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

12 In the Matter of the Accusation Against:  
13 **1 OZONE SMOG CORP., DBA**  
14 **1 OZONE SMOG CORP**  
15 **MOHAMMAD MHUESSN, PRES.**  
16 **MOHAMMAD ZAKIY, SEC.**  
17 **MOSHIAN D. KUMAN, TREAS.**  
4095 Power Inn Road  
Sacramento, CA 95826  
Automotive Repair Dealer Registration No.  
ARD 261939  
Smog Check Test Only Station License No. TC  
261939,

Case No. 79/12-131

**A C C U S A T I O N - S M O G C H E C K**

18 Mailing Address: P.O. Box 245528,  
19 Sacramento, CA 95824

20 **and**

21 **JIMMY PHI NGUYEN**  
8538 Spiceberry Court  
22 Elk Grove, CA 95624  
Advanced Emission Specialist Technician  
23 License No. EA 632673

24 Respondents.

25 Complainant alleges:

26 **PARTIES**

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

1           **Automotive Repair Dealer Registration**

2           2.     On or about May 13, 2010, the Bureau issued Automotive Repair Dealer Registration  
3     Number ARD 261939 (“registration”) to 1 Ozone Smog Corp. (“Respondent Ozone Smog”),  
4     doing business as 1 Ozone Smog Corp. with Mohammad Mhuessn as President, Mohammad  
5     Zakiy as Secretary, and Moshian D. Kuman as Treasurer. The registration was in full force and  
6     effect at all times relevant to the charges brought herein and will expire on April 30, 2013, unless  
7     renewed.

8           **Smog Check Test Only Station License**

9           3.     On or about June 10, 2010, the Bureau issued Smog Check Test Only Station License  
10    Number TC 261939 (“station license”) to Respondent Ozone Smog. The station license was in  
11    full force and effect at all times relevant to the charges brought herein and will expire on April 30,  
12    2013, unless renewed.

13           **Advanced Emission Specialist Technician License**

14           4.     On or about November 22, 2010, the Bureau issued Advanced Emission Specialist  
15    Technician License Number EA 632673 (“technician license”) to Jimmy Phi Nguyen  
16    (“Respondent Nguyen”). The technician license was in full force and effect at all times relevant  
17    to the charges brought herein and will expire on December 31, 2012, unless renewed.

18                                   **INTERIM SUSPENSION ORDERS**

19           5.     On May 10, 2012, the Board ordered the immediate suspension of Respondent Ozone  
20    Smog’s ARD Registration and Smog Check Test Only License and Respondent Nguyen’s  
21    Advanced Emission Specialist Technician License, pursuant to Business and Professions Code  
22    section 494, subdivision (b).

23           6.     On June 4, 2012, the Board ordered the suspensions of Respondent Ozone Smog’s  
24    ARD Registration and Smog Check Test Only License and Respondent Nguyen’s Advanced  
25    Emission Specialist Technician License until an Accusation is issued and a decision is rendered  
26    thereon in accordance with pursuant to Business and Professions Code section 494, subdivision  
27    (f).

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1 **STATUTORY PROVISIONS**

2 7. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent  
3 part:

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

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

13 (4) Any other conduct which constitutes fraud.

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

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

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

9. 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.

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

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

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

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

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

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

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

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

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

#### 20 **COST RECOVERY**

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

#### 25 **SURVEILLANCE OPERATION – MARCH 29, 2012**

26 15. On or about March 29, 2012, the Bureau performed a surveillance operation at  
27 Respondent Ozone Smog's facility located at 4095 Power Inn Road, Sacramento, California. The  
28 surveillance operation and information obtained from the Bureau's Vehicle Information Database  
("VID") revealed that between 0943 hours and 1731 hours, Respondent Nguyen performed  
twelve (12) smog inspections that resulted in the issuance of electronic certificates of compliance  
for the vehicles set forth in Table 1, below, certifying that he had tested and inspected those  
vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact,

1 Respondent Nguyen performed the smog inspections using the clean piping method<sup>1</sup> by using the  
 2 tail pipe emissions of vehicles other than the vehicles being certified in order to issue the  
 3 electronic certificates of compliance. The vehicles certified were not in the test bay at the time of  
 4 the smog inspections. Further, Respondent Nguyen allowed Alan Sayareh (a non-licensed  
 5 individual) to assist in the performance of smog inspections on vehicles 1, 2, 3, and 6.

