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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. 79/11-101

13 **PETE'S STOP GAS & AUTO SERVICES**  
447 E. William Street  
14 San Jose, CA 95112  
**SON TRUONG LE, OWNER**  
Automotive Repair Dealer Registration  
15 No. ARD 234371  
Smog Check Station License No. RC 234371  
16 Lamp Station License No. LS 234371, Class A  
Brake Station License No. BS 234371, Class C

**ACCUSATION**  
**SMOG CHECK**

17 and

18 **SON TRUONG LE**  
1370 Kilchoan Court  
19 San Jose, CA 95122  
Advanced Emission Specialist Technician License  
20 No. EA 041885  
Lamp Adjuster License No. LA 041885, Class A  
21 Brake Adjuster License No. BA 041885, Class C

22 Respondents.

23  
24 Complainant alleges:

25 **PARTIES**

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

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**Automotive Repair Dealer Registration**

2. On or about August 12, 2004, the Bureau issued Automotive Repair Dealer Registration Number ARD 234371 (“registration”) to Son Truong Le (“Respondent”) doing business as Pete's Stop Gas & Auto Services. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

**Smog Check Station License**

3. On or about August 19, 2004, the Bureau issued Smog Check Station License Number RC 234371 (“station license”) to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

**Lamp Station License**

4. On or about August 23, 2007, the Bureau issued Lamp Station License Number LS 234371, Class A to Respondent. The lamp station license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

**Brake Station License**

5. On or about August 23, 2007, the Bureau issued Brake Station License Number BS 234371, Class C to Respondent. The brake station license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

**Advanced Emission Specialist Technician License**

6. On a date uncertain in 2003, the Bureau issued Advanced Emission Specialist Technician License Number EA 041885 (“technician license”) to Respondent. The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

**Lamp Adjuster License**

7. On a date uncertain in 1992, the Bureau issued Lamp Adjuster License Number LA 041885, Class A, to Respondent. The lamp adjuster license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.



1 (a) Commits any act involving dishonesty, fraud or deceit whereby  
another was injured.

2 12. Code section 9889.7 states:

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

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

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

13 15. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

25 17. Section 44072.8 of the Health and Safety Code states:

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

1 COST RECOVERY

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

6 **FACTUAL BACKGROUND**

7 19. On or about July 1, 2010, the Bureau conducted a detailed review of the Vehicle  
8 Information Database (“VID”) for all smog inspections performed at Respondent’s facility for the  
9 period September 3, 2009, through November 30, 2009. The VID showed a pattern of different  
10 diagnostic trouble codes stored in the memory of the power train control module (“PCM”) on  
11 three (3) different vehicles. The following vehicles, 1 through 3, were all certified with the  
12 various pending codes stored in the PCM memory while the original equipment manufacturer  
13 (“OEM”) service information shows these vehicles do not support the pending codes stored in the  
14 PCM memory. The vehicles receiving smog certificates were not tested during the OBD II  
15 functional test<sup>1</sup> and another vehicle was used, constituting clean plugging<sup>2</sup>. All of the following  
16 inspections were performed by Respondent.

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22 <sup>1</sup> The On Board Diagnostics (OBD II) functional test is an automated function of the  
23 BAR-97 analyzer. During the OBC II functional test, the technician is required to connect an  
24 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is  
25 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves  
information from the vehicle’s on-board computer about the status of the readiness indicators,  
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II  
functional test, it will fail the overall inspection.

26 <sup>2</sup> Clean plugging is the use of the OBD II readiness monitor status and stored fault code  
27 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to  
28 another vehicle that is not in compliance due to a failure to complete the minimum number of self  
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission  
control system or component failure.

TABLE 1

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
1. 9/3/2009 1153 – 1213 hours	1998 Jaguar XJ8, License No. 4BOF569	NM767219
2. 11/30/2009 1143 – 1156 hours	2000 Suzuki Grand Vitara, License No. 4PDV541	NO819856
3. 11/30/2009 1250 – 1308 hours	1998 Chevrolet K1500, Vin No. 2GCEC19R0W1104926	NO819858

**FIRST CAUSE FOR DISCIPLINE**

**(Misleading Statements)**

20. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about September 3, 2009, and November 30, 2009, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading as follows: Respondent certified that vehicles 1 through 3, identified in Table 1, above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using clean plugging methods by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the 3 vehicles, and did not test or inspect those vehicles as required by Health and Safety Code section 44012.

