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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. 79/13-48

13 **CITY SMOG & LUBE**
14 **DIEN THI DO, OWNER**
1502 N. Wilson Way
Stockton, CA 95205

ACCUSATION

Smog Check

16 Automotive Repair Dealer Reg. No. ARD 264744
Smog Check, Test Only, Station License
No. TC 264744,

17 **NAM PHAM**
4166 Riverbrook Court
18 Stockton, CA 95219

19 Advanced Emission Specialist Technician
License No. EA 133709,

20 and

21 **LONG NGOC NGUYEN**
22 736 Castle Oak Drive
23 Stockton, CA 95210

24 Advanced Emission Specialist Technician
License No. EA 630502

25 Respondents.

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1 Complainant alleges:

2 **PARTIES/LICENSE INFORMATION**

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

5 **City Smog & Lube; Dien Thi Do, Owner**

6 2. On or about April 22, 2011, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 264744 ("registration") to Dien Thi Do
8 ("Respondent Do" or "Do"), owner of City Smog & Lube. Respondent's registration is currently
9 under suspension, as set forth in paragraph 6 below, and will expire on April 30, 2013, unless
10 renewed.

11 3. On or about May 2, 2011, the Director issued Smog Check, Test Only, Station
12 License Number TC 264744 ("smog check station license") to Respondent Do. Respondent's
13 smog check station license is currently under suspension, as set forth in paragraph 6 below, and
14 will expire on April 30, 2013, unless renewed.

15 **Nam Pham**

16 4. In or about 1998, the Director issued Advanced Emission Specialist Technician
17 License Number EA 133709 ("technician license") to Nam Pham ("Respondent Pham" or
18 "Pham"). Respondent's technician license is currently under suspension, as set forth in paragraph
19 6 below, and will expire on February 28, 2014, unless renewed.

20 **Long Ngoc Nguyen**

21 5. On or about September 26, 2008, the Director issued Advanced Emission Specialist
22 Technician License Number EA 630502 ("technician license") to Long Ngoc Nguyen
23 ("Respondent Nguyen" or "Nguyen"). Respondent's technician license was under suspension, as
24 set forth in paragraph 6 below, but dissolved by operation of law on January 28, 2013, and will
25 expire on March 31, 2014, unless renewed.

26 **Interim Suspension Order**

27 6. On January 11, 2013, in the disciplinary proceeding entitled "In the Matter of the Ex
28 Parte Interim Suspension Order Against: Dien Thi Do", et al., the Office of Administrative

1 Hearings issued an *ex parte* interim order pursuant to Business and Professions Code ("Bus. &
2 Prof. Code") section 494 suspending Respondent Do's registration and smog check station license
3 and Respondents Pham's and Nguyen's technician licenses until the within Accusation is filed and
4 a decision is issued thereon. At the *ex parte* Interim Suspension Order Hearing on January 11,
5 2013, Respondents Do and Pham waived their right to a noticed Interim Suspension Order
6 hearing pursuant to Code section 494, subsection (b), but Respondent Nguyen was not present at
7 the *ex parte* hearing. Although Petitioner served the January 11, 2013 *ex parte* Interim
8 Suspension Order on all Respondents, it failed to serve the Interim Suspension Order Petition and
9 supporting documents on Respondent Nguyen, and therefore, the *ex parte* Interim Suspension
10 Order as to Respondent Nguyen was dissolved by operation of law on January 28, 2013, pursuant
11 to Code section 494, subsection (b).

12 **JURISDICTION**

13 7. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an
14 automotive repair dealer registration.

15 8. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
16 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
17 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
18 invalidating (suspending or revoking) a registration.

19 9. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
20 part, that the Director has all the powers and authority granted under the Automotive Repair Act
21 for enforcing the Motor Vehicle Inspection Program.

22 10. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
23 suspension of a license by operation of law, or by order or decision of the Director of Consumer
24 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
25 of jurisdiction to proceed with disciplinary action.

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

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

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

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

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

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

16 **COST RECOVERY**

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

21 **VIDEO SURVEILLANCE OPERATION OF AUGUST 13, 2012**

22 18. On August 13, 2012, from 0841 to 1520 hours, a representative of the Bureau
23 conducted a video surveillance operation of Respondent Do's smog check facility. The
24 surveillance video and information obtained from the Bureau's vehicle information database
25 ("VID") revealed that Respondent Pham issued electronic smog certificates of compliance on
26 behalf of Do, certifying that he had tested and inspected the vehicles identified below and that the
27 vehicles were in compliance with applicable laws and regulations. In fact, Pham performed the
28 smog inspections on the vehicles using clean piping¹ and "clean-plugging" methods², resulting in
29 the issuance of fraudulent electronic smog certificates of compliance for the vehicles.