6 **Table 1**

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
1. 3/29/2012 0951 hours to 1003 hours	1985 Oldsmobile - Lic. No. 5NCL423	1994 Ford Pickup - Lic. No. 8Y98360	XF439805C	Respondent Nguyen performed the smog inspection with the assistance of Alan Sayareh. The Ford Pickup is registered to Sayareh.
2. 3/29/2012 1006 hours to 1015 hours	1993 Toyota Paseo - Lic. No. 4LCC050	1998 Honda Accord - Lic. No. 5HMM745	XF439806C	Respondent Nguyen performed the inspection with the assistance of Alan Sayareh.
3. 3/29/2012 1129 hours to 1135 hours	2002 Cadillac Seville - No License Plate	2001 Cadillac Deville - No License Plate	XF439810C	Respondent Nguyen performed the inspection with the assistance of Alan Sayareh.
4. 3/29/2012 1151 hours to 1158 hours	1996 Ford Contour - Lic. No. 3PFL345	1998 Acura 2.5LT - Lic. No. 6FJP275	XF439812C	Respondent Nguyen performed the inspection.
5. 3/29/2012 1215 hours to 1223 hours	2006 Dodge Charger - Lic. No. 6HNA601	1997 Ford Expedition - Lic. No. 6KCW614	XF439813C	Respondent Nguyen performed the inspection.

24  
25  
26 <sup>1</sup> "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of  
 27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in  
 28 compliance or are not present in the smog check area during the time of the certification.

<b>Date and Test Times</b>	<b>Vehicle Certified</b>	<b>Vehicle Actually Tested</b>	<b>Certificate Issued</b>	<b>Details</b>
6. 3/29/2012 1304 hours to 1311 hours	1985 Oldsmobile Ninety-Eight Regency - Lic. No. 2BDT475	2002 Dodge Intrepid - Lic. No. 5BZF587	XF439816C	Respondent Nguyen performed the inspection with the assistance of Alan Sayareh.
7. 3/29/2012 1330 hours to 1335 hours	1999 Volvo V70 AWD - No License Plate	2002 Dodge Intrepid - Lic. No. 5BZF587	XF439817C	Respondent Nguyen performed the inspection.
8. 3/29/2012 1357 hours to 1404 hours	1993 Chevrolet K1500 - Lic. No. 3CBP197	1997 Ford Expedition - Lic. No. 6KCW614	XF439819C	Respondent Nguyen performed the inspection.
9. 3/29/2012 1415 hours to 1423 hours	1988 Mazda B- Series - Lic. No. 3N18922	1991 Acura Legend - Lic. No. 4PCZ538	XF439820C	Respondent Nguyen performed the inspection. The Acura is registered to Nguyen.
10. 3/29/2012 1506 hours to 1513 hours	1998 Honda Civic - Lic. No. 6DMP106	2002 Dodge Intrepid - Lic. No. 5BZF587	XF439823C	Respondent Nguyen performed the smog inspection.
11. 3/29/2012 1554 hours to 1559 hours	1998 Ford Explorer - Lic. No. 6KXC152	1997 Ford Expedition - Lic. No. 6KCW614	XF439824C	Respondent Nguyen performed the inspection.
12. 3/29/2012 1626 hours to 1630 hours	2002 Nissan Altima - No License Plate	2002 Dodge Intrepid - Lic. No. 5BZF587	XF439827C	Respondent Nguyen performed the inspection.

**FIRST CAUSE FOR DISCIPLINE**

**(Misleading Statements)**

16. Respondent Ozone Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about March 29, 2012, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when Respondent Ozone Smog issued electronic certificates of compliance for the vehicles set

1 forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws  
2 and regulations when, in fact, those vehicles had been clean piped.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 17. Respondent Ozone Smog has subjected its registration to discipline under Code  
6 section 9884.7, subdivision (a)(4), in that on or about March 29, 2012, Respondent Ozone Smog  
7 committed acts which constitute fraud by issuing electronic certificates of compliance for the  
8 vehicles set forth in Table 1, above, without performing bona fide inspections of the emission  
9 control devices and systems on those vehicles, thereby depriving the People of the State of  
10 California of the protection afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 18. Respondent Ozone Smog has subjected its station license to discipline under Health  
14 and Safety Code section 44072.2, subdivision (a), in that on or about March 29, 2012, regarding  
15 the vehicles set forth in Table 1, above, it violated sections of that Code, as follows:

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

19 b. **Section 44015, subdivision (b):** Respondent Ozone Smog issued electronic  
20 certificates of compliance without properly testing and inspecting the vehicles to determine if  
21 they were in compliance with section 44012 of that Code.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

24 19. Respondent Ozone Smog has subjected its station license to discipline under Health  
25 and Safety Code section 44072.2, subdivision (c), in that on or about March 29, 2012, regarding  
26 the vehicles set forth in Table 1, above, Respondent Ozone Smog violated sections of the  
27 California Code of Regulations, title 16, as follows:

1 a. **Section 3340.35, subdivision (c):** Respondent Ozone Smog issued electronic  
2 certificates of compliance even though those vehicles had not been inspected in accordance with  
3 section 3340.42 of that Code.

4 b. **Section 3340.42:** Respondent Ozone Smog failed to conduct the required smog  
5 tests and inspections on those vehicles in accordance with the Bureau's specifications.

