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

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12 In the Matter of the Accusation Against:

Case No. 77/13-28

13 **C & C AUTO REPAIR**
14 **THAI QUOC NGUYEN**
aka JOHN NGUYEN
15 **aka QUOC NGUYEN, Owner**
16 **8700 Thornton Road**
Stockton, CA 95209

A C C U S A T I O N

17 **Automotive Repair Dealer Registration No.**
18 **ARD 255905**

19 Respondent.

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21 John Wallauch ("Complainant") alleges:

22 **PARTIES**

- 23 1. Complainant brings this Accusation solely in his official capacity as the Chief of
24 the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
- 25 2. On or about August 21, 2008, the Bureau issued Automotive Repair Dealer
26 Registration Number ARD 255905 to Thai Quoc Nguyen, also known as John Nguyen and Quoc
27 Nguyen ("Respondent"), doing business as C & C Auto Repair. The registration was in full force
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1 and effect at all times relevant to the charges brought herein and will expire on August 31, 2013,
2 unless renewed.

3 **STATUTORY PROVISIONS**

4 3. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
5 part:

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

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

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

18 (4) Any other conduct that constitutes fraud.

19 (5) Conduct constituting gross negligence.

20 (6) Failure in any material respect to comply with the provisions of this
21 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
22 regulations adopted pursuant to it.

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

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

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

4. 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

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

10 5. Code section 9884.9 states:

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

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

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

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

(signature or initials)"

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

6. Code section 9884.13 provides, in pertinent 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 invalidating a registration temporarily
or permanently.

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REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 3361.1 states, in pertinent part:

The following minimum requirements specifying accepted trade standards for good and workmanlike rebuilding of automatic transmissions are intended to define terms that have caused confusion to the public and unfair competition within the automotive repair industry. The term "automatic transmission" shall also apply to the automatic transmission portion of transaxles for the purposes of this regulation, unless both the automatic transmission portion and the differential portion of the transaxle share a common oil supply, in which case the term "automatic transmission" shall apply to both portions of the transaxle. These minimum requirements shall not be used to promote the sale of "rebuilt" automatic transmissions when a less extensive and/or less costly repair is desired by the customer. Any automotive repair dealer who represents to customers that the following sections require the rebuilding of automatic transmissions is subject to the sanctions prescribed by the Automotive Repair Act. All automotive repair dealers engaged in the repair, sale, or installation of automatic transmissions in vehicles covered under the Act shall be subject to the following minimum requirements:

(a) Before an automatic transmission is removed from a motor vehicle for purposes of repair or rebuilding, it shall be inspected. Such inspection shall determine whether or not the replacement or adjustment of any external part or parts will correct the specific malfunction of the automatic transmission. In the case of an electronically controlled automatic transmission, this inspection shall include a diagnostic check, including the retrieval of any diagnostic trouble codes, of the electronic control module that controls the operation of the transmission. If minor service and/or replacement or adjustment of any external part or parts and/or of companion units can reasonably be expected to correct the specific malfunction of the automatic transmission, then prior to removal of the automatic transmission from the vehicle, the customer shall be informed of that fact as required by Section 3353 of these regulations. Before removing an automatic transmission from a motor vehicle, the dealer shall also comply with the provisions of section 3353(d), and disclose any applicable guarantee or warranty as provided in sections 3375, 3376 and 3377 of these regulations. If a diagnostic check of an electronic control module cannot be completed due to the condition of the transmission, the customer shall be informed of that fact and a notation shall be made on the estimate, in accordance with Section 3353 of these regulations.

