

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **DISCOUNT AUTO REPAIR**
12 **MING LUONG, Owner**
13 **aka MING NGOC LUONG**
14 **5700 International Blvd.**
15 **Oakland, CA 94621**
16 **Automotive Repair Dealer Registration No.**
17 **ARD 252800**
Smog Check Station License No. RC 252800
Brake Station License No. BS 252800
Lamp Station License No. LS 252800

18 **MING NGOC LUONG**
19 **5700 International Drive**
20 **Oakland, CA 94621**
21 **Brake Adjuster License No. BA 308297**
22 **Lamp Adjuster License No. LA 308297**

23 **TIMOTHY LUONG**
24 **5700 International Drive**
25 **Oakland, CA 94621**
26 **Smog Check Inspector License No. EO 150308**
27 **Smog Check Repair Technician No. EI 150308**
(formerly Advanced Emission Specialist
Technician License No. EA 150308)
Brake Adjuster License No. BA 150308
Lamp Adjuster License No. LA 150308

28 Respondents.

Case No. 79/13-80

ACCUSATION

(SMOG CHECK)

1 John Wallauch ("Complainant") alleges:

2 **PARTIES**

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

5 **LICENSE INFORMATION**

6 **Discount Auto Repair**

7 **Automotive Repair Dealer Registration**

8 2. In 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD
9 252800 ("registration") to Ming Luong, also known as Ming Ngoc Luong ("Respondent"), doing
10 business as Discount Auto Repair. The registration was in full force and effect at all times
11 relevant to the charges brought herein and will expire on November 30, 2013, unless renewed.

12 **Smog Check Station License**

13 3. In 2007, the Bureau issued Smog Check Station Number RC 252800 ("station
14 license") to Respondent. The station license was in full force and effect at all times relevant to
15 the charges brought herein and will expire on November 30, 2013, unless renewed.

16 **Lamp Station License**

17 4. In 2007, the Bureau issued Lamp Station License Number LS 252800 to
18 Respondent. The lamp station license was in full force and effect at all times relevant to the
19 charges brought herein and will expire on November 30, 2013, unless renewed.

20 **Brake Station License**

21 5. In 2007, the Bureau issued Brake Station License Number BS 252800 to
22 Respondent. The brake station license was in full force and effect at all times relevant to the
23 charges brought herein and will expire on November 30, 2013, unless renewed.

24 **Brake Adjuster License**

25 6. In 1985, the Bureau issued Brake Adjuster License Number BA 308297 to
26 Respondent. Respondent's brake adjuster license was in full force and effect at all times relevant
27 to the charges brought herein and will expire on May 31, 2014, unless renewed.

28 ///

1 **Lamp Adjuster License**

2 7. In 1986, the Bureau issued Lamp Adjuster License Number LA 308297 to
3 Respondent. Respondent's lamp adjuster license was in full force and effect at all times relevant
4 to the charges brought herein and will expire on May 31, 2013, unless renewed.

5 **Timothy Luong**

6 **Technician License/Inspector License**
7 **(formerly Advanced Emission Specialist Technician License No. EA 150308)**

8 8. In 2005, the Bureau issued Advanced Emission Specialist Technician License
9 Number EA 150308 to Timothy Luong ("Respondent Timothy Luong"). The Advanced
10 Emission Specialist Technician License was in full force and effect at all times relevant to the
11 charges brought herein and expired on January 31, 2013. Pursuant to California Code of
12 Regulations, title 16, section 3340.28(e), the license was renewed, pursuant to Respondent's
13 election, as Smog Check Inspector License Number EO 150308 ("inspector license") and Smog
14 Check Repair Technician License Number EI 150308 ("repair technician license"), effective
15 January 31, 2013¹. Respondent Timothy Luong's inspector license and repair technician license
16 will expire on January 31, 2015, unless renewed.

17 **Brake Adjuster License**

18 9. In 2006, the Bureau issued Brake Adjuster License Number BA 150308 to
19 Respondent Timothy Luong. Respondent Timothy Luong's brake adjuster license was in full
20 force and effect at all times relevant to the charges brought herein and will expire on
21 January 31, 2014, unless renewed.

22 ///

23 ///

24 ///

25 ///

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

19. Code section 9889.1 states:

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

20. Code section 9889.9 states:

When any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.

