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

11 In the Matter of the Accusation Against:

Case Number: 79/19-16991

12 **DARREN THANH PHAM**
13 **dba EXPRESS SMOG CHECK**
14 **320 Couch Street Suite D**
15 **Vallejo, CA 94590**

FIRST AMENDED
ACCUSATION

16 **Automotive Repair Dealer No. ARD 276292**
17 **Smog Check Station License No RC 276292**

18 **DARREN PHAM**
19 **155 Blue Bird Ct.**
20 **Vallejo, CA 94591**

21 **Smog Check Inspector (EO) License No. EO 151194**
22 **Smog Check Repair Technician (EI) License No. EI 151194**

23 **REGINALD LOUIE LITAN GRENAS**
24 **912 Javan Way**
25 **Suisun, CA 94585**

26 **Mailing Address**
27 **246 San Marino Ave.**
28 **Vallejo, CA 94589**

Smog Check Inspector (EO) License No. EO 631676
Smog Check Repair Technician (EI) License No. EI 631676

JAY M. CARUNGCONG
410 Mokelumne Dr.
Vallejo, CA 94589

Smog Check Inspector (EO) License No. EO 638623

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. On or about April 18, 2014, the Bureau issued Automotive Repair Dealer Registration
7 Number ARD 276292 (Registration) to Darren Thanh Pham (Respondent Pham) dba Express
8 Smog Check. The Registration was in full force and effect at all times relevant to the charges
9 brought herein and will expire on April 20, 2022, unless renewed.

10 **Smog Check Test and Repair Station License**

11 3. On or about September 10, 2014, the Bureau issued Smog Check, Test Only, Station
12 License Number RC 276292 (Smog Station License) to Respondent Pham. The Smog Station
13 License was in full force and effect at all times relevant to the charges brought herein and will
14 expire on April 30, 2022, unless renewed.

15 **Smog Check Inspector Licenses**

16 4. In 2005, the Director issued Advanced Emission Specialist Technician License
17 Number EA 151194 to Respondent Pham. Respondent Pham's advanced emission specialist
18 technician license expired on July 31, 2013, and was cancelled on September 12, 2013. Pursuant
19 to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
20 renewed, pursuant to Respondent Pham's election, as Smog Check Inspector License EO 151194
21 and Smog Check Repair Technician License EI 151194. ¹ Respondent Pham's Smog Check
22 Inspector License will expire on July 31, 2023, unless renewed. Respondent Pham's Smog Check
23 Repair Technician License expired on July 31, 2017 and has not been renewed.

24 5. On or about January 19, 2010, the Director issued Advanced Emission Specialist
25 Technician License Number EA 631676 to Reginald Louie Litan Grenas (Respondent Grenas).

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

1 Respondent Grenas's advanced emission specialist technician license was due to expire on June
2 30, 2014, but was cancelled on June 24, 2014. Pursuant to California Code of Regulations, title
3 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent Grenas's
4 election, as Smog Check Inspector License EO 631676 and Smog Check Repair Technician
5 License EI 631676. Respondent Grenas's Smog Check Inspector License will expire on June 30,
6 2022, unless renewed. Respondent Grenas's Smog Check Repair Technician License expired on
7 June 30, 2020, and has not been renewed.

8 6. On or about October 5, 2015, the Director issued Smog Check Inspector License
9 Number EO 638623 to Jay M. Carungcong (Respondent Carungcong). Respondent Carungcong's
10 Smog Check Inspector License will expire on November 30, 2023, unless renewed.

11 **JURISDICTION**

12 7. This Accusation is brought before the Director of the Department of Consumer
13 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

14 **STATUTORY AND REGULATORY PROVISIONS**

15 8. Section **9884.7** of the Business and Professions Code ("Code") states, in pertinent
16 part:

17 (a) The director, where the automotive repair dealer cannot show there was a bona fide
18 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
19 dealer for any of the following acts or omissions related to the conduct of the business of the
20 automotive repair dealer, which are done by the automotive repair dealer or any automotive
21 technician, employee, partner, officer, or member of the automotive repair dealer.

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

25 . . .

26 (4) Any other conduct that constitutes fraud.

27 . . .

28 (6) Failure in any material respect to comply with the provisions of this chapter or

1 regulations adopted pursuant to it.

2 . . .

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

7 9. Code section **9884.13** provides, in pertinent part, that the expiration of a valid
8 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
9 proceeding against an automotive repair dealer or to render a decision invalidating a registration
10 temporarily or permanently.

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

14 11. Section **44012** of the Health and Safety Code requires that tests at smog check
15 stations be performed in accordance with procedures prescribed by the department.

