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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 79/12-101

13 **ALL CITY AUTOMOTIVE 2**
14 **1910 Main Street**
Escalon, CA 95320
15 **PHAKDEY LIV, OWNER**
Automotive Repair Dealer Registration No. ARD
224392
16 **Smog Check Station License No. RC 224392**
Lamp Station License No. LS 224392, Class A
17 **Brake Station License No. BS 224392, Class C**

FIRST AMENDED ACCUSATION
SMOG CHECK

18 **and**

19 **PHAKDEY LIV**
20 **1910 Main Street**
Escalon, CA 95320
21 **Smog Check Inspector License No. EO139754**
Smog Check Repair Technician License No.
EI139754
22 (formerly Advanced Emission Specialist Technician
License No. EA139754)

23 Respondents.
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1 Complainant alleges:

2 **PARTIES**

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

6 **Automotive Repair Dealer Registration**

7 2. On a date uncertain in 2002, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 224392 ("registration") to Phakdey Liv ("Respondent"), doing
9 business as All City Automotive 2. The registration was in full force and effect at all times
10 relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

11 **Smog Check Station License**

12 3. On or about November 6, 2002, the Bureau issued Smog Check Station License
13 Number RC 224392 ("station license") to Respondent. The station license was in full force and
14 effect at all times relevant to the charges brought herein and will expire on October 31, 2013,
15 unless renewed.

16 **Lamp Station License**

17 4. On or about July 24, 2003, the Bureau issued Lamp Station License Number LS
18 224392, Class A, ("lamp station license") to Respondent. The lamp station license was in full
19 force and effect at all times relevant to the charges brought herein and will expire on October 31,
20 2013, unless renewed.

21 **Brake Station License**

22 5. On or about July 24, 2003, the Bureau issued Brake Station License Number BS
23 224392, Class C, ("brake station license") to Respondent. The brake station license was in full
24 force and effect at all times relevant to the charges brought herein and will expire on October 31,
25 2013, unless renewed.

26 **Advanced Emission Specialist Technician License**

27 6. On a date uncertain in 2000, the Bureau issued Advanced Emission Specialist
28 Technician License Number EA 139754 to Respondent. The Advanced Emission Specialist

1 Technician license was in full force and effect at all times relevant to the charges brought herein.

2 Respondent's advanced emission specialist technician license was due to expire on April 30,
3 2013. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), said
4 license was renewed, pursuant to Respondent's election, as Smog Check Inspector License No.
5 EO 139754, and Smog Check Repair Technician License No. EI 139754, effective May 1, 2013.¹
6 Respondent's smog check inspector and repair technician licenses ("technician licenses") will
7 expire on April 30, 2015, unless renewed.

8 **Brake Adjuster License**

9 7. On a date uncertain in 1998, the Bureau issued Brake Adjuster License Number BA
10 139754, Class C, ("brake adjuster license") to Respondent. The brake adjuster license was in full
11 force and effect at all times relevant to the charges brought herein and expired on April 30, 2011.

12 **Lamp Adjuster License**

13 8. On a date uncertain in 2003, the Bureau issued Lamp Adjuster License Number LA
14 139754, Class A, ("lamp adjuster license") to Respondent. The lamp adjuster license was in full
15 force and effect at all times relevant to the charges brought herein and expired on April 30, 2011.
16 On June 5, 2011, the lamp adjuster license was cancelled.

17 **JURISDICTION**

18 9. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
19 the Director may revoke an automotive repair dealer registration.

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

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

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

3 18. Section 490 of the Code states, in pertinent part:

4 (a) In addition to any other action that a board is permitted to take against
5 a licensee, a board may suspend or revoke a license on the ground that the licensee
6 has been convicted of a crime, if the crime is substantially related to the
7 qualifications, functions, or duties of the business or profession for which the license
8 was issued.

