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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. 79/24-4732

13 **KRIS TRAN DBA KT AUTO REPAIR**  
14 42475 Osgood Rd., #1  
Fremont, CA 94539

**ACCUSATION**

15  
16 **Automotive Repair Dealer Registration No. ARD 267094**  
17 **Smog Check Station License No. RC 267094**  
18 **Smog Check Inspector License No. EO 152335**  
19 **Smog Check Repair Technician License No. EI 152335**

Respondent.

20  
21  
22 **PARTIES**

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

25 2. On or about November 7, 2011, the Bureau issued Automotive Repair Dealer  
26 Registration Number ARD 267094 to Kris Tran dba KT Auto Repair (Respondent). The  
27 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the  
28 charges brought herein and will expire on November 30, 2025, unless renewed.

1           3.     On or about December 9, 2011, the Bureau issued Smog Check Station License  
2     Number RC 267094 to Respondent. The Smog Check Station License was in full force and effect  
3     at all times relevant to the charges brought herein and will expire on November 30, 2025, unless  
4     renewed.

5           4.     On or about October 15, 2013, the Bureau issued Smog Check Repair Technician  
6     License Number EI 152335 to Respondent. The Smog Check Repair Technician License was in  
7     full force and effect at all times relevant to the charges brought herein and will expire on January  
8     31, 2026, unless renewed.

9           5.     On or about October 15, 2013, the Bureau issued Smog Check Inspector License  
10    Number EO 152335 to Respondent. The Smog Check Inspector License was in full force and  
11    effect at all times relevant to the charges brought herein and will expire on January 31, 2026,  
12    unless renewed.

### 13                                   **JURISDICTION**

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

### 16                                   **STATUTORY PROVISIONS**

17           7.     Section 118, subdivision (b), of the Business and Professions Code (Code) provides  
18    that the suspension/expiration/surrender/cancellation of a license shall not deprive the Director of  
19    jurisdiction to proceed with a disciplinary action during the period within which the license may  
20    be renewed, restored, reissued or reinstated.

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

25           9.     Section 9884.7 of the Code states:

26                 (a) The director, if the automotive repair dealer cannot show there was a bona  
27                 fide error, may deny, suspend, revoke, or place on probation the registration of an  
28                 automotive repair dealer for any of the following acts or omissions related to the  
                  conduct of the business of the automotive repair dealer, which are done by the  
                  automotive repair dealer or any automotive technician, employee, partner, officer, or

member of the automotive repair dealer:

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

...

(4) Any other conduct that constitutes fraud.

...

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

...

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

...

(e) For purposes of this section, "fraud" includes, but is not limited to, violations of this chapter involving misrepresentations and all of the following:

(1) Any act or omission that is included within the definition of either "actual fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573 of the Civil Code.

(2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.

(3) A promise or representation not made honestly and in good faith.

(4) An intentional failure to disclose a material fact.

(5) Any act in violation of Section 484 of the Penal Code.

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

11. Section 44012 of the Health and Safety Code states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

...

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12. Section 44032 of the Health and Safety Code states:

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

13. Section 44059 of the Health and Safety Code states:

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

14. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to render a decision suspending or revoking the license.

15. Section 44072.8 of the Health and Safety Code states: "When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

16. Section 44072.2 of the Health and Safety Code states:

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

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

...

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

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

...

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

17. Section 44072.10, subdivision (c), of the Health and Safety Code states:

The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

### **REGULATORY PROVISIONS**

18. California Code of Regulations, title 16, section 3340.24, states:

(a) Any disciplinary or reinstatement proceeding under this article involving licensed stations, licensed technicians, or fleet owners licensed pursuant to section 44020 of the Health and Safety Code shall be conducted in accordance with chapter 5 (commencing with section 11500) of division 3, Title 2 of the Government Code.

...

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

...

19. California Code of Regulations, title 16, section 3340.30, states:

A smog check technician shall comply with the following requirements at all times while licensed.

(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

...

20. California Code of Regulations, title 16, section 3340.35, states:

...

(b) A licensed station shall not sell or otherwise transfer unused certificates to another licensed station, to a new owner of the business, or to any person other than a customer whose vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this article.

