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7  
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:

Case No. *79/16-124*

12 **ONE TWO THREE AUTO SERVICE,**  
13 **INC., DBA ONE TWO THREE AUTO**  
14 **SERVICE, STEVEN CHI SHUN TO,**  
15 **PRESIDENT/SECRETARY/TREASURER**  
16 **390 1st Street**  
17 **San Francisco, CA 94105**

ACCUSATION  
*smog check*

18 **Automotive Repair Dealer Registration No.**  
19 **ARD 239988**  
20 **Smog Check Station License No. RC 239988**  
21 **STEVEN C. TO**  
22 **22 Moore Ct.**  
23 **Alameda, CA 94502**  
24 **Smog Check Inspector License No. EO**  
25 **138340**  
26 **Smog Check Repair Technician License No.**  
27 **EI 138340**

Respondents.

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about July 19, 2005, the Bureau of Automotive Repair issued Automotive  
28 Repair Dealer Registration Number ARD 239988 to One Two Three Auto Service, Inc., dba One

1 Two Three Auto Service, Steven Chi Shun To, President/Secretary/Treasurer (Respondent One  
2 Two Three). The Automotive Repair Dealer Registration (Registration) was in full force and  
3 effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless  
4 renewed.

5 3. On or about July 27, 2005, the Bureau of Automotive Repair issued Smog Check  
6 Station License Number RC 239988 to Respondent One Two Three. The Smog Check Station  
7 License was in full force and effect at all times relevant to the charges brought herein and will  
8 expire on June 30, 2016, unless renewed.

9 4. In 2001, the Bureau of Automotive Repair issued Advanced Emission Specialist (EA)  
10 Technician License No. EA 138340 to Respondent Steven C. To (Respondent To). The  
11 Advanced Emission Specialist Technician License was due to expire on December 31, 2013,  
12 however, was canceled on October 1, 2013. Respondent To renewed his Advanced Emission  
13 Specialist Technician License with the election of Smog Check Inspector (EO) License No.  
14 138340, and Smog Check Repair Technician (EI) License No. 138340, effective October 1, 2013.  
15 The Smog Check Inspector (EO) License and Smog Check Repair Technician (EI) License will  
16 expire on December 31, 2017.

### 17 JURISDICTION

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

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

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

27 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid  
28 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
2 temporarily or permanently.

3 9. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
4 expiration or suspension of a license by operation of law, or by order or decision of the Director  
5 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
6 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary  
7 proceedings against the licensee, or to render a decision suspending or revoking the license.

8 10. Section 118, subdivision (b), of the Code provides that the expiration/cancellation of  
9 a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during  
10 the period within which the license may be renewed, restored, reissued or reinstated.

11 11. Section 44072.8 of the Health and Safety Code states:

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

### 15 **STATUTORY AND REGULATORY PROVISIONS**

16 12. Section 9884.7 of the Code states:

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

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

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

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

1 (4) Any other conduct which constitutes fraud.

2 (5) Conduct constituting gross negligence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21           14. Section 44012 of the Health and Safety Code states:

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

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

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

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

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

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

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

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

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

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1 15. Section 44015 of the Health and Safety Code states:

2 "(a) A licensed smog check station shall not issue a certificate of compliance, except as  
3 authorized by this chapter, to any vehicle that meets the following criteria:

4 "(1) A vehicle that has been tampered with.

5 "(2) A vehicle that, prior to repairs, has been initially identified by the smog check station  
6 as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated  
7 test-only facility, or a test-and-repair station that is both licensed and certified pursuant to  
8 Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph  
9 (B) of paragraph (2) of subdivision (g) of Section 44014.5.

10 "(3) A vehicle described in subdivision (c).

11 "(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to  
12 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

13 "(c)(1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity  
14 authorized to perform referee functions for a vehicle that has been properly tested but does not  
15 meet the applicable emission standards when it is determined that no adjustment or repair can be  
16 made that will reduce emissions from the inspected motor vehicle without exceeding the  
17 applicable repair cost limit established under Section 44017 and that every defect specified by  
18 paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision  
19 (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph  
20 shall be accepted in lieu of a certificate of compliance for the purposes of compliance with  
21 Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No  
22 repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the  
23 applicable repair cost limit specified in Section 44017.

