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

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In the Matter of the Accusation Against:
KIMS SMOG TEST ONLY
3345 W. Olympic Blvd, #A
Los Angeles, CA 90019
Mailing Address:
363 S. Westmoreland Avenue
Los Angeles, CA 90020
JOHN SUKSOON KIM, OWNER
Automotive Repair Dealer Registration No.
ARD 213745
Smog Check Test Only Station License No.
TC 213745,

and

JOHN SUKSOON KIM
363 S. Westmoreland Ave
Los Angeles, CA 90020
Advanced Emission Specialist Technician
License No. EA 141598

Case No. 79/12-161

A C C U S A T I O N

S M O G C H E C K

Respondents.

Complainant alleges:

PARTIES

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

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1 **Automotive Repair Dealer Registration**

2 2. On a date uncertain in 2000, the Bureau issued Automotive Repair Dealer
3 Registration Number ARD 213745 (“registration”) to John Suksoon Kim (“Respondent Kim”),
4 doing business as Kims Smog Test Only. The registration was in full force and effect at all times
5 relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

6 **Smog Check Test Only Station License**

7 3. On or about January 4, 2004, the Bureau issued Smog Check Test Only Station
8 License Number TC 213745 (“station license”) to Respondent Kim. The station license was in
9 full force and effect at all times relevant to the charges brought herein and will expire on
10 November 30, 2012, unless renewed.

11 **Advanced Emission Specialist Technician License**

12 4. On a date uncertain in 2001, the Bureau issued Advanced Emission Specialist
13 Technician License Number EA 141598 (“technician license”) to Respondent Kim. The
14 technician license was in full force and effect at all times relevant to the charges brought herein
15 and will expire on October 31, 2013, unless renewed.

16 **STATUTORY PROVISIONS**

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

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

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

25 (4) Any other conduct that constitutes fraud.

26 (b) Except as provided for in subdivision (c), if an automotive repair
27 dealer operates more than one place of business in this state, the director pursuant to
28 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.

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

6 6. Code section 118, subdivision (b) states:

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

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

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

23 9. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
24 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
25 the Motor Vehicle Inspection Program.

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

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

(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.

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

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

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

8 **COST RECOVERY**

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

13 **UNDERCOVER OPERATION – OCTOBER 13, 2011**

14 14. On or about October 13, 2011, a Bureau undercover operator drove a Bureau-
15 documented 2000 Chrysler Cirrus to Respondent Kim's facility and requested a smog inspection.
16 The vehicle could not pass the visual portion of a smog inspection because the vehicle's positive
17 crankcase ventilation ("PCV") system was missing. The operator signed and received a copy of
18 the work order prior to the smog inspection. Charlie Won Yu, also known as Che Won Yu, a
19 licensed smog technician, performed the smog inspection and issued electronic Certificate of
20 Compliance No. WZ696950 for that vehicle. The operator paid \$60 for the smog inspection and
21 received a copy of Invoice No. 12704 and the Vehicle Inspection Report.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Misleading Statements)**

24 15. Respondent Kim has subjected his registration to discipline under Code section
25 9884.7, subdivision (a)(1), in that on or about October 13, 2011, he made statements which he
26 knew or which by exercise of reasonable care he should have known were untrue or misleading
27 when he issued electronic Certificate of Compliance No. WZ696950 for the 2000 Chrysler Cirrus,

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1 certifying that the vehicle was in compliance with applicable laws and regulations when, in
2 fact, the vehicle's PCV system was missing.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 16. Respondent Kim has subjected his registration to discipline under Code section
6 9884.7, subdivision (a)(4), in that on or about October 13, 2011, he committed acts which
7 constitute fraud by issuing electronic Certificate of Compliance No. WZ696950 for the 2000
8 Chrysler Cirrus without performing a bona fide inspection of the emission control devices and
9 systems on that vehicle, thereby depriving the People of the State of California of the protection
10 afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Violation of the Motor Vehicle Inspection Program)**

13 17. Respondent Kim has subjected his station license to discipline under Health and
14 Safety Code section 44072.2, subdivision (a), in that on or about October 13, 2011, regarding the
15 2000 Chrysler Cirrus, he violated sections of that Code, as follows:

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

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

21 c. **Section 44015, subdivision (b):** Respondent Kim issued electronic Certificate of
22 Compliance No. WZ696950 without properly testing and inspecting that vehicle to determine if it
23 was in compliance with section 44012 of that Code.

24 **FOURTH CAUSE FOR DISCIPLINE**

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

26 18. Respondent Kim has subjected his station license to discipline under Health and
27 Safety Code section 44072.2, subdivision (c), in that on or about October 13, 2011, regarding the

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1 2000 Chrysler Cirrus, he violated sections of the California Code of Regulations, title 16, as
2 follows:

3 a. **Section 3340.35, subdivision (c):** Respondent Kim issued electronic Certificate of
4 Compliance No. WZ696950 even though that vehicle had not been inspected in accordance with
5 section 3340.42 of that Code.

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

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 19. Respondent Kim subjected his station license to discipline under Health and Safety
11 Code section 44072.2, subdivision (d), in that on or about October 13, 2011, regarding the 2000
12 Chrysler Cirrus, he committed acts involving dishonesty, fraud or deceit whereby another was
13 injured by issuing electronic Certificate of Compliance No. WZ696950 for that vehicle without
14 performing a bona fide inspection of the emission control devices and systems on the vehicle,
15 thereby depriving the People of the State of California of the protection afforded by the Motor
16 Vehicle Inspection Program.

