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

12 In the Matter of the Accusation Against:

Case No. 79/16-38

13 **HUNG VAN PHAM**
14 **dba LEE'S AUTO REPAIR**
15 **2303 Spring St.**
16 **Redwood City, CA 94063**

ACCUSATION

Smog Check

17 **Automotive Repair Dealer Registration No. ARD 211860**
18 **Smog Check Station License No. RC 211860**
19 **Brake Adjusting Station License No. BS 211860**
20 **Lamp Adjusting Station License No. LS 211860**

21 **HUNG VAN PHAM**
22 **3572 Corsica Ct.**
23 **San Jose, CA 95148**

24 **Smog Check Repair Technician License No. EI 37019**
25 **Smog Check Inspector License No. EO 37019**
26 **Brake Adjuster License No. BA 37019**
27 **Lamp Adjuster License No. LA 37019**

Respondent.

28 Complainant alleges:

PARTIES

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

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1 **Automotive Repair Dealer Registration**

2 2. On or about September 12, 2000, the Bureau issued Automotive Repair Dealer
3 Registration Number ARD 211860 to Hung Van Pham (Respondent), dba Lee's Auto Repair.
4 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
5 charges brought herein and will expire on July 31, 2016, unless renewed.

6 **Smog Check Station License**

7 3. On or about October 12, 2000, the Bureau issued Smog Check Station License
8 Number RC 211860 to Respondent. The Smog Check Station License was in full force and effect
9 at all times relevant to the charges brought herein and will expire on July 31, 2016, unless
10 renewed.

11 **Lamp Station License**

12 4. On or about October 8, 2003, the Bureau issued Lamp Station License Number LS
13 211860, Class A to Respondent. The Lamp Station License was in full force and effect at all times
14 relevant to the charges brought herein and will expire on July 31, 2016, unless renewed.

15 **Brake Station License**

16 5. On or about October 8, 2003, the Bureau issued Brake Station License Number BS
17 211860, Class C to Respondent. The Brake Station License was in full force and effect at all times
18 relevant to the charges brought herein and will expire on July 31, 2016,, unless renewed.

19 **Smog Check Inspector License and Smog Check Repair Technician License**

20 6. In or about 1999 the Bureau issued Advanced Emission Specialist License Number EA
21 37019 to Respondent. The Advanced Emission Specialist License was cancelled on March 5,
22 2014. Pursuant to California Code of Regulations, title 16, section 3340.28, subsection (e), the
23 license was renewed, pursuant to Respondent's election, as Smog Check Inspector License
24 Number License No. EO 37019 and Smog Check Repair Technician License No. EI 37019.¹ The
25 Smog Check Inspector (EO) and Smog Check Repair Technician (EI) Licenses are due to expire

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

1 on June 30, 2016, unless renewed.

2 **Brake Adjuster License**

3 7. In or about 2003, the Bureau of Automotive Repair issued Brake Adjuster License
4 Number BA 37019, Class C, to Respondent. The Brake Adjuster License was in full force and
5 effect at all times relevant to the charges brought herein and will expire on June 30, 2019, unless
6 renewed.

7 **Lamp Adjuster License**

8 8. In or about 1996, the Bureau of Automotive Repair issued Lamp Adjuster License
9 Number LA 37019, Class A, to Respondent. The Lamp Adjuster License was in full force and
10 effect at all times relevant to the charges brought herein and will expire on June 30, 2019, unless
11 renewed.

12 **JURISDICTION**

13 9. This Accusation is brought before the Director of the Department of Consumer Affairs
14 (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All
15 section references are to the Business and Professions Code unless otherwise indicated.

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

20 11. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
21 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
22 against an automotive repair dealer or to render a decision invalidating a registration temporarily
23 or permanently.

24 12. Code section 9884.7 provides that the Director may revoke an automotive repair
25 dealer registration.

26 13. Code section 9889.1 provides, in pertinent part, that the Director may suspend or
27 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
28 Automotive Repair Act.

1 14. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a
2 license by operation of law or by order of decision of the Director or a court of law, or the
3 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any
4 disciplinary proceedings.

5 15. Code section 9889.9 provides, that when any license has been revoked or suspended
6 following a hearing under the provisions of this article, any additional license issued under Articles
7 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the
8 director.

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

12 17. Health and Safety Code section 44072.8 provides that when a license has been
13 revoked or suspended following a hearing under this article, any additional license issued under
14 this chapter in the name of the licensee may be likewise revoked or suspended by the director.

