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

11 In the Matter of the Accusation Against:
12
13 **36 WASHINGTON SMOG CHECK**
36 Washington Street
Santa Clara, CA 95050
14 **PETER VU LE, OWNER**
Automotive Repair Dealer Registration No.
15 **ARD 258242**
Smog Check Test Only Station License No.
16 **TC 258242**
17 **and**
18 **PETER VU LE**
2672 Ramsdell Place
19 San Jose, CA 95148
Advanced Emission Specialist Technician
20 License No. EA 631316
21 Respondents.

Case No. 79/12-36

A C C U S A T I O N
S M O G C H E C K

23 Complainant alleges:

24 **PARTIES**

25 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
26 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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

6 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
7 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
8 proceeding against an automotive repair dealer or to render a decision invalidating a registration
9 temporarily or permanently.

10 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
11 "commission," "committee," "department," "division," "examining committee," "program," and
12 "agency." "License" includes certificate, registration or other means to engage in a business or
13 profession regulated by the Code.

14 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
15 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
16 the Motor Vehicle Inspection Program.

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

28 10. Section 44072.6 of the Health and Safety Code provides, in pertinent 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.

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1 11. Section 44072.8 of the Health and Safety Code states:

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

5 **COST RECOVERY**

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

10 **SURVEILLANCE OPERATION – AUGUST 3, 2010**

11 13. On or about August 3, 2010, the Bureau performed a video-taped surveillance at
12 Respondent's facility. The surveillance operation and information obtained from the Bureau's
13 Vehicle Information Database ("VID") revealed that between 1101 hours and 1424 hours,
14 Respondent, with the assistance of two unidentified males and Loi Ngoc Dang¹, who previously
15 held a smog technician license, performed fourteen (14) smog inspections that resulted in the
16 issuance of electronic certificates of compliance for the vehicles set forth in Table 1, below.
17 Respondent certified that he had tested and inspected those vehicles and that the vehicles were in
18 compliance with applicable laws and regulations. In fact, Respondent performed the smog
19 inspections using the clean piping method² by using the tail pipe emissions of vehicles other than
20 the vehicles being certified in order to issue the electronic certificates of compliance. The
21 vehicles certified were not in the test bay at the time of the smog inspections.

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25 ¹ Loi Ngoc Dang previously held Advanced Emission Specialist Technician License
26 Number EA 630196. Said license was revoked effective October 29, 2009.

27 ²"Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
28 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
compliance or are not present in the smog check area during the time of the certification.

Table 1

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Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
1 8/3/2010 1101 hours to 1107 hours	2002 Chevrolet W3500, License No. 8G23561	2000 Volkswagen Passat, License No. 4 MON930	NW040693	Respondent and male #1 performed the inspection.
2 8/3/2010 1111 hours to 1116 hours	1995 Honda Civic, License No. 3KLU647	2000 Volkswagen Passat, License No. 4 MON930	NW040694	Respondent and male #1 performed the inspection.
3 8/3/2010 1119 hours to 1124 hours	1985 Jeep CJ7, License No. 1NGZ771	2000 Volkswagen Passat, License No. 4 MON930	NW040695	Respondent and male #1 performed the inspection.
4 8/3/2010 1129 hours to 1139 hours	1997 Lincoln Town Car, License No. 5LQT007	2000 Volkswagen Passat, License No. 4 MON930	NW040696	Respondent and male #2 performed the inspection.
5 8/3/2010 1142 hours To 1146 hours	2000 Mercedes ML 320, License No. 5YGC307	Honda Accord	NW040697	Respondent and male #2 performed the inspection.
6 8/3/2010 1150 hours To 1156 hours	1985 Ford Mustang, License No. 5GLS214	Honda Accord	NW040698	Respondent and male #2 performed the inspection.
7 8/3/2010 1159 hours To 1204 hours	1997 Chevrolet Camero Z28, License No. 5JVX610	Honda Accord	NW040699	Respondent and male #2 performed the inspection.
8 8/3/2010 1207 hours To 1211 hours	1984 Nissan pickup, License No. 2K72920	Honda Accord	NW040700	Respondent and male #2 performed the inspection.

