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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **NEW CHINO SMOG TEST ONLY CENTER; VICTOR G. LARES AND IRMA TORRES LARES, PARTNERS AND OWNERS** 5500 Schaefer Avenue, Unit C Chino, CA 91710 Automotive Repair Dealer Registration No. ARD 224230 Smog Check Test Only Station License No. TC 224230 Respondent.	Case No. 79/13-29 **ACCUSATION** **SMOG CHECK**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On October 16, 2008, the Bureau issued Automotive Repair Dealer Registration Number ARD 224230 (registration) to Victor G. Lares and Irma Torres Lares, owners of New Chino Smog Test Only Center (Respondent). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2013, unless renewed.

Smog Check Test Only Station License

3. On November 3, 2008, the Bureau issued Smog Check & Test Only, Station License Number TC 224230 (station license) to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2013, unless renewed.

JURISDICTION

4. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau, under the authority of the following laws.

5. Business and Professions Code (Code) section 9884.5 provides in pertinent part that a registration that is not renewed within three years following its expiration shall not be renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled immediately upon expiration of the three-year period.

6. Code section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

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

8. Health and Safety Code (H & S Code) section 44002 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.

9. H & S Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

10. H & S Code section 44072.7 provides that all accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (d) of Section

44072.2, the accusation may be filed within two years after the discovery by the Bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.

11. H & S Code section 44072.10 states, in pertinent part:

. . . .

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

. . . .

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

. . . .

STATUTORY PROVISIONS

12. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions 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) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

. . . .

(4) Any other conduct that constitutes fraud.

. . . .

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

. . . .

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

(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.

13. H & S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

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

. . . .

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

. . . .

14. H & S Code section 44015 states, in pertinent part:

. . . .

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

. . . .

15. H & S Code section 44059 states:

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

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16. H & S 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 (H & S 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.

. . . .

17. H & S Code section 44072.8 states:

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.

REGULATORY PROVISIONS

18. CCR Section 3340.24 states, in pertinent part:

. . . .

(c) The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

19. CCR Section 3340.42 states:

With the exception of diesel-powered vehicles addressed in subsection (f) of this section, the following emissions test methods and standards apply to all vehicles:

. . . .

(e) In addition to the test methods prescribed in this section, the following tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog Check inspection:

(1) A visual inspection of the vehicle's emissions control systems. During the visual inspection, the technician shall verify that the following emission control devices, as applicable, are properly installed on the vehicle:

(A) air injection systems,

(B) computer(s) and related sensors and switches,

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(C) crankcase emissions controls, including positive crankcase ventilation,

(D) exhaust gas after treatment systems, including catalytic converters,

(E) exhaust gas recirculation (EGR) systems,

(F) fuel evaporative emission controls,

(G) fuel metering systems, including carburetors and fuel injection,

(H) ignition spark controls, and

(I) any emissions control systems that are not otherwise prompted by the Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

. . . .

(f) On or after January 1, 2010, all 1998 model year and newer diesel-powered vehicles, with a gross vehicle weight rating of 14,000 or less pounds, are subject to the Smog Check Program. The following required inspections apply to all diesel-powered vehicles:

(1) A visual inspection of the vehicle's emissions control systems. During the visual inspection, the technician shall verify that the following emission control devices, as applicable, are properly installed on the vehicle:

(A) computer(s) and related sensors and switches,

(B) crankcase emissions controls,

(C) exhaust gas after treatment systems, including catalytic converters and particulate filters,

(D) exhaust gas recirculation (EGR) systems,

(E) fuel metering systems, including fuel injection, and

(F) any emissions control systems that are not otherwise prompted by the Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

. . . .

COST RECOVERY

20. B & P Code section 125.3 provides, 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.

UNDERCOVER OPERATION: 2001 FORD RANGER

21. On April 25, 2012, the Bureau conducted an undercover operation at Respondent's smog testing station, New Chino Smog Test Only Center. The Bureau's vehicle, a

2001 Ford Ranger, was modified to fail a proper smog inspection due to a missing positive crankcase ventilation (PCV) valve and PCV system hose. On April 5, 2012, in preparation for this undercover operation, the Bureau performed a post-modification/pre-undercover operation California smog check on the vehicle including an Acceleration Simulation Mode (ASM) test and a Two Speed Idle (TSI) test. The vehicle failed the visual portion of both inspections due to the missing PCV components. A Smog Check Vehicle Inspection Report (VIR) for both tests indicated an overall fail test result.

22. On April 25, 2012, a Bureau undercover operator took the vehicle to Respondent's smog station. The operator informed Respondent's attending employee that the vehicle needed a smog check. The operator signed a work order and received an estimate copy. Tavares then performed the inspection on the undercover vehicle. After testing, the operator paid $61.00 and received a copy of invoice number [redacted] showing a breakdown of the $61.00 charged. The operator also received the VIR indicating that the vehicle passed the visual inspection, functional check, and emissions test conducted by Tavares with Advanced Emission Specialist Technician License Number EA 631353. The VIR indicated that Smog Check Certificate Number [redacted] had been electronically transmitted to the Department of Motor Vehicles from station number TC 224230, which corresponds to the station license number issued to Respondent.

