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5 **BEFORE THE**
6 **DEPARTMENT OF CONSUMER AFFAIRS**
7 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
8 **STATE OF CALIFORNIA**

9
10 In the Matter of the Accusation Against:

Case No. 79/09-103

11 **SANG VANG TANG**
12 **288 E. Virginia Street**
13 **San Jose, CA 95112**
14 **Automotive Repair Dealer License No. ARD**
15 **244565**
16 **Smog Check Test Only Station License No.**
17 **TC 244565**
18 **Advanced Emission Specialist Technician**
19 **License No. EA 142557**

DEFAULT DECISION AND ORDER

20 **JASON PHU DANG**
21 **288 E. Virginia Street**
22 **San Jose, CA 95112**
23 **Advanced Emission Specialist Technician**
24 **License No. EA 153683,**

[Gov. Code, §11520]

25 **and**

26 **UY MINH VO**
27 **288 E. Virginia Street**
28 **San Jose, CA 95112**
Advanced Emission Specialist Technician
License No. EA 153004

Respondent.

FINDINGS OF FACT

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2 1. On or about June 8, 2009, Complainant Sherry Mehl, in her official capacity as the
3 Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation
4 No. 79/09-103 against Sang Vang Tang (Respondent) before the Director of Consumer Affairs.

5 2. On or about April 16, 2006, the Bureau of Automotive Repair (Bureau) issued
6 Automotive Repair Dealer License No. ARD 244565 to Respondent Sang Vang Tang. The
7 Automotive Repair Dealer License was in full force and effect at all times relevant to the charges
8 brought herein and will expire on March 31, 2009, unless renewed.

9 3. On or about April 21, 2006, the Bureau of Automotive Repair issued Smog Check
10 Test Only Station License No. TC 244565 to Respondent Sang Vang Tang. The Smog Check
11 Test Only Station License was in full force and effect at all times relevant to the charges brought
12 herein and will expire on March 31, 2009, unless renewed.

13 4. On or about March 31, 2003, the Bureau of Automotive Repair issued Advanced
14 Emission Specialist Technician License No. EA 142557 to Respondent, Sang Vang Tang. The
15 Advanced Emission Specialist Technician License was in full force and effect at all times
16 relevant to the charges brought herein and will expire on January 31, 2011, unless renewed.

17 5. On or about 2006, the Bureau of Automotive Repair Advanced Emission Specialist
18 Technician License No. EA 153683 to Respondent Jason Phu Dang. The Advanced Emission
19 Specialist Technician License was in full force and effect at all times relevant to the charges
20 brought herein and will expire on July 31, 2010, unless renewed.

21 6. On or about 2006, the Bureau of Automotive Repair Advanced Emission Specialist
22 Technician License No. EA 153004 to Respondent Uy Minh Vo. The Advanced Emission
23 Specialist Technician License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on December 31, 2009, unless renewed.

25 7. On or about July 1, 2009, Sandra Adams, an employee of the Department of Justice,
26 served by Certified and First Class Mail a copy of the Accusation No. 79/09-103, Statement to
27 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
28 11507.6, and 11507.7 to Respondents' addresses of record with the Bureau, which were and are:

1 288 E. Virginia Street
2 San Jose, CA 95112.

3 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4 8. Service of the Accusation was effective as a matter of law under the provisions of
5 Business & Professions Code section 124.

6 9. On or about July 21, 2009, the aforementioned documents were returned by the U.S.
7 Postal Service marked "Unclaimed."

8 10. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the respondent
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts
11 of the accusation not expressly admitted. Failure to file a notice of defense shall
12 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
13 may nevertheless grant a hearing.

14 11. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 79/09-103.

17 12. California Government Code section 11520 states, in pertinent part:

18 (a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions
20 or upon other evidence and affidavits may be used as evidence without any notice to
21 respondent.

22 13. Pursuant to its authority under Government Code section 11520, the Director finds
23 Respondent is in default. The Director will take action without further hearing and, based on the
24 evidence on file herein, finds that the allegations in Accusation No. 79/09-103 are true.

25 14. The total cost for investigation and enforcement in connection with the Accusation
26 are \$34,585.23 as of October 30, 2009.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Sang Vang Tang has subjected
3 his Automotive Repair Dealer License No. ARD 244565 and Smog Check Test Only Station
4 License No. TC 244565 to discipline. Respondent Jason Phu Dang has subjected his Advanced
5 Emission Specialist Technician License No. EA 153683 to discipline. Respondent Uy Minh Vo
6 has subjected his Advanced Emission Specialist Technician License No. EA 153004.

