

1 XAVIER BECERRA
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 LESLIE A. WALDEN
Deputy Attorney General
4 State Bar No. 196882
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6293
6 Facsimile: (916) 731-2126
Attorneys for Complainant
7

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. 79/20-10755

13 **TRUNG D. TRAN - OWNER DBA T AND**
14 **D SMOG TEST**
15 **13332 Prairie Ave**
16 **Hawthorne, CA 90250**
17 **Automotive Repair Dealer Registration No.**
ARD 284163
Smog Check, Test Only, Station License No.
TC 284163

FIRST AMENDED ACCUSATION

18 **FRANK DAVIS ROSALES**
19 **1441 E. 53rd St.**
20 **Los Angeles, CA 90011**
21 **Smog Check Inspector License No. EO**
640847
Smog Check Repair Technician License
Number EI 640847

22 **and**

23 **TRUNG D. TRAN**
24 **3417 Lombardo Dr.**
25 **Santa Ana, CA 92704**
Smog Check Inspector License No. EO
639108

26 Respondents..
27
28

1 **PARTIES**

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

5 **Trung D. Tran – Owner dba T and D Smog Test**

6 **Automotive Repair Dealer Registration**

7 2. On or about July 7, 2016, the Bureau of Automotive Repair issued Automotive
8 Repair Dealer Registration Number ARD 284163 to Trung D. Tran - Owner dba T and D Smog
9 Test (Respondent TandD). The Automotive Repair Dealer Registration was in full force and
10 effect at all times relevant to the charges brought herein and will expire on July 31, 2021, unless
11 renewed.

12 **Smog Check, Test Only, Station License**

13 3. On or about July 26, 2016, the Bureau of Automotive Repair issued Smog Check
14 Test Only Station License Number TC 284163 to Respondent TandD. The Smog Check Test
15 Only Station License was in full force and effect at all times relevant to the charges brought
16 herein and will expire on July 31, 2021, unless renewed.

17 **STAR Station Certification**

18 4. On or about October 18, 2016, the Bureau of Automotive Repair issued STAR
19 Station Number 284163 to Respondent TandD.

20 **Frank Davis Rosales**

21 **Smog Check Inspector/Technician License**

22 5. On or about January 8, 2018, the Bureau of Automotive Repair issued Smog Check
23 Inspector License Number EO 640847 to Frank Davis Rosales (Respondent Rosales). The Smog
24 Check Inspector License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2021, unless renewed.

26 6. On or about September 6, 2018, the Bureau of Automotive Repair issued Smog
27 Check Repair Technician License Number EI 640847 to Respondent Rosales. The Smog Check
28 Repair Technician License expired on October 31, 2020, and has not been renewed.

1
2 **Trung Dang Tran**

3 **Inspector License**

4 7. On or about March 21, 2016, the Bureau of Automotive Repair issued Smog Check
5 Inspector License Number EO 639108 to Trung Dang Tran (Respondent Tran). The Smog Check
6 Inspector License was in full force and effect at all times relevant to the charges brought herein
7 and will expire on February 28, 2022, unless renewed.

8 **JURISDICTION**

9 8. Section 9884.7 of the Code states:

10 (a) The director, where the automotive repair dealer cannot show there was a
11 bona fide error, may deny, suspend, revoke, or place on probation the registration of
12 an automotive repair dealer for any of the following acts or omissions related to the
13 conduct of the business of the automotive repair dealer, which are done by the
14 automotive repair dealer or any automotive technician, employee, partner, officer, or
15 member of the automotive repair dealer.

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

19 (2) Causing or allowing a customer to sign any work order that does not state
20 the repairs requested by the customer or the automobile's odometer reading at the
21 time of repair.

22 (3) Failing or refusing to give to a customer a copy of any document requiring
23 his or her signature, as soon as the customer signs the document.

24 (4) Any other conduct which constitutes fraud.

25 (5) Conduct constituting gross negligence.

