

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

In the Matter of the Accusation Against:

YUAN MU ENTERPRISES, LLC dba STAR SMOG CHECK

2080 Redwood Highway

Greenbrae, CA 94904

Mailing Address:

3133 Dunsmuir Ct.

Pleasanton, CA 94588

Automotive Repair Dealer Registration No. ARD 283664

Smog Check, Test Only, Station License No. 283664

JOSE LUIS BERNALES

209 Carson St.

Hercules, CA 94547

Mailing Address:

2655 Appian Way

Pinole, CA 94564

Smog Check Inspector License No. EO 633102

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DECISION

The attached Stipulated Settlement and Disciplinary Order as to Respondent YUAN MU ENTERPRISES, LLC. ONLY is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective on February 13, 2020.

DATED: Dec. 19, 2019



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

1 XAVIER BECERRA
Attorney General of California
2 CHAR SACHSON
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant
7

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

12
13 In the Matter of the Accusation Against:

Case No. 79/18-16287

14 **YUAN MU ENTERPRISES, LLC.**
15 **dba STAR SMOG CHECK**
16 **2080 Redwood Highway**
Greenbrae, CA 94904

17 **MAILING ADDRESS**
18 **3313 Dunsmuir Ct.**
Pleasanton, CA 94588

19 **Automotive Repair Dealer No. ARD 283664**
20 **Smog Check, Test Only, License No. TC 283664**

21 **JOSE LUIS BERNALES**
22 **209 Carson St.**
Hercules, CA 94547

23 **MAILING ADDRESS**
24 **2655 Appian Way**
Pinole, CA 94564

25 **Smog Check Inspector (EO) License No. 633102**
26 **Smog Check Repair Technician (EI) License No. 633102**

27 Respondents.
28

STIPULATED.
SETTLEMENT AND
DISCIPLINARY ORDER AS
TO RESPONDENT YUAN
MU ENTERPRISES, LLC.
ONLY

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

3 **PARTIES**

4 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
5 (Bureau). He brought this action solely in his official capacity and is represented in this matter by
6 Xavier Becerra, Attorney General of the State of California, by Justin R. Surber, Deputy Attorney
7 General.

8 2. Respondent Yuan Mu Enterprises, LLC., (Respondent) is represented in this
9 proceeding by attorney William Ferreira whose address is: 555 California Street, Suite 4925 San
10 Francisco, CA 94104

11 3. On or about May 19, 2016, the Bureau issued Automotive Repair Dealer Registration
12 No. ARD 283664 to Respondent. The Automotive Repair Dealer Registration will expire on May
13 31, 2020, unless renewed.

14 4. On or about June 3, 2016, the Bureau issued Smog Check, Test Only, Station License
15 No. TC 283664 to Respondent. The Smog Check, Test Only, Station License will expire on May
16 31, 2020, unless renewed.

17 5. José Luis Bernales is not a party to this stipulation.

18 **JURISDICTION**

19 6. Accusation No. 79/18-16287 was filed before the Director, and is currently pending
20 against Respondent. The Accusation and all other statutorily required documents were properly
21 served on Respondent on June 26, 2019. Respondent timely filed its Notice of Defense
22 contesting the Accusation.

23 7. A copy of Accusation No. 79/18-16287 is attached as exhibit A and incorporated
24 herein by reference.

25 **ADVISEMENT AND WAIVERS**

26 8. Respondent has carefully read, fully discussed with counsel, and understands the
27 charges and allegations in Accusation No. 79/18-16287. Respondent has also carefully read, fully
28

1 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
2 Order.

3 9. Respondent is fully aware of its legal rights in this matter, including the right to a
4 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
5 the witnesses against them; the right to present evidence and to testify on its own behalf; the right
6 to the issuance of subpoenas to compel the attendance of witnesses and the production of
7 documents; the right to reconsideration and court review of an adverse decision; and all other
8 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

11 CULPABILITY

12 11. Respondent understands and agrees that the charges and allegations in Accusation
13 No. 79/18-16287, if proven at a hearing, constitute cause for imposing discipline upon its
14 Automotive Repair Dealer Registration and its Smog Check Station License.

15 12. For the purpose of resolving the Accusation without the expense and uncertainty of
16 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
17 basis for the charges in the Accusation, and that Respondent hereby gives up its right to contest
18 those charges.

