

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

In the Matter of the Accusation Against:

**RICKY TRAN – PRESIDENT/  
SECRETARY/TREASURER,  
R T WINDSTAR INC., D.B.A.  
STORY ROAD SMOG TEST  
1299 Story Road  
San Jose, CA 95122**

Automotive Repair Dealer Registration No.  
ARD 250139  
Smog Check, Test Only, Station License No.  
TC 250139

Respondent.

Case No. 79/14-68

OAH No. 2014060572

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

December 31, 2014.

DATED:

December 5, 2014

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSHUA A. ROOM  
Supervising Deputy Attorney General  
3 BRETT A. KINGSBURY  
Deputy Attorney General  
4 State Bar No. 243744  
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5 San Francisco, CA 94102-7004  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 79/14-68

12 **RICKY TRAN - PRESIDENT/**  
13 **SECRETARY/ TREASURER,**  
14 **R T WINDSTAR INC., D.B.A.**  
15 **STORY ROAD SMOG TEST**  
1299 Story Road  
San Jose, CA 95122  
  
16 **Automotive Repair Dealer Registration No.**  
17 **ARD 250139**  
**Smog Check, Test Only, Station License No.**  
18 **TC 250139**

OAH No. 2014060572  
**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

Respondent.

21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
22 entitled proceedings that the following matters are true:

23 PARTIES

24 I. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He  
25 brought this action solely in his official capacity and is represented in this matter by Kamala D.  
26 Harris, Attorney General of the State of California, by Brett A. Kingsbury, Deputy Attorney  
27 General.

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1 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel  
2 the attendance of witnesses and the production of documents; the right to reconsideration and  
3 court review of an adverse decision; and all other rights accorded by the California  
4 Administrative Procedure Act and other applicable laws.

5 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
6 every right set forth above.

7 CULPABILITY

8 10. Respondent admits the truth of each and every charge and allegation in Accusation  
9 No. 79/14-68.

10 11. Respondent agrees that its Automotive Repair Dealer Registration and Smog Check,  
11 Test Only, Station License are subject to discipline and they agree to be bound by the Director's  
12 probationary terms as set forth in the Disciplinary Order below.

13 RESERVATION OF RIGHTS

14 12. The admissions made by Respondent herein are only for the purposes of this  
15 proceeding, or any other proceedings in which the Director, Bureau, or other professional  
16 licensing agency is involved, and shall not be admissible in any other criminal or civil  
17 proceeding.

18 CONTINGENCY

19 13. This stipulation shall be subject to approval by the Director or the Director's designee.  
20 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau may  
21 communicate directly with the Director and staff of the Department of Consumer Affairs  
22 regarding this stipulation and settlement, without notice to or participation by Respondent or its  
23 counsel. By signing the stipulation, Respondent understands and agrees that they may not  
24 withdraw its agreement or seek to rescind the stipulation prior to the time the Director considers  
25 and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the  
26 Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this  
27 paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall  
28 not be disqualified from further action by having considered this matter.



1           4.     **Random Inspections.** Provide Bureau representatives unrestricted access to inspect  
2 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

3           5.     **Jurisdiction.** If an accusation is filed against Respondent during the term of  
4 probation, or if the Bureau remits the case to the Attorney General's Office to prepare a Petition to  
5 Revoke Probation during the term of probation, the Director of Consumer Affairs shall have  
6 continuing jurisdiction over this matter until the final decision is issued on the Accusation or  
7 Petition to Revoke Probation, and the period of probation shall be extended until such decision.

8           6.     **Violation of Probation.** Should the Director of Consumer Affairs determine that  
9 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
10 after giving notice and opportunity to be heard, revoke Respondent's probation and impose the  
11 discipline previously stayed.

12          7.     **False and Misleading Advertising.** If the accusation involves false and misleading  
13 advertising, during the period of probation, Respondent shall submit any proposed advertising  
14 copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

15          8.     **Restrictions.** During the period of probation, Respondent shall not perform any form  
16 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,  
17 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to  
18 properly perform such work, and BAR has been given 10 days notice of the availability of the  
19 equipment for inspection by a BAR representative.

20          9.     **Cost Recovery.** Respondent shall pay the Bureau its reasonable costs of prosecution  
21 and investigation in the amount of \$4,167.44. Payment, to the Bureau, of this full amount shall  
22 be payable in twenty four (24) equal, consecutive payments, with the final payment due twelve  
23 (12) months prior to the termination of probation. Failure to complete payment of cost recovery  
24 within this time frame shall constitute a violation of probation which may subject Respondent's  
25 license and registration to outright revocation; however, the Director or the Director's Bureau of  
26 Automotive Repair designee may elect to continue probation until such time as reimbursement of  
27 the entire cost recovery amount has been made to the Bureau.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael B. Levin. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration, and Smog Check, Test Only, Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

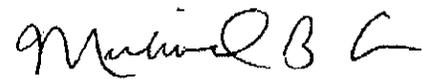
DATED: 10/31/14



Ricky Tran - President/ Secretary/ Treasurer, RT Windstar Inc. dba Story Road Smog Test, Respondent

