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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. 79/21-12217

13 **EASON Y. XIE, OWNER, DBA ALOSTA**
14 **SMOG TEST ONLY CENTER**
15 1027 East Route 66 Unit A
Glendora, CA 91740

ACCUSATION

16 Mailing Address:
17 1721 South Stoneman Ave
Alhambra, CA 91801

18 Automotive Repair Dealer Registration No.
ARD 254154
19 Smog Check, Test Only Station License No.
TC 254154,
20

and

21 **ANDY DUONG**
22 4331 Maxson Rd
El Monte, CA 91732

23 Smog Check Inspector License No.
24 EO 640930,

25 Respondents.
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1 **PARTIES**

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

4 2. On or about March 20, 2008, the Bureau of Automotive Repair (“Bureau”) issued
5 Automotive Repair Dealer Registration Number ARD 254154 to Eason Y. Xie (“Respondent
6 Xie”), doing business as Alostia Smog Test Only Center. The Automotive Repair Dealer
7 Registration was in full force and effect at all times relevant to the charges brought herein and will
8 expire on March 31, 2022, unless renewed.

9 3. On or about April 25, 2008, the Bureau issued Smog Check Test Only Station License
10 Number TC 254154 to Respondent Xie, doing business as Alostia Smog Test Only Center. The
11 Smog Check Test Only Station License will expire on March 31, 2022, unless renewed.

12 4. On or about February 20, 2018, the Bureau issued Smog Check Inspector License
13 Number EO 640930 to Andy Duong (“Respondent Duong”). The Smog Check Inspector License
14 was in full force and effect at all times relevant to the charges brought herein and will expire on
15 October 31, 2023, unless renewed.

16 **JURISDICTION**

17 5. This Accusation is brought before the Director of the Department of Consumer Affairs
18 (“Director”) for the Bureau of Automotive Repair, under the authority of the following laws.

19 6. Business and Professions Code section 118, subdivision (b), provides that suspension,
20 expiration, surrender, or cancellation of a license shall not deprive the Director of jurisdiction to
21 proceed with a disciplinary action during the period within which the license may be renewed,
22 restored, reissued or reinstated.

23 7. Business and Professions Code section 477 provides, in pertinent part, that “Board”
24 includes “bureau,” “commission,” “committee,” “department,” “division,” “examining
25 committee,” “program,” and “agency.” “License” includes certificate, registration or other means
26 to engage in a business or profession regulated by the Business and Professions Code.

27 8. Business and Professions Code section 9884.7 provides that the Director may revoke
28 an automotive repair dealer registration.

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

3 ...

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

9 14. Health and Safety Code section 44012 provides, in pertinent part, that tests at smog
10 check stations shall be performed in accordance with procedures prescribed by the department.

11 15. Health and Safety Code section 44015, subdivision (b), provides that a certificate of
12 compliance shall be issued if a vehicle meets the requirements of Health and Safety Code section
13 44012.

14 16. Section 44032 of the Health and Safety Code states:

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

21 17. Health and Safety Code section 44072.2 states, in pertinent part:

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

25 (a) Violates any section of this chapter [the Motor Vehicle
26 Inspection Program (Health and Safety Code § 44000, et seq.)] and
27 the regulations adopted pursuant to it, which related to the licensed
28 activities.

...
29

(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.

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

1 18. Health and Safety Code section 44072.10 states, in pertinent part:

2

3 (c) The department shall revoke the license of any smog check
4 technician or station licensee who fraudulently certifies vehicles or
5 participates in the fraudulent inspection of vehicles. A fraudulent
inspection includes, but is not limited to, all of the following:

6 (1) Clean piping, as defined by the department

7 (2) Tampering with a vehicle emission control system or test
8 analyzer system.

9 (3) Tampering with a vehicle in a manner that would cause the
vehicle to falsely pass or falsely fail an inspection.

10 (4) Intentional or willful violation of this chapter or any
11 regulation, standard, or procedure of the department implementing
12 this chapter

13 **REGULATORY PROVISIONS**

14 19. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

15 The bureau may suspend or revoke the license of or pursue other legal
16 action against a licensee, if the licensee falsely or fraudulently issues or
obtains a certificate of compliance or a certificate of noncompliance.

17
18 20. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

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

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

24 . . .

25 21. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:

26 A licensed station shall issue a certificate of compliance or noncompliance
27 to the owner or operator of any vehicle that has been inspected in accordance
28 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. . . .

1 22. California Code of Regulations, title 16, section 3340.41, states, in pertinent part:

2 ...

3 (c) No person shall enter into the emissions inspection system any vehicle
4 identification information or emission control system identification data
5 for any vehicle other than the one being tested. Nor shall any person
6 knowingly enter into the emissions inspection system any false
7 information about the vehicle being tested.

