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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:

12 **T N HI TECH AUTO CARE**
13 **THIEN VAN NGUYEN, Owner**
14 **135½ Keyes Street**
San Jose, California 95112

15 **Automotive Repair Dealer Registration No.**
ARD202958
16 **Smog Check Station License No. RC202958**
Certified STAR Station
17 **Brake Station License No. BS202958, class A**
Lamp Station License No. LS202958, class A

18 **STEVE NGUYEN (a.k.a. Thien Van Nguyen)**
19 **135½ Keyes Street**
20 **San Jose, California 95112**

21 **Brake Adjuster License No. BA95381, class A**
Lamp Adjuster License No. LA95381, class A

22 **KHANH-VU VAN LUONG**
23 **2819 Beecher Court**
San Jose, California 95121

24 **Brake Adjuster License No. BA145082, class C**
25 **Lamp Adjuster License No. LA145082, class A,**

26 Respondents.

27 ///

28

Case No. 79/16-39
ACCUSATION
Smog Check

1 Complainant Patrick Dorais alleges:

2 **I. PARTIES**

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

5 2. In 1998, the Bureau issued Automotive Repair Dealer Registration No.
6 ARD 202958 to respondent T N Hi Tech Auto Care; Thien Van Nguyen, Owner. This
7 automotive repair dealer registration was in full force and effect at all times relevant to the
8 charges brought in this accusation and will expire on December 31, 2015, unless renewed.

9 3. On February 28, 1999, the Bureau issued Smog Check Station License No.
10 RC 202958 to respondent T N Hi Tech Auto Care; Thien Van Nguyen, Owner. This smog check
11 station license was in full force and effect at all times relevant to the charges brought in this
12 accusation and will expire on December 31, 2015, unless renewed.

13 4. On March 13, 2014, the Bureau certified respondent T N Hi Tech Auto Care;
14 Thien Van Nguyen, Owner; as a STAR Station.

15 5. On March 10, 1999, the Bureau issued Brake Station License No. BS 202958,
16 class A, to respondent T N Hi Tech Auto Care; Thien Van Nguyen, Owner. This brake station
17 license was in full force and effect at all times relevant to the charges brought in this accusation
18 and will expire on December 31, 2015, unless renewed.

19 6. On March 10, 1999, the Bureau issued Lamp Station License No. LS 202958, class
20 A, to respondent T N Hi Tech Auto Care; Thien Van Nguyen, Owner. This lamp station license
21 was in full force and effect at all times relevant to the charges brought in this accusation and will
22 expire on December 31, 2015, unless renewed.

23 7. In 1993, the Bureau issued Brake Adjuster License No. BA 95381, class A, to
24 respondent Steve Nguyen (a.k.a. Thien Van Nguyen). This brake adjuster license was in full
25 force and effect at all times relevant to the charges brought in this accusation and will expire on
26 November 30, 2017, unless renewed.

27 8. In 1983, the Bureau issued Lamp Adjuster License No. LA 95381, class A, to
28 respondent Steve Nguyen (a.k.a. Thien Van Nguyen). This lamp adjuster license was in full force

1 and effect at all times relevant to the charges brought in this accusation and will expire on
2 November 30, 2018, unless renewed.

3 9. In 2002, the Bureau issued Brake Adjuster License No. BA 145082, class C, to
4 respondent Khanh-Vu Van Luong. This lamp adjuster license was in full force and effect at all
5 times relevant to the charges brought in this accusation and will expire on February 29, 2016,
6 unless renewed.

7 10. In 2002, the Bureau issued Lamp Adjuster License No. LA 145082, class A, to
8 respondent Khanh-Vu Van Luong. This lamp adjuster license was in full force and effect at all
9 times relevant to the charges brought in this accusation and will expire on February 29, 2016,
10 unless renewed.

11 II. JURISDICTION

12 11. This accusation is brought before the Director of Consumer Affairs (Director) for
13 the Bureau under the authority of the following laws.

14 12. Business and Professions Code section 118, subdivision (b), states:

15 “The suspension, expiration, or forfeiture by operation of law of a license issued by a
16 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
17 order of a court of law, or its surrender without the written consent of the board, shall not, during
18 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
19 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
20 provided by law or to enter an order suspending or revoking the license or otherwise taking
21 disciplinary action against the licensee on any such ground.”

22 13. Business and Professions Code section 9882, subdivision (a), states in part:

23 “There is in the Department of Consumer Affairs a Bureau of Automotive Repair under
24 the supervision and control of the director. The duty of enforcing and administering this chapter
25 is vested in the chief who is responsible to the director. The director may adopt and enforce those
26 rules and regulations that he or she determines are reasonably necessary to carry out the purposes
27 of this chapter and declaring the policy of the bureau, including a system for the issuance of
28 citations for violations of this chapter as specified in Section 125.9.”

