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

12 In the Matter of the Accusation Against:

Case No. 79/20-9237

13 **PHUC HONG CHAU TRAN**  
**DBA SMG AUTO SMOG & REPAIR**  
14 4190 24<sup>th</sup> Street  
Sacramento, CA 95822

**ACCUSATION**

15 **Automotive Repair Dealer Registration No. ARD**  
16 **278080**  
**Smog Check Station License No. RC 278080**  
17 **Lamp Station License No. LS 278080, Class A**  
**Brake Station License No. BS 278080, Class C**

18 and

19 **PHUC HONG CHAU TRAN**  
20 4190 24<sup>th</sup> Street  
Sacramento, CA 95822

21 **Smog Check Inspector License No. EO 634494**  
22 **Smog Check Repair License No. EI 634494**  
**Brake Adjuster License No. BA 634494, Class C**  
23 **Lamp Adjuster License No. LA 634494, Class A**

24 and

25 **DUKE TRAN**  
26 4190 24<sup>th</sup> Street  
Sacramento, CA 95822  
**Smog Check Inspector License No. EO 638910**

27 Respondents.  
28

1 **PARTIES**

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

4 **Automotive Repair Dealer Registration and Station Licenses**

5 2. On or about October 3, 2014, the Bureau issued Automotive Repair Dealer  
6 Registration Number ARD 278080 to Phuc Hong Chau Tran, doing business as SMG Auto  
7 Smog & Repair (Respondent SMG). Respondent SMG’s automotive repair dealer registration  
8 was in full force and effect at all times relevant to the charges brought herein and will expire on  
9 October 31, 2022, unless renewed.

10 3. On or about October 27, 2014, the Bureau issued Smog Check Station License  
11 Number RC 278080 to Respondent SMG. Respondent SMG’s smog check station license was in  
12 full force and effect at all times relevant to the charges brought herein and will expire on October  
13 31, 2022, unless renewed.

14 4. On or about July 1, 2019, the Bureau issued Brake Station License Number  
15 BS 278080, Class C to Respondent SMG. Respondent SMG’s brake station license was in full  
16 force and effect at all times relevant to the charges brought herein and will expire on  
17 October 31, 2022, unless renewed.

18 5. On or about July 1, 2019, the Bureau issued Lamp Station License Number  
19 LS 278080, Class A to Respondent SMG. Respondent SMG’s lamp station license was in full  
20 force and effect at all times relevant to the charges brought herein and will expire on  
21 October 31, 2022, unless renewed.

22 **Brake Adjuster and Lamp Adjuster Licenses**

23 6. On or about April 26, 2019, the Bureau issued Brake Adjuster License Number  
24 BA 634494, Class C, to Phuc Hong Chau Tran (Respondent Phuc Tran). Respondent Phuc  
25 Tran’s brake adjuster license was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on September 30, 2022, unless renewed.

27 7. On or about June 7, 2019, the Bureau issued Lamp Adjuster License Number  
28 LA 634494, Class A, to Respondent Phuc Tran. Respondent Phuc Tran’s lamp adjuster license

1 was in full force and effect at all times relevant to the charges brought herein and will expire on  
2 September 30, 2022, unless renewed.

3 **Smog Check Inspector and Smog Check Repair Technician Licenses**

4 8. On or about July 16, 2012, the Bureau issued Smog Check Inspector License  
5 Number EO 634494 and Smog Check Repair Technician License Number EI 634494 to  
6 Respondent Phuc Tran. Respondent Phuc Tran’s smog inspector and smog check repair  
7 technician licenses were in full force and effect at all times relevant to the charges brought herein  
8 and will expire on September 30, 2022, unless renewed.

9 9. On or about January 14, 2016, the Bureau issued Smog Check Inspector License  
10 Number EO 638910 to Duke Tran (Respondent Duke Tran). Respondent Duke Tran’s smog  
11 check inspector license was in full force and effect at all times relevant to the charges brought  
12 herein and will expire on March 31, 2022, unless renewed.

13 **JURISDICTION**

14 10. This Accusation is brought before the Director of the Department of Consumer  
15 Affairs (Director) for the Bureau under the authority of the following laws.

16 11. Business and Professions Code (“Bus. & Prof. Code”) section 22, subdivision (a),  
17 states:

18 “Board” as used in any provision of this Code refers to the board in which the  
19 administration of the provision is vested, and unless otherwise expressly provided, shall  
20 include “bureau,” “commission,” “committee,” “department,” “division,” “examining  
committee,” “program,” and “agency.”

21 12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a  
22 “license” includes “registration” and “certificate.”

23 13. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an  
24 automotive repair dealer registration.

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



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

3 ...

4 (4) Any other conduct which constitutes fraud.

5 ...

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

8 ...

9 (8) Making false promises of a character likely to influence, persuade, or  
induce a customer to authorize the repair, service, or maintenance of automobiles.

10 ...

11 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or  
12 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,  
13 or is, engaged in a course of repeated and willful violations of this chapter, or  
regulations adopted pursuant to it.

14 21. Bus. & Prof Code section 9884.8 states:

15 All work done by an automotive repair dealer, including all warranty work,  
16 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  
17 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  
18 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  
19 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  
20 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.

21  
22 22. Bus. & Prof Code section 9884.19 states:

23 The bureau may adopt, amend or repeal in accordance with the provisions of  
Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the  
24 Government Code such regulations as may be reasonably necessary to carry out the  
provisions of this chapter in the protection of the public from fraudulent or  
25 misleading advertising by an automotive repair dealer, including formulation of  
definitions, to the extent feasible, of the terms "fraud," "guarantee," and words of  
26 like import, and of "negligence," and guidelines for the suspension and revocation  
of licenses. The bureau shall distribute to each registered repair dealer copies of  
27 this chapter and of the regulations adopted pursuant to this chapter.

28 ///

1           **Health and Safety Code**

2           23. Health and Safety Code section 44012 states:

3           The test at the smog check stations shall be performed in accordance with  
4           procedures prescribed by the department and may require loaded mode  
5           dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a  
6           vehicle's onboard diagnostic system, or other appropriate test procedures as  
7           determined by the department in consultation with the state board. The department  
8           shall implement testing using onboard diagnostic systems, in lieu of loaded mode  
9           dynamometer or two-speed idle testing, on model year 2000 and newer vehicles  
10          only, beginning no earlier than January 1, 2013. However, the department, in  
11          consultation with the state board, may prescribe alternative test procedures that

12          include loaded mode dynamometer or two-speed idle testing for vehicles with  
13          onboard diagnostic systems that the department and the state board determine  
14          exhibit operational problems. The department shall ensure, as appropriate to the  
15          test method, the following:

16               (a) Emission control systems required by state and federal law are reducing  
17               excess emissions in accordance with the standards adopted pursuant to  
18               subdivisions (a) and (c) of Section 44013.

19               (b) Motor vehicles are preconditioned to ensure representative and stabilized  
20               operation of the vehicle's emission control system.

21               (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions  
22               of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an  
23               idle mode or loaded mode are tested in accordance with procedures prescribed by  
24               the department. In determining how loaded mode and evaporative emissions  
25               testing shall be conducted, the department shall ensure that the emission reduction  
26               targets for the enhanced program are met.

27               (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative  
28               system and crankcase ventilation system are tested to reduce any nonexhaust  
29               sources of volatile organic compound emissions, in accordance with procedures  
30               prescribed by the department.

31               (e) For diesel-powered vehicles, a visual inspection is made of emission  
32               control devices and the vehicle's exhaust emissions are tested in accordance with  
33               procedures prescribed by the department, that may include, but are not limited to,  
34               onboard diagnostic testing. The test may include testing of emissions of any or all  
35               of the pollutants specified in subdivision (c) and, upon the adoption of applicable  
36               standards, measurement of emissions of smoke or particulates, or both.

37               (f) A visual or functional check is made of emission control devices  
38               specified by the department, including the catalytic converter in those instances in  
39               which the department determines it to be necessary to meet the findings of Section  
40               44001. The visual or functional check shall be performed in accordance with  
41               procedures prescribed by the department.