16 12. Section **44059** of the Health and Safety Code states, in pertinent part:

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

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

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

25 (a) Violates any section of this chapter and the regulations adopted pursuant to it, which
26 related to the licensed activities.

27 . . .

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

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

2 . . .

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

5 14. Section **44072.6** of the Health and Safety Code provides, in pertinent part, that the
6 expiration or suspension of a license by operation of law, or by order or decision of the Director
7 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
8 the Director of jurisdiction to proceed with disciplinary action.

9 15. Section **44072.8** of the Health and Safety Code states:

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

13 16. Section **44072.10** of the Health and Safety Code states:

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

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

18 . . .

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

21 17. California Code of Regulations, title 16, section **3340.24**, states:

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

25 18. California Code of Regulations, title 16, section **3340.30**, states, in pertinent part:

26 A licensed smog check inspector and/or repair technician shall comply with the following
27 requirements at all times while licensed:
28

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

4 . . .

5 19. California Code of Regulations, title 16, section **3340.41(c)**, states:

6 “No person shall enter into the BAR-97 Emissions Inspection System or the OBD
7 Inspection System any vehicle identification information or emission control system
8 identification data for any vehicle other than the one being tested. Nor shall any person
9 knowingly enter into the BAR-97 Emissions Inspection System or the OBD Inspection System
10 any false information about the vehicle being tested.”

11 20. California Code of Regulations, title 16, section **3340.42**, states:

12 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
13 section 3340.45.

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

16 . . .

17 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
18 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
19 The OBD test failure criteria are specified in section 3340.42.2.”

20 21. California Code of Regulations, title 16, section **3340.45**, states:

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

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

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

28

1 **COSTS**

2 22. Section 125.3 of the Code provides, in pertinent part, that a Board (including the
3 Bureau of Automotive Repair) may request the administrative law judge to direct a licentiate
4 found to have committed a violation or violations of the licensing act to pay a sum not to exceed
5 the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate
6 to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of
7 investigation and enforcement costs may be included in a stipulated settlement.

8 **SMOG PROGRAM AND CLEAN PLUGGING ALLEGATIONS**

9 23. California's Smog Check Program requires the owners of most motor vehicles in
10 California to take and pass a Smog Check inspection and receive a Certificate of Compliance
11 every two years when renewing their registration and also when the vehicle's title is transferred.
12 These inspections are performed by Smog Check inspectors at Smog Check Stations, both of
13 which are licensed by the Bureau of Automotive Repair (BAR).

14 24. The Smog Check inspection in certain Enhanced areas of the State is an Acceleration
15 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
16 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons, Carbon
17 Monoxide, Oxides of Nitrogen, Carbon Dioxide, and Oxygen. The inspection involves a test of
18 the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the State, or depending on a
19 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed
20 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a
21 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute
22 (RPM).

23 25. The inspector also performs visual and functional tests on the vehicle as outlined in
24 the Smog Check Manual. The visual inspection of the emission control components verifies the
25 required emission control devices are present and properly connected. Functional tests are also
26 performed which, depending on the vehicle, may include checking the ignition timing,
27 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test
28

1 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
2 cap.

3 26. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
4 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
5 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
6 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.
7 Gas powered vehicles with a gross vehicle weight rating over 14,000 pounds require an
8 inspection on the EIS.

9 27. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
10 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
11 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
12 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
13 vehicle. The bar code scanner is used to input technician information, the vehicle identification
14 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
15 Reports.

16 28. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
17 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
18 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
19 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
20 number of specific data values each PCM uses related to emissions controls.

21 29. As part of the BAR-OIS smog inspections, the technician also performs a visual and
22 functional test on the vehicle being inspected. The visual inspection of the emission control
23 components verifies the required emission control devices are present and properly connected and
24 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
25 makes the determination whether or not the vehicle passes the inspection based on the results of
26 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
27 compliance is issued. The information from the smog inspection is then transmitted to the
28 Vehicle Information Data (VID).

1 30. The Bureau can access the VID to view test data on smog check inspections
2 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
3 particular vehicle which has been tested.

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

8 32. One method is known as "clean plugging." "Clean plugging" is the act of using one
9 vehicle's properly functioning OBDII system, or another source, to generate passing data readings
10 or diagnostic information for the purpose or fraudulently issue a smog certificate of compliance to
11 a vehicle that is not in smog compliance and/or not present for testing. The vehicle being tested is
12 not the one being issued the certificate of compliance.

13 33. The Bureau initiated an investigation of Respondent Pham's smog check station.
14 Respondents were found to have performed three fraudulent smog inspections using clean-
15 plugging methods. All three fraudulent smog inspections were performed at Respondent Pham's
16 Smog Station. Respondent Grenas personally performed two of the clean-plugs. Respondent
17 Carungcong personally performed one of the clean-plugs. Respondent Pham issued the three
18 fraudulent certificates of compliance.

