

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

LOS GATOS AUTOCARE
300 Los Gatos Saratoga Road
Los Gatos, CA 95030

Automotive Repair Dealer Registration
No. ARD 200585
Smog Check Station License No.
RC 200585

PHUONG XUAN NGUYEN, Owner
a.k.a. Phuong X Nguyen
2783 Smithers Drive
San Jose, CA 95148

Smog Check Inspector (EO) License No.
132594
Smog Check Technician (EI) License No.
132594,

Respondent.

Case No. 79/16-33

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective April 28, 2016.

DATED: March 28, 2016



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
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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. 79/16-33

13 **LOS GATOS AUTOCARE**
14 **300 Los Gatos Saratoga Road**
Los Gatos, California 95030

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Automotive Repair Dealer Registration No.**
ARD 200585
16 **Smog Check Station License No. RC 200585**

17 **PHUONG XUAN NGUYEN, Owner**
a.k.a. Phuong X Nguyen
18 **2783 Smithers Drive**
San Jose, California 95148

19 **Smog Check Inspector (EO) License No.**
132594
20 **Smog Check Technician (EI) License No.**
132594,

21 Respondent.
22

23
24 IT IS STIPULATED AND AGREED by and between the parties to the above-entitled
25 proceedings that the following matters are true:

26 **I. PARTIES**

27 1. Complainant Patrick Dorais is the Chief of the Bureau of Automotive Repair
28 (Bureau), Department of Consumer Affairs. He brought this action solely in his official capacity

1 and is represented in this matter by Kamala D. Harris, Attorney General of the State of California,
2 and by Gregory Tuss, Deputy Attorney General.

3 2. Respondents Los Gatos Auto Care, Phuong Xuan Nguyen, a.k.a. Phuong X
4 Nguyen, are represented in this proceeding by attorney Jonathan Sweet, whose mailing address is
5 75 East Santa Clara Street, Suite 1180, San Jose, California 95113.

6 3. On July 8, 1998, the Bureau issued Automotive Repair Dealer Registration No.
7 ARD 200585 to respondent Los Gatos Autocare; Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen,
8 Owner. This automotive repair dealer registration was in full force and effect at all times relevant
9 to the charges brought in this accusation and will expire on July 31, 2016, unless renewed.

10 4. On December 6, 1999, the Bureau issued Smog Check Station License No.
11 RC 200585 to respondent Los Gatos Autocare; Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen,
12 Owner. This smog check station license was in full force and effect at all times relevant to the
13 charges brought in this accusation and will expire on July 31, 2016, unless renewed.

14 5. In 2003, the Bureau issued Advanced Emission Specialist (EA) Technician
15 License No. 132594 to respondent Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen. This
16 advanced emission specialist technician license was cancelled on April 25, 2013, and renewed as
17 Smog Check Inspector (EO) License No. 132594 and Smog Check Repair Technician (EI)
18 License No. 132594.¹ This smog check inspector (EO) license and smog check repair (EI) license
19 were in full force and effect at all times relevant to the charges brought in this accusation and will
20 expire on July 31, 2017, unless renewed.

21 II. JURISDICTION

22 6. Accusation No. 79/16-33 was filed before the Director of Consumer Affairs
23 (Director) for the Bureau and is currently pending against respondents. The accusation and all
24 other statutorily required documents were properly served on respondents on October 22, 2015.

25 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections
26 3340.28, 3340.29, and 3340.30 were amended to restructure advanced emission specialist (EA)
27 licenses as smog check inspector (EO) and smog check repair technician (EI) licenses. A
28 advanced emission specialist (EA) license issued prior to August 1, 2012, could be renewed as a
smog check inspector (EO) license, smog check technician (EI) license, or both. (Cal. Code
Regs., tit. 16, § 3340.28, subd. (e).)

1 Respondents timely filed their notice of defense contesting the accusation.

2 7. A copy of Accusation No. 79/16-33 is attached as exhibit 1 and incorporated by
3 reference.

4 III. ADVISEMENT AND WAIVERS

5 8. Respondents have carefully read, fully discussed with counsel, and understand the
6 charges and allegations in Accusation No. 79/16-33. Respondents have also carefully read, fully
7 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
8 Order.

9 9. Respondents are fully aware of their legal rights in this matter, including the right
10 to a hearing on the charges and allegations in the accusation; the right to be represented by
11 counsel at their own expense; the right to confront and cross-examine the witnesses against them;
12 the right to present evidence and to testify on their own behalf; the right to the issuance of
13 subpoenas to compel the attendance of witnesses and the production of documents; the right to
14 reconsideration and court review of an adverse decision; and all other rights accorded by the
15 California Administrative Procedure Act and other applicable laws.