42               (g) A determination as to whether the motor vehicle complies with the  
43               emission standards for that vehicle's class and model-year as prescribed by the  
44               department.

1 (h) An analysis of pass and fail rates of vehicles subject to an onboard  
2 diagnostic test and a tailpipe test to assess whether any vehicles passing their  
3 onboard diagnostic test have, or would have, failed a tailpipe test, and whether any  
4 vehicles failing their onboard diagnostic test have or would have passed a tailpipe  
5 test.

6 (i) The test procedures may authorize smog check stations to refuse the  
7 testing of a vehicle that would be unsafe to test, or that cannot physically be  
8 inspected, as specified by the department by regulation. The refusal to test a  
9 vehicle for those reasons shall not excuse or exempt the vehicle from compliance  
10 with all applicable requirements of this chapter.

11 24. Health and Safety Code section 44015, subdivision (a)(1), states:

12 (a) A licensed smog check station shall not issue a certificate of compliance,  
13 except as authorized by this chapter, to any vehicle that meets the following criteria:

14 (1) A vehicle that has been tampered with.

15 25. Health and Safety Code section 44032 states:

16 No person shall perform, for compensation, tests or repairs of emission  
17 control devices or systems of motor vehicles required by this chapter unless the  
18 person performing the test or repair is a qualified smog check technician and the  
19 test or repair is performed at a licensed smog check station. Qualified technicians  
20 shall perform tests of emission control devices and systems in accordance  
21 with Section 44012.

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

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

26 (a) Violates any section of this chapter [the Motor Vehicle Inspection  
27 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted  
28 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.

...

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1 (h) Violates or attempts to violate the provisions of this chapter relating to  
2 the particular activity for which he or she is licensed.

3 **REGULATORY PROVISIONS**

4 27. California Code of Regulations, title 16, (“CCR”) section 3340.15, subdivision (a)  
5 states:

6 A smog check station shall meet the following requirements for licensure  
7 and shall comply with these requirements at all times while licensed.

8 (a) The testing and repairing of vehicles shall be performed only in a work  
9 area of the station that has been approved by the bureau during the licensing  
10 inspection. Other work may be performed in the approved area, as desired. Except  
11 for heavy-duty vehicles, the work area shall be within a building and shall be large  
12 enough to accommodate the type of vehicle being serviced. In the case of the  
13 testing and repair of heavy-duty vehicles the work area need not be in a building,  
14 but the emissions inspection system used at the station may only be used within a  
15 building. The work area shall be kept clean and orderly.

16 28. CCR section 3340.24, subdivision (c) states:

17 (c) The bureau may suspend or revoke the license of or pursue other legal  
18 action against a licensee, if the licensee falsely or fraudulently issues or obtains a  
19 certificate of compliance or a certificate of noncompliance.

20 29. CCR section 3340.30 states:

21 A licensed smog check inspector and/or repair technician shall comply with  
22 the following requirements at all times while licensed:

23 (a) Inspect, test and repair vehicles, as applicable, in accordance with section  
24 44012 of the Health and Safety Code, section 44035 of the Health and Safety  
25 Code, and section 3340.42 of this article.

26 (b) Maintain on file with the bureau a correct mailing address pursuant to  
27 section 3303.3 of Article 1 of this Chapter.

28 (c) Notify the bureau in writing within two weeks of any change of  
employment.

(d) Upon expiration of the inspector and/or repair technician license  
immediately cease to inspect, test, or repair failed vehicles, as applicable.

30. CCR section 3340.35, subdivision (c) states:

(c) A licensed station shall issue a certificate of compliance or  
noncompliance to the owner or operator of any vehicle that has been inspected in  
accordance with the procedures specified in section 3340.42 of this article and  
has all the required emission control equipment and devices installed and  
functioning correctly. The following conditions shall apply:

1 (1) Customers shall be charged the same price for certificates as that  
2 paid by the licensed station; and

3 (2) Sales tax shall not be assessed on the price of certificates.

4 31. CCR section 3340.41 states, in pertinent part:

5 ...

6 (b) No person shall enter into the BAR-97 Emissions Inspection System or  
7 the OBD Inspection System any access or qualification number other than as  
8 authorized by the bureau, nor in any way tamper with the BAR-97 Emissions  
9 Inspection System or the OBD Inspection System.

10 (c) No person shall enter into the BAR-97 Emissions Inspection System or  
11 the OBD Inspection System any vehicle identification information or emission  
12 control system identification data for any vehicle other than the one being tested.  
13 Nor shall any person knowingly enter into the BAR-97 Emissions Inspection

14 System or the OBD Inspection System any false information about the vehicle  
15 being tested.

16 ...

17 32. CCR section 3340.42, subdivision (b) states:

18 (b) In addition to subsection (a), all vehicles subject to the smog check  
19 program shall receive the following:

20 (1) A visual inspection of emission control components and systems to  
21 verify the vehicle's emission control systems are properly installed.

22 (2) A functional inspection of emission control systems as specified in  
23 the Smog Check Manual, referenced by section 3340.45, which may include an  
24 OBD test, to verify their proper operation.

25 33. CCR section 3340.45 states:

26 (a) All Smog Check inspections shall be performed in accordance with  
27 requirements and procedures prescribed in the following:

28 (1) Smog Check Manual, dated 2013, which is hereby incorporated by  
reference. This manual became effective on or after January 1, 2013. This manual  
shall remain in effect until subparagraph (2) is implemented.

(2) Smog Check Manual, dated November 2, 2017, which is hereby  
incorporated by reference. This manual shall become effective on August 2, 2018.

34. CCR section 3356, subdivision (b) states:

The invoice shall show the automotive repair dealer's registration number and the  
corresponding business name and address as shown in the Bureau's records.

///

1 35. CCR section 3371 states:

2 No automotive repair dealer shall publish, utter, or make or cause to be published,  
3 uttered, or made any false or misleading statement or advertisement which is known to be  
4 false or misleading, or which by the exercise of reasonable care should be known to be  
5 false or misleading. Advertisements and advertising signs shall clearly show the name and  
6 address listed on the automotive repair dealer's State registration certificate.

7 36. CCR section 3372.1 states, in pertinent part:

8 An automotive repair dealer shall not advertise automotive service at a price which is  
9 misleading. Price advertising is misleading in circumstances which include but are not  
10 limited to the following:

11 (a) The automotive repair dealer does not intend to sell the advertised service at the  
12 advertised price but intends to entice the consumer into a more costly transaction; or

13 ...

14 (c) The advertisement for service or repair has the capacity to mislead the public as  
15 to the need for additional related parts, labor or other services; or

16 ...

17 (d) The automotive repair dealer knows or should know that the advertised service  
18 cannot usually be performed in a good and workmanlike manner without additional parts,  
19 services or labor; provided, however, that an advertisement which clearly and  
20 conspicuously discloses that additional labor, parts or services are often needed will, to that  
21 extent, not be regarded as misleading. Any such disclosure statement shall indicate that  
22 many instances of performance of the service involve extra cost and, if the automotive  
23 dealer reasonably expects that the extra cost will be more than 25% of the advertised costs,  
24 that the extra cost may be substantial. The type size of the disclosure statement shall be at  
25 least 1/2 the type size used in the advertised price and the statement shall either be shown  
26 near the price or shall be prominently footnoted through use of an asterisk or similar  
27 reference.

### 28 **COST RECOVERY**

37. Bus. & Prof. 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.

### **BACKGROUND**

38. California's Smog Check Program requires that owners of most motor vehicles  
subject their vehicles to and pass a Smog Check inspection and receive a Certificate of  
Compliance every two years when renewing their registration and also when the vehicle's title is  
transferred. These inspections are performed by Smog Check inspectors at Smog Check Stations,

1 both of which are licensed by the Bureau. The Smog Check Program is designed and intended to  
2 reduce air pollution by identifying and requiring the repair of polluting motor vehicles.

