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

11
12 In the Matter of the Accusation Against:
13 **SOUTH HARBOR SMOG TEST ONLY**
CENTER
14 **THAI Q. PHAN, PARTNER**
THUAN D. DO, PARTNER
15 **904 South Harbor Blvd.**
Santa Ana, CA 92704
16
Automotive Dealer Registration
17 **No. ARD 263142**
Smog Check, Test Only, Station License
18 **No. TC 263142**
19
THAI QUOC PHAN
904 South Harbor Blvd.
20 **Santa Ana, CA 92704 Smog Check Inspector**
License No. EO 148982
21 **(formerly Advanced Emission Specialist**
Technician License No. EA 148982)
22
CHRISTINA LYNN MORETTA
23 **2137 Belmont Court**
Norco, CA 92860
24 **Smog Check Inspector License No. EO 631995**
and Smog Check Repair Technician License
25 **No. EI 631995**
26 **(formerly Advanced Emission Specialist**
Technician License No. EA 631995)
27 Respondents.
28

Case No. 79/15-10
ACCUSATION
(SMOG CHECK)

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 No. ARD 263142**

6 2. On or about September 1, 2010, the Bureau of Automotive Repair (Bureau) issued
7 Automotive Repair Dealer Registration Number ARD 263142 (registration) to Thai Q. Phan and
8 Thuan D. Do, Partners, dba South Harbor Smog Test Only Center (Respondent South Harbor).
9 Respondent's registration was in full force and effect at all times relevant to the charges brought
10 herein and will expire on September 30, 2014, unless renewed.

11 **Smog Check, Test Only, Station License No. TC 263142**

12 3. On or about September 9, 2010, the Bureau issued Smog Check, Test Only, Station
13 License Number TC 263142 (smog check station license) to Thai Q. Phan and Thuan D. Do,
14 Partners, dba South Harbor Smog Test Only Center (Respondent South Harbor). Respondent's
15 smog check station license was in full force and effect at all times relevant to the charges brought
16 herein and will expire on September 30, 2014, unless renewed.

17 **Smog Check Inspector License No. EO 148982**

18 4. In 2004, the Bureau issued Advanced Emission Specialist License Number EA
19 148982 (technician license) to Thai Quoc Phan (Respondent Phan). The technician license was
20 due to expire on January 31, 2014. Pursuant to California Code of Regulations, title 16, section
21 3340.28, subdivision (e), the technician license was renewed, pursuant to Respondent Phan's
22 election, as Smog Check Inspector License No. EO 148982 (inspector license). Respondent
23 Phan's smog check inspector license and will expire on January 31, 2016, unless renewed.¹

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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 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/or Smog Check Repair Technician (EI) license.

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(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.

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

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 Safety Code, section 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.

....

16. 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."

17. Section 44072.10 of the Health and Safety Code states, in pertinent part:

....

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

3 18. Section 44012 of the Health and Safety Code provides, in pertinent part, that the test
4 at the smog check station shall be performed in accordance with procedures prescribed by the
5 department, pursuant to Section 44013.

6 19. Section 44032 of the Health and Safety Code provides, in pertinent part that qualified
7 technicians shall perform tests of emission control devices and systems in accordance with
8 Section 44012.

9 **REGULATORY PROVISIONS**

10 20. California Code of Regulations, title 16, (CCR) section 3340.24, (c), states:

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

14 21. CCR section 3340.30, subdivision (a), states:

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

17 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
18 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
19 3340.42 of this article."

20 22. CCR section 3340.41, subdivision (b), states:

21 "(b) No person shall enter into the emissions inspection system any access or qualification
22 number other than as authorized by the bureau, nor in any way tamper with the emissions
23 inspection system."

24 23. CCR section 3340.45, states:

25 "(a) All Smog Check inspections shall be performed in accordance with requirements and
26 procedures prescribed in the following:

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

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violations of Motor Vehicle Inspection Program)**

3 31. Respondent South Harbor's smog check station license is subject to disciplinary
4 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent
5 failed to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent South Harbor allowed an unqualified technician to
7 perform tests of emission control systems which was not in accordance with procedures
8 prescribed by the department.

9 b. **Section 44032:** Respondent South Harbor allowed an unqualified technician to
10 perform tests of emission control systems.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

13 32. Respondent South Harbor's smog check station license is subject to disciplinary
14 action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent
15 failed to comply with provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic smog certificates of compliance for the two vehicles identified in paragraph 26, above.

18 b. **Section 3340.41, subdivision (b):** Respondent entered into the emissions inspection
19 system access or qualification numbers other than as authorized by the Bureau.

20 **FIFTH CAUSE FOR DISCIPLINE**

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

22 33. Respondent South Harbor's smog check station license is subject to disciplinary
23 action pursuant to Code section Health and Safety 44072.2, subdivision (d), in that Respondent
24 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
25 smog certificates of compliance for the two vehicles identified in paragraph 26, above, thereby
26 depriving the People of the State of California of the protection afforded by the Motor Vehicle
27 Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violations of Motor Vehicle Inspection Program)**

3 34. Respondent Phan's inspector license is subject to disciplinary action pursuant to
4 Health and Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply
5 with the following sections of that Code:

6 a. **Section 44012:** Respondent Phan performed tests of emission control systems which
7 was not in accordance with procedures prescribed by the department.

