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

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12 In the Matter of the Accusation Against:

Case No. 79/10-68

13 **XSMOG, INC.,**
4645 University Avenue
14 San Diego, CA 92105
Automotive Repair Dealer Registration
15 No. ARD 225965
Smog Check Test Only Station License
16 No. TC 225965;

**FIRST AMENDED
ACCUSATION**

SMOG CHECK

17 **TAI TAN HO, CHIEF EXECUTIVE**
OFFICER and SECRETARY,
18 4645 University Avenue
San Diego, CA 92105
19 Advanced Emission Specialist Technician
License No. EA 146165;

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21 and

22 **TAO TOM HO, CHIEF FINANCIAL**
OFFICER
4645 University Avenue
23 San Diego, CA 92105
Advanced Emission Specialist Technician
24 License No. EA 146425;

25 Respondents.
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1 Complainant alleges:

2 **PARTIES**

3 1. Sherry Mehl (“Complainant”) brings this Accusation solely in her official capacity as
4 the Chief of the Bureau of Automotive Repair (“Bureau”), Department of Consumer Affairs.

5 **Automotive Repair Dealer Registration**

6 2. On or about February 24, 2003, the Bureau issued Automotive Repair Dealer
7 Registration Number ARD 225965 (“registration”) to XSmog, Inc.; Tai Tan Ho, President and
8 Chief Executive Officer (“Respondent XSmog”). The registration was in full force and effect at
9 all times relevant to the charges brought herein and will expire on January 31, 2012, unless
10 renewed.

11 **Smog Check Test Only Station License**

12 3. On or about March 20, 2003, the Bureau issued Smog Check Test Only Station
13 License Number TC 225965 (“station license”) to Respondent XSmog. The station license was in
14 full force and effect at all times relevant to the charges brought herein and will expire on January
15 31, 2012, unless renewed.

16 **Advanced Emission Specialist Technician Licenses**

17 4. In or about 2003, the Bureau issued Advanced Emission Specialist Technician
18 License No. EA 146165 (“EA license”) to Respondent Tai Tan Ho (Respondent Tai Ho). The EA
19 license was in full force and effect at all times relevant to the charges brought herein and will
20 expire on May 31, 2013, unless renewed.

21 5. In or about 2003, the Bureau issued Advanced Emission Specialist Technician
22 License No. EA 146425 (“EA license”) to Respondent Tao Tom Ho (Respondent Tao Ho). The
23 EA license was in full force and effect at all times relevant to the charges brought herein and will
24 expire on September 30, 2012, unless renewed.

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1 STATUTORY PROVISIONS

2 6. Section 9884.7 of the Code states, in pertinent part:

3 (a) The director, where the automotive repair dealer cannot show there
4 was a bona fide error, may refuse to validate, or may invalidate temporarily or
5 permanently, the registration of an automotive repair dealer for any of the following
6 acts or omissions related to the conduct of the business of the automotive repair
7 dealer, which are done by the automotive repair dealer or any automotive technician,
8 employee, partner, officer, or member of the automotive repair dealer.

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

12 (4) Any other conduct which constitutes fraud.

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

15 (b) Except as provided for in subdivision (c), if an automotive repair
16 dealer operates more than one place of business in this state, the director pursuant to
17 subdivision (a) shall only invalidate temporarily or permanently the registration of the
18 specific place of business which has violated any of the provisions of this chapter.
19 This violation, or action by the director, shall not affect in any manner the right of the
20 automotive repair dealer to operate his or her other places of business.

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

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

8. Code section 477 provides, in pertinent part, that "Board" includes "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 Code.

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1 **REGULATORY PROVISION**

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

3 (a) All invoices for service and repair work performed, and parts
4 supplied, as provided in Section 9884.8 of the Business and Professions Code, shall
comply with the following:

5 (1) The invoice shall show the automotive repair dealer's registration
6 number and the corresponding business name and address as shown in the Bureau's
7 records. If the automotive repair dealer's telephone number is shown, it shall comply
with the requirements of subsection (b) of Section 3371 of this chapter.

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

11 11. Section 44072.2 of the Health and Safety Code states:

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

14 (a) Violates any section of this chapter [the Motor Vehicle Inspection
15 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted
pursuant to it, which related to the licensed activities.

