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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:

Case No. 79/13-18

13 **JOE'S TEST ONLY SMOG; JOSEPH**
14 **ROBERT VANCE, SR., OWNER**
15 **15515 Bear Valley Road,**
16 **Hesperia, CA 92345**

ACCUSATION

(SMOG CHECK)

17 **Automotive Repair Dealer Registration**
18 **No. ARD 264291**
19 **Smog Check, Test Only, Station License No.**
20 **TC 264291,**

21 **JOSEPH ROBERT VANCE, SR.,**
22 **21444 Nisqually Road**
23 **Apple Valley, CA 92308**

24 **Advanced Emission Specialist Technician**
25 **License No. EA 142545, (to be redesignated**
26 **upon renewal as EO 142545 and/or EI**
27 **142545)**

28 Respondent.

Complainant alleges:

PARTIES

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

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

4 (4) Any other conduct which constitutes fraud.”

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

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

11 8. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations
12 shall be performed in accordance with procedures prescribed by the department.

13 9. Section 44014, subdivision (a), of the HSC provides that the testing and repair portion
14 of the smog check program shall be conducted only by licensed smog check technicians.

15 10. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance
16 shall be issued if a vehicle meets the requirements of HSC section 40012.

17 11. Section 44032 of the HSC provides, in pertinent part, that “[q]ualified technicians
18 shall perform tests of emission control devices and systems in accordance with Section 44012.”

19 12. Section 44059 of the HSC provides:

20 “The willful making of any false statement or entry with regard to a material matter in any
21 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
22 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
23 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

24 13. Section 44072.2 of the HSC states, in pertinent part:

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

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1 knowingly enter into the emissions inspection system any false information about the vehicle
2 being tested.”

3 19. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
4 procedures which apply to all vehicles inspected in the State of California.

5 20. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
6 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
7 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
8 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

9 **COST RECOVERY**

10 21. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board
11 “may request the administrative law judge to direct a licentiate found to have committed a
12 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
13 investigation and enforcement of the case.”

14 **VID DATA REVIEW-CLEAN PLUGGING**

15 22. The Bureau initiated an investigation against Respondent Vance based upon a review
16 of information from the Bureau's Vehicle Information Database ("VID"), which indicated that
17 Respondent may be engaging in fraudulent smog check activities.

18 23. On September 16, 2012, Alfred Denno (“Denno”), a representative of the Bureau,
19 conducted a detailed review of VID data for all smog inspections performed at Respondent
20 Vance's facility for the period of April 13, 2011 through July 31, 2012.

21 24. The data revealed that on or about January 18, 2012, between 1251 and 1302 hours, a
22 1996 Honda Accord, License No. 3PPY531 was inspected and issued Certificate of Compliance
23 #XD155013C by Respondent Vance. The BAR 97 inspection detail for this test shows that DTC
24 P1404 was stored in the PCM memory at the time of the certification. Service information shows
25 that code DTC P1404 is not supported by a 1996 Honda Accord.

26 25. On or about January 30, 2012, between 1716 and 1720 hours, a 2003 Chevrolet C2500
27 Silverado, License No. 7S97079 was inspected and issued Certificate of Compliance
28 #XD322287C by Respondent Vance. The BAR 97 inspection detail for this test shows that DTC

1 P1521 was stored in the PCM memory at the time of the certification. Service information shows
2 that code DTC P1521 is not supported by a 2003 Chevrolet C2500 Silverado.

3 26. On or about March 7, 2012, between 1045 and 1050 hours, a 1996 Plymouth Neon,
4 License No. 5YMN012 was inspected and issued Certificate of Compliance #XF092012C by
5 Respondent Vance. The BAR 97 inspection detail for this test shows that DTC P1506 was stored
6 in the PCM memory at the time of the certification. Service information shows that code DTC
7 P1506 is not supported by a 1996 Plymouth Neon.

8 27. On or about March 7, 2012, between 1056 and 1100 hours, a 2000 Honda Civic
9 License No. 6HNV723 was inspected and issued Certificate of Compliance #XF092013C by
10 Respondent Vance. The BAR 97 inspection detail for this test shows that DTC P1506 was stored
11 in the PCM memory at the time of the certification. Service information shows that code DTC
12 P1506 is not supported by a 2000 Honda Civic.

