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8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
12  
13 **ALL CITY AUTOMOTIVE 2**  
1910 Main Street  
Escalon, CA 95320  
14 **PHAKDEY LIV, OWNER**  
Automotive Repair Dealer Registration No. ARD  
15 224392  
Smog Check Station License No. RC 224392  
16 Lamp Station License No. LS 224392, Class A  
Brake Station License No. BS 224392, Class C  
17  
18 and  
19 **PHAKDEY LIV**  
1910 Main Street  
Escalon, CA 95320  
20 Advanced Emission Specialist Technician License  
No. EA 139754  
21 Brake Adjuster License No. BA 139754, Class C  
Lamp Adjuster License No. LA 139754, Class A  
22  
23 Respondents.

Case No. 79/12-101

**A C C U S A T I O N**  
**S M O G C H E C K**

24 Complainant alleges:

25 **PARTIES**

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

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1           **Automotive Repair Dealer Registration**

2           2.    On a date uncertain in 2002, the Bureau issued Automotive Repair Dealer  
3 Registration Number ARD 224392 (“registration”) to Phakdey Liv (“Respondent”), doing  
4 business as All City Automotive 2. The registration was in full force and effect at all times  
5 relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.

6           **Smog Check Station License**

7           3.    On or about November 6, 2002, the Bureau issued Smog Check Station License  
8 Number RC 224392 (“station license”) to Respondent. The station license was in full force and  
9 effect at all times relevant to the charges brought herein and will expire on October 31, 2012,  
10 unless renewed.

11          **Lamp Station License**

12          4.    On or about July 24, 2003, the Bureau issued Lamp Station License Number LS  
13 224392, Class A, (“lamp station license”) to Respondent. The lamp station license was in full  
14 force and effect at all times relevant to the charges brought herein and will expire on October 31,  
15 2012, unless renewed.

16          **Brake Station License**

17          5.    On or about July 24, 2003, the Bureau issued Brake Station License Number BS  
18 224392, Class C, (“brake station license”) to Respondent. The brake station license was in full  
19 force and effect at all times relevant to the charges brought herein and will expire on October 31,  
20 2012, unless renewed.

21          **Advanced Emission Specialist Technician License**

22          6.    On a date uncertain in 2000, the Bureau issued Advanced Emission Specialist  
23 Technician License Number EA 139754 (“technician license”) to Respondent. The technician  
24 license was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on April 30, 2013, unless renewed.

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10. Code section 9884.8 states, in pertinent part:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied . . . One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

11. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order .

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

\_\_\_\_\_  
(signature or initials)"

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

13. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and

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1 "agency." "License" includes certificate, registration or other means to engage in a business or  
2 profession regulated by the Code.

3 14. Code section 9889.1 provides, in pertinent part, that the Director may suspend or  
4 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the  
5 Automotive Repair Act.

6 15. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
7 license by operation of law or by order or decision of the Director or a court of law, or the  
8 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
9 disciplinary proceedings.

10 16. Code section 9889.3 states, in pertinent part:

11 The director may suspend, revoke, or take other disciplinary action  
12 against a license as provided in this article [Article 7 (commencing with section  
13 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or  
14 director thereof:

15 (d) Commits any act involving dishonesty, fraud, or deceit whereby  
16 another is injured.

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

20 18. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

27 (c) Violates any of the regulations adopted by the director pursuant to  
28 this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby  
another is injured.

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

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1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
2 the Director of jurisdiction to proceed with disciplinary action.

3 20. Section 44072.8 of the Health and Safety Code states:

4 When a license has been revoked or suspended following a hearing under  
5 this article, any additional license issued under this chapter in the name of the  
6 licensee may be likewise revoked or suspended by the director.

#### 6 **COST RECOVERY**

7 21. Code section 125.3 provides, in pertinent part, that a Board may request the  
8 administrative law judge to direct a licentiate found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

#### 11 **CONSUMER COMPLAINT CALDWELL – JULY 20, 2011**

12 22. On or about June 26, 2011, Kristine Metzen (“consumer”) had her 1996 Volkswagen  
13 Golf GL towed to Respondent’s facility for diagnosis of a no start condition. Respondent  
14 contacted the consumer and told her that the fuel pump was bad and initially gave the consumer  
15 an estimate of \$860 to replace the fuel pump. The consumer declined the repair because of the  
16 cost. On or about June 30, 2011, Respondent countered back with a lower estimate of \$685 to  
17 replace the fuel pump. The consumer authorized the repair. On June 30, 2011, the vehicle was  
18 picked up by a relative of the consumer. The consumer paid Respondent \$685 for the repairs.

19 23. On or about July 11, 2011, the vehicle was taken to Smog Busters in Chico,  
20 California for a smog test; however, the vehicle did not pass the smog inspection due to a trouble  
21 code P1500, which indicated a malfunction in the fuel pump relay circuit. The consumer’s  
22 husband checked the relay and found that although it appeared to be a new part, it was the wrong  
23 part for this vehicle. The consumer’s husband also checked the fuel pump and it appeared to be  
24 the old part and not a new fuel pump. The consumer’s husband installed the correct relay on the  
25 vehicle and on July 19, 2011, the vehicle passed the smog inspection performed by Thao’s Smog  
26 & Automotive.

