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

11 In the Matter of the Accusation Against:

Case No. 79/24-21986

12 **PHUOC TAN BUI**
dba CAL SMOG CHECK
15 North 27th St.
13 San Jose, CA 95116

ACCUSATION

14 **Automotive Repair Dealer Registration No. ARD 301865**
Smog Check Station License No. TC 301865

15 **PHONG THANH NGUYEN**
16 1295 E Dunne Ave #170
Morgan Hill, CA 95037

17 **Mailing Address**
18 605 Toyon Ave
19 San Jose, CA 95127

20 **Smog Check Inspector License No. EO 150707**
Smog Check Repair Technician License No. EI 150707

21 **HUY Q DINH**
22 210 San Jose Ave #3
23 San Jose, CA 95125

24 **Mailing Address:**
25 2604 Whispering Hills Cir.
San Jose, CA 95148

26 **Smog Check Inspector License No. EO 639499**

27 Respondents.
28

1 **PARTIES**

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

4 2. On or about March 1, 2022, the Bureau of Automotive Repair issued Automotive
5 Repair Dealer Registration Number ARD 301865 to Phuoc Tan Bui dba Cal Smog Check
6 (Respondent Cal Smog). The Automotive Repair Dealer Registration will expire on March 31,
7 2026, unless renewed.

8 3. On or about May 11, 2022, the Bureau of Automotive Repair issued Smog Check,
9 Test-Only, Station License Number TC 301865 to Respondent Cal Smog. The Smog Check,
10 Test-Only, Station License will expire on March 31, 2026, unless renewed. On or about August
11 24, 2022, Respondent Cal Smog’s Smog Check Station License was STAR certified. The STAR
12 Certification was suspended on December 18, 2024.

13 4. In 2005, the Bureau issued Advanced Emission Specialist Technician License
14 Number EA 150707 to Phong Thanh Nguyen (Respondent Nguyen). The Advanced Emission
15 Specialist Technician License was cancelled on January 4, 2013. Pursuant to California Code of
16 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
17 respondent's election, as Smog Check Inspector License Number EO 150707 and Smog Check
18 Repair Technician License Number EI 150707, effective January 4, 2013. The Smog Check
19 Inspector license was in full force and effect at all times relevant to the charges brought herein
20 and will expire on January 31, 2026, unless renewed. The Smog Check Repair Technician
21 License expired on January 31, 2015, and has not been renewed.

22 5. On or about July 25, 2016, the Bureau of Automotive Repair issued Smog Check
23 Inspector License Number EO 639499 to Huy Q. Dinh (Respondent Dinh). The Smog Check
24 Inspector License was in full force and effect at all times relevant to the charges brought herein
25 and will expire September 30, 2026, unless renewed.

26 **JURISDICTION**

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

...

(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.

12. 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:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode

1 or loaded mode are tested in accordance with procedures prescribed by the
2 department. The test may include testing of emissions of any or all of the pollutants
3 specified in subdivision (c) and, upon the adoption of applicable standards,
4 measurement of emissions of smoke or particulates, or both.

5 (f) A visual or functional check is made of emission control devices specified
6 by the department, including the catalytic converter in those instances in which the
7 department determines it to be necessary to meet the findings of Section 44001. The
8 visual or functional check shall be performed in accordance with procedures
9 prescribed by the department.

10 (g) A determination as to whether the motor vehicle complies with the
11 emission standards for that vehicle's class and model-year as prescribed by the
12 department.

13 (h) The test procedures may authorize smog check stations to refuse the testing
14 of a vehicle that would be unsafe to test, or that cannot physically be inspected, as
15 specified by the department by regulation. The refusal to test a vehicle for those
16 reasons shall not excuse or exempt the vehicle from compliance with all applicable
17 requirements of this chapter.

18 13. Section 44032 of the Health and Safety Code states:

19 No person shall perform, for compensation, tests or repairs of emission control
20 devices or systems of motor vehicles required by this chapter unless the person
21 performing the test or repair is a qualified smog check technician and the test or
22 repair is performed at a licensed smog check station. Qualified technicians shall
23 perform tests of emission control devices and systems in accordance with Section
24 44012.

25 14. Section 44059 of the Health and Safety Code states:

26 The willful making of any false statement or entry with regard to a material
27 matter in any oath, affidavit, certificate of compliance or noncompliance, or
28 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.

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.

1
2 (h) Violates or attempts to violate the provisions of this chapter relating to the
particular activity for which he or she is licensed.

