined that none of them support the
8 OBD II code. Vehicles 1 through 9, set forth in Table 1, in paragraph 23 below, were all certified
9 with various pending codes stored in the PCM memory while the original equipment
10 manufacturer (OEM) service information shows these vehicles do not support the pending codes
11 stored in the PCM memory.

12 23. The BAR representative obtained information indicating that none of these codes
13 were applicable to the nine vehicles. The VID data also showed that the inspections on all of the
14 vehicles were performed under the technician license of Respondent Zeit. The BAR concluded
15 that Respondent performed the smog inspections on the vehicles using a different vehicle(s)
16 during the OBD II tests, a method known as clean-plugging,² resulting in the issuance of
17 fraudulent certificates of compliance for the vehicles that were tested as outlined in the following
18 table.

19 ///
20 ///

21 ¹ The On Board Diagnostic, generation II (OBD II) functional test is an automated
22 function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to
23 connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC)
24 which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically
25 retrieves information from the vehicle's on-board computer about the status of the readiness
26 indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
27 II functional test, it will fail the overall inspection.

28 ² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
(trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

TABLE 1

Date & Time of Inspection	Vehicle Certified & License or Vin No.	Certificate No.
1. 10/22/2011 9:38 – 9:52 hours	1999 Chevy C1500, 4DML043	WZ898857C
2. 12/12/2011 15:01 – 15:14 hours	2001 Toyota Sienna, 4VCM487	XB631059C
3. 12/16/2011 11:24 – 11:39 hours	1997 Volkswagen Jetta, 6EKG104	XB631088C
4. 1/7/2012 12:45 – 12:59 hours	1998 Acura Integra, 4XVY044	XB986584C
5. 1/12/2012 12:58 – 13:06 hours	2000 Dodge Neon, 4FVP765	XD092367C
6. 2/6/2012 12:29 – 12:42 hours	1999 Dodge B1500, 5LHY450	XD543357C
7. 3/1/2012 16:45 – 16:55 hours	2005 Chevy Express 2500, 7X39230	XD992463C
8. 3/2/2012 10:04 – 10:16 hours	2002 Honda Civic, 4XNZ884	XD992467C
9. 3/9/2012 8:57 – 9:16 hours	2000 Toyota Tacoma, 6G44918	XF093534C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. Respondent's dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that vehicles 1 through 9, identified in Table 1 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not actually test or inspect the vehicles as required by Health & Saf. Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent's dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute

1 fraud by issuing electronic smog certificates of compliance for vehicles 1 through 9, identified in
2 Table 1 above, without performing bona fide inspections of the emission control devices and
3 systems on the vehicles, thereby depriving the People of the State of California of the protection
4 afforded by the Motor Vehicle Inspection Program.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Violations of Motor Vehicle Inspection Program)**

7 26. Respondent's smog check station license is subject to disciplinary action pursuant to
8 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
9 following sections of that Code:

10 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
11 devices and systems required by law for vehicles 1 through 9, identified in Table 1 above, were
12 installed and functioning correctly in accordance with test procedures.

13 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the emission
14 control tests were performed on vehicles 1 through 9, identified in Table 1 above, in accordance
15 with procedures prescribed by the department.

16 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
17 compliance for vehicles 1 through 9, identified in Table 1 above, without ensuring that the
18 vehicles were properly tested and inspected to determine if they were in compliance with Health
19 & Saf. Code section 44012.

20 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of
21 compliance for vehicles 1 through 9, identified in Table 1 above, by certifying that the vehicles
22 had been inspected as required when, in fact, they had not.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

25 27. Respondent's smog check station license is subject to disciplinary action pursuant to
26 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
27 provisions of California Code of Regulations, title 16, as follows:
28

1 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
2 electronic smog certificates of compliance for vehicles 1 through 9, identified in Table 1 above.

3 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
4 compliance for vehicles 1 through 9, identified in Table 1 above, even though the vehicles had
5 not been inspected in accordance with section 3340.42.

6 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
7 conducted on vehicles 1 through 9, identified in Table 1 above, in accordance with the BAR's
8 specifications.

