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7

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. 79/24-4141

13 **ANH-TUAN ANDY PHAM**  
14 **DBA O2 STAR SMOG CHECK**  
15 **701 Kings Row 39B**  
16 **San Jose, CA 95112**

**ACCUSATION**

17 **Mailing Address**  
18 **1120 N 1st St**  
19 **San Jose, CA 95112**

20 **Automotive Repair Dealer Registration No. ARD 287959**  
21 **Smog Check, Test-Only, Station License No. TC 287959**

22 **ANH-TUAN ANDY PHAM**  
23 **1120 N 1st St**  
24 **San Jose, CA 95112**

25 **Smog Check Inspector License No. EO 638864**

Respondent.

26 **PARTIES**

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

2. On or about July 11, 2017, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 287959 to Anh-Tuan Andy Pham (Respondent) dba O2 Star Smog Check. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2025, unless renewed.

3. On or about July 20, 2017, the Bureau of Automotive Repair issued Smog Check, Test-only, Station License Number TC 287959 to Respondent. The Smog Check, Test-only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2025, unless renewed. The Smog Check Station License was STAR certified on or about October 26, 2017.

4. On or about December 28, 2015, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 638864 to Respondent. The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2025, unless renewed.

## JURISDICTION

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

## STATUTORY PROVISIONS FOR ACCUSATION

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

7. Section 9884.7 of the Code states:

(a) The director, if the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an 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.

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

9. 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.

10. 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:

...

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

(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) 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 FOR ACCUSATION**

17. 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.

...

18. 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.

...

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

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

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

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

...

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

...

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

...

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

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

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

...

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

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

All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the Smog Check Manual, dated January 2021, which is hereby incorporated by reference.

23. California Code of Regulations, title 16, section 3371, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:

...

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

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

### **COST RECOVERY FOR ACCUSATION**

25. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

### **SMOG PROGRAM AND CLEAN PLUGGING ALLEGATIONS AT O2 SMOG CHECK**

26. California's Smog Check Program requires the owners of most motor vehicles in California to take and pass a Smog Check inspection and receive a Certificate of Compliance

every two years when renewing their registration and also when the vehicle's title is transferred. These inspections are performed by Smog Check inspectors at Smog Check Stations, both of which are licensed by the Bureau of Automotive Repair (BAR).

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

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

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

30. The newer OIS smog inspection uses a Data Acquisition Device (DAD), a computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the vehicle. The bar



code scanner is used to input technician information, the vehicle identification number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection Reports.

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

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

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

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

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

- 1           a.     Engine speed in revolutions per minute (RPM),
- 2           b.     Throttle position as measured by a throttle position sensor (TPS) mounted onto the
- 3 throttle shaft. The throttle position is measured in a percentage of opening from 0% at idle to up
- 4 to 100% at full throttle.
- 5           c.     Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
- 6 connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a
- 7 normally aspirated vehicle are as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle,
- 8 and 101 kpa at full throttle (atmospheric pressure at sea level).
- 9           d.     Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's
- 10 air intake tract. Air flow is measured in grams per second (gps).

11           36.    The Bureau has become aware of methods some Smog Check stations and Smog

12 Check inspectors use to issue smog certificates to vehicles that will not pass a Smog Check test

13 on their own, or in some instances, are not even present during the time the test is performed.

14           37.    One method is known as "clean plugging." "Clean plugging" is the act of using one

15 vehicle's properly functioning OBDII system, or another source such as an electronic defeat

16 device, to generate passing data readings or diagnostic information for the purpose of issuing a

17 smog certificate of compliance to a vehicle that is not in smog compliance and/or not being

18 tested. The vehicle being certified is not being tested.

19           38.    Defeat devices attempt to simulate engine operation during a Smog Check inspection

20 by transmitting OBD II data to the VID which has been modified or replaced entirely for the

21 purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a

22 defeat device during a Smog Check inspection is clean plugging and is strictly prohibited.