(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required

1 emission control equipment and devices installed and functioning correctly. The  
2 following conditions shall apply:

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

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

6 21. California Code of Regulations, title 16, section 3340.41, states:

7 ...

8 (c) No person shall enter any vehicle identification information or emission  
9 control system identification data for any vehicle other than the one being tested into  
10 the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information  
11 about the vehicle being tested.

12 ...

13 (h) No licensed station shall have in the approved testing area at any time any  
14 electronic device or software capable of simulating the OBD data stream from a  
15 vehicle or manipulating OBD VIN, calibration identification, calibration verification  
16 number, MIL-status, readiness, or diagnostic trouble codes collected from a vehicle  
17 during a Smog Check Inspection.

18 ...

19 22. California Code of Regulations, title 16, section 3340.42, states:

20 Smog check inspection methods are prescribed in the Smog Check Manual,  
21 referenced by section 3340.45.

22 (a) All vehicles subject to a smog check inspection, shall receive one of the  
23 following test methods:

24 ...

25 (3) An OBD-focused test, shall be the test method used to inspect gasoline-  
26 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998  
27 model-year and newer. The OBD test failure criteria are specified in section  
28 3340.42.2.

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

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

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

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1 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons, Carbon  
2 Monoxide, Oxides of Nitrogen, Carbon Dioxide, and Oxygen. The inspection involves a test of  
3 the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the State, or depending on a  
4 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed  
5 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a  
6 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute  
7 (RPM).

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

15 30. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring  
16 the use of the On Board Diagnostic Inspection System (OIS) instead of the EIS for the smog  
17 testing of 2000 model year and newer gas powered and 1998 and newer diesel vehicles. Most  
18 older vehicles require the ASM or TSI test on the EIS. Gas powered vehicles with a gross vehicle  
19 weight rating over 14,000 pounds require an inspection on the EIS.

20 31. The newer OIS smog inspection uses a Data Acquisition Device (DAD), a computer,  
21 a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a vehicle's On  
22 Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR OIS computer  
23 to the vehicle's diagnostic link connector (DLC) to retrieve the data from the vehicle. The bar  
24 code scanner is used to input technician information, the vehicle identification number (VIN), and  
25 DMV renewal information. The printer is used to print Vehicle Inspection Reports.

26 32. Data retrieved and recorded during a OIS smog check includes: the eVIN, which is  
27 the digitally stored VIN programmed into the vehicle's Powertrain Control Module (PCM); the  
28 communication protocol, which is the manufacturer/vehicle's specific "language" the PCM uses

1 to relay information; and the number of Parameter Identifications (PIDs), which is the number of  
2 specific data values each PCM uses related to emissions controls.

3 33. PIDs are data points reported by the vehicle on-board computer to a scan tool or  
4 BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other  
5 input and output values utilized by the vehicle's on-board computer.

6 34. As part of the OIS smog inspections, the technician also performs a visual and  
7 functional test on the vehicle being inspected. The visual inspection of the emission control  
8 components verifies the required emission control devices are present and properly connected and  
9 a functional test is performed of the malfunction indicator light (MIL). The OIS software makes  
10 the determination whether the vehicle passes the inspection based on the results of the OBD,  
11 visual and functional tests. If the vehicle passes the inspection a certificate of compliance is  
12 issued. The information from the smog inspection is then transmitted to the Vehicle Information  
13 Data (VID).

14 35. The Bureau can access the VID to view test data on smog check inspections  
15 performed at any Smog Check Station, or search for, retrieve, and print a test record for a  
16 particular vehicle which has been tested. The VID has an internal clock that is set to Pacific  
17 Standard Time and records the time and date for each inspection. If a vehicle passes the Smog  
18 Inspection, the vehicle information and test results are electronically transmitted to Department of  
19 Motor Vehicles.

20 36. During an OIS inspection, engine operating parameters are retrieved from the  
21 vehicle's OBD II system and recorded to the VID. This is accomplished during the functional  
22 portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when  
23 prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- 24 a. Engine speed in revolutions per minute (RPM),
- 25 b. Throttle position as measured by a throttle position sensor (TPS) mounted onto the
- 26 throttle shaft. The throttle position is measured in a percentage of opening from 0% at idle to up
- 27 to 100% at full throttle.