24 "(2) An economic hardship extension shall be issued, upon request of a qualified low-  
25 income motor vehicle owner, by an entity authorized to perform referee functions, for a motor  
26 vehicle that has been properly tested but does not meet the applicable emission standards when it  
27 is determined that no adjustment or repair can be made that will reduce emissions from the  
28 inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant

1 to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section  
2 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that  
3 the low-income vehicle owner would suffer an economic hardship if the extension is not issued,  
4 and that all appropriate emissions-related repairs up to the amount of the applicable repair cost  
5 limit in Section 44017.1 have been performed.

6 "(d) No repair cost waiver or economic hardship extension shall be issued under any of the  
7 following circumstances:

8 "(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in  
9 the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship  
10 extension may be issued to a motor vehicle owner only once for a particular motor vehicle  
11 belonging to that owner. However, a repair cost waiver or economic hardship extension may be  
12 issued for a motor vehicle that participated in a previous waiver or extension program prior to  
13 January 1, 1998, as determined by the department. For waivers or extensions issued in the  
14 program operative on or after January 1, 1998, a waiver or extension may be issued for a motor  
15 vehicle only once per owner.

16 "(2) Upon initial registration of all of the following:

17 "(A) A direct import motor vehicle.

18 "(B) A motor vehicle previously registered outside this state.

19 "(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

20 "(D) A motor vehicle that has had an engine change.

21 "(E) An alternate fuel vehicle.

22 "(F) A specially constructed vehicle.

23 "(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance  
24 shall be valid for 90 days.

25 "(f) Except as provided in Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle  
26 Code, a licensed motor vehicle dealer shall be responsible for having a smog check inspection  
27 performed on, and a certificate of compliance or noncompliance issued for, every motor vehicle  
28

1 offered for retail sale. A certificate issued to a licensed motor vehicle dealer shall be valid for a  
2 two-year period, or until the vehicle is sold and registered to a retail buyer, whichever occurs first.

3 "(g) A test may be made at any time within 90 days prior to the date otherwise required."

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

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

10 17. Section 44059 of the Health and Safety Code states:

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

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

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

18 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
19 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
20 3340.42 of this article.

21 "(b) A licensed technician shall maintain on file with the bureau a correct mailing address  
22 pursuant to section 3303.3 of Article 1 of this Chapter.

23 "(c) A licensed technician shall notify the bureau in writing within two weeks of any change  
24 of employment.

25 "(d) A licensed technician whose license has expired shall immediately cease to inspect,  
26 test, or repair failed vehicles."

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1 19. California Code of Regulations, title 16, section 3340.35, states:

2 "(a) A licensed station shall purchase certificates of compliance and noncompliance from  
3 the bureau or an authorized agent of the bureau only, and under the following terms and  
4 conditions:

5 "(1) A certificate of compliance or noncompliance shall be purchased by a licensed station  
6 for a fee determined pursuant to section 3340.35.1 of these regulations; and

7 "(2) Full payment is required at the time the certificates are ordered.

8 "(b) A licensed station shall not sell or otherwise transfer unused certificates to another  
9 licensed station, to a new owner of the business, or to any person other than a customer whose  
10 vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this  
11 article.

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

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

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

19 "(d) No person shall sell, issue, cause or permit to be issued any certificate purported to be  
20 a valid certificate of compliance or noncompliance unless duly licensed to do so.

21 "(e) A repair cost waiver or an economic hardship extension shall be the same fee as a  
22 certificate of compliance or noncompliance."

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

24 "(a) A licensed station shall give a copy of the test report printed from the emissions  
25 inspection system to the customer. The report shall be attached to the customer's invoice.

26 "(b) No person shall enter into the emissions inspection system any access or qualification  
27 number other than as authorized by the bureau, nor in any way tamper with the emissions  
28 inspection system.

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

5           "(d) The specifications and procedures required by Section 44016 of the Health and Safety  
6 Code shall be the vehicle manufacturer's recommended procedures for emission problem  
7 diagnosis and repair or the emission diagnosis and repair procedures found in industry-standard  
8 reference manuals and periodicals published by nationally recognized repair information  
9 providers. Smog check stations and smog check technicians shall, at a minimum, follow the  
10 applicable specifications and procedures when diagnosing defects or performing repairs for  
11 vehicles that fail a smog check test.

12           "(e) A smog check station shall not perform an initial test, except for an official pre-test, on  
13 or issue a certificate of compliance to any vehicle that has been directed to a test-only station for  
14 its biennial smog check pursuant to Sections 44010.5 or 44014.7 of the Health and Safety Code,  
15 unless the station is licensed as a test-only station pursuant to subdivision (b) of Section 44014 of  
16 the Health and Safety Code. The reinspection and certification of a test-only directed vehicle that  
17 has failed an initial test at a test-only station and has undergone subsequent repairs to correct the  
18 cause of the failure, may be performed by a test-only station, or by a test-and- repair station that  
19 performs those repairs and that is also certified as a Gold Shield station pursuant to Section  
20 44014.2 of the Health and Safety Code and Article 10 (commencing with section 3392.1) of this  
21 chapter.