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

28 (7) Any willful departure from or disregard of accepted trade standards for good
and workmanlike repair in any material respect, which is prejudicial to another
without consent of the owner or his or her duly authorized representative.

(8) Making false promises of a character likely to influence, persuade, or induce
a customer to authorize the repair, service, or maintenance of automobiles.

(9) Having repair work done by someone other than the dealer or his or her
employees without the knowledge or consent of the customer unless the dealer can
demonstrate that the customer could not reasonably have been notified.

(10) Conviction of a violation of Section 551 of the Penal Code.

1 Upon denying of registration, the director shall notify the applicant thereof, in
2 writing, by personal service or mail addressed to the address of the applicant set forth
3 in the application, and the applicant shall be given a hearing under Section 9884.12 if,
4 within 30 days thereafter, he or she files with the bureau a written request for hearing,
5 otherwise the denial is deemed affirmed.

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

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

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

21 10. Section 477 of the Code provides, in pertinent part, that Board includes bureau,
22 commission, committee, department, division, examining committee, program, and agency.
23 License includes certificate, registration or other means to engage in a business or profession
24 regulated by the Code.

25 11. Section 490 of the Code provides, in pertinent part, that a board may suspend or
26 revoke a license when it finds that the licensee has been convicted of a crime substantially related
27 to the qualifications, functions or duties of the business or profession for which the license was
28 issued.

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

32 13. Section 44072.2 of the Health and Safety Code states:

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

36 (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.

(b) Is convicted of any crime substantially related to the qualifications, functions, and duties of the licenseholder in question.

(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.

(e) Has misrepresented a material fact in obtaining a license.

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection.

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

14. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the 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.

STATUTORY PROVISIONS

15. Section 9884.7 of the Code states:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

...

(4) Any other conduct which constitutes fraud.

...

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

16. Section 44012 of the Health and Safety Code states:

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

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

17. Section 44015 of the Health and Safety Code states:

...

(b) If a vehicle meets the requirements of Section 44012, a smog check station

1 licensed to issue certificates shall issue a certificate of compliance or a certificate of
2 noncompliance.

3

4 18. Section 44032 of the Health and Safety Code states:

5 No person shall perform, for compensation, tests or repairs of emission control
6 devices or systems of motor vehicles required by this chapter unless the person
7 performing the test or repair is a qualified smog check technician and the test or
8 repair is performed at a licensed smog check station. Qualified technicians shall
9 perform tests of emission control devices and systems in accordance with Section
10 44012.

11 19. Section 44059 of the Health and Safety Code states:

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

17 **REGULATORY PROVISIONS**

18 California Code of Regulations, title 16, section 3340.30, states:

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

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

24

25 20. California Code of Regulations, title 16, section 3340.35, states:

26 ...

27 (c) A licensed station shall issue a certificate of compliance or noncompliance
28 to the owner or operator of any vehicle that has been inspected in accordance with the
procedures specified in section 3340.42 of this article and has all the required
emission control equipment and devices installed and functioning correctly. The
following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by
the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

....

21. California Code of Regulations, title 16, section 3340.41, states:

...

1 (c) No person shall enter into the emissions inspection system any vehicle
2 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.

3

4 22. California Code of Regulations, title 16, section 3373, states:

5 No automotive repair dealer or individual in charge shall, in filling out an
6 estimate, invoice, or work order, or record required to be maintained by section
3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
7 information which will cause any such document to be false or misleading, or where
the tendency or effect thereby would be to mislead or deceive customers, prospective
8 customers, or the public.

9 **COST RECOVERY**

10 23. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 **FACTUAL ALLEGATIONS**

17 24. On or about September 1, 2020, a Bureau Representative conducted a detailed review
18 of the VID data for Smog Check inspections performed at Respondent TandD. The review
19 showed a pattern of vehicle's being certified without transmitting eVIN's when they were
20 expected to be transmitted, in addition to communication protocols and PID amounts that do not
21 match the expected protocols or PID amounts for the vehicles being certified. This confirms the
22 vehicles receiving smog certificates were not tested during the OBD II functional test, which
constitutes clean plugging.