21. Code section 9889.16 states:

Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station.

22. Code section 9884.8 states:

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

23. Code section 9884.9 states:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau

1 may specify in regulation the procedures to be followed by an automotive repair
2 dealer when an authorization or consent for an increase in the original estimated price
3 is provided by electronic mail or facsimile transmission. If that consent is oral, the
4 dealer shall make a notation on the work order of the date, time, name of person
5 authorizing the additional repairs and telephone number called, if any, together with a
6 specification of the additional parts and labor and the total additional cost, and shall
7 do either of the following:

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

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

13 I acknowledge notice and oral approval of an increase in the original
14 estimated price.

15 _____
16 (signature or initials)

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

20 24. Code section 9889.7 states:

21 The expiration or suspension of a license by operation of law or by order
22 or decision of the director or a court of law, or the voluntary surrender of a license by
23 a licensee shall not deprive the director of jurisdiction to proceed with any
24 investigation of or action or disciplinary proceedings against such licensee, or to
25 render a decision suspending or revoking such license.

26 25. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

(f) Aids or abets unlicensed persons to evade the provisions of this
chapter.

26 ///

27 ///

1 COST RECOVERY

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

6 BACKGROUND INFORMATION

7 27. A review of Respondent's certificate purchase records showed an exceedingly high
8 number of Brake and Lamp certificates purchased in August 2011, initiating an investigation.

9 UNDERCOVER OPERATION NO. 1: 2002 FORD

10 28. On or about September 16, 2011, an undercover Bureau operator ("operator")
11 drove a Bureau-documented 2002 Ford to Respondent's facility and requested a brake, lamp, and
12 smog inspection. The vehicle defect included an undersized right front and left rear brake rotor,
13 both front headlamps were out of adjustment, and the license plate bulb and housing were
14 missing. When the operator arrived at Respondent's facility, he was greeted by a male employee,
15 Hung Ngoc Man Pham ("Hung"). Hung prepared a work order, had the operator sign it, and
16 provided the operator with a copy. The operator observed Hung, an unlicensed smog technician,
17 perform a smog inspection on the vehicle while Respondent Timothy Luong was servicing
18 another vehicle. Once Hung completed the smog inspection, the operator observed Hung
19 accompany Respondent Timothy Luong to the back of the service bay. Hung then returned to the
20 office with an invoice, Vehicle Inspection Report ("VIR") and a brake and lamp certificate. The
21 operator paid Hung \$150 and received a copy of Invoice No. [REDACTED], VIR, Brake Certificate No.
22 BC [REDACTED], and Lamp Certificate No. LC [REDACTED]. At no time during the lamp and brake
23 inspection, did the operator observe any of the wheels being removed or the exterior lights
24 illuminate.

25 29. On or about October 12, 2011, a Bureau representative re-inspected the vehicle
26 and found that the right front and left rear brake rotors remained undersized, both front headlamps
27 were out of adjustment, and the license plate bulb and housing were still missing.

28 ///

1 satisfactory condition when, in fact, they were not, as more particularly set forth above in
2 paragraph 29.

3 b. Respondent requested and received payment from the operator for an official smog
4 check inspection to be performed by a qualified licensed smog check technician when, in fact,
5 Hung, an unlicensed person performed the smog inspection, resulting in the issuance of
6 fraudulent electronic Certificate of Compliance No. OC [REDACTED].

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Gross Negligence)**

9 32. Respondent's registration is subject to discipline under Code section 9884.7(a)(5), in
10 that on or about September 16, 2011, regarding the 2002 Ford, Respondent committed acts
11 constituting gross negligence, in that Respondent failed to properly inspect the vehicle's brake
12 and lamp systems and issued Brake Certificate No. BC [REDACTED] and Lamp Certificate No.
13 LC [REDACTED], indicating that the vehicle's brake and lamp systems were in satisfactory condition
14 and were in accordance with the Vehicle Code when, in fact, they were not.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with the Code)**

17 33. Respondent's registration is subject to discipline pursuant to Code section
18 9884.7(a)(6), in that on or about September 16, 2011, regarding the 2002 Ford, Respondent failed
19 to comply with provisions of that Code in the following material respects:

20 a. **Section 9884.8:** Respondent failed to separately list the cost for each certificate
21 issued.