22           21. California Code of Regulations, title 16, section 3340.42, states:

23           "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by  
24 section 3340.45.

25           "(a) All vehicles subject to a smog check inspection, shall receive one of the following test  
26 methods:

27           "(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year  
28 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The

1 loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of  
2 nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of  
3 Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode  
4 (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

5 "On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection  
6 shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table  
7 (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby  
8 incorporated by reference. If the emissions standards for a specific vehicle are not included in this  
9 table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE  
10 I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured  
11 emissions are less than or equal to the applicable emission standards specified in the applicable  
12 table.

13 "(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-  
14 year vehicles, except diesel-powered, registered in all program areas of the state, except in those  
15 areas of the state where the enhanced program has been implemented. The two-speed idle mode  
16 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and  
17 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of  
18 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall  
19 be measured and compared to the emission standards set forth in this section and as shown in  
20 TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are  
21 less than or equal to the applicable emissions standards specified in Table III.

22 "(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered  
23 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.  
24 The OBD test failure criteria are specified in section 3340.42.2.

25 "(b) In addition to subsection (a), all vehicles subject to the smog check program shall  
26 receive the following:

27 "(1) A visual inspection of emission control components and systems to verify the vehicle's  
28 emission control systems are properly installed.

1           “(2) A functional inspection of emission control systems as specified in the Smog Check  
2 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper  
3 operation.

4           “(c) The bureau may require any combination of the inspection methods in sections (a) and  
5 (b) under any of the following circumstances:

6           “(1) Vehicles that the department randomly selects pursuant to Health and Safety Code  
7 section 44014.7 as a means of identifying potential operational problems with vehicle OBD  
8 systems.

9           “(2) Vehicles identified by the bureau as being operationally or physically incompatible  
10 with inspection equipment.

11           “(3) Vehicles with OBD systems that have demonstrated operational problems.

12           “(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are  
13 as follows:

14           “(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides  
15 of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables  
16 described in subsection (a), as applicable.

17           “(2) Vehicles with emission levels exceeding the emission standards for gross polluters  
18 during an initial inspection will be considered gross polluters and the provisions pertaining to  
19 gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and  
20 44081 of the Health and Safety Code.

21           “(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until  
22 the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle  
23 included in the tables described in subsection (a), as applicable. However, the provisions  
24 described in section 44017 of the Health and Safety Code may apply.

25           “(4) This subsection applies in all program areas statewide to vehicles requiring inspection  
26 pursuant to sections 44005 and 44011 of the Health and Safety Code.”

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

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

7 **COST RECOVERY**

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

14 **VID REVIEW OF MARCH 2, 2014**

15 24. A representative of the Bureau conducted a detailed review of VID data of OBDII  
16 testing at Respondent One Two Three's facility. The review revealed that on six dates there were  
17 abnormalities contained within the VID data, as alleged below. The information obtained from  
18 the Bureau's VID revealed that Respondent One Two Three and Respondent To issued electronic  
19 smog certificates of compliance, certifying that the vehicles described below had been tested and  
20 inspected and were in compliance with applicable laws and regulations. In fact, the vehicles  
21 described below were not tested during the OBD II functional test<sup>1</sup> and other vehicles were used,  
22  
23

24 <sup>1</sup> The On Board Diagnostics (OBDII) functional test is an automated function of the  
25 BAR-97 analyzer. During the OBDII functional test, the technician is required to connect an  
26 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located  
27 inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information  
28 from the vehicle's on-board computer about the status of the readiness indicators, trouble codes,  
and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will  
fail the overall inspection.

1 constituting clean plugging<sup>2</sup>.

2 2003 Volkswagen Jetta GL TDI

3 25. The Bureau of Automotive Repair's Onboard Diagnostic Inspection System (OIS)  
4 indicates that on September 9, 2014, from approximately 12:04 to 12:13, a 2003 Volkswagen  
5 Jetta GL TDI, California License No. 6HLK943, was tested and smog certificate No. YJ275065C  
6 was issued under licensed Smog Check Inspector No. EO 138340 issued to Respondent To.