7 2. A copy of the Accusation is attached.

8 3. The agency has jurisdiction to adjudicate this case by default.

9 4. The Director of Consumer Affairs is authorized to revoke Respondents' Licenses
10 based upon the following violations alleged in the Accusation:

11 **ORDER**

12 **IT IS SO ORDERED that** Automotive Repair Dealer License No. ARD 244565, Smog
13 Check Test Only Station License No. TC 244565, and Advanced Emission Specialist Technician
14 License No. EA 142557 heretofore issued to Respondent Sang Vang Tang is revoked.

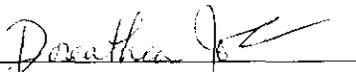
15 **IT IS FURTHER ORDERED that** Advanced Emission Specialist Technician License No.
16 EA 153683 heretofore issued to Respondent Jason Phu Dang is revoked.

17 **IT IS FURTHER ORDERED that** Advanced Emission Specialist Technician License No.
18 EA 153004 heretofore issued to Respondent Uy Minh Vo is revoked.

19 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
20 written motion requesting that the Decision be vacated and stating the grounds relied on within
21 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
22 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

23 This Decision shall become effective on 2/22/10.

24 It is so ORDERED January 14, 2010

25 
26 DOREATHEA JOHNSON

27 Deputy Director, Legal Affairs
28 Department of Consumer Affairs

27 default decision_LIC.rtf
28 DOJ docket number:SF2009403201

28 Attachment: Exhibit A: Accusation No.79/09-103

Exhibit A
Accusation No. 79/09-103

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 MARETTA WARD
Deputy Attorney General
4 State Bar No. 176470
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1384
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

11
12 In the Matter of the Accusation Against,

Case No. 79/09-103

13 **TRAM TEST ONLY CENTER, INC.**
SANG VANG TANG, PRESIDENT
14 288 E. Virginia Street
15 San Jose, CA 95112

ACCUSATION

(Smog Check)

16 Automotive Repair Dealer Reg. No. ARD 244565
17 Smog Check, Test Only, Station License No. TC 244565,

18 **SANG VANG TANG**
4071 Forestbrook Way
19 San Jose, CA 95111

20 Advanced Emission Specialist Technician License
21 No. EA 142557,

22 **JASON PHU DANG**
3281 Merrit Lane
23 San Jose, CA 95111

24 Advanced Emission Specialist Technician License
25 No. EA 153683,

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and
UY MINH VO
1066 Woodminster Drive
San Jose, CA 95121

Advanced Emission Specialist Technician License
No. EA 153004

Respondents.

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration No. ARD 244565

2. On or about April 17, 2006, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 244565 to Tram Test Only Center, Inc. ("Respondent Tram Test Only Center"), with Sang Vang Tang as president ("Respondent Tang"). Respondent Tram Test Only Center's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

Smog Check, Test Only, Station License No. TC 244565

3. On or about April 21, 2006, the Director issued Smog Check, Test Only, Station License Number TC 244565 to Respondent Tram Test Only Center. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

Advanced Emission Specialist Technician License No. EA 142557

4. On or about March 31, 2003, the Director issued Advanced Emission Specialist Technician License Number EA 142557 to Respondent Tang. Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2011, unless renewed.

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STATUTORY PROVISIONS

11. Bus. & Prof. 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 refuse to validate, or may invalidate temporarily or permanently, 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 which constitutes fraud.

.....

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

.....

(c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, 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.

12. Bus. & Prof. Code section 9884.8 states, in pertinent part, that “[a]ll work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied . . .”

13. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost . . .

1 14. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
2 "bureau," "commission," "committee," "department," "division," "examining committee."
3 "program." and "agency." "License" includes certificate, registration or other means to engage in
4 a business or profession regulated by the Bus. & Prof. Code.

5 15. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

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

17 16. Health & Saf. Code section 44072.8 states that when a license has been revoked or
18 suspended following a hearing under this article, any additional license issued under this chapter
19 in the name of the licensee may be likewise revoked or suspended by the director.