3 39. For a Smog Check inspection, the inspector performs visual and functional tests on  
4 the vehicle as outlined in the Smog Check Manual. The visual inspection of the emission control  
5 components verifies the required emission control devices are present and properly connected.  
6 Functional tests are also performed which, depending on the vehicle, may include checking the  
7 ignition timing, malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a  
8 low-pressure test of the evaporative emissions control system (LPPET), a visible smoke test, and  
9 a pressure test of the gas cap.

10 40. An On-Board Diagnostics (OBDII) functional test is also performed on most 1996 to  
11 1999 model year vehicles. The inspector is required to connect a test cable from the Emission  
12 Inspection System (EIS) to a Diagnostic Link Connector (DLC) which is located in the vehicle's  
13 passenger compartment. Through the DLC, the EIS retrieves information from the vehicle's on-  
14 board computer about its ability to communicate, the status of the I/M readiness monitors and the  
15 MIL light command, as well as diagnostic trouble codes (DTC). The I/M readiness monitors tell  
16 whether or not the OBDII system has run a sufficient number of self-tests on the vehicle's  
17 emission and engine control systems. A failure of one or more of the OBD II functional criteria,  
18 depending on model year, will result in the vehicle failing its Smog Check inspection. In addition  
19 to reporting the outcome of the OBDII functional test, the Smog Check inspection results also  
20 show DTC's if there are any in the vehicle's on-board computer memory.

21 41. The inspector enters the results of the visual and functional inspections into the EIS.  
22 The EIS unit makes the determination whether or not the vehicle passes the inspection based on  
23 the results of the tailpipe test, and entries made by the inspector for the visual and functional tests  
24 performed.

25 42. The EIS is connected through the internet to BAR's Vehicle Information Database  
26 (VID), which is maintained by a state contractor. If the vehicle passes the visual, functional and  
27 tailpipe tests, it passes the overall inspection and a Certificate of Compliance is issued and  
28 transmitted electronically to the VID. Additionally, all data gathered during a Smog Check

1 inspection, regardless of the type of inspection, is transmitted to and retained in the VID.

2 43. On March 9, 2015, California’s Smog Check Program was updated to keep pace with  
3 ever-advancing technology. The program update requires the use of an On-Board Diagnostic  
4 Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of  
5 the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and  
6 most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device  
7 (DAD), computer, bar code scanner, and printer.

8 44. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the  
9 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects  
10 between the BAR-OIS computer and the vehicle’s diagnostic link connector. The bar code  
11 scanner is used to input technician information, the vehicle identification number, and DMV  
12 renewal information. The vehicle identification number (VIN) that is physically present on all  
13 vehicles is required to be programmed into the vehicle’s On-Board Diagnostics – Generation II  
14 (OBD II) on 2005 and newer vehicles, and on many occasions was programmed into the OBD II  
15 computer in earlier model-years. The electronically programmed VIN is referred to as the  
16 “eVIN”, is captured by the Bureau during a smog check inspection, and should match the  
17 physical VIN on the vehicle. The printer is used to provide a Vehicle Inspection Report (VIR),  
18 which shows the inspection results and the Smog Check Certificate of Compliance Number for  
19 passing vehicles. Data retrieved and recorded during an OIS smog check includes the eVIN, the  
20 communication protocol<sup>1</sup>, and the number of Parameter Identifications (PID’s)<sup>2</sup>.

21 ///

22 ///

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23  
24 <sup>1</sup> The OBD II communication protocol describes the specified communication  
25 “language” used by the OBD II computer to communicate to scan tools and other devices  
such as the BAR-OIS. The communication protocol is programmed into the OBD II  
computer during manufacture and does not change.

26 <sup>2</sup> PID’s are data points reported by the OBD II computer to the scan tool or BAR-  
27 OIS (for example, engine speed (rpm), vehicle speed, engine temperature, etc.) The PID  
28 count is the number of data points reported by the OBD II computer, and is programmed  
during manufacture.

1 **CONSUMER COMPLAINT NO. 1: C.R.**

2 45. On or about October 29, 2018, the Bureau received a complaint from C.R. against  
3 Respondent SMG, alleging that C.R. brought his 1999 Honda Accord to Respondent SMG for an  
4 advertised \$19.95 smog inspection that included a free retest, but was charged \$41.75 for a test  
5 and was quoted \$21.75 for a retest. During an investigation of that complaint, Bureau  
6 investigator S.A. visited Respondent SMG and met with Respondent Phuc Tran and Respondent  
7 Duke Tran. S.A. observed signs on the business advertising a smog check special for \$19.75  
8 plus certificate, without any exclusions listed, as well as banners and a sign on the building  
9 stating “PASS OR DON’T PAY” without any exclusions listed. When asked about the  
10 advertisements, Respondent Phuc told S.A. that the \$19.75 smog test price, and that the “PASS  
11 OR DON’T PAY” advertisement only applied to model years 2000 and newer, and that \$41.75 is  
12 the smog check price for model years 1999 and older.

13 **FIRST CAUSE FOR DISCIPLINE – RESPONDENT SMG**

14 (False or Misleading Statements)

15 46. Respondent SMG’s licenses are subject to disciplinary action under Bus. & Prof.  
16 Code section 9884.7, subdivision (a)(1), and Health & Safety Code section 44072.2, subdivision  
17 (d), in that Respondent SMG made false or misleading statements regarding the prices it  
18 advertised and actually charged for smog checks, as set forth more particularly above in  
19 paragraph 45.

20 **SECOND CAUSE FOR DISCIPLINE – RESPONDENT SMG**

21 (Untrue and Misleading Statements or Advertising)

22 47. Respondent SMG’s licenses are subject to disciplinary action under Bus. & Prof.  
23 Code section 9884.7, subdivision (a)(6), and CCR sections 3371 and 3372.1, subdivision (d), in  
24 that Respondent SMG made false or misleading statements regarding the prices it advertised and  
25 actually charged for smog checks, as set forth more particularly above in paragraph 45.

26 **CONSUMER COMPLAINT NO. 2: D.H.**

27 48. On or about June 21, 2019, the Bureau received a complaint from D.H. against  
28 Respondent SMG, alleging that D.H. brought his 2008 Honda CRV to Respondent SMG for a

1 smog inspection and presented a pre-paid coupon purchased for \$22 through Groupon.  
2 However, D.H. was charged an additional \$6 fee for the stated reason that his vehicle required a  
3 smog inspection at a Star Station, an additional \$5 fee because D.H. failed to bring his DMV  
4 renewal paperwork, and \$2.75 for an electronic communication fee, for a total of \$13.75 more  
5 than the \$22.00 that Respondent SMG advertised through Groupon for a smog inspection.  
6 During an investigation of that complaint, Bureau investigator J.L. found that Respondent SMG  
7 had charged D.H. those additional fees even though D.H.'s vehicle did not require a Star Station  
8 for its smog inspection, that D.H.'s DMV documents were used by Respondent SMG to scan the  
9 vehicle's VIN, and that the fees were not properly disclosed on the estimate. Inspector J.L. also  
10 found that Respondent SMG's Groupon advertisement used the business name "SMG Auto Star  
11 Smog & Registration," that the Groupon advertisements did not clearly indicate next to the  
12 advertised price that additional charges may apply, and that Respondent SMG charged a  
13 Groupon processing fee that did not apply to D.H.'s vehicle or the terms of the Groupon coupon.  
14 Inspector J.L. also found that Respondent SMG's invoice #13439 to D.H. listed the business  
15 name as "SMGAuto," and that Respondent SMG did not record the vehicle's odometer reading  
16 on the work order prior to having D.H. sign the work order.

17 **THIRD CAUSE FOR DISCIPLINE – RESPONDENT SMG**

18 (False or Misleading Statements)

19 49. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
20 Code section 9884.7, subdivision (a)(1), in that Respondent SMG advertised a service that they  
21 did not intend to perform for the advertised price on D.H.'s vehicle, and Respondent SMG  
22 created a false and misleading record by charging a Groupon processing fee that was not a  
23 condition of the Groupon coupon purchased by D.H., as set forth more particularly above in  
24 paragraph 48.