6 **FIFTH CAUSE FOR DISCIPLINE**

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

8 20. Respondent Ozone Smog has subjected its station license to discipline under Health  
9 and Safety Code section 44072.2, subdivision (d), in that on or about March 29, 2012, regarding  
10 the vehicles set forth in Table 1, above, Respondent Ozone Smog committed acts involving  
11 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of  
12 compliance for those vehicles without performing bona fide inspections of the emission control  
13 devices and systems on those vehicles, thereby depriving the People of the State of California of  
14 the protection afforded by the Motor Vehicle Inspection Program.

15 **SIXTH CAUSE FOR DISCIPLINE**

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

17 21. Respondent Nguyen has subjected his technician license to discipline under Health  
18 and Safety Code section 44072.2, subdivision (a), in that on or about March 29, 2012, regarding  
19 the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

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

23 b. **Section 44032:** Respondent Nguyen failed to perform tests of the emission  
24 control devices and systems on those vehicles in accordance with section 44012 of that Code, in  
25 that the vehicle had been clean piped.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent Nguyen has subjected his technician license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (c), in that on or about March 29, 2012, regarding  
5 the vehicles set forth in Table 1, above, he violated sections of the California Code of  
6 Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Nguyen failed to inspect and  
8 test those vehicles in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.41, subdivision (c):** Respondent Nguyen entered false  
10 information into the Emission Inspection System for the electronic certificates of compliance by  
11 entering vehicle emission control information for vehicles other than the vehicles being certified.

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

14 **EIGHTH CAUSE FOR DISCIPLINE**

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

16 23. Respondent Nguyen has subjected his technician license to discipline under Health  
17 and Safety Code section 44072.2, subdivision (d), in that on or about March 29, 2012, he  
18 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing  
19 electronic certificates of compliance for the vehicles set forth in Table 1, above, without  
20 performing bona fide inspections of the emission control devices and systems on those vehicles,  
21 thereby depriving the People of the State of California of the protection afforded by the Motor  
22 Vehicle Inspection Program.

23 **DISCIPLINARY CONSIDERATION**

24 24. To determine the level of discipline in this matter, the following should be  
25 considered:

26 a. On or about February 28, 2011, Citation No. C2011-0979 was issued against  
27 Respondent Ozone Smog for violation of section 44012, subdivision (f), of the Health and Safety  
28

1 Code and California Code of Regulations (“CCR”), title 16, section 3340.35, subdivision (c). The  
2 total penalty assessed was \$2,000.00.

3 b. On or about October 29, 2010, Citation No. C2011-0514 was issued against  
4 Respondent Ozone Smog for violation of section 44012, subdivision (f), of the Health and Safety  
5 Code and CCR, title 16, section 3340.35, subdivision (c). The total penalty assessed was  
6 \$1,500.00.

7 c. On or about July 15, 2010, Citation No. C2011-0062 was issued against  
8 Respondent Ozone Smog for violation of section 44012, subdivision (f), of the Health and Safety  
9 Code and CCR, title 16, section 3340.35, subdivision (c). The total fine assessed was \$1,000.00.

### 10 OTHER MATTERS

11 25. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,  
12 or may invalidate temporarily or permanently, the registrations for all places of business operated  
13 in this state by 1 Ozone Smog Corp., upon a finding that it has, or is, engaged in a course of  
14 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
15 dealer.

16 26. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station  
17 License Number TC 261939, issued to 1 Ozone Smog Corp., doing business as 1 Ozone Smog  
18 Corp., is revoked or suspended, any additional license issued under this chapter in the name of  
19 said licensee may be likewise revoked or suspended by the director.

20 27. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist  
21 Technician License Number EA 632673, issued to Jimmy Phi Nguyen, is revoked or suspended,  
22 any additional license issued under this chapter in the name of said licensee may be likewise  
23 revoked or suspended by the director.

### 24 PRAYER

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

27 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration  
28 Number ARD 261939, issued to 1 Ozone Smog Corp., doing business as 1 Ozone Smog Corp.,

- 1           2.     Revoking, suspending or placing on probation any other automotive repair dealer
- 2 registration issued in the name 1 Ozone Smog Corp.;
- 3           3.     Revoking or suspending Smog Check Test Only Station License Number TC 261939,
- 4 issued to 1 Ozone Smog Corp., doing business as 1 Ozone Smog Corp.;
- 5           4.     Revoking or suspending any additional license issued under Chapter 5 of the Health
- 6 and Safety Code in the name of 1 Ozone Smog Corp.;
- 7           5.     Revoking or suspending Advanced Emission Specialist Technician License Number
- 8 EA 632673, issued to Jimmy Phi Nguyen;
- 9           6.     Revoking or suspending any additional license issued under Chapter 5 of the Health
- 10 and Safety Code in the name of Jimmy Phi Nguyen;
- 11           7.     Ordering 1 Ozone Smog Corp., and Jimmy Phi Nguyen to pay the Bureau of
- 12 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
- 13 pursuant to Business and Professions Code section 125.3; and,
- 14           8.     Taking such other and further action as deemed necessary and proper.

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16  
17 DATED: JUNE 7, 2012

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