8 ...

9 23. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions
10 test methods and procedures which apply to all vehicles inspected in the State of California.

11 24. California Code of Regulations, title 16, section 3340.45, states:

12 (a) All Smog Check inspections shall be performed in accordance with
13 requirements and procedures prescribed in the following:

14 (1) Smog Check Manual, dated 2013, which is hereby
15 incorporated by reference. This manual became effective on or
16 after January 1, 2013. This manual shall remain in effect until
17 subparagraph (2) is implemented.

18 (2) Smog Check Manual, dated November 2, 2017, which is
19 hereby incorporated by reference. This manual shall become
20 effective on August 2, 2018.

21 **COST RECOVERY**

22 25. Business and Professions Code section 125.3 provides, in pertinent part, that the Board
23 may request the administrative law judge to direct a licentiate found to have committed a violation
24 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
25 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
26 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may
27 be included in a stipulated settlement.

28 **CALIFORNIA AUTOMOTIVE REPAIR ACT AND SMOG CHECK PROGRAM**

29 26. California's Smog Check Program requires most vehicles in the State to undergo a
30 smog check inspection every two years or when the vehicle's title is transferred.

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1 ***Inspection of Pre-2000 Model Year Vehicles***

2 27. A smog check inspection of a pre-2000 model year vehicle includes three parts:
3 visual, functional, and tailpipe. Technicians are required to perform the test in accordance with the
4 Smog Check Manual. Technicians are required to enter the results of the inspection into the
5 Emission Inspection System (EIS), which determines whether a vehicle passed the inspection
6 based on the results of the tailpipe, visual, and functional tests. A vehicle must pass all three parts
7 to pass the overall inspection and receive a Certificate of Compliance. The Certificate of
8 Compliance is then transmitted electronically to the Vehicle Information Database.

9 28. In the visual portion, the technician inspects the emission control components to
10 verify that the required emission control devices are present and properly connected.

11 29. The functional test includes checking the malfunction indicator light. On-Board
12 Diagnostics (OBD) is a term used to describe a vehicle’s computer system that controls the
13 emission control, along with many other features. This system includes self-diagnostic and
14 reporting functions. OBD systems monitor the vehicle’s emission control system performance and
15 notify the driver when defects that cause an increase in air pollution are identified.

16 a. For vehicles pre-1996 model year, the technician must also check the
17 ignition timing and Exhaust Gas Recirculation system, conduct a low pressure test of the
18 evaporative emissions controls, conduct a visible smoke test, and conduct a pressure test of the
19 fuel cap.

20 b. For vehicles that are 1996 model year or newer, the functional test is
21 performed using the vehicle’s OBD II system. During an OBD II functional test, the technician is
22 required to connect a test cable from the BAR-97 analyzer to a Diagnostic Link Connector, located
23 in the passenger compartment, which outputs information from the vehicle’s on-board computer
24 about the status of readiness indicators, trouble codes, and the malfunction indicator light.

25 30. The tailpipe inspection requires different testing equipment based on the area where
26 the vehicle is registered: Enhanced Areas, Basic Areas, and Change of Ownership Areas.

27 a. Acceleration Simulation Mode Inspection: Pre-2000 model year vehicles
28 registered in Enhanced Areas require an Acceleration Simulation Mode (ASM) inspection, which

1 is performed using an EIS, also known as a BAR-97. The EIS is a computer based, five-gas
2 analyzer that measures Hydrocarbons (HC), Carbon Monoxide (CO), Nitrogen Oxide (NO_x),
3 Carbon Dioxide (CO₂) and Oxygen (O₂). The ASM inspection entails two loaded mode sequences
4 (i.e., “Mode 1” and “Mode 2”) that measure the vehicle's tailpipe emissions on a dynamometer.
5 The vehicle’s drive wheels are placed onto rollers, and the vehicle is driven at speeds of 15 miles
6 per hour during Mode 1 of the ASM and 25 miles per hour during Mode 2 of the ASM. The
7 purpose of the ASM inspection is to simulate driving conditions while the emissions are sampled
8 and measured by the EIS.

9 b. Two Speed Idle Inspection: Pre-2000 model year vehicles registered in
10 Basic Areas or Change Ownership Areas, and vehicles that are incompatible with the ASM
11 inspection¹, require a Two Speed Idle (TSI) inspection. Rather than applying a load to the vehicle's
12 drive wheels with a dynamometer, the EIS measures the emissions of HC, CO, O₂, and CO₂ at two
13 test sequences—2500 revolutions per minute and idle.