3
4 16. Section 44072.10, subdivision (c), of the Health and Safety Code states:

5 (c) The department shall revoke the license of any smog check technician or
6 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:

7 (1) Clean piping, clean plugging, clean glassing, clean tanking, or any other
8 fraudulent inspection practice, as defined by the department.

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

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

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

13 17. Section 44072.8 of the Health and Safety Code states:

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

16 **REGULATORY PROVISIONS**

17
18 18. California Code of Regulations, title 16, section 3340.1, states:

19 ...
20 "Clean plugging" means using a substitute vehicle's OBD system, or another
21 source, to generate data readings or diagnostic information in order to cause the OIS
to issue a certificate of compliance for the test vehicle.

22 ...
23
24 19. California Code of Regulations, title 16, section 3340.24, states:

25 (a) Any disciplinary or reinstatement proceeding under this article involving
26 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
27 (commencing with section 11500) of division 3, Title 2 of the Government Code.

28 ...

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

4 ...

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

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

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

11 ...

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

13 (c) A licensed station shall issue a certificate of compliance or noncompliance
14 to the owner or operator of any vehicle that has been inspected in accordance with the
15 procedures specified in section 3340.42 of this article and has all the required
16 emission control equipment and devices installed and functioning correctly. The
17 following conditions shall apply:

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

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

21 ...

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

23 ...

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

28 ...

(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

...

23. 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:

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle are not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in those areas of the state where the enhanced program has been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emission standards set forth in this section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or equal to the applicable emissions standards specified in Table III.

(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.

(c) The bureau may require any combination of the inspection methods in sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and Safety Code section 44014.7 as a means of identifying potential operational problems with vehicle OBD systems.

1 (2) Vehicles identified by the bureau as being operationally or physically
incompatible with inspection equipment.

2 (3) Vehicles with OBD systems that have demonstrated operational problems.

3 (d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter
standards are as follows:

4 (1) A gross polluter means a vehicle with excess hydrocarbon, carbon
5 monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions
standards included in the tables described in subsection (a), as applicable.

6 (2) Vehicles with emission levels exceeding the emission standards for gross
7 polluters during an initial inspection will be considered gross polluters and the
provisions pertaining to gross polluting vehicles will apply, including, but not limited
8 to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

9 (3) A gross polluting vehicle shall not be passed or issued a certificate of
10 compliance until the vehicle's emissions are reduced to or below the applicable
emissions standards for the vehicle included in the tables described in subsection (a),
11 as applicable. However, the provisions described in section 44017 of the Health and
Safety Code may apply.

12 (4) This subsection applies in all program areas statewide to vehicles requiring
13 inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

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

15 All Smog Check inspections shall be performed in accordance with
16 requirements and procedures prescribed in the Smog Check Manual, dated January
17 2021, which is hereby incorporated by reference.

18 **COST RECOVERY**

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

25 **SMOG PROGRAM AND FACTUAL ALLEGATIONS**

26 26. California's Smog Check Program requires the owners of most motor vehicles in
27 California to take and pass a Smog Check inspection and receive a Certificate of Compliance
28 every two years when renewing their registration and also when the vehicle's title is transferred.

1 These inspections are performed by Smog Check inspectors at Smog Check Stations, both of
2 which are licensed by the Bureau of Automotive Repair (BAR). Smog inspection can only take
3 place in Bureau approved work areas of Smog Stations.

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

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

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

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

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

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

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

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

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

25 35. During an OIS inspection, engine operating parameters are retrieved from the
26 vehicle's OBD II system and recorded to the VID. This is accomplished during the functional
27 portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when
28 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. Another method some Smog Check stations and Smog Check inspectors use to issue
24 smog certificates to vehicles that will not pass a Smog Check test on their own, or in some
25 instances, are not even present during the time the test is performed is known as "Clean Piping."
26 "Clean piping" is the act of using the emission sample of a known clean vehicle to substitute for
27 the emissions of a vehicle that will not pass a smog inspection or is not present at the time of the
28 test. The vehicle being certified is not being tested.

1 **Clean Plugging Allegations**

2 40. A Bureau representative performed a detailed review of the VID data for the Smog
3 Check inspections performed at Respondent Cal Smog’s smog check Station. The review showed
4 a pattern of vehicles being certified with engine operating parameters not corresponding to
5 normal engine operation. Those vehicles received smog certificates but were not tested during
6 the OBD II functional test. They were clean plugged.

