

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

Received in BAR EPO
SEP 14 2015

In the Matter of the Accusation Against:

O2 SMOG TEST ONLY CENTER
DAT THANH TRUONG, Owner
234 El Camino Real
Redwood City, CA 94062

Automotive Repair Dealer Registration No.
ARD 264304
Smog Check Test Only Station License No.
TC 264304

and

DAT THANH TRUONG
2150 Monterey Highway, 1
San Jose, CA 95112

429 Coyote Road
San Jose, CA 95111

Smog Check Inspector License No. EO
152275

Smog Check Repair Technician License No.
EI 152275 (formerly Advanced Emission
Specialist Technician License No. EA
152275)

Respondents.

Case No. 79/15-16

OAH No. 2015020928


DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective October 1, 2015.

The suspension of Smog Check Inspector License No. EO 152275 and Smog Check Repair Technician License No. EI 152275, issued to Dat Thanh Truong, shall commence on the effective date of this Decision.

DATED: September 9, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
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Attorneys for Complainant

8
9 **BEFORE THE**
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. 79/15-16

13
14 **O2 SMOG TEST ONLY CENTER**
DAT THANH TRUONG, OWNER
15 **234 El Camino Real**
Redwood City, CA 94062

OAH No. 2015020928

16 **AUTOMOTIVE REPAIR DEALER**
REGISTRATION NO. ARD 264304
17 **SMOG CHECK TEST ONLY STATION LICENSE**
18 **NO. TC 264304**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19 **AND**

20 **DAT THANH TRUONG**
2150 Monterey Highway, 1
21 **San Jose, CA 95112**

22 **429 Coyote Road**
San Jose CA 95111

23 **SMOG CHECK INSPECTOR LICENSE NO. EO**
152275

24 **SMOG CHECK REPAIR TECHNICIAN LICENSE**
NO. EI 152275

25 **(FORMERLY ADVANCED EMISSION SPECIALIST**
26 **TECHNICIAN LICENSE NO. EA 152275)**

27 Respondents.

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He
5 brought this action solely in his official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Sheila J. Vasantharam, Deputy Attorney
7 General.

8 2. Respondent Dat Thanh Truong (Respondent) is represented in this proceeding by
9 attorney Michael B. Levin, whose address is: 3727 Camino del Rio South, Ste. 200
10 San Diego, CA 92108

11 **Respondent O2 Smog**

12 3. On or about March 8, 2011, the Bureau of Automotive Repair issued Automotive
13 Repair Dealer Registration Number ARD 264304 to O2 Smog Test Only Center, Dat Thanh
14 Truong, Owner (Respondent O2 Smog). The Automotive Repair Dealer Registration was in full
15 force and effect at all times relevant to the charges brought in this Accusation. The registration
16 expired on March 31, 2012, and was not renewed.

17 4. On or about March 28, 2011, the Bureau of Automotive Repair issued Smog Check
18 Test Only Station License Number TC 264304 to Respondent O2 Smog. The Smog Check Test
19 Only Station License was in full force and effect at all times relevant to the charges brought in
20 this Accusation. The station license was suspended on May 30, 2012, and cancelled on May 3,
21 2015.

22 **Respondent Truong**

23 5. In or about 2006, the Director issued Advanced Emission Specialist Technician
24 License Number EA 152275 to Dat Thanh Truong (Respondent Truong). Respondent Truong's
25 advanced emission specialist technician license expired on September 30, 2012. Pursuant to
26 California Code of Regulations, title 16, section 3340.28, subdivision (e), and pursuant to
27 Respondent Truong's election, the license was renewed as Smog Check Inspector License No. EO
28

1 152275 and Smog Check Repair Technician License No. EI 152275, effective October 8, 2012.¹
2 Respondent's smog check inspector license and smog check repair technician license (technician
3 licenses) will expire on September 30, 2016, unless renewed.

4 JURISDICTION

5 6. Accusation No. 79/15-16 was filed before the Director of Consumer Affairs
6 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
7 Respondent. The Accusation and all other statutorily required documents were properly served
8 on Respondent on August 8, 2014. Respondent timely filed his Notice of Defense contesting the
9 Accusation.

10 7. A copy of Accusation No. 79/15-16 is attached as Exhibit A and incorporated herein
11 by reference.

12 ADVISEMENT AND WAIVERS

13 8. Respondents have carefully read, fully discussed with counsel, and understand the
14 charges and allegations in Accusation No. 79/15-16. Respondents have also carefully read, fully
15 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
16 Order.