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COST RECOVERY

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

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CONSUMER COMPLAINT NO. 1- 2004 SATURN VUE

9. On or about May 16, 2011, Robert Grude ("Grude") had his 2004 Saturn Vue towed to Respondent's facility because it would not move while in gear and the transmission was

1 making a loud noise. Grude was told that the transmission needed to be replaced. Grude gave
2 Respondent authorization to replace the transmission and provided Respondent with a \$3,100
3 deposit. After completion of the transmission replacement, Grude paid Respondent a total of
4 \$4,172.37 and received a copy of Invoice No. 020986. Approximately two days after the
5 completion of the transmission installation, Grude's vehicle began having problems. The vehicle
6 would only go a short distance, then stop moving. Grude took his vehicle to Chase Chevrolet
7 ("Chase") for a diagnosis. Chase determined that Grude's vehicle's transmission was four quarts
8 low on transmission fluid and found that the left drive axle came apart between the shaft and
9 Constant Velocity (CV) joint, causing damage to the splines. Chase noted that it appeared the
10 drive shaft was not properly installed. Chase added four quarts of transmission fluid and Grude
11 paid Chase \$282.23. Grude returned to Respondent's facility regarding the drive shaft issue.
12 Both axle shafts had been replaced in the vehicle approximately 4,000 miles earlier at Brannon
13 Tire, so Respondent contacted Brannon Tire regarding the axle problem. Brannon Tire went to
14 Respondent's facility and inspected the vehicle. Brannon Tire provided Respondent with a
15 replacement drive axle. Respondent installed the drive axle free of charge, but failed to provide
16 Grude with an invoice.

17 10. On or about May 31, 2011, Grude had his vehicle towed to Chase for an inspection
18 because the left ball joint may have been loose. Chase found the left ball joint nut was loose and
19 the cotter pin was missing. Chase tightened the ball joint and installed a cotter pin. Grude paid
20 Chase \$55.50.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 11. Respondent's registration is subject to discipline under Code section 9884.7(a)(1),
24 in that on or about May 16, 2011, Respondent made statements which he knew or which by
25 exercise of reasonable care should have known were untrue or misleading, in that Respondent
26 represented on Invoice No. 020986 that seven quarts of transmission fluid had been installed
27 when, in fact, only two quarts had been installed.

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1 six spark plugs, and flushed the coolant. On or about August 2, 2010, Velasquez picked up the
2 vehicle and paid Respondent \$507.53.

3 16. On or about September 1, 2010, Velasquez took her vehicle to Respondent's
4 facility for service because her brakes were squeaking and her vehicle's engine was overheating.
5 Respondent did not provide Velasquez with a written estimate. Respondent replaced Velasquez'
6 front brakes under warranty, and the vehicle's fan clutch. Velasquez paid Respondent \$434.78.

7 17. On or about September 8, 2010, Velasquez took her vehicle to Respondent's
8 facility for service because her vehicle was overheating again. Respondent did not provide
9 Velasquez with a written estimate. Respondent replaced the water pump and thermostat.
10 Velasquez paid Respondent \$303.98. Velasquez told a mechanic at Respondent's facility that
11 since her clutch fan had been replaced, her vehicle sounded like an airplane. The mechanic told
12 her that it was supposed to sound like that.

13 18. On or about August 9, 2011, Velasquez took her vehicle to Pro Care Automotive
14 ("Pro Care") for service to have them diagnose and repair her vehicle because the MIL was
15 illuminated, the vehicle was hard to start, the brakes were squeaky, and the cooling fan ran
16 continuously. Pro Care replaced the battery, front brake pads and rotors, and the fan clutch.
17 Velasquez paid Pro Care \$1,000.62.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Provisions of the Automotive Repair Act)**

20 19. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
21 in that regarding the 2002 GMC Envoy, Respondent failed to materially comply with the
22 following provisions of that Code:

23 a. **Section 9884.8:** Respondent failed to describe what brake parts were replaced and
24 why they were replaced on Invoice No. 020339.

25 b. **Section 9884.9(a):** Respondent failed to provide Velasquez with a written
26 estimated price for parts and labor for a specific job on August 2, 2010, September 1, 2010, and
27 September 8, 2010.

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SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Provisions of the Automotive Repair Act)

20. Respondent's registration is subject to discipline under Code section 9884.7(a)(2), in that regarding the 2002 GMC Envoy, Respondent caused or allowed Velasquez to sign Invoice Nos. 020339 and 020357, which did not state the vehicle's odometer reading.

CONSUMER COMPLAINT NO. 3 – 1998 HONDA ACCORD

21. On or about August 19, 2011, Nicole Shergill ("Shergill") had her 1998 Honda Accord towed to Respondent's facility because her vehicle overheated on the freeway. Shergill signed a written estimate in the amount of \$65 for a diagnosis.