1 14. Business and Professions Code section 9884.13 states:

2 “The expiration of a valid registration shall not deprive the director or chief of jurisdiction
3 to proceed with any investigation or disciplinary proceeding against an automotive repair dealer
4 or to render a decision invalidating a registration temporarily or permanently.”

5 15. Business and Professions Code section 9884.22, subdivision (a), states:

6 “Notwithstanding any other provision of law, the director may revoke, suspend, or deny at
7 any time any registration required by this article on any of the grounds for disciplinary action
8 provided in this article. The proceedings under this article shall be conducted in accordance with
9 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
10 Code, and the director shall have all the powers granted therein.”

11 16. Business and Professions Code section 9889.1 states:

12 “Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the
13 director. The director may refuse to issue a license to any applicant for the reasons set forth in
14 Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter
15 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
16 and the director shall have all the powers granted therein.”

17 17. Business and Professions Code section 9889.3 states in part:

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

20 “(a) Violates any section of the Business and Professions Code that relates to his or her
21 licensed activities.

22 ...

23 “(c) Violates any of the regulations promulgated by the director pursuant to this chapter.

24 ...

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

27 18. Health and Safety Code section 44072 states:

28 “Any license issued under this chapter and the regulations adopted pursuant to it may be

1 suspended or revoked by the director. The director may refuse to issue a license to any applicant
2 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted
3 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
4 of the Government Code, and the director shall have all the powers granted therein.”

5 19. Health and Safety Code section 44072.6 states:

6 “The expiration or suspension of a license by operation of law or by order or decision of
7 the director or a court of law, or the voluntary surrender of a license by a licensee shall not
8 deprive the director of jurisdiction to proceed with any investigation of, or action or disciplinary
9 proceedings against, the licensee, or to render a decision suspending or revoking the license.”

10 III. STATUTORY AND REGULATORY PROVISIONS

11 20. Business and Professions Code section 9884.7, subdivision (a), states in part:

12 “The director, where the automotive repair dealer cannot show there was a bona fide error,
13 may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer
14 for any of the following acts or omissions related to the conduct of the business of the automotive
15 repair dealer, which are done by the automotive repair dealer or any automotive technician,
16 employee, partner, officer, or member of the automotive repair dealer.

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

20 ...

21 “(4) Any other conduct that constitutes fraud.

22 ...

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

25 21. Business and Professions Code section 9884.8 states in part:

26 “All work done by an automotive repair dealer, including all warranty work, shall be
27 recorded on an invoice and shall describe all service work done and parts supplied. Service work
28 and parts shall be listed separately on the invoice, which shall also state separately the subtotal

1 prices for service work and for parts, not including sales tax, and shall state separately the sales
2 tax, if any, applicable to each.”

3 22. Business and Professions Code section 9884.9, subdivision (a), states in part:

4 “The automotive repair dealer shall give to the customer a written estimated price for
5 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
6 before authorization to proceed is obtained from the customer.”

7 23. Business and Professions Code section 9889.16 states:

8 “Whenever a licensed adjuster in a licensed station upon an inspection or after an
9 adjustment, made in conformity with the instructions of the bureau, determines that the lamps or
10 the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when
11 requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form
12 prescribed by the director, which certificate shall contain the date of issuance, the make and
13 registration number of the vehicle, the name of the owner of the vehicle, and the official license
14 of the station.”

15 24. Business and Professions Code section 17200 states:

16 “As used in this chapter, unfair competition shall mean and include any unlawful, unfair
17 or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and
18 any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
19 Business and Professions Code.”

20 25. Business and Professions Code section 17500 states:

21 “It is unlawful for any person, firm, corporation or association, or any employee thereof
22 with intent directly or indirectly to dispose of real or personal property or to perform services,
23 professional or otherwise, or anything of any nature whatsoever or to induce the public to enter
24 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated
25 before the public in this state, or to make or disseminate or cause to be made or disseminated
26 from this state before the public in any state, in any newspaper or other publication, or any
27 advertising device, or by public outcry or proclamation, or in any other manner or means
28 whatever, including over the Internet, any statement, concerning that real or personal property or

1 those services, professional or otherwise, or concerning any circumstance or matter of fact
2 connected with the proposed performance or disposition thereof, which is untrue or misleading,
3 and which is known, or which by the exercise of reasonable care should be known, to be untrue or
4 misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so
5 made or disseminated any such statement as part of a plan or scheme with the intent not to sell
6 that personal property or those services, professional or otherwise, so advertised at the price
7 stated therein, or as so advertised.”