1 c. Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)  
2 connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a  
3 normally aspirated vehicle are as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle,  
4 and 101 kpa at full throttle (atmospheric pressure at sea level).

5 d. Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's  
6 air intake tract. Air flow is measured in grams per second (gps).

7 37. During an OIS Smog Check inspection, along with other visual and functional  
8 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed  
9 with the engine idling and, when requested by the OIS analyzer, with an elevated or increased  
10 engine speed. The increase in engine speed is performed by the inspector either stepping on the  
11 throttle pedal or manually opening the throttle. The inspector's stepping on the throttle pedal or  
12 manually opening the throttle results in a corresponding increase in engine RPMs by allowing an  
13 increase in airflow into the engine. An increase in throttle, measured by the TPS, which increases  
14 engine RPM, would result in a corresponding increase in MAF, as well as a change in MAP.  
15 Stated another way, any movement in the throttle from the idle position will result in an increase  
16 of airflow through the engine with corresponding increases in RPM and MAF, along with  
17 changes in MAP.

18 38. The Bureau has become aware of methods some Smog Check stations and Smog  
19 Check inspectors use to issue smog certificates to vehicles that will not pass a Smog Check test  
20 on their own, or in some instances, are not even present during the time the test is performed.

21 39. One method is known as "clean plugging." "Clean plugging" is the act of using one  
22 vehicle's properly functioning OBDII system, or another source such as an electronic defeat  
23 device, to generate passing data readings or diagnostic information for the purpose of issuing a  
24 smog certificate of compliance to a vehicle that is not in smog compliance and/or not being  
25 tested. The vehicle being certified is not being tested.

26 40. Defeat devices attempt to simulate engine operation during a Smog Check inspection  
27 by transmitting OBD II data to the VID which has been modified or replaced entirely for the  
28

1 purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a  
2 defeat device during a Smog Check inspection is clean plugging and is strictly prohibited.

3 41. On or about March 15, 2024, a Bureau representative conducted a detailed review of  
4 the VID data for the Smog Check inspections performed at KT Auto Repair, dated from March  
5 12, 2024, through March 18, 2024. The review showed a pattern of vehicles being certified with  
6 engine operating parameters not corresponding to normal engine operation. Those vehicles  
7 received smog certificates but were not tested during the OBD II functional test. They were clean  
8 plugged.

9 42. Respondent clean plugged and issued certificates of compliance to 10 Vehicles using  
10 an electronic defeat device and a vehicle simulator computer program. None of the 10 vehicles  
11 that were issued a certificate of compliance were legitimately inspected. All of the “inspections”  
12 were performed at Respondent’s smog check station KT Auto Repair. Respondent issued all 10  
13 certificates of compliance. All 10 of the vehicles were tested and certified under Respondent’s  
14 Smog Check Technician license.

15 **Clean Plug 1:**

16 43. On or about March 12, 2024, Respondent issued smog certificate # IZ180867C to a  
17 2001 Chevrolet Silverado C1500, VIN # 1GCEC14W71Z275430. The smog certificate was  
18 issued under Respondent’s Smog Check Technician License # EO 152335. However, a  
19 legitimate smog inspection was not performed on the vehicle. Respondent used an electronic  
20 defeat device to issue a fraudulent certificate of compliance to this vehicle.

21 44. The Dynamic PID Chart for the 2001 Chevrolet Silverado C1500 shows between time  
22 stamp 162 and 21705, engine speed was steady at around 400 RPM. During this time, the throttle  
23 was fixed at 0% opening. The MAP was fixed at 31kpa, and the MAF was fixed at 5.21gps.  
24 Between time stamp 22018 and 43656, the engine speed was accelerated and then held steady at  
25 around 1650 RPM. During the steady elevated engine RPM, the throttle was fixed at 0%  
26 opening. During the steady elevated engine RPM, the MAP was fixed at 31kpa, and the MAF  
27 was fixed at 5.21gps. The steady idle and steady elevated engine speeds with the associated fixed  
28 throttle positions, and the subsequent fixed MAP and MAF readings associated with the same

1 engine speeds and throttle parameters, are not characteristic or expected for normal engine  
2 operation.