19 13. Respondent agrees that its Automotive Repair Dealer Registration and Smog Check
20 Station License are subject to discipline and agrees to be bound by the Director's probationary
21 terms as set forth in the Disciplinary Order below.

22 CONTINGENCY

23 14. This stipulation shall be subject to approval by the Director of Consumer Affairs or
24 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
25 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
26 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
27 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
28 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the

1 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the
2 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
3 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
4 and the Director shall not be disqualified from further action by having considered this matter.

5 15. The parties understand and agree that Portable Document Format (PDF) and facsimile
6 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
7 signatures thereto, shall have the same force and effect as the originals.

8 16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
9 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
10 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
11 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
12 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
13 writing executed by an authorized representative of each of the parties.

14 17. In consideration of the foregoing admissions and stipulations, the parties agree that
15 the Director may, without further notice or formal proceeding, issue and enter the following
16 Disciplinary Order:

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 283664
19 and Smog Check, Test Only, Station License No. TC 283664, issued to Respondent Yuan Mu
20 Enterprises, LLC. are revoked. However, the revocations are stayed and Respondent is placed on
21 probation for three (3) years on the following terms and conditions.

22 1. **Obey All Laws.** During the period of probation, Respondent shall comply with all
23 federal and state statutes, regulations and rules governing all BAR registrations and licenses held
24 by Respondent.

25 2. **Posting of Sign.** (Applicable only when actual suspension of a registration or station
26 license is ordered): During the period of suspension, Respondent shall prominently post a sign or
27 signs, provided by BAR, indicating the beginning and ending dates of the suspension and
28 indicating the reason for the suspension. The sign or signs shall be conspicuously displayed in a

1 location or locations open to and frequented by customers. The location(s) of the sign(s) shall be
2 approved by BAR and shall remain posted during the entire period of actual suspension.

3 **3. Quarterly Reporting.** During the period of probation, Respondent shall report either
4 by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no
5 more frequently than once each calendar quarter, on the methods used and success achieved in
6 maintaining compliance with the terms and conditions of probation.

7 **4. Report Financial Interests.** Respondent shall, within 30 days of the effective date
8 of the decision and within 30 days from the date of any request by BAR during the period of
9 probation, report any financial interest which any Respondent or any partners, officers, or owners
10 of any Respondent facility may have in any other business required to be registered pursuant to
11 Section 9884.6 of the Business and Professions Code.

12 **5. Access to Examine Vehicles and Records.** Respondent shall provide BAR
13 representatives unrestricted access to examine all vehicles (including parts) undergoing service,
14 inspection, or repairs, up to and including the point of completion. Respondent shall also provide
15 BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

16 **6. Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of
17 California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction
18 of California, Respondent shall notify BAR in writing within 10 days of the dates of departure
19 and return, and of the dates of cessation and resumption of business in California. All provisions
20 of probation other than cost reimbursement requirements, restitution requirements, training
21 requirements, and that Respondent obey all laws, shall be held in abeyance during any period of
22 time of 30 days or more in which Respondent is not residing or engaging in business within the
23 jurisdiction of California. All provisions of probation shall recommence on the effective date of
24 resumption of business in California. Any period of time of 30 days or more in which Respondent
25 is not residing or engaging in business within the jurisdiction of California shall not apply to the
26 reduction of this probationary period or to any period of actual suspension not previously
27 completed. Tolling is not available if business or work relevant to the probationary license or
28 registration is conducted or performed during the tolling period.

1 **7. Violation of Probation.** If Respondent violates or fails to comply with the terms and
2 conditions of probation in any respect, the Director, after giving notice and opportunity to be
3 heard may set aside the stay order and carry out the disciplinary order provided in the decision.
4 Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain
5 jurisdiction, and the period of probation shall be extended until final resolution of the matter.

6 **8. Maintain Valid License.** Respondent shall, at all times while on probation, maintain
7 a current and active registration and/or license(s) with BAR, including any period during which
8 suspension or probation is tolled. If Respondent's registration or license is expired at the time the
9 decision becomes effective, the registration or license must be renewed by Respondent within 30
10 days of that date. If Respondent's registration or license expires during a term of probation, by
11 operation of law or otherwise, then upon renewal Respondent's registration or license shall be
12 subject to any and all terms and conditions of probation not previously satisfied. Failure to
13 maintain a current and active registration and/or license during the period of probation shall also
14 constitute a violation of probation.