14 31. Carbon Dioxide (CO₂) is a byproduct of most combustion processes and any level
15 of emissions will not result in a failing smog check. The measurement is meant as a diagnostic tool
16 for inspectors. Oxygen (O₂) is necessary for engine combustion to occur. High levels of O₂ in the
17 exhaust indicate a problem with the catalytic converter, but any level of O₂ emissions will not
18 result in failing smog check. The measurement is meant as a diagnostic tool for inspectors. Carbon
19 Monoxide (CO) is a pollutant and is often the byproduct of an overly rich fuel mixture. Unhealthy
20 CO emissions will result in a vehicle failing smog check. Hydrocarbon (HC), a pollutant, is
21 unburned fuel. High levels of HC emissions indicate incomplete fuel combustion, either as the
22 result of a misfire or low engine compression, and result in a vehicle failing its smog check.
23 Nitrogen Oxide (NO_x) is a pollutant that results from excessive engine combustion chamber
24 temperature, which could be caused by a lean fuel mixture, advanced timing, carbon buildup,
25 malfunctioning EGR, or a malfunctioning engine cooling system. Unhealthy levels of NO_x
26 emissions result in a vehicle failing its smog inspection.

27 _____
28 ¹ Vehicles that are incompatible with the ASM, such as all-wheel drive vehicles are vehicles with
traction control issues, must receive the Two Speed Idle (TSI) test.

1 around September 18, 2021, he and/or his employees committed acts that constitute fraud by
2 issuing electronic certificates of compliance for two vehicles, as described above in paragraph 33,
3 without performing bona fide inspections of the emission control devices and systems on those
4 vehicles, thereby depriving the People of the State of California of the protection afforded by the
5 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
6 allegations contained in paragraph 33, above, as though set forth fully herein.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Material Violation of Automotive Repair Act:**

9 **Respondent Xie - Automotive Repair Dealer Registration**

10 35. Respondent Xie's Automotive Repair Dealer Registration is subject to disciplinary
11 action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), in that, on or
12 around September 18, 2021, he and/or his employees failed in a material respect to comply with
13 the provisions of this chapter or regulations adopted pursuant to it when he issued electronic
14 certificates of compliance for two vehicles, as described above in paragraph 33, without
15 performing bona fide inspections of the emission control devices and systems on those vehicles,
16 thereby depriving the People of the State of California of the protection afforded by the Motor
17 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
18 allegations contained in paragraph 33, above, as though set forth fully herein.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements:**

21 **Automotive Repair Dealer Registration - Respondent Xie)**

22 36. Respondent Xie's Automotive Repair Dealer Registration is subject to disciplinary
23 action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that, on or
24 around September 18, 2021, Respondent Xie made or authorized statements which he knew or in
25 the exercise of reasonable care should have known to be untrue or misleading when he certified
26 that the two vehicles, as described above in paragraph 33, had passed inspection and were in
27 compliance with applicable laws and regulations, when in fact they were not. Complainant refers
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1 to, and by this reference incorporates, the allegations contained in paragraph 33, above, as though
2 set forth fully herein.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program:**

5 **Respondent Xie - Smog Check Test Only Station License)**

6 37. Respondent Xie's Smog Check Test Only Station License is subject to disciplinary
7 action pursuant to Health & Safety Code section 44072.2, subdivision (a), in that, on or around
8 September 18, 2021, he failed to comply with the following sections of that Code:

9 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
10 performed on two vehicles, as described in paragraph 33 above, in accordance with procedures
11 prescribed by the department; and

12 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates
13 of compliance for two vehicles, as described in paragraph 33 above, without ensuring that the
14 vehicles were properly tested and inspected to determine if they were in compliance with Health
15 & Safety Code section 44012.

16 Complainant refers to, and by this reference incorporates, the allegations contained in
17 paragraph 33, above, as though set forth fully herein.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program:**

20 **Respondent Xie - Smog Check Test Only Station License)**

21 38. Respondent Xie's Smog Check Test Only Station License is subject to disciplinary
22 action pursuant to Health & Safety Code section 44072.2, subdivision (c), in that, on or around
23 September 18, 2021, he failed to comply with provisions of California Code of Regulations, title
24 16, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
26 electronic smog certificates of compliance for two vehicles as described in paragraph 33 above;

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program:**

3 **Respondent Duong - Smog Check Inspector License)**

4 40. Respondent Duong’s Smog Check Inspector License is subject to disciplinary action
5 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that, on or around September
6 18, 2021, he failed to comply with the following sections of that code:

7 a. **Section 44032:** Respondent failed to ensure that the emission control tests were
8 performed on two vehicles, as described in paragraph 33 above, in accordance with Health &
9 Safety Code section 44012; and

10 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates
11 of compliance for two vehicles, as described in paragraph 33 above, without ensuring that the
12 vehicles were properly tested and inspected to determine if they were in compliance with Health
13 & Safety Code section 44012.