**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

21. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about September 3, 2009, and November 30, 2009, he committed acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 3, identified in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 24. Respondent subjected his station license to discipline under Health and Safety Code  
6 section 44072.2, subdivision (d), in that on or about September 3, 2009, and November 30, 2009,  
7 regarding vehicles 1 through 3, identified in Table 1, above, he committed acts involving  
8 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of  
9 compliance for those vehicles without performing bona fide inspections of the emission control  
10 devices and system on the vehicles, thereby depriving the People of the State of California of the  
11 protection afforded by the Motor Vehicle Inspection Program.

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 25. Respondent has subjected his technician license to discipline under Health and Safety  
15 Code section 44072.2, subdivision (a), in that on or about, September 3, 2009, and November 30,  
16 2009, regarding vehicles 1 through 3, identified in Table 1, above, Respondent failed to comply  
17 with section 44012 of that Code in a material respect, as follows: Respondent failed to perform  
18 the emission control tests on those vehicles in accordance with procedures prescribed by the  
19 department.

20 **SEVENTH CAUSE FOR DISCIPLINE**

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

22 26. Respondent has subjected his technician license to discipline under Health and Safety  
23 Code section 44072.2, subdivision (c), in that on or about September 3, 2009, and November 30,  
24 2009, regarding vehicles 1 through 3, identified in Table 1, above, he violated sections of the  
25 California Code of Regulations, title 16, as follows:

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

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

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

7 **EIGHTH CAUSE FOR DISCIPLINE**

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

9 27. Respondent has subjected his technician license to discipline under Health and Safety  
10 Code section 44072.2, subdivision (d), in that on or about September 3, 2009, and November 30,  
11 2009, regarding vehicles 1 through 3, identified in Table 1, above, he committed acts involving  
12 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of  
13 compliance without performing bona fide inspections of the emission control devices and systems  
14 on those vehicles, thereby depriving the People of the State of California of the protection  
15 afforded by the Motor Vehicle Inspection Program.

16 **FACTUAL BACKGROUND**

17 28. On or about July 2, 2010, the Bureau conducted a second detailed review of the VID  
18 for all smog inspections performed at Respondent's facility for the period January 19, 2010,  
19 through April 2, 2010. The VID showed a pattern of different diagnostic trouble codes stored in  
20 the PCM on two (2) different vehicles. Vehicles, 1 and 2, were both certified with the various  
21 pending codes stored in the PCM memory while the OEM service information shows these  
22 vehicles do not support the pending codes stored in the PCM memory. The vehicles receiving  
23 smog certificates were not tested during the OBD II functional test and another vehicle was used,  
24 constituting clean plugging. Both of the following inspections were performed by Respondent.

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TABLE 2

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
1. 1/19/2010 1410 – 1421 hours	2000 Dodge Durango, License No. 5UDD327	NQ239893
2. 4/2/2010 1527 – 1538 hours	2001 Mercury Cougar, License No. 4NZZ720	NS473205

**NINTH CAUSE FOR DISCIPLINE**

**(Misleading Statements)**

29. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about January 19, 2010, and April 2, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading as follows: Respondent certified that vehicles 1 and 2, identified in Table 2, above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using clean plugging methods by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the two vehicles, and did not test or inspect those vehicles as required by Health and Safety Code section 44012.

**TENTH CAUSE FOR DISCIPLINE**

**(Fraud)**

30. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about January 19, 2010, and April 2, 2010, he committed acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 and 2, identified in Table 2, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**ELEVENTH CAUSE FOR DISCIPLINE**

**(Violation of the Motor Vehicle Inspection Program)**

31. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about January 19, 2010, and April 2, 2010,

1 regarding vehicles 1 and 2, identified in Table 2, above, he violated sections of that Code, as  
2 follows:

3 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
4 performed on those vehicles in accordance with procedures prescribed by the department.

5 b. **Section 44015:** Respondent issued electronic certificates of compliance for those  
6 vehicles without ensuring that the vehicles were properly tested and inspected to determine if they  
7 were in compliance with Health and Safety Code section 44012.