15 **9. Cost Recovery.** Respondent shall pay the Bureau of Automotive Repair \$4,010.53
16 for the reasonable costs of the investigation and enforcement of case No. 79/18-16287. Any
17 agreement for a scheduled payment plan shall require full payment to be completed no later than
18 six (6) months before probation terminates. Respondent shall make payment by check or money
19 order payable to the Bureau of Automotive Repair and shall indicate on the check or money order
20 that it is for cost recovery payment for case No. 79/18-16287. Any order for payment of cost
21 recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate
22 until full cost recovery payment has been made. BAR reserves the right to pursue any other
23 lawful measures in collecting on the costs ordered and past due, in addition to taking action based
24 upon the violation of probation.

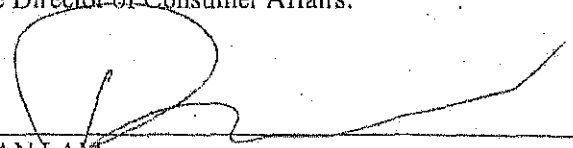
25 **10. Completion of Probation.** Upon successful completion of probation, Respondent's
26 affected registration and/or license will be fully restored or issued without restriction, if
27 Respondent meets all current requirements for registration or licensure and has paid all
28 outstanding fees, monetary penalties, or cost recovery owed to BAR.

11. **License Surrender.** Following the effective date of a decision that orders a stay of invalidation or revocation, if Respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate the Respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision. Respondent may not petition the Director for reinstatement of the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If Respondent applies to BAR for a registration or license at any time after that date, Respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney. I am a member of Yuan Mu Enterprises, LLC. And have the authority to enter this stipulation on behalf of Yuan Mu Enterprises, LLC. I understand the stipulation and the effect it will have on Yuan Mu Enterprises, LLC.'s Automotive Repair Dealer Registration and Smog Check Station License. Yuan Mu Enterprises, LLC. enters into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agrees to be bound by the Decision and Order of the Director of Consumer Affairs.

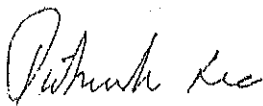
DATED: 11-4-19



RYAN LAM,
As a member of and on behalf of
Respondent Yuan Mu Enterprises, LLC.

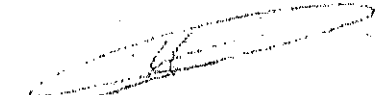
1
2 DATED:

11/4/2019


PATRICK LEE,
As a member of and on behalf of
Respondent Yuan Mu Enterprises, LLC.


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4
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6 DATED:

Nov 4, 2019


YIZHEN HUANG
As a member of and on behalf of
Respondent Yuan Mu Enterprises, LLC.

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10
11 I have read and fully discussed with the members of Yuan Mu Enterprises, LLC., the terms
12 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
13 Order. I approve its form and content.

14 DATED: 11-4-19


WILLIAM FERREIRA
Attorney for Respondent

15
16
17 **ENDORSEMENT**

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Director of Consumer Affairs.
20

21 DATED:

11/12/19

Respectfully submitted,

22 XAVIER BECERRA
23 Attorney General of California
24 CHAR SACHSON
25 Supervising Deputy Attorney General

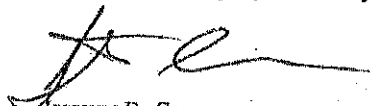

JUSTIN R. SURBER
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 79/18-16287

1 XAVIER BECERRA
Attorney General of California
2 CHAR SACHSON
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 79/18-16287

12 YUAN MU ENTERPRISES, LLC.
13 dba STAR SMOG CHECK
14 2080 Redwood Highway
Greenbrae, CA 94904

ACCUSATION

15 MAILING ADDRESS
16 3313 Dunsmuir Ct.
17 Pleasanton, CA 94588

18 Automotive Repair Dealer No. ARD 283664
Smog Check, Test Only, License No. TC 283664

19 JOSE LUIS BERNALES
20 209 Carson St.
21 Hercules, CA 94547

22 MAILING ADDRESS
23 2655 Appian Way
Pinole, CA 94564

24 Smog Check Inspector (EO) License No. 633102
25 Smog Check Repair Technician (EI) License No. 633102

26 Respondents.

1 Complainant alleges:
2

3 PARTIES

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

6 2. On or about May 19, 2016, the Bureau of Automotive Repair issued Automotive
7 Repair Dealer Registration Number ARD 283664 to Yuan Mu Enterprises, LLC., (Respondent
8 Yuan) dba Star Smog Check. The Automotive Repair Dealer Registration was in full force and
9 effect at all times relevant to the charges brought herein and will expire on May 31, 2020, unless
10 renewed.