23           39.    A Bureau Program Representative performed a detailed review of the VID data for

24 the Smog Check inspections performed at Respondent's facility O2 Star Smog Check. The

25 review showed a pattern of vehicles being certified with engine operating parameters not

26 corresponding to normal engine operation. Those vehicles received smog certificates but were

27 not tested during the OBD II functional test. They were clean plugged.

28

1           40. A Program Representative performed a review of the Smog Check data transmitted to  
2 the VID during Smog Check Inspections performed by Respondent from February 14, 2023,  
3 through March 8, 2024. The review revealed Respondent clean plugged and issued certificates of  
4 compliance to 15 vehicles using clean plugging methods. None of the 15 vehicles that were  
5 issued a certificate of compliance were legitimately inspected. All of the “inspections” were  
6 performed by Respondent at Respondent’s smog check station O2 Star Smog. All 15 of the  
7 vehicles were tested and certified under Respondent’s Automotive Repair Dealer Registration,  
8 Smog Station license, and Smog Check Inspector license.

9           **Clean Plug 1:**

10           41. On or about February 14, 2024, Respondent issued smog certificate # TS720426C to  
11 a 2004 Kia Spectra LX, VIN KNAFE121445057234. Respondent did not perform a legitimate  
12 smog inspection on the vehicle. Respondent used an electronic defeat device to issue a fraudulent  
13 certificate of compliance to this vehicle.

14           42. The Dynamic PID Chart for the 2004 Kia Spectra LX shows between time stamp 817  
15 and 20212 engine speed is steady at around 750 RPM. During this time the throttle is fixed at  
16 7.5% opening. The MAF is also fixed at 3.09gps. Between time stamp 21078 and 43147 the  
17 engine speed is accelerated then held steady at around 1600 RPM. During the steady elevated  
18 engine RPM, the throttle is fixed at 7.5% opening. The MAF is also fixed at 3.09gps. The steady  
19 idle and steady elevated engine speeds with the associated fixed throttle positions and subsequent  
20 fixed MAF readings with the same as idle speed parameters are not characteristic or expected for  
21 normal engine operation.

22           **Clean Plug 2:**

23           43. On or about February 14, 2024, Respondent issued smog certificate # TS720432C to  
24 a 2004 Pontiac Grand Prix GT, VIN 2G2WP522441298374. Respondent did not perform a  
25 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a  
26 fraudulent certificate of compliance to this vehicle.

27           44. The Dynamic PID Chart for the 2004 Pontiac Grand Prix GT shows between time  
28 stamp 351 and 24630 engine speed is steady at around 720 RPM. During this time the throttle is

1 fixed at 19.2% opening. The MAP is fixed at 102kpa. The MAF is also fixed at 0gps. Between  
2 time stamp 24981 and 43172 the engine speed is accelerated then held steady at around 1460  
3 RPM. During the steady elevated engine RPM, the throttle is fixed at 19.2% opening. The MAP  
4 is fixed at 102kpa. The MAF is also fixed at 0gps. The steady idle and steady elevated engine  
5 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings  
6 with the same as idle speed parameters are not characteristic or expected for normal engine  
7 operation.

8 **Clean Plug 3:**

9 45. On or about February 15, 2024, Respondent issued smog certificate # TS720441C to  
10 a 2005 Cadillac Deville, VIN 1G6KD54Y35U256890. Respondent did not perform a legitimate  
11 smog inspection on the vehicle. Respondent used an electronic defeat device to issue a fraudulent  
12 certificate of compliance to this vehicle.

13 46. The Dynamic PID Chart for the 2005 Cadillac Deville shows between time stamp 338  
14 and 18732 engine speed is steady at around 700 RPM. During this time the throttle is fixed at 0%  
15 opening. The MAP is fixed at 31kpa. The MAF is also fixed at 6.67gps. Between time stamp  
16 19093 and 41096 the engine speed is accelerated then held steady at around 1600 RPM. During  
17 the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is fixed at 31kpa.  
18 The MAF is also fixed at 6.67gps. The steady idle and steady elevated engine speeds with the  
19 associated fixed throttle positions and subsequent fixed MAP and MAF readings with the same as  
20 idle speed parameters are not characteristic or expected for normal engine operation.