9 **FIFTH CAUSE FOR DISCIPLINE**

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

11 28. Respondent's smog check station license is subject to disciplinary action pursuant to
12 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
13 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
14 compliance for vehicles 1 through 9, identified in Table 1 above, without performing bona fide
15 inspections of the emission control devices and systems on the vehicles, thereby depriving the
16 People of the State of California of the protection afforded by the Motor Vehicle Inspection
17 Program.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Violations of Motor Vehicle Inspection Program)**

20 29. Respondent Zeit's technician license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
22 following sections of that Code:

23 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
24 devices and systems required by law for vehicles 1 through 9, identified in Table 1 above, were
25 installed and functioning correctly in accordance with test procedures.

26 b. **Section 44012, subdivision (f):** Respondent failed to perform the emission control
27 tests on vehicles 1 through 9, identified in Table 1 above, in accordance with procedures
28 prescribed by the department.

1 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
2 compliance for vehicles 1 through 9, identified in Table 1 above, without properly testing and
3 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section
4 44012.

5 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of
6 compliance for vehicles 1 through 9, identified in Table 1 above, by certifying that the vehicles
7 had been inspected as required when, in fact, they had not.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

10 30. Respondent Zeit's technician license is subject to disciplinary action pursuant to
11 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
12 provisions of California Code of Regulations, title 16, as follows:

13 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
14 electronic smog certificates of compliance for vehicles 1 through 9, identified in Table 1 above.

15 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
16 through 9, identified in Table 1 above, in accordance with Health & Saf. Code sections 44012 and
17 44035, and California Code of Regulations, title 16, section 3340.42.

18 c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection
19 system vehicle identification information or emission control system identification data for a
20 vehicle other than the one being tested for vehicles 1 through 9, identified in Table 1 above.

21 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
22 through 9, identified in Table 1 above, in accordance with the Bureau's specifications.

23 **EIGHTH CAUSE FOR DISCIPLINE**

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

25 31. Respondent Zeit's technician license is subject to disciplinary action pursuant to
26 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
27 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
28 compliance for vehicles 1 through 9, identified in Table 1 above, without performing bona fide

1 inspections of the emission control devices and systems on the vehicles, thereby depriving the
2 People of the State of California of the protection afforded by the Motor Vehicle Inspection
3 Program.

4 **OTHER MATTERS**

5 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
6 suspend, revoke or place on probation the registration for all places of business operated in this
7 state by Respondent Yousef K. Zeit, owner of Joe's Smog Test Only, upon a finding that
8 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
9 regulations pertaining to an automotive repair dealer.

10 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
11 License Number TC 266397, issued to Respondent Yousef K. Zeit, owner of Joe's Smog Test
12 Only, is revoked or suspended, any additional license issued under the same chapter in the name
13 of said licensee may be likewise revoked or suspended by the Director.

14 34. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
15 Technician License Number EA 632736, issued to Respondent Yousef K. Zeit, is revoked or
16 suspended, any additional license issued under the same chapter in the name of said licensee may
17 be likewise revoked or suspended by the Director.

18 **PRAYER**

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

21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 266397, issued to Yousef K. Zeit, owner of Joe's Smog Test Only;

23 2. Revoking or suspending any other automotive repair dealer registration issued to
24 Yousef K. Zeit;

25 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
26 266397, issued to Yousef K. Zeit, owner of Joe's Smog Test Only;

27 4. Revoking or suspending Advanced Emission Specialist Technician License Number
28 EA 632736, issued to Yousef K. Zeit;

1 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Yousef K. Zeit;

3 6. Ordering Yousef K. Zeit to pay the Bureau of Automotive Repair the reasonable costs
4 of the investigation and enforcement of this case, pursuant to Business and Professions Code
5 section 125.3;

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

7
8 DATED: 7/18/12

John Wallauch by [Signature]

9 JOHN WALLAUCH
10 Chief
11 Bureau of Automotive Repair
12 Department of Consumer Affairs
13 State of California
14 Complainant

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