

**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation  
Against:

Case No. 79/13-42

**TOM HOA PHAM, Doing Business As  
COLEMAN AUTOMOTIVE & SMOG CHECK**  
660 Coleman Ave. # 5  
San Jose, CA 95110

Automotive Repair Dealer Registration No.  
ARD253298  
Smog Check Station License No. RC253298

and

**TAM HUYNH**  
660 Coleman Ave. # 5  
San Jose, CA 95110

Smog Check Inspector License No. EO 147802  
Smog Check Repair Technician License No.  
EI 147802 (formerly Advanced Emission  
Specialist Technician License EA147802)

Respondents.

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter. The following typographical errors are noted:

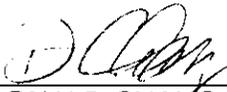
1. Page 2, line 15: The expiration date of Automotive Repair Dealer Registration No. ARD 253298 should be changed from "December 31, 2013" to "December 31, 2014".
2. Page 2, line 19: The expiration date of Smog Check Station License No. RC 253298 should be changed from "December 31, 2013" to "December 31, 2014".
3. Page 2, line 23: The expiration date of Advanced Emission Specialist Technician License Number EA147802 should be changed from "August 31, 2013" to "August 31, 2015".

4. Page 2, line 26: The expiration date of Smog Check Inspector License No. EO147802 and Smog Check Repair Technician License No. EI 147802 should be changed from "August 31, 2013" to "August 31, 2015".

The suspension of Automotive Repair Dealer Registration No. ARD 253298 and Smog Check Station License No. RC 253298 shall commence on the effective date of this decision.

This Decision shall become effective February 13, 2014.

DATED: JAN 27 2014

  
\_\_\_\_\_  
DONALD CHANG  
Assistant Chief Counsel  
Department of Consumer Affairs

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Attorney General of California  
2 DIANN SOKOLOFF  
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8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation  
Against:

Case No. 79/13-42

13 **TOM HOA PHAM, Doing Business As**  
14 **COLEMAN AUTOMOTIVE & SMOG**  
15 **CHECK**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

16 660 Coleman Ave. # 5  
17 San Jose, CA 95110

18 Automotive Repair Dealer Registration No.  
19 ARD253298  
20 Smog Check Station License No. RC253298

21 and

22 **TAM HUYNH**  
23 660 Coleman Ave. # 5  
24 San Jose, CA 95110

25 Smog Check Inspector License No. EO  
26 147802  
27 Smog Check Repair Technician License No.  
28 EI 147802  
(formerly Advanced Emission Specialist  
Technician License EA147802)

Respondents.

///

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
2 entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair  
5 (Bureau). He brought this action solely in his official capacity and is represented in this matter by  
6 Kamala D. Harris, Attorney General of the State of California, by Shana A. Bagley, Deputy  
7 Attorney General.

8 2. Respondents Tom Hoa Pham doing business as Coleman Automotive & Smog Check,  
9 (Respondent Coleman Automotive) and Tam Huynh (Respondent Huynh) are representing  
10 themselves in this proceeding and have chosen not to exercise their right to be represented by  
11 counsel.

12 3. On or about January 15, 2008, the Bureau issued Automotive Repair Dealer  
13 Registration No. ARD253298 to Respondent Coleman Automotive. The Automotive Repair  
14 Dealer Registration was in full force and effect at all times relevant to the charges brought in First  
15 Amended Accusation No. 79/13-42 and will expire on December 31, 2013, unless renewed.

16 4. On or about March 12, 2009, the Bureau issued Smog Check Station License No.  
17 RC253298 to Respondent Coleman Automotive. The Smog Check Station License was in full  
18 force and effect at all times relevant to the charges brought in First Amended Accusation No.  
19 79/13-42 and will expire on December 31, 2013, unless renewed.

20 5. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist  
21 Technician License Number EA147802 to Respondent Huynh. The Advanced Emission  
22 Specialist Technician License was in full force and effect at all times relevant to the charges  
23 brought in First Amended Accusation No. 79/13-42 and was due to expire on August 31, 2013.  
24 Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), said license  
25 was renewed, pursuant to Respondent's election, as Smog Check Inspector License No. EO  
26 147802 and Smog Check Repair Technician License No. EI 147802, effective August 31, 2013.