3 **Clean Plug 2:**

4 45. On or about March 12, 2024, Respondent issued smog certificate # IZ180868C to a  
5 2001 Chevrolet Silverado C1500, VIN # 1GCEC19T71Z132136. The smog certificate was  
6 issued under Respondent's Smog Check Technician License # EO 152335. However, a  
7 legitimate smog inspection was not performed on the vehicle. Respondent used an electronic  
8 defeat device to issue a fraudulent certificate of compliance to this vehicle.

9 46. The Dynamic PID Chart for the 2001 Chevrolet Silverado C1500 shows between time  
10 stamp 149 and 24988, engine speed was steady at around 450 RPM. During this time, the throttle  
11 was fixed at 0.4% opening. The MAP was fixed at 34kpa, and the MAF was fixed at 4.76gps.  
12 Between time stamp 25305 and 42499, the engine speed was accelerated and then held steady at  
13 around 1650 RPM. During the steady elevated engine RPM, the throttle was fixed at 0.4%  
14 opening. During the steady elevated engine RPM, the MAP was fixed at 34kpa, and the MAF  
15 was fixed at 4.76gps. The steady idle and steady elevated engine speeds with the associated fixed  
16 throttle positions, and the subsequent fixed MAP and MAF readings associated with the same  
17 engine speeds and throttle parameters, are not characteristic or expected for normal engine  
18 operation.

19 **Clean Plug 3:**

20 47. On or about March 12, 2024, Respondent issued smog certificate # IZ180869C to a  
21 2001 Chevrolet Silverado C1500, VIN # 1GCEC19T91Z204437. The smog certificate was  
22 issued under Respondent's Smog Check Technician License # EO 152335. However, a  
23 legitimate smog inspection was not performed on the vehicle. Respondent used an electronic  
24 defeat device to issue a fraudulent certificate of compliance to this vehicle.

25 48. The Dynamic PID Chart for the 2001 Chevrolet Silverado C1500 shows between time  
26 stamp 171 and 18685, engine speed was steady at around 600 RPM. During this time, the throttle  
27 was fixed at 0.4% opening. The MAP was fixed at 34kpa, and the MAF was fixed at 4.76gps.  
28 Between time stamp 19095 and 36841, the engine speed was accelerated and then held steady at

1 around 1650 RPM. During the steady elevated engine RPM, the throttle was fixed at 0.4%  
2 opening. During the steady elevated engine RPM, the MAP was fixed at 34kpa, and the MAF  
3 was fixed at 4.76gps. The steady idle and steady elevated engine speeds with the associated fixed  
4 throttle positions, and the subsequent fixed MAP and MAF readings associated with the same  
5 engine speeds and throttle parameters, are not characteristic or expected for normal engine  
6 operation.

7 **Clean Plug 4:**

8 49. On or about March 12, 2024, Respondent issued smog certificate # IZ180871C to a  
9 2002 GMC New Sierra C1500, VIN # 2GTEC19TX21358441. The smog certificate was issued  
10 under Respondent's Smog Check Technician License # EO 152335. However, a legitimate smog  
11 inspection was not performed on the vehicle. Respondent used an electronic defeat device to  
12 issue a fraudulent certificate of compliance to this vehicle.

13 50. The Dynamic PID Chart for the 2002 GMC New Sierra C1500 shows between time  
14 stamp 128 and 20300, engine speed was steady at around 650 RPM. During this time, the throttle  
15 was fixed at 0% opening. The MAP was fixed at 33kpa, and the MAF was fixed at 4.89gps.  
16 Between time stamp 20715 and 37803, the engine speed was accelerated and then held steady at  
17 around 1500 RPM. During the steady elevated engine RPM, the throttle was fixed at 0%  
18 opening. During the steady elevated engine RPM, the MAP was fixed at 33kpa, and the MAF  
19 was fixed at 4.89gps. The steady idle and steady elevated engine speeds with the associated fixed  
20 throttle positions, and the subsequent fixed MAP and MAF readings associated with the same  
21 engine speeds and throttle parameters, are not characteristic or expected for normal engine  
22 operation.