15 **STATUTORY PROVISIONS**

16 18. Code section 125 states:

17 "Any person, licensed under the provisions of Division 1 (commencing with Section 100),
18 Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is
19 guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or
20 her, who conspires with a person not so licensed to violate any provision of this code, or who,
21 with intent to aid or assist that person in violating those provisions does either of the following:

22 "(a) Allows his or her license to be used by that person.

23 "(b) Acts as his or her agent or partner."

24 19. Code section 9884.7 states:

25 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
26 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
27 dealer for any of the following acts or omissions related to the conduct of the business of the
28

1 automotive repair dealer, which are done by the automotive repair dealer or any automotive
2 technician, employee, partner, officer, or member of the automotive repair dealer.

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

6 "...

7 "(4) Any other conduct which constitutes fraud.

8 "...

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

11 "...

12 20. Code section 9889.3 states, in pertinent part:

13 "The director may suspend, revoke, or take other disciplinary action against a license as
14 provided in this article [Article 7 (commencing with section 9889.1) of the Automotive Repair
15 Act] if the licensee or any partner, officer, or director thereof:

16 "(a) Violates any section of the Business and Professions Code that relates to his or her
17 licensed activities.

18 "...

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

20 "...

21 "(f) Aids or abets an unlicensed person to evade the provisions of this chapter.

22 "...

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

25 "..."

26 21. Code section 9889.22 states:

27 "The willful making of any false statement or entry with regard to a material matter in any
28 oath, affidavit, certificate of compliance or noncompliance, or application form which is required

1 by this chapter [the Automotive Repair Act] or Chapter 5 (commencing with Section 44000) of
2 Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as
3 provided in the Penal Code."

4 22. Health and Safety Code section 44072.2 states:

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

8 "...

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

10 "..."

11 23. Health and Safety Code section 44072.6 states:

12 "The expiration or suspension of a license by operation of law or by order or decision of the
13 director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the
14 director of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings
15 against, the licensee, or to render a decision suspending or revoking the license."

16 COST RECOVERY

17 24. Code section 125.3 provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
22 included in a stipulated settlement.

23 FACTS

24 25. On or about September 16, 2014, a Bureau investigator visited Lee's Auto Repair to
25 perform a routine brake and lamp station inspection. The Bureau investigator was met and
26 assisted by Respondent's employee, Dan Duc Thai.

27 26. Mr. Thai informed the Bureau investigator he was not licensed to perform brake and
28 lamp inspections and that Respondent was the only licensed brake and lamp adjuster working at

1 Respondent.

2 27. During the course of his investigation, the Bureau investigator discovered that:

3 (a) Respondent had pre-signed the following 4 certificates of brake adjustment: (1) BC
4 1916963; (2) BC 1916964; (3) BC 1916965; and (4) BC 1916966;

5 (b) Respondent had pre-signed the following 4 certificates of lamp adjustment: (1) LC
6 1885570; (2) LC 1885571; (3) LC 1885572; and (4) LC 1885573;

7 (c) Mr. Thai performed the following 9 brake inspections and issued the following
8 certificates of adjustment Respondent had signed: (1) BC 1873453; (2) BC 1873493; (3) BC
9 1873495; (4) BC 1873497; (5) BC 1873498; (6) BC 1873499; (7) BC 1873500; (8) BC 1916960;
10 (9) BC 1916962, and

11 (d) Mr. Thai performed the following 11 lamp inspections and issued the following
12 certificates of adjustment Respondent had signed: (1) LC 1843202; (2) LC 1843203; (3) LC
13 1843210; (4) LC 1843250; (5) LC 1885552; (6) LC 1885554; (7) BL 1885555; (8) LC 1885556;
14 (9) LC 1885557; (10) LC 1885567; (11) LC 1885569.

15 28. Mr. Thai admitted to the Bureau investigator that for the last three years, Respondent
16 had pre-signed certificates of adjustment so that Mr. Thai could perform brake and lamp
17 inspections and issue certificates of adjustment during Respondent's absence.

18 29. On or about September 17, 2014, Respondent met with Bureau staff to discuss the
19 Bureau investigator's findings.

20 30. Respondent admitted that for the last three years he had pre-signed brake and lamp
21 certificates of adjustment and authorized Mr. Thai to perform the brake and lamp inspections and
22 issue the certificates of adjustment during Respondent's absence.

23 31. Respondent admitted he pre-signed the four brake and four lamp certificates of
24 adjustment the Bureau investigator found and admitted that Mr. Thai performed the brake and
25 lamp inspections the Bureau investigator identified in the certificates of adjustments.