30 ¹ Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),

(continued...)

Time of Inspection	Vehicle Certified & License No.	Certificate No.	Bureau's Findings
1. 1257 - 1324	1993 Toyota Corolla; CA License No. 5FLX019	OO907198C	Vehicle was clean piped; Nguyen assisted Pham during the inspection
2. 1417 - 1427	2000 Dodge Stratus; CA License No. 4MHX590	OO907199C	Vehicle was clean piped and clean plugged; Nguyen assisted Pham during the inspection

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

19. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Do's technician, Respondent Pham, certified that vehicles 1 and 2, identified in paragraph 18 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Pham used clean piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

b. Respondent Do's technician, Respondent Pham, certified that vehicle 2, identified in paragraph 18 above, had passed inspection and was in compliance with applicable laws and regulations. In fact, Pham conducted the inspection on vehicle 2 using clean-plugging methods in that he substituted or used a different vehicle during the OBD II functional test³ in order to issue a

"clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS (Emissions Inspection System) to issue a certificate of compliance for another vehicle.

² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

³ The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II

(continued...)

1 smog certificate of compliance for vehicle 2, and did not test or inspect vehicle 2 as required by
2 Health & Saf. Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 20. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof.
6 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud
7 by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph
8 18 above, without ensuring that bona fide inspections were performed of the emission control
9 devices and systems on the vehicles, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 21. Respondent Do's smog check station license is subject to disciplinary action pursuant
14 to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
15 provisions of that Code, as follows:

16 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
17 performed on vehicles 1 and 2, identified in paragraph 18 above, in accordance with procedures
18 prescribed by the department.

19 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
20 vehicles 1 and 2, identified in paragraph 18 above, without ensuring that the vehicles were
21 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
22 section 44012.

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28 functional test, it will fail the overall inspection.

FOURTH CAUSE FOR DISCIPLINE
**(Failure to Comply with Regulations Pursuant
to the Motor Vehicle Inspection Program)**

22. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c):** Respondent Do issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 18 above, even though those vehicles had not been inspected in accordance with section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Do authorized or permitted Respondent Pham to enter false information into the EIS unit by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent Do failed to ensure that the required smog tests were conducted on vehicles 1 and 2, identified in paragraph 18 above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE
(Dishonesty, Fraud or Deceit)

23. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 18 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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

VIDEO SURVEILLANCE OPERATION OF AUGUST 14, 2012

27. On August 14, 2012, from 0832 to 1713 hours, a representative of the Bureau conducted a video surveillance operation of Respondent Do's smog check facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondents Pham and Nguyen issued electronic smog certificates of compliance on behalf of Do, certifying that they had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Pham and Nguyen performed the smog inspections on the vehicles using clean piping and clean-plugging methods, resulting in the issuance of fraudulent electronic smog certificates of compliance for the vehicles.

Time of Inspection	Vehicle Certified & License No.	Certificate No.	Bureau's Findings
3. 1022 - 1036	1990 Acura Integra; CA License No. 5PCZ210	OQ030553C	Pham performed the inspection; the vehicle was clean piped.
4. 1050 - 1110	2000 Kia Sephia; CA License No. 6MTN551	OQ030554C	Pham performed the inspection; the vehicle was clean plugged.
Time of Inspection	Vehicle Certified & License No.	Certificate No.	Bureau's Findings
5. 1319 - 1333	1996 Volkswagen Jetta III; CA License No. 3SHH747	OQ030555C	Nguyen performed the inspection assisted by Pham (Nguyen issued the certificate); the vehicle was clean piped.
6. 1434 - 1451	1993 Toyota Corolla; CA License No. 4YZL831	OQ030557C	Pham performed the inspection assisted by Nguyen (Pham issued the certificate); the vehicle was clean piped
7. 1624 - 1641	1994 Honda Accord; CA License No. 4EQF686	OQ030559C	Pham performed the inspection; the vehicle was clean piped

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

28. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

1 a. Respondent Do's technician, Respondent Pham, certified that vehicles 3, 6, and 7,
2 identified in paragraph 27 above, had passed inspection and were in compliance with applicable
3 laws and regulations. In fact, Pham used clean piping methods in order to issue certificates for
4 the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section
5 44012.