19 34. A Bureau representative reviewed data for the three clean-plugged vehicles inspected
20 by Respondents. The data revealed that the three vehicles that were purportedly tested by
21 Respondents were not and could not have been connected to the DAD when they were being
22 certified because the OBD-II data purportedly transmitted by those vehicles could not have been
23 transmitted by those vehicles.

24 35. Respondents clean plugged and issued fraudulent certificates of compliance to the
25 following three vehicles:

26 ///

27 ///

28 ///

1 a) Clean Plug# 1 - 2015 Subaru XV Crosstrek (Performed by Respondent Grenas)

2

Certificate #	eVIN	Protocol	PID count
3 QU022116C			
4 Fraudulent Inspection 6/1/19	Not Reported	I914	16
5 Expected OBDII Value	JF2GPACC6F8238579	ICAN11bt5	48 3

6

7 b) Clean Plug #2 – 2002 Chrysler Sebring Limited (Performed by Respondent
8 Carungcong)

9

Certificate #	eVIN	Protocol	PID count
10 QU227650C			
11 Fraudulent Inspection 6/18/19	Not Reported	I914	16
12 Expected OBDII Value	Not Reported	JVPW	22/3

13

14 c) Clean Plug #3 –2011 Mercedes Benz Sprinter 2500 (Performed by Respondent
15 Grenas)

16

Certificate #	eVIN	Protocol	PID count
17 RA715075C			
18 Fraudulent Inspection 11/19/19	JTJYWRBZ7F2002422	ICAN11bt5	40 29
19 Expected OBDII Value	Not Usually Reported	ICAN11bt5	58 12 or 58 12 16

20

21

22

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Misleading Statements - Registration)**

25 36. Respondent Pham has subjected his registration to discipline under Code section
26 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or which by
27 exercise of reasonable care should have known were untrue or misleading, as set forth above in
28 paragraphs 33-35, above. Respondents fraudulently purported to test three vehicles, and certified

1 that the three vehicles passed inspection and were in compliance with applicable laws and
2 regulations. In fact, Respondents conducted the inspections on those vehicles using clean-
3 plugging methods.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud - Registration)**

6 37. Respondent Pham has subjected his registration to discipline under Code section
7 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud, as set forth above in
8 paragraphs 33-36, above.

9 **THIRD CAUSE FOR DISCIPLINE**

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

11 38. Respondent Pham has subjected his Station License, Smog Check Inspector and/or
12 Smog Check Repair Technician licenses to discipline under Health and Safety Code sections
13 44072.10 and 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and
14 applicable regulations, through conduct described in paragraphs 33-35, as follows:

15 a. **Section 44012:** Respondent Pham failed to ensure that smog inspections were
16 performed on three vehicles in accordance with procedures prescribed by the department.

17 b. **Section 44059:** Respondent Pham willfully made false entries for the electronic
18 certificates of compliance by certifying that vehicles had been inspected as required when, in fact,
19 they had not.

20 c. **Section 3340.24, subdivision (c):** Respondent Pham falsely or fraudulently issued
21 electronic certificates of compliance to certain vehicles without performing bona fide inspections
22 of the emission control devices and systems on those vehicles.

23 d. **Section 3340.30, subdivision (a):** Respondent Pham failed to inspect the vehicles in
24 accordance with Health and Safety Code section 44012 and California code of Regulations title
25 16, section 3340.42.

26 ///

27 ///

28 ///

1 e. **Section 3340.41, subdivision (c):** Respondent entered vehicle identification
2 information for a vehicle other than the one being tested into the BAR-OIS. Respondent Pham
3 knowingly entered false information about the vehicle being tested into the BAR-OIS.

4 f. **Section 3340.42:** Respondent Pham failed to conduct the required smog tests and
5 inspections on certain vehicles in accordance with the Bureau's specifications.

6 g. **Section 3340.45** Respondent Pham violated the procedures contained in the Smog
7 Check Manual by entering vehicle identification information for a vehicle that was not being
8 tested. Respondent Pham knowingly entered false information about the vehicle being tested.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Dishonesty, Fraud or Deceit-Smog Licenses)**

11 39. Respondent Pham subjected his Station License, Smog Check Inspector, and/or Smog
12 Check Repair Technician licenses to discipline under Health and Safety Code sections 44072.10
13 and 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit,
14 whereby another was injured by issuing electronic certificates of compliance for vehicles without
15 performing bona fide inspections of the emission control devices and systems on the vehicles,
16 thereby depriving the People of the State of California of the protection afforded by the Motor
17 Vehicle Inspection Program, as set forth above in paragraph 33-36, above.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Violations of the Motor Vehicle Inspection Program – Smog Check Licenses)**

20 40. Respondent Grenas has subjected his Smog Check Inspector and Smog Check Repair
21 Technician licenses to discipline under Health and Safety Code sections 44072.10 and 44072.2,
22 subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations,
23 through conduct described in paragraphs 33-35, as follows:

24 a. **Section 44012:** Respondent Grenas failed to ensure that smog inspections were
25 performed on vehicles in accordance with procedures prescribed by the department.