9 19. Section 9884.7 of the Code states, in pertinent part:

10 (a) The director, where the automotive repair dealer cannot show there
11 was a bona fide error, may deny, suspend, revoke, or place on probation the
12 registration of an automotive repair dealer for any of the following acts or omissions
13 related to the conduct of the business of the automotive repair dealer, which are done
14 by the automotive repair dealer or any automotive technician, employee, partner,
15 officer, or member of the automotive repair dealer.

16 (1) Making or authorizing in any manner or by any means whatever any
17 statement written or oral which is untrue or misleading, and which is known, or which
18 by the exercise of reasonable care should be known, to be untrue or misleading.

19 (4) Any other conduct that constitutes fraud.

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

22 (b) Except as provided for in subdivision (c), if an automotive repair
23 dealer operates more than one place of business in this state, the director pursuant to
24 subdivision (a) shall only suspend, revoke, or place on probation the registration of
25 the specific place of business which has violated any of the provisions of this chapter.
26 This violation, or action by the director, shall not affect in any manner the right of the
27 automotive repair dealer to operate his or her other places of business.

28 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
place on probation the registration for all places of business operated in this state by
an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

20. Code section 9884.8 states, in pertinent part:

All work done by an automotive repair dealer, including all warranty
work, shall be recorded on an invoice and shall describe all service work done and
parts supplied . . . One copy of the invoice shall be given to the customer and one
copy shall be retained by the automotive repair dealer.

21. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written

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

16 (1) Make a notation on the invoice of the same facts set forth in the
17 notation on the work order .

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

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

23 _____
24 (signature or initials)"

25 22. Code section 9889.3 states, in pertinent part:

26 The director may suspend, revoke, or take other disciplinary action
27 against a license as provided in this article [Article 7 (commencing with section
28 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or
director thereof:

(b) Is convicted of any crime substantially related to the qualifications,
functions, or duties of the license holder in question.

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

23 23. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

5 24. Bus. & Prof. Code section 22, subdivision (a), states:

6 "Board" as used in any provision of this Code, refers to the board in
7 which the administration of the provision is vested, and unless otherwise expressly
8 provided, shall include "bureau," "commission," "committee," "department,"
9 "division," "examining committee," "program," and "agency."

10 25. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
11 "commission," "committee," "department," "division," "examining committee," "program," and
12 "agency." "License" includes certificate, registration or other means to engage in a business or
13 profession regulated by the Code.

14 COST RECOVERY

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

19 UNDERCOVER RUN – JANUARY 27, 2011

20 27. On or about January 27, 2011, a Bureau undercover operator drove a Bureau-
21 documented 1998 Honda to Respondent's facility and requested a smog inspection. The vehicle
22 could not pass the visual portion of a smog inspection because the vehicle was equipped with a
23 non-approved, adjustable camshaft timing gear. The operator signed a work order; however, he
24 did not receive an estimate copy prior to the smog inspection. Respondent performed the smog
25 inspection and issued electronic Certificate of Compliance No. [REDACTED] for that vehicle. The
26 operator paid \$40 for the smog inspection and received a copy of Invoice No. [REDACTED] and the
27 Vehicle Inspection Report ("VIR").

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 28. Respondent has subjected his registration to discipline under Code section 9884.7,
4 subdivision (a)(1), in that on or about January 27, 2011, he made statements which he knew or
5 which by exercise of reasonable care he should have known were untrue or misleading when he
6 issued electronic Certificate of Compliance No. [REDACTED] for the 1998 Honda, certifying that
7 the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle
8 could not pass the visual portion of the smog inspection because it was equipped with a non-
9 approved, adjustable camshaft timing gear.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 29. Respondent has subjected his registration to discipline under Code section 9884.7,
13 subdivision (a)(4), in that on or about January 27, 2011, he committed acts which constitute fraud
14 by issuing electronic Certificate of Compliance No. [REDACTED] for the 1998 Honda without
15 performing a bona fide inspection of the emission control devices and systems on that vehicle,
16 thereby depriving the People of the State of California of the protection afforded by the Motor
17 Vehicle Inspection Program.