25 **FOURTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

26 (Untrue and Misleading Advertising – Price)

27 50. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
28 Code section 9884.7, subdivision (a)(6), and CCR sections 3371 and 3372.1, subdivision (a), in

1 that Respondent SMG advertised a service that they did not intend to perform for the advertised  
2 price on D.H.'s vehicle, as set forth more particularly above in paragraph 48.

3 **FIFTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

4 (Misleading Advertising - Additional Related Parts, Labor or Other Services)

5 51. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
6 Code section 9884.7, subdivision (a)(6), and CCR sections 3371 and 3372.1, subdivisions (c) and  
7 (d), in that Respondent SMG's Groupon advertisement does not indicate near the advertised  
8 price that additional costs for the service may apply, as set forth more particularly above in  
9 paragraph 48.

10 **SIXTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

11 (Fraud)

12 52. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
13 Code section 9884.7, subdivision (a)(4), in that Respondent SMG intentionally did not provide  
14 D.H. with the coupon price on its Groupon coupon, and in that Respondent SMG charged D.H.  
15 undisclosed processing fees, as set forth more particularly above in paragraph 48.

16 **SEVENTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

17 (Failure to Comply with the Automotive Repair Act)

18 53. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
19 Code section 9884.7, subdivision (a)(6), in that Respondent SMG violated the Automotive  
20 Repair Act as follows:

21 a. Bus. & Prof. Code section 9884.8 (invoice requirements), in that Respondent  
22 SMG's invoice #13439 to D.H. had a business name that was different from the business name  
23 listed in the Bureau's records, as set forth more particularly above in paragraph 48; and,

24 b. Bus. & Prof. Code section 9884.7(a)(2) (failure to record odometer reading on  
25 signed work order), in that Respondent SMG failed to record the vehicle's odometer reading  
26 prior to having D.H. sign the work order, as set forth more particularly above in paragraph 48.

27 ///

28 ///





1 that the vehicle passed. E.S. received a Vehicle Inspection Report and an invoice from  
2 Respondent SMG that listed \$141 for a smog check, \$8.25 for a smog certificate, and \$0.75 for a  
3 card fee. E.S. paid Respondent SMG \$150 with his debit card and \$25 cash, which was not  
4 reported on the invoice. During an investigation of that complaint, Bureau investigator S.A.  
5 found that E.S.'s vehicle passed a smog test at Respondent SMG with a Diagnostic Trouble Code  
6 (DTC) of P0328 (Knock Sensor 1 Circuit High Input)<sup>3</sup> set in the vehicle's ECM memory.  
7 Knock sensor faults are not emissions related, will not illuminate the MIL, and repairs associated  
8 with knock sensor faults should not be considered a requirement for a smog inspection. A DTC  
9 of P0328 would not cause E.S.'s vehicle to fail a smog inspection.

10 **ELEVENTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

11 (False or Misleading Statements)

12 59. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
13 Code section 9884.7, subdivision (a)(1), in that Respondent SMG's inspector falsely told E.S.  
14 that his vehicle would not pass a smog inspection, as set forth more particularly above in  
15 paragraph 58.

16 **TWELFTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

17 (Failure to Comply with Regulations Adopted by the Bureau)

18 60. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
19 Code section 9884.7, subdivision (a)(6), when it violated provisions of the CCR, as follows:

20 a. CCR section 3371 (untrue or misleading statements), in that Respondent  
21 SMG's inspector falsely told E.S. that his vehicle would not pass a smog inspection, as set forth  
22 more particularly above in paragraph 58.

23 **CONSUMER COMPLAINT NO. 5: L.V.**

24 61. On or about April 20, 2020, the Bureau received a complaint from L.V. against  
25 Respondent SMG, alleging that she took her 2002 Dodge Dakota to Respondent SMG for a smog  
26 inspection with a \$31.75 coupon and that an employee with Respondent SMG told her that her

27 <sup>3</sup> A P0328 Knock Sensor Circuit High Input is a diagnostic trouble code that  
28 indicates there is a high output voltage of the knock sensor on a vehicle.

1 vehicle would fail a smog inspection because the EVAP monitor<sup>4</sup> was not complete. Respondent  
2 SMG's employee then told L.V. that he would pass the vehicle for an additional \$200, which  
3 L.V. refused. Respondent SMG's employee told L.V. that he would pass the vehicle for \$150,  
4 which she refused, and then for \$60, which she also refused. During an investigation of that  
5 complaint, Bureau investigator S.A. found that L.V.'s vehicle had passed a smog test at another  
6 facility with an incomplete EVAP monitor.

7 **THIRTEENTH CAUSE FOR DISCIPLINE -- RESPONDENT SMG**

8 (False or Misleading Statements)

9 62. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
10 Code section 9884.7, subdivision (a)(1), in that Respondent SMG's inspector falsely told L.V.  
11 that her vehicle would not pass a smog inspection, as set forth more particularly above in  
12 paragraph 61.

13 **FOURTEENTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

14 (Failure to Comply with Regulations Adopted by the Bureau)

15 63. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
16 Code section 9884.7, subdivision (a)(6), when it violated provisions of the CCR, as follows:

17 a. CCR section 3371 (untrue or misleading statements), in that Respondent  
18 SMG's employee falsely told L.V. that her vehicle would not pass a smog inspection, as set forth  
19 more particularly above in paragraph 61.

20 **UNDERCOVER OPERATION NO. 1: 2002 DODGE**

21 64. On or about October 7, 2020, an undercover Bureau operator ("operator") drove a  
22 Bureau-documented 2002 Dodge to Respondent SMG's facility and requested a smog inspection  
23 from Respondent Duke Tran. The vehicle was in a condition to pass a smog inspection. When  
24 the operator arrived and requested the smog inspection, he observed Respondent Duke Tran  
25 connect an OBDII scanner to the vehicle's diagnostic port. After Respondent Duke Tran  
26 reviewed the information displayed on the scanner, he provided the operator with an estimate to  
27 perform a smog inspection for \$68.24. The operator authorized the inspection and paid

28 <sup>4</sup> An EVAP monitor checks for fuel vapor leaks on a vehicle's fuel system.

1 Respondent Duke Tran \$68.24 in cash. Respondent Duke Tran instructed the operator to pull the  
2 vehicle up near the bay of the facility, where Respondent Phuc Tran directed the operator to park  
3 outside the bay and exit the vehicle. The operator then observed Respondent Phuc Tran connect  
4 the DAD to the vehicle to begin the smog inspection. Respondent Phuc Tran never looked under  
5 the vehicle to inspect the catalytic converter. No one else from Respondent SMG participated in  
6 the smog inspection. Respondent Phuc Tran disconnected the DAD, told the operator that the  
7 vehicle passed, and instructed the operator to park on the street while waiting for the paperwork.  
8 Respondent Phuc Tran brought the operator Invoice #33777 and the Smog Check Vehicle  
9 Inspection Report (VIR), which listed the inspector as Respondent Duke Tran even though the  
10 operator had observed Respondent Phuc Tran perform the inspection.

11 **FIFTEENTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

12 (False or Misleading Statements)

13 65. Respondent SMG’s licenses are subject to disciplinary action under Bus. & Prof.  
14 Code section 9884.7, subdivision (a)(1), in that on or about October 7, 2020, Respondent SMG’s  
15 VIR for the 2002 Dodge smog inspection represented that Respondent Duke Tran performed the  
16 smog inspection when in fact Respondent Phuc Tran had performed the smog inspection, as set  
17 forth more particularly above in paragraph 64.