20 COST RECOVERY

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

25 UNDERCOVER OPERATION #1: 1997 FORD TAURUS

26 18. On August 30, 2007, an undercover operator with the Bureau (hereinafter "operator")
27 took the Bureau's 1997 Ford Taurus to Respondent Tram Test Only Center's facility and
28 requested a smog inspection. The On Board Diagnostic (OBDII) system on the Bureau-
documented vehicle was defective in that the OBDII readiness monitors would erase when the
ignition key was turned off, preventing all of the readiness monitors from running to completion.
Respondent Vo (hereinafter "Vo") performed a smog test on the vehicle and later told the

1 operator that the vehicle failed because of the computer. Vo instructed the operator to drive the
2 vehicle for 30 miles and to return to the facility so that Vo could retest the vehicle. Vo did not
3 charge the operator for the inspection or provide the operator with a written estimate, invoice, or
4 vehicle inspection report ("VIR").

5 19. At approximately 1120 hours that same day, the operator returned the vehicle to the
6 facility and requested a re-inspection. Vo only tested the OBDII monitors and told the operator
7 that the vehicle still failed the smog test. The operator asked Vo if there was anything Vo could
8 do to help him out. Vo told the operator that he could bypass the computer for \$150, but it was
9 illegal and the operator should not tell anyone. The operator told Vo that he had to get more
10 money and would be back.

11 20. At approximately 1142 hours, the operator returned to the facility. Vo tested the
12 emissions on the vehicle. The operator observed Vo attach the OBDII connector to a new white
13 Honda Odyssey with no license plates. After the smog test was completed, the operator paid Vo
14 \$140 and received a VIR, but no estimate or invoice. The VIR indicated that the vehicle was
15 certified by Vo, resulting in the issuance of electronic smog Certificate of Compliance No.
16 MU496066C.

17 21. Later that same day, a representative of the Bureau called the facility and was quoted
18 a price of \$50 for a smog inspection.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 22. Respondent Tram Test Only Center's automotive repair dealer registration is subject
22 to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
23 Respondent made or authorized statements which it knew or in the exercise of reasonable care
24 should have known to be untrue or misleading, as follows: Respondent Tram Test Only Center's
25 smog check technician, Respondent Vo, certified that the Bureau's 1997 Ford Taurus had passed
26 inspection and was in compliance with applicable laws and regulations, and that he performed the
27 inspection in accordance with all Bureau requirements. In fact, Respondent Vo utilized another
28 vehicle, the Honda Odyssey, during the OBDII functional test in order to issue a smog certificate

1 of compliance for the 1997 Ford Taurus, and did not test or inspect the 1997 Ford Taurus as
2 required by Health & Saf. Code section 44012. Further, the OBDII system on the 1997 Ford
3 Taurus was defective, as set forth in paragraph 18 above, and the vehicle would not pass the
4 inspection required by Health & Saf. Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 23. Respondent Tram Test Only Center's automotive repair dealer registration is subject
8 to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
9 Respondent committed an act which constitutes fraud by issuing an electronic smog certificate of
10 compliance for the Bureau's 1997 Ford Taurus without performing a bona fide inspection of the
11 emission control devices and systems on the vehicle, thereby depriving the People of the State of
12 California of the protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Violations of the Bus. & Prof. Code)**

15 24. Respondent Tram Test Only Center's automotive repair dealer registration is subject
16 to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that
17 Respondent failed to comply with provisions of that Code in the following material respects:

18 a. **Section 9884.8:** Respondent failed to provide the operator with an invoice for the
19 smog inspection on the Bureau's 1997 Ford Taurus.

20 b. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with a
21 written estimate for the smog inspection on the Bureau's 1997 Ford Taurus.

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1 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
2 issuing an electronic smog certificate of compliance for the Bureau's 1997 Ford Taurus without
3 performing a bona fide inspection of the emission control devices and systems on the vehicle,
4 thereby depriving the People of the State of California of the protection afforded by the Motor
5 Vehicle Inspection Program.

6 **SEVENTH CAUSE FOR DISCIPLINE**

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

8 28. Respondent Vo's advanced emission specialist technician license is subject to
9 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
10 Respondent failed to comply with section 44012 of that Code by failing to perform emission
11 control tests on the Bureau's 1997 Ford Taurus in accordance with procedures prescribed by the
12 department.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations Pursuant**
15 **to the Motor Vehicle Inspection Program)**

16 29. Respondent Vo's advanced emission specialist technician license is subject to
17 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
18 Respondent failed to comply with provisions of California Code of Regulations, title 16, as
19 follows:

20 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an
21 electronic smog certificate of compliance for the Bureau's 1997 Ford Taurus.

22 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
23 1997 Ford Taurus in accordance with Health & Saf. Code sections 44012 and 44035, and
24 California Code of Regulations, title 16, section 3340.42.

25 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
26 Bureau's 1997 Ford Taurus in accordance with the Bureau's specifications.