I have read and fully discussed with Respondent Ricky Tran the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11/2/14



Michael B. Levin  
Attorney for Respondent

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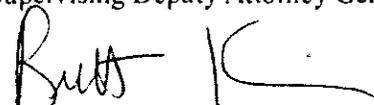
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 11/7/14

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JOSHUA A. ROOM  
Supervising Deputy Attorney General



BRETT A. KINGSBURY  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 79/14-68**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSHUA A. ROOM  
Supervising Deputy Attorney General  
3 BRETT A. KINGSBURY  
Deputy Attorney General  
4 State Bar No. 243744  
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5 San Francisco, CA 94102-7004  
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Case No. *79/14-68*

12 **RICKY TRAN - PRESIDENT/  
SECRETARY/ TREASURER,  
13 R T WINDSTAR INC., D.B.A.  
STORY ROAD SMOG TEST**  
14 1299 Story Road  
San Jose, CA 95122

ACCUSATION

*smog check*

15 **Automotive Repair Dealer Registration No.**  
16 **ARD 250139**  
17 **Smog Check, Test Only, Station License No.**  
**TC 250139**

18 Respondent.

19  
20  
21 Complainant alleges:

22 **PARTIES**

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

25 2. In 2007, the Bureau of Automotive Repair issued Automotive Repair Dealer  
26 Registration Number ARD 250139 to Ricky Tran - President/ Secretary/ Treasurer, R T Windstar  
27 Inc. dba Story Road Smog Test (Respondent). The Automotive Repair Dealer Registration was in  
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1 full force and effect at all times relevant to the charges brought herein and will expire on April 30,  
2 2014, unless renewed.

3 3. On or about June 7, 2007, the Bureau of Automotive Repair issued Smog Check,  
4 Test Only, Station License Number TC 250139 to Respondent. The Smog Check, Test Only,  
5 Station License was in full force and effect at all times relevant to the charges brought herein and  
6 will expire on April 30, 2014, unless renewed.

### 7 JURISDICTION

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

10 5. Section 118, subdivision (b), of the Business and Professions Code provides that the  
11 suspension, expiration, surrender, or cancellation of a license shall not deprive the Director of  
12 jurisdiction to proceed with a disciplinary action during the period within which the license may  
13 be renewed, restored, reissued or reinstated. Section 9884.5 of the Business and Professions Code  
14 provides that a registration may not be renewed, restored, or reinstated after three years following  
15 expiration.

16 6. Section 477 of the Business and Professions Code provides, in pertinent part, that  
17 "Board" includes "bureau," "commission," "committee," "department," "division," "examining  
18 committee," "program," and "agency." "License" includes certificate, registration or other means  
19 to engage in a business or profession regulated by the code.

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

23 8. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
24 expiration or suspension of a license by operation of law, or by order or decision of the Director  
25 of Consumer Affairs, or a court of law, or the voluntary surrender of the license, shall not deprive  
26 the Director of jurisdiction to proceed with any investigation of or action or disciplinary  
27 proceedings against the licensee, or to render a decision suspending or revoking the license.

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1 13. California Code of Regulations, title 16, section 3340.42, states, in pertinent part:

2 "Smog check inspection methods are prescribed in the Smog Check Manual, reference by  
3 section 3340.45."

4 14. California Code of Regulations, title 16, section 3340.45, requires that all smog check  
5 inspections be performed in accordance with the smog check inspection manual applicable to the  
6 time period.

7 **COSTS**

8 15. Section 125.3 of the Code provides, in pertinent part, that the Complainant may  
9 request the administrative law judge to direct a licentiate found to have committed a violation or  
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
11 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
12 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
13 may be included in a stipulated settlement.

14 **BACKGROUND**

15 16. On July 26, 2013, an undercover operator working for the Bureau took a Bureau-  
16 documented 1995 Chevrolet to Respondent's shop for a smog inspection. The 1995 Chevrolet  
17 utilizes a Positive Crankcase Ventilation (PCV) emission control system, but it was missing the  
18 required PCV valve and vacuum pipe/hose at the time of the inspection. The 1995 Chevrolet was  
19 therefore not in a condition to pass a properly performed smog inspection.

20 17. Respondent's technician, Tien Ly, performed the inspection and passed the vehicle.  
21 Tien Ly also specifically entered into the emissions inspection system that the vehicle's PCV  
22 system "passed." Tien Ly then signed under penalty of perjury (1) that the inspection had been  
23 performed in accordance with all Bureau requirements and (2) that the false information on the  
24 passing vehicle inspection report was true and accurate. The Bureau's operator was charged \$40  
25 for the inspection and for the issuance of a certificate of compliance.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(False or Misleading Statements)**

3 18. Respondent's automotive repair dealer registration is subject to discipline under  
4 section 9884.7(a)(1) of the Business and Professions Code in that Respondent's technician made  
5 or authorized a statement which was untrue or misleading and which was known, or which by the  
6 exercise of reasonable care should have been known, to be untrue or misleading. The  
7 circumstances are described above in Background.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Conduct Constituting Fraud)**