23 25. In the review, the Bureau Representative referenced at a minimum, the following
24 data/information:

25 a. DMV VIN: VIN number of the vehicle entered or scanned by the Smog
26 Inspector;

27 b. Cert ID: Smog Check Certificate number issued;
28

- c. eVIN: Digitally stored VIN number in the vehicle PCM and identified by the OIS;
- d. Protocol: The "type" of communication that was established with the vehicle by the OIS;
- e. PID Count: The number of Parameter Identification (PID's) available from the vehicle computer(s) used for diagnostic data received by the OIS; and
- f. Similar or "Like" Vehicles: Data for similar vehicles is derived and compiled from tests conducted statewide on vehicles that have certain matching VIN characters.

26. The Bureau Representative's comprehensive review into the Smog Check activities at Respondent TandD revealed thirteen (13) Smog Check Certificates of Compliance that were fraudulently issued to vehicles using the clean plugging method. The following table summarizes the fraudulent Smog Check Certificates of Compliance issued by Respondent TandD and the vehicles fraudulently certified under the license of Smog Check Inspector Respondent Rosales.

	Vehicle Year	Vehicle Make	Vehicle Model	License or VIN #	eVIN Transmitted	Reported Protocol	Expected Protocol	Reported PIDs	Expected PIDs	Certificate Issued	Smog Check Inspector
1.	2005	Honda	Civic Hybrid	6ZAK310	Expected, Not Reported	I914	I914	16	4 18 7 or 4 19 7	RE227420C	Frank Davis Rosales, EO 640847
2.	2006	Nissan	Xterra Off Road	5TJT665	Expected, Not Reported	I914	I914	16	22	RE381582C	Frank Davis Rosales, EO 640847
3.	2007	Honda	Pilot EXL	7FZE570	Expected, Not Reported	I914	I914	16	24	RE381586C	Frank Davis Rosales, EO 640847
4.	2004	Ford	Econoline E350 Super Duty Van	00388E1	Expected, Not Reported	JVPW	JPWM	15	22 or 23	RG837589C	Frank Davis Rosales, EO 640847
5.	2006	Honda	Accord EX	5SQT040	Expected, Not Reported	I914	I914	16	21	RK675838C	Frank Davis Rosales, EO 640847
6.	2004	Ford	Expedition XLT	5HZG972	Expected, Not Reported	JVPW	JPWM	15	22	RK675842C	Frank Davis Rosales, EO 640847
7.	2005	Toyota	Camry LE	5MNE461	Expected, Not Reported	I914	I914	16	17 or 18	RM318641C	Frank Davis Rosales, EO 640847
8.	2006	Honda	Accord LX	8BNY484	Expected, Not Reported	I914	I914	16	21	RM318642C	Frank Davis Rosales, EO 640847

9.	2004	GMC	Sierra K2500 Heavy Duty	7M42884	Expected, Not Reported	JVPW	JVPW	15	12 2	RO053780C	Frank Davis Rosales, EO 640847
10.	2005	BMW	325 CI SULEV	7LOY567	Expected, Not Reported	I914	I914	16	22 1 or 22 8	R0235287C	Frank Davis Rosales, EO 640847
11.	2006	Dodge	Caravan SXT	7NOJ952	Expected, Not Reported	JVPW	JVPW	15	17 3 or 18 3	RO732911C	Frank Davis Rosales, EO 640847
12.	2001	GMC	Yukon XL C1500	5KIA166	Expected, Not Reported	JVPW	JVPW	16	22	RO896325C	Frank Davis Rosales, EO 640847
13.	2003	Jaguar	S-Type	7AAM555	Expected, Not Reported	I914	I914	16	25	RO896332C	Frank Davis Rosales, EO 640847

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements against Respondent TandD)

27. Respondent TandD's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that between January 19, 2020, through August 30, 2020, Respondent TandD 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 TandD certified that vehicles 1 through 13, set forth above in paragraph 26, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent TandD conducted the inspections on the vehicles using the clean plugging method by substituting or using different vehicles or another source during the OBD II functional tests in order to issue smog certificates of compliance for the thirteen (13) vehicles, and did not test or inspect the thirteen (13) vehicles as required by Health and Safety Code section 44012.

