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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. 79/17-9157

12 **XPRESS SMOG AND TEST ONLY – MAHMOUD A.**
13 **KWARA, SOLE OWNER**

ACCUSATION

14 4624 Telephone Road
Ventura, CA 93003

15 Mailing Address:

16 4234 Avenida Simi
Simi Valley, CA 93063

17 Automotive Repair Dealer Registration No. ARD 259932
18 Smog Check, Test Only, Station License No. TC 259932

19 Respondent.
20

21 Complainant alleges:

22 **PARTIES**

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

25 **Automotive Repair Dealer Registration**

26 2. On or about November 12, 2009, the Bureau of Automotive Repair issued
27 Automotive Repair Dealer Registration Number ARD 259932 (ARD registration) to Xpress
28 Smog and Test Only, Mahmoud A. Kwara, Sole Owner (Respondent Xpress Smog). The

1 registration was in full force and effect at all times relevant to the charges brought herein and will
2 expire on August 31, 2018, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about February 22, 2010, the Bureau of Automotive Repair issued Smog
5 Check, Test Only, Station License Number TC 259932 (station license) to Respondent Xpress
6 Smog. The station license was in full force and effect at all times relevant to the charges brought
7 herein and will expire on August 31, 2018, unless renewed.

8 **JURISDICTION**

9 4. Business and Professions Code (Code) section 9884.7 provides that the Director may
10 revoke an automotive repair dealer registration.

11 5. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
12 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
13 against an automotive repair dealer or to render a decision temporarily or permanently invalidating
14 (suspending or revoking) a registration.

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

18 **STATUTORY PROVISIONS**

19 7. Section 9884.7 of the Code states, in pertinent part:

20 "(a) The director, where the automotive repair dealer cannot show there was a bona
21 fide error, may deny, suspend, revoke, or place on probation the registration of an
22 automotive repair dealer for any of the following acts or omissions related to the conduct of
23 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.

24 (1) Making or authorizing in any manner or by any means whatever any statement
25 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.

26 ...

27 (3) Failing or refusing to give to a customer a copy of any document requiring his or
her signature, as soon as the customer signs the document.

28 ...

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

2 "(b) Except as provided for in subdivision (c), if an automotive repair dealer operates
3 more than one place of business in this state, the director pursuant to subdivision (a) shall
4 only suspend, revoke, or place on probation the registration of the specific place of business
5 which has violated any of the provisions of this chapter. This violation, or action by the
6 director, shall not affect in any manner the right of the automotive repair dealer to operate
7 his or her other places of business.

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

12 8. Section 44012 of the Health and Safety Code states, in pertinent part:

13 "The test at the smog check stations shall be performed in accordance with procedures
14 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
15 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
16 and shall ensure all of the following:

17 ...

18 "(f) A visual or functional check is made of emission control devices specified by the
19 department, including the catalytic converter in those instances in which the department
20 determines it to be necessary to meet the findings of Section 44001. The visual or functional
21 check shall be performed in accordance with procedures prescribed by the department."

22 9. Section 44015 of the Health and Safety Code states, in pertinent part:

23 ...

24 "(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
25 issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

26 10. Health and Safety Code section 44072.2 states, in pertinent part:

27 "The director may suspend, revoke, or take other disciplinary action against a
28 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.

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

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

11. Health and Safety Code section 44072.8 states that 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.

REGULATORY PROVISIONS

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

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

“(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.”

13. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

...

“(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly.”

14. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions test methods and procedures which apply to all vehicles inspected in the State of California.

15. California Code of Regulations, title 16, section 3356, states, in pertinent part:

...

“(d) The automotive repair dealer shall give the customer a legible copy of the invoice and shall retain a legible copy as part of the automotive repair dealer's records pursuant to Section 9884.11 of the Business and Professions Code and Section 3358 of this article.”

1 **COST RECOVERY**

2 16. Section 125.3 of the Code provides, in pertinent part, that the 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, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **UNDERCOVER OPERATION – FEBRUARY 22, 2017**