16 10. Respondents voluntarily, knowingly, and intelligently waive and give up each and
17 every right set forth above.

18 IV. CULPABILITY

19 11. Respondents admits the truth of each and every charge and allegation in
20 Accusation No. 79/16-33.

21 12. Respondents agree that their Automotive Repair Dealer Registration No.
22 ARD 200585, Smog Check Station License No. RC 200585, Smog Check Inspector (EO) License
23 No. 132594, and Smog Check Repair Technician (EI) License Number 132594 are subject to
24 discipline and agree to be bound by the Director's probationary terms as set forth in the
25 Disciplinary Order below.

26 V. CONTINGENCY

27 13. This stipulation shall be subject to approval by the Director or the Director's
28 designee. Respondents understand and agree that counsel for complainant and the staff of the

1 Bureau may communicate directly with the Director and staff of the Department of Consumer
2 Affairs regarding this stipulation and settlement, without notice to or participation by respondents
3 or their counsel. By signing the stipulation, respondents understand and agree that they may not
4 withdraw their agreement or seek to rescind the stipulation prior to the time the Director considers
5 and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the
6 Stipulated Settlement and Disciplinary Order shall be of no force or effect except for this
7 paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall
8 not be disqualified from further action by having considered this matter.

9 14. The parties understand and agree that Portable Document Format (PDF) and
10 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and
11 facsimile signatures, shall have the same force and effect as the originals.

12 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be
13 an integrated writing representing the complete, final, and exclusive embodiment of their
14 agreement. It supersedes any and all prior or contemporaneous agreements, understandings,
15 discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and
16 Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed
17 except by a writing executed by an authorized representative of each of the parties.

18 16. In consideration of the foregoing admissions and stipulations, the parties agree that
19 the Director may, without further notice or formal proceeding, issue and enter the following
20 Disciplinary Order:

21 **DISCIPLINARY ORDER**

22 IT IS ORDERED that Automotive Repair Dealer Registration No. ARD 200585 and
23 Smog Check Station License No. RC 200585, issued to respondent California Auto Repair;
24 Phuong Xuan Nguyen, a.k.a. Phong X Nguyen, Owner; and Smog Check Inspector (EO) License
25 No. 132594 and Smog Check Repair Technician (EI) License No. 132594, issued to respondent
26 Phuong Xuan Nguyen, a.k.a. Phong X Nguyen, are revoked. However, the revocations are stayed
27 and respondents are placed on probation for three (3) years on the following terms and conditions.

28 **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 200585, Smog

1 Check Station License No. RC 200585, Smog Check Inspector (EO) License No. 132594, and
2 Smog Check Repair Technician (EI) License No. 132594 are suspended for 15 consecutive days
3 to begin on the effective date of the Decision and Order.

4 **Obey All Laws.** Comply with all statutes, regulations and rules governing
5 automotive inspections, estimates and repairs.

6 **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
7 and ending dates of the suspension of Automotive Repair Dealer Registration No. ARD 200585
8 and Smog Check Station License No. RC 200585, and indicating the reason for the suspension.
9 The sign shall be conspicuously displayed in a location open to and frequented by customers and
10 shall remain posted during the entire period of actual suspension.

11 **Reporting.** Respondents or respondents' authorized representatives must report in
12 person or in writing as prescribed by the Bureau on a schedule set by the Bureau, but no more
13 frequently than each quarter, on the methods used and success achieved in maintaining
14 compliance with the terms and conditions of probation.

15 **Report Financial Interest.** Within 30 days of the effective date of this action, report
16 any financial interest which any partners, officers, or owners of the respondent facility may have
17 in any other business required to be registered under Section 9884.6 of the Business and
18 Professions Code.

19 **Random Inspections.** Provide Bureau representatives unrestricted access to
20 inspect all vehicles (including parts) undergoing repairs, up to and including the point of
21 completion.

22 **Jurisdiction.** If an accusation is filed against a respondent during the term of probation,
23 the Director shall have continuing jurisdiction over this matter until the final decision on the
24 accusation, and the period of probation shall be extended until such decision.

25 **Violation of Probation.** Should the Director determine that a respondent has failed
26 to comply with the terms and conditions of probation, the Department may, after giving notice
27 and opportunity to be heard, temporarily or permanently invalidate Automotive Repair Dealer
28 Registration No. ARD 200585 registration and/or suspend or revoke Smog Check Station License

1 No. RC 200585, Smog Check Inspector (EO) License No. 132594, or Smog Check Repair
2 Technician (EI) License No. 132594.