1 Respondent's smog check inspector license and smog check repair technician will expire on  
2 August 31, 2015, unless renewed.<sup>1</sup>

### 3 JURISDICTION

4 6. Accusation No. 79/13-42 was filed before the Director of Consumer Affairs  
5 (Director), for the Bureau of Automotive Repair, and is currently pending against Respondents.  
6 The Accusation and all other statutorily required documents were properly served on  
7 Respondents on February 6, 2013. Respondents timely filed their Notice of Defense contesting  
8 the Accusation. First Amended Accusation No. 79/13-42 was filed before the Director and is  
9 currently pending against Respondents. The First Amended Accusation and all other statutorily  
10 required documents were properly served on Respondents on November 20, 2013.

11 7. A copy of the First Amended Accusation No. 79/13-42 is attached as exhibit A and  
12 incorporated by reference.

### 13 ADVISEMENT AND WAIVERS

14 8. Respondents have carefully read and understand the charges and allegations in the  
15 First Amended Accusation No. 79/13-42. Respondents have also carefully read and understand  
16 the effects of this Stipulated Settlement and Disciplinary Order.

17 9. Respondents are fully aware of their legal rights in this matter, including the right to a  
18 hearing on the charges and allegations in the First Amended Accusation; the right to be  
19 represented by counsel at their own expense; the right to confront and cross-examine the  
20 witnesses against them; the right to present evidence and to testify on their own behalf; the right  
21 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
22 documents; the right to reconsideration and court review of an adverse decision; and all other  
23 rights accorded by the California Administrative Procedure Act and other applicable laws.

24 10. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
25 every right set forth above.

26 <sup>1</sup> 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 **CULPABILITY**

2 11. Respondents admit the truth of each and every charge and allegation in First  
3 Amended Accusation No. 79/13-42.

4 12. Respondents agree that their Automotive Repair Dealer Registration, Smog Station  
5 License, Advanced Emission Specialist Technician License, Smog Check Inspector License, and  
6 Smog Check Repair Technician License are subject to discipline and they agree to be bound by  
7 the Director's probationary terms as set forth in the Disciplinary Order below.

8 **CIRCUMSTANCES IN MITIGATION**

9 13. Respondent Coleman Automotive and Respondent Huynh have never been the  
10 subject of any disciplinary action. They are admitting responsibility at an early stage in the  
11 proceedings.

12 **CONTINGENCY**

13 14. This stipulation shall be subject to approval by the Director of Consumer Affairs or  
14 the Director's designee. Respondents understand and agree that counsel for Complainant and the  
15 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of  
16 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to  
17 or participation by Respondents. By signing the stipulation, Respondents understand and agree  
18 that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the  
19 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision  
20 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except  
21 for this paragraph, it shall be inadmissible in any legal action between the parties, and the  
22 Director shall not be disqualified from further action by having considered this matter.

23 15. The parties understand and agree that facsimile copies of this Stipulated Settlement  
24 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
25 effect as the originals.

26 16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
3 writing executed by an authorized representative of each of the parties.

4 17. In consideration of the foregoing admissions and stipulations, the parties agree that  
5 the Director may, without further notice or formal proceeding, issue and enter the following  
6 Disciplinary Order:

7 **DISCIPLINARY ORDER AS TO RESPONDENT COLEMAN AUTOMOTIVE**

8 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD253298  
9 and Smog Check Station License No. RC253298 issued to Respondent Coleman Automotive is  
10 revoked. However, the revocation is stayed and Respondent Coleman Automotive is placed on  
11 probation for three (3) years on the following terms and conditions.

12 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD253298 and  
13 Smog Check Station License No RC253298 issued to Respondent Coleman Automotive are  
14 suspended for 15 days.

15 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing  
16 automotive inspections, estimates and repairs.

17 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning  
18 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be  
19 conspicuously displayed in a location open to and frequented by customers and shall remain  
20 posted during the entire period of actual suspension.