22 b. **Section 9889.16:**

23 i. Respondent issued Brake Certificate Number BC [REDACTED] for the vehicle, when
24 the vehicle was not in compliance with Bureau regulations or the requirements of the Vehicle
25 Code, in that the right front and left rear brake rotors were undersized.

26 ii. Respondent issued Lamp Certificate Number LC [REDACTED] for the vehicle, when
27 the vehicle was not in compliance with Bureau regulations or the requirements of the Vehicle
28

1 Code, in that both headlamps were out of adjustment. In addition, the license plate bulb and
2 housing was missing.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 34. Respondent's registration is subject to discipline pursuant to Code section
6 9884.7(a)(6), in that on or about September 16, 2011, regarding the 2002 Ford, Respondent failed
7 to comply with provisions of California Code of Regulations, title 16, in the following material
8 respects:

9 a. **Section 3305(a)**: Respondent failed to perform a brake and lamp inspection in
10 accordance with the vehicle's manufacturer standards and/or current standards, specifications,
11 recommended procedures, and/or directives issued by the Bureau.

12 b. **Section 3316(d)(2)**: Respondent issued Lamp Adjustment Certificate Number
13 LC [REDACTED], certifying that the vehicle's lamp system had been inspected and was in satisfactory
14 condition when, in fact, it was not.

15 c. **Section 3321(c)(2)**: Respondent issued Brake Adjustment Certificate Number
16 BC [REDACTED], certifying that the vehicle's brake system had been inspected and was in satisfactory
17 condition when, in fact, it was not.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with the Code)**

20 35. Respondent's brake and lamp station licenses are subject to discipline under Code
21 section 9889.3(a), in that on or about September 16, 2011, regarding the 2002 Ford, Respondent
22 violated sections of the Code, relating to his licensed activities, as more particularly set forth
23 above in paragraphs 30 through 33.

24 **SEVENTH CAUSE FOR DISCIPLINE**

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

26 36. Respondent's brake and lamp station licenses are subject to discipline under Code
27 section 9889.3(c), in that on or about September 16, 2011, regarding the 2002 Ford, Respondent
28

1 failed to comply with provisions of California Code of Regulations, title 16, as more particularly
2 set forth above in paragraph 34.

3 **EIGHTH CAUSE FOR DISCIPLINE**

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

5 37. Respondent's brake and lamp station licenses are subject to discipline pursuant to
6 Code section 9889.3(d), in that on or about September 16, 2011, regarding the 2002 Ford,
7 Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured,
8 as more particularly set forth above in paragraphs 30 and 31.

9 **NINTH CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with the Code)**

11 38. Respondent's brake and lamp adjuster licenses are subject to discipline under Code
12 section 9889.3(a), in that on or about September 16, 2011, regarding the 2002 Ford, Respondent
13 violated sections of the Code, relating to his licensed activities, as more particularly set forth
14 above in paragraphs 30 through 33.

15 **TENTH CAUSE FOR DISCIPLINE**

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

17 39. Respondent's brake and lamp adjuster licenses are subject to discipline under Code
18 section 9889.3(e), in that on or about September 16, 2011, regarding the 2002 Ford, Respondent
19 failed to comply with provisions of California Code of Regulations, title 16, as more particularly
20 set forth above in paragraph 34.

21 **ELEVENTH CAUSE FOR DISCIPLINE**

22 **(Acts Involving Dishonesty, Fraud, or Deceit)**

23 40. Respondent's brake and lamp adjuster licenses are subject to discipline under Code
24 section 9889.3(d), in that on or about September 16, 2011, regarding the 2002 Ford, Respondent
25 committed acts involving dishonesty, fraud, or dcccit, by issuing Brake Certificate Number
26 BC [REDACTED] and Lamp Certificate Number LC [REDACTED], certifying that the brake and lamp
27 systems were in satisfactory condition and in accordance with the Vehicle Code, when, in fact,
28 they were not.

1 TWELFTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 41. Respondent's smog check station license is subject to discipline pursuant to Health
4 and Safety Code section 44072.2(d), in that on or about September 16, 2011, Respondent
5 committed a dishonest, fraudulent, or deceitful act whereby another was injured, as follows:

6 a. Respondent issued electronic Certificate of Compliance No. OC [REDACTED], falsely
7 representing that a licensed smog check technician had performed the inspections on the vehicle
8 when, in fact, Hung, an unlicensed person performed the inspections.