11 3. On or about June 3, 2016, the Bureau of Automotive Repair issued Smog Check,
12 Test Only, Station License Number TC 283664 to Respondent Yuan. The Smog Check, Test
13 Only, Station License was in full force and effect at all times relevant to the charges brought
14 herein and will expire on May 31, 2020, unless renewed.

15 4. In 2011, the Bureau of Automotive Repair issued Advanced Emission Specialist
16 Technician License Number EA 633102 to Jose Luis Bernales (Respondent Bernales). The
17 license was cancelled on February 21, 2013. Thereafter the license was renewed pursuant to
18 Respondent's election as a Smog Check Inspector License No. EO633102 and Smog Check
19 Repair Technician License No. EI633102, effective February 21, 2013.¹ The Smog Check
20 Inspector License was in full force and effect at all times relevant to the charges brought herein
21 and will expire on May 31, 2021, unless renewed. The Smog Check Repair Technician License
22 expired on May 31, 2019 and has not been renewed.

23 JURISDICTION

24 5. This Accusation is brought before the Director of the Department of Consumer
25 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

26
27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
28 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

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1 prices for service work and for parts, not including sales tax, and shall state separately the sales
2 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice
3 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
4 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
5 statement indicating whether any crash parts are original equipment manufacturer crash parts or
6 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
7 given to the customer and one copy shall be retained by the automotive repair dealer."

8 9. Section 9884.9 of the Code states:

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

23 "(1) Make a notation on the invoice of the same facts set forth in the notation on the work
24 order.

25 "(2) Upon completion of the repairs, obtain the customer's signature or initials to an
26 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
27 repairs, in the following language:

28 "I acknowledge notice and oral approval of an increase in the original estimated price.

1 _____
2 (signature or initials)"

3 Nothing in this section shall be construed as requiring an automotive repair dealer to give a
4 written estimated price if the dealer does not agree to perform the requested repair.

5 ..."

6 10. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
7 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
8 proceeding against an automotive repair dealer or to render a decision invalidating a registration
9 temporarily or permanently.

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

13 12. Section 44012 of the Health and Safety Code states:

14 "The test at the smog check stations shall be performed in accordance with procedures
15 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
16 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
17 and shall ensure all of the following:

18 ...

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

23 ..."

24 13. Section 44015 of the Health and Safety Code states:

25 "(a) A licensed smog check station shall not issue a certificate of compliance, except as
26 authorized by this chapter, to any vehicle that meets the following criteria:

27 "(1) A vehicle that has been tampered with.

28 ...

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

3 ...”

4 14. Section 44032 of the Health and Safety Code states:

5 “No person shall perform, for compensation, tests or repairs of emission control devices or
6 systems of motor vehicles required by this chapter unless the person performing the test or repair
7 is a qualified smog check technician and the test or repair is performed at a licensed smog check
8 station. Qualified technicians shall perform tests of emission control devices and systems in
9 accordance with Section 44012.”

10 15. Section 44059 of the Health and Safety Code states:

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

15 16. Section 44072.2 of the Health and Safety Code states:

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

19 “(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health
20 and Saf. Code, ‘ 44000, et seq.)) and the regulations adopted pursuant to it, which related to the
21 licensed activities.

22 ...”

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

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

25 ...”

26 “(h) Violates or attempts to violate the provisions of this chapter relating to the particular
27 activity for which he or she is licensed.”

1 “(1) A visual inspection of emission control components and systems to verify the vehicle’s
2 emission control systems are properly installed,

3 “(2) A functional inspection of emission control systems as specified in the Smog Check
4 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
5 operation.

6 “...”

7 22. California Code of Regulations, title 16, section 3340.45, states:

8 “(a) All Smog Check inspections shall be performed in accordance with requirements and
9 procedures prescribed in the following:

10 “...”

11 “(2) Smog Check Manual, dated November 2, 2017, which is hereby incorporated by
12 reference. This manual shall become effective on August 2, 2018.”