17 9. Respondents are fully aware of their legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
19 their own expense; the right to confront and cross-examine the witnesses against them; the right
20 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
21 compel the attendance of witnesses and the production of documents; the right to reconsideration
22 and court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 10. Respondents voluntarily, knowingly, and intelligently waive and give up each and
25 every right set forth above.

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30
27 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license
28 and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair
Technician (EI) license.

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

3 17. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Director may, without further notice or formal proceeding, issue and enter the following
5 Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration Number ARD
8 264304 issued to O2 Smog Test Only Center, Dat Thanh Truong Owner (Respondent O2 Smog),
9 and Smog Check Test Only Station License Number TC 264304 issued to Respondent O2 Smog
10 are revoked.

11 IT IS HEREBY ALSO ORDERED that Automotive Repair Dealer Registration Number
12 ARD 264304 issued to O2 Smog Test Only Center, Dat Thanh Truong Owner (Respondent O2
13 Smog), and Smog Check Test Only Station License Number TC 264304 issued to Respondent O2
14 Smog shall comply with Citation Number C2012-1310 in the amount of \$1,500.00 within 30 days
15 of this decision and order.

16 IT IS HEREBY ALSO ORDERED that Smog Check Inspector License No. EO 152275
17 issued to Dat Thanh Truong (Respondent Truong) and Smog Check Repair Technician License
18 No. EI 152275 issued to Respondent Truong are revoked. However, the revocation is stayed and
19 Respondent Truong is placed on probation for three (3) years on the following terms and
20 conditions.

21 1. **Actual Suspension.** Smog Check Inspector License No. EO 152275 issued to
22 Respondent Truong is suspended for 15 days. Smog Check Repair Technician License No. EI
23 152275 issued to Respondent Truong is suspended for 15 days.

24 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
25 automotive inspections, estimates and repairs.

26 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
27 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
28 conspicuously displayed in a location open to and frequented by customers and shall remain

1 posted during the entire period of actual suspension.

2 4. **Reporting.** Respondent Truong or Respondent Truong's authorized representative
3 must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a
4 schedule set by the Bureau, but no more frequently than each quarter, on the methods used and
5 success achieved in maintaining compliance with the terms and conditions of probation.

6 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
7 any financial interest which any partners, officers, or owners of Respondent Truong's facility may
8 have in any other business required to be registered pursuant to Section 9884.6 of the Business
9 and Professions Code.

10 6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
11 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

12 7. **Jurisdiction.** If an accusation is filed against Respondent Truong during the term of
13 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
14 until the final decision on the accusation, and the period of probation shall be extended until such
15 decision.

16 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
17 Respondent Truong has failed to comply with the terms and conditions of probation, the
18 Department may, after giving notice and opportunity to be heard suspend or revoke the license.

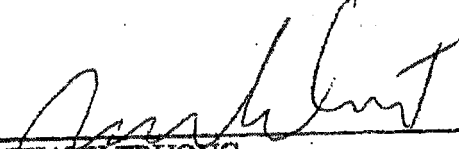
19 9. **Continuing Education Courses.** During the period of probation, Respondent
20 Truong shall attend and successfully complete a Smog Check Inspector Training Level 1 course.
21 The course shall be 68 hours long. The course shall be completed and proof of completion
22 submitted to the Bureau within 180 days of the effective date of this decision and order. If proof
23 of completion of the course is not furnished to the Bureau within the 180-day period, Respondent
24 Truong's licenses shall be immediately suspended until such proof is received.

25 10. **Cost Recovery.** Respondent shall reimburse the Bureau its full investigation and
26 prosecution costs in the amount of \$8,657.21. Cost recovery shall be made payable in (24)
27 twenty four consecutive, equal monthly installments, with the first payment due within 30 days of
28 the effective date of the Decision. Final payment shall be received no later than (12) twelve

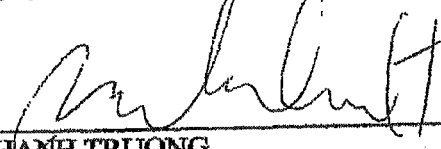
1 months before probation terminates. Failure to complete payment of cost recovery within this
2 time frame shall constitute a violation of probation which may subject Respondent Truong's
3 licenses to outright revocation; however, the Director or the Director's Bureau of Automotive
4 Repair designee may elect to continue probation until such time as reimbursement of the entire
5 cost recovery amount has been made to the Bureau.