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

11 **TWELFTH CAUSE FOR DISCIPLINE**

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

13 32. Respondent has subjected his station license to discipline under Health and Safety  
14 Code section 44072.2, subdivision (c), in that on or about January 19, 2010, and April 2, 2010,  
15 regarding vehicles 1 and 2, identified in Table 2, above, he violated sections of the California  
16 Code of Regulations, title 16, as follows:

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

21 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
22 compliance even though those vehicles had not been inspected in accordance with section  
23 3340.42 of that Code.

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

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 33. Respondent subjected his station license to discipline under Health and Safety Code  
4 section 44072.2, subdivision (d), in that on or about January 19, 2010, and April 2, 2010,  
5 regarding vehicles 1 and 2, identified in Table 2, above, he committed acts involving dishonesty,  
6 fraud or deceit whereby another was injured by issuing electronic certificates of compliance for  
7 those vehicles without performing bona fide inspections of the emission control devices and  
8 system on the vehicles, thereby depriving the People of the State of California of the protection  
9 afforded by the Motor Vehicle Inspection Program.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

12 34. Respondent has subjected his technician license to discipline under Health and Safety  
13 Code section 44072.2, subdivision (a), in that on or about January 19, 2010, and April 2, 2010,  
14 regarding vehicles 1 and 2, identified in Table 2, above, Respondent failed to comply with section  
15 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission  
16 control tests on those vehicles in accordance with procedures prescribed by the department.

17 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

19 35. Respondent has subjected his technician license to discipline under Health and Safety  
20 Code section 44072.2, subdivision (c), in that on or about January 19, 2010, and April 2, 2010,  
21 regarding vehicles 1 and 2, identified in Table 2, above, he violated sections of the California  
22 Code of Regulations, title 16, as follows:

23 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
24 electronic certificates of compliance without performing bona fide inspections of the emission  
25 control devices and systems on those vehicles as required by Health and Safety Code section  
26 44012.

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

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

3 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

5 36. Respondent has subjected his technician license to discipline under Health and Safety  
6 Code section 44072.2, subdivision (d), in that on or about January 19, 2010, and April 2, 2010,  
7 regarding vehicles 1 and 2, identified in Table 2, above, he committed acts involving dishonesty,  
8 fraud or deceit whereby another was injured by issuing electronic certificates of compliance  
9 without performing bona fide inspections of the emission control devices and systems on those  
10 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
11 Motor Vehicle Inspection Program.

12 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

14 37. Respondent has subjected his lamp and brake station licenses and his brake and lamp  
15 adjuster licenses to discipline under Code section 9889.3, in that Respondent committed acts  
16 involving dishonesty, fraud or deceit whereby another was injured, as more particularly set forth  
17 in paragraphs 20 through 27, and 29 through 36, above.

18 **OTHER MATTERS**

19 38. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,  
20 or may invalidate temporarily or permanently, the registrations for all places of business operated  
21 in this state by Son Truong Le doing business as Pete's Stop Gas & Auto Services, upon a finding  
22 that he has, or is, engaged in a course of repeated and willful violations of the laws and  
23 regulations pertaining to an automotive repair dealer.

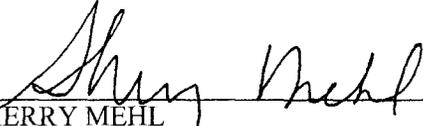
24 39. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License  
25 Number RC 234371, issued to Son Truong Le doing business as Pete's Stop Gas & Auto  
26 Services, is revoked or suspended, any additional license issued under this chapter in the name of  
27 said licensee may be likewise revoked or suspended by the director including, but not limited to  
28 Advanced Emission Specialist Technician License Number EA 041885, issued to Son Truong Le.



- 1           7.    Revoking or suspending Lamp Adjuster License Number LA 041885, Class A, issued
- 2 to Son Truong Le;
- 3           8.    Revoking or suspending any additional licensed issued under Articles 5 and 6 of that
- 4 chapter, in the name of Son Truong Le including, but not limited to Brake Adjuster License
- 5 Number BA 041885, Class C;
- 6           9.    Ordering Son Truong Le to pay the Bureau of Automotive Repair the reasonable
- 7 costs of the investigation and enforcement of this case, pursuant to Business and Professions
- 8 Code section 125.3; and,
- 9           10.   Taking such other and further action as deemed necessary and proper.

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DATED: 6/29/11

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

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