13 23. California Code of Regulations, title 16, section 3353, states:

14 “No work for compensation shall be commenced and no charges shall accrue without
15 specific authorization from the customer in accordance with the following requirements:

16 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
17 estimated price for labor and parts for a specific job.

18 “...”

19 24. California Code of Regulations, title 16, section 3371, states:

20 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
21 or misleading statement or advertisement which is known to be false or misleading, or which by
22 the exercise of reasonable care should be known to be false or misleading. Advertisements and
23 advertising signs shall clearly show the following:

24 “(a) Firm Name and Address. The dealer’s firm name and address as they appear on the
25 State registration certificate as an automotive repair dealer; and

26 “(b) Telephone Number. If a telephone number appears in an advertisement or on an
27 advertising sign, this number shall be the same number as that listed for the dealer’s firm name
28

1 and address in the telephone directory, or in the telephone company records if such number is
2 assigned to the dealer subsequent to the publication of such telephone directory."

3 25. California Code of Regulations, title 16, section 3373, states:

4 "No automotive repair dealer or individual in charge shall, in filling out an estimate,
5 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
6 withhold therefrom or insert therein any statement or information which will cause any such
7 document to be false or misleading, or where the tendency or effect thereby would be to mislead
8 or deceive customers, prospective customers, or the public."

9 COSTS

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

16 FACTUAL BACKGROUND

17 27. In or about September 2018, a Bureau Representative prepared a 2002 Dodge
18 (Dodge) to fail a smog inspection due to the removal of the Positive Crankcase Ventilation (PCV)
19 valve and hose assembly. The Bureau Representative installed a non-approved open breather
20 element in place of the PCV valve and large vacuum cap on the PCV valve intake manifold
21 vacuum supply port. In this condition the Dodge would not pass a properly performed smog
22 inspection. The Dodge would fail the visual portion of the smog inspection.

23 28. On or about September 25, 2018, an undercover operation was performed at
24 Respondent Yuan's smog check station Star Smog Check to confirm compliance with the Smog
25 Check Program. An operator drove the Dodge to Star Smog Check and requested a smog
26 inspection from Respondent Bernales and Respondent Yuan.

27 29. Respondent Bernales pulled the Dodge into a service bay. A few minutes later
28 Respondent Bernales came in the waiting area and told the operator that the vehicle would not

1 pass because the vehicle had been modified. Respondent Bernales showed the operator the non-
2 approved open breather element installed in place of the PCV valve told the operator that you
3 cannot do that.

4 30. Respondent Bernales offered to pass the Dodge without repairing it for \$100.00. The
5 operator initially declined the offer and explained that she needed to talk to her son. Respondent
6 Bernales told the operator she owed "nothing" since it did not pass. The operator did not sign or
7 receive an estimate and was not provided with an invoice or Vehicle Inspection Report (VIR).

8 31. On or about September 25, 2018, the operator returned to Star Smog Check and asked
9 Respondent Bernales if he was still willing to pass the Dodge. Respondent Bernales
10 acknowledged he would and said that he would give the operator a discount on the smog and
11 certificate and only charge her \$50.00, then the "other" would be \$150.00. The operator agreed to
12 this. After a few minutes, Respondent Bernales handed the operator a VIR. The operator did not
13 sign or receive a written estimate and was not provided with an invoice.

14 32. Smog Certificate of Compliance #Q0727831C was issued for the Dodge by
15 Respondent Yuan and Respondent Bernales. Respondent Bernales entered "Pass" into the OIS
16 for the Visual Inspection category "Crankcase Emission Controls," when in fact Respondent
17 Bernales should have entered "Tampered" because the Durango had been tampered. The VIR
18 stated "Pass" for the Visual Inspection category "Crankcase Emission Controls." Respondent
19 Bernales signed the VIR under penalty of perjury.

20 **FIRST CAUSE FOR DISCIPLINE**

21 (False or Misleading Statements)

22 33. Respondent Yuan has subjected its Automotive Repair Dealer Registration to
23 disciplinary action under section 9884.7, subdivision(a)(1), in that Respondents made false or
24 misleading statements that it knew or should have known were false or misleading as follows:

25 a. Respondents transmitted information to the Vehicle Information Database stating the
26 Dodge had properly installed Crankcase Emission Controls.