7 41. Respondent Nguyen personally performed 7 clean plugs at Respondent Cal Smog’s
8 station. Respondent Dinh personally performed 3 clean plugs at Respondent Cal Smog’s station.
9 Respondent Cal Smog issued all 10 certificates of compliance. None of the 10 vehicles that were
10 issued a certificate of compliance were legitimately inspected. An electronic defeat device was
11 used to clean plug the vehicles.

12 **Clean Plug 1:**

13 42. On or about June 3, 2024, Respondent Cal Smog and Respondent Nguyen
14 issued smog certificate # TY702453C to a 2002 Chevrolet Silverado C1500. Respondent Cal
15 Smog and Respondent Nguyen did not perform a legitimate smog inspection on the vehicle.
16 Respondents used an electronic defeat device to cause the OIS and Respondents to issue a
17 fraudulent certificate of compliance to this vehicle.

18 43. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Chevrolet Silverado
19 C1500 shows between time stamp 186 and 17383 engine speed is steady at around 575 RPM.
20 During this time the throttle is varying between 2% and 4.3% opening. The MAP is varying
21 between 46kpa and 32kpa, The MAF varying between 4.35gps and 2.8gps. At time stamp 17785
22 the engine speed begins to accelerate. Between time stamp 21028 and 35609 the engine speed is
23 accelerated then held steady at around 1450 RPM. During this time the throttle is varying
24 between .4% and 5.5%. The MAP is varying between 33kpa and 44kpa. The MAF is varying
25 between 4.05gps and 3.13gps. The steady idle and steady elevated engine speeds with the
26 associated varying throttle positions and subsequent varying MAP and MAF readings are not
27 characteristic or expected for normal engine operation.

28 ///

1 **Clean Plug 2:**

2 44. On or about June 5, 2024, Respondent Cal Smog and Respondent Nguyen issued
3 smog certificate # TY702460C to a 2002 Toyota Tacoma. Respondent Cal Smog and Respondent
4 Nguyen did not perform a legitimate smog inspection on the vehicle. Respondents used an
5 electronic defeat device to cause the OIS and Respondents to issue a fraudulent certificate of
6 compliance to this vehicle.

7 45. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Toyota Tacoma
8 shows between time stamp 276 and 16448 engine speed is steady at around 775 RPM. During this
9 time the throttle is varying between 11.4% and 7.1% opening. The MAF varying between 5.09gps
10 and 3.87gps. At time stamp 17264 the engine speed begins to accelerate. Between time stamp
11 20808 and 35663 the engine speed is accelerated then held steady at around 1700 RPM. During
12 this time the throttle is varying between 11.4% and 7.1%. The MAF is varying between 3.65gps
13 and 4.75gps. The steady idle and steady elevated engine speeds with the associated varying
14 throttle positions and subsequent varying MAF readings are not characteristic or expected for
15 normal engine operation.

16 **Clean Plug 3:**

17 46. On or about June 7, 2024, Respondent Cal Smog and Respondent Nguyen
18 issued smog certificate # TY702464C to a 2004 Ford F250 Super Duty. Respondent Cal Smog
19 and Respondent Nguyen did not perform a legitimate smog inspection on the vehicle.
20 Respondents used an electronic defeat device to cause the OIS and Respondents to issue a
21 fraudulent certificate of compliance to this vehicle.

22 47. The Dynamic OBD Data and Dynamic Data Charts for the 2004 Ford F250 Super
23 Duty shows between time stamp 77 and 22321 engine speed is steady at around 825 RPM. During
24 this time the throttle is fixed at 20.4% opening. The MAF is also fixed at 10.63gps. Between time
25 stamp 22597 and 39370 the engine speed is accelerated then held steady at around 1600 RPM.
26 During the steady elevated engine RPM, the throttle is fixed at 20.4% opening. The MAF is also
27 fixed at 10.63gps. The steady idle and steady elevated engine speeds with the associated fixed
28

1 throttle positions, fixed MAF readings with the same as idle speed parameters are not
2 characteristic or expected for normal engine operation.

3 **Clean Plug 4:**

4 48. On or about June 7, 2024, Respondent Cal Smog and Respondent Nguyen
5 issued smog certificate # TY702477C to a 2002 Toyota 4Runner. Respondent Cal Smog and
6 Respondent Nguyen did not perform a legitimate smog inspection on the vehicle. Respondents
7 used an electronic defeat device to cause the OIS and Respondents to issue a fraudulent certificate
8 of compliance to this vehicle.