18 **SIXTEENTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

19 (Failure to comply with Regulations Adopted by the Bureau)

20 66. Respondent SMG’s licenses are subject to disciplinary action under Bus. & Prof.  
21 Code section 9844.7, subdivision (a)(6), in that it failed to comply with provisions of the CCR,  
22 as follows:

23 a. CCR section 3340.45, subdivision (a)(2) (failure to comply with Smog Check  
24 Manual), in that on or about October 7, 2020, Respondent SMG allowed its smog inspector,  
25 Respondent Phuc Tran, to perform a smog inspection on the 2002 Dodge while using another  
26 smog inspector’s license, as set forth more particularly above in paragraph 64;

27 b. CCR section 3341, subdivision (b) (unauthorized access into an emissions  
28 inspection system), in that on or about October 7, 2020, Respondent SMG allowed Respondent

1 Phuc Tran to access the OIS using Respondent Duke Tran’s log-in information to perform a  
2 smog inspection on the 2002 Dodge, as set forth more particularly above in paragraph 64;

3 c. CCR section 3340.15, subdivision (a) (smog test performed in unapproved  
4 area), in that on or about October 7, 2020, Respondent SMG allowed Respondent Phuc Tran to  
5 perform a smog inspection on the 2002 Dodge outside of the building, instead of in areas of the  
6 station that had been approved by the Bureau, as set forth more particularly above in paragraph  
7 64; and

8 d. CCR section 3373 (false or misleading records), in that on or about October 7,  
9 2020, Respondent SMG allowed Respondent Phuc Tran to generate a fraudulent certificate of  
10 compliance showing Respondent Duke Tran as the inspector for the 2002 Dodge when in fact  
11 Respondent Phuc Tran performed the smog inspection on the 2002 Dodge, as set forth more  
12 particularly above in paragraph 64.

13 **SEVENTEENTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

14 (Fraud, Dishonesty or Deceit)

15 67. Respondent SMG’s licenses are subject to disciplinary action under Health and  
16 Safety Code section 44072.2, subdivision (d), for committing an act involving dishonesty, fraud  
17 or deceit in that on or about October 7, 2020, Respondent SMG allowed Respondent Phuc Tran  
18 to access the OIS using Respondent Duke Tran’s login information to generate a fraudulent  
19 certificate of compliance showing Respondent Duke Tran as the inspector for the 2002 Dodge  
20 when in fact Respondent Phuc Tran performed the smog inspection on the 2002 Dodge, as set  
21 forth more particularly above in paragraph 64.

22 **EIGHTEENTH CAUSE FOR DISCIPLINE – RESPONDENT PHUC TRAN**

23 (Fraud, Dishonesty or Deceit)

24 68. Respondent Phuc Tran’s smog inspector and repair technician licenses are subject to  
25 disciplinary action under Health & Safety Code section 44072.2, subdivision (d), in that he  
26 committed an act involving dishonesty, fraud, or deceit on or about October 7, 2020, when he  
27 used Respondent Duke Tran’s Smog Inspector license and confidential access code to perform a  
28 smog inspection on the 2002 Dodge, as set forth more particularly above in paragraph 64.

1                                    **NINETEENTH CAUSE FOR DISCIPLINE – RESPONDENT PHUC TRAN**

2                                    (Failure to Comply with Regulations Adopted by the Bureau)

3                    69.    Respondent Phuc Tran’s smog inspector and repair technician licenses are subject to  
4 disciplinary action under Bus. & Prof. Code section 9887.4, subdivision (a)(6) in that he violated  
5 sections of the CCR, as follows:

6                    a.     CCR section 3340.41, subdivision (b) (unauthorized access into an emissions  
7 inspection system), in that on or about October 7, 2020, Respondent Phuc Tran used Respondent  
8 Duke Tran’s license and confidential access code to perform a smog inspection on the 2002  
9 Dodge, as set forth more particularly above in paragraph 64; and

10                  b.     CCR section 3340.45, subdivision (a)(2) (violation of Smog Check Manual), in  
11 that on or about October 7, 2020, Respondent Phuc Tran generated a fraudulent certificate of  
12 compliance showing Respondent Duke Tran as the inspector for the 2002 Dodge when in fact  
13 Respondent Phuc Tran performed the smog inspection on the 2002 Dodge, as set forth more  
14 particularly above in paragraph 64.

15                                    **TWENTIETH CAUSE FOR DISCIPLINE – RESPONDENT DUKE TRAN**

16                                    (Fraud – Lending License to Another Person)

17                  70.    Respondent Duke Tran’s smog inspector license is subject to disciplinary action  
18 under Bus. & Prof. Code section 9884.7, subdivision (a)(4), and Health & Safety Code section  
19 44072.2, subdivisions, (d) and (f),, in that he committed conduct which constitutes fraud by  
20 lending his license to another person or knowingly permitting the use thereof by another, when  
21 on or about October 7, 2020, he allowed Respondent Phuc Tran to use his Smog Inspector  
22 license and access code to perform a smog inspection on the 2002 Dodge, as set forth more  
23 particularly above in paragraph 64.

24                                    **TWENTY-FIRST CAUSE FOR DISCIPLINE – RESPONDENT DUKE TRAN**

25                                    (Fraud, Dishonesty or Deceit)

26                  71.    Respondent Duke Tran’s smog inspector license is subject to disciplinary action  
27 under Health & Safety Code section 44072.2, subdivision (d), in that he committed an act  
28 involving dishonesty, fraud, or deceit on or about October 7, 2020, when he allowed Respondent

1 Phuc Tran to use his Smog Inspector license and confidential access code to perform a smog  
2 inspection on the 2002Dodge, as set forth more particularly above in paragraph 64.

3 **UNDERCOVER OPERATION NO. 2: 2000 FORD**

4 72. On or about October 7, 2020, an undercover Bureau operator (“operator”) drove a  
5 Bureau-documented 2000 Ford to Respondent SMG’s facility and requested a smog inspection  
6 from Respondent Duke Tran. The vehicle was in not in a condition to pass a smog inspection  
7 because the Positive Crankcase Ventilation valve and components had been removed from the  
8 2000Ford, a non-approved aftermarket open breather element had been installed in place of the  
9 Positive Crankcase Ventilation valve, and caps had been installed on the engine in place of the  
10 missing Positive Crankcase Ventilation components. When the operator arrived and requested  
11 the smog inspection, he observed Respondent Duke Tran connect an OBDII scanner to the  
12 vehicle’s diagnostic port. After Respondent Duke Tran reviewed the information displayed on  
13 the scanner, he provided the operator with an estimate to perform a smog inspection for \$68.24.  
14 The operator authorized the inspection and paid Respondent Duke Tran \$68.24 in cash.  
15 Respondent Duke Tran instructed the operator to pull the vehicle up near the bay of the facility,  
16 where Respondent Phuc Tran directed the operator to park outside the bay and exit the vehicle.  
17 The operator then observed Respondent Phuc Tran connect the DAD to the vehicle to begin the  
18 smog inspection. Respondent Phuc Tran never looked under the vehicle to inspect the catalytic  
19 converter. No one else from Respondent SMG participated in the smog inspection. Respondent  
20 Phuc Tran disconnected the DAD, told the operator that the vehicle passed, and instructed the  
21 operator to park on the street while waiting for the paperwork. Respondent Phuc Tran brought  
22 the operator Invoice #33781 and the Smog Check Vehicle Inspection Report (VIR), which listed  
23 the inspector as Respondent Duke Tran even though the operator had observed Respondent Phuc  
24 Tran perform the inspection.

25 **TWENTY-SECOND CAUSE FOR DISCIPLINE – RESPONDENT SMG**

26 (False or Misleading Statements)

27 73. Respondent SMG’s licenses are subject to disciplinary action under Bus. & Prof.  
28 Code section 9884.7, subdivision (a)(1), in that on or about October 7, 2020, Respondent SMG

1 made untrue or misleading statements by:

2 a. issuing a fraudulent certificate of compliance for the 2000 Ford, which had a  
3 non-approved aftermarket open breather element and a missing Positive Crankcase Ventilation  
4 valve, as more particularly set forth above in paragraph 72; and

5 b. representing on the VIR for the 2000 Ford smog inspection that Respondent  
6 Duke Tran performed the smog inspection when in fact Respondent Phuc Tran had performed  
7 the smog inspection, as set forth more particularly above in paragraph 72.