23. On April 27, 2012, Bureau personnel re-inspected the vehicle after the smog test at Respondent's smog station. The condition of the vehicle as modified before testing at Respondent's smog station had not changed; the previously removed PCV valve and PCV system hose were still missing. The Bureau performed two California smog check vehicle inspections including an ASM test and a TSI test. The vehicle failed the visual portion of both inspections due to the PCV components that remained missing. A Smog Check Vehicle Inspection Report (VIR) for both tests also indicated an overall fail test result.

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FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

24. Respondent has subjected their registration to discipline under Code section 9884.7, subdivision (a)(1), in that on April 25, 2012, they made statements which they knew or which by exercise of reasonable care they should have known were untrue or misleading when they issued electronic Certificate of Compliance No. [redacted] for the 2001 Ford Ranger, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle had a missing PCV system.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent has subjected their registration to discipline under Code section 9884.7, subdivision (a)(4), in that on April 25, 2012, they committed acts which constitute fraud by issuing electronic Certificate of Compliance No. [redacted] for the 2001 Ford Ranger without performing a bona fide visual inspection of the PCV system on that vehicle.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

26. Respondent has subjected their station license to discipline under H & S Code section 44072.2, subdivision (a), in that on April 25, 2012, regarding the 2001 Ford Ranger, they violated the following sections of that Code:

a. **Section 44012, subdivision (a)**: Respondent failed to determine that the PCV system required by law was installed and functioning correctly in accordance with test procedures.

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

c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate of Compliance No. [redacted] without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

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d. **Section 44059**: Respondent willfully made false entries for electronic Certificate of Compliance No. [redacted] by certifying that the vehicle had been inspected as required when, in fact, it had not.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

27. Respondent has subjected their station license to discipline under H & S Code section 44072.2, subdivision (c), in that on April 25, 2012, regarding the 2001 Ford Ranger, they violated the following sections of the CCR:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. [redacted] without performing a bona fide inspection of the emission control devices and systems on the vehicle as required by H & S Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of Compliance No. [redacted] even though the vehicle had not been inspected in accordance with H & S Code section 3340.42.

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

28. Respondent has subjected their station license to discipline under H & S Code section 44072.2, subdivision (d), in that on April 25, 2012, regarding the 2001 Ford Ranger, they committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. [redacted] for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the citizens of the State of California the benefits of the Motor Vehicle Inspection Program.

MATTERS IN AGGRAVATION

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

a. On or about September 24, 2009, the Bureau issued Citation No. C2010-0222 to Respondent, for violations of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual and functional check of emission control devices according to procedures prescribed by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On or about September 10, 2009, Respondent's employee issued a certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil penalties totaling $500.00 against Respondent for the violations. Respondent paid the fine on November 14, 2009.

b. On or about February 3, 2010, the Bureau issued Citation No. C2010-0793 against Respondent, for violations of Health & Saf. Code section 44012, subdivision (f) (failure to determine that emission control devices and systems required by state and federal law are installed and functioning correctly in accordance with test procedures); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On or about January 20, 2010, Respondent issued a certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil penalties totaling $1,000.00 against Respondent for the violations. Respondent paid the fine on March 24, 2010.

c. On or about August 19, 2010, the Bureau issued Citation No. C2011-0198 against Respondent, for violations of Health & Saf. Code section 44012, subdivision (f) (failure to determine that emission control devices and systems required by state and federal law are installed and functioning correctly in accordance with test procedures); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On or about August 4, 2010, Respondent issued a certificate of compliance to a Bureau undercover vehicle with the a missing PCV system. The Bureau assessed civil penalties totaling $2,500.00 against Respondent for the violations. Citation penalty was modified to $1,500.00 on May 31, 2011. Respondent paid the fine on August 9, 2011.

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OTHER MATTERS

30. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Victor G. Lares and Irma Torres Lares, owners of New Chino Smog Test Only Center, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

31. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TC 224230, issued to Respondent Victor G. Lares and Irma Torres Lares, owners of New Chino Smog Test Only Center, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

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 224230, issued to Victor G. Lares and Irma Torres Lares, owners of New Chino Smog Test Only Center;

2. Revoking or suspending any other automotive repair dealer registration issued to Victor G. Lares and Irma Torres Lares;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 224230, issued to Victor G. Lares and Irma Torres Lares, owners of New Chino Smog Test Only Center;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the names of Victor G. Lares and Irma Torres Lares;

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5. Ordering Victor G. Lares and Irma Torres Lares, individually, and as owners of New Chino 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: 11-19-12

John Wallauch by Doug Barall

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

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