6 ACCEPTANCE

7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
8 discussed it with my attorney, Michael B. Levin. I understand the stipulation and the effect it will
9 have on my Automotive Repair Dealer Registration and Smog Check Test Only Station License.
10 I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
11 intelligently, and agree to be bound by the Decision and Order of the Director of Consumer
12 Affairs.


13
14 DATED: 05/28/15 
15 DAT THANH TRUONG
16 On Behalf of Respondent O2 Smog
Respondent

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
18 discussed it with my attorney, Michael B. Levin. I understand the stipulation and the effect it will
19 have on my Smog Check Inspector License and Smog Check Repair Technician License. I enter
20 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
21 and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

22
23 DATED: 05/28/15 
24 DAT THANH TRUONG
Respondent

25 ///
26 ///
27 ///
28 ///

1 I have read and fully discussed with Respondent Dat Thanh Truong the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: 6/2/15 
6 Michael B. Levin
7 Attorney for Respondent

8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Director of Consumer Affairs

11 Dated: 6/2/15 Respectfully submitted,
12 KAMALA D. HARRIS
13 Attorney General of California
14 DIANN SOKOLOFF
15 Supervising Deputy Attorney General

16 
17 SHEILA J. VASANTHARAM
18 Deputy Attorney General
19 Attorneys for Complainant

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Exhibit A

Accusation No. 79/15-16

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
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7 *Attorneys for Complainant*

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 **O2 SMOG TEST ONLY CENTER**
14 **DAT THANH TRUONG, OWNER**
234 EL CAMINO REAL
15 **REDWOOD CITY, CA 94062**
16 **AUTOMOTIVE REPAIR DEALER**
17 **REGISTRATION No. ARD 264304**
18 **SMOG STATION TEST ONLY LICENSE NO. TC**
19 **264304**
20 **AND**
21 **DAT THANH TRUONG**
2150 Monterey Highway, 1
22 **San Jose, CA 95112**
429 Coyote Road
23 **San Jose CA 95111**
24 **Smog Check Inspector License No. EO**
152275
25 **Smog Check Repair Technician License No.**
EI 152275
26 **(formerly Advanced Emission Specialist**
Technician License No. EA 152275)
Respondent.

Case No. 79/15-16

ACCUSATION
(SMOG CHECK)

27 Complainant alleges:
28

1 PARTIES

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

4 **Respondent O2 Smog**

5 2. On or about March 8, 2011, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 264304 to O2 Smog Test Only Center, Dat Thanh
7 Truong, Owner (Respondent O2 Smog). The Automotive Repair Dealer Registration
8 (registration) was in full force and effect at all times relevant to the charges brought in this
9 Accusation. The registration expired on March 31, 2012, and was not renewed.

10 3. On or about March 28, 2011, the Bureau of Automotive Repair issued Smog Check
11 Test Only Station License Number TC 264304 to Respondent O2 Smog. The Smog Check Test
12 Only Station License (station license) was in full force and effect at all times relevant to the
13 charges brought in this Accusation. The station license expired on March 31, 2012, was not
14 renewed, and was suspended on May 30, 2012.

15 **Respondent Truong**

16 3. In or about 2006, the Director issued Advanced Emission Specialist Technician
17 License Number EA 152275 to Dat Thanh Truong (Respondent Truong). Respondent Truong's
18 advanced emission specialist technician license expired on September 30, 2012. Pursuant to
19 California Code of Regulations, title 16, section 3340.28, subdivision (e), and pursuant to
20 Respondent Truong's election, the license was renewed as Smog Check Inspector License No. EO
21 152275 and Smog Check Repair Technician License No. EI 152275, effective October 8, 2012.¹
22 Respondent's smog check inspector license and smog check repair technician license (technician
23 licenses) will expire on September 30, 2016, unless renewed.

24 ///

25
26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 automotive repair dealer or any automotive technician, employee, partner, officer, or
2 member of the automotive repair dealer.

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

6 ...

7 (4) Any other conduct that constitutes fraud.

8 ...

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

11 9. Health and Safety Code Section 44012 states, in part:

12 The test at the smog check stations shall be performed in accordance with
13 procedures prescribed by the department, pursuant to Section 44013, shall require, at
14 a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed
15 testing in all other program areas, and shall ensure all of the following:

16 ...

17 (f) A visual or functional check is made of emission control devices specified
18 by the department, including the catalytic converter in those instances in which the
19 department determines it to be necessary to meet the findings of Section 44001. The
20 visual or functional check shall be performed in accordance with procedures
21 prescribed by the department.