6 b. Respondent Do's technician, Respondent Pham, certified that vehicle 4, identified in
7 paragraph 27 above, had passed inspection and was in compliance with applicable laws and
8 regulations. In fact, Pham conducted the inspection on vehicle 4 using clean-plugging methods in
9 that he substituted or used a different vehicle during the OBD II functional test in order to issue a
10 smog certificate of compliance for vehicle 4, and did not test or inspect vehicle 4 as required by
11 Health & Saf. Code section 44012.

12 c. Respondent Do's technician, Respondent Nguyen, certified that vehicle 5, identified
13 in paragraph 27 above, had passed inspection and was in compliance with applicable laws and
14 regulations. In fact, Nguyen used clean piping methods in order to issue a certificate for the
15 vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

16 **TENTH CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 29. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof.
19 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud
20 by issuing electronic smog certificates of compliance for vehicles 3 through 7, identified in
21 paragraph 27 above, without ensuring that bona fide inspections were performed of the emission
22 control devices and systems on the vehicles, thereby depriving the People of the State of
23 California of the protection afforded by the Motor Vehicle Inspection Program.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

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

26 30. Respondent Do's smog check station license is subject to disciplinary action pursuant
27 to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
28 provisions of that Code, as follows:

1 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
2 performed on vehicles 3 through 7, identified in paragraph 27 above, in accordance with
3 procedures prescribed by the department.

4 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
5 vehicles 3 through 7, identified in paragraph 27 above, without ensuring that the vehicles were
6 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
7 section 44012.

8 **TWELFTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations Pursuant**
10 **to the Motor Vehicle Inspection Program)**

11 31. Respondent Do's smog check station license is subject to disciplinary action pursuant
12 to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
13 provisions of California Code of Regulations, title 16, as follows:

14 a. **Section 3340.35, subdivision (c):** Respondent Do issued electronic smog certificates
15 of compliance for vehicles 3 through 7, identified in paragraph 27 above, even though those
16 vehicles had not been inspected in accordance with section 3340.42.

17 b. **Section 3340.41, subdivision (c):** Respondent Do authorized or permitted
18 Respondents Pham and Nguyen to enter false information into the EIS unit by entering vehicle
19 identification information or emission control system identification data for vehicles other than
20 the ones being tested.

21 c. **Section 3340.42:** Respondent Do failed to ensure that the required smog tests were
22 conducted on vehicles 3 through 7, identified in paragraph 27 above, in accordance with the
23 Bureau's specifications.

24 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

26 32. Respondent Do's smog check station license is subject to disciplinary action pursuant
27 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
28 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of

1 compliance for vehicles 3 through 7, identified in paragraph 27 above, without ensuring that bona
2 fide inspections were performed of the emission control devices and systems on the vehicles,
3 thereby depriving the People of the State of California of the protection afforded by the Motor
4 Vehicle Inspection Program.

5 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

7 33. Respondent Pham's technician license is subject to disciplinary action pursuant to
8 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
9 section 44012 of that Code, as follows: Respondent failed to perform the emission control tests
10 on vehicles 3, 4, 6, and 7, identified in paragraph 27 above, in accordance with procedures
11 prescribed by the department.

12 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

15 34. Respondent Pham's technician license is subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
17 provisions of California Code of Regulations, title 16, as follows:

18 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 3, 4,
19 6, and 7, identified in paragraph 27 above, in accordance with Health & Saf. Code sections 44012
20 and 44035, and California Code of Regulations, title 16, section 3340.42.

21 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
22 by entering vehicle identification information or emission control system identification data for
23 vehicles other than the ones being tested.

24 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 3,
25 4, 6, and 7, identified in paragraph 27 above, in accordance with the Bureau's specifications.

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c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicle 5, identified in paragraph 27 above, in accordance with the Bureau's specifications.

NINETEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

38. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for vehicle 5, identified in paragraph 27 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

VIDEO SURVEILLANCE OPERATION OF AUGUST 15, 2012

39. On August 15, 2012, from 0831 to 1732 hours, a representative of the Bureau conducted a video surveillance operation of Respondent Do's smog check facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondents Nguyen and Pham issued electronic smog certificates of compliance on behalf of Do, certifying that they had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Nguyen and Pham performed the smog inspections on the vehicles using clean piping and clean-plugging methods, resulting in the issuance of fraudulent electronic smog certificates of compliance for the vehicles.