18 **THIRD CAUSE FOR DISCIPLINE**

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

20 30. Respondent has subjected his station license to discipline under Health and Safety
21 Code section 44072.2, subdivision (a), in that on or about January 27, 2011, regarding the 1998
22 Honda, he violated sections of that Code, as follows:

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

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

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1 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
2 Compliance No. [REDACTED] without properly testing and inspecting the vehicle to determine if it
3 was in compliance with section 44012 of that Code.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 31. Respondent has subjected his station license to discipline under Health and Safety
7 Code section 44072.2, subdivision (c), in that on or about January 27, 2011, regarding the 1998
8 Honda, he violated sections of the California Code of Regulations, title 16, as follows:

9 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
10 Compliance No. [REDACTED] even though that vehicle had not been inspected in accordance with
11 section 3340.42 of that Code.

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

14 **FIFTH CAUSE FOR DISCIPLINE**

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

16 32. Respondent subjected his station license to discipline under Health and Safety Code
17 section 44072.2, subdivision (d), in that on or about January 27, 2011, regarding the 1998 Honda,
18 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
19 electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona
20 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
21 People of the State of California of the protection afforded by the Motor Vehicle Inspection
22 Program.

23 **SIXTH CAUSE FOR DISCIPLINE**

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

25 33. Respondent has subjected his technician licenses to discipline under Health and
26 Safety Code section 44072.2, subdivision (a), in that on or about January 27, 2011, regarding the
27 1998 Honda, he violated sections of that Code, as follows:

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

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

6 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
7 and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle
8 could not pass the visual portion of the inspection because the vehicle was equipped with a non-
9 approved, adjustable camshaft timing gear.

10 **SEVENTH CAUSE FOR DISCIPLINE**

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

12 34. Respondent has subjected his technician licenses to discipline under Health and
13 Safety Code section 44072.2, subdivision (c), in that on or about January 27, 2011, regarding the
14 1998 Honda, he violated sections of the California Code of Regulations, title 16, as follows:

15 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle
16 in accordance with Health and Safety Code section 44012.

17 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the
18 Emission Inspection System ("EIS") for electronic Certificate of Compliance No. [REDACTED] by
19 entering "Pass" for the visual inspection portion of the smog inspection when, in fact, the vehicle
20 could not pass the visual inspection because the vehicle was equipped with a non-approved,
21 adjustable camshaft timing gear.

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

24 **EIGHTH CAUSE FOR DISCIPLINE**

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

26 35. Respondent has subjected his technician licenses to discipline under Health and
27 Safety Code section 44072.2, subdivision (d), in that on or about January 27, 2011, regarding the
28 1998 Honda, he committed acts involving dishonesty, fraud or deceit whereby another was

1 injured by issuing electronic Certificate of Compliance No. [REDACTED] without performing a
2 bona fide inspection of the emission control devices and systems on that vehicle, thereby
3 depriving the People of the State of California of the protection afforded by the Motor Vehicle
4 Inspection Program.

5 **UNDERCOVER RUN – JUNE 22, 2011**

6 36. On or about June 22, 2011, a Bureau undercover operator drove a Bureau-
7 documented 1996 Pontiac to Respondent's facility and requested a smog inspection. The vehicle
8 could not pass the visual portion of a smog inspection because the vehicle's fuel evaporative
9 storage ("EVAP") canister was missing. The operator signed a work order and received a copy of
10 the document prior to the smog inspection. Respondent performed the smog inspection and
11 issued electronic Certificate of Compliance No. [REDACTED] for that vehicle. The operator paid
12 \$38 for the smog inspection and received a copy of Invoice No. [REDACTED] and the VIR.

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Misleading Statements)**

15 37. Respondent has subjected his registration to discipline under Code section 9884.7,
16 subdivision (a)(1), in that on or about June 22, 2011, he made statements which he knew or which
17 by exercise of reasonable care he should have known were untrue or misleading when he issued
18 electronic Certificate of Compliance No. [REDACTED] for the 1996 Pontiac, certifying that the
19 vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle could
20 not pass the visual portion of the smog inspection because the vehicle's EVAP canister was
21 missing.