8 **TWENTY-THIRD CAUSE FOR DISCIPLINE – RESPONDENT SMG**

9 (Failure to comply with Regulations Adopted by the Bureau)

10 74. Respondent SMG’s licenses are subject to disciplinary action under Bus. & Prof.  
11 Code section 9844.7, subdivision (a)(6), in that it failed to comply with provisions of the CCR,  
12 as follows:

13 a. CCR section 3340.24, subdivision (c) (issuance of fraudulent certificate of  
14 compliance), in that on or about October 7, 2020, Respondent SMG issued a false or fraudulent  
15 certificate of compliance for the 2000 Ford, which had a non-approved aftermarket open breather  
16 element and a missing Positive Crankcase Ventilation valve, as set forth more particularly above  
17 in paragraph 72;

18 b. CCR section 3340.35, subdivision (c) (certificate of compliance issued after  
19 failure to comply with CCR section 3340.42), in that on or about October 7, 2020, Respondent  
20 SMG issued a false or fraudulent certificate of compliance for the 2000 Ford, which had a non-  
21 approved aftermarket open breather element and a missing Positive Crankcase Ventilation valve,  
22 as set forth more particularly above in paragraph 72;

23 c. CCR section 3340.42, subdivision (b)(1) (failure to comply with Smog Check  
24 test methods and standards), in that on or about October 7, 2020, Respondent SMG issued a false  
25 or fraudulent certificate of compliance for the 2000 Ford, without performing a visual inspection  
26 of emission control components to verify the vehicle’s emission control systems were properly  
27 installed, and the 2000 Ford had a non-approved aftermarket open breather element and a

28 ///

1 missing Positive Crankcase Ventilation valve, as set forth more particularly above in paragraph  
2 72;

3 d. CCR section 3340.45, subdivision (a)(2) (failure to comply with Smog Check  
4 Manual), in that on or about October 7, 2020, Respondent SMG allowed its smog inspector,  
5 Respondent Phuc Tran, to perform a smog inspection on the 2000 Ford while using another smog  
6 inspector's license, as set forth more particularly above in paragraph 72;

7 e. CCR section 3341, subdivision (b) (unauthorized access into an emissions  
8 inspection system), in that on or about October 7, 2020, Respondent SMG allowed Respondent  
9 Phuc Tran to access the OIS using Respondent Duke Tran's log-in information to perform a  
10 smog inspection on the 2000 Ford, as set forth more particularly above in paragraph 72;

11 f. CCR section 3340.15, subdivision (a) (smog test performed in unapproved  
12 area), in that on or about October 7, 2020, Respondent SMG allowed Respondent Phuc Tran to  
13 perform a smog inspection on the 2000 Ford outside of the building, instead of in areas of the  
14 station that had been approved by the Bureau, as set forth more particularly above in paragraph  
15 72; and

16 g. CCR section 3373 (false or misleading records), in that on or about October 7,  
17 2020, Respondent SMG allowed Respondent Phuc Tran to generate a fraudulent certificate of  
18 compliance showing Respondent Duke Tran as the inspector for the 2000 Ford when in fact  
19 Respondent Phuc Tran performed the smog inspection on the 2000 Ford, as set forth more  
20 particularly above in paragraph 72.

21 **TWENTY-FOURTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

22 (Failure to Comply With Smog Test Procedures)

23 75. Respondent SMG's licenses are subject to disciplinary action under Health and  
24 Safety Code sections 44012, subdivision (f), and 44072.2, subdivision (h), in that Respondent  
25 SMG failed to comply with required smog test procedures when on or about October 7, 2020,  
26 Respondent SMG issued a certificate of compliance for the 2000 Ford without performing a  
27 visual or functional inspection of emission control components, including the catalytic converter,  
28 as set forth more particularly above in paragraph 72.



1 fraudulent certificate of compliance for the 2000 Ford, which had a non-approved aftermarket  
2 open breather element and a missing Positive Crankcase Ventilation valve, as set forth more  
3 particularly above in paragraph 72;

4 b. CCR section 3340.30, subdivision (a) (failure to test vehicle in accordance  
5 with Health & Saf. Code section 44012), in that on or about October 7, 2020, Respondent Phuc  
6 Tran issued a false or fraudulent certificate of compliance for the 2000 Ford, which had a non-  
7 approved aftermarket open breather element and a missing Positive Crankcase Ventilation valve,  
8 as set forth more particularly above in paragraph 72;

9 c. CCR section 3340.41, subdivision (b) (unauthorized access into an emissions  
10 inspection system), in that on or about October 7, 2020, Respondent Phuc Tran used Respondent  
11 Duke Tran's license and confidential access code to perform a smog inspection on the 2000  
12 Ford, as set forth more particularly above in paragraph 72;

13 d. CCR section 3340.41, subdivision (c) (entry of false information into OBD  
14 Inspection System), in that on or about October 7, 2020, Respondent Phuc Tran falsely entered  
15 into the OBD inspection system that he had completed a visual inspection of the 2000 Ford,  
16 when in fact he had not performed a visual inspection of the vehicle, as set forth more  
17 particularly above in paragraph 72;

18 e. CCR section 3340.42, subdivision (b)(1) (failure to comply with Smog Check  
19 test methods and standards), in that on or about October 7, 2020, Respondent Phuc Tran issued a  
20 false or fraudulent certificate of compliance for the 2000 Ford, without performing a visual  
21 inspection of emission control components to verify the vehicle's emission control systems were  
22 properly installed, and the 2000 Ford had a non-approved aftermarket open breather element and  
23 a missing Positive Crankcase Ventilation valve, as set forth more particularly above in paragraph  
24 72; and

25 f. CCR section 3340.45, subdivision (a)(2) (violation of Smog Check Manual), in  
26 that on or about October 7, 2020, Respondent Phuc Tran generated a fraudulent certificate of  
27 compliance showing Respondent Duke Tran as the inspector for the 2000 Ford when in fact  
28 Respondent Phuc Tran performed the smog inspection on the 2000 Ford, as set forth more

1 particularly above in paragraph 72.

2 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE – RESPONDENT PHUC TRAN**

3 (Failure to Comply With Smog Test Procedures)

4 79. Respondent Phuc Tran’s smog inspector and repair technician licenses are subject to  
5 disciplinary action under Health and Safety Code sections 44012, subdivision (f), and 44032, in  
6 that Respondent Phuc Tran failed to comply with required smog test procedures when on or  
7 about October 7, 2020, he issued a certificate of compliance for the 2000 Ford without  
8 performing a visual or functional inspection of emission control components, including the  
9 catalytic converter, as set forth more particularly above in paragraph 72.

10 **TWENTY-NINTH CAUSE FOR DISCIPLINE – RESPONDENT PHUC TRAN**

11 (Fraud, Dishonesty or Deceit)

12 80. Respondent Phuc Tran’s smog inspector and repair technician licenses are subject to  
13 disciplinary action under Health & Safety Code section 44072.2, subdivision (d), in that he  
14 committed an act involving dishonesty, fraud, or deceit on or about October 7, 2020, when he  
15 used Respondent Duke Tran’s Smog Inspector license and confidential access code to perform a  
16 smog inspection on the 2000 Ford, as set forth more particularly above in paragraph 72.

17 **THIRTIETH CAUSE FOR DISCIPLINE – RESPONDENT DUKE TRAN**

18 (Fraud – Lending License to Another Person)

19 81. Respondent Duke Tran’s smog inspector license is subject to disciplinary action  
20 under Bus. & Prof. Code section 9884.7, subdivision (a)(4), and Health & Safety Code section  
21 44072.2, subdivisions, (d) and (f), in that he committed conduct which constitutes fraud by  
22 lending his license to another person or knowingly permitting the use thereof by another, when  
23 on or about October 7, 2020, he allowed Respondent Phuc Tran to use his Smog Inspector  
24 license and access code to perform a smog inspection on the 2000 Ford, as set forth more  
25 particularly above in paragraph 72.