26 b. **Section 44059:** Respondent Grenas willfully made false entries for the electronic
27 certificates of compliance by certifying that vehicles had been inspected as required when, in fact,
28 they had not.

1 c. **Section 3340.24, subdivision (c):** Respondent Grenas falsely or fraudulently caused
2 electronic certificates of compliance to be issued to vehicles without performing bona fide
3 inspections of the emission control devices and systems on those vehicles.

4 d. **Section 3340.30, subdivision (a):** Respondent Grenas failed to inspect vehicles in
5 accordance with Health and Safety Code section 44012 and California code of Regulations title
6 16, section 3340.42.

7 e. **Section 3340.41, subdivision (c):** Respondent Grenas entered vehicle identification
8 information for a vehicle other than the one being tested into the BAR-OIS. Respondent
9 knowingly entered false information about the vehicle being tested into the BAR-OIS.

10 f. **Section 3340.42:** Respondent Grenas failed to conduct the required smog tests and
11 inspections on vehicles in accordance with the Bureau's specifications.

12 g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check
13 Manual by entering vehicle identification information for a vehicle that was not being tested.
14 Respondent knowingly entered false information about the vehicle being tested.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud or Deceit – Smog Check Licenses)**

17 41. Respondent Grenas subjected his Smog Check Inspector and Smog Check Repair
18 Technician licenses to discipline under Health and Safety Code sections 44072.10 and 44072.2,
19 subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby another
20 was injured by issuing electronic certificates of compliance for vehicles without performing bona
21 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
22 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program, as set forth above in paragraphs 33-36, above.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

26 42. Respondent Carungcong has subjected his Smog Check Inspector license to discipline
27 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
28

1 violated sections of that Code and applicable regulations, through conduct described in
2 paragraphs 33-35, as follows:

3 a. **Section 44012:** Respondent Carungcong failed to ensure that a smog inspection was
4 performed on a vehicle in accordance with procedures prescribed by the department.

5 b. **Section 44059:** Respondent Carungcong willfully made a false entry for an
6 electronic certificate of compliance by certifying that a vehicle had been inspected as required
7 when, in fact, they had not.

8 c. **Section 3340.24, subdivision (c):** Respondent Carungcong falsely or fraudulently
9 caused an electronic certificate of compliance to be issued to a vehicle without performing bona
10 fide inspections of the emission control devices and systems on that vehicle.

11 d. **Section 3340.30, subdivision (a):** Respondent Carungcong failed to inspect a vehicle
12 in accordance with Health and Safety Code section 44012 and California code of Regulations title
13 16, section 3340.42.

14 e. **Section 3340.41, subdivision (c):** Respondent Carungcong entered vehicle
15 identification information for a vehicle other than the one being tested into the BAR-OIS.
16 Respondent knowingly entered false information about the vehicle being tested into the BAR-
17 OIS.

18 f. **Section 3340.42:** Respondent Carungcong failed to conduct the required smog tests
19 and inspections on vehicles in accordance with the Bureau's specifications.

20 g. **Section 3340.45** Respondent Carungcong violated the procedures contained in the
21 Smog Check Manual by entering vehicle identification information for a vehicle that was not
22 being tested. Respondent knowingly entered false information about the vehicle being tested.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Dishonesty, Fraud or Deceit – Smog Check License)**

25 43. Respondent Carungcong subjected his Smog Check Inspector license to discipline
26 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he
27 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing an
28 electronic certificate of compliance for a vehicle without performing bona fide inspections of the

1 emission control devices and systems on the vehicle, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
3 in paragraphs 33-36, above.

4 **CLEAN TANKING ALLEGATIONS**

5 44. Another method of performing fraudulent smog inspections is known as “Clean
6 tanking.” Clean tanking is a method by which inspectors and smog station cheat the Low-
7 Pressure Fuel Evaporative Test (LPFET), one of the functional tests that is part of the EIS
8 inspections. The LPFET tests the functionality of the vehicle’s Evaporative Emissions Control
9 (EVAP) system by introducing inert Nitrogen (N2) gas into a vehicle’s fuel tank. The N2 gas is
10 introduced through a specialized adapter attached to the fuel fill neck. If the EVAP system is
11 properly sealed, the equipment will reach a predetermined pressure and then hold that pressure for
12 a specified period of time. This confirms no leaks are present.