1	9 8/3/2010 1216 hours To 1223 hours	1994 Ford Aerostar, License No. 4ZFY737	2000 Volkswagen Passat, License No. 4MON930	NW109701	Respondent and Loi Ngoc Dang performed the inspection.
2					
3	10 8/3/2010 1226 hours To 1233 hours	1985 GMC K1500, License No. 4T23740	2000 Volkswagen Passat, License No. 4MON930	NW109702	Respondent and Loi Ngoc Dang performed the inspection.
4					
5	11 8/3/2010 1236 hours To 1242 hours	1993 Chevrolet C1500, License No. 4V13543	2000 Volkswagen Passat, License No. 4MON930	NW109703	Respondent and Loi Ngoc Dang performed the inspection.
6					
7	12 8/3/2010 1247 hours To 1257 hours	2000 Chevrolet Tahoe, License No. 5EVC481	Honda Accord	NW109704	Respondent and Loi Ngoc Dang performed the inspection.
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9	13 8/3/2010 1336 hours To 1343 hours	2002 Lamborghini L-147, Murcielago, no license plate	1998 Toyota Sienna, License No. 5KQP178	NW109706	Respondent performed the inspection.
10					
11	14 8/3/2010 1414 hours To 1424 hours	1995 Toyota Avalon, License No. 5BXP802	1996 Dodge Ram, License No. 1UAR432	NW109708	Respondent performed the inspection.
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FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 3, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 15. Respondent has subjected his registration to discipline under Code section 9884.7,
4 subdivision (a)(4), in that on or about August 3, 2010, he committed acts which constitute fraud
5 by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above,
6 without performing bona fide inspections of the emission control devices and systems on those
7 vehicles, thereby depriving the People of the State of California of the protection afforded by the
8 Motor Vehicle Inspection Program.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 16. Respondent has subjected his station license to discipline under Health and Safety
12 Code section 44072.2, subdivision (a), in that on or about August 3, 2010, regarding the vehicles
13 set forth in Table 1, above, he violated sections of that Code, as follows:

14 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
15 control devices and systems required by law were installed and functioning correctly in
16 accordance with test procedures.

17 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
18 on those vehicles in accordance with procedures prescribed by the department.

19 c. **Section 44014:** Respondent allowed Loi Ngoc Dang, who is not a licensed smog
20 technician, to participate in the smog inspections of vehicles 9, 10, 11, and 12.

21 d. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
22 compliance without properly testing and inspecting the vehicles to determine if they were in
23 compliance with section 44012 of that Code.

24 e. **Section 44059:** Respondent willfully made false entries for the electronic certificates
25 of compliance by certifying that those vehicles had been inspected as required when, in fact, they
26 had not.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 17. Respondent has subjected his station license to discipline under Health and Safety
4 Code section 44072.2, subdivision (c), in that on or about August 3, 2010, regarding the vehicles
5 set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as
6 follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
8 electronic certificates of compliance without performing bona fide inspections of the emission
9 control devices and systems on those vehicles as required by Health and Safety Code section
10 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
12 compliance even though those vehicles had not been inspected in accordance with section
13 3340.42 of that Code.

14 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
15 inspections on those vehicles in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 18. Respondent subjected his station license to discipline under Health and Safety Code
19 section 44072.2, subdivision (d), in that on or about August 3, 2010, regarding the vehicles set
20 forth in Table 1, above, he committed acts involving dishonesty, fraud or deceit whereby another
21 was injured by issuing electronic certificates of compliance for those vehicles without performing
22 bona fide inspections of the emission control devices and system on those 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 **(Aiding and Abetting an Unlicensed Person)**

27 19. Respondent has subjected his technician license to discipline under Health and Safety
28 Code section 44072.2, subdivision (f), in that on or about August 3, 2010, he aided and abetted

1 Loi Ngoc Dang, who is not licensed as a smog technician, to evade the provisions of this chapter
2 by allowing Dang to participate in the performance of the smog inspections on vehicles 9, 10, 11,
3 and 12, as set forth in Table 1, above.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 20. Respondent has subjected his technician license to discipline under Health and Safety
7 Code section 44072.2, subdivision (a), in that on or about August 3, 2010, regarding the vehicles
8 set forth in Table 1, above, he violated sections of that Code, as follows:

9 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
10 control devices and systems required by law were installed and functioning correctly in
11 accordance with test procedures.

12 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
13 on those vehicles in accordance with procedures prescribed by the department.

14 c. **Section 44014:** Respondent allowed Loi Ngoc Dang, who is not a licensed smog
15 technician, to participate in the smog inspections of vehicles 9, 10, 11, and 12.

16 d. **Section 44032:** Respondent failed to perform tests of the emission control devices
17 and systems on those vehicles in accordance with section 44012 of that Code, in that those
18 vehicles had been clean piped.