8 26. California Code of Regulations, title 16, section 3305, subdivision (a), states:

9 “All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for
10 the purpose of issuing any certificate of compliance or adjustment shall be performed in official
11 stations, by official adjusters, in accordance with the following, in descending order of
12 precedence, as applicable:

13 “(1) Vehicle Manufacturers’ current standards, specifications and recommended
14 procedures, as published in the manufacturers’ vehicle service and repair manuals.

15 “(2) Current standards, specifications, procedures, directives, manuals, bulletins and
16 instructions issued by vehicle and equipment or device manufacturers.

17 “(3) Standards, specifications and recommended procedures found in current industry-
18 standard reference manuals and periodicals published by nationally recognized repair information
19 providers.

20 “(4) The bureau’s Handbook for Brake Adjusters and Stations, May 2015, which is hereby
21 incorporated by reference.

22 “(5) The bureau’s Handbook for Lamp Adjusters and Stations, May 2015, which is hereby
23 incorporated by reference.”

24 27. California Code of Regulations, title 16, section 3316, states in part:

25 “The operation of official lamp adjusting stations shall be subject to the following
26 provisions:

27 . . .

28 “(d) Effective April 1, 1999, licensed stations shall purchase certificates of adjustment

1 from the bureau for a fee of three dollars and fifty cents (\$3.50) each and shall not purchase or
2 otherwise obtain such certificates from any other source. Full payment is required at the time
3 certificates are ordered. Certificates are not exchangeable following delivery. A licensed station
4 shall not sell or otherwise transfer unused certificates of adjustment. Issuance of a lamp
5 adjustment certificate shall be in accordance with the following provisions:

6 . . .

7 “(2) Where all of the lamps, lighting equipment, and related electrical systems on a
8 vehicle have been inspected and found to be in compliance with all requirements of the Vehicle
9 Code and bureau regulations, the certificate shall certify that the entire system meets all of those
10 requirements.”

11 28. California Code of Regulations, title 16, section 3321, states in part:

12 “The operation of official brake adjusting stations shall be subject to the following
13 provisions:

14 . . .

15 “(c) Effective April 1, 1999, licensed stations shall purchase certificates of adjustment
16 from the bureau for a fee of three dollars and fifty cents (\$3.50) and shall not purchase or
17 otherwise obtain such certificates from any other source. A licensed station shall not sell or
18 otherwise transfer unused certificates of adjustment. Full payment is required at the time
19 certificates are ordered. Certificates are not exchangeable following delivery. Issuance of a
20 brake adjustment certificate shall be in accordance with the following provisions:

21 . . .

22 “(2) Where the entire brake system on any vehicle has been inspected or tested and found
23 to be in compliance with all requirements of the Vehicle Code and bureau regulations, and the
24 vehicle has been road-tested, the certificate shall certify that the entire system meets all such
25 requirements.”

26 29. California Code of Regulations, title 16, section 3353, states in part:

27 “No work for compensation shall be commenced and no charges shall accrue without
28 specific authorization from the customer in accordance with the following requirements:

1 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
2 estimated price for parts and labor for a specific job.”

3 30. California Code of Regulations, title 16, section 3371, states in part:

4 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any
5 false or misleading statement or advertisement which is known to be false or misleading, or
6 which by the exercise of reasonable care should be known to be false or misleading.”

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

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

13 **IV. COST RECOVERY**

14 32. Section 125.3, subdivision (a), states:

15 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary
16 proceeding before any board within the department or before the Osteopathic Medical Board
17 upon request of the entity bringing the proceedings, the administrative law judge may direct a
18 licensee found to have committed a violation or violations of the licensing act to pay a sum not
19 to exceed the reasonable costs of the investigation and enforcement of the case.”

20 **V. FACTUAL BACKGROUNDS AND CAUSES FOR DISCIPLINE**

21 **A. January 2014 Inspection**

22 33. On January 6, 2014, a Bureau representative conducted a field visit to respondent
23 T N Hi Tech Auto Care (T N Hi Tech). During the visit, the investigator reviewed the copies of
24 brake and lamp certificates of adjustment issued by the shop, and corresponding invoices. The
25 registered owner of the vehicle was not listed on any of the certificates, and the correct type of
26 brake system inspected was not listed on any of the brake certificates of adjustment. Moreover,
27 the shop did not have a designated area for measuring the controlled stopping distances of
28 vehicles.

1 **First Cause for Discipline (T N Hi Tech)**
2 **Failure to Properly Complete Certificates**
3 **Business and Professions Code sections 9884.7, subdivision (a)(6), and 9889.16;**
4 **California Code of Regulations, title 16, section 3305, subdivision (a)**

4 34. The allegations of paragraph 33 are realleged and incorporated by reference as if
5 fully set forth.