Time of Inspection	Vehicle Certified & License No.	Certificate No.	Bureau's Findings
8. 1050 - 1106	1997 Nissan pickup; CA License No. 7F28947	OQ030560C	Nguyen performed the inspection; the vehicle was clean piped.
9. 1221 - 1250	2000 Volkswagen GTI; CA License No. 4SWL082	OQ030562C	Pham performed the inspection; the vehicle was clean piped.
10. 1613 - 1626	1999 Saturn SL; CA License No. 6PUW565	OQ030563C	Pham performed the inspection assisted by Nguyen (Pham issued the certificate); the vehicle was clean piped and clean plugged.
11. 1638 - 1654	1997 Honda Civic; CA License No. 6MTT963	OQ030564C	Pham performed the inspection assisted by Nguyen (Pham issued the certificate); the vehicle was clean piped and clean plugged

1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 40. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
5 she knew or in the exercise of reasonable care should have known to be untrue or misleading, as
6 follows:

7 a. Respondent Do's technician, Respondent Nguyen, certified that vehicle 8, identified
8 in paragraph 39 above, had passed inspection and was in compliance with applicable laws and
9 regulations. In fact, Nguyen used clean piping methods in order to issue a certificate for the
10 vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

11 b. Respondent Do's technician, Respondent Pham, certified that vehicles 9 through 11,
12 identified in paragraph 39 above, had passed inspection and were in compliance with applicable
13 laws and regulations. In fact, Pham used clean piping methods in order to issue certificates for
14 the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section
15 44012.

16 c. Respondent Do's technician, Respondent Pham, certified that vehicles 10 and 11,
17 identified in paragraph 39 above, had passed inspection and were in compliance with applicable
18 laws and regulations. In fact, Pham conducted the inspections on vehicles 10 and 11 using clean-
19 plugging methods in that he substituted or used different vehicles during the OBD II functional
20 test in order to issue smog certificates of compliance for vehicles 10 and 11, and did not test or
21 inspect vehicles 10 and 11 as required by Health & Saf. Code section 44012.

22 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 41. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof.
25 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud
26 by issuing electronic smog certificates of compliance for vehicles 8 through 11, identified in
27 paragraph 39 above, without ensuring that bona fide inspections were performed of the emission

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1 control devices and systems on the vehicles, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

5 42. Respondent Do's smog check station license is subject to disciplinary action pursuant
6 to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
7 provisions of that Code, as follows:

8 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
9 performed on vehicles 8 through 11, identified in paragraph 39 above, in accordance with
10 procedures prescribed by the department.

11 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
12 vehicles 8 through 11, identified in paragraph 39 above, without ensuring that the vehicles were
13 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
14 section 44012.

15 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**

17 **to the Motor Vehicle Inspection Program)**

18 43. Respondent Do's smog check station license is subject to disciplinary action pursuant
19 to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
20 provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.35, subdivision (c):** Respondent Do issued electronic smog certificates
22 of compliance for vehicles 8 through 11, identified in paragraph 39 above, even though those
23 vehicles had not been inspected in accordance with section 3340.42.

24 b. **Section 3340.41, subdivision (c):** Respondent Do authorized or permitted
25 Respondents Pham and Nguyen to enter false information into the EIS unit by entering vehicle
26 identification information or emission control system identification data for vehicles other than
27 the ones being tested.

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1 c. **Section 3340.42:** Respondent Do failed to ensure that the required smog tests were
2 conducted on vehicles 8 through 11, identified in paragraph 39 above, in accordance with the
3 Bureau's specifications.

4 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

6 44. Respondent Do's smog check station license is subject to disciplinary action pursuant
7 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
8 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
9 compliance for vehicles 8 through 11, identified in paragraph 39 above, without ensuring that
10 bona fide inspections were performed of the emission control devices and systems on the
11 vehicles, thereby depriving the People of the State of California of the protection afforded by the
12 Motor Vehicle Inspection Program.

13 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

15 45. Respondent Nguyen's technician license is subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
17 section 44012 of that Code, as follows: Respondent failed to perform the emission control tests
18 on vehicle 8, identified in paragraph 39 above, in accordance with procedures prescribed by the
19 department.

20 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant**
22 **to the Motor Vehicle Inspection Program)**

23 46. Respondent Nguyen's technician license is subject to disciplinary action pursuant to
24 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
25 provisions of California Code of Regulations, title 16, as follows:

26 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicle 8,
27 identified in paragraph 39 above, in accordance with Health & Saf. Code sections 44012 and
28 44035, and California Code of Regulations, title 16, section 3340.42.