7 a. The expected VID information for this vehicle is:

- 8 • Communication protocol<sup>3</sup>: (I914)
- 9 • PID<sup>4</sup> count: 5/13
- 10 • DMV VIN No. 3VWRP69M03M041920

11 b. OIS Test Data for the tested vehicle lists the following information, which could not  
12 have been generated from the vehicle:

- 13 • Communication protocol: ICAN11bt500
- 14 • PID (Parameter identification) count: 42
- 15 • eVIN (electronic VIN): 1FMYU03146KA73196

16 c. Prior to the above-listed smog check inspection, between 09:26 and 09:32 and 09:36  
17 and 09:42 on September 9, 2014, the 2003 Volkswagen Jetta GL TDI failed two OIS smog check  
18 inspections performed by Respondent To. During these smog check inspections, the data  
19 transmitted to the VID matched the information expected from the vehicle.

20 2002 BMW 540I

21 26. The Bureau of Automotive Repair's OIS indicates that on September 25, 2014, from  
22 approximately 13:11 to 13:18, a 2002 BMW 540I, California License No. 4VGC981, was tested  
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24 <sup>2</sup> Clean plugging is the use of the OBDII readiness monitor status and stored fault code  
25 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to  
26 another vehicle that is not in compliance due to a failure to complete the minimum number of self  
27 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission  
28 control system or component failure.

<sup>3</sup> Communication Protocol is the specified communication language used by the OBD II  
computer.

1 and smog certificate No. YJ275075C was issued under licensed Smog Check Inspector No. EO  
2 138340 issued to Respondent To.

3 a. The expected VID information for this vehicle is:

- 4 • Communication protocol: (I914)
- 5 • PID count: 1/23
- 6 • No eVIN

7 b. OIS Test Data for the tested vehicle lists the following information, which could not  
8 have been generated from the vehicle:

- 9 • Communication protocol: ICAN11bt500
- 10 • PID count: 40
- 11 • eVIN: WVVDS71K87W141510

12 2007 Audi A4 2.0 Turbo

13 27. The Bureau of Automotive Repair's OIS indicates that on January 15, 2015, from  
14 approximately 13:51 to 13:57, a 2007 Audi A4 2.0 Turbo, California License No. 5VPE572, was  
15 tested and smog certificate No. PM294892C was issued under licensed Smog Check Inspector  
16 No. EO 138340 issued to Respondent To.

17 a. The expected VID information for this vehicle is:

- 18 • Communication protocol: ICAN11bt5
- 19 • PID count: 14/37
- 20 • eVIN: JF1SG63636G733382

21 b. OIS Test Data for the tested vehicle lists the following information, which could not  
22 have been generated from the vehicle:

- 23 • Communication protocol: KWPF8FE9
- 24 • PID count: 19
- 25 • eVIN: JF1SG63636G733382

26 c. Prior to the above-listed smog check inspection, between 13:06 and 13:14 on January  
27 15, 2015, 2007 Audi A42.0 Turbo failed OIS smog check inspection performed by Respondent  
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1 To. During this smog check inspection, the data transmitted to the VID matched the information  
2 expected from the vehicle.

3 2009 Audi S5 Quattro

4 28. The Bureau of Automotive Repair's OIS indicates that on January 29, 2015, from  
5 approximately 17:16 to 17:22, a 2009 Audi S5 Quattro, California License No. 6UUD676, was  
6 tested and smog certificate No. YN594254C was issued under licensed Smog Check Inspector  
7 No. EO 138340 issued to Respondent To.

8 a. The expected VID information for this vehicle is:

- 9 • Communication protocol: ICAN11bt5
- 10 • PID count: 14/44
- 11 • eVIN: WAURV78T39A036415

12 b. OIS Test Data for the tested vehicle lists the following information, which could not  
13 have been generated from the vehicle:

- 14 • Communication protocol: I9140808
- 15 • PID count: 22
- 16 • eVIN: WBAEV33424KR33011

17 2003 Mercedes Benz ML350

18 29. The Bureau of Automotive Repair's OIS indicates that on February 17, 2015, from  
19 approximately 14:02 to 14:08, a 2003 Mercedes Benz ML350, California License No. 7C77392,  
20 was tested and smog certificate No. YN594267C was issued under licensed Smog Check  
21 Inspector No. EO 138340 issued to Respondent To.