26 **THIRTY-FIRST CAUSE FOR DISCIPLINE – RESPONDENT DUKE TRAN**

27 (Fraud, Dishonesty or Deceit)

28 82. Respondent Duke Tran’s smog inspector license is subject to disciplinary action

1 under Health & Safety Code section 44072.2, subdivision (d), in that he committed an act  
2 involving dishonesty, fraud, or deceit on or about October 7, 2020, when he allowed Respondent  
3 Phuc Tran to use his Smog Inspector license and confidential access code to perform a smog  
4 inspection on the 2000 Ford, as set forth more particularly above in paragraph 72.

5 **UNDERCOVER OPERATION NO. 3: 2001 NISSAN**

6 83. On or about February 24, 2021, an undercover Bureau operator (“operator”) drove a  
7 Bureau-documented 2001 Nissan to Respondent SMG’s facility and requested a smog inspection  
8 from Respondent Duke Tran. The vehicle was in not in a condition to pass a smog inspection  
9 because the rear catalytic converter was removed and a straight exhaust pipe was installed. The  
10 vehicle also had a defective knock sensor installed and a DTC of P0325 (a Knock Sensor BI  
11 Problem) was set in the vehicle’s ECM memory, however that DTC would not cause the MIL to  
12 illuminate and would not cause the vehicle to fail a smog inspection. When the operator arrived  
13 and requested the smog inspection, he observed Respondent Duke Tran connect an OBDII  
14 scanner to the vehicle’s diagnostic port. After Respondent Duke Tran reviewed the information  
15 displayed on the scanner, he told the operator that the vehicle had a code for a knock sensor and  
16 that the vehicle would not pass smog. Respondent Duke Tran then told the operator that another  
17 shop would charge him \$500, but that he would charge the operator \$200 to issue a certificate of  
18 compliance. The operator paid Respondent Duke Tran \$200 cash. While the vehicle was  
19 outside of the building, the operator then observed Respondent Phuc Tran connect the DAD to  
20 the vehicle to begin the smog inspection. Respondent Phuc Tran never looked under the vehicle  
21 to inspect the catalytic converter. No one else from Respondent SMG participated in the smog  
22 inspection. Respondent Phuc Tran disconnected the DAD, told the operator that the vehicle  
23 passed, and instructed the operator to park on the street while waiting for the paperwork.  
24 Respondent Phuc Tran brought the operator Invoice #33726 and the Smog Check Vehicle  
25 Inspection Report (VIR).

26 **THIRTY-SECOND CAUSE FOR DISCIPLINE – RESPONDENT SMG**

27 (False or Misleading Statements)

28 84. Respondent SMG’s licenses are subject to disciplinary action under Bus. & Prof.

1 Code section 9884.7, subdivision (a)(1), in that Respondent SMG made false or misleading  
2 statements when on or about February 24, 2021, Respondent's smog inspector, Respondent Duke  
3 Tran, told the Bureau's undercover operator that the 2001 Nissan would fail a smog inspection,  
4 and then offered and accepted \$200 to issue a certificate of compliance, as set forth more  
5 particularly above in paragraph 83.

6 **THIRTY-THIRD CAUSE FOR DISCIPLINE – RESPONDENT SMG**

7 (Fraud)

8 85. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
9 Code section 9884.7, subdivision (a)(4), in that Respondent SMG made false or misleading  
10 statements when on or about February 24, 2021, Respondent's smog inspector, Respondent Duke  
11 Tran, told the Bureau's undercover operator that the 2001 Nissan would fail a smog inspection,  
12 and then offered and accepted \$200 to issue a certificate of compliance, as set forth more  
13 particularly above in paragraph 83.

14 **THIRTY-FOURTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

15 (Failure to Comply with Regulations Adopted by the Bureau)

16 86. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
17 Code section 9884.7, subdivision (a)(6), when it violated provisions of the CCR, as follows:

18 a. CCR section 3340.15, subdivision (a) (smog test performed in unapproved  
19 area), in that on or about February 24, 2021, Respondent SMG allowed Respondent Phuc Tran to  
20 perform a smog inspection on the 2001 Nissan outside of the building, instead of in areas of the  
21 station that had been approved by the Bureau, as set forth more particularly above in paragraph  
22 83;

23 b. CCR section 3340.24 subdivision (c) (issuance of fraudulent certificate of  
24 compliance), in that on or about February 24, 2021, Respondent Phuc Tran issued a false or  
25 fraudulent certificate of compliance for the 2001 Nissan, which had a missing rear catalytic  
26 converter, as set forth more particularly above in paragraph 83;

27 c. CCR section 3340.41, subdivision (c) (entry of false information into OBD  
28 Inspection System), in that on or about February 24, 2021, Respondent SMG's smog inspector,

1 Respondent Phuc Tran, falsely entered into the OBD inspection system that he had completed a  
2 visual inspection of the 2001 Nissan, when in fact he had not performed a visual inspection of  
3 the vehicle and issued a certificate of compliance when the vehicle was missing a rear catalytic  
4 converter, as set forth more particularly above in paragraph 83;

5 d. CCR section 3340.42, subdivision (b)(1) (failure to comply with Smog Check  
6 test methods and standards), in that on or about February 24, 2021, Respondent SMG issued a  
7 false or fraudulent certificate of compliance for the 2001 Nissan, without performing a visual  
8 inspection of emission control components to verify the vehicle's emission control systems were  
9 properly installed, and the 2001 Nissan was missing a rear catalytic converter, as set forth more  
10 particularly above in paragraph 83;

11 e. CCR section 3340.45, subdivision (a)(2) (failure to comply with Smog Check  
12 Manual), in that on or about February 24, 2021, Respondent SMG allowed its smog inspector,  
13 Respondent Phuc Tran, to issue a certificate of compliance for the 2001 Nissan, which was  
14 missing a rear catalytic converter, as set forth more particularly above in paragraph 83;

15 f. CCR section 3371 (untrue or misleading statements), in that on or about  
16 February 24, 2021, Respondent SMG's smog inspector, Respondent Duke Tran, falsely told the  
17 Bureau's undercover operator that the 2001 Nissan would fail a smog inspection, and then  
18 offered and accepted \$200 to issue a certificate of compliance, as set forth more particularly  
19 above in paragraph 83; and

20 g. CCR section 3373 (false or misleading records), in that on or about February  
21 24, 2021, Respondent SMG allowed Respondent Phuc Tran to issue a fraudulent certificate of  
22 compliance for the 2001 Nissan, which was missing a rear catalytic converter, as set forth more  
23 particularly above in paragraph 83.

24 **THIRTY-FIFTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

25 (False Promises to Induce a Sale)

26 87. Respondent SMG's licenses are subject to disciplinary action under Bus. & Prof.  
27 Code section 9884.7, subdivision (a)(8), by making false promises to induce a sale when on or  
28 about February 24, 2021, Respondent SMG's representative falsely told the Bureau's undercover

1 operator that the 2001 Nissan would fail a smog inspection, and then offered and accepted \$200  
2 to issue a certificate of compliance, as set forth more particularly above in paragraph 83.

3 **THIRTY-SIXTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

4 (Failure to Comply With Smog Test Procedures)

5 88. Respondent SMG’s licenses are subject to disciplinary action under Health and  
6 Safety Code sections 44012, subdivision (f), and 44072.2, subdivision (h), in that Respondent  
7 SMG failed to comply with required smog test procedures when on or about February 24, 2021,  
8 Respondent SMG issued a fraudulent certificate of compliance for the 2001 Nissan which was  
9 missing a rear catalytic converter, as set forth more particularly above in paragraph 83.

10 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

11 (Certification of Prohibited Vehicle)

12 89. Respondent SMG’s licenses are subject to disciplinary action under Health and  
13 Safety Code sections 44015, subdivision (a)(1), and 44072.2, subdivision (h), in that Respondent  
14 SMG issued a certificate of compliance to a vehicle that has been tampered with when on or  
15 about February 24, 2021, Respondent SMG issued a certificate of compliance for the 2001  
16 Nissan, which had a missing rear catalytic converter, as set forth more particularly above in  
17 paragraph 83.