21 4. **Reporting.** Respondent Coleman Automotive or Respondent Coleman Automotive's  
22 authorized representative must report in person or in writing as prescribed by the Bureau of  
23 Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on  
24 the methods used and success achieved in maintaining compliance with the terms and conditions  
25 of probation.

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1           5.    **Report Financial Interest.** Within 30 days of the effective date of this action, report  
2 any financial interest which any partners, officers, or owners of the Respondent facility may have  
3 in any other business required to be registered pursuant to Business and Professions Code section  
4 9884.6.

5           6.    **Random Inspections.** Provide Bureau representatives unrestricted access to inspect  
6 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

7           7.    **Jurisdiction.** If an accusation is filed against Respondent during the term of  
8 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter  
9 until the final decision on the accusation, and the period of probation shall be extended until such  
10 decision.

11          8.    **Violation of Probation.** Should the Director of Consumer Affairs determine that  
12 Respondent Coleman Automotive has failed to comply with the terms and conditions of  
13 probation, the Department may, after giving notice and opportunity to be heard, temporarily or  
14 permanently invalidate the registration and suspend or revoke the license.

15          9.    **Cost Recovery.** Respondent Coleman Automotive shall pay to the Bureau, pursuant  
16 to Business and Professions Code section 125.3, the costs of investigation and enforcement in this  
17 matter in the amount of \$9,896.93. All Respondents are jointly and severally liable for these  
18 costs. Payment to the Bureau shall be made in 24 installments, with the final payment due no  
19 later than 12 months before probation terminates. Failure to complete payment of cost recovery  
20 within this time frame shall constitute a violation of probation which may subject Respondent's  
21 Automotive Repair Dealer Registration and Smog Check Station License to outright revocation.  
22 However, the Director or the Director's Bureau of Automotive Repair designee may elect to  
23 continue probation until such time as reimbursement of the entire cost recovery amount has been  
24 made to the Bureau.

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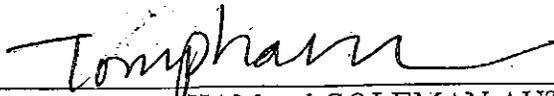
1 completion submitted to the Bureau within 60 days of the effective date of this decision and  
2 order. If proof of completion of the course is not furnished to the Bureau within the 60-day  
3 period, Respondents' license shall be immediately suspended until such proof is received.

4 17. **Cost Recovery.** Respondent Huynh shall pay to the Bureau, pursuant to Business  
5 and Professions Code section 125.3, the costs of investigation and enforcement in this matter in  
6 the amount of \$9,896.93. All Respondents are jointly and severally liable for these costs.  
7 Payment to the Bureau shall be made in 24 installments, with the final payment due no later than  
8 12 months before probation terminates. Failure to complete payment of cost recovery within this  
9 time frame shall constitute a violation of probation which may subject Respondent Huynh's  
10 license(s) to outright revocation. However, the Director or the Director's Bureau of Automotive  
11 Repair designee may elect to continue probation until such time as reimbursement of the entire  
12 cost recovery amount has been made to the Bureau.

13 ACCEPTANCE

14 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
15 stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog  
16 Check Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,  
17 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of  
18 Consumer Affairs.

19  
20 DATED: 12-02-2013



21 TOM HOA PHAM and COLEMAN AUTOMOTIVE  
22 & SMOG CHECK  
23 Respondent

24 ///

25 ///

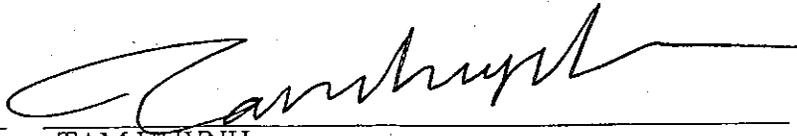
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1 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
2 stipulation and the effect it will have on my Advanced Emission Specialist Technician License,  
3 Smog Check Inspector License, and Smog Check Repair Technician License. I enter into this  
4 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree  
5 to be bound by the Decision and Order of the Director of Consumer Affairs.