26 32. By signing the certificates of adjustment, an individual certifies, under penalty of
27 perjury, that he or she has performed the applicable inspection, adjustment, or repair, as specified
28 by, among other sources, the Bureau of Automotive Repair and Business and Professions Code.

1 33. Respondent caused injury.

2 **FIRST CAUSE FOR DISCIPLINE**

3 (Untrue/Misleading Statements)

4 34. Respondent's ARD Registration is subject to disciplinary action under section Code
5 section 9884.7, subdivision (a)(1), in that it Respondent made or authorized written statements it
6 knew to be untrue or misleading when it pre-signed brake and lamp certificates of adjustment, as
7 described in paragraphs 25-33, above.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Fraud)

10 35. Respondent's ARD Registration is subject to disciplinary action under section Code
11 section 9884.7, subdivision (a)(4), in that Respondent committed acts involving dishonesty, fraud,
12 or deceit, when it pre-signed brake and lamp certificates of adjustment, as described in paragraphs
13 25-33, above.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Failure to Comply with Automotive Repair Act)

16 36. Respondent's ARD Registration is subject to disciplinary action under section Code
17 section 9884.7, subdivision (a)(6), in that Respondent violated Code section 9889.22, when it
18 engaged in fraudulent behavior, as described in paragraphs 25-33, above.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 (Violation of Code)

21 37. Respondent's Brake and Lamp Station licenses are subject to disciplinary action under
22 Code section 9889.3, subdivision (a), in that Respondent violated Code sections 125 and 9889.22,
23 when it pre-signed certificates of adjustment without having performed the requisite inspections
24 and allowed an unlicensed employee to perform the requisite brake and lamp inspections, as
25 described in paragraphs 25-33, above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Fraud, Dishonesty, or Deceit)

3 38. Respondent's Brake and Lamp Station licenses are subject to disciplinary action under
4 section Code section 9889.3, subdivision (d), in that it committed acts involving dishonesty, fraud,
5 or deceit whereby another is injured, as described in paragraphs 25-33, above.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 (Violation of Chapter)

8 39. Respondent's Brake and Lamp Station licenses are subject to disciplinary action
9 under section Code section 9889.3, subdivision (h), in that that Respondent violated code section
10 9889.22, when it pre-signed certificates of adjustment without having performed the requisite
11 inspections and allowed an unlicensed employee to perform the requisite brake and lamp
12 inspections using Respondent's brake and lamp adjuster licenses, as described in paragraphs 25-33,
13 above.

14 **SEVENTH CAUSE FOR DISCIPLINE**

15 (Aiding or Abetting Unlicensed Person)

16 40. Respondent's Brake and Lamp Station licenses are subject to disciplinary action under
17 Code section 9889.3, subdivision (f), in that it aided in abetted an unlicensed person when it
18 allowed an unlicensed employee to perform brake and lamp inspections using Respondent's brake
19 and lamp adjuster licenses, as described in paragraphs 25-33, above.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 (Fraud, Dishonesty, or Deceit)

22 41. Respondent's Smog Station license is subject to disciplinary action under section
23 Health and Safety Code section 44072.2, subsection (d), in that it committed acts involving
24 dishonesty, fraud, or deceit whereby another is injured, as described in paragraphs 25-33, above.

25 **NINTH CAUSE FOR DISCIPLINE**

26 (Violation of Code)

27 42. Respondent's Brake and Lamp Adjuster licenses are subject to disciplinary action
28 under Code section 9889.3, subdivision (a), in that he violated Code sections 125 and 9889.22,

1 when he pre-signed certificates of adjustment without having performed the requisite inspections
2 and allowed an unlicensed employee, to perform the requisite brake and lamp inspections, as
3 described in paragraphs 25-33, above.

4 **TENTH CAUSE FOR DISCIPLINE**

5 (Fraud, Dishonesty, or Deceit)

6 43. Respondent's Brake and Lamp Adjuster licenses are subject to disciplinary action
7 under section Code section 9889.3, subdivision (d), in that he committed acts involving dishonesty,
8 fraud, or deceit whereby another is injured, as described in paragraphs 25-33, above.

9 **ELEVENTH CAUSE FOR DISCIPLINE**

10 (Violation of Chapter)

11 44. Respondent's Brake and Lamp Adjuster licenses are subject to disciplinary
12 action under section Code section 9889.3, subdivision (h), in that that he violated Code section
13 9889.22, when he pre-signed certificates of adjustment without having performed the requisite
14 inspections and allowed an unlicensed employee to perform the requisite brake and lamp
15 inspections using his brake and lamp adjuster licenses, as described in paragraphs 25-33, above.