13 28. On or about July 31, 2012, between 1252 and 1302 hours, a 2000 Toyota Tundra
14 License No. 6J07833 was inspected and issued Certificate of Compliance # XJ549696C by
15 Respondent Vance. The BAR 97 inspection detail for this test shows that DTC P0108 was stored
16 in the PCM memory at the time of the certification. Service information shows that code DTC
17 P0108 is not supported by a 2000 Toyota Tundra.

18 29. The Bureau concluded that Respondent Vance performed the smog inspections on the
19 five vehicles using a different vehicle during the OBD II tests, a method known as "clean
20 plugging",² resulting in the issuance of fraudulent certificates of compliance for the vehicles. The
21 following chart ("Table 1") summarizes the clean plugging activities discovered by Bureau
22 Representative Denno's analysis of the Joe's Test Only Smog, VID data for April 13, 2011
23 through July 31, 2012:

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25 ² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
28 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

Table 1

Test Date and Time	Vehicle Certified & License No.	Certificate No.	Details
01/18/2012 1251-1302 hours	1996 Honda Accord 3PPY531	XD155013C	Inapplicable trouble code P1404 detected; vehicle certified by respondent Vance.
01/30/2012 1716-1720 hours	2003 Chevy C2500 7S97079	XD322287C	Inapplicable trouble code P1521 detected; vehicle certified by respondent Vance.
03/07/2012 1045-1050 hours	1996 Plymouth Neon 5YMN012	XF092012C	Inapplicable trouble code P1506 detected; vehicle certified by respondent Vance.
03/07/2012 1056-1100 hours	2000 Honda Civic 6HNV723	XF092013C	Inapplicable trouble code P1506 detected; vehicle certified by respondent Vance.
07/31/2012 1252-1302 hours	2000 Toyota Tundra 6J07833	XJ549696C	Inapplicable trouble code P0108 detected; vehicle certified by respondent Vance.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

30. Respondent Joe's Test Only Smog, Joseph Robert Vance, Sr. , owner, has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1 above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had not been so inspected.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

31. Respondent Joe's Test Only Smog, Joseph Robert Vance, Sr. , owner, has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(4), in that he committed

1 acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set
2 forth in Table 1 above, without performing bona fide inspections of the emission control devices
3 and systems on those vehicles, thereby depriving the People of the State of California of the
4 protection afforded by the Motor Vehicle Inspection Program.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Material Violation of Automotive Repair Act)**

7 32. Respondent Joe's Test Only Smog, Joseph Robert Vance, Sr. , owner, has subjected
8 his registration to discipline under BPC section 9884.7, subdivision (a)(6), in that he failed in a
9 "material respect to comply with the provisions of this chapter or regulations adopted pursuant to
10 it" when he issued electronic certificates of compliance for the vehicles set forth in Table 1 above,
11 without performing bona fide inspections of the emission control devices and systems on those
12 vehicles, thereby depriving the People of the State of California of the protection afforded by the
13 Motor Vehicle Inspection Program.

14 **FOURTH CAUSE FOR DISCIPLINE**

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

16 33. Respondent Joe's Test Only Smog, Joseph Robert Vance, Sr. , owner, has subjected
17 his station license to discipline under HSC section 44072.2, subdivision (a), in that, with respect
18 to the vehicles set forth in Table 1 above, Respondent violated the following sections of the HSC:

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

21 b. **Section 44015, subdivision (b):** Respondent Vance issued electronic certificates of
22 compliance without properly testing and inspecting the vehicles to determine if they were in
23 compliance with section 44012 of the HSC.

24 e. **Section 44059:** Respondent Vance willfully made false entries for the electronic
25 certificates of compliance by certifying that those vehicles had been inspected as required when,
26 in fact, they had not.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 34. Respondent Joe's Test Only Smog, Joseph Robert Vance, Sr. , owner, has subjected
4 his station license to discipline under HSC section 44072.2, subdivision (c), in that, with respect
5 to the vehicles set forth in Table 1 above, Respondent violated the following sections of title 16 of
6 the CCR:

7 a. **Section 3340.24, subdivision (c):** Respondent Vance falsely or fraudulently issued
8 electronic certificates of compliance without performing bona fide inspections of the emission
9 control devices and systems on those vehicles as required by HSC section 44012.