9 49. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Toyota 4Runner
10 shows between time stamp 232 and 17186 engine speed is steady at around 650 RPM. During this
11 time the throttle is varying between 12.5% and 17.6% opening. The MAF varying between
12 3.53gps and 2.99gps. At time stamp 17671 the engine speed begins to accelerate. Between time
13 stamp 18081 and 35542 the engine speed is accelerated then held steady at around 1825 RPM.
14 During this time the throttle is varying between 13.3% and 18%. The MAF is varying between
15 4.55gps and 3.43gps. The steady idle and steady elevated engine speeds with the associated
16 varying throttle positions and subsequent varying MAF readings are not characteristic or expected
17 for normal engine operation.

18 **Clean Plug 5:**

19 50. On or about June 9, 2024, Respondent Cal Smog and Respondent Nguyen issued
20 smog certificate # TY702489C to a 2003 Ford Expedition XLT. Respondent Cal Smog and
21 Respondent Nguyen did not perform a legitimate smog inspection on the vehicle. Respondents
22 used an electronic defeat device to cause the OIS and Respondents to issue a fraudulent certificate
23 of compliance to this vehicle.

24 51. The Dynamic OBD Data and Dynamic Data Charts for the 2003 Ford Expedition
25 XLT shows between time stamp 199 and 16729 engine speed is steady at around 675 RPM.
26 During this time the throttle is varying between 24.3% and 19.6% opening. The MAF varying
27 between 7.47gps and 5.41gps. At time stamp 17105 the engine speed begins to accelerate.
28 Between time stamp 17529 and 35064 the engine speed is accelerated then held steady at around

1 1600 RPM. During this time the throttle is varying between 23.9% and 18.8%, The MAF is
2 varying between 5.45gps and 7.54gps. The steady idle and steady elevated engine speeds with
3 the associated varying throttle positions and subsequent varying MAF readings are not
4 characteristic or expected for normal engine operation.

5 **Clean Plug 6:**

6 52. On or about June 9, 2024, Respondent Cal Smog and Respondent Nguyen
7 issued smog certificate # TY702492C to a 2000 Honda Accord LX. Respondent Cal Smog and
8 Respondent Nguyen did not perform a legitimate smog inspection on the vehicle. Respondents
9 used an electronic defeat device to cause the OIS and Respondents to issue a fraudulent certificate
10 of compliance to this vehicle.

11 53. The Dynamic OBD Data and Dynamic Data Charts for the 2000 Honda Accord LX,
12 shows between time stamp 314 and 21459 engine speed is steady at around 750 RPM. During
13 this time the throttle is varying between 11.4% and 7.5% opening. The MAP varying between
14 29kpa and 18kpa, at time stamp 21941 the engine speed begins to accelerate. Between time stamp
15 24208 and 39534 the engine speed is accelerated then held steady at around 1700 RPM. During
16 this time the throttle is varying between 11.8% and 6.7%. The MAP is varying between 29kpa and
17 17kpa. The steady idle and steady elevated engine speeds with the associated varying throttle
18 positions and subsequent varying MAP readings are not characteristic or expected for normal
19 engine operation.

20 **Clean Plug 7:**

21 54. On or about June 10, 2024, Respondent Cal Smog and Respondent Nguyen issued
22 smog certificate # TY702498C to a 2001 Toyota Sequoia Limited. Respondent Cal Smog and
23 Respondent Nguyen did not perform a legitimate smog inspection on the vehicle. Respondents
24 used an electronic defeat device to cause the OIS and Respondents to issue a fraudulent certificate
25 of compliance to this vehicle.

26 55. The Dynamic OBD Data and Dynamic Data Charts for the 2001 Toyota Sequoia
27 Limited shows between time stamp 242 and 17793 engine speed is steady at around 800 RPM.
28 During this time the throttle is varying between 14.5% and 18% opening. The MAF varying

1 between 7.46gps and 5.44gps. At time stamp 18200 the engine speed begins to accelerate.
2 Between time stamp 19886 and 34877 the engine speed is accelerated then held steady at around
3 1600 RPM. During this time the throttle is varying between 13.3% and 16.9%. The MAF is
4 varying between 7.44gps and 5.97gps. The steady idle and steady elevated engine speeds with
5 the associated varying throttle positions and subsequent varying MAF readings are not
6 characteristic or expected for normal engine operation.