9 b. Respondent issued Brake Certificate Number BC [REDACTED] and Lamp Certificate
10 Number LC [REDACTED], certifying that the brake and lamp systems were in satisfactory condition
11 and in accordance with the Vehicle Code, when, in fact, they were not, as more particularly set
12 forth above in paragraph 31, subdivisions (a) and (b).

13 THIRTEENTH CAUSE FOR DISCIPLINE

14 (Aiding and Abetting Unlicensed Person)

15 42. Respondent's smog check station license is subject to discipline pursuant to Health
16 and Safety Code section 44072.2(f), in that on or about September 16, 2011, regarding the 2002
17 Ford, Respondent aided or abetted an unlicensed person, Hung, by allowing Hung to perform a
18 smog inspection and issue a false Certificate of Compliance No. OC [REDACTED], using Respondent
19 Timothy Luong's Advanced Emission Specialist Technician License No. EA 150308.

20 FOURTEENTH CAUSE FOR DISCIPLINE

21 (Dishonesty, Fraud or Deceit)

22 43. Respondent Timothy Luong's inspector license and repair technician license are
23 subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about
24 September 16, 2011, regarding the 2002 Ford, he committed a dishonest, fraudulent, or deceitful
25 act whereby another was injured by allowing an unlicensed person, Hung, to perform a smog
26 check inspection and issue Certificate of Compliance No. OC [REDACTED], using his Advanced
27 Emission Specialist Technician License No. EA 150308.

28 ///

1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

3 44. Respondent Timothy Luong's brake and lamp adjuster licenses are subject to
4 discipline under Code section 9889.3(d), in that on or about September 16, 2011, regarding the
5 2002 Ford, he committed acts involving dishonesty, fraud, or deceit, by allowing an unlicensed
6 person, Hung, to perform a smog check inspection and issue Certificate of Compliance No.
7 OC [REDACTED] using his Advanced Emission Specialist Technician License No. EA 150308.

8 **UNDERCOVER OPERATION NO. 2: 1999 GMC**

9 45. On or about September 16, 2011, an undercover Bureau operator ("operator")
10 drove a Bureau documented 1999 GMC to Respondent's facility and requested a brake, lamp, and
11 smog inspection. The vehicle defect included an undersized right front brake rotor, an oversized
12 left rear brake drum, a missing air injection reaction system pump, an inoperative right license
13 plate lamp, and both headlamps were out of adjustment. When the operator arrived at
14 Respondent's facility, he was greeted by Hung, who prepared a work order and had the operator
15 sign it, but failed to provide the operator with a copy. The operator observed Hung, an unlicensed
16 smog technician, and Respondent Timothy Luong looking under the hood of the vehicle. Hung
17 attempted to perform the smog inspection but was prohibited from continuing because the vehicle
18 was flagged as a test-only/directed. Respondent Timothy Luong told the operator that he could
19 perform the brake and lamp inspections. The operator observed Respondent Timothy Luong go
20 to the rear of the service bay and then return with Invoice No. [REDACTED] and brake and lamp
21 certificates. The operator paid Respondent Timothy Luong \$80 and received Invoice No. [REDACTED]
22 Brake Certificate No. BC [REDACTED] and Lamp Certificate No. LC [REDACTED]. At no time during the
23 lamp and brake inspection, did the operator observe any of the vehicle's wheels being removed or
24 the exterior lights illuminate.

25 46. On or about October 4, 2011, a Bureau representative re-inspected the vehicle and
26 found that the right front brake rotor was undersized, the left rear brake drum was oversized, the
27 right license plate lamp was inoperative, and both headlamps remained out of adjustment.

28 ///

1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 49. Respondent's registration is subject to discipline under Code section 9884.7(a)(5), in
4 that on or about September 16, 2011, regarding the 1999 GMC, Respondent committed acts
5 constituting gross negligence, in that Respondent failed to properly inspect the vehicle's brake
6 and lamp systems and issued Brake Certificate No. BC [REDACTED] and Lamp Certificate No.
7 LC [REDACTED] indicating that the vehicle's brake and lamp systems were in satisfactory condition
8 and were in accordance with the Vehicle Code when, in fact, they were not.