22 **TENTH CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 38. Respondent has subjected his registration to discipline under Code section 9884.7,
25 subdivision (a)(4), in that on or about June 22, 2011, he committed acts which constitute fraud by
26 issuing electronic Certificate of Compliance No. [REDACTED] for the 1996 Pontiac without
27 performing a bona fide inspection of the emission control devices and systems on that vehicle,

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

3 **ELEVENTH CAUSE FOR DISCIPLINE**

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

5 39. Respondent has subjected his station license to discipline under Health and Safety
6 Code section 44072.2, subdivision (a), in that on or about June 22, 2011, regarding the 1996
7 Pontiac, he violated sections of that Code, as follows:

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

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

13 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
14 Compliance No. [REDACTED] without properly testing and inspecting the vehicle to determine if it
15 was in compliance with section 44012 of that Code.

16 **TWELFTH CAUSE FOR DISCIPLINE**

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

18 40. Respondent has subjected his station license to discipline under Health and Safety
19 Code section 44072.2, subdivision (c), in that on or about June 22, 2011, regarding the 1996
20 Pontiac, he violated sections of the California Code of Regulations, title 16, as follows:

21 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
22 Compliance No. [REDACTED] even though that vehicle had not been inspected in accordance with
23 section 3340.42 of that Code.

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

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 41. Respondent subjected his station license to discipline under Health and Safety Code
4 section 44072.2, subdivision (d), in that on or about June 22, 2011, regarding the 1996 Pontiac, he
5 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
6 electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona
7 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

12 42. Respondent has subjected his technician licenses to discipline under Health and
13 Safety Code section 44072.2, subdivision (a), in that on or about June 22, 2011, regarding the
14 1996 Pontiac, he violated sections of that Code, as follows:

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

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

20 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
21 and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle
22 could not pass the visual portion of the inspection because the vehicle's EVAP canister was
23 missing.

24 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

26 43. Respondent has subjected his technician licenses to discipline under Health and
27 Safety Code section 44072.2, subdivision (c), in that on or about June 22, 2011, regarding the
28 1996 Pontiac, he violated sections of the California Code of Regulations, title 16, as follows:

1 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle
2 in accordance with Health and Safety Code section 44012.

3 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
4 for electronic Certificate of Compliance No. [REDACTED] by entering "Pass" for the visual
5 inspection portion of the smog inspection when, in fact, the vehicle could not pass the visual
6 inspection because the vehicle's EVAP canister was missing.

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

9 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

11 44. Respondent has subjected his technician licenses to discipline under Health and
12 Safety Code section 44072.2, subdivision (d), in that on or about June 22, 2011, regarding the
13 1996 Pontiac, he committed acts involving dishonesty, fraud or deceit whereby another was
14 injured by issuing electronic Certificate of Compliance No. [REDACTED] without performing a bona
15 fide inspection of the emission control devices and systems on that vehicle, thereby depriving the
16 People of the State of California of the protection afforded by the Motor Vehicle Inspection
17 Program.

18 **CONSUMER COMPLAINT CALDWELL – JULY 20, 2011**

19 45. On or about June 26, 2011, Kristine Metzen ("consumer") had her 1996 Volkswagen
20 Golf GL towed to Respondent's facility for diagnosis of a no start condition. Respondent
21 contacted the consumer and told her that the fuel pump was bad and initially gave the consumer
22 an estimate of \$860 to replace the fuel pump. The consumer declined the repair because of the
23 cost. On or about June 30, 2011, Respondent countered back with a lower estimate of \$685 to
24 replace the fuel pump. The consumer authorized the repair. On June 30, 2011, the vehicle was
25 picked up by a relative of the consumer. The consumer paid Respondent \$685 for the repairs.

26 46. On or about July 11, 2011, the vehicle was taken to Smog Busters in Chico,
27 California for a smog test; however, the vehicle did not pass the smog inspection due to a trouble
28 code P1500, which indicated a malfunction in the fuel pump relay circuit. The consumer's

1 husband checked the relay and found that although it appeared to be a new part, it was the wrong
2 part for this vehicle. The consumer's husband also checked the fuel pump and it appeared to be
3 the old part and not a new fuel pump. The consumer's husband installed the correct relay on the
4 vehicle and on July 19, 2011, the vehicle passed the smog inspection performed by Thao's Smog
5 & Automotive.