27 b. Respondent created a VIR stating the Dodge had properly installed Crankcase
28 Emission Controls.

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1 g. Respondent violated California Code of Regulations, Title 16, section-3353, in that
2 Respondent failed to provide the operator with a written estimate.

3 h. Respondent violated California Code of Regulations, Title 16, section 3371, in that
4 Respondent made untrue or misleading statements as described in paragraph 33, above.

5 i. Respondent violated California Code of Regulations, Title 16, section 3373, in that
6 Respondent made untrue or misleading statements on a Vehicle Inspection Report. The Vehicle
7 Inspection Report stated that the vehicle passed the Crankcase Emission Controls visual
8 inspection.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 (Fraud, Dishonest, or Deceit)

11 36. Respondent Yuan has subjected its Smog Check Station License to disciplinary action
12 under Health and Safety Code section 44072.2, subdivision (d), in that Respondents committed
13 acts involving dishonesty, fraud, or deceit whereby another was injured. The circumstances are
14 described in paragraphs 27-32, above.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 (Violation of Laws and Regulations)

17 37. Respondent Yuan has subjected its Smog Check Station License to disciplinary action
18 under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or (g), in that
19 Respondents violated the following laws and regulations:

20 a. Respondent Yuan violated Health and Safety code section 44012, subdivision (f), in
21 the Respondents failed to perform a smog check on the Dodge according to the procedures
22 prescribed by the department. Respondents failed to perform a proper visual inspection.

23 b. Respondent Yuan violated Health and Safety code section 44015, subdivision (a)(1),
24 in that Respondents issued a certificate of compliance to a vehicle that had been tampered with.

25 c. Respondent Yuan violated Health and Safety code section 44059, in that Respondents
26 issued a Vehicle Inspection Report that stated the Dodge passed the Crankcase Emission Controls
27 portion of the smog inspection when they knew the vehicle did not pass this portion of the smog
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1 inspection. Respondents also caused a certificate of compliance to be issued to the Dodge by
2 making false entries into the OIS inspection system.

3 c. Respondent Yuan violated California Code of Regulations, Title 16, section 3340.24,
4 subdivision (c), in that Respondents falsely or fraudulently issued a certificate of compliance to
5 the Dodge.

6 d. Respondent Yuan violated California Code of Regulations, Title 16, section 3340.35,
7 subdivision (c), in that Respondents issued a certificate of compliance to a vehicle that did not
8 have all the required emission control equipment and devices installed and functioning correctly.

9 e. Respondent Yuan violated California Code of Regulations, Title 16, section 3340.42,
10 subdivision (b) in that Respondents failed to perform a proper visual inspection of the Dodge.

11 f. Respondent Yuan violated California Code of Regulations, Title 16, section 3340.42
12 in conjunction with California Code of Regulations, Title 16, section 3340.45, subdivision (b), in
13 that Respondents failed to perform a proper visual inspection on the Dodge as proscribed in the
14 Smog Check Manual.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 (Fraud, Dishonest, or Deceit)

17 38. Respondent Bernales has subjected its Smog Check Inspector and Smog Check
18 Repair Technician Licenses to disciplinary action under Health and Safety Code section 44072.2,
19 subdivision (d), in that Respondents committed acts involving dishonesty, fraud, or deceit
20 whereby another was injured. The circumstances are described in paragraphs 27-32, above.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 (Violation of Laws and Regulations)

23 39. Respondent Bernales has subjected its Smog Check Station License to disciplinary
24 action under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or (g), in that
25 Respondents violated the following laws and regulations:

26 a. Respondent Bernales violated Health and Safety code section 44012, subdivision (f),
27 in the Respondents failed to perform a smog check on the Dodge according to the procedures
28 prescribed by the department. Respondents failed to perform a proper visual inspection.

1 b. Respondent Bernales violated Health and Safety code section 44032 by failing to
2 perform a smog inspection on the Dodge pursuant to Health and Safety code section 44012.

3 c. Respondent Bernales violated Health and Safety code section 44059, in that
4 Respondents issued a Vehicle Inspection Report that stated the Dodge passed the Crankcase
5 Emission Controls portion of the smog inspection when they knew the vehicle did not pass this
6 portion of the smog inspection. Respondents also caused a certificate of compliance to be issued
7 to the Dodge by making false entries into the OIS inspection system.