9 **NINETEENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with the Code)**

11 50. Respondent's registration is subject to discipline pursuant to Code section
12 9884.7(a)(6), in that on or about September 16, 2011, regarding the 1999 GMC, Respondent
13 failed to comply with provisions of that Code in the following material respects:

14 a. **Section 9884.8:** Respondent failed to separately list the cost for each certificate
15 issued.

16 b. **Section 9884.9(a):** Respondent failed to provide the operator with a written
17 estimated price for parts and labor for a specific job.

18 c. **Section 9889.16:**

19 i. Respondent issued Brake Certificate Number BC [REDACTED] for the vehicle, when
20 the vehicle was not in compliance with Bureau regulations or the requirements of the Vehicle
21 Code, in that the right front brake rotor was undersized and the left rear brake drum was
22 oversized.

23 ii. Respondent issued Lamp Certificate Number LC [REDACTED] for the vehicle, when
24 the vehicle was not in compliance with Bureau regulations or the requirements of the Vehicle
25 Code, in that both headlamps were out of adjustment. In addition, the license plate bulb was
26 inoperative.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

54. Respondent's brake and lamp station licenses are subject to discipline under Code section 9889.3(c), in that on or about September 16, 2011, regarding the 1999 GMC, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 52.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

55. Respondent's brake and lamp station licenses are subject to discipline pursuant to Code section 9889.3(d), in that on or about September 16, 2011, regarding the 1999 GMC, Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in paragraphs 47 and 48.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

56. Respondent's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(a), in that on or about September 16, 2011, regarding the 1999 GMC, Respondent violated sections of the Code, relating to his licensed activities, as more particularly set forth above in paragraphs 47 through 51.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

57. Respondent's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(c), in that on or about September 16, 2011, regarding the 1999 GMC, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 52.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

58. Respondent's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(d), in that on or about September 16, 2011, regarding the 1999 GMC, Respondent

1 committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number
2 BC [REDACTED] and Lamp Certificate Number LC [REDACTED], certifying that the brake and lamp
3 systems were in satisfactory condition and in accordance with the Vehicle Code, when, in fact,
4 they were not.

5 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

7 59. Respondent's smog check station license is subject to discipline pursuant to Health
8 and Safety Code section 44072.2(d), in that on or about September 16, 2011, regarding the 1999
9 GMC, Respondent committed a dishonest, fraudulent, or deceitful act whereby another was
10 injured, in that Respondent issued Brake Certificate Number BC [REDACTED] and Lamp Certificate
11 Number LC [REDACTED], certifying that the brake and lamp systems were in satisfactory condition
12 and in accordance with the Vehicle Code, when, in fact, they were not, as more particularly set
13 forth above in paragraphs 47 and 48.

14 **UNDERCOVER OPERATION NO. 3: 1993 HONDA**

15 60. On or about October 20, 2011, an undercover Bureau operator ("operator") drove a
16 Bureau documented 1993 Honda to Respondent's facility and requested a brake, lamp, and smog
17 inspection. The vehicle defect included all four (4) brake rotors being undersized, the left front
18 headlamp was out of adjustment, and the high beam indicator was inoperative. The vehicle was
19 capable of passing a smog inspection. When the operator arrived at Respondent's facility, he was
20 greeted by Hung. The operator provided Hung with DMV paperwork. Hung reviewed the
21 paperwork and told the operator that no smog inspection was needed. The operator told Hung
22 that he still needed the brake and lamp inspections. Hung told the operator to go the facility's
23 office. The operator went to the facility's office and told Respondent that he needed a brake and
24 lamp inspection. Respondent asked the operator for the DMV paperwork. The operator observed
25 Respondent fill out the brake and lamp certificates. Respondent then asked the operator for \$80.
26 The operator paid Respondent \$80 and was provided the brake and lamp certificates. The
27 operator requested a receipt. Respondent asked the operator to complete the information on the
28 receipt and sign it, which the operator did. During the operator's visit to Respondent's facility, he

1 had a clear view of the vehicle at all times and at no time did the operator observe anyone inspect
2 the vehicle in any manner. In fact, the operator maintained the keys to the vehicle at all times.