28. Additional facts and circumstances surrounding these allegations are set forth in paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

SECOND CAUSE FOR DISCIPLINE

(Fraud against Respondent TandD)

29. Respondent TandD's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that between January 19, 2020, through August 30, 2020, Respondent TandD committed acts which constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 13, set forth above in paragraph 26, without performing

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

4 30. Additional facts and circumstances surrounding these allegations are set for in
5 paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with the Motor Vehicle Inspection Program against Respondent TandD)**

8 31. Respondent TandD's Smog Check, Test Only, Station License is subject to discipline
9 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between January 19,
10 2020, through August 30, 2020, regarding vehicles 1 through 13, set forth above in paragraph 26,
11 Respondent TandD failed to comply with the following sections of that Code:

12 a. **Section 44012:** Respondent TandD failed to ensure that the emission control tests were
13 performed on vehicles 1 through 13, in accordance with procedures prescribed by the department.

14 b. **Section 44015:** Respondent TandD issued electronic smog certificates of compliance
15 for vehicles 1 through 13, without ensuring that the vehicles were properly tested and inspected to
16 determine if they were in compliance with Health and Safety Code section 44012.

17 c. **Section 44059:** Respondent TandD willfully made false entries for the electronic smog
18 certificates of compliance by certifying that those vehicles had been inspected as required when,
19 in fact, they had not.

20 32. Additional facts and circumstances surrounding these allegations are set for in
21 paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations Pursuant to the
24 Motor Vehicle Inspection Program against Respondent TandD)**

25 33. Respondent TandD's Smog Check, Test Only, Station License is subject to discipline
26 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between January 19,
27 2020, through August 30, 2020, regarding vehicles 1 through 13, set forth above in Paragraph 26,
28

Respondent TandD failed to comply with provisions of California Code of Regulations, title 16, as follows:

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

34. Additional facts and circumstances surrounding these allegations are set for in paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit against Respondent TandD)

35. Respondent TandD's Smog Check, Test Only, Station License is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that between January 19, 2020, through August 30, 2020, regarding vehicles 1 through 13, set forth above in Paragraph 26, Respondent TandD committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

36. Additional facts and circumstances surrounding these allegations are set for in paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program against Respondent Rosales)

37. Respondent Rosales's inspector license and repair technician license are subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between January 19, 2020, through August 30, 2020, regarding vehicles 1 through 13, set forth above in Paragraph 26, he failed to comply with section 44012 of that Code in a material respect, as follows: Respondent Rosales failed to perform the emission control tests on those vehicles in accordance with procedures prescribed by the department.

1 38. Additional facts and circumstances surrounding these allegations are set for in
2 paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations Pursuant to the**
5 **Motor Vehicle Inspection Program against Respondent Rosales)**

6 39. Respondent Rosales's inspector license and repair technician license are subject to
7 discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between
8 January 19, 2020, through August 30, 2020, regarding vehicles 1 through 13, set forth above in
9 Paragraph 26, he failed to comply with provisions of California Code of Regulations, title 16, as
10 follows:

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

13 c. **Section 3340.41 subdivision (c)**: Respondent Rosales entered into the emissions
14 inspection system vehicle identification information or emission control system identification
15 data for vehicles other than those being tested and/or knowingly entered false information about
16 the vehicles being tested.

