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

21 **HOANG HUY TRAN**
22 **355 Colville Circle**
23 **San Jose, CA 95123**

24 **Smog Check Insepctor License No. EO 150704**
25 **Smog Check Repair Technician License No.**
26 **EI 150704 (formerly Advanced Emission Specialist**
27 **Technician License No. EA 150704)**

28 Respondent.

Case No. 79/12-56

FIRST AMENDED

A C C U S A T I O N

(Smog Check)

Patrick Dorais ("Complainant") alleges:

PARTIES

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

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1 (4) Any other conduct that constitutes fraud.

2 (6) Failure in any material respect to comply with the provisions of this
3 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
4 regulations adopted pursuant to it.

5 (b) Except as provided for in subdivision (c), if an automotive repair dealer
6 operates more than one place of business in this state, the director pursuant to
7 subdivision (a) shall only suspend, revoke, or place on probation the registration of
8 the specific place of business which has violated any of the provisions of this chapter.
9 This violation, or action by the director, shall not affect in any manner the right of the
10 automotive repair dealer to operate his or her other places of business.

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

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

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

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

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

26 The director may suspend, revoke, or take other disciplinary action against a
27 license as provided in this article if the licensee, or any partner, officer, or director
28 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 ("PCM") on nine (9) different vehicles. Vehicles 1 through 9, set forth below in Table 1, were all
2 certified with various pending codes stored in the PCM memory, while the Original Equipment
3 Manufacturer ("OEM") service information shows these vehicles do not support the pending
4 codes stored in the PCM memory. The vehicles receiving smog certificates were not tested
5 during the OBD II² functional test and another vehicle(s) was used, constituting clean plugging³.

6 16. In addition, on or about July 2, 2010, the Bureau conducted an additional review of
7 the VID for smog inspections performed at Respondent's facility on January 7, 2010. The review
8 showed that one (1) vehicle, set forth in Table 2, was certified with a pending code stored in the
9 PCM memory while the OEM service information showed the vehicle did not support the
10 pending code stored in the PCM memory. The vehicle received a smog certificate without being
11 tested during the OBD II functional test and another vehicle was used, constituting clean
12 plugging.

13 **TABLE 1**

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.	
14 1. 03/2/2010 1029 – 1045 hours	1996 Volkswagen Golf License No. 3RME741	NQ928124	
15 2. 03/15/2010 1609 – 1618 hours	1999 Mazda Miata License No. 4HDS236	NS190608	
16 3. 03/17/2010 1833 – 1840 hours	2003 Ford Crown Victoria License No. 8G44826	NS190631	
17 4. 04/2/2010 1244 – 1250 hours	1998 Nissan Sentra License No. 6GKC316	NS445768	
18 5. 04/3/2010 1410 – 1426 hours	1997 Nissan Pathfinder License No. 5AOA850	NS445776	
19 6. 04/3/2010	2003 Mini Cooper	NS445778	

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21
22 ² The On Board Diagnostics (OBD II) functional test is an automated function of the
23 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
24 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
25 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
26 information from the vehicle's on-board computer about the status of the readiness indicators,
27 trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
28 functional test, it will fail the overall inspection.

³ Clean plugging is the use of the OBD II readiness monitor status and stored fault code
(trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to
another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

1450 – 1459 hours	License No. 4ZSA128	
7. 04/23/2010 1802 – 1824 hours	1996 Toyota 4Runner License No. 3RST053	NS694187
8. 04/24/2010 1401 – 1411 hours	1999 Crown Victoria License No. 7J08808	NS694192
9. 05/22/2010 1301 – 1308 hours	1996 Ford Aerostar License No. 3SIC656	NU048195

TABLE 2

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.
1. 01/7/2010 1416 – 1425 hours	1998 Honda Civic License No. 4CXA943	NQ243957

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

17. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that between January 7, 2010, and May 22, 2010, Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that the vehicles set forth above in Tables 1 and 2, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using the clean plugging method by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

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

1 those vehicles without performing bona fide inspections of the emission control devices and
2 systems on the vehicles, thereby depriving the People of the State of California of the protection
3 afforded by the Motor Vehicle Inspection Program.

4 **SIXTH CAUSE FOR DISCIPLINE**

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

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

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12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Regulations Pursuant to the**
14 **Motor Vehicle Inspection Program)**

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

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

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

23 **EIGHTH CAUSE FOR DISCIPLINE**

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

25 24. Respondent's technician license(s) is subject to discipline pursuant to Health and
26 Safety Code section 44072.2(d), in that between January 7, 2010, and May 22, 2010, regarding
27 the vehicles set forth above in Tables 1 and 2, he committed acts involving dishonesty, fraud or
28 deceit whereby another was injured by issuing electronic certificates of compliance without

1 performing bona fide inspections of the emission control devices and systems on those vehicles,
2 thereby depriving the People of the State of California of the protection afforded by the Motor
3 Vehicle Inspection Program.

4 **OTHER MATTERS**

5 25. 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 Hoang Huy Tran,
7 upon a finding that he has, or is, engaged in a course of repeated and willful violation of the laws
8 and regulations pertaining to an automotive repair dealer.

9 26. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
10 Station License Number TC 254099, issued to Hoang Huy Tran, doing business as Delacruz
11 Smog Only, is revoked or suspended, any additional license issued under this chapter in the name
12 of said licensee may be likewise revoked or suspended by the director.

13 27. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
14 License No. EO 150704 and Smog Check Repair Technician License EI 150704, issued to Hoang
15 Huy Tran, are revoked or suspended, any additional license issued under this chapter in the name
16 of said licensee may be 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 or suspending Automotive Repair Dealer Registration No. ARD
21 254099, issued to Hoang Huy Tran, doing business as Delacruz Smog Only;

22 2. Revoking or suspending any other automotive repair dealer registration issued to
23 Hoang Huy Tran;

24 3. Revoking or suspending Smog Check Test Only Station License Number TC
25 254099, issued to Hoang Huy Tran, doing business as Delacruz Smog Only;

26 4. Revoking or suspending any additional license issued under Chapter 5 of the
27 Health and Safety Code in the name of Hoang Huy Tran;

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1 5. Revoking or suspending Smog Check Inspector License No. EO 150704 (formally
2 Advanced Emission Specialist Technician License Number EA 150704), issued to Hoang Huy
3 Tran;

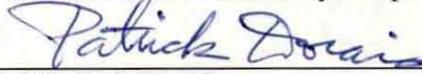
4 6. Revoking or suspending Smog Check Repair Technician License No. EI 150704
5 (formally Advanced Emission Specialist Technician License Number EA 150704), issued to
6 Hoang Huy Tran;

7 7. Revoking or suspending any additional license issued under Chapter 5 of the
8 Health and Safety Code in the name of Hoang Huy Tran;

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

11 9. Taking such other and further action as deemed necessary and proper.

12 DATED: August 9, 2013



PATRICK DORAIS
Acting Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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