3 61. On or about November 7, 2011, a Bureau representative re-inspected the vehicle
4 and found that the high beam indicator was inoperative, the left headlamp was out of adjustment,
5 and all four brake rotors remained undersized.

6 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

7 **(Untrue or Misleading Statements)**

8 62. Respondent's registration is subject to discipline under Code section 9884.7(a)(1),
9 in that on or about October 20, 2011, regarding the 1993 Honda, Respondent made or authorized
10 statements which he knew or in the exercise of reasonable care should have known to be untrue or
11 misleading, as follows:

12 a. Respondent certified under penalty of perjury on Brake Certificate Number
13 BC [REDACTED] that the applicable inspections were performed on the brake system when, in fact,
14 Respondent failed to inspect the brake system on the vehicle, as evidenced by his failure to
15 remove any of the vehicle's wheels.

16 b. Respondent certified under penalty of perjury on Lamp Certificate Number
17 LC [REDACTED] that the applicable adjustments had been performed on the lamp system when, in
18 fact, the left headlamp was out of adjustment. In addition, the high beam indicator was
19 non-operative.

20 **THIRTIETH CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 63. Respondent's registration is subject to discipline pursuant to Code section
23 9884.7(a)(4), in that on or about October 20, 2011, regarding the 1993 Honda, Respondent
24 committed acts that constitute fraud, in that Respondent requested and received payment from the
25 operator for performing the applicable inspections on the vehicle's brake and lamp systems as
26 specified by the Bureau and in accordance with the Vehicle Code. In fact, Respondent failed to
27 perform the necessary inspections, adjustments or repairs in compliance with Bureau regulations
28 and/or the Vehicle Code. In addition, Respondent issued Brake Certificate Number BC [REDACTED]

1 and Lamp Certificate Number LC [REDACTED] certifying that the vehicle's brake and lamp systems
2 were in satisfactory condition when, in fact, they were not, as more particularly set forth above in
3 paragraph 61.

4 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

5 **(Gross Negligence)**

6 64. Respondent's registration is subject to discipline under Code section 9884.7(a)(5), in
7 that on or about October 20, 2011, regarding the 1993 Honda, Respondent committed acts
8 constituting gross negligence, in that Respondent failed to properly inspect the vehicle's brake
9 and lamp systems and issued Brake Certificate No. BC [REDACTED] and Lamp Certificate No.
10 LC [REDACTED] indicating that the vehicle's brake and lamp systems were in satisfactory condition
11 and were in accordance with the Vehicle Code when, in fact, they were not.

12 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with the Code)**

14 65. Respondent's registration is subject to discipline pursuant to Code section
15 9884.7(a)(6), in that on or about October 20, 2011, regarding the 1993 Honda, Respondent failed
16 to comply with provisions of that Code in the following material respects:

17 a. **Section 9884.8:** Respondent failed to separately list the cost for each certificate
18 issued.

19 b. **Section 9884.9(a):**

20 i. Respondent failed to provide the operator with a written estimated price for
21 parts and labor for a specific job.

22 ii. Respondent failed to obtain the operator's authorization prior to
23 commencing repairs.

24 c. **Section 9889.16:**

25 i. Respondent issued Brake Certificate Number BC [REDACTED] for the vehicle,
26 when the vehicle was not in compliance with Bureau regulations or the requirements of the
27 Vehicle Code, in that all four brake rotors were undersized.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRTY-FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

68. Respondent's brake and lamp station licenses are subject to discipline under Code section 9889.3(c), in that on or about October 20, 2011, regarding the 1993 Honda, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 66.

THIRTY-SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

69. Respondent's brake and lamp station licenses are subject to discipline pursuant to Code section 9889.3(d), in that on or about October 20, 2011, regarding the 1993 Honda, Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in paragraphs 62 and 63.

THIRTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

70. Respondent's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(a), in that on or about October 20, 2011, regarding the 1993 Honda, Respondent violated sections of the Code, relating to his licensed activities, as more particularly set forth above in paragraphs 62 through 65.

THIRTY-EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

71. Respondent's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(c), in that on or about October 20, 2011, regarding the 1993 Honda, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 66.

