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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. **79/13-40**

13 **I DO SMOG, INC.**
14 **LAUREN PHAM YANG,**
15 **President/Secretary/Treasurer**
771 North Mathilda Ave, Unit 1
Sunnyvale, CA 94085

A C C U S A T I O N
(Smog Check)

16 **Automotive Repair Dealer Registration**
17 **No. ARD 260651**
18 **Smog Check, Test Only, Station License No.**
TC 260651

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

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

24 **Automotive Repair Dealer Registration**

25 2. On or about February 1, 2010, the Director of Consumer Affairs ("Director") issued
26 Automotive Repair Dealer Registration number ARD 260651 ("registration") to I Do Smog, Inc.,
27 Lauren Yang President/Secretary/Treasurer, ("Respondent"). Respondent's registration was in
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1 full force and effect at all times relevant to the charges brought in this Accusation and will expire
2 on January 31, 2014, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about February 11, 2010, the Director issued Smog Check, Test Only, Station
5 License number TC 260651 ("station license") to Respondent. Respondent's station license was
6 in full force and effect at all times relevant to the charges brought in this Accusation and will
7 expire on January 31, 2014, unless renewed.

8 **JURISDICTION**

9 4. This Accusation is brought before the Director, under the authority of the following
10 laws. All section references are to the Business and Professions Code (Code) unless otherwise
11 indicated.

12 5. Code section 118, subdivision (b), states:

13 The suspension, expiration, or forfeiture by operation of law of a license issued
14 by a board in the department, or its suspension, forfeiture, or cancellation by order of
15 the board or by order of a court of law, or its surrender without the written consent of
16 the board, shall not, during any period in which it may be renewed, restored, reissued,
17 or reinstated, deprive the board of its authority to institute or continue a disciplinary
proceeding against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action against the
licensee on any such ground.

18 6. Code section 9884.13 provides, in part, that the expiration of a valid registration shall
19 not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against
20 an automotive repair dealer or to render a decision invalidating a registration temporarily or
21 permanently.

22 7. Health and Safety Code section 44002 provides, in part, that the Director has all the
23 powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle
24 Inspection Program.

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1 12. Health and Safety Code section 44015, subdivision (b), states “[i]f a vehicle meets the
2 requirements of Section 44012, a smog check station licensed to issue certificates shall issue a
3 certificate of compliance or a certificate of noncompliance.”

4 13. Health and Safety Code section 44072.2 states, in part:

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

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

11 ...

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

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

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

19 REGULATORY PROVISIONS

20 15. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:

21 A licensed station shall issue a certificate of compliance or noncompliance to
22 the owner or operator of any vehicle that has been inspected in accordance with the
23 procedures specified in section 3340.42 of this article and has all the required
24 emission control equipment and devices installed and functioning correctly. . . .

25 16. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

26 No person shall enter into the emissions inspection system any vehicle
27 identification information or emission control system identification data for any
28 vehicle other than the one being tested. Nor shall any person knowingly enter into the
emissions inspection system any false information about the vehicle being tested.

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

2 Smog check stations and smog check technicians shall conduct tests and
3 inspections in accordance with the bureau's BAR-97 Emissions Inspection System
4 Specifications referenced in subsections (a) and (b) of Section 3340.17 . . .

5 **COST RECOVERY**

6 18. Code section 125.3 provides, in part, that a Board may request the administrative law
7 judge to direct a licentiate found to have committed a violation or violations of the licensing act to
8 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9 **UNDERCOVER OPERATION: 1994 CHEVROLET CAPRICE**

10 19. On May 3, 2012, an undercover operator with the Bureau ("operator") drove the
11 Bureau's 1994 Chevrolet Caprice to I Do Smog, Inc., located in Sunnyvale, California, and
12 requested a smog inspection. The vehicle was missing a Secondary Air Injection Reactor System,
13 a component of the emissions system.

14 20. After the inspection was completed, the operator paid \$58.00 to Respondent and
15 Respondent provided the operator with copies of an invoice and a vehicle inspection report. The
16 vehicle inspection report indicated that a technician at Respondent's facility performed the smog
17 inspection. Respondent issued Electronic Smog Certificate of Compliance No. OM528740 for
18 the vehicle.

19 21. On May 10, 2012, the Bureau inspected the 1994 Chevrolet Caprice and found that
20 the Secondary Air Injection Reactor System was still missing.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Misleading Statements)**

23 22. Respondent has subjected its registration to discipline under Code section 9884.7,
24 subdivision (a)(1), in that on or about May 3, 2012, it made statements which it knew or which by
25 exercise of reasonable care it should have known were untrue or misleading when it issued
26 electronic Certificate of Compliance No. OM528740 for the 1994 Chevrolet Caprice, certifying
27 that the vehicle complied with applicable laws and regulations when, in fact, the vehicle's
28 Secondary Air Injection Reactor System was missing.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 23. Respondent has subjected its registration to discipline under Code section 9884.7,
4 subdivision (a)(4), in that on or about May 3, 2012, it committed acts, that constitute fraud by
5 issuing electronic Certificate of Compliance No. OM528740 for the 1994 Chevrolet Caprice,
6 without performing a bona fide inspection of the emission control devices and systems on that
7 vehicle, thereby depriving the People of the State of California of the protection afforded by the
8 Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Violation of the Motor Vehicle Inspection Program)**

11 24. Respondent has subjected its station license to discipline under Health and Safety
12 Code section 44072.2, subdivision (a), in that on or about May 3, 2012, regarding the 1994
13 Chevrolet Caprice, it violated sections of that Code, as follows:

14 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
15 control devices and systems required by law were installed and functioning correctly in
16 accordance with test procedures.

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

19 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
20 Compliance No. OM528740 without properly testing and inspecting the vehicle to determine if it
21 complied with Code section 44012.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

24 25. Respondent has subjected its station license to discipline under Health and Safety
25 Code section 44072.2, subdivision (c), in that on or about May 3, 2012, regarding the 1994
26 Chevrolet Caprice, it violated sections of the California Code of Regulations, title 16, as follows:
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1 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
2 Compliance No. OM528740 even though the vehicle was not inspected in accordance with
3 section 3340.42 of that Code.

4 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the
5 emissions inspection system.

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

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 26. Respondent subjected its station license to discipline under Health and Safety Code
11 section 44072.2, subdivision (d), in that on or about May 3, 2012, regarding the 1994 Chevrolet
12 Caprice, it committed acts involving dishonesty, fraud or deceit whereby another was injured by
13 issuing electronic Certificate of Compliance No. OM528740 to that vehicle without performing a
14 bona fide inspection of the emission control devices and systems on the vehicle, thereby
15 depriving the People of the State of California of the protection afforded by the Motor Vehicle
16 Inspection Program.

17 **PRIOR CITATIONS**

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

20 a. On or about March 14, 2011, the Bureau issued Citation No. C2011-1061 against
21 Respondent for violations of Health and Safety Code section 44012, subdivision (f), (failure to
22 determine that emission control devices and systems are installed and functioning correctly). On
23 or about February 17, 2011, Respondent had issued a certificate of compliance to a Bureau
24 undercover vehicle with a missing PCV valve. A civil penalty of \$1,000.00 was ordered and later
25 reduced to \$500.00. On or about October 12, 2012, Respondent paid the civil penalty.

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4. Ordering I Do Smog, Inc., Lauren Pham Yang, President/Secretary/Treasurer, 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; and

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

DATED: June 4 2013



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

SF2012401005