3 **Continuing Education Courses.** During the period of probation, respondent Phuong
4 Xuan Nguyen, a.k.a. Phong X Nguyen, shall attend and successfully complete a 68-hour Bureau-
5 certified Licensed Inspector Training course (level I), applicable to the smog check inspector
6 (EO) license and smog check repair technician (EI) licenses held by respondent Phuong Xuan
7 Nguyen, a.k.a. Phong X Nguyen. This course shall be completed and proof of completion
8 submitted to the Bureau within 180 days of the effective date of this decision and order. If proof
9 of completion of the course is not furnished to the Bureau within the 180-day period, the smog
10 check inspector (EO) license and smog check repair technician (EI) license held by respondent
11 Phuong Xuan Nguyen, a.k.a. Phong X Nguyen, shall be immediately suspended until such proof
12 is received.

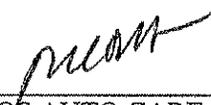
13 **Cost Recovery.** Automotive Repair Dealer Registration No. ARD 200585 and
14 Smog Check Station License No. RC 200585 issued to respondent Los Gatos Auto Repair;
15 Phuong Xuan Nguyen, a.k.a. Phong X Nguyen, Owner; and Smog Check Inspector (EO) License
16 No. 132594 and Smog Check Repair Technician (EI) License No. 132594 issued to respondent
17 Phuong Xuan Nguyen, a.k.a. Phong X Nguyen, are jointly and severally responsible for the full
18 costs of investigation and enforcement of this matter. The total costs are \$3,067.33. Payment to
19 the Bureau of the full amount of cost recovery shall be payable in 24 consecutive equal
20 installments with the final payment received no later than 12 months before probation terminates.
21 Failure to complete payment of cost recovery within this time frame shall constitute a violation of
22 probation which may subject respondent's Automotive Repair Dealer Registration No. ARD
23 200585, Smog Check Station License No. RC 200585, Smog Check Inspector (EO) License No.
24 132594, and Smog Check Repair Technician (EI) License No. 132594 to outright revocation;
25 however, the Director or the Director's Bureau designee may elect to continue probation until
26 such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

27 **ACCEPTANCE**

28 I have carefully read the above Stipulated Settlement and Disciplinary Order and have

1 fully discussed it with my attorney, Jonathan Sweet. I understand the stipulation and the effect it
2 will have on my Automotive Repair Dealer Registration No. ARD 200585, Smog Check Station
3 License No. RC 200585, Smog Check Inspector (EO) License No. 132594, and Smog Check
4 Repair Technician (EI) License No. 132594. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Director of Consumer Affairs.

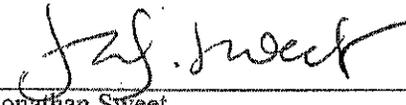
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8 DATED: 11/24/15



LOS GATOS AUTO CARE; PHUONG XUAN
NGUYEN, a.k.a. PHUONG X NGUYEN,
Respondents

11 I have read and fully discussed with respondents Los Gatos Auto Care; Phuong Xuan
12 Nguyen, a.k.a. Phuong X Nguyen, the terms and conditions and other matters contained in the
13 above Stipulated Settlement and Disciplinary Order. I approve its form and content.

14
15 DATED: 11-24-15



Jonathan Sweet
Attorney for Respondent

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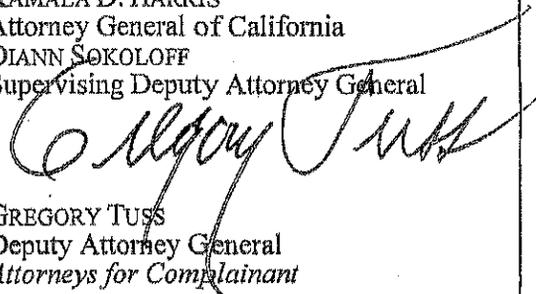
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is respectfully submitted for consideration by the Director of Consumer Affairs

Dated: 11.24.15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General



GREGORY TUSS
Deputy Attorney General
Attorneys for Complainant

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Exhibit 1

Accusation No. 79/16-33

1 KAMALA D. HARRIS
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2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
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15 **Automotive Repair Dealer Registration No.**
ARD 200585
16 **Smog Check Station License No. RC 200585**

17 **PHUONG XUAN NGUYEN, Owner**
a.k.a. Phuong X Nguyen
2783 Smithers Drive
18 Los Gatos, California 95148

19 **Smog Check Inspector (EO) License No.**
132594
20 **Smog Check Technician (EI) License No.**
132594,
21

22 Respondents.

Case No. 79/16-33

ACCUSATION

23
24 Complainant Patrick Dorais alleges:

25 **I. PARTIES**

- 26 1. Complainant brings this accusation solely in his official capacity as the Chief of
27 the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
28 2. On July 8, 1998, the Bureau issued Automotive Repair Dealer Registration No.

