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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:
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14 **DELACRUZ SMOG ONLY**
15 **2495 Delacruz Blvd.**
16 **Santa Clara, CA 95050**
17 **HOANG HUY TRAN, Owner**
18 **Automotive Repair Dealer Registration No.**
19 **ARD 254099**
20 **Smog Check Test Only Station License No.**
21 **TC 254099**

22 **HOANG HUY TRAN**
23 **355 Colville Circle**
24 **San Jose, CA 95123**
25 **Advanced Emission Specialist Technician License**
26 **No. EA 150704**

27 Respondent.

Case No. 79/12-56

ACCUSATION
(Smog Check)

28 Sherry Mehl ("Complainant") alleges:

PARTIES

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

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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. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
7 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
8 proceeding against an automotive repair dealer or to render a decision invalidating a registration
9 temporarily or permanently.

10 7. Section 477(b) of the Code states that "license" includes certificate, registration or
11 other means to engage in a business or profession regulated by this code.

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

15 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

11. Section 44072.8 of the Health and Safety Code states:

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.

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1 statements which he knew or in the exercise of reasonable care should have known to be untrue or
2 misleading, as follows: Respondent certified that the vehicles set forth above in Tables 1 and 2,
3 had passed inspection and were in compliance with applicable laws and regulations. In fact,
4 Respondent conducted the inspections on those vehicles using the clean plugging method by
5 substituting or using different vehicles during the OBD II functional tests in order to issue smog
6 certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by
7 Health and Safety Code section 44012.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 17. Respondent's registration is subject to discipline pursuant to Code section
11 9884.7(a)(4), in that between January 7, 2010, and May 22, 2010, Respondent committed acts
12 which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth
13 above in Tables 1 and 2, without performing bona fide inspections of the emission control devices
14 and systems on those vehicles, thereby depriving the People of the State of California of the
15 protection afforded by the Motor Vehicle Inspection Program.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Motor Vehicle Inspection Program)**

18 18. Respondent's station license is subject to discipline pursuant to Health and Safety
19 Code section 44072.2(a), in that between January 7, 2010, and May 22, 2010, regarding vehicles
20 set forth above in Tables 1 and 2, Respondent failed to comply with the following sections of that
21 Code:

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

24 b. **Section 44015:** Respondent issued electronic certificates of compliance for vehicles
25 without ensuring that the vehicles were properly tested and inspected to determine if they were in
26 compliance with Health and Safety Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 19. Respondent's station license is subject to discipline pursuant to Health and Safety
5 Code section 44072.2(c), in that between January 7, 2010, and May 22, 2010, regarding the
6 vehicles set forth above in Tables 1 and 2, Respondent failed to comply with provisions of
7 California Code of Regulations, title 16, as follows:

8 a. **Section 3340.35(c)**: Respondent issued electronic certificates of compliance even
9 though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

12 **FIFTH CAUSE FOR DISCIPLINE**

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

14 20. Respondent's station license is subject to discipline pursuant to Health and Safety
15 Code section 44072.2(d), in that between January 7, 2010, and May 22, 2010, regarding the
16 vehicles set forth above in Tables 1 and 2, Respondent committed acts involving dishonesty,
17 fraud or deceit whereby another was injured by issuing electronic certificates of compliance for
18 those vehicles without performing bona fide inspections of the emission control devices and
19 systems on the vehicles, thereby depriving the People of the State of California of the protection
20 afforded by the Motor Vehicle Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**

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

23 21. Respondent's technician license is subject to discipline pursuant to Health and
24 Safety Code section 44072.2(a), in that between January 7, 2010, and May 22, 2010, regarding
25 the vehicles set forth above in Tables 1 and 2, he failed to comply with section 44012 of that
26 Code in a material respect, by failing to perform the emission control tests on those vehicles in
27 accordance with procedures prescribed by the department.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

4 22. Respondent's technician license is subject to discipline pursuant to Health and
5 Safety Code section 44072.2(c), in that between January 7, 2010, and May 22, 2010, regarding
6 the vehicles set forth above in Tables 1 and 2, he failed to comply with provisions of California
7 Code of Regulations, title 16, as follows:

8 a. **Section 3340.30(a)**: Respondent failed to inspect and test those vehicles in accordance
9 with Health and Safety Code sections 44012.

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

12 **EIGHTH CAUSE FOR DISCIPLINE**

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

14 23. Respondent's technician license is subject to discipline pursuant to Health and Safety
15 Code section 44072.2(d), in that between January 7, 2010, and May 22, 2010, regarding the
16 vehicles set forth above in Tables 1 and 2, he committed acts involving dishonesty, fraud or
17 deceit whereby another was injured by issuing electronic certificates of compliance without
18 performing bona fide inspections of the emission control devices and systems on those vehicles,
19 thereby depriving the People of the State of California of the protection afforded by the Motor
20 Vehicle Inspection Program.

21 **OTHER MATTERS**

22 24. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
23 probation the registrations for all places of business operated in this state by Hoang Huy Tran,
24 upon a finding that he has, or is, engaged in a course of repeated and willful violation of the laws
25 and regulations pertaining to an automotive repair dealer.

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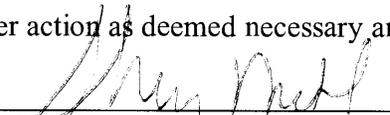
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7. Ordering Hoang Huy Tran to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 11/28/11


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

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