6 35. Respondent T N Hi Tech Auto Care has subjected its ARD registration, smog
7 check station license, STAR certification, brake station license, and lamp station license to
8 discipline for failing to properly complete brake and lamp adjustment certificates of adjustment
9 (Bus. & Prof. Code, §§ 9884.7, subd. (a)(6), 9889.16; Cal. Code Regs., tit. 16, § 3305, subd. (a)).
10 The registered owner of the vehicle was not listed on any of the certificates issued by the shop,
11 and the correct type of brake system inspected was not listed on any of the brake certificates of
12 adjustment.

13 **Second Cause for Discipline (T N Hi Tech)**
14 **Failure to Designate Area to Conduct Brake Tests**
15 **Business and Professions Code sections 9884.7, subdivision (a)(6);**
16 **California Code of Regulations, title 16, sections 3305, subdivision (a), and**
17 **3321, subdivision (c)(2)**

16 36. The allegations of paragraph 33 are realleged and incorporated by reference as if
17 fully set forth.

18 37. Respondent T N Hi Tech Auto Care has subjected its ARD registration, smog
19 check station license, STAR certification, brake station license, and lamp station license to
20 discipline for failing to have a designated area for measuring the controlled stopping distances of
21 vehicles (Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, §§ 3305, subd. (a),
22 3321, subd. (c)(2)).

23 **B. February 2014 Undercover Operation**

24 38. a. From December 24, 2013, to February 4, 2014, a Bureau representative
25 inspected and documented a 2003 Honda. As part of this documentation procedure, the
26 representative machined all four brake rotors to thicknesses below specifications. He placed
27 identification marks on the machined rotors and installed tamper indicators on all four wheels.
28 The representative also adjusted both headlamps outside of specifications, installed tamper

1 indicators on the headlamp adjustment mechanisms, and installed defective license plate bulbs.
2 The vehicle drove and operated normally; however, a brake or lamp certificate of adjustment may
3 not be issued to this car with these documented conditions.

4 b. On February 11, 2014, a Bureau undercover operator drove the car to
5 respondent T N Hi Tech. At the shop, the operator told respondent Khanh-Vu Van Luong
6 (Luong) that he wanted a smog check,¹ and a brake and lamp inspection. Respondent Luong did
7 not give a written estimate to the operator before he electronically inspected the car. He told the
8 operator that he could not perform a smog check until the car had been driven enough to complete
9 a computer check. The operator still asked for the brake and lamp inspection even without the
10 smog check.

11 c. Respondent Luong gave a written estimate to the operator and put the car
12 on a lift. Respondent Luong said that the license plate bulbs were burnt and gave the operator
13 two bulbs to replace them.

14 d. Respondent Luong took the car off the lift about four minutes later. The
15 operator did not see anyone remove the car's wheels or use a device to aim the car's headlamps.
16 Respondent Luong said that the car passed the brake and lamp inspections. He said that the front
17 brake rotors were low but he passed the brake inspection anyway.

18 e. After the services were completed, the operator paid \$90.00 and received
19 brake and lamp certificates of adjustment, and an invoice. The certificates of adjustment were
20 signed by respondent Luong. The invoice did not list the correct measurements for the rotor
21 thicknesses, and did not list the subtotal prices for the brake and lamp inspections.

22 f. The Bureau representative re-inspected the car on February 12 to February
23 13, 2014. The brake rotor thicknesses still were below specifications, the identification marks
24 still were on the machined rotors, and all the tamper indicators on the wheels were intact. Both
25 headlamps were still adjusted outside of specifications, and all the tamper indicators on the
26 headlamp adjustment mechanisms were intact.

27 ¹ The Bureau representative documented the car so that it would pass a smog check.
28

1 **Third Cause for Discipline (T N High Tech)**
2 **Failure to Properly Inspect Vehicle; Unfair Business Practices**
3 **Business and Professions Code sections 9884.7, subdivision (a)(6), and 17200;**
4 **California Code of Regulations, title 16, sections 3305, subdivision (a),**
5 **3316, subdivision (d)(2), and 3321, subdivision (d)(2)**

6 39. The allegations of paragraph 38 are realleged and incorporated by reference as if
7 fully set forth.

8 40. Respondent T N Hi Tech has subjected its ARD registration, smog check station
9 license, STAR certification, brake station license, and lamp station license to discipline for failing
10 to properly inspect a car for brake and lamp certifications, and for unfair business practices (Bus.
11 & Prof. Code, §§ 9884.7, subd. (a)(6), 17200; Cal. Code Regs., tit. 16, §§ 3305, subd. (a), 3316,
12 subd. (d)(2), 3321, subd. (c)(2)). After performing a brake and lamp inspection on the car and
13 issuing brake and lamp certificates of adjustment, the brake rotor thicknesses still were below
14 specifications, the identification marks still were on the machined rotors, and all the tamper
15 indicators on the wheels were intact. Both headlamps still were adjusted outside of
16 specifications, and all the tamper indicators on the headlamp adjustment mechanisms were intact.