14 Complainant refers to, and by this reference incorporates, the allegations contained in
15 paragraph 33, above, as though set forth fully herein.

16 **EIGHTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program:**

18 **Respondent Duong - Smog Check Inspector License)**

19 41. Respondent Duong’s Smog Check Inspector License is subject to disciplinary action
20 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that, on or around September
21 18, 2021, he failed to comply with provisions of California Code of Regulations, title 16, as
22 follows:

23 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
24 electronic smog certificates of compliance for two vehicles as described in paragraph 33 above;

25 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test two
26 vehicles, as described in paragraph 33 above, in accordance with Health & Safety Code sections
27 44012 and 44035, and California Code of Regulations, title 16, section 3340.42;

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1 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false
2 information into the emissions inspection system for two vehicles as described in paragraph 33
3 above; and

4 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections
5 conducted on two vehicles, as described in paragraph 33 above, were done in accordance with the
6 Bureau's specifications.

7 Complainant refers to, and by this reference incorporates, the allegations contained in
8 paragraph 33, above, as though set forth fully herein.

9 **NINTH CAUSE FOR DISCIPLINE**

10 **(Dishonesty, Fraud or Deceit: Respondent Duong - Smog Check Inspector License)**

11 42. Respondent Duong's Smog Check Inspector License is subject to disciplinary action
12 pursuant to Health & Safety Code section 44072.2, subdivision (d), in conjunction with Health &
13 Safety Code section 44072.10, subdivision (c), in that, on or around September 18, 2021, he
14 committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing
15 electronic smog certificates of compliance for two vehicles, as described in paragraph 33 above,
16 without performing bona fide inspections of the emission control devices and systems on the
17 vehicles, thereby depriving the People of the State of California of the protection afforded by the
18 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
19 allegations contained in paragraph 33, above, as though set forth fully herein.

20 **OTHER MATTERS**

21 43. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the
22 Director may suspend, revoke, or place on probation the registration for all places of business
23 operated in this state by Respondent Eason Y. Xie, upon a finding that he has, or is, engaged in a
24 course of repeated and willful violations of the laws and regulations pertaining to an automotive
25 repair dealer.

26 44. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
27 License No. TC 254154, issued to Respondent Eason Y. Xie, is revoked or suspended, any
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1 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Safety Code in
2 the name of said licensee may be likewise revoked or suspended by the director.

3 45. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
4 Number EO 640930, issued to Respondent Andy Duong, is revoked or suspended, any additional
5 license issued under Chapter 5 of Part 5 of Division 26 of the Health & Safety Code in the name
6 of said licensee may be likewise revoked or suspended by the director.

7 **DISCIPLINE CONSIDERATIONS**

8 46. To determine the degree of discipline, if any, to be imposed on Respondent Eason Y.
9 Xie, Complainant alleges that on or about October 15, 2008, in a prior action, the Bureau of
10 Automotive Repair issued Citation No. C09-358 to Eason Y. Xie doing business as Alosta Smog
11 Test Only Center for issuing a Certificate of Compliance to a Bureau documented vehicle with a
12 missing evaporative canister. Respondent was ordered to pay \$500.00. On or around November
13 20, 2008, a Citation Service Conferenced was held. Payment was received on December 3, 2008.
14 Citation No. C09-358 is now final.

15 47. To determine the degree of discipline, if any, to be imposed on Respondent Eason Y.
16 Xie, Complainant alleges that on or about August 3, 2011, in a prior action, the Bureau of
17 Automotive Repair issued Citation No. C2012-121 to Eason Y. Xie doing business as Alosta Smog
18 Test Only Center issuing a Certificate of Compliance to a Bureau documented vehicle with a
19 missing evaporative charcoal canister. Respondent was ordered to pay \$1,500.00. On or around
20 August 23, 2011, a Citation Service Conferenced was held. Payment was received on September
21 12, 2011. Citation No. C2012-121 is now final.

22 **PRAYER**

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

26 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
27 254154, issued to Eason Y. Xie dba Alosta Smog Test Only Center;

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1 2. Revoking or suspending any other automotive repair dealer registration issued to
2 Eason Y. Xie;

3 3. Revoking or suspending Smog Check Test Only Station License Number TC 254154,
4 issued to Eason Y. Xie dba Alostia Smog Test Only Center;

5 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
6 Division 26 of the Health and Safety Code in the name of Eason Y. Xie;

7 5. Revoking or suspending Smog Check Inspector License Number EO 640930, issued
8 to Andy Duong;

9 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
10 Division 26 of the Health and Safety Code in the name of Andy Duong;

11 7. Ordering Eason Y. Xie and Andy Duong to pay the Bureau of Automotive Repair the
12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 125.3; and,

14 8. Taking such other and further action as deemed necessary and proper.

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DATED: As of Digital Signature Date

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

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