THIRTY-NINTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

72. Respondent's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(d), in that on or about October 20, 2011, regarding the 1993 Honda, Respondent

1 committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number
2 BC [REDACTED] and Lamp Certificate Number LC [REDACTED], certifying that the brake and lamp
3 systems were in satisfactory condition and in accordance with the Vehicle Code, when, in fact,
4 they were not.

5 **FORTIETH CAUSE FOR DISCIPLINE**

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

7 73. Respondent's smog check station license is subject to discipline pursuant to Health
8 and Safety Code section 44072.2(d), in that on or about October 20, 2011, regarding the 1993
9 Honda, Respondent committed a dishonest, fraudulent, or deceitful act whereby another was
10 injured, in that Respondent issued Brake Certificate Number BC [REDACTED] and Lamp Certificate
11 Number LC [REDACTED] certifying that the brake and lamp systems were in satisfactory condition
12 and in accordance with the Vehicle Code, when, in fact, they were not, as more particularly set
13 forth above in paragraphs 62 and 63.

14 **MANNED SURVEILLANCE - FEBRUARY 10, 2012**

15 74. On February 10, 2012, the Bureau performed a manned surveillance of
16 Respondent's facility between the hours of 0937 and 1218 hours. The surveillance operation and
17 information obtained from the Emission Inspection System ("EIS") and the Bureau's Vehicle
18 Information Database ("VID") revealed that Respondent Timothy Luong performed a smog
19 inspection resulting in the issuance of an illegal electronic certificate of compliance, certifying
20 that he had tested and inspected the vehicle set forth in Table 1 below, and that the vehicle was in
21 compliance with applicable laws and regulations. In fact, Respondent Timothy Luong performed
22 the smog inspection using the clean piping method by using the tail pipe emissions of a vehicle
23 other than the vehicle being certified in order to issue the certificate. The vehicle certified was
24 not in the test bay at the time of the smog inspection.

25 **TABLE 1**

Date & Time of Inspection	Vehicle Certified	Vehicle Actually Tested	Certificate No.	Technician
02/10/2012 1005-1022 hours	1995 Nissan Maxima License No. 5E1M000	Chevrolet Camaro	OK357687C	Timothy Luong

1 **FORTY-FOURTH CAUSE FOR DISCIPLINE**

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

3 78. Respondent's station license is subject to discipline under Health and Safety Code
4 section 44072.2(c), in that on or about February 10, 2012, regarding the electronic certificate of
5 compliance and the vehicle set forth in Table 1 above, Respondent violated sections of the
6 California Code of Regulations, title 16, as follows:

7 a. **Section 3340.35(c):** Respondent issued an electronic certificate of compliance for
8 the vehicle even though the vehicle had not been inspected in accordance with section 3340.42 of
9 that Code.

10 b. **Section 3340.42:** Respondent failed to conduct the required smog test and
11 inspection on the vehicle in accordance with the Bureau's specifications.

12 **FORTY-FIFTH CAUSE FOR DISCIPLINE**

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

14 79. Respondent's station license is subject to discipline under Health and Safety Code
15 section 44072.2(d), in that on or about February 10, 2012, Respondent committed acts involving
16 dishonesty, fraud or deceit whereby another was injured by issuing an electronic certificate of
17 compliance for the vehicle set forth in Table 1 above, without performing a bona fide inspection
18 of the emission control devices and systems on the vehicle, thereby depriving the People of the
19 State of California of the protection afforded by the Motor Vehicle Inspection Program.

20 **FORTY-SIXTH CAUSE FOR DISCIPLINE**

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

22 80. Respondent's brake and lamp station licenses are subject to discipline pursuant to
23 Code section 9889.3(d), in that on or about February 10, 2012, Respondent committed acts
24 involving dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth
25 above in paragraph 75 and 76.

26 ///

27 ///

28 ///

1 business as Discount Auto Repair, is revoked or suspended, any additional license issued under
2 this chapter in the name of said licensee may be likewise revoked or suspended by the director.

3 88. Pursuant to Code section 9889.9, if Lamp Station License Number LS 252800,
4 issued to Ming Luong, also known as Ming Ngoc Luong, doing business as Discount Auto
5 Repair, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter
6 20.3 of the Business and Professions Code in the name of said licensees may be likewise revoked
7 or suspended by the director.