21 **Clean Plug 4:**

22 47. On or about February 17, 2024, Respondent issued smog certificate # TS789703C to  
23 a 2004 Chevrolet Express G2500, VIN 1GCGG29V841155058. Respondent did not perform a  
24 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a  
25 fraudulent certificate of compliance to this vehicle.

26 48. The Dynamic PID Chart for the 2004 Chevrolet Express G2500 shows between time  
27 stamp 356 and 18998 engine speed is steady at around 800 RPM. During this time the throttle is  
28 fixed at 11.4% opening. The MAP is fixed at 34kpa. The MAF is also fixed at 7.34gps. Between

1 time stamp 19356 and 35579 the engine speed is accelerated then held steady at around 2060  
2 RPM. During the steady elevated engine RPM, the throttle is fixed at 11.4% opening. The MAP  
3 is fixed at 34kpa. The MAF is also fixed at 7.34gps. The steady idle and steady elevated engine  
4 speeds with the associated fixed throttle positions and subsequent fixed MAF and MAP readings  
5 with the same as idle speed parameters are not characteristic or expected for normal engine  
6 operation.

7 **Clean Plug 5:**

8 49. On or about February 17, 2024, Respondent issued smog certificate # TS789704C to  
9 a 2000 Chevrolet Silverado K2500, VIN 1GCGK29U5YE268048. Respondent did not perform a  
10 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a  
11 fraudulent certificate of compliance to this vehicle.

12 50. The Dynamic PID Chart for the 2000 Chevrolet Silverado K2500 shows between  
13 time stamp 334 and 20553 engine speed is steady at around 700 RPM. During this time the  
14 throttle is fixed at 0% opening. The MAP is fixed at 35kpa. The MAF is also fixed at 6.12gps.  
15 Between time stamp 20908 and 37557 the engine speed is accelerated then held steady at around  
16 2000 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The  
17 MAP is fixed at 35kpa. The MAF is also fixed at 6.12gps. The steady idle and steady elevated  
18 engine speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF  
19 readings with the same as idle speed parameters are not characteristic or expected for normal engine  
20 operation.

21 **Clean Plug 6:**

22 51. On or about February 17, 2024, Respondent issued smog certificate # TS789706C to  
23 a 2004 GMC Envoy XL, VIN 1GKES16S546115926. Respondent did not perform a legitimate  
24 smog inspection on the vehicle. Respondent used an electronic defeat device to issue a fraudulent  
25 certificate of compliance to this vehicle.

26 52. The Dynamic PID Chart for the 2004 GMC Envoy XL shows between time stamp  
27 341 and 18987 engine speed is steady at around 900 RPM. During this time the throttle is fixed  
28 at 14.9% opening. The MAP is fixed at 31kpa. Between time stamp 19350 and 36884 the engine

1 speed is accelerated then held steady at around 2000 RPM. During the steady elevated engine  
2 RPM, the throttle is fixed at 14.9% opening. The MAP is fixed at 31kpa. The steady idle and  
3 steady elevated engine speeds with the associated fixed throttle positions and subsequent fixed  
4 MAP readings with the same as idle speed parameters are not characteristic or expected for  
5 normal engine operation.

6 **Clean Plug 7:**

7 53. On or about February 19, 2024, Respondent issued smog certificate # TS789727C to  
8 a 2001 Chevrolet Silverado C1500, VIN 1GCEC14W21Z275075. Respondent did not perform a  
9 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a  
10 fraudulent certificate of compliance to this vehicle.

11 54. The Dynamic PID Chart for the 2001 Chevrolet Silverado C1500 shows between time  
12 stamp 346 and 17981 engine speed is steady at around 670 RPM. During this time the throttle is  
13 fixed at 0% opening. The MAP is fixed at 33kpa. The MAF is also fixed at 5.5gps. Between  
14 time stamp 18337 and 35083 the engine speed is accelerated then held steady at around 1420  
15 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is  
16 fixed at 33kpa. The MAF is also fixed at 5.5gps. The steady idle and steady elevated engine  
17 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings  
18 with the same as idle speed parameters are not characteristic or expected for normal engine  
19 operation.