17 **Fourth Cause for Discipline (T N High Tech)**
18 **False and Misleading Statements and Records, Fraud**
19 **Business and Professions Code sections 9884.7, subdivision (a)(1), (4) & (6), 9889.16, and**
20 **17500;**
21 **California Code of Regulations, title 16, section 3371, 3373**

22 41. The allegations of paragraph 38 are realleged and incorporated by reference as if
23 fully set forth.

24 42. Respondent T N Hi Tech has subjected its ARD registration, smog check station
25 license, STAR certification, brake station license, and lamp station license to discipline for
26 making false and misleading statements and records, and fraud, for charging for and issuing brake
27 and lamp certificates of adjustment to a car which was out of compliance and listing incorrect
28 rotor measurements on an invoice (Bus. & Prof. Code, §§ 9884.7, subd. (a)(1), (4) & (6),
9889.16, 17500; Cal. Code Regs., tit. 16, §§ 3371, 3373). Respondent T N Hi Tech charged for
and issued a brake certificate of adjustment to the car which had brake rotor thicknesses below
specifications, and charged for and issued a lamp certification of adjustment to a car which had
both headlamps adjusted outside of specifications. It also did not list the correct measurements

1 for the rotor thicknesses on the invoice.

2 **Fifth Cause for Discipline (T N High Tech)**
3 **Failure to Give Estimate Before Beginning Work**
4 **Business and Professions Code sections 9884.7, subdivision (a)(6), and**
5 **9884.9, subdivision (a)**

6 43. The allegations of paragraph 38 are realleged and incorporated by reference as if
7 fully set forth.

8 44. Respondent T N Hi Tech has subjected its ARD registration, smog check station
9 license, STAR certification, brake station license, and lamp station license to discipline for failing
10 to give an estimate before beginning work on the car (Bus. & Prof. Code, §§ 9884.7, subd. (a)(6),
11 9884.9, subd. (a)). Respondent Luong did not give a written estimate to the operator before
12 electronically inspecting the car.

13 **Sixth Cause for Discipline (T N High Tech)**
14 **Failure to List Subtotal Prices on Invoice**
15 **Business and Professions Code sections 9884.7, subdivision (a)(6), 9884.8**

16 45. The allegations of paragraph 38 are realleged and incorporated by reference as if
17 fully set forth.

18 46. Respondent T N Hi Tech has subjected its ARD registration, smog check station
19 license, STAR certification, brake station license, and lamp station license to discipline for failing
20 to list the brake and lamp inspection subtotal prices on the invoice (Bus. & Prof. Code, §§ 9884.7,
21 subd. (a)(6), 9884.8).

22 **Seventh Cause for Discipline (Luong)**
23 **Failure to Properly Inspect Vehicle**
24 **Business and Professions Code section sections 9884.7, subdivision (a)(6);**
25 **California Code of Regulations, title 16, section 3305, subdivision (a)**

26 47. The allegations of paragraph 38 are realleged and incorporated by reference as if
27 fully set forth.

28 48. Respondent Luong has subjected his brake adjuster license and lamp adjuster
license to discipline for failing to properly perform a brake and lamp inspection (Bus. & Prof.
Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, §§ 3305, subd. (a)). Respondent Leong
issued brake and lamp certificates of adjustment without taking the wheels off the car, measuring

1 the brake rotor thicknesses, or measuring or adjusting the headlamps.

2 **Eighth Cause for Discipline (Luong)**
3 **Issuing False Certificates of Adjustment**
4 **Business and Professions Code sections 9884.7, subdivision (a)(6), 9889.16**

4 49. The allegations of paragraph 38 are realleged and incorporated by reference as if
5 fully set forth.

6 50. Respondent Luong has subjected his brake adjuster license and lamp adjuster
7 license to discipline for issuing brake and lamp certificates of adjustment for a car which was out
8 of compliance (Bus. & Prof. Code, § 9884.7, subd. (a)(6), 9889.16). Respondent Luong issued a
9 brake certificate of adjustment to the car which had brake rotor thicknesses below specifications,
10 and issued a lamp certification of adjustment to a car which had both headlamps adjusted outside
11 of specifications.

12 **C. March 2014 Undercover Operation**

13 51. a. From February 27 through March 6, 2014, a Bureau representative
14 inspected and documented a 1997 Toyota. As part of this documentation procedure, the
15 representative machined a front brake rotor and a rear brake drum to thicknesses outside of
16 specifications. He placed identification marks on the machined rotor and drum and installed
17 tamper indicators on all the wheels. The representative also adjusted both headlamps outside of
18 specifications and installed tamper indicators on the headlight adjustment mechanisms. The
19 vehicle drove and operated normally; however, a brake or lamp certificate of adjustment may not
20 be issued to this car with these documented conditions.