1 ARD 200585 to respondent Los Gatos Autocare; Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen,
2 Owner. This automotive repair dealer registration was in full force and effect at all times relevant
3 to the charges brought in this accusation and will expire on July 31, 2016, unless renewed.

4 3. On December 6, 1999, the Bureau issued Smog Check Station License No.
5 RC 200585 to respondent Los Gatos Autocare; Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen,
6 Owner. This smog check station license was in full force and effect at all times relevant to the
7 charges brought in this accusation and will expire on July 31, 2016, unless renewed.

8 4. In 2003, the Bureau issued Advanced Emission Specialist (EA) Technician
9 License No. 132594 to respondent Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen. This
10 advanced emission specialist technician license was cancelled on April 25, 2013, and renewed as
11 Smog Check Inspector (EO) License No. 132594 and Smog Check Repair Technician (EI)
12 License No. 132594.¹ This smog check inspector (EO) license and smog check repair (EI)
13 license were in full force and effect at all times relevant to the charges brought in this accusation
14 and will expire on July 31, 2017, unless renewed.

15 II. JURISDICTION

16 5. This accusation is brought before the Director of Consumer Affairs (Director) for
17 the Bureau under the authority of the following laws.

18 6. Business and Professions Code section 118, subdivision (b), states:

19 "The suspension, expiration, or forfeiture by operation of law of a license issued by a
20 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
21 order of a court of law, or its surrender without the written consent of the board, shall not, during
22 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
23 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
24 provided by law or to enter an order suspending or revoking the license or otherwise taking

25 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections
26 3340.28, 3340.29, and 3340.30 were amended to restructure advanced emission specialist (EA)
27 licenses as smog check inspector (EO) and smog check repair technician (EI) licenses. A
28 advanced emission specialist (EA) license issued prior to August 1, 2012, could be renewed as a
smog check inspector (EO) license, smog check technician (EI) license, or both. (Cal. Code
Regs., tit. 16, § 3340.28, subd. (e).)

1 disciplinary action against the licensee on any such ground.”

2 7. Business and Professions Code section 9882, subdivision (a), states in part:

3 “There is in the Department of Consumer Affairs a Bureau of Automotive Repair under
4 the supervision and control of the director. The duty of enforcing and administering this chapter
5 is vested in the chief who is responsible to the director. The director may adopt and enforce those
6 rules and regulations that he or she determines are reasonably necessary to carry out the purposes
7 of this chapter and declaring the policy of the bureau, including a system for the issuance of
8 citations for violations of this chapter as specified in Section 125.9.”

9 8. Business and Professions Code section 9884.13 states:

10 “The expiration of a valid registration shall not deprive the director or chief of jurisdiction
11 to proceed with any investigation or disciplinary proceeding against an automotive repair dealer
12 or to render a decision invalidating a registration temporarily or permanently.”

13 9. Business and Professions Code section 9884.22, subdivision (a), states:

14 “Notwithstanding any other provision of law, the director may revoke, suspend, or deny at
15 any time any registration required by this article on any of the grounds for disciplinary action
16 provided in this article. The proceedings under this article shall be conducted in accordance with
17 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
18 Code, and the director shall have all the powers granted therein.”

19 10. Business and Professions Code section 9889.1 states:

20 “Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the
21 director. The director may refuse to issue a license to any applicant for the reasons set forth in
22 Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter
23 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
24 and the director shall have all the powers granted therein.”

25 11. Health and Safety Code section 44072 states:

26 “Any license issued under this chapter and the regulations adopted pursuant to it may be
27 suspended or revoked by the director. The director may refuse to issue a license to any applicant
28 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted

1 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
2 of the Government Code, and the director shall have all the powers granted therein.”

3 12. Health and Safety Code section 44072.6 states:

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

8 **III. STATUTORY AND REGULATORY PROVISIONS**

9 13. Business and Professions Code section 9884.7, subdivision (a), states in part:

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

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

18 ...

19 “(3) Failing or refusing to give to a customer a copy of any document requiring his or her
20 signature, as soon as the customer signs the document.

21 “(4) Any other conduct that constitutes fraud.

22 ...

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

25 14. Business and Professions Code section 9884.9, subdivision (a), states in part:

26 “The automotive repair dealer shall give to the customer a written estimated price for
27 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
28 before authorization to proceed is obtained from the customer.”

1 15. Business and Professions Code section 17200 states:

2 “As used in this chapter, unfair competition shall mean and include any unlawful, unfair
3 or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and
4 any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
5 Business and Professions Code.”