23 **Clean Plug 5:**

24 51. On or about March 13, 2024, Respondent issued smog certificate # IZ180885C to a  
25 2001 Toyota Tacoma Xtracab Prerunner, VIN # 5TESN92N51Z774768. The smog certificate  
26 was issued under Respondent's Smog Check Technician License # EO 152335. However, a  
27 legitimate smog inspection was not performed on the vehicle. Respondent used an electronic  
28 defeat device to issue a fraudulent certificate of compliance to this vehicle.

52. The Dynamic PID Chart for the 2001 Toyota Tacoma shows between time stamp 228 and 24217, engine speed was steady at around 700 RPM. During this time, the throttle was fixed at 9.4% opening. The MAF was fixed at 3.41gps. Between time stamp 24583 and 40919, the engine speed was accelerated and then held steady at around 1970 RPM. During the steady elevated engine RPM, the throttle was fixed at 9.4% opening. During the steady elevated engine RPM, the MAF was fixed at 3.41gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the subsequent fixed MAF readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

**Clean Plug 6:**

53. On or about March 14, 2024, Respondent issued smog certificate # IZ180888C to a 2001 Honda Civic LX, VIN # 1HGEM21591L063857. The smog certificate was issued under Respondent's Smog Check Technician License # EO 152335. However, a legitimate smog inspection was not performed on the vehicle. Respondent used an electronic defeat device to issue a fraudulent certificate of compliance to this vehicle.

54. The Dynamic PID Chart for the 2001 Honda Civic LX shows between time stamp 223 and 28362, engine speed was steady at around 750 RPM. During this time, the throttle was fixed at 9% opening. The MAP was fixed at 100kpa. Between time stamp 28713 and 44964, the engine speed was accelerated and then held steady at around 1870 RPM. During the steady elevated engine RPM, the throttle was fixed at 9% opening. During the steady elevated engine RPM, the MAP was fixed at 100kpa. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the subsequent fixed MAP readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

**Clean Plug 7:**

55. On or about March 18, 2024, Respondent issued smog certificate # TU392451C to a 2000 Honda Civic EX, VIN # 1HGEJ8147YL080864. The smog certificate was issued under Respondent's Smog Check Technician License # EO 152335. However, a legitimate smog

1 inspection was not performed on the vehicle. Respondent used an electronic defeat device to  
2 issue a fraudulent certificate of compliance to this vehicle.

3 56. The Dynamic PID Chart for the 2000 Honda Civic EX shows between time stamp  
4 470 and 80721, engine speed was steady at around 850 RPM. During this time, the throttle was  
5 fixed at 9% opening. The MAP was fixed at 26kpa. Between time stamp 81452 and 97592, the  
6 engine speed was accelerated and then held steady at around 1500 RPM. During the steady  
7 elevated engine RPM, the throttle was fixed at 9% opening. During the steady elevated engine  
8 RPM, the MAP was fixed at 26kpa. The steady idle and steady elevated engine speeds with the  
9 associated fixed throttle positions, and the subsequent fixed MAP readings associated with the  
10 same engine speeds and throttle parameters, are not characteristic or expected for normal engine  
11 operation.

12 **Clean Plug 8:**

13 57. On or about March 18, 2024, Respondent issued smog certificate # TU392452C to a  
14 2002 Chevrolet Silverado C1500, VIN # 2GCEC19V321160513. The smog certificate was  
15 issued under Respondent's Smog Check Technician License # EO 152335. However, a  
16 legitimate smog inspection was not performed on the vehicle. Respondent used an electronic  
17 defeat device to issue a fraudulent certificate of compliance to this vehicle.

18 58. The Dynamic PID Chart for the 2002 Chevrolet Silverado C1500 shows between time  
19 stamp 151 and 24959, engine speed was steady at around 625 RPM. During this time, the throttle  
20 was fixed at 0.4% opening. The MAP was fixed at 36kpa, and the MAF was fixed at 5.96gps.  
21 Between time stamp 25357 and 43088, the engine speed was accelerated and then held steady at  
22 around 1650 RPM. During the steady elevated engine RPM, the throttle was fixed at 0.4%  
23 opening. During the steady elevated engine RPM, the MAP was fixed at 36kpa, and the MAF  
24 was fixed at 5.96gps. The steady idle and steady elevated engine speeds with the associated fixed  
25 throttle positions, and the subsequent fixed MAP and MAF readings associated with the same  
26 engine speeds and throttle parameters, are not characteristic or expected for normal engine  
27 operation.