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1 **UNDERCOVER OPERATION – OCTOBER 5, 2011**

2 29. On or about October 5, 2011, a Bureau undercover operator drove a Bureau-  
3 documented 2001 Chrysler 300M to Respondent's facility and requested a smog inspection. The  
4 vehicle could not pass the visual portion of a smog inspection because the vehicle's positive  
5 crankcase ventilation (PCV) valve was missing. The operator did not sign a work order nor was  
6 the operator provided with an estimate prior to the smog inspection. Respondent performed the  
7 smog inspection and issued electronic Certificate of Compliance No. OG848331 for that vehicle.  
8 The operator paid \$38 for the smog inspection and received a copy of Invoice No. 22254 and the  
9 Vehicle Inspection Report ("VIR").

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Misleading Statements)**

12 30. Respondent has subjected his registration to discipline pursuant to Code section  
13 9884.7, subdivision (a)(1), in that on or about October 5, 2011, he made statements which he  
14 knew or which by exercise of reasonable care he should have known were untrue or misleading  
15 when he issued electronic Certificate of Compliance No. OG848331 for the 2001 Chrysler 300M,  
16 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,  
17 the vehicle's PCV valve was missing.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 31. Respondent has subjected his registration to discipline pursuant to Code section  
21 9884.7, subdivision (a)(4), in that on or about October 5, 2011, he committed acts which  
22 constitute fraud by issuing electronic Certificate of Compliance No. OG848331 for the 2001  
23 Chrysler 300M, without performing a bona fide inspection of the emission control devices and  
24 systems on that vehicle, thereby depriving the People of the State of California of the protection  
25 afforded by the Motor Vehicle Inspection Program.

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1 2001 Chrysler 300M, he violated sections of the California Code of Regulations, title 16, as  
2 follows:

3 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle  
4 in accordance with Health and Safety Code section 44012.

5 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the  
6 Emission Inspection System for electronic Certificate of Compliance No. OG848331 by entering  
7 "Pass" for the visual inspection portion of the smog inspection when, in fact, the vehicle could  
8 not pass the visual inspection because the vehicle's PCV valve was missing.

9 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
10 inspections on that vehicle in accordance with the Bureau's specifications.

11 **TWELFTH CAUSE FOR DISCIPLINE**

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

13 38. Respondent has subjected his technician license to discipline pursuant to Health and  
14 Safety Code section 44072.2, subdivision (d), in that on or about October 5, 2011, regarding the  
15 2001 Chrysler 300M, he committed acts involving dishonesty, fraud or deceit whereby another  
16 was injured by issuing electronic Certificate of Compliance No. OG848331 without performing a  
17 bona fide inspection of the emission control devices and systems on that vehicle, thereby  
18 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
19 Inspection Program.

20 **NINTH CAUSE FOR DISCIPLINE**

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

22 39. Respondent has subjected his lamp and brake station licenses and brake and lamp  
23 adjuster licenses to discipline under Code section 9889.3, subdivision (d), in that on or about June  
24 30, 2011, and October 5, 2011, Respondent committed acts involving dishonesty, fraud or deceit,  
25 as more particularly set forth in paragraphs 26, 27, 30, 31, 35, and 38, above.

26 **PRIOR CITATIONS**

27 40. To determine the degree of penalty, if any, to be imposed upon Respondent,  
28 Complainant alleges as follows:

1           **Registration and Station License**

2           a.     On July 8, 2011, the Bureau issued Citation No. C2012-16 to Respondent against his  
3 registration and station licenses for violations of Health and Safety Code section 44012,  
4 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
5 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
6 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a  
7 missing fuel evaporative storage canister. The Bureau assessed a civil penalty of \$1,500.  
8 Respondent appealed this citation on July 29, 2011. The matter is currently pending.

9           b.     On February 24, 2011, the Bureau issued Citation No. C2011-0953 to Respondent  
10 against his registration and station licenses for violations of Health and Safety Code section  
11 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
12 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
13 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a non-  
14 approved, adjustable camshaft timing gear. The Bureau assessed a civil penalty of \$1,000.  
15 Respondent appealed this citation on April 19, 2011. The matter is currently pending.

16           c.     On May 16, 2005, the Bureau issued Citation No. C05-0343 to Respondent against  
17 his registration and station licenses for violations of Health and Safety Code section 44012,  
18 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
19 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
20 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a  
21 missing PCV system. The Bureau assessed a civil penalty of \$500. Respondent complied with  
22 this citation on July 5, 2006.

23           d.     On February 11, 2004, the Bureau issued Citation No. C04-0425 to Respondent  
24 against his registration and station licenses for violations of Health and Safety Code section  
25 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
26 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)  
27 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a  
28 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the

1 manufacturer's specifications. The Bureau assessed a civil penalty of \$500. Respondent  
2 complied with this citation on April 19, 2004.