13 45. The LPFET equipment must pass a calibration test every three days to verify the
14 ability to properly measure the volume of N2 introduced and the pressure readings. To perform
15 the calibration, the LPFET equipment introduces N2 into a calibration tank attached to the
16 equipment. Clean Tanking occurs when a smog inspector performs the LPFET test on a
17 calibration tank instead of actual vehicle being certified.

18 46. The Bureau identifies clean tanking by performing a statistical analysis of LPFET
19 data transmitted to the VID during a smog inspections. During an EIS smog inspection, the
20 LPFET equipment measures the “headspace volume” in a vehicle’s gas tank. The “headspace
21 volume” is the volume of the vapor space in the fuel tank above the fuel level. The headspace
22 volume will change depending on how full the fuel tank is. For example, a vehicle with a half
23 tank of fuel will have a larger headspace volume than a vehicle with full tank of fuel.

24 47. Unlike headspace volume in actual vehicles, the LPFET calibration tank has a set
25 volume of 2.0 gallons. The Bureau identifies clean tanking when a smog station and or inspector
26 has a disproportionate number of LPFET tests in the two-gallon headspace volume range.²

27 ² The testing headspace volume and calibration tank volume is not exact. A calibration
28 test is considered successful if the amount of N2 gas introduced is within the 1.5 to 2.5-gallon
(continued...)

1 48. A bureau review of LPFET inspections performed by Respondents revealed all three
2 had a disproportionate number of LPFET tests in the two gallon range and were involved in clean
3 tanking.

4 49. A bureau representative reviewed the data for smog inspections performed by
5 respondents during the period of January 1, 2020 through April 25, 2021. A total of 172 LPFET
6 passing inspections were performed by Respondent Carungcong and Respondent Grenas at
7 Respondent Pham's Smog Station.³ Of the 172 passing inspections, 107 (62.21%) had a
8 calculated headspace within the two gallon range.

9 50. Respondent Carungcong performed 152 of the 172 passing smog inspections
10 performed at Respondent Pham's Smog Station.⁴ Of the 152 passing inspections, 94 (61.84%)
11 had a calculated headspace within the two gallon range.

12 51. Respondent Grenas performed 19 of the 172 passing smog inspections performed at
13 Respondent Pham's Smog Station.⁵ Of the 19 passing inspections, 13 (68.42%) had a calculated
14 headspace within the two gallon range.

15 52. The percentage of vehicles inspected by respondents that had a calculated headspace
16 within the two gallon range far exceeds the percentage of vehicles that would be expected to fall
17 within this range. Statewide, 573,285 passing LPFET inspections were performed during this
18 same period. Only 13.84% of those inspections reported a headspace volume in the two gallon
19 range.⁶

20 53. Based on statewide averages only about 24 of 172 of Respondent Phams's passing
21 inspections would be expected to have a headspace volume in the two gallon range. Instead, 107
22 vehicles were within the two gallon range. Respondent Pham issued certificates of compliance to
23 vehicles that were inspected using clean tanking methods.

24 headspace volume range. When looking for clean tanking the Bureau looks for a disproportionate
25 number of tests in this range. For purposes of this accusation the two gallon range means 1.5-2.5
gallons.

26 ³ All inspections that had a zero reading or no N2 added were not included.

27 ⁴ All inspections that had a zero reading or no N2 added were not included.

28 ⁵ All inspections that had a zero reading or no N2 added were not included.

⁶ All inspections that had a zero reading or no N2 added were not included. In addition,
14.03% is artificially high is it includes clean tanked vehicles.

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Violation of Regulations-Registration)**

3 59. Respondent Pham has subjected his registration to discipline under Code section
4 9884.7, subdivision (a)(6), in that he violated California Code of Regulations Title 16, sections
5 3371 and/or 3373 by causing false or misleading certificates of compliance to be issued to
6 vehicles what were not properly inspected as set forth above in paragraph 48-57, above.

7 **TWELFTH CAUSE FOR DISCIPLINE**

8 **(Violation of the Motor Vehicle Inspection Program – Smog Licenses)**

9 60. Respondent Pham has subjected his Station License, Smog Check Inspector and/or
10 Smog Check Repair Technician licenses to discipline under Health and Safety Code sections
11 44072.10 and 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and
12 applicable regulations, as set forth above in paragraphs 48-56, as follows:

13 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
14 on the vehicles in accordance with procedures prescribed by the department. Respondent failed
15 to perform proper functional inspections.

16 b. **Section 44059:** Respondent willfully made false entries for the electronic certificates
17 of compliance by certifying that the vehicles had been inspected as required when, in fact, they
18 had not.