9 17. On February 22, 2017, at the direction of Bureau representatives, an undercover
10 operator (operator) drove a Bureau-documented 2002 Honda to Respondent Xpress Smog,
11 located at 4624 Telephone Road, Ventura, California and requested a smog check inspection on
12 the 2002 Honda. Immediately prior to this, Bureau representatives had purposely prepared the
13 2002 Honda to fail the visual portion of a smog check inspection by intentionally removing the
14 vehicle's catalytic converter. The 2002 Honda could not lawfully pass a smog check inspection
15 without a catalytic converter installed on the vehicle. Just prior to traveling to Respondent Xpress
16 Smog, a Bureau representative and the operator met at an undisclosed location nearby, at which
17 point the Bureau representative confirmed that the catalytic converter was still missing on the
18 vehicle. The Bureau representative took photos of the area on the 2002 Honda where the catalytic
19 converter would have been present, had there been one on the vehicle at the time. These photos
20 depicted the fact that no catalytic converter was installed on the vehicle when it was taken to
21 Respondent Xpress Smog for a smog check inspection on February 22, 2017. Thereafter, the
22 operator drove straight to Respondent Xpress Smog's facility. Upon arrival at Respondent
23 Xpress Smog, the operator requested a smog check inspection. The operator signed a work order
24 but did not receive a copy of it from Respondent Xpress Smog. Thereafter, smog technician
25 Abdullah Kwara performed a smog check inspection of the 2002 Honda and passed the vehicle,
26 notwithstanding the fact that the vehicle's catalytic converter was missing on the vehicle. Smog
27 technician Abdullah Kwara issued Certificate of Compliance [REDACTED] to the operator
28 indicating that the 2002 Honda had passed the smog check inspection after receiving \$65.00 as

1 payment for the smog check inspection from the operator. Immediately thereafter, the operator
2 drove the 2002 Honda back to the same undisclosed location and met with the same Bureau
3 representative who had previously taken photos of the 2002 Honda to confirm that it was missing
4 a catalytic converter several minutes before. The Bureau representative confirmed the catalytic
5 converter was still missing on the 2002 Honda at that time and as a result thereof, the Bureau
6 representative concluded that said vehicle should not have passed the smog check inspection
7 smog technician Abdullah Kwara had just performed.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Violations of the Automotive Repair Act)**

10 18. Respondent Xpress Smog's ARD registration is subject to disciplinary action
11 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), by violating the
12 sections:

13 b. **Business and Professions Code section 9884.7, subdivision (a)(3)**: On February
14 22, 2017, Respondent Xpress Smog failed to give the operator of the 2002 Honda a copy of the
15 invoice or estimate that he signed.

16 Complainant refers to, and by this reference incorporates, the allegations set forth above in
17 paragraph 17, as though set forth fully herein.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 19. Respondent Xpress Smog's ARD registration is subject to discipline pursuant to Code
21 section 9884.7(a)(4), in that on February 22, 2017, with regard to the 2002 Honda, Respondent
22 Xpress Smog committed an act which constitutes fraud by issuing an electronic certificate of
23 compliance for that vehicle, without performing a bona fide inspection of the emission control
24 devices and systems on that vehicle, thereby depriving the People of the State of California of the
25 protection afforded by the Motor Vehicle Inspection Program.

26 Complainant refers to, and by this reference incorporates, the allegations set forth above in
27 paragraph 17, as though set forth fully herein.

28 ///

1 issuing a Certificate of Compliance to a documented vehicle with the ignition timing adjusted
2 beyond specifications, in violation of Health and Safety Code section 44012(f). Respondent
3 formally appealed the citation, and the matter is still pending.

4 c. On or about August 29, 2016, the Bureau issued Citation No. C2016-1634 in the
5 amount of \$3,000.00 against Respondent Xpress Smog's ARD registration and station license for
6 issuing a Certificate of Compliance to a documented vehicle with a missing secondary air
7 injection pump, in violation of Health and Safety Code section 44012. Respondent formally
8 appealed the citation, and the matter is still pending.

9 **OTHER MATTERS**

10 24. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
11 or permanently or refuse to validate, the registrations for all places of business operated in this
12 state by Xpress Smog and Test Only, Mahmoud A. Kwara, Sole Owner, upon a finding that she
13 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
14 pertaining to an automotive repair dealer.

15 25. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
16 License Number TC 259932 issued to Xpress Smog and Test Only, Mahmoud A. Kwara, Sole
17 Owner, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of
18 Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked
19 or suspended by the director.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 259932, issued to Xpress Smog and Test Only, Mahmoud A. Kwara, Sole Owner;

25 2. Revoking, suspending, or placing on probation any other automotive repair dealer
26 registration issued to Mahmoud A. Kwara;

27 3. Revoking or suspending Smog Check Test Only Station License Number TC 259932,
28 issued to Xpress Smog and Test Only, Mahmoud A. Kwara, Sole Owner;

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4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Mahmoud A. Kwara;

5. Ordering Mahmoud A. Kwara 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: December 8, 2017 

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