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

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

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

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

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

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1 **COST RECOVERY**

2 14. 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 **UNDERCOVER OPERATION – AUGUST 4, 2009**

7 15. On or about August 4, 2009, a Bureau undercover operator drove a Bureau-
8 documented 1986 Chevrolet Astro Van to Respondent's facility and requested a smog inspection.
9 The vehicle could not pass the visual portion of a smog inspection because the vehicle's air
10 injection system was missing. The operator signed and received a written estimate prior to the
11 smog inspection. Leslie Loc Nguyen, a licensed technician, performed the smog inspection and
12 issued electronic Certificate of Compliance No. WB777677 certifying that he had tested and
13 inspected the 1986 Chevrolet Astro Van and that the vehicle was in compliance with applicable
14 laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog
15 inspection because the vehicle's air injection system was missing.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Misleading Statements)**

18 16. Respondents have subjected their licenses and registration to discipline under Code
19 section 9884.7, subdivision (a)(1), in that on or about August 4, 2009, they made statements
20 which they knew or which by exercise of reasonable care they should have known were untrue or
21 misleading when they issued electronic Certificate of Compliance No. WB777677 for the 1986
22 Chevrolet Astro Van, certifying that the vehicle was in compliance with applicable laws and
23 regulations when, in fact, the vehicle could not have passed the visual portion of the smog
24 inspection because the vehicle's air injection system was missing.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 17. Respondents have subjected their licenses and registration to discipline under Code
4 section 9884.7, subdivision (a)(4), in that on or about August 4, 2009, they committed acts which
5 constitute fraud by issuing electronic Certificate of Compliance No. WB777677 for the 1986
6 Chevrolet Astro Van without performing a bona fide inspection of the emission control devices
7 and systems on that vehicle, thereby depriving the People of the State of California of the
8 protection afforded by the Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with Invoice Requirements)**

11 18. Respondents have subjected their licenses and registration to discipline pursuant to
12 Code section 9884.7, subdivision (a)(6), in that they failed to comply with section 3356,
13 subdivision (a)(1) of the California Code of Regulations, title 16, by failing to set forth their
14 business name and address as shown in the Bureau's records.

15 **FOURTH CAUSE FOR DISCIPLINE**

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

17 19. Respondents have subjected their licenses and registration to discipline under Health
18 and Safety Code section 44072.2, subdivision (a), in that on or about August 4, 2009, regarding
19 the 1986 Chevrolet Astro Van, they violated sections of that Code, as follows:

20 a. **Section 44012, subdivision (a):** Respondents failed to determine that all emission
21 control devices and systems required by law were installed and functioning correctly in
22 accordance with test procedures.

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

25 c. **Section 44015, subdivision (b):** Respondents issued electronic Certificate of
26 Compliance No. WB777677 without properly testing and inspecting the vehicle to determine if it
27 was in compliance with section 44012 of that Code.

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PRIOR CITATIONS

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

a. On April 18, 2007, the Bureau issued Citation No. C07-0747 to Respondent Xsmog against its registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and California Code of Regulations, title 16, (“Regulation”), section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing EGR system. The Bureau assessed a civil penalty of \$500. Respondent complied with this citation on May 25, 2007.

b. On November 30, 2007, the Bureau issued Citation No. C08-0526 to Respondent Xsmog against its registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer’s specifications. The Bureau assessed a civil penalty of \$1,000. Respondent complied with this citation on February 6, 2008.

c. On August 12, 2008, the Bureau issued Citation No. C09-0151 to Respondent Xsmog against its registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a civil penalty of \$2,000. Respondent appealed this citation on September 15, 2008. The appeal was withdrawn on January 30, 2009, and Respondent complied with this citation on March 13, 2009.

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OTHER MATTERS

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

24. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 225965, issued to XSmog, Inc., is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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:

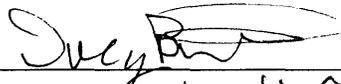
- 1. Temporarily or permanently invalidating Automobile Repair Dealer Registration Number ARD 225965, issued to XSmog, Inc.;
- 2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to XSmog, Inc.;
- 3. Revoking or suspending Smog Check Test Only Station License Number TC 225965, issued to XSmog, Inc.;
- 4. 6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of XSmog, Inc.;
- 7. Ordering Respondent 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

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

DATED: 12/29/11

Sherry Mehl by 
SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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