

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHEILA J. VASANTHARAM
Deputy Attorney General
4 State Bar No. 289217
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-1006
Facsimile: (510) 622-2270
7 E-mail: Sheila.Vasantharam@doj.ca.gov
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. 77117-7461

13 **NIPPON AUTO REPAIR; TUYET HONGVO**
14 **TRAN, OWNER**
15 **41419 Albrae Street**
Fremont, CA 94538

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
17 **ARD 236375**

18 **Smog Check Station License No. RC 236375**

19 **Brake Station License No. BS 236375, Class C**

20 **Lamp Station License No. LS 236375, Class A,**

21 Respondent.

22 Complainant alleges:

23 **PARTIES**

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

26 2. In 2004, the Bureau of Automotive Repair issued Automotive Repair Dealer
27 Registration Number ARD 236375 to Tuyet Hongvo Tran (Owner); dba Nippon Auto Repair
28

1 (Respondent Nippon). The Automotive Repair Dealer Registration was in full force and effect at
2 all times relevant to the charges brought in this Accusation and will expire on November 30,
3 2018, unless renewed.

4 3. On or about November 16, 2006, the Bureau of Automotive Repair issued Smog
5 Check Station License Number RC 236375 to Tuyet Hongvo Tran (Owner); dba Nippon Auto
6 Repair. The Smog Check Station License was in full force and effect at all times relevant to the
7 charges brought in this Accusation and will expire on November 30, 2018, unless renewed.

8 4. On or about October 20, 2005, the Bureau of Automotive Repair issued Brake Station
9 License Number BS 236375, class C, to Tuyet Hongvo Tran (Owner); dba Nippon Auto Repair.
10 The Brake Station was in full force and effect at all times relevant to the charges brought in this
11 Accusation and will expire on November 30, 2018, unless renewed.

12 5. On or about October 20, 2005, the Bureau of Automotive Repair issued Lamp Station
13 License Number LS 236375, class A, to Tuyet Hongvo Tran (Owner); dba Nippon Auto Repair.
14 The Lamp Station was in full force and effect at all times relevant to the charges brought in this
15 Accusation and will expire on November 30, 2018, unless renewed.

16 JURISDICTION

17 6. This Accusation is brought before the Director of the Department of Consumer
18 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

19 7. Business and Professions Code (Code) section 118, subdivision (b), provides that the
20 suspension/expiration/surrender/cancellation of a license shall not deprive the
21 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
22 within which the license may be renewed, restored, reissued or reinstated.

23 8. Section 9889.1 of the Code states:

24 "Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the
25 director. The director may refuse to issue a license to any applicant for the reasons set forth in
26 Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter
27 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
28 and the director shall have all the powers granted therein."

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

4 (2) Causing or allowing a customer to sign any work order that does not state the repairs
5 requested by the customer or the automobile's odometer reading at the time of repair.

6 ...

7 (4) Any other conduct which constitutes fraud.

8 ...

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

11 (7) Any willful departure from or disregard of accepted trade standards for good and
12 workmanlike repair in any material respect, which is prejudicial to another without consent of the
13 owner or his or her duly authorized representative."

14 15. Section 9884.8 of the Code states:

15 "All work done by an automotive repair dealer, including all warranty work, shall be
16 recorded on an invoice and shall describe all service work done and parts supplied. Service work
17 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
18 prices for service work and for parts, not including sales tax, and shall state separately the sales
19 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice
20 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
21 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
22 statement indicating whether any crash parts are original equipment manufacturer crash parts or
23 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
24 given to the customer and one copy shall be retained by the automotive repair dealer."

25 16. Section 9884.9, subdivision (a) of the Code states:

26 "(a) The automotive repair dealer shall give to the customer a written estimated price for
27 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
28 before authorization to proceed is obtained from the customer. No charge shall be made for work

1 done or parts supplied in excess of the estimated price without the oral or written consent of the
2 customer that shall be obtained at some time after it is determined that the estimated price is
3 insufficient and before the work not estimated is done or the parts not estimated are supplied.
4 Written consent or authorization for an increase in the original estimated price may be provided
5 by electronic mail or facsimile transmission from the customer. The bureau may specify in
6 regulation the procedures to be followed by an automotive repair dealer if an authorization or
7 consent for an increase in the original estimated price is provided by electronic mail or facsimile
8 transmission. If that consent is oral, the dealer shall make a notation on the work order of the date,
9 time, name of person authorizing the additional repairs, and telephone number called, if any,
10 together with a specification of the additional parts and labor and the total additional cost, and
11 shall do either of the following:

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

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

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

18 _____

19 _____

20 (signature or initials)""

21 17. Section 9889.3, subdivision (d) states:

22 "The director may suspend, revoke, or take other disciplinary action against a license as
23 provided in this article if the licensee or any partner, officer, or director thereof:

24 ...

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

26 18. Section 17200 of the Code states:

27 "As used in this chapter, unfair competition shall mean and include any unlawful, unfair or
28 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any

1 act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
2 Business and Professions Code."

3 19. Section 17500 of the Code states:

4 "It is unlawful for any person, firm, corporation or association, or any employee thereof
5 with intent directly or indirectly to dispose of real or personal property or to perform services,
6 professional or otherwise, or anything of any nature whatsoever or to induce the public to enter
7 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated
8 before the public in this state, or to make or disseminate or cause to be made or disseminated
9 from this state before the public in any state, in any newspaper or other publication, or any
10 advertising device, or by public outcry or proclamation, or in any other manner or means
11 whatever, including over the Internet, any statement, concerning that real or personal property or
12 those services, professional or otherwise, or concerning any circumstance or matter of fact
13 connected with the proposed performance or disposition thereof, which is untrue or misleading,
14 and which is known, or which by the exercise of reasonable care should be known, to be untrue or
15 misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so
16 made or disseminated any such statement as part of a plan or scheme with the intent not to sell
17 that personal property or those services, professional or otherwise, so advertised at the price
18 stated therein, or as so advertised. Any violation of the provisions of this section is a
19 misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a
20 fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and
21 fine."

22 REGULATORY PROVISIONS

23 20. California Code of Regulations, title 16, section 3353, states in pertinent part:

24 "No work for compensation shall be commenced and no charges shall accrue without
25 specific authorization from the customer in accordance with the following requirements:

26 "(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
27 estimated price for parts and labor for a specific job.
28

1 " (b) Estimate for Auto Body or Collision Repairs. Every dealer, when doing auto body or
2 collision repairs, shall give to each customer a written estimated price for parts and labor for a
3 specific job. Parts and labor shall be described separately and each part shall be identified,
4 indicating whether the replacement part is new, used, rebuilt, or reconditioned. The estimate shall
5 also describe replacement crash parts as original equipment manufacturer (OEM) crash parts or
6 non-OEM aftermarket crash parts.

7 " (c) Additional Authorization. Except as provided in subsection (f), the dealer shall obtain
8 the customer's authorization before any additional work not estimated is done or parts not
9 estimated are supplied. This authorization shall be in written, oral, or electronic form, and shall
10 describe the additional repairs, parts, labor and the total additional cost.

11 (1) If the authorization from the customer for additional repairs, parts, or labor in excess of
12 the written estimated price is obtained orally, the dealer shall also make a notation on the work
13 order and on the invoice of the date, time, name of the person authorizing the additional repairs,
14 and the telephone number called, if any, together with the specification of the additional repairs,
15 parts, labor and the total additional cost.

16 (2) If the authorization from the customer for additional repairs, parts, or labor in excess of
17 the written estimated price is obtained by facsimile transmission (fax), the dealer shall also attach
18 to the work order and the invoice, a faxed document that is signed and dated by the customer and
19 shows the date and time of transmission and describes the additional repairs, parts, labor and the
20 total additional cost.

21 (3) If the authorization from the customer for additional repairs, parts, or labor in excess of
22 the written estimated price is obtained by electronic mail (e-mail), the dealer shall print and attach
23 to the work order and invoice, the e-mail authorization which shows the date and time of
24 transmission and describes the additional repairs, parts, labor and the total additional cost.

25 (4) The additional repairs, parts, labor, total additional cost, and a statement that the
26 additional repairs were authorized either orally, or by fax, or by e-mail shall be recorded on the
27 final invoice pursuant to Section 9884.9 of the Business and Professions Code. All documentation
28 must be retained pursuant to Section 9884.11 of the Business and Professions Code."

1 21. California Code of Regulations, title 16, section 3356, states:

2 "(a) All invoices for service and repair work performed, and parts supplied, as provided for
3 in Section 9884.8 of the Business and Professions Code, shall comply with the following:

4 (1) The invoice shall show the automotive repair dealer's registration number and the
5 corresponding business name and address as shown in the Bureau's records. If the automotive
6 repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b)
7 of Section 3371 of this chapter."

8 22. California Code of Regulations, title 16, section 3366, states, in pertinent part:

9 "(a) Except as provided in subsection (b) of this section, any automotive repair dealer that
10 advertises or performs, directly or through a sublet contractor, automotive air conditioning work
11 and uses the words service, inspection, diagnosis, top off, performance check or any expression or
12 term of like meaning in any form of advertising or on a written estimate or invoice shall include
13 and perform all of the following procedures as part of that air conditioning work:

14 ...

15 (4) Service ports are examined for missing caps, damaged threads and conformance with
16 labeling;

17 ...

18 (15) High and low side system operating pressures, as applicable, have been measured and
19 recorded on the final invoice; and,

20 (16) The center air distribution outlet temperature has been measured and recorded on the
21 final invoice."

22 **COST RECOVERY PROVISION**

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

27 ///

28 ///

1 FACTUAL BACKGROUND

2 **UNDERCOVER OPERATION #1**

3 24. Starting on or about April 27, 2017, Bureau representative DW documented the air
4 conditioning (A/C) system on a [REDACTED]. As part of DW's documentation, DW marked
5 for identification purposes a new A/C compressor and A/C receiver drier and installed the parts
6 on the Chevrolet. After testing and confirming that the Chevrolet's A/C system was performing
7 according to the vehicle manufacturer's specifications, DW installed a faulty A/C relay that
8 prevented the A/C compressor from operating. To fix the A/C system, a technician would simply
9 have to replace the faulty A/C relay.

10 25. On or about August 15, 2017, Bureau representative JC brought the Chevrolet to
11 Nippon Auto Repair and requested that the Chevrolet's A/C system be repaired because the
12 system was not blowing cold air.

13 26. Nippon Auto Repair provided JC with a written estimate of \$104.55 to diagnose the
14 Chevrolet's A/C system. JC signed the estimate, Nippon Auto Repair asked him to pay in
15 advance, JC paid an advance of \$100.00, Nippon Auto Repair provided him with a copy of the
16 estimate, and JC left the premises.

17 27. On or about August 15, 2017, Nippon Auto Repair informed JC that the Chevrolet's
18 A/C compressor, receiver drier, and oil needed to be replaced and the repairs would cost \$850.00.
19 JC authorized Nippon Auto Repair to complete the repairs.

20 28. On or about August 17, 2017, JC paid Nippon Auto Repair \$859.03 for the repairs,
21 and Nippon Auto Repair provided him with an invoice. The invoice did not include Nippon Auto
22 Repair's correct automotive repair dealer registration number or address.

23 29. On or about August 29, 2017, Bureau representative DW re-inspected the Chevrolet.
24 DW determined that Nippon Auto Repair only had to replace the faulty A/C compressor relay to
25 fix the Chevrolet's A/C system. DW determined that Nippon Auto Repair had replaced the
26 defective A/C compressor relay with the Chevrolet's park/lamp relay and replaced the park/lamp
27 relay with another relay. However, Nippon Auto Repair also invoiced and charged JC for
28 unnecessarily replacing the A/C compressor, refrigerant, and A/C receiver drier. DW's

1 investigation also revealed that Nippon Auto Repair has failed to change the Chevrolet's A/C
2 receiver drier, despite invoicing and charging JC for this work. Nippon Auto Repair had also
3 failed to reinstall the A/C pressure ports protective caps, even though they serve as a secondary
4 seal to prevent refrigerant from escaping into the atmosphere.

5 **UNDERCOVER OPERATION #2**

6 30. From October 20, 2017, to November 8, 2017, Bureau representative DW
7 documented the A/C system in a [REDACTED]. As part of DW's documentation, DW marked for
8 identification purposes a new A/C compressor, A/C receiver drier, and A/C pressure switch, and
9 installed the parts on the Toyota. DW also evacuated the A/C system, performed a vacuum test,
10 and recharged the system with refrigerant. After testing and confirming that the Toyota's A/C
11 system was performing according to the vehicle manufacturer's specifications, DW marked and
12 installed a faulty A/C magnetic clutch relay which prevented the A/C compressor from operating.
13 To fix the A/C system, a technician would simply have to replace the faulty A/C magnetic clutch
14 relay.

15 31. On or about December 18, 2017, Bureau representative DS brought the Toyota to
16 Nippon Auto Repair and requested they inspect the Toyota's A/C system and defroster because
17 they were not blowing cold air.

18 32. At Nippon Auto Repair, DS signed a blank repair order and Nippon Auto Repair
19 failed to provide him with a written estimate.

20 33. On or about December 19, 2017, Nippon Auto Repair informed DS that the Toyota
21 needed a new A/C temperature control relay and that it would cost \$198.53 for the relay. Nippon
22 Auto Repair also informed DS that the Toyota's A/C refrigerant was low and needed to be
23 evacuated and recharged, and that this would cost \$105.00. DS authorized the repairs.

24 34. On or about December 20, 2017, DS arrived at Nippon Auto Repair, DS paid \$303.08
25 for the repairs, and Nippon Auto Repair provided him with two invoices. The invoices did not
26 include Nippon Auto Repair's correct automotive repair dealer registration number.

27 35. On or about January 10, 2018, Bureau representative DW re-inspected the Toyota.
28 DW determined that Nippon Auto Repair only needed to replace the Toyota's A/C magnetic

1 clutch relay to fix the A/C system and that Nippon Auto Repair had completed this repair.
2 However, Nippon Auto Repair had also invoiced and charged DS for evacuating and recharging
3 the Toyota's A/C refrigerant, even though the system had been fully charged and did not have any
4 leaks, making this work unnecessary.

5 FIRST CAUSE FOR DISCIPLINE

6 (Bus. & Prof Code, § 9884.7, subd. (a)(1))
7 (Making or Authorizing Untrue or Misleading Statements)

8 36. Respondent Nippon has subjected its Automotive Repair Dealer Registration to
9 disciplinary action in that Respondent Nippon made untrue statements by stating that the
10 Chevrolet's A/C compressor was not working and needed to be replaced as set forth in paragraphs
11 24 to 29, above. (Bus. & Prof Code, § 9884.7, subd. (a)(1).)

12 SECOND CAUSE FOR DISCIPLINE

13 (Bus. & Prof. Code, § 9884.7, subd. (a)(4))
14 (Fraud)

15 37. Respondent Nippon has subjected its Automotive Repair Dealer Registration to
16 discipline in that Respondent Nippon engaged in fraud when it invoiced and charged \$49.00 for
17 an A/C receiver drier that they did not install on the Chevrolet, invoiced and charged \$60.00 for
18 refrigerant that the Toyota did not need, and invoiced and charged \$39.00 for unnecessarily
19 checking the Toyota's A/C system for refrigerant and leaks, as set forth in paragraphs 24 to 35,
20 above. (Bus. & Prof. Code, section 9884.7, subd, (a)(4).)

21 THIRD CAUSE FOR DISCIPLINE

22 (Bus. & Prof Code, § 9884.7, subd. (a)(6))
23 (Failure to Comply with the Automotive Repair Act)

24 38. Respondent Nippon has subjected its Automotive Repair Dealer Registration and
25 Smog Station License to discipline in that it failed to comply with the Automotive Repair Act and
26 sections of the Code and applicable regulations as set forth in paragraphs 24 to 35, above. (Bus. &
27 Prof Code, § 9884.7, subd. (a)(6).) The violations are as follows:

28 a. **Cal. Code Regs., tit. 16, § 3366, subd. (a)(4):** Respondent Nippon failed to reinstall
the Chevrolet's A/C pressure port protective caps to adhere to manufacturer labeling.

1 it invoiced and charged \$49.00 for an A/C receiver drier that they did not install on the Chevrolet,
2 invoiced and charged \$60.00 for refrigerant that the Toyota did not need, and invoiced and
3 charged \$39.00 for unnecessarily checking the Toyota's A/C system for refrigerant and leaks, as
4 set forth in paragraphs 24 to 35, above. (Bus. & Prof. Code, § 9889.3, subd. (d).)

5 **OTHER MATTERS**

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

11 44. Pursuant to Business and Professions Code section 9889.9, if Lamp Adjuster License
12 number LA 236375 Class A, issued to Respondent Nippon is revoked or suspended, any
13 additional license issued in the name of said licensee may be likewise revoked or suspended by
14 the Director.

15 45. Pursuant to Business and Professions Code section 9889.9, if Brake Adjuster License
16 number BA 236375 Class C, issued to Respondent Nippon is revoked or suspended, any
17 additional license issued in the name of said licensee may be likewise revoked or suspended by
18 the Director.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
21 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

22 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
23 236375, issued to Tuyet Hongvo Tran (Owner); dba Nippon Auto Repair;

24 2. Revoking, suspending, or placing on probation any other automotive repair
25 registration issued to Tuyet Hongvo Tran;

26 3. Revoking or suspending Smog Check Station License Number RC 236375, issued to
27 Tuyet Hongvo Tran; dba Nippon Auto Repair;

28

- 1 4. Revoking or suspending any other additional license issued under Chapter 5, part 5,
- 2 division 26 of the Health and Safety Code in the name of Tuyet Hongvo Tran;
- 3 5. Revoking or suspending Lamp Station License Number LS 236375 issued to Tuyet
- 4 Hongvo Tran (Owner); dba Nippon Auto Repair.
- 5 6. Revoking or suspending Brake Station License Number BS 236375 issued to Tuyet
- 6 Hongvo Tran (Owner); dba Nippon Auto Repair.
- 7 7. Revoking or suspending any additional licenses issued under Article 5 and 6, Chapter
- 8 20.3 of the Business and Professions Code in the name of Tuyet Hongvo Tran;
- 9 8. Ordering Tuyet Hongvo Tran; dba Nippon Auto Repair to pay the Bureau of
- 10 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
- 11 pursuant to Business and Professions Code section 125.3; and
- 12 9. Taking such other and further action as deemed necessary and proper.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: July 30, 2018



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

OK2018900334
90967510.docx