1 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
2 by entering vehicle identification information or emission control system identification data for a
3 vehicle other than the one being tested.

4 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicle 8,
5 identified in paragraph 39 above, in accordance with the Bureau's specifications.

6 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

8 47. Respondent Nguyen's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
10 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
11 compliance for vehicle 8, identified in paragraph 39 above, without performing a bona fide
12 inspection of the emission control devices and systems on the vehicle, thereby depriving the
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program.

15 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

17 48. Respondent Pham's technician license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
19 section 44012 of that Code, as follows: Respondent failed to perform the emission control tests
20 on vehicles 9 through 11, identified in paragraph 39 above, in accordance with procedures
21 prescribed by the department.

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1 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 9
8 through 11, identified in paragraph 39 above, in accordance with Health & Saf. Code sections
9 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
11 by entering vehicle identification information or emission control system identification data for
12 vehicles other than the ones being tested.

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 9
14 through 11, identified in paragraph 39 above, in accordance with the Bureau's specifications.

15 **THIRTIETH CAUSE FOR DISCIPLINE**

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

17 50. Respondent Pham's technician license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
19 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
20 compliance for vehicles 9 through 11, identified in paragraph 39 above, without performing bona
21 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
22 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program.

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1 **VIDEO SURVEILLANCE OPERATION OF AUGUST 16, 2012**

2 51. On August 16, 2012, from 0832 to 1717 hours, a representative of the Bureau
3 conducted a video surveillance operation of Respondent Do's smog check facility. The
4 surveillance video and information obtained from the Bureau's VID revealed that Respondent
5 Nguyen issued electronic smog Certificate of Compliance No. OQ030568C on behalf of Do,
6 certifying that he had tested and inspected a 1998 Ford F150, California License No. 5T37663
7 ("vehicle 12"), and that the vehicle was in compliance with applicable laws and regulations. In
8 fact, Nguyen conducted the inspection on the vehicle using clean piping methods, resulting in the
9 issuance of fraudulent electronic smog certificate of compliance for the vehicle.

10 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 52. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof.
13 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which
14 she knew or in the exercise of reasonable care should have known to be untrue or misleading, as
15 follows: Respondent Do's technician, Respondent Nguyen, certified that vehicle 12, identified in
16 paragraph 51 above, had passed inspection and was in compliance with applicable laws and
17 regulations. In fact, Nguyen used clean piping methods in order to issue a certificate for the
18 vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

19 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 53. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof.
22 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes
23 fraud by issuing an electronic smog certificate of compliance for vehicle 12, identified in
24 paragraph 51 above, without ensuring that a bona fide inspection was performed of the emission
25 control devices and systems on the vehicle, thereby depriving the People of the State of California
26 of the protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

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

3 54. Respondent Do's smog check station license is subject to disciplinary action pursuant
4 to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
5 provisions of that Code, as follows:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on vehicle 12, identified in paragraph 51 above, in accordance with procedures
8 prescribed by the department.

9 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
10 vehicle 12, identified in paragraph 51 above, without ensuring that the vehicle was properly tested
11 and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

12 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

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

15 55. Respondent Do's smog check station license is subject to disciplinary action pursuant
16 to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
17 provisions of California Code of Regulations, title 16, as follows:

18 a. **Section 3340.35, subdivision (c):** Respondent Do issued an electronic smog
19 certificate of compliance for vehicle 12, identified in paragraph 51 above, even though the vehicle
20 had not been inspected in accordance with section 3340.42.

21 b. **Section 3340.41, subdivision (c):** Respondent Do authorized or permitted
22 Respondent Nguyen to enter false information into the EIS unit by entering vehicle identification
23 information or emission control system identification data for a vehicle other than the one being
24 tested.

25 c. **Section 3340.42:** Respondent Do failed to ensure that the required smog tests were
26 conducted on vehicle 12, identified in paragraph 51 above, in accordance with the Bureau's
27 specifications.

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1 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

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

3 56. Respondent Do's smog check station license is subject to disciplinary action pursuant
4 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
5 dishonest, fraudulent or deceitful acts whereby another is injured by issuing an electronic smog
6 certificate of compliance for vehicle 12, identified in paragraph 51 above, without ensuring that a
7 bona fide inspection was performed 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 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

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

12 57. Respondent Nguyen's technician license is subject to disciplinary action pursuant to
13 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
14 section 44012 of that Code, as follows: Respondent failed to perform the emission control tests
15 on vehicle 12, identified in paragraph 51 above, in accordance with procedures prescribed by the
16 department.