20 **Clean Plug 8:**

21 55. On or about February 19, 2024, Respondent issued smog certificate # TS789728C to  
22 a 2001 GMC Yukon, VIN 1GKEK13T41J238204. Respondent did not perform a legitimate  
23 smog inspection on the vehicle. Respondent used an electronic defeat device to issue a fraudulent  
24 certificate of compliance to this vehicle.

25 56. The Dynamic PID Chart for the 2001 GMC Yukon shows between time stamp 340  
26 and 20143 engine speed is steady at around 670 RPM. During this time the throttle is fixed at  
27 0.4% opening. The MAP is fixed at 34kpa. The MAF is also fixed at 7.24gps. Between time  
28 stamp 20503 and 36719 the engine speed is accelerated then held steady at around 1725 RPM.

1 During the steady elevated engine RPM, the throttle is fixed at 0.4% opening. The MAP is fixed  
2 at 34kpa. The MAF is also fixed at 7.24gps. The steady idle and steady elevated engine speeds  
3 with the associated fixed throttle positions and subsequent fixed MAF and MAP readings with the  
4 same as idle speed parameters are not characteristic or expected for normal engine operation.

5 **Clean Plug 9:**

6 57. On or about February 20, 2024, Respondent issued smog certificate # TS789744C to  
7 a 2003 Chevrolet Silverado K1500, VIN 1GCGK13U73F208889. Respondent did not perform a  
8 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a  
9 fraudulent certificate of compliance to this vehicle.

10 58. The Dynamic PID Chart for the 2003 Chevrolet Silverado K1500 shows between  
11 time stamp 349 and 40706 engine speed is steady at around 600 RPM. During this time the  
12 throttle is fixed at 8.6% opening. The MAP is fixed at 34kpa. The MAF is also fixed at 6.39gps.  
13 Between time stamp 41053 and 57348 the engine speed is accelerated then held steady at around  
14 1680 RPM. During the steady elevated engine RPM, the throttle is fixed at 8.6% opening. The  
15 MAP is fixed at 34kpa. The MAF is also fixed at 6.39gps. The steady idle and steady elevated  
16 engine speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF  
17 readings with the same as idle speed parameters are not characteristic or expected for normal  
18 engine operation.

19 **Clean Plug 10:**

20 59. On or about February 25, 2024, Respondent issued smog certificate # IZ232361C to a  
21 2002 Chevrolet Express G1500, VIN 1GBFG15R721197849. Respondent did not perform a  
22 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a  
23 fraudulent certificate of compliance to this vehicle.

24 60. The Dynamic PID Chart for the 2002 Chevrolet Express G1500 shows between time  
25 stamp 28 and 17482 engine speed is steady at around 700 RPM. During this time the throttle is  
26 fixed at 0% opening. The MAP is fixed at 32kpa. The MAF is also fixed at 5.74gps. Between  
27 time stamp 17832 and 34300 the engine speed is accelerated then held steady at around 1475  
28 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is

1 fixed at 32kpa. The MAF is also fixed at 5.74gps. The steady idle and steady elevated engine  
2 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings  
3 with the same as idle speed parameters are not characteristic or expected for normal engine  
4 operation.

5 **Clean Plug 11:**

6 61. On or about February 26, 2024, Respondent issued smog certificate # IZ232371C to a  
7 2003 GMC Yukon Denali, VIN 1GKEK63U23J258671. Respondent did not perform a legitimate  
8 smog inspection on the vehicle. Respondent used an electronic defeat device to issue a fraudulent  
9 certificate of compliance to this vehicle.

