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

<p>11 In the Matter of the Accusation Against:</p> <p>12 JOHN ROOD SMOG & REPAIRS 13 JOHN DUNCAN ROOD, Partner 14 GAIL ANN ROOD, Partner 15 1050 17th Avenue, Unit A 16 Santa Cruz, CA 95062 17 Automotive Repair Dealer Registration No. ARD 18 127470 19 Smog Check Station License No. RC 127470</p> <p>20 JOHN DUNCAN ROOD 21 1050 17th Avenue, Unit A 22 Santa Cruz, CA 95062 23 Advanced Emission Specialist Technician License 24 No. EA 039705</p> <p>25 Respondents.</p>	<p>Case No. 79/12-147</p> <p>A C C U S A T I O N</p> <p>S M O G C H E C K</p>
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23 John Wallauch ("Complainant") alleges:

24 **PARTIES**

25 1. Complainant brings this Accusation solely in his official capacity as the Chief of the
26 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 44002 of the Health and Safety Code provides, in pertinent part, that the
7 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
8 the Motor Vehicle Inspection Program.

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

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

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

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

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

19 8. 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 9. 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.”

27 COST RECOVERY

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

1 **UNDERCOVER OPERATION - JULY 19, 2011**

2 11. On or about July 19, 2011, a Bureau undercover operator ("operator") drove a 1996
3 Ford Explorer to Respondent's facility and requested a smog inspection. As part of the Bureau's
4 documentation of the vehicle, the vehicle's positive crankcase ventilation ("PCV") system was
5 missing, rendering the vehicle incapable of passing the visual portion of the smog inspection.
6 Jason Rood, a licensed technician, performed the smog inspection on the vehicle and issued
7 electronic Certificate of Compliance Number OE673817, certifying that he had tested and
8 inspected the vehicle and that it was in compliance with applicable laws and regulations. In fact,
9 the vehicle could not have passed the visual portion of the smog inspection because the vehicle's
10 PCV system was missing.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 12. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
14 that on or about July 19, 2011, it made or authorized statements which it knew or in the exercise
15 of reasonable care should have known to be untrue or misleading by issuing electronic Certificate
16 of Compliance Number OE673817 for the 1996 Ford Explorer, certifying that the vehicle was in
17 compliance with applicable laws and regulations, when, in fact, the vehicle could not have passed
18 the visual portion of the smog inspection because the vehicle's PCV system was missing.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 13. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
22 that on or about July 19, 2011, it committed acts which constitute fraud by issuing electronic
23 Certificate of Compliance Number OE673817 for the 1996 Ford Explorer without performing a
24 bona fide inspection of the emission control devices and systems on the vehicle, thereby
25 depriving the People of the State of California of the protection afforded by the Motor Vehicle
26 Inspection Program.

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PRIOR DISCIPLINE

17. To determine the degree of discipline, if any, Complaint alleges the following:

Automotive Repair Dealer Registration No. ARD 127470
Smog Check Station License No. RC 127470

Citation No. C2011-1160, April 12, 2011

a. On or about April 12, 2011, the Bureau issued Citation No. C2011-1160 against Respondent's registration and station license for violations of Health and Safety Code section 44012(f) (failure to determine that emission control devices and systems required by State and Federal law were installed and functioning correctly in accordance with test procedures), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing Positive Crankcase Ventilation Valve. The Bureau assessed civil penalties totaling \$2,500 against Respondent for the violations. On or about June 1, 2011, the citation was appealed. A hearing date has been set for December 4, 2012.

Citation No. C2011-0366, October 1, 2010

b. On or about October 1, 2010, the Bureau issued Citation No. C2011-0366 against Respondent's registration and station license for violations of Health and Safety Code section 44012(f) (failure to determine that emission control devices and systems required by State and Federal law were installed and functioning correctly in accordance with test procedures), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing Pulse Secondary Air Injection System. The Bureau assessed civil penalties totaling \$1,500 against Respondent for the violations. On or about December 2, 2010, the citation was appealed. The appeal was withdrawn on August 8, 2011, and Respondent complied with this citation on August 12, 2011.

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1 **Citation No. C09-1438, June 29, 2009**

2 c. On or about June 29, 2009, the Bureau issued Citation No. C09-1438 against
3 Respondent's registration and station license for violations of Health and Safety Code section
4 44012(f) (failure to determine that emission control devices and systems required by State and
5 Federal law were installed and functioning correctly in accordance with test procedures), and
6 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to
7 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
8 vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil
9 penalties totaling \$500 against Respondent for the violations. Respondent complied with this
10 citation on August 12, 2009.