6  
7 DATED: 12-02-2013



8 TAM HUYNH  
9 Respondent

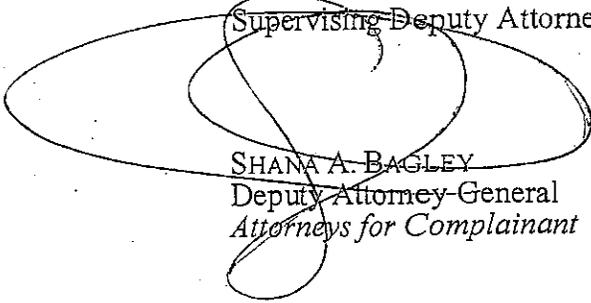
10 ENDORSEMENT

11 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
12 submitted for consideration by the Director of Consumer Affairs.

13 Dated: 26 November 2013

14 Respectfully submitted,

15 KAMALA D. HARRIS  
16 Attorney General of California  
17 DIANN SOKOLOFF  
18 Supervising Deputy Attorney General



19 SHANA A. BAGLEY  
20 Deputy Attorney General  
21 Attorneys for Complainant

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**Exhibit A**

**First Amended Accusation No. 79/13-42**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 SHANA A. BAGLEY  
Deputy Attorney General  
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Oakland, CA 94612-0550  
6 Telephone: (510) 622-2129  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

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

Case No. 79/14-42

**FIRST AMENDED ACCUSATION**

13 **TOM HOA PHAM, Doing Business As**  
14 **COLEMAN AUTOMOTIVE & SMOG**  
**CHECK**  
15 **660 Coleman Ave. # 5**  
16 **San Jose, CA 95110**

17 **Automotive Repair Dealer Registration No.**  
**ARD253298**  
18 **Smog Check Station License No. RC253298**  
19 **And**

20 **TAM HUYNH**  
21 **660 Coleman Ave. # 5**  
**San Jose, CA 95110**

22 **Smog Check Inspector License EO 147802;**  
23 **Smog Check Repair Technician License EI**  
24 **147802 (formerly Advanced Emission**  
**Specialist Technician License EA 147802)**

25 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

6 **LICENSE INFORMATION**

7 **Respondent Coleman Automotive**

8 2. On or about January 15, 2008, the Bureau issued Automotive Repair Dealer  
9 Registration Number ARD 253298 (registration) to Tom Hoa Pham, doing business as Coleman  
10 Automotive & Smog Check (Respondent Coleman Automotive). The registration was in full  
11 force and effect at all times relevant to the charges brought in this First Amended Accusation and  
12 will expire on December 31, 2013, unless renewed.

13 3. On or about March 12, 2009, the Bureau issued Smog Check Station License Number  
14 RC 253298 (station license) to Respondent Coleman Automotive. The station license was in full  
15 force and effect at all times relevant to the charges brought in this First Amended Accusation and  
16 will expire on December 31, 2013, unless renewed.

17 **Respondent Tam Huynh**

18 4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist  
19 Technician License Number EA 147802 (technician license) to Tam Huynh (Respondent Huynh).  
20 Respondent's advanced emission specialist technician license was due to expire on August 31,  
21 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), said  
22 license was renewed, pursuant to Respondent's election, as Smog Check Inspector License No.  
23 EO 147802 and Smog Check Repair Technician License No. EI 147802, effective August 31,  
24 2012. Respondent's smog check inspector license and smog check repair technician will expire  
25 on August 31, 2015, unless renewed.<sup>1</sup>

26 <sup>1</sup> 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.

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JURISDICTION

5. This First Amended Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All sections references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Code section 118, subdivision (b), states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

7. Code section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

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

9. Health and Safety Code section 44002, provides, in part, that the Director has all of the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

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

STATUTORY PROVISIONS

11. Code section 490 provides, in part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A

conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

12. Code section 9889.3 states, in part:

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

(b) Is convicted of any crime substantially related to the qualifications, functions and duties of the licenseholder in question.

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

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

(b) Is convicted of any crime substantially related to the qualifications, functions, and duties of the licenseholder in question.