19 e. **Section 44059:** Respondent willfully made false entries for the electronic certificates
20 of compliance by certifying that those vehicles had been inspected as required when, in fact, they
21 had not.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 21. Respondent has subjected his technician license to discipline under Health and Safety
25 Code section 44072.2, subdivision (c), in that on or about August 3, 2010, regarding the vehicles
26 set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as
27 follows:

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1 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
2 electronic certificates of compliance without performing bona fide inspections of the emission
3 control devices and systems on those vehicles as required by Health and Safety Code section
4 44012.

5 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those
6 vehicles in accordance with Health and Safety Code section 44012.

7 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
8 Emission Inspection System for the electronic certificates of compliance by entering vehicle
9 emission control information for vehicles other than the vehicles being certified.

10 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and
11 inspections on those vehicles in accordance with the Bureau's specifications.

12 **NINTH CAUSE FOR DISCIPLINE**

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

14 22. Respondent has subjected his technician license to discipline under Health and Safety
15 Code section 44072.2, subdivision (d), in that on or about August 3, 2010, he committed acts
16 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
17 certificates of compliance for vehicles set forth in Table 1, above, without performing bona fide
18 inspections of the emission control devices and systems on those vehicles, thereby depriving the
19 People of the State of California of the protection afforded by the Motor Vehicle Inspection
20 Program.

21 **TENTH CAUSE FOR DISCIPLINE**

22 **(Aiding and Abetting an Unlicensed Person)**

23 23. Respondent has subjected his technician license to discipline under Health and Safety
24 Code section 44072.2, subdivision (f), in that on or about August 3, 2010, he aided and abetted
25 Loi Ngoc Dang, who is not licensed as a smog technician, to evade the provisions of this chapter
26 by allowing Dang to participate in the performance of the smog inspections on vehicles 9, 10, 11,
27 and 12, as set forth in Table 1, above.

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1 **PRIOR CITATIONS**

2 24. To determine the degree of penalty, if any, to be imposed upon Respondent,
3 Complainant alleges as follows:

4 a. On August 6, 2010, the Bureau issued Citation No. C2011-0144 to Respondent
5 against his registration and station licenses for violations of Health and Safety Code section
6 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
7 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
8 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
9 certificate of compliance to a Bureau vehicle with a non functional exhaust gas recirculation
10 valve. The Bureau assessed a civil penalty of \$1,000. Respondent complied with this citation on
11 September 1, 2010.

12 b. On August 6, 2010, the Bureau issued Citation No. M2011-0145 to Respondent
13 against his technician license for violations of Health and Safety Code section 44032, (qualified
14 technicians shall perform tests of emission control systems and devices in accordance with
15 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
16 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
17 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
18 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a non
19 functional exhaust gas recirculation valve. Respondent was required to attend an 8-hour training
20 course. Respondent complied with this citation on September 12, 2010.

21 **OTHER MATTERS**

22 25. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
23 or permanently or refuse to validate, the registrations for all places of business operated in this
24 state by Peter Vu Le, upon a finding that he has, or is, engaged in a course of repeated and willful
25 violations of the laws and regulations pertaining to an automotive repair dealer.

26 26. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
27 License Number TC 258242, issued to Peter Vu Le, doing business as 36 Washington Smog
28 Check, is revoked or suspended, any additional license issued under this chapter in the name of

1 said licensee may be likewise revoked or suspended by the director, including but not limited to,
2 Advanced Emission Specialist Technician License Number EA 631316, issued to Peter Vu Le, is
3 revoked or suspended, any additional license issued under this chapter in the name of said
4 licensee may be likewise revoked or suspended by the director.

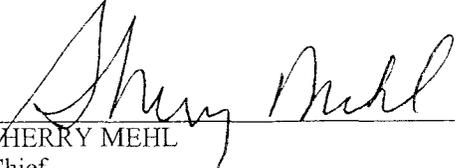
5 **PRAYER**

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

- 8 1. Revoking, suspending, or placing on probation, Automotive Repair Dealer
9 Registration Number ARD 258242, issued to Peter Vu Le, doing business as 36 Washington
10 Smog Check;
- 11 2. Revoking, suspending, or placing on probation any other automotive repair dealer
12 registration issued to Peter Vu Le;
- 13 3. Revoking or suspending Smog Check Test Only Station License Number TC 258242,
14 issued to Peter Vu Le, doing business as 36 Washington Smog Check;
- 15 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
16 & Safety Code in the name of Peter Vu Le, including but not limited to, Advanced Emission
17 Specialist Technician License Number EA 631316, issued to Peter Vu Le;
- 18 5. Ordering Peter Vu Le to pay the Bureau of Automotive Repair the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and,
- 21 6. Taking such other and further action as deemed necessary and proper.

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24 DATED: _____

9/14/11


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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