6 16. Business and Professions Code section 17204 states:

7 “Actions for relief pursuant to this chapter shall be prosecuted exclusively in a court of
8 competent jurisdiction by the Attorney General or a district attorney or by a county counsel
9 authorized by agreement with the district attorney in actions involving violation of a county
10 ordinance, or by a city attorney of a city having a population in excess of 750,000, or by a city
11 attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a
12 city having a full-time city prosecutor in the name of the people of the State of California upon
13 their own complaint or upon the complaint of a board, officer, person, corporation, or association,
14 or by a person who has suffered injury in fact and has lost money or property as a result of the
15 unfair competition.”

16 17. Business and Professions Code section 17206, subdivision (a), states in part:

17 “Any person who engages, has engaged, or proposes to engage in unfair competition shall
18 be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each
19 violation.”

20 18. Health and Safety Code section 44012 states in part:

21 “The test at the smog check stations shall be performed in accordance with procedures
22 prescribed by the department and may require loaded mode dynamometer testing in enhanced
23 areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other
24 appropriate test procedures as determined by the department in consultation with the state board.
25 . . . The department shall ensure, as appropriate to the test method, the following:

26 . . .

27 “(f) A visual or functional check is made of emission control devices specified by the
28 department, including the catalytic converter in those instances in which the department

1 determines it to be necessary to meet the findings of Section 44001. The visual or functional
2 check shall be performed in accordance with procedures prescribed by the department.”

3 19. Health and Safety Code section 44032 states:

4 “No person shall perform, for compensation, tests or repairs of emission control devices or
5 systems of motor vehicles required by this chapter unless the person performing the test or repair
6 is a qualified smog check technician and the test or repair is performed at a licensed smog check
7 station. Qualified technicians shall perform tests of emission control devices and systems in
8 accordance with Section 44012.”

9 20. Health and Safety Code section 44059 states:

10 “The willful making of any false statement or entry with regard to a material matter in any
11 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
12 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
13 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

14 21. Health and Safety Code section 44072.2 states in part:

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

18 “(a) Violates any section of this chapter and the regulations adopted pursuant to it, which
19 related to the licensed activities.”

20 22. California Code of Regulations, title 16, section 3340.30, states in part:

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

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

26 23. California Code of Regulations, title 16, section 3340.35, subdivision (c), states in
27 part:

28 “A licensed station shall issue a certificate of compliance or noncompliance to the owner

1 or operator of any vehicle that has been inspected in accordance with the procedures specified in
2 section 3340.42 of this article and has all the required emission control equipment and devices
3 installed and functioning correctly.”

4 24. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

5 “No person shall enter into the emissions inspection system any vehicle identification
6 information or emission control system identification data for any vehicle other than the one
7 being tested. Nor shall any person knowingly enter into the emissions inspection system any
8 false information about the vehicle being tested.”

9 25. California Code of Regulations, title 16, section 3340.42, subdivision (b), states in
10 part:

11 “In addition to subsection (a), all vehicles subject to the smog check program shall receive
12 the following:

13 “(1) A visual inspection of emission control components and systems to verify the
14 vehicle’s emission control systems are properly installed.”

15 26. California Code of Regulations, title 16, section 3340.45, states:

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

18 “(1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
19 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

20 “(2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
21 manual shall become effective on or after January 1, 2013.”

22 27. California Code of Regulations, title 16, section 3353, states in part:

23 “No work for compensation shall be commenced and no charges shall accrue without
24 specific authorization from the customer in accordance with the following requirements:

25 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
26 estimated price for parts and labor for a specific job.”

27 28. California Code of Regulations, title 16, section 3371, states in part:

28 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any

1 false or misleading statement or advertisement which is known to be false or misleading, or
2 which by the exercise of reasonable care should be known to be false or misleading.”

3 29. California Code of Regulations, title 16, section 3373, states:

4 “No automotive repair dealer or individual in charge shall, in filling out an estimate,
5 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
6 withhold therefrom or insert therein any statement or information which will cause any such
7 document to be false or misleading, or where the tendency or effect thereby would be to mislead
8 or deceive customers, prospective customers, or the public.”

9 **IV. COST RECOVERY**

10 30. Section 125.3, subdivision (a), states in part:

11 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary
12 proceeding before any board within the department or before the Osteopathic Medical Board
13 upon request of the entity bringing the proceedings, the administrative law judge may direct a
14 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
15 to exceed the reasonable costs of the investigation and enforcement of the case.”

16 **V. FACTUAL BACKGROUND**

17 31. From August 22 to August 29, 2014, a Bureau representative modified a 2006
18 Chevrolet by removing its exhaust gas recirculation (EGR) system. The Bureau’s Smog Check
19 Inspection Procedures Manual requires a technician to see a vehicle’s EGR system before
20 allowing a vehicle to pass a smog inspection.