21 b. On March 19, 2014, a Bureau undercover operator drove the car to
22 respondent T N Hi Tech. At the shop, the operator told respondent Luong that he wanted a smog
23 check,² and a brake and lamp inspection. Respondent Luong did not give a written estimate to
24 the operator before he electronically inspected the car. He told the operator that he could not
25 perform the smog check or the inspections until the car was driven enough to complete a
26 computer check. The operator left the shop, drove the car, returned, and asked a different

27
28 ² The Bureau representative documented the car so that it would pass a smog check.

1 technician for a smog check, and a brake and lamp inspection. This technician did not give a
2 written estimate to the operator before he electronically monitored the car. He told the operator
3 that now he could perform the smog check and the inspections.

4 c. The technician gave the operator a blank work order to sign. After the
5 operator signed it, the technician wrote in an estimated price of \$120.00 and gave a copy to the
6 operator. The work order did not list the labor and parts necessary for a specific job.

7 d. The technician drove the car into the shop and performed a smog
8 inspection. After about five minutes, he returned the car to the operator and said that it had
9 passed the smog check, and the brake and lamp inspections. The operator did not see anyone
10 drive the car away from the shop to road-test the brakes. Nor did he see anyone remove the car's
11 wheels or use a device to aim the car's headlamps.

12 e. After the services were completed, the operator paid \$120.00 and received
13 a smog check certificate, brake and lamp certificates of adjustment, and an invoice. The
14 certificates of adjustment were signed by respondent Luong. The invoice did not list the subtotal
15 prices for the brake and lamp inspections.

16 f. The Bureau representative re-inspected the car on March 26 to March 28,
17 2014. The brake rotor and drum thicknesses still were outside of specifications. The
18 identification marks on the rotor and drum, and all the tamper indicators on the wheels were
19 intact. Both headlamps still were adjusted outside of specifications, and all the tamper indicators
20 on the headlamp adjustment mechanisms were intact.

21 **Ninth Cause for Discipline (T N High Tech)**
22 **Failure to Properly Inspect Vehicle; Unfair Business Practices**
23 **Business and Professions Code sections 9884.7, subdivision (a)(6), and 17200;**
24 **California Code of Regulations, title 16, sections 3305, subdivision (a),**
25 **3316, subdivision (d)(2), and 3321, subdivision (d)(2)**

26 52. The allegations of paragraph 51 are realleged and incorporated by reference as if
27 fully set forth.

28 53. Respondent T N Hi Tech has subjected its ARD registration, smog check station
license, STAR certification, brake station license, and lamp station license to discipline for failing
to properly inspect a car for brake and lamp certifications, and for unfair business practices (Bus.

1 & Prof. Code, §§ 9884.7, subd. (a)(6), 17200; Cal. Code Regs., tit. 16, §§ 3305, subd. (a), 3316,
2 subd. (d)(2), 3321, subd. (c)(2)). After performing a brake and lamp inspection on the car and
3 issuing brake and lamp certificates of adjustment, the brake rotor and drum thicknesses still were
4 outside of specifications, the identification marks still were on the machined rotor and drum, and
5 all the tamper indicators on the wheels were intact. Both headlamps still were adjusted outside of
6 specifications, and all the tamper indicators on the headlamp adjustment mechanisms were intact.

7 **Tenth Cause for Discipline (T N High Tech)**
8 **False and Misleading Statements and Records, Fraud**
9 **Business and Professions Code sections 9884.7, subdivision (a)(1), (4) & (6), 9889.16, and**
10 **17500;**
11 **California Code of Regulations, title 16, section 3371, 3373**

12 54. The allegations of paragraph 51 are realleged and incorporated by reference as if
13 fully set forth.

14 55. Respondent T N Hi Tech has subjected its ARD registration, smog check station
15 license, STAR certification, brake station license, and lamp station license to discipline for
16 making false and misleading statements and records, and fraud, for charging for and issuing brake
17 and lamp certificates of adjustment to a car which was out of compliance (Bus. & Prof. Code, §§
18 9884.7, subd. (a)(1), (4) & (6), 9889.16, 17500; Cal. Code Regs., tit. 16, §§ 3371, 3373).

19 Respondent T N Hi Tech issued a brake certificate of adjustment to the car which had a brake
20 rotor and drum thickness outside of specifications, and issued a lamp certification of adjustment
21 to a car which had both headlamps adjusted outside of specifications.

22 **Eleventh Cause for Discipline (T N High Tech)**
23 **Failure to Give Estimate Before Beginning Work**
24 **Business and Professions Code sections 9884.7, subdivision (a)(6), and**
25 **9884.9, subdivision (a)**

26 56. The allegations of paragraph 51 are realleged and incorporated by reference as if
27 fully set forth.