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1 **NINTH CAUSE FOR DISCIPLINE**

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

3 30. Respondent Vo's advanced emission specialist technician license is subject to
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
5 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
6 issuing an electronic smog certificate of compliance for the Bureau's 1997 Ford Taurus 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 **UNDERCOVER OPERATION #2: 1998 HONDA CIVIC**

11 31. On November 14, 2007, an undercover operator with the Bureau (hereinafter
12 "operator") took the Bureau's 1998 Honda Civic to Respondent Tram Test Only Center's facility
13 and met with Respondent Tang (hereinafter "Tang"). The operator told Tang that the vehicle had
14 an adjustable cam gear and requested a smog inspection. An illegal adjustable camshaft timing
15 gear¹ was installed on the Bureau-documented vehicle. Tang instructed the operator to drive the
16 vehicle into the smog bay, which the operator did. The operator observed Tang lift the hood of
17 the vehicle and perform the smog test. After the inspection was completed, the operator received
18 a vehicle inspection report and paid Tang \$160 in cash for the inspection. Tang did not provide
19 the operator with a written estimate or invoice for the inspection. That same day, electronic smog
20 Certificate of Compliance #MW395889C was issued for the vehicle.

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24 ¹ Aftermarket parts intended to replace the original vehicle equipment that are not functionally identical to
25 the original equipment part in all respects and that in any way affect emissions must be approved by the California
26 Air Resources Board (CARB) via an executive order. Add-on or modified parts undergo a CARB engineering
27 evaluation. If the part or modification is shown to not increase vehicle emissions, it is granted an exemption to
28 emission control system anti-tampering laws. This exemption is called an executive order and allows the add-on or
modified part to be installed on specific emission controlled vehicles. Every executive order part or modification has
an assigned number that can be verified by smog check stations, BAR referee stations, or by the CARB. The
assigned number is to be affixed to the part or kept with the vehicle.

1 c. **3340.41, subdivision (c):** Respondent Tram Test Only Center's smog check
2 technician, Respondent Tang, knowingly entered into the emissions inspection system ("EIS")
3 false information about the Bureau's 1998 Honda Civic.

4 d. **Section 3340.42:** Respondent Tram Test Only Center failed to conduct the
5 required smog tests on the Bureau's 1998 Honda Civic in accordance with the Bureau's
6 specifications.

7 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

9 37. Respondent Tram Test Only Center's smog check station license is subject to
10 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
11 Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured by
12 issuing an electronic smog certificate of compliance for the Bureau's 1998 Honda Civic without
13 performing a bona fide inspection of the emission control devices and systems on the vehicle,
14 thereby depriving the People of the State of California of the protection afforded by the Motor
15 Vehicle Inspection Program.

16 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

18 38. Respondent Tang's technician license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
20 section 44012 of that Code, as follows: Respondent failed to perform the emission control tests
21 on the Bureau's 1998 Honda Civic in accordance with procedures prescribed by the department.

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1 SEVENTEENTH CAUSE FOR DISCIPLINE

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

4 39. Respondent Tang's technician license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions
6 of California Code of Regulations, title 16, as follows:

7 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued an
8 electronic smog certificate of compliance for the Bureau's 1998 Honda Civic.

9 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test the
10 Bureau's 1998 Honda Civic in accordance with Health & Saf. Code sections 44012 and 44035.
11 and Regulation 3340.42.

12 c. 3340.41, subdivision (c): Respondent knowingly entered into the EIS false
13 information about the Bureau's 1998 Honda Civic.

14 d. Section 3340.42: Respondent failed to conduct the required smog tests on the
15 Bureau's 1998 Honda Civic in accordance with the Bureau's specifications.

16 EIGHTEENTH CAUSE FOR DISCIPLINE

17 (Dishonesty, Fraud or Deceit)

18 40. Respondent Tang's technician license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
20 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
21 compliance for the Bureau's 1998 Honda Civic without performing a bona fide inspection of the
22 emission control devices and systems on the vehicle, thereby depriving the People of the State of
23 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **UNDERCOVER OPERATION #3: 1986 OLDSMOBILE CUTLASS SUPREME**

2 41. On April 23, 2008, an undercover operator with the Bureau (hereinafter "operator")
3 took the Bureau's 1986 Oldsmobile Cutlass Supreme (hereinafter "Oldsmobile") to Respondent
4 Tram Test Only Center's facility and requested a smog inspection. An opening was created in the
5 ground control circuit 411 at the mixture control (M/C) solenoid test connector on the Bureau-
6 documented vehicle, causing the check engine light (malfunction indicator light or "MIL") to
7 illuminate on the dashboard and the vehicle to fail an emissions test as a gross polluter.
8 Respondent Dang (hereinafter "Dang") had the operator sign an estimate, but did not give him a
9 copy. Following the inspection, Dang told the operator that the vehicle failed because it exceeded
10 the gross polluter limits and that the operator should get the vehicle fixed then return it to the
11 facility. The operator paid Dang \$50. Dang gave the operator a copy of a VIR, but did not
12 provide him with an invoice.