18 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE – RESPONDENT SMG**

19 (Fraud, Dishonesty or Deceit)

20 90. Respondent SMG’s licenses are subject to disciplinary action under Health and  
21 Safety Code section 44072.2, subdivision (d), for committing an act involving dishonesty, fraud  
22 or deceit in that on or about February 24, 2021,

23 a. Respondent SMG issued a fraudulent certificate of compliance to the 2001  
24 Nissan, which had a missing rear catalytic converter, as set forth more particularly above in  
25 paragraph 83; and

26 b. Respondent SMG’s representative, Respondent Duke Tran, told the Bureau’s  
27 undercover operator that the 2001 Nissan would fail a smog test, and then offered and accepted  
28 \$200 to issue a certificate of compliance, as set forth more particularly above in paragraph 83.



1 missing a rear catalytic converter, as set forth more particularly above in paragraph 83.

2 **FORTIETH CAUSE FOR DISCIPLINE – RESPONDENT PHUC TRAN**

3 (Failure to Comply With Smog Test Procedures)

4 92. Respondent Phuc Tran’s smog inspector and repair technician licenses are subject to  
5 disciplinary action under Health and Safety Code sections 44012, subdivision (f), 44032, and  
6 44072.2, subdivision (h), in that Respondent Phuc Tran failed to comply with required smog test  
7 procedures when on or about February 24, 2021, he issued a certificate of compliance for the  
8 2001 Nissan without performing a visual or functional inspection of emission control  
9 components, including the catalytic converter, as set forth more particularly above in paragraph  
10 83.

11 **FORTY-FIRST CAUSE FOR DISCIPLINE – RESPONDENT PHUC TRAN**

12 (Fraud, Dishonesty or Deceit)

13 93. Respondent Phuc Tran’s smog inspector and repair technician licenses are subject to  
14 disciplinary action under Health & Safety Code section 44072.2, subdivision (d), in that he  
15 committed an act involving dishonesty, fraud, or deceit on or about February 24, 2021, when he  
16 issued a fraudulent certificate of compliance for the 2001 Nissan, which was missing the rear  
17 catalytic converter, as set forth more particularly above in paragraph 83.

18 **FORTY-SECOND CAUSE FOR DISCIPLINE – RESPONDENT DUKE TRAN**

19 (False or Misleading Statements)

20 94. Respondent Duke Tran’s smog inspector license is subject to disciplinary action  
21 under Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent Duke Tran made  
22 false or misleading statements when on or about February 24, 2021, he told the Bureau’s  
23 undercover operator that the 2001 Nissan would fail a smog inspection, and then offered and  
24 accepted \$200 to issue a certificate of compliance, as set forth more particularly above in  
25 paragraph 83.

26 **FORTY-THIRD CAUSE FOR DISCIPLINE – RESPONDENT DUKE TRAN**

27 (Failure to Comply with Regulations Adopted by the Bureau)

28 95. Respondent Duke Tran’s smog inspector license is subject to disciplinary action

1 under Bus. & Prof. Code section 9884.7, subdivision (a)(6), when he violated provisions of the  
2 CCR, as follows:

3 a. CCR section 3340.24 subdivision (c) (issuance of fraudulent certificate of  
4 compliance), in that on or about February 24, 2021, Respondent Duke Tran told the undercover  
5 operator that the 2001 Nissan would fail a smog inspection, and then offered and accepted \$200  
6 to issue a certificate of compliance, which had a missing rear catalytic converter, as set forth  
7 more particularly above in paragraph 83; and

8 b. CCR section 3340.30, subdivision (a) (failure to test vehicle in accordance  
9 with Health & Saf. Code section 44012), in that on or about February 24, 2021, Respondent  
10 Duke Tran told the undercover operator that the 2001 Nissan would fail a smog inspection, and  
11 then offered and accepted \$200 to issue a certificate of compliance, which had a missing rear  
12 catalytic converter, as set forth more particularly above in paragraph 83.

13 **FORTY-FOURTH CAUSE FOR DISCIPLINE – RESPONDENT DUKE TRAN**

14 (Fraud, Dishonesty or Deceit)

15 96. Respondent Duke Tran’s smog inspector license is subject to disciplinary action  
16 under Health & Safety Code section 44072.2, subdivision (d), in that he committed an act  
17 involving dishonesty, fraud, or deceit on or about February 24, 2021, when he told the  
18 undercover operator that the 2001 Nissan would fail a smog inspection, and then offered and  
19 accepted \$200 to issue a certificate of compliance, which had a missing rear catalytic converter,  
20 as set forth more particularly above in paragraph 83.

21 **OTHER MATTERS**

22 97. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director  
23 may suspend, revoke or place on probation the registration for all places of business  
24 operated in this state by Respondent Phuc Hong Chau Tran upon a finding that he has, or  
25 is, engaged in a course of repeated and willful violations of the laws and regulations  
26 pertaining to an automotive repair dealer.

27 98. Pursuant to Bus. & Prof. Code section 9889.9 the Director may revoke or  
28 suspend any additional licenses issued under Articles 5 and 6 of Chapter 20.3 of the

1 Business and Professions Code to Respondent Phuc Hong Chau Tran when any license  
2 issued to Respondent Phuc Hong Chau Tran has been revoked or suspended following a  
3 hearing under the provisions of Article 7 of Chapter 20.3 of the Business and Professions  
4 Code.

5 99. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station  
6 License Number RC 278080, issued to Respondent Phuc Hong Chau Tran, doing  
7 business as SMG Auto Smog & Repair, is revoked or suspended, any additional license  
8 issued under Chapter 5 of Part 5 of Division 26 of the Health & Safety Code in the name  
9 of said licensee may be likewise revoked or suspended by the Director.

10 100. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector  
11 License Number EO 634494, issued to Respondent Phuc Hong Chau Tran is revoked or  
12 suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the  
13 Health & Safety Code in the name of said licensee may be likewise revoked or suspended  
14 by the Director.

15 101. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector  
16 License Number EO 638910, issued to Respondent Duke Tran is revoked or suspended,  
17 any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health &  
18 Safety Code in the name of said licensee may be likewise revoked or suspended by the  
19 Director.

20 **PRAYER**

21 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein  
22 alleged, and that following the hearing, the Director issue a decision:

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
24 278080, issued to Phuc Hong Chau Tran doing business as SMG Auto Smog & Repair;

25 2. Revoking or suspending any other automotive repair dealer registration issued to  
26 Phuc Hong Chau Tran;

27 3. Revoking or suspending Smog Check Station License Number RC 278080, issued to  
28 Phuc Hong Chau Tran doing business as SMG Auto Smog & Repair;

1           4.     Revoking or suspending Brake Station License Number BS 278080, C, issued to  
2 Phuc Hong Chau Tran doing business as SMG Auto Smog & Repair;

3           5.     Revoking or suspending Lamp Station License Number LS 278080, A, issued to  
4 Phuc Hong Chau Tran doing business as SMG Auto Smog & Repair;

5           6.     Revoking or suspending Smog Check Inspector License Number EO 634494, issued  
6 to Phuc Hong Chau Tran;

7           7.     Revoking or suspending Smog Repair Technician License Number EI 634494,  
8 issued to Phuc Hong Chau Tran;

9           8.     Revoking or suspending Brake Adjuster License Number BA 634494, C, issued to  
10 Phuc Hong Chau Tran;

11          9.     Revoking or suspending Lamp Adjuster License Number LA 634494, A, issued to  
12 Phuc Hong Chau Tran;

13          10.    Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
14 Division 26 of the Health and Safety Code in the name of Phuc Hong Chau Tran;

15          11.    Revoking or suspending Smog Check Inspector License Number EO 638910, issued  
16 to Duke Tran;

17          12.    Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
18 Division 26 of the Health and Safety Code in the name of Duke Tran;

19          13.    Ordering Phuc Hong Chau Tran and Duke Tran to pay the Bureau of Automotive  
20 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to  
21 Business and Professions Code section 125.3; and,

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

23     DATED: \_\_\_\_\_

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

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