28 57. Respondent T N Hi Tech has subjected its ARD registration, smog check station
license, STAR certification, brake station license, and lamp station license to discipline for failing
to give an estimate before beginning work on the car (Bus. & Prof. Code, §§ 9884.7, subd. (a)(6),
9884.9, subd. (a)). The operator did not receive a written estimate before a technician

1 electronically monitored the car.

2 **Twelfth Cause for Discipline (T N High Tech)**
3 **Failure to List Give Estimate Before Beginning Work**
4 **Business and Professions Code sections 9884.7, subdivision (a)(6), and**
5 **9884.9, subdivision (a)**

6 58. The allegations of paragraph 51 are realleged and incorporated by reference as if
7 fully set forth.

8 59. Respondent T N Hi Tech has subjected its ARD registration, smog check station
9 license, STAR certification, brake station license, and lamp station license to discipline for failing
10 to give an estimate of the labor and parts necessary for a specific job (Bus. & Prof. Code,
11 §§ 9884.7, subd. (a)(6), 9884.9, subd. (a)).

12 **Thirteenth Cause for Discipline (T N High Tech)**
13 **Failure to List Subtotal Prices on Invoice**
14 **Business and Professions Code sections 9884.7, subdivision (a)(6), 9884.8**

15 60. The allegations of paragraph 51 are realleged and incorporated by reference as if
16 fully set forth.

17 61. Respondent T N Hi Tech has subjected its ARD registration, smog check station
18 license, STAR certification, brake station license, and lamp station license to discipline for failing
19 to list the brake and lamp inspection subtotal prices on the invoice (Bus. & Prof. Code, §§ 9884.7,
20 subd. (a)(6), 9884.8).

21 **Fourteenth Cause for Discipline (Luong)**
22 **Failure to Properly Inspect Vehicle**
23 **Business and Professions Code section sections 9884.7, subdivision (a)(6);**
24 **California Code of Regulations, title 16, section 3305, subdivision (a)**

25 62. The allegations of paragraph 51 are realleged and incorporated by reference as if
26 fully set forth.

27 63. Respondent Luong has subjected his brake adjuster license and lamp adjuster
28 license to discipline for failing to properly perform a brake and lamp inspection (Bus. & Prof.
Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, §§ 3305, subd. (a)). Respondent Luong
issued brake and lamp certificates of adjustment without taking the wheels off the car, measuring
the brake rotors or drums, or measuring or adjusting the headlamps.

Fifteenth Cause for Discipline (Luong)
Issuing False Certificates of Adjustment
Business and Professions Code sections 9884.7, subdivision (a)(6), 9889.16

64. The allegations of paragraph 51 are realleged and incorporated by reference as if fully set forth.

65. Respondent Luong subjected his brake adjuster license and lamp adjuster license to discipline for issuing brake and lamp certificates of adjustment for a car which was out of compliance (Bus. & Prof. Code, § 9884.7, subd. (a)(6), 9889.16). Respondent Luong issued a brake certificate of adjustment to the car which had a brake rotor and drum thickness outside of specifications, and issued a lamp certification of adjustment to a car which had both headlamps adjusted outside of specifications.

D. April 2014 Undercover Operation

66. a. From March 5 through March 19, 2014, a Bureau representative inspected and documented a 2000 Toyota. As part of this documentation procedure, the representative machined a front brake rotor and a rear brake drum to outside of specifications. He placed identification marks on the machined rotor and drum. He installed tamper indicators on all the wheels. The representative also adjusted one headlamp outside of specifications and installed tamper indicators on the headlight adjustment mechanisms. The vehicle drove and operated normally; however, a brake or lamp certificate of adjustment may not be issued to this car with these documented conditions.

b. On April 1, 2014, a Bureau undercover operator drove the car to respondent T N Hi Tech. At the shop, the operator told a technician that he wanted a smog check,³ and a brake and lamp inspection.

c. The technician drove the car into the shop and performed a smog inspection. After about 10 minutes, the technician returned the car to the operator and said that it had passed the smog check, and the brake and lamp inspections. The operator did not see anyone drive the car away from the shop to road-test the brakes. Nor did the operator see anyone remove

³ The Bureau representative documented the car so that it would pass a smog check.

1 the car's wheels or use a device to aim the car's headlights.

2 d. After the services were completed, the operator paid \$120.00 and received
3 a smog certificate, brake and lamp certificates of adjustment, and an invoice. The certificates of
4 adjustment were signed by respondent Luong. The invoice did not list the subtotal prices for the
5 brake and lamp inspections.

6 e. The Bureau representative re-inspected the car on April 2 to April 3, 2014.
7 The brake rotor and drum still were outside of specifications. The identification marks on the
8 rotor and drum were present, and the all the tamper indicators on the wheels were intact. The
9 headlamp was still adjusted outside of specifications, and all the tamper indicators on the
10 headlight adjustment mechanisms were intact.