7 **Clean Plug 8:**

8 56. On or about August 28, 2024, Respondent Cal Smog and Respondent Dinh
9 issued smog certificate # TY7940118C to a 2005 Acura MDX Touring. Respondent Cal Smog
10 and Respondent Dinh did not perform a legitimate smog inspection on the vehicle. Respondents
11 used an electronic defeat device to cause the OIS and Respondents to issue a fraudulent certificate
12 of compliance to this vehicle.

13 57. The Dynamic OBD Data and Dynamic Data Charts for the 2005 Acura MDX
14 Touring shows between time stamp 194 and 19144 engine speed is steady at around 700 RPM.
15 During this time the throttle is varying between 17.3% and 13.3% opening. The MAP varying
16 between 35kpa and 46kpa. At time stamp 19509 the engine speed begins to accelerate. Between
17 time stamp 21342 and 36440 the engine speed is accelerated then held steady at around 1600
18 RPM. During this time the throttle is varying between 12.5% and 17.3%. The MAP is varying
19 between 33kpa and 46kpa. The steady idle and steady elevated engine speeds with the associated
20 varying throttle positions and subsequent varying MAP readings are not characteristic or expected
21 for normal engine operation.

22 **Clean Plug 9:**

23 58. On or about September 18, 2024, Respondent Cal Smog and Respondent Dinh
24 issued smog certificate # TY940120C to a 2000 Honda Accord SE. Respondent Cal Smog and
25 Respondent Dinh did not perform a legitimate smog inspection on the vehicle. Respondents used
26 an electronic defeat device to cause the OIS and Respondents to issue a fraudulent certificate of
27 compliance to this vehicle.

28

1 59. The Dynamic OBD Data and Dynamic Data Charts for the 2000 Honda Accord
2 SE shows between time stamp 222 and 17504 engine speed is steady at around 700 RPM. During
3 this time the throttle is varying between 9.8% and 6.7% opening. The MAP varying between
4 25kpa and 16kpa. At time stamp 20699 the engine speed begins to accelerate. Between time
5 stamp 23222 and 39246 the engine speed is accelerated then held steady at around 1600 RPM.
6 During this time the throttle is varying between 6.3% and 10.6%. The MAP is varying between
7 30kpa and 17kpa. The steady idle and steady elevated engine speeds with the associated varying
8 throttle positions and subsequent varying MAP readings are not characteristic or expected for
9 normal engine operation.

10 **Clean Plug 10:**

11 60. On or about September 18, 2024, Respondent Cal Smog and Respondent Dinh
12 issued smog certificate # TY940123C to a 2002 Honda Odyssey EX. Respondent Cal Smog and
13 Respondent Dinh did not perform a legitimate smog inspection on the vehicle. Respondents used
14 an electronic defeat device to cause the OIS and Respondents to issue a fraudulent certificate of
15 compliance to this vehicle.

16 61. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Honda Odyssey EX
17 shows between time stamp 200 and 17275 engine speed is steady at around 775 RPM. During this
18 time the throttle is fixed at 9.4% opening. The MAP is also fixed at 35kpa. Between time stamp
19 20711 and 36075 the engine speed is accelerated then held steady at around 1650 RPM. During
20 the steady elevated engine RPM, the throttle is fixed at 9.4% opening. The MAP is also fixed at
21 35kpa. The steady idle and steady elevated engine speeds with the associated fixed throttle
22 positions and subsequent fixed MAP readings with the same as idle speed parameters are not
23 characteristic or expected for normal engine operation.

24 **FIRST CAUSE FOR DISCIPLINE**

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

26 62. Respondent Cal Smog has subjected his Automotive Repair Dealer Registration to
27 discipline under Code section 9884.7, subdivision (a)(1), in that Respondent Cal Smog made
28 statements which he knew or which by exercise of reasonable care should have known were

1 untrue or misleading, as set forth above in the Smog Program and Clean Plugging Allegations.
2 Respondent Cal Smog purported to test vehicles, and certified that the vehicles passed inspection
3 and were in compliance with applicable laws and regulations. In fact, Respondent conducted the
4 inspections on those vehicles using clean-plugging methods.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud - Registration)**

7 63. Respondent Cal Smog has subjected his Automotive Repair Dealer Registration to
8 discipline under Code section 9884.7, subdivision (a)(4), in that it committed acts which
9 constitute fraud, as set forth above in the Smog Program and Clean Plugging Allegations.