6 47. On or about July 25, 2011, the vehicle was taken to Chico VW where it was inspected
7 a second time and it was discovered that the fuel pump assembly had not been replaced as
8 invoiced by Respondent.

9 48. On or about August 3, 2011, the Bureau visited the residence of the consumer and
10 inspected and photographed the vehicle and discovered that the fuel pump had not been replaced
11 as invoiced by Respondent.

12 **SEVENTEENTH CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 49. Respondent has subjected his registration to discipline pursuant to Code section
15 9884.7, subdivision (a)(1), in that on or about June 30, 2011, he made statements which he knew
16 or which by exercise of reasonable care he should have known were untrue or misleading when
17 he represented to the consumer on Invoice No. [REDACTED] that he had replaced the fuel pump. In fact,
18 he had not replaced the fuel pump as invoiced.

19 **EIGHTEENTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 50. Respondent has subjected his registration to discipline pursuant to Code section
22 9884.7, subdivision (a)(4), in that on or about June 30, 2011, Respondent accepted payment in the
23 amount of \$685 to replace the fuel pump; however, that part had not been replaced as invoiced.

24 **NINETEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Code)**

26 51. Respondent has subjected his registration to discipline pursuant to Code section
27 9884.7, subdivision (a)(6), in that on or about June 30, 2011, Respondent failed to comply with
28 the following sections of that Code:

1 a. **Section 9884.8:** Regarding Invoice No. [REDACTED], Respondent failed to describe all
2 service work performed and parts used in such a manner that the consumer could understand what
3 was purchased.

4 b. **Section 9884.9, subdivision (a):** Respondent failed to provide the consumer with a
5 written estimated price for parts and labor for a specific job.

6 **UNDERCOVER OPERATION – OCTOBER 5, 2011**

7 52. On or about October 5, 2011, a Bureau undercover operator drove a Bureau-
8 documented 2001 Chrysler to Respondent's facility and requested a smog inspection. The
9 vehicle could not pass the visual portion of a smog inspection because the vehicle's positive
10 crankcase ventilation (PCV) valve was missing. The operator did not sign a work order nor was
11 the operator provided with an estimate prior to the smog inspection. Respondent performed the
12 smog inspection and issued electronic Certificate of Compliance No. [REDACTED] for that vehicle.
13 The operator paid \$38 for the smog inspection and received a copy of Invoice No. [REDACTED] and the
14 VIR.

15 **TWENTIETH CAUSE FOR DISCIPLINE**

16 **(Misleading Statements)**

17 53. Respondent has subjected his registration to discipline pursuant to Code section
18 9884.7, subdivision (a)(1), in that on or about October 5, 2011, he made statements which he
19 knew or which by exercise of reasonable care he should have known were untrue or misleading
20 when he issued electronic Certificate of Compliance No. [REDACTED] for the 2001 Chrysler,
21 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
22 the vehicle's PCV valve was missing.

23 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 54. Respondent has subjected his registration to discipline pursuant to Code section
26 9884.7, subdivision (a)(4), in that on or about October 5, 2011, he committed acts which
27 constitute fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the 2001
28 Chrysler, without performing a bona fide inspection of the emission control devices and systems

1 on that vehicle, thereby depriving the People of the State of California of the protection afforded
2 by the Motor Vehicle Inspection Program.

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Code)**

5 55. Respondent has subjected his registration to discipline pursuant to Code section
6 9884.7, subdivision (a)(6), in that on or about October 5, 2011, he failed to comply with section
7 9884.9, subdivision (a) by failing to provide the operator with a written estimated price for parts
8 and labor for a specific job prior to commencing the smog inspection.