14. Health and Safety Code section 44072.8 states:

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

15. Health and Safety Code section 44072.10 states, in part:

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter...

#### REGULATORY PROVISIONS

16. California Code of Regulations, title 16, section 3395.2 provides:

A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a registrant if to a substantial degree it shows that the registrant is presently or potentially unfit to perform the functions authorized by the registration in a manner consistent with the public health, safety, or welfare.

1 Such crimes or acts shall include, but not be limited to, any violation of the provisions  
2 of Article 3 of Chapter 20.3 of Division 3 of the Business and Professions Code.<sup>2</sup>

3 17. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that  
4 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
5 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
6 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

#### 7 COST RECOVERY

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

#### 11 VID DATA REVIEW

12 19. On or about May 17, 2012, a representative of the Bureau conducted a detailed  
13 review of the Vehicle Information Database (VID) data for all smog inspections performed at  
14 Respondent Coleman Automotive's facility for the period of January 1, 2012, through May 9,  
15 2012. The representative found that 14 vehicles, as set forth in Table 1, below, were identified at  
16 the time of certification as Directed Vehicles (DV), also known as High Emitter Profile (HEP)  
17 and/or Gross Polluter (GP) vehicles. However, Respondent Coleman Automotive was not  
18 licensed pursuant to Health and Safety Code sections 44014, subdivision (b), and 44014.2 and  
19 California Code of Regulations section 3340.41, subdivision (e), to certify DV/HEP or GP  
20 vehicles. The VID data also showed that Respondent Huynh had performed the smog inspections  
21 on the 14 vehicles identified in Table 1, below.

22 20. The Bureau concluded that Respondent Coleman Automotive and Respondent Huynh  
23 performed the smog inspections on the vehicles identified in Table 1, below, by intentionally  
24 disconnecting the Emissions Inspection System (EIS) from the State's computer system, a method

25  
26 <sup>2</sup> Article 3 of Chapter 20.3 of Division 3 of the Code includes Section 9884.7,  
27 subdivision (a)(4), which lists "conduct which constitutes fraud" as a ground for the invalidation  
28 of the registration of an automotive repair dealer.

1 known as "off line testing,"<sup>3</sup> resulting in the issuance of fraudulent certificates of compliance for  
 2 the following vehicles:

3 **TABLE 1**

4	Date & Time of Inspection	Vehicle	License Plate No.	DV/HEP	GP	Certificate No.
5	1 5/5/2012 12:05-12:15	2002 Daewoo Nubria	5HLH931	Yes	No	OM247046C
6	2 5/5/2012 12:22-12:33	1992 Honda Accord	2ZRP541	Yes	No	OM247047C
7	3 5/5/2012 12:43-12:53	1998 Dodge Ram	5T49069	Yes	No	N/A
8	4 5/5/2012 3:26-3:38	1998 Dodge Ram	5T49069	Yes	No	OM247049C
9	5 5/7/2012 11:59-12:10	1994 Honda Accord	4MSW756	Yes	No	OM609752C
10	6 5/7/2012 3:14-3:26	2002 Ford Windstar	4WIC926	Yes	No	OM609753C
11	7 5/8/2012 10:08-10:19	1991 Ford Aerostar	4KPJ326	No	Yes	OM609755C
12	8 5/8/2012 12:41-12:53	1996 Toyota Camry	4XGF334	Yes	No	OM609757C
13	9 5/8/2012 1:51-2:04	1996 Chevrolet Cavalier	3RUW099	Yes	No	OM609758C
14	10 5/8/2012 2:45-3:02	1993 Toyota Pickup	6U43209	Yes	Yes	OM609759C
15	11 5/8/2012 4:20-4:31	1983 Chevrolet G20 Chevy Van	2F61167	Yes	No	OM609760C
16	12 5/8/2012 5:30-5:41	2000 Toyota Corolla	6JST154	Yes	Yes	OM609761C
17	13 5/9/2012 9:47-10:01	1994 Chevrolet C1500 Pickup	4W48351	Yes	No	OM609762C
18	14 5/9/2012 5:16-5:30	1981 Oldsmobile Cutlass	1CFC203	Yes	No	OM609767C

19 <sup>3</sup> To perform an "off line test," the telephone line, or high-speed or broadband connection  
 20 is disconnected from the EIS prior to entering the information that identifies the vehicle he/she  
 21 wishes to certify and then performs a complete smog inspection. Performing the test off line  
 22 prevents the EIS from contacting the VID. The EIS would prohibit the certification of vehicles  
 23 identified as directed vehicles/high emitter profile (DV/HEP) or vehicles identified as gross  
 24 polluters (GP) at stations that are not licensed to certify DV/HEP or GP vehicles.