22. On or about August 22, 2011, Shergill received a telephone call from Respondent's facility stating that the heater hose was broken, causing the head gasket to fail (blew a head gasket), and the repair would cost \$1,500. Shergill declined the repairs and returned to Respondent's facility, paid \$65 for the diagnosis, and drove the vehicle home. On that same day, Shergill had the heater hose replaced. Since replacing the heater hose, the vehicle has not overheated.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Provisions of the Automotive Repair Act)

23. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that regarding the 1998 Honda Accord, Respondent failed to materially comply with Code section 9884.8, in that Respondent failed to describe on Invoice No. 021200 what diagnostic procedures were performed or what testing results were that suggested that the cylinder head gasket had failed.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Provisions of the Automotive Repair Act)

24. Respondent's registration is subject to discipline under Code section 9884.7(a)(2), in that regarding the 1998 Honda Accord, Respondent caused or allowed Shergill to sign Invoice No. 021200 which did not state the vehicle's odometer reading.

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UNDERCOVER OPERATION No. 1 – JULY 11, 2011

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2 25. On or about July 11, 2011, a Bureau undercover operator (“operator”) drove a
3 Bureau-documented 1983 Chevrolet Camaro to Respondent’s facility and requested a diagnosis
4 because the vehicle was running rough. The only repair necessary was repair of the vacuum leak
5 at the open vacuum hose. When the operator arrived at Respondent’s facility, he was greeted by a
6 man with the name “Angel” on his shirt. The operator requested a diagnosis of the vehicle
7 regarding the engine running rough. Angel gave the operator an estimate of \$65 for the
8 diagnosis. The operator completed and signed a work order but did not receive a copy.

9 26. On or about July 12, 2011, the operator contacted Respondent’s facility and spoke
10 with Angel. Angel told him that he repaired a vacuum leak but the vehicle's carburetor needed to
11 be replaced. The cost of the repairs would be \$848 and he would need a deposit of \$480 to order
12 the part.

13 27. On or about July 13, 2011, the operator returned to Respondent’s facility and paid
14 Respondent \$500. After signing the repair order, Respondent provided the operator with a copy
15 of Estimate No. 021095 as a receipt for the \$500 deposit.

16 28. On or about July 21, 2011, the operator returned to Respondent’s facility.
17 Respondent showed the operator an air filter and stated that it was too dirty to reinstall so he
18 replaced it as well as added a quart of transmission fluid. The operator paid Respondent the
19 balance of \$367.58 and was provided with a copy of Invoice No. 021095.

20 29. On or about July 22, 2011, a Bureau representative re-inspected the vehicle and
21 found the following:

22 a. The carburetor had been replaced unnecessarily. The replacement carburetor did
23 not have the necessary vacuum ports, rendering one of the required emission control devices
24 inoperative, causing the vehicle to fail a California Emissions Inspection test.

25 b. The replacement carburetor was improperly adjusted, resulting in poor drivability.

26 c. The air filter had been replaced unnecessarily.

27 d. One quart of transmission fluid had been added, resulting in the fluid level being
28 overfull.

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 30. Respondent's registration is subject to discipline under Code section 9884.7(a)(1),
4 in that on or about July 11, 2011, regarding the 1983 Chevrolet Camaro, he made statements
5 which he knew or which by exercise of reasonable care he should have known to be untrue or
6 misleading, in that Respondent misrepresented to the operator that the vehicle needed a new
7 carburetor and air filter when, in fact, those repairs were not necessary. In addition, Respondent
8 represented to the operator that the vehicle needed a quart of transmission fluid when, in fact, it
9 did not.

10 **TENTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 31. Respondent's registration is subject to discipline under Code section 9884.7(a)(4),
13 in that on or about July 13, 2011, regarding the 1983 Chevrolet Camaro, he committed acts
14 constituting fraud, in that he charged for and received payment from the operator for the
15 following repairs/services that were not necessary:

- 16 a. Replacing the carburetor.
17 b. Replacing the air filter.
18 c. Adding one quart transmission fluid.