11 **Citation No. C08-0683, February 14, 2008**

12 d. On or about February 14, 2008, the Bureau issued Citation No. C08-0683 against
13 Respondent's registration and station license for violations of Health and Safety Code section
14 44012(f) (failure to determine that emission control devices and systems required by State and
15 Federal law were installed and functioning correctly in accordance with test procedures), and
16 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to
17 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
18 vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil
19 penalties totaling \$500 against Respondent for the violations. Respondent complied with this
20 citation on April 7, 2008.

21 **Citation No. C06-0460, February 3, 2006**

22 e. On or about February 3, 2006, the Bureau issued Citation No. C06-0460 against
23 Respondent's registration and station license for violations of Health and Safety Code section
24 44012(f) (failure to determine that emission control devices and systems required by State and
25 Federal law were installed and functioning correctly in accordance with test procedures), and
26 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to
27 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
28 vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil

1 penalties totaling \$500 against Respondent for the violations. Respondent complied with this
2 citation on March 25, 2006.

3 **Citation No. C03-0789, January 30, 2003**

4 f. On or about January 30, 2003, the Bureau issued Citation No. C03-0789 against
5 Respondent's registration and station license for violations of Health and Safety Code section
6 44012(f) (failure to determine that emission control devices and systems required by State and
7 Federal law were installed and functioning correctly in accordance with test procedures), and
8 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to
9 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
10 vehicle with a non-functional Exhaust Gas Recirculation system. The Bureau assessed civil
11 penalties totaling \$2,000 against Respondent for the violations. Respondent complied with this
12 citation on March 25, 2003.

13 **Citation No. C03-0518, October 28, 2002**

14 g. On or about October 28, 2002, the Bureau issued Citation No. C03-0518 against
15 Respondent's registration and station license for violations of Health and Safety Code section
16 44012(f) (failure to determine that emission control devices and systems required by State and
17 Federal law were installed and functioning correctly in accordance with test procedures), and
18 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to
19 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
20 vehicle with a non-functional Exhaust Gas Recirculation system. The Bureau assessed civil
21 penalties totaling \$1,000 against Respondent for the violations. Respondent complied with this
22 citation on December 12, 2002.

23 **Citation No. C03-0086, July 12, 2002**

24 h. On or about July 12, 2002, the Bureau issued Citation No. C03-0086 against
25 Respondent's registration and station license for violations of Health and Safety Code section
26 44012(f) (failure to determine that emission control devices and systems required by State and
27 Federal law were installed and functioning correctly in accordance with test procedures), and
28 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to

1 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
2 vehicle with incorrect ignition timing. The Bureau assessed civil penalties totaling \$500 against
3 Respondent for the violations. Respondent complied with this citation on August 27, 2002.

4 **OTHER MATTERS**

5 18. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
6 probation the registrations for all places of business operated in this state by John Duncan Rood
7 and Gail Ann Rood, Partners, upon a finding that it has, or is, engaged in a course of repeated and
8 willful violation of the laws and regulations pertaining to an automotive repair dealer.

9 19. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
10 License Number RC 127470, issued to John Duncan Rood and Gail Ann Rood, Partners, is
11 revoked or suspended, any additional license issued under this chapter in the name of said
12 licensees may be likewise revoked or suspended by the director.

13 20. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
14 Specialist Technician License Number EA 039705, issued to John Duncan Rood, is revoked or
15 suspended, any additional license issued under this chapter in the name of said licensee may be
16 likewise revoked or suspended by the director.

17 **PRAYER**

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

20 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
21 Registration No. ARD 127470, issued to John Duncan Rood and Gail Ann Rood, Partners, doing
22 business as John Rood Smog & Repairs;

23 2. Revoking, suspending, or placing on probation any other automotive repair dealer
24 registration issued to John Duncan Rood and/or Gail Ann Rood;

25 3. Revoking, suspending, or placing on probation Smog Check Station License
26 Number RC 127470, issued to John Duncan Rood and Gail Ann Rood, Partners, doing business
27 as John Rood Smog & Repairs;

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4. Revoking, suspending, or placing on probation Advanced Emission Specialist Technician License Number EA 039705, issued to John Duncan Rood;

5. Revoking, suspending, or placing on probation any additional license issued under chapter 5, of the Health and Safety Code in the name of John Duncan Rood and/or Gail Ann Rood;

6. Ordering John Duncan Rood and Gail Ann Rood 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,

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

DATED: May 29, 2012


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

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