10 62. The Dynamic PID Chart for the 2003 GMC Yukon Denali shows between time stamp  
11 36 and 31150 engine speed is steady at around 600 RPM. During this time the throttle is fixed at  
12 5.9% opening. The MAP is fixed at 37kpa. The MAF is also fixed at 6.92gps. Between time  
13 stamp 31492 and 48699 the engine speed is accelerated then held steady at around 1450 RPM.  
14 During the steady elevated engine RPM, the throttle is fixed at 5.9% opening. The MAP is fixed  
15 at 37kpa. The MAF is also fixed at 6.92gps. The steady idle and steady elevated engine speeds  
16 with the associated fixed throttle positions and subsequent fixed MAP and MAF readings with the  
17 same as idle speed parameters are not characteristic or expected for normal engine operation.

18 **Clean Plug 12:**

19 63. On or about February 27, 2024, Respondent issued smog certificate # IZ232387C to a  
20 2003 Chevrolet Silverado K1500, VIN 1GCEK19T53E147733. Respondent did not perform a  
21 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a  
22 fraudulent certificate of compliance to this vehicle.

23 64. The Dynamic PID Chart for the 2003 Chevrolet Silverado K1500 shows between  
24 time stamp 137 and 27008 engine speed is steady at around 750 RPM. During this time the  
25 throttle is fixed at 6.3% opening. The MAP is fixed at 38kpa. The MAF is also fixed at 6.17gps.  
26 Between time stamp 27356 and 43574 the engine speed is accelerated then held steady at around  
27 1450 RPM. During the steady elevated engine RPM, the throttle is fixed at 6.3% opening. The  
28 MAP is fixed at 38kpa. The MAF is also fixed at 6.17gps. The steady idle and steady elevated



1 engine speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF  
2 readings with the same as idle speed parameters are not characteristic or expected for normal  
3 engine operation.

4 **Clean Plug 13:**

5 65. On or about March 7, 2024, Respondent issued smog certificate # TS959476C to a  
6 2002 Chevrolet Silverado C1500, VIN 2GCEC19V621267040. Respondent did not perform a  
7 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a  
8 fraudulent certificate of compliance to this vehicle.

9 66. The Dynamic PID Chart for the 2002 Chevrolet Silverado C1500 shows between time  
10 stamp 27 and 16240 engine speed is steady at around 700 RPM. During this time the throttle is  
11 fixed at 0% opening. The MAP is fixed at 35kpa. The MAF is also fixed at 4.67gps. Between  
12 time stamp 16770 and 33252 the engine speed is accelerated then held steady at around 1800  
13 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is  
14 fixed at 35kpa. The MAF is also fixed at 4.67gps. The steady idle and steady elevated engine  
15 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings  
16 with the same as idle speed parameters are not characteristic or expected for normal engine  
17 operation.

18 **Clean Plug 14:**

19 67. On or about March 7, 2024, Respondent issued smog certificate # TS959478C to a  
20 2004 Chevrolet Suburban C1500, VIN 3GNEC16T14G106793. Respondent did not perform a  
21 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a  
22 fraudulent certificate of compliance to this vehicle.

23 68. The Dynamic PID Chart for the 2004 Chevrolet Suburban C1500 shows  
24 between time stamp 33 and 16359 engine speed is steady at around 800 RPM. During this time  
25 the throttle is fixed at 4.7% opening. The MAP is fixed at 34kpa. The MAF is also fixed at  
26 5.34gps. Between time stamp 16871 and 32872 the engine speed is accelerated then held steady  
27 at around 1700 RPM. During the steady elevated engine RPM, the throttle is fixed at 4.7%  
28 opening. The MAP is fixed at 34kpa. The MAF is also fixed at 5.34gps. The steady idle and

1 steady elevated engine speeds with the associated fixed throttle positions and subsequent fixed  
2 MAP and MAF readings with the same as idle speed parameters are not characteristic or expected  
3 for normal engine operation.