22 10. Health and Safety Code Section 44015, subdivision (b), states that "[i]f a vehicle
23 meets the requirements of Section 44012, a smog check station licensed to issue certificates shall
24 issue a certificate of compliance or a certificate of noncompliance."

25 11. Health and Safety Code section 44032 states:

26 No person shall perform, for compensation, tests or repairs of emission control
27 devices or systems of motor vehicles required by this chapter unless the person
28 performing the test or repair is a qualified smog check technician and the test or repair
is performed at a licensed smog check station. Qualified technicians shall perform
tests of emission control devices and systems in accordance with Section 44012.

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12. Health and Safety Code section 44050, subdivision (e), states:

Failure to comply with an order of abatement or payment of an administrative fine issued by the department pursuant to this section is grounds for suspension or revocation of the license, or placing the licensee on probation.

13. Health and Safety Code Section 44072.2 states, in part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director 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.

...

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

14. Health and Safety Code section 44072.8 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.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 3340.30 states, in part:

A smog check technician shall comply with the following requirements at all times while licensed.

(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

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16. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

17. California Code of Regulations, title 16, section 3340.42, states, in part:

Smog check stations and smog check technicians shall conduct tests and inspections in accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in subsections (a) and (b) of Section 3340.17

COST RECOVERY

18. Code section 125.3 provides, in 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.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Citation)

19. Respondent O2 Smog's registration is subject to discipline because it failed to comply with an order to pay an administrative fine issued by the department. (Health & Saf. Code, § 44050, subd. (e).)

20. On or about April 3, 2012, the Bureau issued Citation No. C2012-1310 to Respondent O2 Smog against its registration and station license for failing to perform a visual/functional check of emission control devices according to procedures described by the department (Health & Saf. Code, §44012, subd. (f)). The citation assessed a civil penalty of \$1,500.00 against Respondent O2 Smog. Respondent O2 Smog did not pay the civil penalty to the Bureau and did not file with the Bureau an appeal of the citation.

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1 hour training course. That Citation is now final and is incorporated by reference as if fully set
2 forth.

3 30. To determine the degree of discipline, if any, to be imposed on Respondent Truong,
4 Complainant alleges that on or about November 2, 2011, in a prior action, the Bureau of
5 Automotive Repair issued Citation Number M2012-0399 and ordered Respondent Truong to
6 complete a 16-hour training course. That Citation is now final and is incorporated by reference as
7 if fully set forth.

8 31. To determine the degree of discipline, if any, to be imposed on Respondent Truong,
9 Complainant alleges that on or about April 3, 2012, in a prior action, the Bureau of Automotive
10 Repair issued Citation Number M2012-1311 and ordered Respondent Truong to complete a 68-
11 hour training course. That Citation is now final and is incorporated by reference as if fully set
12 forth.

13 **OTHER MATTERS**

14 32. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
15 or permanently or refuse to validate, the registrations for all places of business operated in this
16 state to O2 Smog Test Only Center, Dat Thanh Truong, Owner, upon a finding that it has, or is,
17 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
18 automotive repair dealer.

19 33. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
20 License Number TC 264304, issued to O2 Smog Test Only Center, Dat Thanh Truong, Owner, is
21 revoked or suspended, any additional license issued under this chapter in the name of said
22 licensee may likewise be suspended or revoked.

23 34. Under Health and Safety Code section 44072.8, if Smog Check Inspector License No.
24 EO 152275 and/or Smog Check Repair Technician License No. EI 152275 issued to Dat Thanh
25 Truong are revoked or suspended, any additional license issued under this chapter in the name of
26 said licensee may likewise be suspended or revoked.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 264304, issued to O2 Smog Test Only Center, Dat Thanh Truong, Owner;
2. Revoking or suspending any other automotive repair dealer registration issued in the name O2 Smog Test Only Center, Dat Thanh Truong, Owner;
3. Revoking or suspending Smog Check Test Only Station License Number TC 264304, issued to O2 Smog Test Only Center, Dat Thanh Truong, Owner;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of O2 Smog Test Only Center, Dat Thanh Truong, Owner;
5. Revoking or suspending Smog Check Inspector License Number EO 152275, issued to Dat Thanh Truong;
6. Revoking or suspending Smog Check Repair Technician License Number EI 152275, issued to Dat Thanh Truong;
7. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Dat Thanh Truong;
8. Ordering O2 Smog Test Only, Dat Thanh Truong, Owner, and Dat Thanh Truong, technician, 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; and
9. Taking such other and further action as deemed necessary and proper.

DATED: August 7, 2014


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

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