16 **THIRTEENTH CAUSE FOR DISCIPLINE**

17 (Aiding or Abetting Unlicensed Person)

18 45. Respondent's Brake and Lamp Adjuster licenses are subject to disciplinary action
19 under Code section 9889.3, subdivision (f), in that he aided in abetted an unlicensed person when
20 he allowed an unlicensed employee to perform brake and lamp inspections using his brake and
21 lamp adjuster licenses, as described in paragraphs 25-33, above.

22 **FOURTEENTH CAUSE FOR DISCIPLINE**

23 (Fraud, Dishonesty, or Deceit)

24 46. Respondent's Smog Check Repair Technician and Smog Check Inspector licenses are
25 subject to disciplinary action under section Health and Safety Code section 44072.2, subsection
26 (d), in that he committed acts involving dishonesty, fraud, or deceit whereby another is injured, as
27 described in paragraphs 25-33, above.

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1 **OTHER MATTERS**

2 47. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke, or
3 place on probation the registration for all places of business operated in this state by Hung Van
4 Pham (Respondent), dba Lee's Auto Repair upon finding that Respondent has, or is, engaged in a
5 course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

6 48. Pursuant to Code section 9889.9, if Respondent's Lamp Station license or Brake
7 Station license is revoked or suspended, any additional license issued under this chapter in the
8 name of said licensee may be likewise revoked or suspended by the director.

9 49. Pursuant to Business and Professions Code section 9889.9, if Respondent's Lamp
10 Adjuster license or Brake Adjuster license is revoked or suspended, any additional license issued
11 under this chapter in the name of said licensee may be likewise revoked or suspended by the
12 director.

13 50. Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Station
14 license is revoked or suspended, any additional license issued under this chapter in the name of said
15 licensee may be likewise revoked or suspended by the director.

16 51. Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Check
17 Repair Technician license or Smog Check Inspector License is revoked or suspended, any
18 additional license issued under this chapter in the name of said licensee may be likewise revoked or
19 suspended by the director.

20 **DISCIPLINE CONSIDERATIONS**

21 52. To determine the degree of discipline, if any, to be imposed on Respondent,
22 Complainant alleges that:

23 (a) On or about September 25, 2012, in a prior action, the Bureau of Automotive Repair
24 issued Citation Number C2013-0231, and ordered Respondent to pay \$1,000.00. The Citation
25 was issued after Respondent improperly inspected and issued a Certificate of Compliance to a
26 Bureau undercover vehicle with a missing Air Injection System on or about June 28, 2012. That
27 Citation was paid in full on or about October 21, 2012, is now final, and is incorporated by
28 reference as if fully set forth.

1 (b) On or about May 18, 2010, in a prior action, the Bureau of Automotive Repair issued
2 Citation Number M2010-1188, and ordered Respondent to complete an 8-hour training course.
3 The citation was issued after Respondent issued a Certificate of Compliance to a Bureau
4 undercover vehicle with a missing Pulse Secondary Air Injection System Reed Valve Assembly on
5 or about April 26, 2010. That Citation was complied with on July 24, 2010, is now final, and is
6 incorporated by reference as if fully set forth.

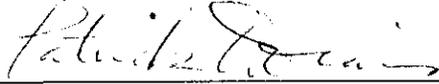
7 **PRAYER**

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

- 10 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
11 211860, issued to Hung Van Pham;
- 12 1. Revoking or suspending Smog Check Station License Number RC 211860, issued to;
13 Hung Van Pham;
- 14 2. Revoking or suspending Lamp Station License Number LS 211860, Class A, issued to
15 Hung Van Pham;
- 16 3. Revoking or suspending Brake Station License Number BS 211860, Class C, issued to
17 Hung Van Pham;
- 18 4. Revoking or suspending Smog Check Inspector License Number EO 37019, issued to
19 Hung Van Pham;
- 20 5. Revoking or suspending Smog Check Repair Technician License Number EI 37019,
21 issued to Hung Van Pham;
- 22 6. Revoking or suspending Brake Adjuster License Number BA 37019, Class C, issued
23 to Hung Van Pham;
- 24 7. Revoking or suspending Lamp Adjuster License Number LA 37019, Class A, issued to
25 Hung Van Pham;
- 26 8. Ordering Respondent to pay the Bureau of Automotive Repair the reasonable costs of
27 the investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3;

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9. Taking such other and further action as deemed necessary and proper.

DATED: October 19, 2015 

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

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