4 **Clean Plug 15:**

5 69. On or about March 8, 2024, Respondent issued smog certificate # TS959482C to a  
6 2007 Saturn Vue, VIN 5GZCZ23D37S840199. Respondent did not perform a legitimate smog  
7 inspection on the vehicle. Respondent used an electronic defeat device to issue a fraudulent  
8 certificate of compliance to this vehicle.

9 70. The Dynamic PID Chart for the 2007 Saturn Vue shows between time stamp 123 and  
10 16589 engine speed is steady at around 800 RPM. During this time the throttle is fixed at 18%  
11 opening. The MAP is fixed at 27kpa. Between time stamp 16953 and 32908 the engine speed is  
12 accelerated then held steady at around 1700 RPM. During the steady elevated engine RPM, the  
13 throttle is fixed at 18% opening. The MAP is fixed at 27kpa. The steady idle and steady elevated  
14 engine speeds with the associated fixed throttle positions and subsequent fixed MAP readings  
15 with the same as idle speed parameters are not characteristic or expected for normal engine  
16 operation.

17 **FIRST CAUSE FOR DISCIPLINE**

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

19 71. Respondent has subjected his Automotive Repair Dealer Registration to discipline  
20 under Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he  
21 knew or which by exercise of reasonable care should have known were untrue or misleading, as  
22 set forth above in the Smog Program and Clean Plugging Allegations. Respondent purported to  
23 test vehicles, and certified that the vehicles passed inspection and were in compliance with  
24 applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles  
25 using clean-plugging methods.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud - Registration)**

3 72. Respondent has subjected his Automotive Repair Dealer Registration to discipline  
4 under Code section 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud,  
5 as set forth above in the Smog Program and Clean Plugging Allegations.

6 **THIRD CAUSE FOR DISCIPLINE**

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

8 73. Respondent has subjected his Automotive Repair Dealer Registration to discipline  
9 under Code section 9884.7, subdivision (a)(6), in that he violated California Code of Regulations,  
10 title 16, section 3373, by creating and issuing false or misleading certificates of compliance and  
11 vehicle inspection reports for the 15 vehicles that were clean plugged as set forth above in the  
12 Smog Program and Clean Plugging Allegations. The certificates and inspection reports indicated  
13 the vehicles were tested in accordance with all bureau requirements and the vehicles were  
14 qualified to receive certificates of compliance. This was false as the vehicles were clean  
15 plugged.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

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

25 **FIFTH CAUSE FOR DISCIPLINE**

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

27 75. Respondent has subjected his Smog Check Station License and Smog Check  
28 Inspector License to discipline under Health and Safety Code sections 44072.10 and/or 44072.2,

subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations, through conduct described in the Smog Program and Clean Plugging Allegations, as follows:

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

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

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

d. **Section 3340.41, subdivision (c):** Respondent entered false information about vehicles being tested into OIS.

e. **Section 3340.41, subdivision (h):** Respondent had electronic devices or software capable of simulating the OBD data stream from a vehicle or manipulating OBD VIN, calibration identification, calibration verification number, MIL status, readiness, or diagnostic trouble codes collected from a vehicle during a Smog Check Inspection in the approved testing area of the station.

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

g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check Manual by entering vehicle identification information for a vehicle that was not being tested.

h. **Section 44059:** Respondent willfully made false statements in issuing the Smog Certificates of compliance and on the Vehicle Inspection Reports.

#### **OTHER MATTERS**

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

77. Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Check Station License or Smog Check Inspector License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

## 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 287959, issued to Anh-Tuan Andy Pham dba O2 Star Smog Check;

2. Revoking or suspending any additional Automotive Repair Dealer Registration(s) issued to Anh-Tuan Andy Pham;

3. Revoking or suspending Smog Check, Test-only, Station Number TC 287959, issued to Anh-Tuan Andy Pham dba O2 Star Smog Check;

4. Revoking or suspending Smog Check Inspector Number EO 638864, issued to Anh-Tuan Andy Pham;

5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Anh-Tuan Andy Pham;

5. Ordering Anh-Tuan Andy Pham 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,

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

DATED: As of Digital Signature Date

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

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