10 19. Respondent's automotive repair dealer registration is subject to discipline under  
11 section 9884.7(a)(4) of the Business and Professions Code in that Respondent's technician  
12 engaged in conduct that constitutes fraud. The circumstances are described above in Background.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 20. Respondent's automotive repair dealer registration is subject to discipline under  
16 section 9884.7(a)(6) of the Business and Professions Code in that, as described above in  
17 Background, Respondent failed in a material respect to comply with regulations adopted pursuant  
18 to the Automotive Repair Act, specifically:

19 21. Section 3340.35, subdivision (b) of title 16, California Code of Regulations, in that  
20 Respondent improperly issued a certificate of compliance to a customer whose vehicle had not  
21 been inspected in accordance with the procedures specified in the Smog Check Manual.

22 22. Section 3340.45 of title 16, California Code of Regulations, in that Respondent  
23 performed a smog inspection other than in accordance with the smog check inspection manual  
24 applicable to the time period.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Violating Statutes or Regulations)**

27 23. Respondent's smog check station license is subject to discipline under Health and  
28 Safety Code section 44072.2, subdivision (a), (c) and/or (h), in that, as described above in

1 Background, Respondent violated the following statutory and/or regulatory provisions related to  
2 the smog program:

3 24. Section 44012 of the Health and Safety Code in that Respondent performed the tests  
4 on the 1995 Chevrolet other than in accordance with procedures described by the Department.

5 25. Section 44012, subdivision (f) of the Health and Safety Code in that Respondent did  
6 not perform the visual check portion of the smog inspection in accordance with prescribed  
7 procedures.

8 26. Section 3340.35, subdivision (b) of title 16, California Code of Regulations, in that  
9 Respondent improperly issued a certificate of compliance to a customer whose vehicle had not  
10 been inspected in accordance with the procedures specified in the Smog Check Manual.

11 27. Section 3340.45 of title 16, California Code of Regulations, in that Respondent  
12 performed a smog inspection other than in accordance with the smog check inspection manual  
13 applicable to the time period.

#### 14 **FIFTH CAUSE FOR DISCIPLINE**

##### 15 **(Dishonesty)**

16 28. Respondent's smog check station license is subject to discipline under section  
17 44072.2(d) of the Health and Safety Code in that Respondent committed an act involving  
18 dishonesty, fraud, or deceit whereby another was injured, in that Respondent charged money for  
19 an inspection but did not properly perform one, and improperly issued a certificate of compliance,  
20 thereby depriving the people of California of the protections of the Health and Safety Code and  
21 Motor Vehicle Inspection Program. The circumstances are described more fully above in  
22 Background.

#### 23 **DISCIPLINE CONSIDERATIONS**

24 29. To determine the degree of discipline, if any, to be imposed on Respondent,  
25 Complainant alleges that on or about July 27, 2011, in a prior action, the Bureau issued Citation  
26 Number #C2012-0073 to Respondent for issuing a certificate of compliance to a Bureau-  
27 documented undercover vehicle with a missing Fuel Evaporative Canister. Respondent was  
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1 ordered to pay \$1000. The citation was paid on September 2, 2011. That citation is now final  
2 and is incorporated by reference as if fully set forth.

3 30. To determine the degree of discipline, if any, to be imposed on Respondent,  
4 Complainant alleges that on or about December 8, 2011, in a prior action, the Bureau issued  
5 Citation Number #C2012-0627 to Respondent for issuing a certificate of compliance to a Bureau-  
6 documented undercover vehicle with a missing PCV valve. Respondent was ordered to pay  
7 \$1500. The citation was paid on December 22, 2011. That citation is now final and is  
8 incorporated by reference as if fully set forth.

9 31. To determine the degree of discipline, if any, to be imposed on Respondent,  
10 Complainant alleges that on or about January 15, 2013, in a prior action, the Bureau of  
11 Automotive Repair issued Citation Number #C2013-0493 to Respondent for issuing a certificate  
12 of compliance to a Bureau-documented undercover vehicle with a missing Pulsed Secondary Air  
13 Injection/Air Suction system. Respondent was ordered to pay \$3000. Respondent has appealed  
14 the citation, which shall be fully incorporated herein if and when it becomes final.

15 **PRAYER**

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

18 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
19 250139, issued to Ricky Tran - President/ Secretary/ Treasurer, R T Windstar Inc. dba Story Road  
20 Smog Test (Respondent);

21 2. Revoking or suspending any other automotive repair dealer registration issued in the  
22 name of Ricky Tran - President/ Secretary/ Treasurer, R T Windstar Inc.;

23 3. Revoking or suspending Smog Check, Test Only, Station License Number TC  
24 250139, issued to Respondent;

25 4. Revoking or suspending any other license issued under Chapter 5 of the Health and  
26 Safety Code in the name of Ricky Tran - President/ Secretary/ Treasurer, R T Windstar Inc.;

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5. Ordering Respondent to pay the Bureau of Automotive Repair 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 is deemed necessary and proper.

DATED: December 17, 2013

  
PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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