1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 24. Respondent Coleman Automotive's station license is subject to discipline pursuant to  
4 Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
5 the following sections of California Code of Regulations, title 16:

6 a. 3340.17, subdivision (h): Respondent Coleman Automotive failed to keep  
7 communication line connected via modem between the EIS and the State's computer system, in  
8 order to transmit required program information for vehicles, as identified in Table 1 of paragraph  
9 17, above.

10 b. 3340.41, subdivision (e): Respondent Coleman Automotive issued certificates of  
11 compliance to vehicles 1, 2, and 4 through 14, as identified in Table 1 of paragraph 17, above, for  
12 which the station was not licensed to certify.

13 c. 3373: Respondent Coleman Automotive created false and misleading records in the  
14 issuance of certificates of compliance to vehicles 1, 2, and 4 through 14, as identified in Table 1  
15 of paragraph 20, above.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 25. Respondent Coleman Automotive's station license is subject to discipline pursuant to  
19 Health & Safety Code section 44072.2, subdivision (d), in that Respondent Coleman Automotive  
20 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic  
21 smog certificate of compliance for vehicles 1, 2, and 4 through 14, as identified in Table 1 of  
22 paragraph 20, above, without being licensed by the department to certify the vehicles, thereby  
23 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
24 Inspection Program.

25 **SIXTH CAUSE FOR DISCIPLINE**

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

27 26. Respondent Huynh's smog check repair technician license and smog check inspector  
28 license are subject to disciplinary action pursuant to Health & Safety Code section 44072.2,

1 subdivision (a), in that he failed to comply with section 44012 of that Code in a material respect,  
2 as follows: Respondent Huynh failed to perform the emission control tests on vehicles 1 through  
3 14, as identified in Table 1 of paragraph 20, above, in accordance with procedures by the  
4 Department.

5 **SEVENTH CAUSE FOR DISCIPLINE**

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

7 27. Respondent Huynh's smog check repair technician license and smog check inspector  
8 license are subject to disciplinary action pursuant to Health & Safety Code section 44072.2,  
9 subdivision (c), in that he failed to comply with the following sections of California Code of  
10 Regulations, title 16:

11 a. 3340.30 subdivision (a): A licensed technician shall inspect, test and repair vehicles  
12 in accordance with Health and Safety Code sections 44012 and 44035 and California Code of  
13 Regulations, title 16, section 3340.42.

14 b. 3373: Respondent created false and misleading records in the issuance of certificate  
15 of compliance to vehicles 1, 2, and 4 through 14, as identified in Table 1 of paragraph 20, above.

16 **EIGHTH CAUSE FOR DISCIPLINE**

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

18 28. Respondent Huynh's smog check repair technician license and smog check inspector  
19 license are subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision  
20 (d), in that he committed dishonest, fraudulent or deceitful acts whereby another is injured by  
21 issuing electronic smog certificate of compliance for vehicles 1, 2, and 4 through 14, as identified  
22 in Table 1 of paragraph 20, above, without being licensed by the department to certify the  
23 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
24 Motor Vehicle Inspection Program.

