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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:

13 **A VALLEY SMOG**
14 **ARVIN PANU, Owner**
15 **12736 Ave. 416**
16 **Orosi, CA 93647**

17 **Automotive Repair Dealer Registration No.**
18 **ARD 254338**
19 **Smog Check Station License No. RC 254338**

20 Respondent.

Case No. 79/13-83

ACCUSATION

(SMOG CHECK)

21 John Wallauch ("Complainant") alleges:

22 **PARTIES**

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

25 **Automotive Repair Dealer Registration**

26 2. On or about April 3, 2008, the Bureau issued Automotive Repair Dealer Registration
27 Number ARD 254338 to Arvin Panu ("Respondent"), doing business as A Valley Smog. The
28 registration was in full force and effect at all times relevant to the charges brought herein and will
expire on December 31, 2013, unless renewed.

1 estimated price may be provided by electronic mail or facsimile transmission from the
2 customer. The bureau may specify in regulation the procedures to be followed by an
3 automotive repair dealer when an authorization or consent for an increase in the original
4 estimated price is provided by electronic mail or facsimile transmission. If that consent is
5 oral, the dealer shall make a notation on the work order of the date, time, name of person
6 authorizing the additional repairs and telephone number called, if any, together with a
7 specification of the additional parts and labor and the total additional cost, and shall do
8 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 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)

Nothing in this section shall be construed as requiring an automotive repair dealer to
give a written estimated price if the dealer does not agree to perform the requested repair.

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

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

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

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

(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.

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

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

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

7 **COST RECOVERY**

8 10. Code section 125.3 provides, in pertinent part, that a 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.

12 **UNDERCOVER OPERATION - MAY 22, 2012**

13 11. On or about May 22, 2012, a Bureau undercover operator (“operator”) drove a 2000
14 Chrysler to Respondent's facility and requested a smog inspection. As part of the Bureau's
15 documentation of the vehicle, the vehicle's positive crankcase ventilation (“PCV”) system was
16 missing, rendering the vehicle incapable of passing the visual portion of the smog inspection.
17 Simran Panu, a licensed technician, performed the smog inspection on the vehicle and issued
18 electronic Certificate of Compliance Number [REDACTED] certifying that he had tested and
19 inspected the vehicle and that it was in compliance with applicable laws and regulations. In fact,
20 the vehicle could not have passed the visual portion of the smog inspection because the vehicle's
21 PCV system was missing.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

24 12. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
25 that on or about May 22, 2012, he made or authorized statements which he knew or in the
26 exercise of reasonable care he should have known to be untrue or misleading by issuing electronic
27 Certificate of Compliance No. [REDACTED] for the 2000 Chrysler, certifying that the vehicle was in
28

1 compliance with applicable laws and regulations, when, in fact, the vehicle could not have passed
2 the visual portion of the smog inspection because the vehicle's PCV system was missing.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 13. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
6 that on or about May 22, 2012, he committed acts which constitute fraud by issuing electronic
7 Certificate of Compliance No. [REDACTED] for the 2000 Chrysler without performing a bona fide
8 inspection of the emission control devices and systems on the vehicle, thereby depriving the
9 People of the State of California of the protection afforded by the Motor Vehicle Inspection
10 Program.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Violations of the Motor Vehicle Inspection Program)**

13 14. Respondent's station license is subject to discipline under Health & Safety Code
14 section 44072.2(a), in that on or about May 22, 2012, regarding the 2000 Chrysler, he failed to
15 comply with the following sections of that Code:

16 a. **Section 44012(f):** Respondent failed to perform emission control tests on the vehicle
17 in accordance with procedures prescribed by the department.

18 b. **Section 44015(b):** Respondent issued electronic Certificate of Compliance No.
19 [REDACTED] for the vehicle without properly testing and inspecting the vehicle to determine if it
20 was in compliance with Health & Safety Code section 44012.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations)**

23 15. Respondent's station license is subject to discipline under Health & Safety Code
24 section 44072.2(c), in that on or about May 22, 2012, regarding the 2000 Chrysler, he failed to
25 comply with provisions of California Code of Regulations, title 16, as follows:

26 a. **Section 3340.35(c):** Respondent issued electronic Certificate of Compliance No.
27 [REDACTED] for the vehicle even though the vehicle had not been inspected in accordance with
28 section 3340.42.

1 installed and functioning correctly in accordance with test procedures), and California Code of
2 Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was
3 improperly tested). The Bureau assessed civil penalties totaling \$1,500 against Respondent for
4 the violations. Respondent complied with this citation on September 27, 2010.

5 b. On or about December 29, 2010, the Bureau issued Citation No. C2011-0741 against
6 Respondent's station license for violations of Health and Safety Code section 44012(f) (failure to
7 determine that emission control devices and systems required by State and Federal law were
8 installed and functioning correctly in accordance with test procedures), and California Code of
9 Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was
10 improperly tested). The Bureau assessed civil penalties totaling \$1,500 against Respondent for
11 the violations. Respondent complied with this citation on April 2, 2012.

12 c. On or about January 11, 2012, the Bureau issued Citation No. C2012-0702 against
13 Respondent's station license for violations of Health and Safety Code section 44012(f) (failure to
14 perform a visual/functional check of emission control devices according to procedures prescribed
15 by the department), and California Code of Regulations, title 16, section 3340.35(c) (issuing a
16 certificate of compliance to a vehicle that was improperly tested). The Bureau assessed civil
17 penalties totaling \$1,500 against Respondent for the violations. Respondent complied with this
18 citation on March 2, 2012.

19 **OTHER MATTERS**

20 20. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
21 probation the registrations for all places of business operated in this state by Arvin Panu, upon a
22 finding that he has, or is, engaged in a course of repeated and willful violation of the laws and
23 regulations pertaining to an automotive repair dealer.

24 21. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
25 License Number RC 254338, issued to Arvin Panu, doing business as A Valley Smog, is revoked
26 or suspended, any additional license issued under this chapter in the name of said licensees may
27 be likewise revoked or suspended by the director.

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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, suspending, or placing on probation Automotive Repair Dealer Registration No. ARD 254338, issued to Arvin Panu, doing business as A Valley Smog;
2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Arvin Panu;
3. Revoking or suspending Smog Check Station License Number RC 254338, issued to Arvin Panu, doing business as A Valley Smog;
4. Revoking or suspending any additional license issued under chapter 5, of the Health and Safety Code in the name of Arvin Panu;
5. Ordering Arvin Panu to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
6. Taking such other and further action as deemed necessary and proper.

DATED: May 14, 2013


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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