3 **Technician License**

4 e. On July 8, 2011, the Bureau issued Citation No. M2012-17 to Respondent against his  
5 technician license for violations of Health and Safety Code section 44032, (qualified technicians  
6 shall perform tests of emission control systems and devices in accordance with section 44012 of  
7 that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30,  
8 subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with  
9 sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42).  
10 Respondent issued a certificate of compliance to a Bureau vehicle with a missing fuel evaporative  
11 storage canister. Respondent was required to attend a 16-hour training course. Respondent  
12 appealed this citation on July 29, 2011. The matter is currently pending.

13 f. On February 24, 2011, the Bureau issued Citation No. M2011-0954 to Respondent  
14 against his technician license for violations of Health and Safety Code section 44032, (qualified  
15 technicians shall perform tests of emission control systems and devices in accordance with  
16 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
17 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
18 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
19 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a non-  
20 approved, adjustable camshaft gear. Respondent was required to attend an 8-hour training course.  
21 Respondent appealed this citation on April 19, 2011. The matter is currently pending.

22 g. On May 16, 2005, the Bureau issued Citation No. M05-0344 to Respondent against  
23 his technician license for violations of Health and Safety Code section 44032, (qualified  
24 technicians shall perform tests of emission control systems and devices in accordance with  
25 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
26 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
27 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
28 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV

1 system. Respondent was required to attend an 8-hour training course. Respondent complied with  
2 this citation on June 13, 2005.

3 h. On February 11, 2004, the Bureau issued Citation No. M04-0426 to Respondent  
4 against his technician license for violations of Health and Safety Code section 44032, (qualified  
5 technicians shall perform tests of emission control systems and devices in accordance with  
6 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
7 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
8 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
9 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition  
10 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend an  
11 8-hour training course. Respondent complied with this citation on April 15, 2004.

12 **OTHER MATTERS**

13 41. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
14 or permanently or refuse to validate, the registrations for all places of business operated in this  
15 state by Phakdey Liv, upon a finding that he has, or is, engaged in a course of repeated and willful  
16 violations of the laws and regulations pertaining to an automotive repair dealer.

17 42. Under Health and Safety Code section 44072.8, if Smog Check Station License  
18 Number RC 224392, issued to Phakdey Liv, doing business as All City Automotive 2, is revoked  
19 or suspended, any additional license issued under this chapter in the name of said licensee may be  
20 likewise revoked or suspended by the director.

21 43. Under Code section 9889.9, if Lamp Station License Number LS 224392, Class A,  
22 issued to Phakdey Liv, doing business as All City Automotive 2, is revoked or suspended, any  
23 additional license issued under this chapter in the name of said licensee may be likewise revoked  
24 or suspended by the director, including but not limited to Brake Station License Number BS  
25 224392, Class C.

26 44. Under Code section 9889.9, if Brake Adjuster License Number BA 139754, Class C,  
27 issued to Phakdey Liv, is revoked or suspended, any additional license issued under this chapter

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1 in the name of said licensee may be likewise revoked or suspended by the director, including but  
2 not limited to Lamp Adjuster License Number LA 139754, Class A.

3 45. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist  
4 Technician License Number EA 139754, issued to Phakdey Liv, is revoked or suspended, any  
5 additional license issued under this chapter in the name of said licensee may be likewise revoked  
6 or suspended by the director.

7 **PRAYER**

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

10 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
11 Registration Number ARD 224392, issued to Phakdey Liv, doing business as All City  
12 Automotive 2;

13 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
14 registration issued to Phakdey Liv;

15 3. Revoking or suspending Smog Check Station License Number RC 224392, issued to  
16 Phakdey Liv, doing business as All City Automotive 2;

17 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
18 and Safety Code in the name of Phakdey Liv;

19 5. Revoking or suspending Advanced Emission Specialist Technician License Number  
20 EA 139754, issued to Phakdey Liv;

21 6. Revoking or suspending any additional license issued under Chapter 5 of the Health  
22 and Safety Code in the name of Phakdey Liv;

23 7. Revoking or suspending Lamp Station License Number LS 224392, Class A, issued  
24 to Phakdey Liv, doing business as All City Automotive 2;

25 8. Revoking or suspending Brake Station License Number BS 224392, Class C, issued  
26 to Phakdey Liv, doing business as All City Automotive 2;

27 9. Revoking or suspending Brake Adjuster License Number BA 139754, Class C, issued  
28 to Phakdey Liv;

1           10. Revoking or suspending Lamp Adjuster License Number LA 139754, Class A, issued  
2 to Phakdey Liv;

3           11. Revoking or suspending any additional license issued under Articles 5 and 6 of  
4 Chapter 20.3 of the Business and Professions Code in the name of Phakdey Liv;

5           12. Ordering Phakdey Liv to pay the Bureau of Automotive Repair the reasonable costs  
6 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
7 section 125.3; and,

8           13. Taking such other and further action as deemed necessary and proper.  
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10  
11 DATED: 3/13/12

12 John Wallauch by   
13 JOHN WALLAUCH  
14 Chief  
15 Bureau of Automotive Repair  
16 Department of Consumer Affairs  
17 State of California  
18 *Complainant*  
19 *Doug Balatti*

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