19 c. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
20 electronic certificates of compliance to the vehicles without performing bona fide inspections of
21 the emission control devices and systems on those vehicles.

22 e. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
23 about the vehicle being tested into the EIS/BAR-97.

24 f. **Section 3340.42, subdivision (b)(2):** Respondent failed to conduct the required
25 smog tests and inspections vehicles in accordance with the Bureau’s specifications.

26 g. **Section 3340.45:** Respondent violated the procedures contained in the Smog Check
27 Manual by failing to perform LPFET tests on the vehicles being certified.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 61. Respondent Pham has subjected his Station License, Smog Check Inspector and/or
4 Smog Check Repair Technician licenses to discipline under Health and Safety Code sections
5 44072.10 and 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or
6 deceit, whereby another was injured by issuing electronic certificates of compliance for vehicles
7 without performing bona fide inspections of the emission control devices and systems on the
8 vehicles, thereby depriving the People of the State of California of the protection afforded by the
9 Motor Vehicle Inspection Program, as set forth above in paragraphs 48-56, above.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**

11 **(Violations of the Motor Vehicle Inspection Program – Smog Check Licenses)**

12 62. Respondent Grenas has subjected his Smog Check Inspector and Smog Check Repair
13 Technician licenses to discipline under Health and Safety Code sections 44072.10 and 44072.2,
14 subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations, as set
15 forth above in paragraph 48-56, as follows:

16 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
17 on vehicles in accordance with procedures prescribed by the department.

18 b. **Section 44059:** Respondent willfully made false entries for the electronic certificates
19 of compliance by certifying that vehicles had been inspected as required when, in fact, they had
20 not.

21 c. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
22 electronic certificates of compliance to vehicles without performing bona fide inspections of the
23 emission control devices and systems on those vehicles.

24 d. **Section 3340.30, subdivision (a):** Respondent failed to test vehicles in accordance
25 with Health and Safety Code section 44012 and California Code of Regulations, Title 16, section
26 3340.42.

27 e. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
28 about the vehicle being tested into the EIS/BAR-97.

1 f. **Section 3340.42, subdivision (b)(2):** Respondent failed to conduct the required
2 functional tests and inspections on vehicles in accordance with the Bureau's specifications.

3 g. **Section 3340.45:** Respondent violated the procedures contained in the Smog Check
4 Manual by failing to perform LPFET tests on the vehicles being certified.

5 **FIFTEENTH CAUSE FOR DISCIPLINE**

6 **(Dishonesty, Fraud or Deceit – Smog Check Licenses)**

7 63. Respondent Grenas has subjected his Smog Check Inspector and Smog Check Repair
8 Technician licenses to discipline under Health and Safety Code sections 44072.10 and 44072.2,
9 subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby another
10 was injured by issuing electronic certificates of compliance for vehicles without performing bona
11 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
12 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
13 Program, as set forth above in paragraphs 48-57, above.

14 **SIXTEENTH CAUSE FOR DISCIPLINE**

15 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

16 64. Respondent Carungcong has subjected his Smog Check Inspector license to discipline
17 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
18 violated sections of that Code and applicable regulations, as set forth above in paragraph 48-56,
19 as follows:

20 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
21 on vehicles in accordance with procedures prescribed by the department.

22 b. **Section 44059:** Respondent willfully made false entries for the electronic certificates
23 of compliance by certifying that vehicles had been inspected as required when, in fact, they had
24 not.

25 c. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
26 electronic certificates of compliance to vehicles without performing bona fide inspections of the
27 emission control devices and systems on those vehicles.

28

1 d. **Section 3340.30, subdivision (a):** Respondent failed to test vehicles in accordance
2 with Health and Safety Code section 44012 and California Code of Regulations, Title 16, section
3 3340.42.

4 e. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
5 about the vehicle being tested into the EIS/BAR-97.

6 f. **Section 3340.42, subdivision (b)(2):** Respondent failed to conduct the required
7 functional tests and inspections on vehicles in accordance with the Bureau's specifications.

8 g. **Section 3340.45:** Respondent violated the procedures contained in the Smog Check
9 Manual by failing to perform LPFET tests on the vehicles being certified.

10 **SEVENTEENTH CAUSE FOR DISCIPLINE**

11 **(Dishonesty, Fraud or Deceit – Smog Check License)**

12 65. Respondent Carungcong subjected his Smog Check Inspector license to discipline
13 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he
14 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing
15 electronic certificates of compliance for vehicles without performing bona fide inspections of the
16 emission control devices and systems on the vehicles, thereby depriving the People of the State of
17 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
18 in paragraphs 48-57.