9 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

11 56. Respondent has subjected his station license to discipline pursuant to Health and
12 Safety Code section 44072.2, subdivision (a), in that on or about October 5, 2011, regarding the
13 2001 Chrysler, he 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. [REDACTED] without properly testing and inspecting the vehicle to determine if it
21 was in compliance with section 44012 of that Code.

22 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

24 57. Respondent has subjected his station license to discipline pursuant to Health and
25 Safety Code section 44072.2, subdivision (c), in that on or about October 5, 2011, regarding the
26 2001 Chrysler, he 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. [REDACTED] even though that vehicle had not been inspected in accordance with
3 section 3340.42 of that Code.

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

6 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

8 58. Respondent subjected his station license to discipline pursuant to Health and Safety
9 Code section 44072.2, subdivision (d), in that on or about October 5, 2011 regarding the 2001
10 Chrysler, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
11 issuing electronic Certificate of Compliance No. [REDACTED] to that vehicle without performing a
12 bona fide inspection of the emission control devices and systems on the vehicle, thereby
13 depriving the People of the State of California of the protection afforded by the Motor Vehicle
14 Inspection Program.

15 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

17 59. Respondent has subjected his technician licenses to discipline pursuant to Health and
18 Safety Code section 44072.2, subdivision (a), in that on or about October 5, 2011, regarding the
19 2001 Chrysler, he violated sections of that Code, as follows:

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

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

25 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
26 and systems on that vehicle in accordance with section 44012 of that Code.

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1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

3 60. Respondent has subjected his technician licenses to discipline pursuant to Health and
4 Safety Code section 44072.2, subdivision (c), in that on or about October 5, 2011, regarding the
5 2001 Chrysler, he violated sections of the California Code of Regulations, title 16, as follows:

6 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle
7 in accordance with Health and Safety Code section 44012.

8 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
9 for electronic Certificate of Compliance No. [REDACTED] by entering "Pass" for the visual
10 inspection portion of the smog inspection when, in fact, the vehicle could not pass the visual
11 inspection because the vehicle's PCV valve was missing.

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

14 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

16 61. Respondent has subjected his technician licenses to discipline pursuant to Health and
17 Safety Code section 44072.2, subdivision (d), in that on or about October 5, 2011, regarding the
18 2001 Chrysler, he committed acts involving dishonesty, fraud or deceit whereby another was
19 injured by issuing electronic Certificate of Compliance No. [REDACTED] without performing a
20 bona fide inspection of the emission control devices and systems on that vehicle, thereby
21 depriving the People of the State of California of the protection afforded by the Motor Vehicle
22 Inspection Program.

23 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

25 62. Respondent has subjected his lamp and brake station licenses and brake and lamp
26 adjuster licenses to discipline under Code section 9889.3, subdivision (d), in that on or about
27 January 27, 2011, June 22, 2011, June 30, 2011, and October 5, 2011, Respondent committed acts

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1 involving dishonesty, fraud or deceit, as more particularly set forth in paragraphs 28, 29, 32, 35,
2 37, 38, 41, 49, 50, 53, 54, and 58, above.

3 **THIRTIETH CAUSE FOR DISCIPLINE**

4 **(Conviction for a Crime Substantially Related)**

5 63. Respondent has subjected his registration, station license, technician licenses, lamp
6 and brake station licenses and brake and lamp adjuster licenses to discipline under Code sections
7 490, subdivision (a), and 9889.3, subdivision (b), in that on or about July 9, 2012, he was
8 convicted of a crime substantially related to the qualifications, functions or duties of a licensee, as
9 follows:

10 a. On or about July 9, 2012, in the case known as People of the State of California v.
11 Phakdey Liv, (Superior Court San Joaquin County, 2012, Case No. MF034763A), Respondent
12 was convicted on a plea of nolo contendere to violating Penal Code section 530.5 (unauthorized
13 use of personal information of another in order to obtain goods and services, a misdemeanor.)
14 The circumstances of the crime are that Respondent participated in a scheme to use information
15 gained from credit cards handed to him by customers of All City Automotive Repair 2, to create
16 new credit cards which appeared to be issued to him and others, which were then used to
17 purchase items.

