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

11 In the Matter of the Accusation Against:

12 **FAIR OAKS AUTO SERVICE AND TUNE, INC.,**  
13 **dba SPEEDEE OIL CHANGE & TUNE UP**  
14 **TONY MAK, PRESIDENT**  
15 **MICHAEL MAK, SECRETARY/TREASURER**  
5490 Dewey Drive  
16 Fair Oaks, CA 95628

17 Automotive Repair Dealer Reg. No. ARD 250098  
Smog Check Station License No. RC 250098

18 Respondent.

Case No. 79/13-17

**ACCUSATION**

*Smog Check*

19 Complainant alleges:

20 **PARTIES**

21 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity  
22 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.  
23

24 **Automotive Repair Dealer Registration**

25 2. In or about 2007, the Bureau issued Automotive Repair Dealer Registration Number  
26 ARD 250098 ("registration") to Fair Oaks Auto Service and Tune, Inc. ("Respondent"), doing  
27 business as Speedee Oil Change & Tune Up, with Tony Mak as president and Michael Mak as  
28

1 secretary and treasurer. Respondent's registration was in full force and effect at all times relevant  
2 to the charges brought herein and will expire on April 30, 2013, unless renewed.

### 3 **Smog Check Station License**

4 3. On or about May 7, 2007, the Bureau issued Smog Check Station License Number  
5 RC 250098 to Respondent. Respondent's smog check station license was in full force and effect  
6 at all times relevant to the charges brought herein and will expire on April 30, 2013, unless  
7 renewed.

### 8 **JURISDICTION**

9 4. Business and Professions Code ("Code") section 9884.7 provides that the Director of  
10 the Department of Consumer Affairs ("Director") may revoke an automotive repair dealer  
11 registration.

12 5. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
13 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding  
14 against an automotive repair dealer or to render a decision temporarily or permanently  
15 invalidating (revoking or suspending) a registration.

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

19 7. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration  
20 or suspension of a license by operation of law, or by order or decision of the Director, or a court  
21 of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to  
22 proceed with disciplinary action.

### 23 **STATUTORY PROVISIONS**

24 8. Code section 9884.7 states, in pertinent part:

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

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

4 (4) Any other conduct that constitutes fraud.

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

10 9. Code section 22, subdivision (a), states:

11 "Board" as used in any provision of this Code, refers to the board in  
12 which the administration of the provision is vested, and unless otherwise expressly  
13 provided, shall include "bureau," "commission," "committee," "department,"  
14 "division," "examining committee," "program," and "agency."

15 10. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes  
16 "registration" and "certificate."

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

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

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

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

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

28 12. Health and Safety Code section 44072.8 states that when a license has been revoked  
or suspended following a hearing under this article, any additional license issued under this  
chapter in the name of the licensee may be likewise revoked or suspended by the director.

### COST RECOVERY

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

1                                    **RECORDED UNDERCOVER OPERATION: 1997 NISSAN PATHFINDER**

2            14.    On February 9, 2012, an undercover operator with the Bureau (“operator”) took the  
3 Bureau’s 1997 Nissan Pathfinder to Respondent’s facility and requested a smog inspection. The  
4 ignition timing on the Bureau-documented vehicle was not adjusted to manufacturer’s  
5 specifications. The operator signed a work order and received a written estimate for the  
6 inspection. After the inspection was completed, the operator paid the facility \$58.24 and received  
7 copies of an invoice and vehicle inspection report (“VIR”). The VIR indicated that licensed smog  
8 check technician Chia Vang (“Vang”) had performed the inspection on the vehicle and that the  
9 vehicle passed the inspection. That same day, electronic smog Certificate of Compliance No.  
10 OK215156C was issued for the vehicle. The videotape of the undercover operation revealed that  
11 Yang had not performed the functional ignition timing check on the vehicle.

12            15.    On March 20, 2012, the Bureau inspected the vehicle and found that the ignition  
13 timing still was not adjusted to manufacturer’s specifications.

14                                    **FIRST CAUSE FOR DISCIPLINE**

15                                    **(Untrue or Misleading Statements)**

16            16.    Respondent's registration is subject to disciplinary action pursuant to Code section  
17 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew, or in  
18 the exercise of reasonable care should have known to be untrue or misleading, as follows:

19                    a.    Respondent’s technician Vang certified under penalty of perjury on the VIR  
20 that the Bureau’s 1997 Nissan Pathfinder had passed the inspection and was in compliance with  
21 applicable laws and regulations. In fact, the ignition timing on the vehicle was not adjusted to  
22 manufacturer’s specifications in that the ignition timing was set to 5 degrees BTDC (before top  
23 dead center) when the specifications were 15 degrees BTDC. As such, the vehicle would not pass  
24 the inspection required by Health and Safety Code section 44012.

25                    b.    Respondent’s technician Vang certified under penalty of perjury on the VIR  
26 that he performed the smog inspection on the Bureau’s 1997 Nissan Pathfinder in accordance  
27 with all Bureau requirements. In fact, Vang failed to perform the required functional ignition  
28 timing check on the vehicle.



1 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog  
2 certificate of compliance for the Bureau's 1997 Nissan Pathfinder even though the vehicle had  
3 not been inspected in accordance with section 3340.42.

4 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were  
5 conducted on the Bureau's 1997 Nissan Pathfinder in accordance with the Bureau's  
6 specifications.

7 **FIFTH CAUSE FOR DISCIPLINE**

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

9 20. Respondent's smog check station license is subject to disciplinary action pursuant to  
10 Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed a  
11 dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued  
12 an electronic smog certificate of compliance for the Bureau's 1997 Nissan Pathfinder without  
13 ensuring that a bona fide inspection was performed of the emission control devices and systems  
14 on the vehicle, thereby depriving the People of the State of California of the protection afforded  
15 by the Motor Vehicle Inspection Program.

16 **MATTERS IN AGGRAVATION**

17 21. To determine the degree of discipline, if any, to be imposed on Respondent,  
18 Complainant alleges as follows:

19 a. On or about July 7, 2009, the Bureau issued Citation No. C2010-0001 against  
20 Respondent for violations of Health and Safety Code section 44012, subdivision (f) (failure to  
21 perform a visual/functional check of emission control devices according to procedures prescribed  
22 by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35,  
23 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On  
24 or about June 18, 2009, Respondent had issued a certificate of compliance to a Bureau undercover  
25 vehicle with a missing fuel evaporative storage canister. The Bureau assessed civil penalties  
26 totaling \$500 against Respondent for the violations. Respondent paid the fine on August 24,  
27 2009.



**PRAYER**

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 250098, issued to Fair Oaks Auto Service and Tune, Inc., doing business as Speedee Oil Change & Tune Up;
2. Revoking or suspending any other automotive repair dealer registration issued to Fair Oaks Auto Service and Tune, Inc.;
3. Revoking or suspending Smog Check Station License Number RC 250098, issued to Fair Oaks Auto Service and Tune, Inc., doing business as Speedee Oil Change & Tune Up;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Fair Oaks Auto Service and Tune, Inc.;
5. Ordering Fair Oaks Auto Service and Tune, Inc., doing business as Speedee Oil Change & Tune Up, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
6. Taking such other and further action as deemed necessary and proper.

DATED: 9/25/12

*John Wallauch by Doug Balatti*  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*  
DOUG BALATTI

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