19 **UNDERCOVER OPERATION**

20 66. In 2019, a Bureau Representative prepared a 2012 Honda (Honda) to fail a smog
21 inspection due to the removal of the Positive Crankcase Ventilation (PCV) valve and hose
22 assembly. The Bureau Representative installed a non-approved open breather element in place of
23 the PCV valve and large vacuum cap on the PCV valve intake manifold vacuum supply port. In
24 this condition the Honda would not pass a properly performed smog inspection. The Honda
25 would fail the visual portion of the smog inspection.

26 67. On or about October 14, 2019, an undercover operation was performed at Respondent
27 Pham's smog check station to confirm compliance with the Smog Check Program. An operator
28 drove the Honda to Express Smog Check and requested a smog inspection.

1 c. Respondent Pham violated California Code of Regulations, Title 16, section 3340.35,
2 subdivision (c), in that Respondent Pham issued a certificate of compliance to a vehicle that did
3 not have all the required emission control equipment and devices installed and functioning
4 correctly.

5 d. Respondent Pham violated California Code of Regulations, Title 16, section 3340.42,
6 subdivision (b) in that Respondent failed to provide a proper visual inspection of the Honda.

7 e. Respondent Pham violated California Code of Regulations, Title 16, section 3340.42,
8 in conjunction with California Code of Regulations, Title 16, section 3340.45, subdivision (b), in
9 that Respondent failed to provide a proper visual inspection on the Honda as prescribed in the
10 Smog Check Manual.

11 f. Respondent Pham violated California Code of Regulations, Title 16, section 3353, in
12 that Respondent Pham failed to provide the operator with a written estimate.

13 g. Respondent Pham violated California Code of Regulations, Title 16, section 3371, in
14 that Respondent Pham made untrue or misleading statements as described in paragraph 47, above.

15 h. Respondent Pham violated California Code of Regulations, Title 16, section 3373, in
16 that Respondent Pham made untrue or misleading statements on a Vehicle Inspection Report.
17 The Vehicle Inspection Report stated that the vehicle passed the Crankcase Emission Controls
18 visual inspection.

19 **TWENTIETH CAUSE FOR DISCIPLINE**

20 **(Dishonest or Deceit-Smog Licenses)**

21 71. Respondent Pham has subjected his Station License, Smog Check Inspector and/or
22 Smog Check Repair Technician licenses to disciplinary action under Health and Safety Code
23 section 44072.2, subdivision (d), in that Respondent Pham committed acts involving dishonesty
24 or deceit whereby another was injured. The circumstances are described in paragraphs 66-69,
25 above.

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1 **TWENTY FIRST CAUSE FOR DISCIPLINE**

2 **(Violation of Laws and Regulations-Smog Licenses)**

3 72. Respondent Pham has subjected his Station License, Smog Check Inspector and/or
4 Smog Check Repair Technician licenses to disciplinary action under Health and Safety Code
5 section 44072.2, subdivision(s) (a), (c) and/or (g), in that Respondent Pham violated the following
6 laws and regulations:

7 a. Respondent Pham violated Health and Safety code section 44012, subdivision (f), in
8 the Respondent Pham failed to perform a smog check on the Honda according to the procedures
9 prescribed by the department. Respondent failed to perform a proper visual inspection.

10 b. Respondent Pham violated Health and Safety code section 44015, subdivision (a)(1),
11 in that Respondent Pham issued a certificate of compliance to a vehicle that had been tampered
12 with.

13 c. Respondent Pham violated California Code of Regulations, Title 16, section 3340.24,
14 subdivision (c), in that Respondent Pham falsely issued a certificate of compliance to the Honda.

15 d. Respondent Pham violated California Code of Regulations, Title 16, section 3340.35,
16 subdivision (c), in that Respondent Pham issued a certificate of compliance to a vehicle that did
17 not have all the required emission control equipment and devices installed and functioning
18 correctly.

19 e. Respondent Pham violated California Code of Regulations, Title 16, section 3340.42,
20 subdivision (b) in that Respondent Pham failed to perform a proper visual inspection of the
21 Honda.

22 f. Respondent Pham violated California Code of Regulations, Title 16, section
23 3340.42 in conjunction with California Code of Regulations, Title 16, section 3340.45,
24 subdivision (b), in that Respondent Pham failed to perform a proper visual inspection on the
25 Honda as prescribed in the Smog Check Manual.

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1 **TWENTY SECOND CAUSE FOR DISCIPLINE**

2 **(Dishonesty or Deceit-Smog Check License)**

3 73. Respondent Carungcong has subjected his Smog Check Inspector License to
4 disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that
5 Respondent Carungcong committed acts involving dishonesty or deceit whereby another was
6 injured. The circumstances are described in paragraphs 66-69, above.