10 c. **Section 3340.35, subdivision (c):** Respondent Vance issued electronic certificates of
11 compliance even though those vehicles had not been inspected in accordance with section
12 3340.42 of the HSC.

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

15 **SIXTH CAUSE FOR DISCIPLINE**

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

17 35. Respondent Joe's Test Only Smog, Joseph Robert Vance, Sr. , owner, has subjected
18 his station license to discipline under HSC section 44072.2, subdivision (d), in that, with respect
19 to the vehicles set forth in Table 1 above, Respondent committed acts involving dishonesty, fraud
20 or deceit whereby another was injured by issuing electronic certificates of compliance for those
21 vehicles without performing bona fide inspections of the emission control devices and systems on
22 those vehicles, thereby depriving the People of the State of California of the protection afforded
23 by the Motor Vehicle Inspection Program.

24 **SEVENTH CAUSE FOR DISCIPLINE**

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

26 36. Respondent Vance has subjected his technician license(s) to discipline under HSC
27 section 44072.2, subdivision (a), in that he violated the following sections of the HSC with
28 respect to the vehicles set forth in Table 1 above:

1 a. **Section 44012:** Respondent Vance failed to ensure that the emission control tests
2 were performed on those vehicles in accordance with procedures prescribed by the department.

3 b. **Section 44032:** Respondent Vance failed to perform tests of the emission control
4 devices and systems on those vehicles in accordance with section 44012 of the HSC, in that the
5 vehicles had been clean plugged.

6 c. **Section 44059:** Respondent Vance willfully made false entries for the electronic
7 certificates of compliance by certifying that those vehicles had been inspected as required when,
8 in fact, they had not.

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

11 37. Respondent Vance has subjected his technician license(s) to discipline under HSC
12 section 44072.2, subdivision (c), in that he violated the following sections of the CCR, title 16,
13 with respect to the vehicles set forth in Table 1 above:

14 a. **Section 3340.24, subdivision (c):** Respondent Vance falsely or fraudulently issued
15 electronic certificates of compliance without performing bona fide inspections of the emission
16 control devices and systems on those vehicles as required by HSC section 44012.

17 b. **Section 3340.30, subdivision (a):** Respondent Vance failed to inspect and test those
18 vehicles in accordance with HSC section 44012.

19 c. **Section 3340.41, subdivision (c):** Respondent Vance entered false information into
20 the EIS for the electronic certificates of compliance by entering vehicle emission control
21 information for vehicles other than the vehicles being certified.

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

24 **NINTH CAUSE FOR DISCIPLINE**

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

26 38. Respondent Vance has subjected his technician license(s) to discipline under HSC
27 section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit
28 whereby another was injured by issuing electronic certificates of compliance for the vehicles set

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

4 **OTHER MATTERS**

5 39. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
6 suspend, revoke, or place on probation the registration for all places of business operated in this
7 state by Respondent Joe's Test Only Smog, Joseph Robert Vance, Sr., owner, upon a finding that
8 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
9 regulations pertaining to an automotive repair dealer.

10 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
11 License Number TC 264291, issued to Respondent Joe's Test Only Smog, Joseph Robert Vance,
12 Sr., owner, is revoked or suspended, any additional license issued under this chapter in the name
13 of said licensee may be likewise revoked or suspended by the director.

14 41. Pursuant to Health & Saf. Code sections 44072.8, if Respondent Joseph Robert
15 Vance, Sr.'s Advanced Emission Specialist Technician License currently designated as EA
16 142545 and as redesignated upon timely renewal as EO 142545 and/or EI 142545, is revoked or
17 suspended, any additional license issued under this chapter in the name of said licensee may be
18 likewise revoked or suspended by the director.

19 **PRAAYER**

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

22 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
23 264291, issued to Joe's Test Only Smog, Joseph Robert Vance, Sr.;

24 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
25 264291, issued to Joe's Test Only Smog, Joseph Robert Vance, Sr.;

26 3. Revoking or suspending Joseph Robert Vance, Sr.'s Advanced Emission Specialist
27 Technician License currently designated as EA 142545, and as redesignated upon timely renewal
28 as EO 142545 and/or EI 142545;

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4. Ordering Joseph Robert Vance, Sr. 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;

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

DATED: May 9, 2013



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