22 a. The expected VID information for this vehicle is:

- 23 • Communication protocol: KWPF
- 24 • PID count: 22/24
- 25 • eVIN: 4JGAB57E73A421432

26 b. OIS Test Data for the tested vehicle lists the following information, which could not  
27 have been generated from the vehicle:

- 28 • Communication protocol: ICAN11bt5

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- PID count: 44
- eVIN: WDBUF56J76A945090

2009 Nissan Altima 2.5S

30. The Bureau of Automotive Repair’s OIS indicates that on March 16, 2015, from approximately 16:22 to 16:28, a 2009 Nissan Altima 2.5S, California License No. BMPB557, was tested and smog certificate No. YN594278C was issued under licensed Smog Check Inspector No. EO 138340 issued to Respondent To.

a. The expected VID information for this vehicle is:

- Communication protocol: ICAN11bt5
- PID count: 39
- eVIN: 1N4AL24EX9C145822

b. OIS Test Data for the tested vehicle lists the following information, which could not have been generated from the vehicle:

- Communication protocol: KWPF8FEF
- PID count: 21
- eVIN: WBAVB135X6KR63138

**FIRST CAUSE FOR DISCIPLINE**

(Untrue/Misleading Statements)

31. Respondent One Two Three’s registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7(a)(1), in that it made or authorized statements which it knew, or in the exercise of reasonable care should have known, to be untrue or misleading, as follows: Respondent One Two Three certified that the vehicles identified in paragraphs 25 – 30 above had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent One Two Three certified the OBDII tests on vehicles other than those identified in paragraphs 25 – 30 above, in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by Health and Safety Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply with Regulations Pursuant  
3 to the Motor Vehicle Inspection Program)

4 34. Respondent One Two Three's Smog Check Station license is subject to disciplinary  
5 action pursuant to Health and Safety Code section 44072.2(c), in that Respondent One Two Three  
6 failed to comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.35(c)**: Respondent One Two Three issued electronic smog certificates  
8 of compliance for the vehicles identified in paragraphs 25 – 30 above, even though those vehicles  
9 had not been inspected in accordance with section 3340.42.

10 b. **Section 3340.42(e)(2)(F)**: Respondent One Two Three failed to conduct the OBD  
11 system tests of the vehicles identified in paragraphs 25 – 30 above which were undergoing Smog  
12 Check Inspections.

13 c. **Section 3373**: Respondent One Two Three created records which were false and  
14 misleading when it issued electronic smog certificates of compliance for the vehicles identified in  
15 paragraphs 25 – 30 above.

16 d. **Section 3340.45**: Respondent One Two Three failed to conduct emissions tests in  
17 accordance with the EIS prompts and procedures prescribed by the Department of Consumer  
18 Affairs.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 (Dishonesty, Fraud or Deceit)

21 35. Respondent One Two Three's Smog Check Station license is subject to disciplinary  
22 action pursuant to Health and Safety Code section 44072.2(d), in that it committed dishonest,  
23 fraudulent or deceitful acts whereby another is injured by issuing an electronic smog certificate of  
24 compliance for the vehicles identified in paragraphs 25 – 30 above, without performing bona fide  
25 inspections of the emission control devices and systems on the vehicles, thereby depriving the  
26 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
27 Program.



1 a. **Section 3340.30(a)**: Respondent To failed to inspect and test the vehicles identified  
2 in paragraphs 25 – 30 above, in accordance with Health and Safety Code sections 44012 and  
3 44035, and California Code of Regulations, title 16, section 3340.42.

4 b. **Section 3340.41 (c)**: Respondent To falsely entered information into the EIS for  
5 vehicles other than the ones being tested.

6 c. **Section 3340.42(e)(2)(F)**: Respondent To failed to conduct the OBD system tests of  
7 the vehicles identified in paragraphs 25 – 30 above which were undergoing Smog Check  
8 Inspections.

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10 **PRAYER**

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

13 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
14 239988, issued to One Two Three Auto Service, Inc., dba One Two Three Auto Service, Steven  
15 Chi Shun To, President/Secretary/Treasurer;

16 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
17 registration issued to One Two Three Auto Service, Inc.;

18 3. Revoking or suspending Smog Check Station License Number RC 239988, issued to  
19 One Two Three Auto Service Inc., dba One Two Three Auto Service, Inc., Steven Chi Shun To,  
20 President/Secretary/Treasurer;

21 4. Revoking or suspending Smog Check Inspector License Number EO 138340 and  
22 Smog Check Repair Technician License Number EI 138340, issued to Steven C. To;

23 5. Revoking, suspending, or placing on probation any additional license issued under  
24 chapter 5, of the Health and Safety Code in the name of Steven C. To, aka Steven Chi Shun To;

25 6. Ordering One Two Three Auto Service, Inc., and Steven Chi Shun To to pay the  
26 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this  
27 case, pursuant to Business and Professions Code section 125.3;

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

DATED: May 23, 2016



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

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