21 32. On September 26, 2014, a Bureau undercover operator drove the Chevrolet to
22 respondent Los Gatos Autocare and asked for a smog inspection. The operator signed a work
23 order but did not receive a copy of the estimate.

24 33. After the inspection, the driver received a copy of the invoice and a vehicle
25 inspection report that showed that the Chevrolet had passed the smog inspection. The report was
26 signed by respondent Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen (Nguyen), and indicated
27 that the Chevrolet’s EGR system was in place.

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VI. CAUSES FOR DISCIPLINE

**First Cause for Discipline (Los Gatos Autocare)
Making or Authorizing Untrue or Misleading Statements
Business and Professions Code section 9884.7, subdivision (a)(1) and (6),
California Code of Regulations, title 16, section 3371**

34. The allegations of paragraphs 31-33 are realleged and incorporated by reference as if fully set forth.

35. Respondent Los Gatos Autocare has subjected its ARD registration and smog check station license to discipline for publishing or making untrue or misleading statements (Bus. & Prof. Code, § 9884.7, subd. (a)(1), (6); Cal. Code Regs., tit. 16, § 3371). Respondent Los Gatos Autocare issued a vehicle inspection report that showed that the Chevrolet had passed the smog inspection. The report was signed by respondent Nguyen and indicated that the Chevrolet's EGR system was in place. The Bureau's Smog Check Inspection Procedures Manual requires a technician to see a vehicle's EGR system before allowing a vehicle to pass a smog inspection.

**Second Cause for Discipline (Los Gatos Autocare)
Failing to Give Document to Customer
Business and Professions Code section 9884.7, subdivision (a)(3)**

36. The allegations of paragraphs 31-33 are realleged and incorporated by reference as if fully set forth.

37. Respondent Los Gatos Autocare has subjected its ARD registration and smog check station license to discipline for failing to give a customer a copy of a document as soon as the customer signs the document (Bus. & Prof. Code, § 9884.7, subd. (a)(3)). The Bureau's undercover operator signed a work order but did not receive a copy of the estimate.

**Third Cause for Discipline (Los Gatos Autocare)
Fraud
Business and Professions Code section 9884.7, subdivision (a)(4)**

38. The allegations of paragraphs 31-33 are realleged and incorporated by reference as if fully set forth.

39. Respondent Los Gatos Autocare has subjected its ARD registration and smog check station license to discipline for fraud (Bus. & Prof. Code, § 9884.7, subd. (a)(4)). Respondent Los Gatos Autocare issued a vehicle inspection report that showed that the Chevrolet

1 had passed the smog inspection. The report was signed by respondent Nguyen and indicated that
2 the Chevrolet's EGR system was in place. The Bureau's Smog Check Inspection Procedures
3 Manual requires a technician to see a vehicle's EGR system before allowing a vehicle to pass a
4 smog inspection.

5 **Fourth Cause for Discipline (Los Gatos Autocare)**
6 **Failing to Give Written Estimate to Customer**
7 **Business and Professions Code sections 9884.7, subdivision (a)(6), 9884.9, subdivision (a);**
8 **California Code of Regulations, title 16, section 3353**

9 40. The allegations of paragraphs 31-33 are realleged and incorporated by reference as
10 if fully set forth.

11 41. Respondent Los Gatos Autocare has subjected its ARD registration and smog
12 check station license to discipline for failing to give a customer a written estimate before working
13 on a vehicle (Bus. & Prof. Code, §§ 9884.7, subd. (a)(6), 9884.9, subd. (a); Cal. Code Regs., tit.
14 16, § 3340.42, subd. (b).) Respondent Nguyen did not give the Bureau's undercover operator a
15 copy of an estimate before working on the vehicle.

16 **Fifth Cause for Discipline (Los Gatos Autocare)**
17 **Unfair Competition**
18 **Business and Professions Code sections 17204, 17206, subdivision (a)**

19 42. The allegations of paragraphs 31-33 are realleged and incorporated by reference as
20 if fully set forth.

21 43. Respondent Los Gatos Autocare has subjected its ARD registration and smog
22 check station license to discipline for unfair competition as defined by Business and Professions
23 Code section 17204 (Bus. & Prof. Code, § 17206, subd. (a)). Respondent Los Gatos Autocare
24 issued a vehicle inspection report that showed that the Chevrolet had passed the smog inspection.
25 The report was signed by respondent Nguyen and indicated that the Chevrolet's EGR system was
26 in place. The Bureau's Smog Check Inspection Procedures Manual requires a technician to see a
27 vehicle's EGR system before allowing a vehicle to pass a smog inspection.