13 42. On May 1, 2008, the operator returned the vehicle to the facility and met with Dang.
14 The operator told Dang that the vehicle had failed a smog test the week before and he was back to
15 have it smogged. Dang started the vehicle and saw that the check engine light was on. Dang
16 asked the operator what he wanted to do about the check engine light. The operator told Dang to
17 pass the vehicle. Dang stated that he would for \$150. Dang had the operator sign a written
18 estimate, but did not give him a copy. The operator observed Dang drive a Honda Civic onto the
19 second dynamometer. Dang then backed the Oldsmobile onto the first dynamometer and inserted
20 the emissions probe into the tail pipe of the vehicle. Approximately 10 minutes later, Dang
21 removed the emissions probe from the Oldsmobile and inserted it into the tail pipe of the Honda
22 Civic. Dang then drove the Oldsmobile off of the first dynamometer. The operator paid Dang
23 \$150. Dang gave the operator a copy of a VIR, but did not provide him with an invoice. That
24 same day, electronic smog Certificate of Compliance #NA482271C was issued for the vehicle.

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1 **NINETEENTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 43. Respondent Tram Test Only Center's automotive repair dealer registration is
4 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in
5 that Respondent made or authorized a statement which it knew or in the exercise of reasonable
6 care should have known to be untrue or misleading, as follows: Respondent Tram Test Only
7 Center's smog check technician, Respondent Dang, certified that the Bureau's 1986 Oldsmobile
8 Cutlass Supreme had passed inspection and was in compliance with applicable laws and
9 regulations, and that he performed the inspection in accordance with all Bureau requirements. In
10 fact, Respondent Dang conducted the inspection using the exhaust emissions of another vehicle,
11 the Honda Civic, a method known as clean piping², in order to issue a smog certificate of
12 compliance for the 1986 Oldsmobile Cutlass Supreme, and did not test or inspect the 1986
13 Oldsmobile Cutlass Supreme as required by Health & Saf. Code section 44012. Further, there
14 was an opening in the ground control circuit 411 at the M/C solenoid test connector, causing the
15 1986 Oldsmobile Cutlass Supreme to fail an emissions test as a gross polluter and the check
16 engine light to illuminate on the dashboard. As such, the vehicle would not pass the inspection
17 required by Health & Saf. Code section 44012.

18 **TWENTIETH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 44. Respondent Tram Test Only Center's automotive repair dealer registration is
21 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in
22 that Respondent committed an act which constitutes fraud by issuing an electronic smog
23 certificate of compliance for the Bureau's 1986 Oldsmobile Cutlass Supreme without performing
24 a bona fide inspection of the emission control devices and systems on the vehicle, thereby
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26 _____
27 ² Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "clean
28 piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS to
issue a certificate of compliance for another vehicle.

1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

4 **(Violations of the Bus. & Prof. Code)**

5 45. Respondent Tram Test Only Center's automotive repair dealer registration is subject
6 to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that
7 Respondent failed to comply with provisions of that Code in the following material respects:

8 a. **Section 9884.8:** Respondent failed to provide the operator with invoices for the smog
9 inspections on the Bureau's 1986 Oldsmobile Cutlass Supreme.

10 b. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with a
11 written estimate for the smog inspection on the Bureau's 1986 Oldsmobile Cutlass Supreme.

12 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

14 46. Respondent Tram Test Only Center's smog check station license is subject to
15 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
16 Respondent failed to comply with the following sections of that Code:

17 a. **Section 44012:** Respondent failed to perform the emission control tests on the
18 Bureau's 1986 Oldsmobile Cutlass Supreme in accordance with procedures prescribed by the
19 department.

20 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance
21 for the Bureau's 1986 Oldsmobile Cutlass Supreme without properly testing and inspecting the
22 vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

23 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with Regulations Pursuant**
25 **to the Motor Vehicle Inspection Program)**

26 47. Respondent Tram Test Only Center's smog check station license is subject to
27 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that

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1 Respondent failed to comply with the provisions of California Code of Regulations, title 16, as
2 follows:

3 a. **Section 3340.24, subdivision (c)**: Respondent Tram Test Only Center falsely or
4 fraudulently issued an electronic smog certificate of compliance for the Bureau's 1986
5 Oldsmobile Cutlass Supreme.