17 40. Additional facts and circumstances surrounding these allegations are set for in
18 paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations Pursuant to the**
21 **Motor Vehicle Inspection Program against Respondent Rosales)**

22 41. Respondent Rosales's inspector license and repair technician license are subject to
23 discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between
24 January 19, 2020, through August 30, 2020, regarding vehicles 1 through 13, set forth above in
25 paragraph 26, Respondent Rosales failed to comply with the following sections of that Code:

26 a. **Section 44012**: Respondent Rosales failed to ensure that the emission control tests were
27 performed on vehicles 1 through 13, in accordance with procedures prescribed by the department.
28

b. **Section 44032:** Respondent Rosales failed to perform tests of emission control devices and systems in accordance with section 44012.

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

42. Additional facts and circumstances surrounding these allegations are set for in paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit against Respondent Rosales)

43. Respondent Rosales's inspector license and repair technician license are subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that between January 19, 2020, through August 30, 2020, regarding vehicles 1 through 13, set forth above in Paragraph 26, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of compliance 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.

44. Additional facts and circumstances surrounding these allegations are set for in paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

TENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit against Respondent Tran)

45. Respondent Tran's inspector license and repair technician license are subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that between January 19, 2020, through August 30, 2020, regarding vehicles 1 through 13, set forth above in Paragraph 26, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 46. Additional facts and circumstances surrounding these allegations are set for in
4 paragraphs 24 through 26 above, and are incorporated herein as though set forth in full.

5 **OTHER MATTERS**

6 47. Pursuant to Code section 9884.7, subdivision (c), the director may suspend revoke,
7 or place on probation the registrations for all places of business operated in this state by Trung D.
8 Tran, owner, upon a finding that he has, or is, engaged in a course of repeated and willful
9 violation of the laws and regulations pertaining to an automotive repair dealer.

10 48. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,
11 Station License Number TC 284163, issued to Trung D. Tran, owner, doing business as T and D
12 Smog Test, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of
13 Div 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or
14 suspended by the director.

15 49. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
16 License No. EO 640847 and Smog Check Repair Technician License Number EI 640847
17 (formerly Advanced Emission Specialist Technician License Number EA 640847), issued to
18 Frank Davis Rosales, is revoked or suspended, any additional license issued under Chapter 5 of
19 Part 5 of Div 26 of the Health and Safety Code in the name of said licensee may be likewise
20 revoked or suspended by the director.

21 50. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
22 License No. EO 639108, issued to Trung D. Tran, is revoked or suspended, any additional license
23 issued under Chapter 5 of Part 5 of Div. 26 of the Health and Safety Code in the name of said
24 licensee may be likewise revoked or suspended by the director.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of the Department of Consumer Affairs issue a
28 decision:

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
- 2 284163, issued to Trung D. Tran - owner dba T and D Smog Test;
- 3 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
- 4 Trung D. Tran;
- 5 3. Revoking or suspending Smog Check, Test Only TC 284163 issued to Trung D. Tran;
- 6 4. Revoking or suspending Smog Check Inspector License Number EO 640847, issued
- 7 to Frank Davis Rosales;
- 8 5. Revoking or suspending Smog Check Repair Technician License Number EI 640847,
- 9 issued to Frank Davis Rosales;
- 10 6. Revoking or suspending Smog Check Inspector License Number EO 639108, issued
- 11 to Trung Dang Tran;
- 12 7. Ordering Trung D. Tran – owner dba T and D Smog Test, Frank Davis Rosales and
- 13 Trung Dang Tran to pay the Bureau of Automotive Repair the reasonable costs of the
- 14 investigation and enforcement of this case, pursuant to Business and Professions Code section
- 15 125.3;
- 16 8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
- 17 Div. 26 of the Health and Safety Code in the name of Trung D. Tran;
- 18 9. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
- 19 Div. 26 of the Health and Safety Code in the name of Frank Davis Rosales; and
- 20 10. Taking such other and further action as deemed necessary and proper.

21 DATED: January 22, 2021

Signature on file

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

26 LA2020603180
27 63807821.docx