10 **THIRD CAUSE FOR DISCIPLINE**

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

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

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Dishonesty, Fraud or Deceit – Smog Station License)**

22 65. Respondent Cal Smog has subjected his Smog Check Station License to discipline
23 under Health and Safety Code sections 44072.10 and/or 44072.2, subdivision (d), in that it
24 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing
25 electronic certificates of compliance for vehicles without performing bona fide inspections of the
26 emission control devices and systems on the vehicles, thereby depriving the People of the State of
27 California of the protection afforded by the Motor Vehicle Inspection Program. Respondent Cal
28

1 Smog participated in clean-plugging as set forth above in the Smog Program and Clean Plugging
2 Allegations above.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program- Smog Station License)**

5 66. Respondent Cal Smog has subjected his Smog Check Station License to discipline
6 under Health and Safety Code sections 44072.10 and/or 44072.2, subdivisions (a) and (c), in that
7 it violated sections of that Code and applicable regulations, through conduct described in the
8 Smog Program and Clean Plugging Allegations, as follows:

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

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

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

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

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

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

25 **SIXTH CAUSE FOR DISCIPLINE**

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

27 67. Respondent Nguyen has subjected his Smog Check Inspector License and Smog
28 Check Repair Technician License to discipline under Health and Safety Code sections 44072.10

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

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Violation of the Motor Vehicle Inspection Program- Smog Check Licenses Nguyen)**

9 68. Respondent Nguyen has subjected his Smog Check Inspector License to discipline
10 under Health and Safety Code sections 44072.10 and/or 44072.2, subdivisions (a) and (c), in that
11 he violated sections of that Code and applicable regulations, through conduct described in the
12 Smog Program and Clean Plugging Allegations, as follows:

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

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

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

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

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

28

1 f. **Section 3340.42:** Respondent failed to conduct the required smog tests and
2 inspections on certain 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 entering vehicle identification information for a vehicle that was not being tested.

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

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit – Smog Check Inspector - Dinh)**

9 69. Respondent Dinh has subjected his Smog Check Inspector License to discipline under
10 Health and Safety Code sections 44072.10 and/or 44072.2, subdivision (d), in that he committed
11 acts involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
12 certificates of compliance for vehicles without performing bona fide inspections of the emission
13 control devices and systems on the vehicles, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program. Respondent Dinh
15 participated in clean-plugging as set forth above in the Smog Program and Clean Plugging
16 Allegations above.

17 **NINETH CAUSE FOR DISCIPLINE**

18 **(Violation of the Motor Vehicle Inspection Program- Smog Check Inspector License- Dinh)**

19 70. Respondent Dinh has subjected his Smog Check Inspector License to discipline under
20 Health and Safety Code sections 44072.10 and/or 44072.2, subdivisions (a) and (c), in that he
21 violated sections of that Code and applicable regulations, through conduct described in the Smog
22 Program and Clean Plugging Allegations, as follows:

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

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

28

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

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

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

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

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

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

17 **OTHER MATTERS**

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

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

26 73. Pursuant to Health & Safety Code section 44072.8, if Respondent Nguyen's Smog
27 Check Inspector license or Smog Check Repair Technician license is revoked or suspended, any
28

1 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code
2 in the name of said licensee may be likewise revoked or suspended by the director.

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

7 **PRAYER**

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

- 11 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
12 301865, issued to Phuoc Tan Bui dba Cal Smog Check;
- 13 2. Revoking or suspending Smog Check, Test-Only, Station License Number TC
14 301865, issued to Phuoc Tan Bui dba Cal Smog Check;
- 15 3. Revoking or suspending any additional Automotive Repair Dealer Registration(s)
16 issued to Phuoc Tan Bui;
- 17 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
18 Division 26 of the Health and Safety Code to Phuoc Tan Bui;
- 19 5. Ordering Phuoc Tan Bui to pay the Bureau of Automotive Repair the reasonable costs
20 of the investigation and enforcement of this case, pursuant to Business and Professions Code
21 section 125.3 and if placed on probation, the costs of probation monitoring;
- 22 6. Revoking or suspending Smog Check inspector (EO) Number 150707, issued to
23 Phong Thanh Nguyen;
- 24 7. Revoking or suspending Smog Check repair technician (EI) Number 150707, issued
25 to Phong Thanh Nguyen;
- 26 8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
27 Division 26 of the Health and Safety Code to Phong Thanh Nguyen;