7 **TWENTY THIRD CAUSE FOR DISCIPLINE**

8 **(Violation of Laws and Regulations- Smog Check License)**

9 74. Respondent Carungcong has subjected his Smog Check Inspector License to
10 disciplinary action under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or
11 (g), in that Respondent Carungcong violated the following laws and regulations:

12 a. Respondent Carungcong violated Health and Safety code section 44012, subdivision
13 (f), in that Respondent Carungcong failed to perform a smog check on the Honda according to the
14 procedures prescribed by the department. Respondent failed to perform a proper visual
15 inspection.

16 b. Respondent Carungcong violated Health and Safety code section 44015, subdivision
17 (a)(1), in that Respondent Carungcong issued a certificate of compliance to a vehicle that had
18 been tampered with.

19 c. Respondent Carungcong violated California Code of Regulations, Title 16, section
20 3340.24, subdivision (c), in that Respondent Carungcong falsely issued a certificate of
21 compliance to the Honda.

22 d. Respondent Carungcong violated California Code of Regulations, Title 16, section
23 3340.35, subdivision (c), in that he caused Respondent Pham to issue a certificate of compliance
24 to a vehicle that did not have all the required emission control equipment and devices installed
25 and functioning correctly.

26 e. Respondent Carungcong violated California Code of Regulations, Title 16, section
27 3340.42, subdivision (b) in that Respondent Carungcong failed to perform a proper visual
28 inspection of the Honda.

1 f. Respondent Carungcong violated California Code of Regulations, Title 16,
2 section 3340.42 in conjunction with California Code of Regulations, Title 16, section 3340.45,
3 subdivision (b), in that Respondent Carungcong failed to perform a proper visual inspection on
4 the Honda as prescribed in the Smog Check Manual.

5 **DISCIPLINARY CONSIDERATIONS**

6 75. To determine the degree of discipline, if any, to be imposed on Respondent Pham,
7 Complainant alleges that on or about January 2, 2019, Respondent Pham was issued Citation No.
8 C2019-34 for failing to perform a smog inspection according to the procedures prescribed by the
9 department. The citation is now final.

10 76. To determine the degree of discipline, if any, to be imposed on Respondent
11 Pham and Respondent Carungcong, Complainant alleges that on or about April 17, 2019, a
12 Bureau representative held a proactive conference with Respondent Carungcong at Respondent
13 Pham's Smog Check Station. Respondent Carungcong was acting as Respondent Pham's station
14 manager and in his individual capacity as a smog check inspector. The Bureau representative
15 informed Respondents Carungcong and Pham of improper smog inspections that were performed
16 by Respondent Carungcong at Respondent Pham's Station. Respondent Carungcong and Pham
17 were warned that future violations of the Automotive Repair Act and Smog Check Program may
18 result in disciplinary action.

19 77. To determine the degree of discipline, if any, to be imposed on Respondent Grenas,
20 Complainant alleges that on or about June 15, 2012, Respondent Grenas was issued Citation No.
21 M2012-1783 for failing to perform a smog inspection according to the procedures prescribed by
22 the department. The citation is now final.

23 **OTHER MATTERS**

24 78. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
25 or place on probation the registration for all places of business operated in this state by
26 Respondent Pham, upon a finding that Respondent has, or is, engaged in a course of repeated and
27 willful violations of the laws and regulations pertaining to an automotive repair dealer.
28

1 7. Ordering Darren Thanh Pham to pay the Bureau of Automotive Repair the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 8. Revoking or suspending Smog Check Inspector (EO) License No. EO 631676
5 issued to Reginald Louie Litan Grenas;

6 9. Revoking or suspending Smog Check Repair Technician (EI) License No. EI
7 631676 issued to Reginald Louie Litan Grenas;

8 10. Revoking or suspending any additional Smog Check Station License, Smog Check
9 Inspector License, or Smog Check Repair Technician license, issued to Reginald Louie Litan
10 Grenas;

11 11. Ordering Reginald Louie Litan Grenas to pay the Bureau of Automotive Repair
12 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 125.3;

14 12. Revoking or suspending Smog Check Inspector (EO) License No. EO 638623
15 issued to Jay M Carungcong;

16 13. Revoking or suspending any additional Smog Check Station License, Smog Check
17 Inspector License, or Smog Check Repair Technician license, issued to Jay M Carungcong;

18 14. Ordering Jay M Carungcong to pay the Bureau of Automotive Repair the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3;

21 15. Taking such other and further action as deemed necessary and proper.

22
23 DATED: As of Digital Signature Date

24 _____
25 PATRICK DORAIS
26 Chief
27 Bureau of Automotive Repair
28 Department of Consumer Affairs
State of California
Complainant