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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:

Case No. 79/12-141

13 **#1 SMOG TEST ONLY CENTER**  
14 **TU VAN TRAN, OWNER**  
14117 South Western Avenue, #B  
Gardena, CA 90249

**A C C U S A T I O N**

(Smog Check)

15 **Automotive Repair Dealer Reg. No. ARD 214072**  
16 **Smog Check, Test Only, Station License No.**  
**TC 214072**

17 Respondent.

18  
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 2. In or about 2000, the Director of Consumer Affairs ("Director") issued Automotive  
24 Repair Dealer Registration Number ARD 214072 ("registration") to Tu Van Tran ("Respondent"),  
25 owner of #1 Smog Test Only Center. Respondent's registration was in full force and effect at all  
26 times relevant to the charges brought herein and will expire on December 31, 2012, unless  
27 renewed.

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

9. Bus. & Prof. Code section 22, subdivision (a), states:

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

10. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

11. Health & Saf. Code section 44072.2 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 . . .

12. Health & Saf. 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. Bus. & Prof. 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.

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1 Bureau's 2000 Chrysler Cirrus without performing a bona fide inspection of the emission control  
2 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
3 protection afforded by the Motor Vehicle Inspection Program.

4 **THIRD CAUSE FOR DISCIPLINE**

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

6 18. Respondent's smog check station license is subject to disciplinary action pursuant to  
7 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
8 following sections of that Code:

9 a. **Section 44012:** Respondent failed to perform the visual check of the emission  
10 control devices on the Bureau's 2000 Chrysler Cirrus in accordance with procedures prescribed  
11 by the department in that he failed to determine that the PCV system components were missing  
12 on the vehicle.

13 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for  
14 the Bureau's 2000 Chrysler Cirrus without properly testing and inspecting the vehicle to  
15 determine if it was in compliance with Health & Saf. Code section 44012.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

19 19. Respondent's smog check station license is subject to disciplinary action pursuant to  
20 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
21 following sections of California Code of Regulations, title 16:

22 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate  
23 of compliance for the Bureau's 2000 Chrysler Cirrus even though the vehicle had not been  
24 inspected in accordance with section 3340.42.

25 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the  
26 Bureau's 2000 Chrysler Cirrus in accordance with the Bureau's specifications.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 20. Respondent's smog check station license is subject to disciplinary action pursuant to  
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,  
5 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an  
6 electronic smog certificate of compliance for the Bureau's 2000 Chrysler Cirrus without  
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,  
8 thereby depriving the People of the State of California of the protection afforded by the Motor  
9 Vehicle Inspection Program.

10 **MATTERS IN AGGRAVATION**

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

13 a. On or about October 16, 2006, the Bureau issued Citation No. C07-0211 against  
14 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
15 perform a visual/functional check of emission control devices according to procedures prescribed  
16 by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35,  
17 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On  
18 or about September 29, 2006, Respondent had issued a certificate of compliance to a Bureau  
19 undercover vehicle with a missing EGR valve. The Bureau assessed civil penalties totaling \$500  
20 against Respondent for the violations. Respondent paid the fine on November 15, 2006.

21 b. On or about September 27, 2010, the Bureau issued Citation No. C2011-0339 against  
22 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
23 determine that emission control devices and systems required by State and Federal law are  
24 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,  
25 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On  
26 or about September 2, 2010, Respondent had issued a certificate of compliance to a Bureau  
27 undercover vehicle with a missing EVAP canister. The Bureau assessed civil penalties totaling  
28 \$1,000 against Respondent for the violations. Respondent paid the fine on November 3, 2010.

1 c. On or about April 14, 2011, the Bureau issued Citation No. C2011-1192 against  
2 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
3 determine that emission control devices and systems required by State and Federal law are  
4 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,  
5 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On  
6 or about March 24, 2011, Respondent had issued a certificate of compliance to a Bureau  
7 undercover vehicle with a missing EVAP canister. The Bureau assessed civil penalties totaling  
8 \$1,500 against Respondent for the violations. Respondent paid the fine on May 23, 2011.

9 d. On or about July 22, 2011, the Bureau issued Citation No. C2012-0052 against  
10 Respondent for violating Health & Saf. Code section 44012, subdivision (f) (failure to perform a  
11 visual/functional check of emission control devices according to procedures prescribed by the  
12 department). Respondent had issued a certificate of compliance to a Bureau undercover vehicle  
13 with a missing PCV system. The Bureau assessed civil penalties totaling \$1,500 against  
14 Respondent for the violations. Respondent paid the fine on September 16, 2011.

15 **OTHER MATTERS**

16 22. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
17 suspend, revoke, or place on probation the registration for all places of business operated in this  
18 state by Respondent Tu Van Tran, owner of #1 Smog Test Only Center, upon a finding that  
19 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and  
20 regulations pertaining to an automotive repair dealer.

21 23. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
22 License Number TC 214072, issued to Respondent Tu Van Tran, owner of #1 Smog Test Only  
23 Center, is revoked or suspended, any additional license issued under this chapter in the name of  
24 said licensee may 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 or suspending Automotive Repair Dealer Registration Number ARD 214072, issued to Tu Van Tran, owner of #1 Smog Test Only Center;
2. Revoking or suspending any other automotive repair dealer registration issued to Tu Van Tran;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 214072, issued to Tu Van Tran, owner of #1 Smog Test Only Center;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Tu Van Tran;
5. Ordering Tu Van Tran, owner of #1 Smog Test Only Center, 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: 5/11/12

*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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