28 ///

**Clean Plug 9:**

59. On or about March 18, 2024, Respondent issued smog certificate # TU392453C to a 2000 Chevrolet Astro, VIN # 1GCDM19W7YB140453. The smog certificate was issued under Respondent's Smog Check Technician License # EO 152335. However, a legitimate smog inspection was not performed on the vehicle. Respondent used an electronic defeat device to issue a fraudulent certificate of compliance to this vehicle.

60. The Dynamic PID Chart for the 2000 Chevrolet Astro shows between time stamp 128 and 30113, engine speed was steady at around 450 RPM. During this time, the throttle was fixed at 0% opening. The MAP was fixed at 36kpa, and the MAF was fixed at 4.24gps. Between time stamp 30474 and 48742, the engine speed was accelerated and then held steady at around 1800 RPM. During the steady elevated engine RPM, the throttle was fixed at 0% opening. During the steady elevated engine RPM, the MAP was fixed at 36kpa, and the MAF was fixed at 4.24gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the subsequent fixed MAP and MAF readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

**Clean Plug 10:**

61. On or about March 18, 2024, Respondent issued smog certificate # TU392460C to a 2000 Toyota Celica GT-S, VIN # JTDDY38T1Y0022014. The smog certificate was issued under Respondent's Smog Check Technician License # EO 152335. However, a legitimate smog inspection was not performed on the vehicle. Respondent used an electronic defeat device to issue a fraudulent certificate of compliance to this vehicle.

62. The Dynamic PID Chart for the 2000 Toyota Celica GT-S shows between time stamp 191 and 37575, engine speed was steady at around 550 RPM. During this time, the throttle was fixed at 12.2% opening. The MAF was fixed at 1.7gps. Between time stamp 38000 and 54878, the engine speed was accelerated and then held steady at around 1400 RPM. During the steady elevated engine RPM, the throttle was fixed at 12.2% opening. During the steady elevated engine RPM, the MAF was fixed at 1.7gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the subsequent fixed MAF readings associated with the

1 same engine speeds and throttle parameters, are not characteristic or expected for normal engine  
2 operation.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements - Registration)**

5 63. Respondent's Automotive Repair Dealer Registration is subject to discipline under  
6 Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or  
7 which by exercise of reasonable care should have known were untrue or misleading, as set forth  
8 above in paragraphs 38-62, above. Respondent purported to test vehicles, and certified that the  
9 vehicles passed inspection and were in compliance with applicable laws and regulations. In fact,  
10 Respondent conducted the inspections on those vehicles using clean plugging methods.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud - Registration)**

13 64. Respondent's Automotive Repair Dealer Registration is subject to discipline under  
14 Code section 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud, as set  
15 forth above in paragraphs 38-62, above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(False or Misleading Records - Registration)**

18 65. Respondent's Automotive Repair Dealer Registration is subject to discipline under  
19 Code section 9884.7, subdivision (a)(6), in that he violated California Code of Regulations, title  
20 16, section 3373, by creating and issuing false or misleading certificates of compliance and  
21 vehicle inspection reports for the 10 vehicles that were clean plugged, as set forth above in  
22 paragraphs 38-62, above. The certificates and inspection reports falsely indicated the vehicles  
23 were tested in accordance with all Bureau requirements and the vehicles were qualified to receive  
24 certificates of compliance.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Dishonesty, Fraud or Deceit – Smog Licenses)**

27 66. Respondent's Smog Check Station License, Smog Check Inspector License, and  
28 Smog Check Repair Technician License are subject to discipline under Health and Safety Code

1 sections 44072.10 and/or 44072.2, subdivision (d), in that he committed acts involving  
2 dishonesty, fraud or deceit, whereby another was injured by issuing electronic certificates of  
3 compliance for vehicles without performing bona fide inspections of the emission control devices  
4 and systems on the vehicles, thereby depriving the People of the State of California the protection  
5 afforded by the Motor Vehicle Inspection Program, as set forth above in paragraphs 38-62, above.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Violation of the Motor Vehicle Inspection Program - Smog Licenses)**