8 d. Respondent Bernales violated California Code of Regulations, Title 16, section
9 3340.24, subdivision (c), in that Respondents falsely or fraudulently caused a certificate of
10 compliance to be issued to the Dodge.

11 e. Respondent Yuan Bernales California Code of Regulations, Title 16, section 3340.35,
12 subdivision (c), in that Respondents issued a certificate of compliance to a vehicle that did not
13 have all the required emission control equipment and devices installed and functioning correctly.

14 f. Respondent Bernales violated California Code of Regulations, Title 16, section
15 3340.42, subdivision (b) in that Respondents failed to provide a proper visual inspection of the
16 Dodge.

17 g. Respondent Bernales violated California Code of Regulations, Title 16, section
18 3340.42 in conjunction with California Code of Regulations, Title 16, section 3340.45,
19 subdivision (b), in that Respondents failed to provide a proper visual inspection on the Dodge as
20 proscribed in the Smog Check Manual.

21 DISCIPLINARY CONSIDERATIONS

22 40. To determine the degree of discipline, if any, to be imposed on Respondent Bernales,
23 Complainant alleges that on or about May 16, 2018, Respondent Bernales was issued Citation No.
24 M2018-1201 for failing to perform a smog inspection according to the procedures prescribed by
25 the department. The citation is under appeal. On May 31, 2018, the above referenced citation
26 was served on Respondent Bernales at a Citation Conference where Respondent Bernales was
27 warned that future violations of the Health and Safety Code could lead to additional disciplinary
28 action

1 41. To determine the degree of discipline, if any, to be imposed on Respondent Bernales,
2 Complainant alleges on or about June 8, 2016, a Proactive Conference was held with Respondent
3 Bernales regarding improperly issuing a Smog Certificate of Compliance to a vehicle using a
4 BAR97 Emission Inspection System (EIS) when an OBD Inspection System (OIS) test was
5 required.

6 42. To determine the degree of discipline, if any, to be imposed on Respondent Bernales,
7 Complainant alleges that on or about February 12, 2015, in a matter entitled "In the Matter of The
8 Accusation and Petition to Revoke Probation Against Smog Man LLC., et al.," Bureau Case No.
9 79/14-73, Respondent Bernales was ordered to complete an 8-hour training course.

10 **OTHER MATTERS**

11 43. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
12 or place on probation the registration for all places of business operated in this state by
13 Respondent Yuan, upon a finding that Respondent Yuan has, or is, engaged in a course of
14 repeated and willful violations of the laws and regulations pertaining to an automotive repair
15 dealer.

16 44. Pursuant to Health & Safety Code section 44072.8, if Respondent Yuan's Station
17 License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of
18 Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked
19 or suspended by the director.

20 45. Pursuant to Health & Safety Code section 44072.8, if Respondent Bernales's Smog
21 Check Inspector License or Smog Check Repair Technician License is revoked or suspended, any
22 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code
23 in the name of said licensee may be likewise revoked or suspended by the director.

24 **PRAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 283664, issued to Yuan Mu Enterprises, LLC. dba Star Smog Check;

- 1 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
2 283664, issued to Yuan Mu Enterprises, LLC. dba Star Smog Check;
3 3. Revoking or suspending Smog Check Inspector License Number EO 633102, issued
4 to Jose Luis Bernales;
5 4. Revoking or suspending Smog Check Repair Technician License Number EI 633102,
6 issued to Jose Luis Bernales;
7 5. Revoking or suspending any additional Automotive Repair Dealer Registration,
8 Smog Check Station license, Smog Check Inspector license, and/or Smog Check Repair
9 Technician license issued to Yuan Mu Enterprises, LLC;
10 6. Revoking or suspending any additional Smog Check Station License, Smog Check
11 Inspector License, or Smog Check Repair Technician license, issued to Jose Luis Bernales;
12 5. Ordering Yuan Mu Enterprises, LLC. dba Star Smog Check to pay the Bureau of
13 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
14 pursuant to Business and Professions Code section 125.3; and,
15 6. Ordering Jose Luis Bernales to pay the Bureau of Automotive Repair the reasonable
16 costs of the investigation and enforcement of this case, pursuant to Business and Professions
17 Code section 125.3; and,
18 7. Taking such other and further action as deemed necessary and proper.

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21 DATED: June 20, 2019

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

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