17 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations Pursuant**
19 **to the Motor Vehicle Inspection Program)**

20 58. Respondent Nguyen's technician license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
22 provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicle 12,
24 identified in paragraph 51 above, in accordance with Health & Saf. Code sections 44012 and
25 44035, and California Code of Regulations, title 16, section 3340.42.

26 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
27 by entering vehicle identification information or emission control system identification data for a
28 vehicle other than the one being tested.

1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicle
2 12, identified in paragraph 51 above, in accordance with the Bureau's specifications.

3 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

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

5 59. Respondent Nguyen's technician license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
7 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
8 compliance for vehicle 12, identified in paragraph 51 above, without performing a bona fide
9 inspection of the emission control devices and systems on the vehicle, thereby depriving the
10 People of the State of California of the protection afforded by the Motor Vehicle Inspection
11 Program.

12 **MATTERS IN AGGRAVATION**

13 60. To determine the degree of discipline, if any, to be imposed on Respondents Pham
14 and Nguyen, Complainant alleges as follows:

15 **Respondent Pham**

16 a. On or about June 18, 2004, the Bureau issued Citation No. M04-0620 against
17 Respondent Pham for violations of Health & Saf. Code section 44032 (qualified technicians shall
18 perform tests of emission control systems and devices in accordance with Health & Saf. Code
19 section 44012); and California Code of Regulations, title 16, section ("Regulation") 3340.30,
20 subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with
21 Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent was
22 directed to complete an 8 hour training course. Respondent completed the training on July 19,
23 2004.

24 b. On or about July 10, 2008, the Bureau issued Citation No. M09-0023 against
25 Respondent Pham for violations of Health & Saf. Code section 44032 (qualified technicians shall
26 perform tests of emission control systems and devices in accordance with Health & Saf. Code
27 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
28 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and

1 Regulation 3340.42). Respondent was directed to complete an 8 hour training course.

2 Respondent completed the training on August 18, 2008.

3 c. On or about October 17, 2008, the Bureau issued Citation No. M09-0383 against
4 Respondent Pham for violations of Health & Saf. Code section 44032 (qualified technicians shall
5 perform tests of emission control systems and devices in accordance with Health & Saf. Code
6 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
7 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
8 Regulation 3340.42). Respondent was directed to complete a 16 hour training course.
9 Respondent completed the training on November 22, 2008.

10 **Respondent Nguyen**

11 d. On or about May 6, 2009, the Bureau issued Citation No. M09-1278 against
12 Respondent Nguyen for violations of Health & Saf. Code section 44032 (qualified technicians
13 shall perform tests of emission control systems and devices in accordance with Health & Saf.
14 Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect,
15 test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
16 Regulation 3340.42). Respondent was directed to complete an 8 hour training course.
17 Respondent completed the training on May 30, 2009.

18 **OTHER MATTERS**

19 61. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
20 suspend, revoke or place on probation the registration for all places of business operated in this
21 state by Respondent Dien Thi Do, owner of City Smog & Lube, upon a finding that said
22 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
23 regulations pertaining to an automotive repair dealer.

24 62. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
25 License Number TC 264744, issued to Respondent Dien Thi Do, owner of City Smog & Lube, is
26 revoked or suspended, any additional license issued under this chapter in the name of said
27 licensee may be likewise revoked or suspended by the Director.

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63. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 133709, issued to Respondent Nam Pham, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

64. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 630502, issued to Respondent Long Ngoc Nguyen, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 264744, issued to Dien Thi Do, owner of City Smog & Lube;

2. Revoking or suspending any other automotive repair dealer registration issued to Dien Thi Do;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 264744, issued to Dien Thi Do, owner of City Smog & Lube;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Dien Thi Do;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 133709, issued to Nam Pham;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Nam Pham;

7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630502, issued to Long Ngoc Nguyen;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Long Ngoc Nguyen;

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1 9. Ordering Dien Thi Do, owner of City Smog & Lube, Nam Pham, and Long Ngoc
2 Nguyen to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
3 enforcement of this case, pursuant to Business and Professions Code section 125.3;

4 10. Taking such other and further action as deemed necessary and proper.

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6 DATED:

2-6-13

John Wallauch by
JOHN WALLAUCH

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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