8 89. Pursuant to Code section 9889.9, if Brake Station License Number BS 252800,
9 issued to Ming Luong, also known as Ming Ngoc Luong, doing business as Discount Auto
10 Repair, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter
11 20.3 of the Business and Professions Code in the name of said licensees may be likewise revoked
12 or suspended by the director.

13 90. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 308297,
14 issued to Ming Luong, also known as Ming Ngoc Luong, is revoked or suspended, any additional
15 license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the
16 name of said licensee may be likewise revoked or suspended by the director.

17 91. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 308297,
18 issued to Ming Luong, also known as Ming Ngoc Luong, is revoked or suspended, any additional
19 license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the
20 name of said licensee may be likewise revoked or suspended by the director.

21 92. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
22 License Number EO 150308 and/or Smog Check Repair Technician License Number EI 150308
23 (formerly Advanced Emission Specialist Technician License No. EA 150308), issued to
24 Respondent Timothy Luong, is revoked or suspended, any additional license issued under this
25 chapter in the name of said licensee may be likewise revoked or suspended by the director.

26 93. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 150308,
27 issued to Timothy Luong, is revoked or suspended, any additional license issued under Article 5
28

1 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be
2 likewise revoked or suspended by the director.

3 94. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 150308,
4 issued to Timothy Luong, is revoked or suspended, any additional license issued under Articles 5
5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be
6 likewise revoked or suspended by the director.

7 **PRAYER**

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

10 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
11 Registration No. ARD 252800, issued to Ming Luong, also known as Ming Ngoc Luong, doing
12 business as Discount Auto Repair;

13 2. Revoking, suspending, or placing on probation any other automotive repair dealer
14 registration issued to Ming Luong, also known as Ming Ngoc Luong, doing business as Discount
15 Auto Repair;

16 3. Revoking or suspending Smog Check Station License Number RC 252800, issued
17 to Ming Luong, also known as Ming Ngoc Luong, doing business as Discount Auto Repair;

18 4. Revoking or suspending any additional license issued under chapter 5, of the
19 Health and Safety Code in the name of Ming Luong, also known as Ming Ngoc Luong, doing
20 business as Discount Auto Repair;

21 5. Revoking or suspending Lamp Station License Number LS 252800, issued to
22 Ming Luong, also known as Ming Ngoc Luong, doing business as Discount Auto Repair;

23 6. Revoking or suspending Brake Station License Number BS 252800, issued to
24 Ming Luong, also known as Ming Ngoc Luong, doing business as Discount Auto Repair;

25 7. Revoking or suspending Lamp Adjuster License Number LA 308297, issued to
26 Ming Luong, also known as Ming Ngoc Luong;

27 8. Revoking or suspending Brake Adjuster License Number BA 308297, issued to
28 Ming Luong, also known as Ming Ngoc Luong;

1 9. Revoking or suspending any additional license issued under Articles 5 and 6 of
2 Chapter 20.3 of the Business and Professions Code in the name of Ming Luong, also known as
3 Ming Ngoc Luong, doing business as Discount Auto Repair;

4 10. Revoking or suspending Smog Check Inspector License Number EO 150308
5 and/or Smog Check Repair Technician License Number EI 150308 (formerly Advanced Emission
6 Specialist Technician License No. EA 150308), issued to Timothy Luong;

7 11. Revoking or suspending Lamp Adjuster License Number LA 150308, issued to
8 Timothy Luong;

9 12. Revoking or suspending Brake Adjuster License Number BA 150308, issued to
10 Timothy Luong;

11 13. Revoking or suspending any additional license issued under Chapter 5 of the
12 Health and Safety Code in the name of Timothy Luong;

13 14. Ordering Ming Luong, also known as Ming Ngoc Luong, doing business as
14 Discount Auto Repair, and Timothy Luong to pay the Director of Consumer Affairs the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
16 125.3; and,

17 15. Taking such other and further action as deemed necessary and proper.

18 DATED: 5/10/13

John Wallauch by [Signature]
19 JOHN WALLAUCH
20 Chief
21 Bureau of Automotive Repair
22 Department of Consumer Affairs
23 State of California
24 *Complainant*

JOHN BALATT

25 SF2012401061
26 11044086.doc
27
28