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NINTH CAUSE FOR DISCIPLINE

(Substantially Related Conviction)

29. Respondent Huynh's smog check repair technician license and smog check inspector license are subject to disciplinary action under Code sections 490 and 9889.3, subdivision (b), and Health and Safety Code section 44072.2, subdivision (b), in that he was convicted of an offense substantially related to the qualifications, functions, and duties of an Advanced Emission Specialist Technician, within the meaning of California Code of Regulations, title 16, section 3395.2. The circumstances are as follows:

a. On or about September 30, 2013, in the criminal proceeding entitled *People v. Tam Huynh* in Santa Clara County Superior Court Case Number C1350078, Respondent Huynh was convicted by a plea of nolo contendere, with a Harvey Waiver, of violating Vehicle Code section 4463, subdivision (a)(2), (Counterfeit Certificates) a misdemeanor.

b. Respondent Huynh was sentenced to serve 15 days in county jail, serve 3 years of informal probation, to pay restitution to the victim and fines to the court, and to comply with other terms and conditions.

c. The underlying circumstances of the conviction are more particularly set forth in paragraphs 19 and 20, above.

PRIOR CITATIONS

30. To determine the degree of discipline, if any, to be imposed on Respondent, Complaint alleges the following:

a. On or about October 6, 2009, the Bureau issued Citation No. C2010-0334 against Respondent Coleman Automotive's registration and station license for violating Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c), for issuing a certificate of compliance to a Bureau undercover vehicle that did not comply with Health & Safety Code section 44012. The Bureau assessed civil penalties totaling \$500.00 for the violations. Respondent Coleman Automotive complied with this citation on November 2, 2009.

1           b.    On or about February 23, 2010, the Bureau issued Citation No. C2010-0847 against  
2 Respondent Coleman Automotive's registration and station license for violating Health and  
3 Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section  
4 3340.35, subdivision (c), for issuing a certificate of compliance to a Bureau undercover vehicle  
5 that did not comply with Health & Safety Code section 44012. The Bureau assessed civil  
6 penalties totaling \$1,000.00 for the violations. Respondent Coleman Automotive complied with  
7 this citation on January 19, 2012.

8           c.    On or about January 19, 2007, the Bureau issued Citation No. M2007-0463 against  
9 Respondent Huynh's technician license for violating Health and Safety Code section 44032 and  
10 California Code of Regulations, title 16, section 3340.30, subdivision (a), for issuing a certificate  
11 of compliance to a Bureau undercover vehicle that was did not comply with Health & Safety  
12 Code section 44012. Respondent Huynh was required to attend an 8-hour training course. On or  
13 about March 18, 2007, Respondent Huynh completed the required training course.

14           d.    On or about October 6, 2009, the Bureau issued Citation No. M2010-0335 against  
15 Respondent Huynh's technician license for violating Health and Safety Code section 44032 and  
16 California Code of Regulations, title 16, section 3340.30, subdivision (a), for issuing a certificate  
17 of compliance to a Bureau undercover vehicle that did not comply with Health & Safety Code  
18 section 44012. Respondent Huynh was required to attend an 8-hour training course. On or about  
19 October 25, 2009, Respondent Huynh completed the required training course.

20           e.    On or about February 23, 2010, the Bureau issued Citation No. M2010-0848 against  
21 Respondent Huynh's technician license for violating Health and Safety Code section 44032 and  
22 California Code of Regulations, title 16, section 3340.30, subdivision (a), for issuing a certificate  
23 of compliance to a Bureau undercover vehicle that did not comply with Health & Safety Code  
24 section 44012. Respondent Huynh was required to attend a 16-hour training course. On or about  
25 January 23, 2012, Respondent Huynh completed the required training course.

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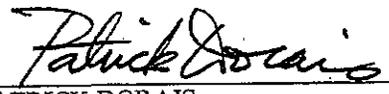
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4. Revoking or suspending any additional license issued under chapter 5, of the Health and Safety Code in the name of Tom Hoa Pham;
5. Revoking or suspending Smog Check Repair Technician License Number EI 147802, issued to Tam Huynh;
6. Revoking or suspending Smog Check Inspector License Number EO 147802, issued to Tam Huynh;
7. Revoking or suspending any additional license issued to Tam Huynh under chapter 5, of the Health and Safety Code, pursuant to Health and Safety Code section 44072.8;
8. Ordering Tom Hoa Pham and Tam Huynh to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and
9. Taking such other and further action as deemed necessary and proper.

DATED: November 18, 2013

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

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