18 **PRIOR CITATIONS**

19 64. To determine the degree of penalty, if any, to be imposed upon Respondent,
20 Complainant alleges as follows:

21 **Registration and Station License**

22 a. On May 16, 2005, the Bureau issued Citation No. C05-0343 to Respondent against
23 his registration and station licenses for violations of Health and Safety Code section 44012,
24 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
25 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
26 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
27 missing PCV system. The Bureau assessed a civil penalty of \$500. Respondent complied with
28 this citation on July 5, 2006.

1 b. On February 11, 2004, the Bureau issued Citation No. C04-0425 to Respondent
2 against his registration and station licenses for violations of Health and Safety Code section
3 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
4 and California Code of Regulations, title 16, (“Regulation”), section 3340.35, subdivision (c)
5 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
6 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
7 manufacturer’s specifications. The Bureau assessed a civil penalty of \$500. Respondent
8 complied with this citation on April 19, 2004.

9 **Technician License**

10 c. On May 16, 2005, the Bureau issued Citation No. M05-0344 to Respondent against
11 his technician license for violations of Health and Safety Code section 44032, (qualified
12 technicians shall perform tests of emission control systems and devices in accordance with
13 section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”) section
14 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
15 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
16 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV
17 system. Respondent was required to attend an 8-hour training course. Respondent complied with
18 this citation on June 13, 2005.

19 d. On February 11, 2004, the Bureau issued Citation No. M04-0426 to Respondent
20 against his technician license for violations of Health and Safety Code section 44032, (qualified
21 technicians shall perform tests of emission control systems and devices in accordance with
22 section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”) section
23 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
24 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
25 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition
26 timing adjusted beyond the manufacturer’s specifications. Respondent was required to attend an
27 8-hour training course. Respondent complied with this citation on April 15, 2004.

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OTHER MATTERS

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65. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Phakdey Liv, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

66. Under Health and Safety Code section 44072.8, if Smog Check Station License Number RC 224392, issued to Phakdey Liv, doing business as All City Automotive 2, 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.

67. Under Code section 9889.9, if Lamp Station License Number LS 224392, Class A, issued to Phakdey Liv, doing business as All City Automotive 2, 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, including but not limited to Brake Station License Number BS 224392, Class C.

68. Under Code section 9889.9, if Brake Adjuster License Number BA 139754, Class C, issued to Phakdey Liv, 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, including but not limited to Lamp Adjuster License Number LA 139754, Class A.

69. Pursuant to Health & Saf. Code section 44072.8, if Respondent Phakdey Liv's technician licenses, EO 139754 and EI 139754, are 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.

PRAYER

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, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 224392, issued to Phakdey Liv, doing business as All City Automotive 2;

- 1 2. Revoking, suspending, or placing on probation any other automotive repair dealer
2 registration issued to Phakdey Liv;
- 3 3. Revoking or suspending Smog Check Station License Number RC 224392, issued to
4 Phakdey Liv, doing business as All City Automotive 2;
- 5 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Phakdey Liv;
- 7 5. Revoking or suspending Phakdey Liv’s technician licenses EO 139754 and
8 EI139754.
- 9 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
10 and Safety Code in the name of Phakdey Liv;
- 11 7. Revoking or suspending Lamp Station License Number LS 224392, Class A, issued
12 to Phakdey Liv, doing business as All City Automotive 2;
- 13 8. Revoking or suspending Brake Station License Number BS 224392, Class C, issued
14 to Phakdey Liv, doing business as All City Automotive 2;
- 15 9. Revoking or suspending Brake Adjuster License Number BA 139754, Class C, issued
16 to Phakdey Liv;
- 17 10. Revoking or suspending Lamp Adjuster License Number LA 139754, Class A, issued
18 to Phakdey Liv;
- 19 11. Revoking or suspending any additional license issued under Articles 5 and 6 of
20 Chapter 20.3 of the Business and Professions Code in the name of Phakdey Liv;

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12. Ordering Phakdey Liv to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 6/17/13

John Wallauch by Joyce Baker
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Divya Bhatti
Complainant

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