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**Sixth Cause for Discipline (Los Gatos Autocare)
Perjury
Health and Safety Code sections 44059, 44072.2**

44. The allegations of paragraphs 31-33 are realleged and incorporated by reference as if fully set forth.

45. Respondent Los Gatos Autocare has subjected its ARD registration and smog check station license to discipline for perjury (Health & Saf. Code, §§ 44059, 44072.2). Respondent Los Gatos Autocare issued a vehicle inspection report that showed that the Chevrolet had passed the smog inspection. The report was signed by respondent Nguyen and indicated that the Chevrolet's EGR system was in place. The Bureau's Smog Check Inspection Procedures Manual requires a technician to see a vehicle's EGR system before allowing a vehicle to pass a smog inspection.

**Seventh Cause for Discipline (Los Gatos Autocare)
Entering False Information into Emission Inspection System
Business and Professions Code section 9884.7, subdivision (a)(6),
California Code of Regulations, title 16, section 3340.41, subd. (c)**

46. The allegations of paragraphs 31-33 are realleged and incorporated by reference as if fully set forth.

47. Respondent Los Gatos Autocare has subjected its ARD registration and smog check station license to discipline for entering false information into an emission inspection system (Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, § 3340.41, subd. (c)). Respondent Los Gatos Autocare issued a vehicle inspection report that showed that the Chevrolet had passed the smog inspection. The report was signed by respondent Nguyen and indicated that the Chevrolet's EGR system was in place. The Bureau's Smog Check Inspection Procedures Manual requires a technician to see a vehicle's EGR system before allowing a vehicle to pass a smog inspection.

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1 **Tenth Cause for Discipline (Los Gatos Autocare)**
2 **Creating False or Misleading Document**
3 **Business and Professions Code section 9884.7, subdivision (a)(6),**
4 **California Code of Regulations, title 16, section 3373**

4 52. The allegations of paragraphs 31-33 are realleged and incorporated by reference as
5 if fully set forth.

6 53. Respondent Los Gatos Autocare has subjected its ARD registration and smog
7 check station license to discipline for entering false information into an emission inspection
8 system (Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, § 3373). Respondent
9 Los Gatos Autocare issued a vehicle inspection report that showed that the Chevrolet had passed
10 the smog inspection. The report was signed by respondent Nguyen and indicated that the
11 Chevrolet's EGR system was in place. The Bureau's Smog Check Inspection Procedures Manual
12 requires a technician to see a vehicle's EGR system before allowing a vehicle to pass a smog
13 inspection.

14 **Eleventh Cause for Discipline (Nguyen)**
15 **Failing to Perform Tests in Accord with Health and Safety Code Section 44012**
16 **Business and Professions Code section 9884.7, subdivision (a)(6);**
17 **Health and Safety Code sections 44012, 44032, and 44072.2;**
18 **California Code of Regulations, title 16, section 3340.30**

17 54. The allegations of paragraphs 31-33 are realleged and incorporated by reference as
18 if fully set forth.

19 55. Respondent Nguyen has subjected his smog check inspector and technician
20 licenses to discipline for failing to perform emission control device tests in accordance with
21 Health and Safety Code section 44012 (Bus. & Prof. Code, § 9884.7, subd. (a)(6); Health & Saf.
22 Code, §§ 44032, 44072.2; Cal. Code Regs., tit. 16, § 3340.30). Respondent Los Gatos Autocare
23 issued a vehicle inspection report that showed that the Chevrolet had passed the smog inspection.
24 The report was signed by respondent Nguyen and indicated that the Chevrolet's EGR system was
25 in place. The Bureau's Smog Check Inspection Procedures Manual requires a technician to see a
26 vehicle's EGR system before allowing a vehicle to pass a smog inspection.

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1 M09-1000 and an order of abatement against respondent Nguyen's Advanced Emission Specialist
2 (EA) Technician License No. 132594. The citations and order were for issuing a certificate of
3 compliance on February 11, 2009, to a Bureau undercover vehicle with a missing positive
4 crankcase ventilation system (Health & Saf. Code, §§ 44032, 44012, subd. (f); Cal. Code Regs.,
5 tit. 16, §§ 3340.30, subd. (a), 3340.35, subd. (c)). The citation against respondent Los Gatos
6 Autocare's automotive repair dealer registration and smog check station license assessed a civil
7 penalty of \$500.00, and the citation and order against respondent Nguyen's advanced emission
8 specialist technician license directed respondent Nguyen to complete an eight-hour Bureau-
9 certified training course. The Bureau held a citation conference with both respondents on March
10 18, 2009. Respondent Los Gatos Autocare paid the civil penalty on April 1, 2009; respondent
11 Nguyen completed the training on April 5, 2009.