19 **ELEVENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Provisions of the Automotive Repair Act)**

21 32. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
22 in that regarding the 1983 Chevrolet Camaro, Respondent failed to materially comply with the
23 following provisions of that Code:

- 24 a. **Section 9884.8:** Respondent failed to identify the carburetor as new, used or
25 rebuilt on Invoice No. 021095.
26 b. **Section 9884.9:**
27 i. Respondent failed to provide the operator with a written estimated amount for
28 parts and labor for a specific job on July 11, 2011.

1 ii. Respondent failed to properly document the operator's additional
2 authorization on or about July 12, 2011, when the estimate was exceeded.

3 **UNDERCOVER OPERATION No. 2 – SEPTEMBER 12, 2011**

4 33. On or about September 12, 2011, a Bureau undercover operator (“operator”) had a
5 Bureau-documented 1994 Chevrolet Silverado towed to Respondent’s facility and requested a
6 diagnosis of what was causing the engine to crank over but not start. The only repair necessary
7 was to replace the defective fuel pump relay. When the operator arrived at Respondent’s facility,
8 she was greeted by a woman named Lisa. The operator completed and signed a work order but
9 was not provided a copy.

10 34. On or about September 13, 2011, the operator contacted Respondent's facility and
11 spoke with Respondent, who informed the operator that the fuel pump had low fuel pressure and
12 the fuel pump needed to be replaced at a cost of \$424.99. The operator authorized the repairs.

13 35. On or about September 14, 2011, the operator returned to the Respondent’s facility
14 to retrieve the vehicle. The operator paid Respondent \$445.69 and was provided a copy of
15 Invoice No. 021242.

16 36. On or about September 15, 2011, a Bureau representative re-inspected the vehicle
17 and found that Respondent unnecessarily replaced the vehicle’s fuel pump.

18 **TWELFTH CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 37. Respondent’s registration is subject to discipline under Code section 9884.7(a)(1),
21 in that on or about September 12, 2011, regarding the 1994 Chevrolet Silverado, he made
22 statements which he knew or which by exercise of reasonable care he should have known to be
23 untrue or misleading, in that Respondent represented to the operator that the vehicle needed a new
24 fuel pump when, in fact, that repair was not necessary.

25 **THIRTEENTH CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 38. Respondent’s registration is subject to discipline under Code section 9884.7(a)(4),
28 in that on or about September 14, 2011, regarding the 1994 Chevrolet Silverado, he committed

1 acts constituting fraud, in that he charged for and received payment from the operator for a new
2 fuel pump when, in fact, that repair was not necessary.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Provisions of the Automotive Repair Act)**

5 39. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
6 in that regarding the 1994 Chevrolet Silverado, Respondent failed to materially comply with the
7 following provisions of that Code:

8 a. **Section 9884.8:** Respondent failed to document the replacement of the fuel pump
9 relay on Invoice No. 021242.

10 b. **Section 9884.9:**

11 i. Respondent failed to provide the operator with a written estimated amount
12 for parts and labor for a specific job on September 12, 2011.

13 ii. Respondent failed to obtain authorization for the replacement of the fuel
14 pump relay.

15 iii. Respondent failed to document the operator's additional authorization on
16 September 13, 2011, when the estimate was exceeded.

17 **OTHER MATTERS**

18 40. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
19 probation the registrations for all places of business operated in this state by Thai Quoc Nguyen,
20 also known as John Nguyen and Quoc Nguyen, upon a finding that he has, or is, engaged in a
21 course of repeated and willful violation of the laws and regulations pertaining to an automotive
22 repair dealer.

23 **PRAYER**

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

26 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
27 Registration No. ARD 255905, issued to Thai Quoc Nguyen, also known as John Nguyen and
28 Quoc Nguyen, doing business as C & C Auto Repair;

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- 2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Thai Quoc Nguyen, also known as John Nguyen and Quoc Nguyen;
- 3. Ordering Thai Quoc Nguyen, also known as John Nguyen and Quoc Nguyen to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 4. Taking such other and further action as deemed necessary and proper.

DATED: 1/15/13

John Wallauch by Doug Balatti
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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