17 **PRIOR CITATIONS**

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

20 a. On July 2, 2002, the Bureau issued Citation No. C03-0009 to Respondent Kim
21 against his registration and station licenses for violations of Health and Safety Code section
22 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
23 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
24 (issuing a certificate of compliance to a vehicle improperly tested). Respondent Kim issued a
25 certificate of compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a
26 civil penalty of \$500. Respondent Kim complied with this citation on July 26, 2002.

27 b. On June 9, 2008, the Bureau issued Citation No. C08-1080 to Respondent Kim
28 against his registration and station licenses for violations of Health and Safety Code section

1 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
2 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
3 improperly tested). Respondent Kim issued a certificate of compliance to a Bureau vehicle with a
4 missing air injection system. The Bureau assessed a civil penalty of \$500. Respondent Kim
5 complied with this citation on July 1, 2008.

6 c. On October 12, 2010, the Bureau issued Citation No. C2011-0438 to Respondent
7 Kim against his registration and station licenses for violations of Health and Safety Code section
8 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
9 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
10 improperly tested). Respondent Kim issued a certificate of compliance to a Bureau vehicle with a
11 missing fuel evaporative canister. The Bureau assessed a civil penalty of \$1,500. Respondent
12 Kim complied with this citation on October 25, 2010.

13 d. On June 29, 2011, the Bureau issued Citation No. C2011-1517 to Respondent Kim
14 against his registration and station licenses for violations of Health and Safety Code section
15 44012, subdivision (f) (failure to determine that emission control devices and systems required by
16 State and Federal law are installed and functioning correctly). Respondent Kim issued a
17 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
18 manufacturer's specifications. The Bureau assessed a civil penalty of \$1,500. Respondent Kim
19 complied with this citation on August 3, 2011.

20 e. On July 2, 2002, the Bureau issued Citation No. M03-0110 to Respondent Kim
21 against his technician license for violations of Health and Safety Code section 44032, (qualified
22 technicians shall perform tests of emission control systems and devices in accordance with
23 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
24 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
25 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
26 3340.42). Respondent Kim issued a certificate of compliance to a Bureau vehicle with a missing
27 PCV system. Respondent Kim was required to attend an 8-hour training course. Respondent
28 Kim complied with this citation on August 13, 2002.

1 f. On June 9, 2008, the Bureau issued Citation No. M08-1081 to Respondent Kim
2 against his technician license for violations of Health and Safety Code section 44032, (qualified
3 technicians shall perform tests of emission control systems and devices in accordance with
4 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
5 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
6 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
7 3340.42). Respondent Kim issued a certificate of compliance to a Bureau vehicle with a missing
8 aid injection system. Respondent Kim was required to attend an 8-hour training course.
9 Respondent Kim complied with this citation on July 2, 2008.

10 g. On October 12, 2010, the Bureau issued Citation No. M2011-0439 to Respondent
11 Kim against his technician license for violations of Health and Safety Code section 44032,
12 (qualified technicians shall perform tests of emission control systems and devices in accordance
13 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
14 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
15 accordance with sections 44012 and 44035 of the Health and Safety Code and California Code of
16 Regulation section 3340.42). Respondent Kim issued a certificate of compliance to a Bureau
17 vehicle with a missing fuel evaporative canister. Respondent Kim was required to attend a 16-
18 hour training course. Respondent Kim complied with this citation on October 27, 2010.

19 h. On June 29, 2011, the Bureau issued Citation No. M2011-1518 to Respondent Kim
20 against his technician license for violations of Health and Safety Code section 44032, (qualified
21 technicians shall perform tests of emission control systems and devices in accordance with
22 section 44012 of that Code). Respondent Kim issued a certificate of compliance to a Bureau
23 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. Respondent
24 Kim was required to attend a Basic Clean Air Car Course. Respondent Kim complied with this
25 citation on September 2, 2011.

26 **OTHER MATTERS**

27 21. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
28 or permanently or refuse to validate, the registrations for all places of business operated in this

1 state by to John Suksoon Kim, upon a finding that he has, or is, engaged in a course of repeated
2 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

3 22. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
4 License Number TC 213745, issued to John Suksoon Kim, doing business as Kims Smog Test
5 Only, is revoked or suspended, any additional license issued under this chapter in the name of
6 said licensee may be likewise revoked or suspended by the director, including but not limited to
7 Advanced Emission Specialist Technician License Number EA 141598, issued to John Suksoon
8 Kim.

9 **PRAYER**

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

12 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
13 Registration Number ARD 213745, issued to John Suksoon Kim, doing business as Kims Smog
14 Test Only;

15 2. Revoking, suspending or placing on probation any other automotive repair dealer
16 registration issued to John Suksoon Kim;

17 3. Revoking or suspending Smog Check Test Only Station License Number TC 213745,
18 issued to John Suksoon Kim, doing business as Kims Smog Test Only;

19 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
20 and Safety Code in the name of John Suksoon Kim, including but not limited to Advanced
21 Emission Specialist Technician License Number EA 141598, issued to John Suksoon Kim;

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5. Ordering John Suksoon Kim 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: June 7 2012



JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant