

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@doj.ca.gov
7 *Attorneys for Complainant*

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. 77/16-01

13 **DUY TUONG NGUYEN, OWNER**
14 **TAN NGUYEN, RME**
15 **DBA**
16 **WASHINGTON AUTO REPAIR**
17 **165 Washington Street #B**
18 **San Jose, CA 95112**

19 **Automotive Repair Dealer Registration**
20 **No. ARD 247313**
21 **Smog Check Repair Only Station License**
22 **No. RO 247313**
23 **Lamp Station License No. LS 247313, Class**
24 **A**
25 **Brake Station License No. BS 247313, Class**
26 **C**

27 **and**
28 **TAN TUONG NGUYEN**
4192 Camden Avenue
San Jose, CA 95124

Smog Check Inspector License No. EO
634583
Smog Check Repair Technician License No.
EI 634583 (formerly Advanced Emission
Specialist Technician License No. EA
634583)
Brake Adjuster License No. BA 634583,
Class C
Lamp Adjuster License No. LA 634583,
Class A

A C C U S A T I O N

1 **and**

2 **TUONG VAN NGUYEN**
3 **4192 Camden Avenue**
4 **San Jose, CA 95124**

5 **Smog Check Inspector License No. EO**
6 **312020**
7 **Smog Check Repair Technician License No.**
8 **EI 312020 (formerly Advanced Emission**
9 **Specialist Technician License No. EA**
10 **312020)**
11 **Brake Adjuster License No. BA 312020,**
12 **Class C**
13 **Lamp Adjuster License No. LA 312020,**
14 **Class A**

15 Respondents.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about September 20, 2006, the Bureau issued Automotive Repair Dealer
21 Registration Number ARD 247313 to Duy Tuong Nguyen, Owner, Tan Nguyen, RME dba
22 Washington Auto Repair (Respondent Washington). The Automotive Repair Dealer Registration
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 September 30, 2015, unless renewed.

25 3. On or about October 10, 2012, the Bureau issued Smog Check Repair Only Station
26 License Number RO 247313 to Respondent Washington. The Smog Check Repair Only Station
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on September 30, 2015, unless renewed.

29 4. On or about March 28, 2011, the Bureau issued Lamp Station License Number LS
30 247313, Class A to Respondent Washington. The Lamp Station License was in full force and
31 effect at all times relevant to the charges brought herein and will expire on September 30, 2015,
32 unless renewed.

1 5. On or about March 28, 2011, the Bureau issued Brake Station License Number BS
2 247313, Class C to Respondent Washington. The Brake Station License was in full force and
3 effect at all times relevant to the charges brought herein and will expire on September 30, 2015,
4 unless renewed.

5 6. On or about August 2, 2012, the Director issued Advanced Emission Specialist
6 Technician License Number EA 634583 to Tan Tuong Nguyen (Respondent Tan). Respondent
7 Tan's Advanced Emission Specialist Technician License was due to expire on April 30, 2014.
8 Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license
9 was renewed, pursuant to Respondent Tan's election, as Smog Check Inspector License Number
10 EO 634583 and Smog Check Repair Technician License Number EI 634583 (technician licenses),
11 effective January 21, 2014. Respondent Tan's technician licenses will expire April 30, 2016,
12 unless renewed.¹

13 7. On or about November 26, 2012, the Bureau issued Brake Adjuster License Number
14 BA 634583, Class C to Respondent Tan. The Brake Adjuster License was in full force and effect
15 at all times relevant to the charges brought herein and will expire on April 30, 2016, unless
16 renewed.

17 8. On or about May 24, 2013, the Bureau issued Lamp Adjuster License Number LA
18 634583, Class A to Respondent Tan. The Lamp Adjuster License was in full force and effect at
19 all times relevant to the charges brought herein and will expire on April 30, 2017, unless renewed.

20 9. In or around 2003, the Director issued Advanced Emission Specialist Technician
21 License Number EA 312020 to Tuong Van Nguyen (Respondent Tuong). Respondent Tuong's
22 advanced emission specialist technician license was due to expire on November 30, 2013.
23 Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license
24 was renewed, pursuant to Respondent Tuong's election, as Smog Check Inspector License
25 Number EO 312020 and Smog Check Repair Technician License Number EI 312020 (technician

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 licenses), effective August 14, 2013. Respondent Tuong's technician licenses will expire on
2 November 30, 2015, unless renewed.

3 10. In or around 1991, the Bureau issued Brake Adjuster License Number BA 312020,
4 Class C to Respondent Tuong. The Brake Adjuster License was in full force and effect at all
5 times relevant to the charges brought herein and will expire on November 30, 2017, unless
6 renewed.

7 11. In or around 1991, the Bureau issued Lamp Adjuster License Number LA 312020,
8 Class A to Respondent Tuong. The Lamp Adjuster License was in full force and effect at all
9 times relevant to the charges brought herein and will expire on November 30, 2015, unless
10 renewed.

11 JURISDICTION

12 12. This Accusation is brought before the Director of the Department of Consumer
13 Affairs (Director) for the Bureau of Automotive Repair under the authority of the following laws.
14 All section references are to the Business and Professions Code (Code) unless otherwise
15 indicated.

16 13. Section 9889.7 of the Code provides, in pertinent part, that the expiration or
17 suspension of a license by operation of law or by order or decision of the Director or a court of
18 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to
19 proceed with any disciplinary proceedings.

20 STATUTORY PROVISIONS

21 14. Section 9884.7 of the Code states, in pertinent part:

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

27 ///

28 ///

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 ...

5 “(4) Any other conduct which constitutes fraud.

6 ...

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

9 ...”

10 15. Section 9884.8 of the Code states, in pertinent part:

11 “All work done by an automotive repair dealer, including all warranty work, shall be
12 recorded on an invoice and shall describe all service work done and parts supplied. Service work
13 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
14 prices for service work and for parts, not including sales tax, and shall state separately the sales
15 tax, if any, applicable to each. . . .”

16 16. Section 9884.9 of the Code states, in pertinent part:

17 “(a) The automotive repair dealer shall give to the customer a written estimated price for
18 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
19 before authorization to proceed is obtained from the customer. . . .”

20 17. Section 9889.3 of the Code states, in pertinent part:

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

24 “(a) Violates any section of the Business and Professions Code which relates to his or her
25 licensed activities.

26 ...

27 “(c) Violates any of the regulations promulgated by the director pursuant to this chapter
28 [the Automotive Repair Act].

1 certificates are ordered. Certificates are not exchangeable following delivery. A licensed station
2 shall not sell or otherwise transfer unused certificates of adjustment. Issuance of a lamp
3 adjustment certificate shall be in accordance with the following provisions:

4 ...

5 “(2) Where all of the lamps, lighting equipment, and related electrical systems on a vehicle
6 have been inspected and found to be in compliance with all requirements of the Vehicle Code and
7 bureau regulations, the certificate shall certify that the entire system meets all of those
8 requirements.

9 ...”

10 21. California Code of Regulations, title 16, section 3321 states, in pertinent part:

11 “(c) Effective April 1, 1999, licensed stations shall purchase certificates of adjustment from
12 the bureau for a fee of three dollars and fifty cents (\$3.50) and shall not purchase or otherwise
13 obtain such certificates from any other source. A licensed station shall not sell or otherwise
14 transfer unused certificates of adjustment. Full payment is required at the time certificates are
15 ordered. Certificates are not exchangeable following delivery. Issuance of a brake adjustment
16 certificate shall be in accordance with the following provisions:

17 ...

18 “(2) Where the entire brake system on any vehicle has been inspected or tested and found to
19 be in compliance with all requirements of the Vehicle Code and bureau regulations, and the
20 vehicle has been road-tested, the certificate shall certify that the entire system meets all such
21 requirements.

22 ...”

23 22. 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 labor and parts for a specific job.

28 ...”

1 representative saw Respondent Tan install the four wheels back on the Honda and drive it out of
2 the shop bay area.

3 28. A short time later, the Bureau representative spoke with Respondent Tuong, who
4 informed her that the Honda had passed the brake and lamp inspection. The Bureau
5 representative paid for the inspection and Respondent Tuong provided her with an invoice and
6 brake and lamp certificates. Respondent Tan signed the brake and lamp certificates.

7 **Undercover Operation #2 – June 18, 2014**

8 29. In or around May and June 2014, a Bureau representative inspected and documented
9 a 2001 Toyota. The Toyota was documented to fail a brake inspection due to the vehicle's left
10 front brake rotor and right rear brake drum being outside the manufacturer's specifications. The
11 Toyota was also documented to fail a lamp inspection due to the vehicle's headlights being
12 adjusted outside the manufacturer's specifications.

13 30. On or about June 18, 2014, a Bureau representative drove the Toyota to Respondent
14 Washington's shop in San Jose, California where he was met by Respondent Tuong and an
15 unidentified individual. The Bureau representative requested a brake and lamp inspection and
16 filled out customer information on an estimate form. The unidentified individual wrote \$87.00
17 for the brake and lamp inspection on the estimate form. The Bureau representative then observed
18 Respondent Tan drive the Toyota into the shop and raise it on a lift.

19 31. A short time later, the Bureau representative spoke with Respondent Tuong, who
20 informed him that the Toyota had passed the brake and lamp inspection. The Bureau
21 representative paid for the inspection and Respondent Tuong provided him with an invoice and
22 brake and lamp certificates. The invoice did not list separately the subtotal prices for the brake
23 and lamp inspections. Respondent Tuong signed the brake and lamp certificates.

24 **Undercover Operation #3 – August 14, 2014**

25 32. In or around June and July 2014, a Bureau representative inspected and documented a
26 2002 Dodge. The Dodge was documented to fail a brake inspection due to the vehicle's front
27 brake rotors and rear brake drums being outside the manufacturer's specifications. The Dodge
28 was also documented to fail a lamp inspection due to the vehicle's headlights being adjusted

1 outside the manufacturer's specifications.

2 33. On or about August 14, 2014, a Bureau representative drove the Dodge to
3 Respondent Washington's shop in San Jose, California where she was met by Respondent Tuong.
4 The Bureau representative requested a brake and lamp inspection and filled out customer
5 information on a work order form. Respondent Tuong wrote \$87.00 for the brake and lamp
6 inspection on the work order form. The Bureau representative then observed an unidentified
7 individual drive the Dodge into the service bay area. Approximately ten minutes later,
8 Respondent Tan informed the Bureau representative that the Dodge passed the brake and lamp
9 inspection.

10 34. A short time later, the Bureau representative spoke with Respondent Tuong, who
11 informed her that the Dodge had passed the brake and lamp inspection. The Bureau
12 representative paid for the inspection and Respondent Tuong provided her with an invoice and
13 brake and lamp certificates. The invoice did not list separately the subtotal prices for the brake
14 and lamp inspections. Respondent Tan signed the brake and lamp certificates.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Untrue and/or Misleading Statements)**

17 35. Respondent Washington's Automotive Repair Dealer Registration is subject to
18 disciplinary action under section 9884.7, subdivision (a)(1) of the Code in that Respondent
19 Washington made and/or authorized statements it knew or which by the exercise of reasonable
20 care it should have known were untrue and/or misleading when it issued brake and lamp
21 certificates for the three vehicles described above stating that those vehicles' brake and lamp
22 systems were in compliance with applicable laws and regulations when in fact they were not.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 36. Respondent Washington's Automotive Repair Dealer Registration is subject to
26 disciplinary action under section 9884.7, subdivision (a)(4) of the Code for fraud in that
27 Respondent Washington was paid for brake and lamp inspections that were supposed to be
28 performed on the three vehicles described above when those inspections were either not

1 performed or not completed.

2 **THIRD CAUSE FOR DISCIPLINE**

3 **(Failure to Comply with the Business and Professions Code)**

4 37. Respondent Washington's Automotive Repair Dealer Registration is subject to
5 disciplinary action under section 9884.7, subdivision (a)(6) of the Code in that Respondent
6 Washington failed to comply with the following provisions of the Code:

7 a. Section 9884.8: Respondent Washington failed to state separately on the invoices for
8 the three vehicles the subtotal prices for the brake and lamp inspections.

9 b. Section 9884.9, subdivision (a): Respondent Washington failed to give the Bureau
10 representative a written estimated price for the brake and lamp inspection performed on the
11 Honda.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Regulations)**

14 38. Respondent Washington's Automotive Repair Dealer Registration is subject to
15 disciplinary action under section 9884.7, subdivision (a)(6) of the Code in that, with regard to the
16 brake and lamp inspections performed on the three vehicles described above, Respondent
17 Washington violated the following sections of title 16 of the California Code of Regulations:

18 a. Section 3305, subdivisions (a)(1) and/or (a)(2): Respondent Washington failed to
19 perform brake and lamp inspections in accordance with manufacturer specifications.

20 b. Section 3316, subdivision (d)(2): Respondent Washington improperly certified that
21 the vehicles' lamp systems were in compliance with all the requirements of the Vehicle Code and
22 Bureau regulations.

23 c. Section 3321, subdivision (c)(2): Respondent Washington improperly certified that
24 the vehicles' brake systems were in compliance with all the requirements of the Vehicle Code and
25 Bureau regulations.

26 d. Section 3353, subdivision (a): Respondent Washington failed to provide the Bureau
27 representative with a written estimated price for the brake and lamp inspection performed on the
28 Honda.

1 e. Section 3371: Respondent Washington made false and/or misleading statements when
2 it issued brake and lamp certificates for the three vehicles stating that the vehicles' brake and
3 lamp systems were in compliance with applicable laws and regulations when in fact they were
4 not.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with the Business and Professions Code)**

7 39. Respondent Washington's Brake and Lamp Station licenses are subject to
8 disciplinary action under Business and Professions Code section 9889.3, subdivisions (a) and (h),
9 in that Respondent Washington violated Business and Professions Code sections 9884.8 and
10 9884.9, subdivision (a) relating to its licensed activities, as set forth above in Paragraph 37.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations)**

13 40. Respondent Washington's Brake and Lamp Station licenses are subject to
14 disciplinary action under Business and Professions Code section 9889.3, subdivision (c) in that
15 Respondent Washington failed to comply with California Code of Regulations, title 16, sections
16 3305, subdivisions (a)(1) and/or (a)(2), 3316, subdivision (d)(2), 3321, subdivision (c)(2), 3353,
17 subdivision (a), and 3371, as set forth above in Paragraph 38.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 41. Respondent Washington's Brake and Lamp Station licenses are subject to
21 disciplinary action under Business and Professions Code section 9889.3, subdivision (d) in that
22 Respondent Washington committed acts involving fraud whereby another was injured, as set forth
23 above in Paragraph 36.

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 **(Improper Issuance of Brake and Lamp Certificates)**

26 42. Respondent Tan's Brake Adjuster License and Lamp Adjuster License are subject to
27 disciplinary action under sections 9889.3, subdivision (a) and 9889.16 of the Code in that he
28 improperly issued brake and lamp certificates for the Honda and Dodge vehicles described above.

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Failure to Perform Proper Brake and Lamp Inspections)**

3 43. Respondent Tan's Brake Adjuster License and Lamp Adjuster License are subject to
4 disciplinary action under section 9889.3, subdivision (c) of the Code and California Code of
5 Regulations, title 16, section 3305, subdivisions (a)(1) and/or (a)(2) in that Respondent Tan did
6 not perform the brake and lamp inspections on the Honda and Dodge vehicles in accordance with
7 manufacturer specifications.

8 **TENTH CAUSE FOR DISCIPLINE**

9 **(Improper Issuance of Brake and Lamp Certificates)**

10 44. Respondent Tuong's Brake Adjuster License and Lamp Adjuster License are subject
11 to disciplinary action under sections 9889.3, subdivision (a) and 9889.16 of the Code in that he
12 improperly issued brake and lamp certificates for the Toyota vehicle described above.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Perform Proper Brake and Lamp Inspections)**

15 45. Respondent Tuong's Brake Adjuster License and Lamp Adjuster License are subject
16 to disciplinary action under section 9889.3, subdivision (c) of the Code and California Code of
17 Regulations, title 16, section 3305, subdivisions (a)(1) and/or (a)(2) in that Respondent Tuong did
18 not perform the brake and lamp inspections on the Toyota vehicle in accordance with
19 manufacturer specifications.

20 **OTHER MATTERS**

21 46. Under section 9884.7, subdivision (c) of the Code, the Director may suspend, revoke,
22 or place on probation the registrations for all places of business operated in this state by
23 Respondent Washington upon a finding that it has, or is, engaged in a course of repeated and
24 willful violations of the laws and regulations pertaining to an automotive repair dealer.

25 47. Under Health and Safety Code section 44072.8, if Smog Check Repair Only Station
26 License Number RO 247313 issued to Respondent Washington is revoked or suspended, any
27 additional license issued under this chapter in the name of said licensee may be likewise revoked
28 or suspended by the Director.

1 48. Under section 9889.9 of the Code, if Lamp Station License Number LS 247313, Class
2 A issued to Respondent Washington is revoked or suspended, any additional license issued under
3 Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
4 revoked or suspended by the Director.

5 49. Under section 9889.9 of the Code, if Brake Station License Number BS 247313,
6 Class C issued to Respondent Washington is revoked or suspended, any additional license issued
7 under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
8 revoked or suspended by the Director.

9 50. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
10 Number EO 634583 and Smog Check Repair Technician License No. EI 634583 issued to
11 Respondent Tan are revoked or suspended, any additional license issued under this chapter in the
12 name of said licensee may be likewise revoked or suspended by the Director.

13 51. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
14 Number EO 312020 and Smog Check Repair Technician License No. EI 312020 issued to
15 Respondent Tuong are revoked or suspended, any additional license issued under this chapter in
16 the name of said licensee may be likewise revoked or suspended by the Director.

17 52. Under section 9889.9 of the Code, if Brake Adjuster License Number BA 634583,
18 Class C issued to Respondent Tan is revoked or suspended, any additional license issued under
19 Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
20 revoked or suspended by the Director.

21 53. Under section 9889.9 of the Code, if Lamp Adjuster License Number LA 634583,
22 Class A issued to Respondent Tan is revoked or suspended, any additional license issued under
23 Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
24 revoked or suspended by the Director.

25 54. Under section 9889.9 of the Code, if Brake Adjuster License Number BA 312020,
26 Class C issued to Respondent Tuong is revoked or suspended, any additional license issued under
27 Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
28 revoked or suspended by the Director.

1 11. Revoking or suspending Brake Adjuster License Number BA 634583, Class C issued
2 to Respondent Tan;

3 12. Revoking or suspending Lamp Adjuster License Number LA 634583, Class A issued
4 to Respondent Tan;

5 13. Revoking or suspending any additional license issued under Articles 5 and 6 of
6 Chapter 20.3 of the Business and Professions Code in the name of Respondent Tan;

7 14. Revoking or suspending Smog Check Inspector License Number EO 312020 issued
8 to Tuong Van Nguyen (Respondent Tuong);

9 15. Revoking or suspending Smog Check Repair Technician License Number EI 312020
10 issued to Respondent Tuong;

11 16. Revoking or suspending any additional license issued under Chapter 5 of the Health
12 and Safety Code in the name of Respondent Tuong;

13 17. Revoking or suspending Brake Adjuster License Number BA 312020, Class C issued
14 to Respondent Tuong;

15 18. Revoking or suspending Lamp Adjuster License Number LA 312020, Class A issued
16 to Respondent Tuong;

17 19. Revoking or suspending any additional license issued under Articles 5 and 6 of
18 Chapter 20.3 of the Business and Professions Code in the name of Respondent Tuong;

19 20. Ordering Respondent Washington, Respondent Tan, and Respondent Tuong to pay
20 the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of
21 this case pursuant to Business and Professions Code section 125.3; and

22 21. Taking such other and further action as deemed necessary and proper.

23
24 DATED:

July 15, 2015



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

25
26
27
28 SF2015401340