8 b. **Section 44032:** Respondent Phan performed tests of emission control systems for
9 which he was not qualified.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

12 35. Respondent Phan's inspector license is subject to disciplinary action pursuant to
13 Health and Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply
14 with provisions of California Code of Regulations, title 16, as follows:

15 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
16 electronic smog certificates of compliance for the two vehicles identified in paragraph 26, above.

17 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the two
18 vehicles identified in paragraph 26, above, in compliance with the Code.

19 c. **Section 3340.41, subdivision (b):** Respondent entered into the emissions inspection
20 system access or qualification numbers other than as authorized by the Bureau.

21 **EIGHTH CAUSE FOR DISCIPLINE**

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

23 36. Respondent Phan's inspector license is subject to disciplinary action pursuant to
24 Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed
25 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
26 certificates of compliance for the two vehicles identified in paragraph 26, above, thereby
27 depriving the People of the State of California of the protection afforded by the Motor Vehicle
28 Inspection Program.

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Violations of Motor Vehicle Inspection Program)**

3 37. Respondent Moretta's inspector license and repair license are subject to disciplinary
4 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent
5 failed to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent Moretta allowed Respondent Phan to use her license and
7 access code numbers to perform tests of emission control systems which was not in accordance
8 with procedures prescribed by the department.

9 b. **Section 44032:** Respondent Moretta allowed Respondent Phan to use her license and
10 access code numbers to perform tests of emission control systems for which he was not qualified.

11 **TENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

13 38. Respondent Moretta's inspector license and repair license are subject to disciplinary
14 action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent
15 failed to comply with provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent Moretta allowed Respondent Phan to
17 use her license and access code numbers to falsely or fraudulently issue electronic smog
18 certificates of compliance for the two vehicles identified in paragraph 26, above.

19 b. **Section 3340.41, subdivision (b):** Respondent Moretta allowed Respondent Phan to
20 use her license and access code numbers to be entered into the emissions inspection system.

21 c. **Section 3340.45:** Respondent Moretta allowed Respondent Phan to use her license
22 and access code numbers to be entered into the emissions inspection system in violation of the
23 Smog Check Inspection Procedures Manual.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

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

26 39. Respondent Moretta's inspector license and repair license are subject to disciplinary
27 action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent
28 committed dishonest, fraudulent or deceitful acts whereby another is injured by allowing

1 Respondent Phan to use her license and access code numbers to issue electronic smog certificates
2 of compliance for the two vehicles identified in paragraph 26, above, thereby depriving the
3 People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 **OTHER MATTERS**

6 40. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke
7 or place on probation the registration for all places of business operated in this state by
8 Respondent Thai Q. Phan or Thuan D. Do, Partners, dba South Harbor Smog Test Only Center,
9 upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations
10 of the laws and regulations pertaining to an automotive repair dealer.

11 41. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,
12 Station License Number TC 263142, issued to Respondent Thai Q. Phan or Thuan D. Do,
13 Partners, dba South Harbor Smog Test Only Center, is revoked or suspended, any additional
14 license issued under this chapter in the name of said licensee may be likewise revoked or
15 suspended by the Director.

16 42. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
17 License No. EO 148982, issued to Respondent Thai Quoc Phan, is revoked or suspended, any
18 additional license issued under this chapter in the name of said licensee may be likewise revoked
19 or suspended by the Director.

20 43. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
21 License No. EO 631995 or Smog Check Repair Technician License No. EI 631995, issued to
22 Respondent Christina Lynn Moretta, is revoked or suspended, any additional license issued under
23 this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Director of Consumer Affairs issue a decision:
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28

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
- 2 263142, issued to Thai Q. Phan and Thuan D. Do, Partners, dba South Harbor Smog Test Only
- 3 Center;
- 4 2. Revoking or suspending any other automotive repair dealer registrations issued to
- 5 Thai Q. Phan or Thuan D. Do;
- 6 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
- 7 263142, issued to Thai Q. Phan and Thuan D. Do, Partners, dba South Harbor Smog Test Only
- 8 Center;
- 9 4. Revoking or suspending Smog Check Inspector License Number EO 148982, issued
- 10 to Thai Quoc Phan;
- 11 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 12 and Safety Code in the name of Thai Quoc Phan;
- 13 6. Revoking or suspending Smog Check Inspector License Number EO 631995 and
- 14 Smog Check Repair Technician License No. EI 631995, issued to Christina Lynn Moretta;
- 15 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 16 and Safety Code in the name of Christina Lynn Moretta;
- 17 8. Ordering Respondents Thai Q. Phan, Thuan D. Do, Thai Quoc Phan and/or Christina
- 18 Lynn Moretta to pay the Bureau of Automotive Repair the reasonable costs of the investigation
- 19 and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 9. Taking such other and further action as deemed necessary and proper.

23 DATED: 7-22-14

PATRICK DORAIS by Doug Balatti
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Doug Balatti
Assist. Chief

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