6 b. **Section 3340.35, subdivision (c)**: Respondent Tram Test Only Center issued an
7 electronic smog certificate of compliance for the Bureau's 1986 Oldsmobile Cutlass Supreme
8 even though the vehicle had not been inspected in accordance with California Code of
9 Regulations, title 16, section 3340.42.

10 c. **3340.41, subdivision (c)**: Respondent Tram Test Only Center's smog check
11 technician, Respondent Dang, knowingly entered into the EIS false information about the
12 Bureau's 1986 Oldsmobile Cutlass Supreme.

13 d. **Section 3340.42**: Respondent Tram Test Only Center failed to conduct the
14 required smog tests on the Bureau's 1986 Oldsmobile Cutlass Supreme in accordance with the
15 Bureau's specifications.

16 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

18 48. Respondent Tram Test Only Center's smog check station license is subject to
19 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
20 Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured by
21 issuing an electronic smog certificate of compliance for the Bureau's 1986 Oldsmobile Cutlass
22 Supreme without performing a bona fide inspection of the emission control devices and systems
23 on the vehicle, thereby depriving the People of the State of California of the protection afforded
24 by the Motor Vehicle Inspection Program.

25 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

27 49. Respondent Dang's technician license is subject to disciplinary action pursuant to
28 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with

1 section 44012 of that Code, as follows: Respondent failed to perform the emission control tests
2 on the Bureau's 1986 Oldsmobile Cutlass Supreme in accordance with procedures prescribed by
3 the department.

4 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant**
6 **to the Motor Vehicle Inspection Program)**

7 50. Respondent Dang's technician license is subject to disciplinary action pursuant to
8 Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions
9 of California Code of Regulations, title 16, as follows:

10 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an
11 electronic smog certificate of compliance for the Bureau's 1986 Oldsmobile Cutlass Supreme.

12 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the
13 Bureau's 1986 Oldsmobile Cutlass Supreme in accordance with Health & Saf. Code sections
14 44012 and 44035, and Regulation 3340.42.

15 c. **3340.41, subdivision (c)**: Respondent knowingly entered into the EIS false
16 information about the Bureau's 1986 Oldsmobile Cutlass Supreme.

17 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
18 Bureau's 1986 Oldsmobile Cutlass Supreme in accordance with the Bureau's specifications.

19 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

21 51. Respondent Dang's technician license is subject to disciplinary action pursuant
22 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
23 dishonest, fraudulent, or deceitful act whereby another is injured by issuing an electronic smog
24 certificate of compliance for the Bureau's 1986 Oldsmobile Cutlass Supreme without performing
25 a bona fide inspection of the emission control devices and systems on the vehicle, thereby
26 depriving the People of the State of California of the protection afforded by the Motor Vehicle
27 Inspection Program.

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OTHER MATTERS

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2 52. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
4 business operated in this state by Respondent Tram Test Only Center, Inc. upon a finding that
5 said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
6 regulations pertaining to an automotive repair dealer.

7 53. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
8 License Number TC 244565, issued to Respondent Tram Test Only Center, Inc., is revoked or
9 suspended, any additional license issued under this chapter in the name of said licensee may be
10 likewise revoked or suspended by the director.

11 54. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
12 Technician License Number EA 142557, issued to Sang Vang Tang, is revoked or suspended, any
13 additional license issued under this chapter in the name of said licensee may be likewise revoked
14 or suspended by the director.

15 55. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
16 Technician License Number EA 153683, issued to Jason Phu Dang, is revoked or suspended, any
17 additional license issued under this chapter in the name of said licensee may be likewise revoked
18 or suspended by the director.

19 56. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
20 Technician License Number EA 153004, issued to Uy Minh Vo, is revoked or suspended, any
21 additional license issued under this chapter in the name of said licensee may be likewise revoked
22 or suspended by the director.

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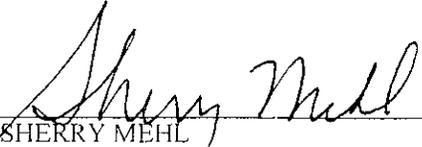
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12. Taking such other and further action as deemed necessary and proper.

DATED: 6/8/09


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs

State of California
Complainant

SF2009403201