8 67. Respondent's Smog Check Station License, Smog Check Inspector License, and  
9 Smog Check Repair Technician License are subject to discipline under Health and Safety Code  
10 sections 44072.10 and/or 44072.2, subdivisions (a) and (c), in that he violated sections of that  
11 Code and/or applicable regulations, through conduct described in paragraphs 38-62, as follows:

12 a. **Health and Safety Code Section 44012:** Respondent failed to ensure that smog  
13 inspections were performed on vehicles in accordance with procedures prescribed by the  
14 department.

15 b. **Health and Safety Code Section 44059:** Respondent willfully made false  
16 statements in issuing the Smog Certificates of compliance and on the Vehicle Inspection Reports.

17 c. **Code of Regulations, title 16, Section 3340.24, subdivision (c):** Respondent falsely  
18 or fraudulently issued electronic certificates of compliance to certain vehicles without performing  
19 bona fide inspections of the emission control devices and systems on those vehicles.

20 d. **Code of Regulations, title 16, Section 3340.30, subdivision (a):** Respondent failed  
21 to inspect the vehicles in accordance with Health and Safety Code section 44012 and California  
22 Code of Regulations title 16, section 3340.42.

23 e. **Code of Regulations, title 16, Section 3340.41, subdivision (c):** Respondent  
24 entered false information about vehicles being tested into OIS.

25 f. **Code of Regulations, title 16, Section 3340.41, subdivision (h):** Respondent had  
26 electronic devices and/or software capable of simulating the OBD data stream from a vehicle  
27 and/or manipulating OBD VIN, calibration identification, calibration verification number, MIL  
28

1 status, readiness, or diagnostic trouble codes collected from a vehicle during a Smog Check  
2 Inspection in the approved testing area of the station.

3 g. **Code of Regulations, title 16, Section 3340.42:** Respondent failed to conduct the  
4 required smog tests and inspections on certain vehicles in accordance with the Bureau's  
5 specifications.

6 h. **Code of Regulations, title 16, Section 3340.45:** Respondent violated the procedures  
7 contained in the Smog Check Manual by entering vehicle identification information for a vehicle  
8 that was not being tested.

### 9 **DISCIPLINARY CONSIDERATIONS**

10 68. To determine the degree of discipline imposed upon Respondent, Complainant  
11 alleges that on or about August 14, 2023, the Bureau held a Proactive Conference with  
12 Respondent at KT Auto Repair. During that Conference, Bureau Representatives advised  
13 Respondent that compliance with all laws and regulations under the Automotive Repair Act is  
14 mandatory. Bureau Representatives specifically advised Respondent no false information about  
15 the vehicle being tested may be entered in the analyzer, and tests and inspections must be  
16 conducted in accordance with the Bureau's Smog Check Manual.

### 17 **OTHER MATTERS**

18 69. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,  
19 or place on probation the registration for all places of business operated in this state by  
20 Respondent, upon a finding that Respondent has, or is, engaged in a course of repeated and  
21 willful violations of the laws and regulations pertaining to an automotive repair dealer.

22 70. Pursuant to Health & Safety Code section 44072.8, if a license issued to Respondent  
23 is revoked or suspended following a hearing, any additional license issued under Chapter 5 of  
24 Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise  
25 revoked or suspended by the Director.

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**PRAYER**

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 267094, issued to Kris Tran dba KT Auto Repair;
2. Revoking or suspending any additional Automotive Repair Dealer Registration(s) issued to Kris Tran;
3. Revoking or suspending Smog Check Station License Number RC 267094, issued to Kris Tran dba KT Auto Repair;
4. Revoking or suspending Smog Check Repair Technician License Number EI 152335, issued to Kris Tran;
5. Revoking or suspending Smog Check Inspector License Number EO 152335, issued to Kris Tran;
6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Kris Tran;
7. Ordering Kris Tran to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of probation monitoring; and,
8. Taking such other and further action as deemed necessary and proper.

DATED: As of Digital Signature Date

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

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