12 60. Complainant also alleges that on November 19, 2012, the Bureau issued Citation
13 No. C2013-0327 against respondent Los Gatos Autocare's Automotive Repair Dealer
14 Registration No. ARD 200585 and Smog Check Station License No. RC 200585. The citation
15 assessed a civil penalty of \$1,500.00 against respondent's automotive repair dealer registration
16 and smog check station license for issuing a certificate of compliance on September 7, 2012, to a
17 Bureau undercover vehicle with a missing secondary air injection reactor system (Health & Saf.
18 Code, § 44012, subd. (f)). The Bureau held a citation conference with respondent on December
19 20, 2012; respondent paid the civil penalty on January 17, 2013.

20 61. Complainant also alleges that on April 29, 2013, the Bureau issued Citation No.
21 C2013-0634 against respondent Los Gatos Autocare's Automotive Repair Dealer Registration
22 No. ARD 200585 and Smog Check Station License No. RC 200585, and issued Citation No.
23 M2013-0635 and an order of abatement against respondent Nguyen's Smog Check Inspector
24 (EO) License No. 132594. The citations and order were for issuing a certificate of compliance on
25 March 7, 2013, to a Bureau undercover vehicle with a missing positive crankcase ventilation
26 system (Health & Saf. Code, §§ 44032, 44012, subd. (f)). The citation against respondent Los
27 Gatos Autocare's automotive repair dealer registration and smog check station license assessed a
28 civil penalty of \$2,500.00, and the citation and order against respondent Nguyen's advanced

1 emission specialist technician license directed respondent Nguyen to complete an eight-hour
2 Bureau-certified training course and assessed an administrative fine of \$500.00. The Bureau held
3 a citation conference with both respondents on May 23, 2013. Respondent Los Gatos Autocare
4 paid the civil penalty, and respondent Nguyen completed the training and paid the administrative
5 fine, on June 17, 2013.

6 62. Complainant also alleges that on September 12, 2013, the Bureau issued Citation
7 No. C2014-0170 against respondent Los Gatos Autocare's Automotive Repair Dealer
8 Registration No. ARD 200585 and Smog Check Station License No. RC 200585, and issued
9 Citation No. M2014-0171 and an order of abatement against respondent Nguyen's Smog Check
10 Inspector (EO) License No. 132594. The citations and order were for issuing a certificate of
11 compliance on August 23, 2013, to a Bureau undercover vehicle with a missing air injection
12 system (Health & Saf. Code, §§ 44032, 44012, subd. (f)). The citation against respondent Los
13 Gatos Autocare's automotive repair dealer registration and smog check station license assessed a
14 civil penalty of \$3,500.00, and the citation and order against respondent Nguyen's advanced
15 emission specialist technician license directed respondent Nguyen to complete a twenty-eight-
16 hour Bureau-certified training course and assessed an administrative fine of \$1,000.00. The
17 Bureau held a citation conference with both respondents on September 12, 2013. Respondent
18 Nguyen completed the training on November 3, 2013; respondent Los Gatos Autocare paid the
19 civil penalty and respondent Nguyen paid the administrative fine on November 7, 2013.

20 VIII. OTHER MATTERS

21 63. Business and Professions Code section 9884.7, subdivision (c), states in part:
22 "[T]he director may suspend, revoke, or place on probation the registration for all places
23 of business operated in this state by an automotive repair dealer upon a finding that the
24 automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this
25 chapter, or regulations adopted pursuant to it."

26 64. Health and Safety Code section 44072.8 states:
27 "When a license has been revoked or suspended following a hearing under this article, any
28 additional license issued under this chapter in the name of the licensee may be likewise revoked

1 or suspended by the director.”

2 **IX. PRAYER**

3 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
4 accusation, and that following the hearing, the Director of Consumer Affairs issues a decision:

5 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 200585
6 issued to respondent Los Gatos Autocare; Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen,
7 Owner;

8 2. Revoking or suspending Smog Check Station License No. RC 200585 issued to
9 respondent Los Gatos Autocare; Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen, Owner;

10 3. Revoking or suspending Smog Check Inspector (EO) License No. 132594 issued
11 to respondent Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen;

12 4. Revoking or suspending Smog Check Repair Technician (EI) License No. 132594
13 issued to respondent Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen;

14 5. Ordering Phuong Xuan Nguyen, a.k.a. Phuong X Nguyen, under Business and
15 Professions Code section 125.3 to pay the Bureau of Automotive Repair the reasonable costs of
16 the investigation and enforcement of this case; and

17 6. Taking such other and further action as deemed necessary and proper.

18 DATED: October 1, 2015 *Patrick Doraïs*

19 PATRICK DORAIS
20 Chief
21 Bureau of Automotive Repair
22 Department of Consumer Affairs
23 State of California
24 Complainant

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