11 **Sixteenth Cause for Discipline (T N High Tech)**
12 **Failure to Properly Inspect Vehicle; Unfair Business Practices**
13 **Business and Professions Code sections 9884.7, subdivision (a)(6), and 17200;**
14 **California Code of Regulations, title 16, sections 3305, subdivision (a),**
15 **3316, subdivision (d)(2), and 3321, subdivision (d)(2)**

16 67. The allegations of paragraph 66 are realleged and incorporated by reference as if
17 fully set forth.

18 68. Respondent T N Hi Tech has subjected its ARD registration, smog check station
19 license, STAR certification, brake station license, and lamp station license to discipline for failing
20 to properly inspect a car for brake and lamp certifications, and for unfair business practices (Bus.
21 & Prof. Code, §§ 9884.7, subd. (a)(6), 17200; Cal. Code Regs., tit. 16, §§ 3305, subd. (a), 3316,
22 subd. (d)(2), 3321, subd. (c)(2)). After performing a brake and lamp inspection on the car and
23 issuing brake and lamp certificates of adjustment, the brake rotor and drum thickness still were
24 outside of specifications, the identification marks still were on the rotor and drum, and all the
25 tamper indicators on the wheels were intact. The headlamp still was adjusted outside of
26 specifications, and all the tamper indicators on the headlight adjustment mechanisms were intact.

27 **Seventeenth Cause for Discipline (T N High Tech)**
28 **False and Misleading Statements and Records, Fraud**
29 **Business and Professions Code sections 9884.7, subdivision (a)(1), (4) & (6), 9889.16, and**
30 **17500;**
31 **California Code of Regulations, title 16, section 3371, 3373**

32 69. The allegations of paragraph 66 are realleged and incorporated by reference as if

1 fully set forth.

2 70. Respondent T N Hi Tech has subjected its ARD registration, smog check station
3 license, STAR certification, brake station license, and lamp station license to discipline for
4 making false and misleading statements and records, and fraud, for charging for and issuing brake
5 and lamp certificates of adjustment to a car which was out of compliance (Bus. & Prof. Code, §§
6 9884.7, subd. (a)(1), (4) & (6), 9889.16, 17500; Cal. Code Regs., tit. 16, §§ 3371, 3373).
7 Respondent T N Hi Tech issued a brake certificate of adjustment to the car which had a brake
8 rotor and drum thickness outside of specifications, and issued a lamp certification of adjustment
9 to a car which had a headlamp adjusted outside of specifications.

10 **Eighteenth Cause for Discipline (T N High Tech)**
11 **Failure to List Subtotal Prices on Invoice**
12 **Business and Professions Code sections 9884.7, subdivision (a)(6), 9884.8**

13 71. The allegations of paragraph 66 are realleged and incorporated by reference as if
14 fully set forth.

15 72. Respondent T N Hi Tech has subjected its ARD registration, smog check station
16 license, STAR certification, brake station license, and lamp station license to discipline for failing
17 to list the brake and lamp inspection subtotal prices on the invoice (Bus. & Prof. Code, §§ 9884.7,
18 subd. (a)(6), 9884.8).

19 **Nineteenth Cause for Discipline (Luong)**
20 **Failure to Properly Inspect Vehicle**
21 **Business and Professions Code section sections 9884.7, subdivision (a)(6);**
22 **California Code of Regulations, title 16, section 3305, subdivision (a)**

23 73. The allegations of paragraph 66 are realleged and incorporated by reference as if
24 fully set forth.

25 74. Respondent Luong has subjected his brake adjuster license and lamp adjuster
26 license to discipline for failing to properly perform a brake and lamp inspection (Bus. & Prof.
27 Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, §§ 3305, subd. (a)). Respondent Luong
28 issued brake and lamp certificates of adjustment without taking the wheels off the car, measuring
the brake rotors, or measuring or adjusting the headlamps.

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1 **Twentieth Cause for Discipline (Luong)**
2 **Issuing False Certificates of Adjustment**
3 **Business and Professions Code sections 9884.7, subdivision (a)(6), 9889.16**

4 75. The allegations of paragraph 66 are realleged and incorporated by reference as if
5 fully set forth.

6 76. Respondent Luong has subjected his brake adjuster license and lamp adjuster
7 license to discipline for issuing brake and lamp certificates of adjustment for a car which was out
8 of compliance (Bus. & Prof. Code, § 9884.7, subd. (a)(6), 9889.16). Respondent Luong issued a
9 brake certificate of adjustment to the car which had a brake rotor and drum thickness outside of
10 specifications, and issued a lamp certification of adjustment to a car which had a headlamp
11 adjusted outside of specifications.

12 **E. April 2014 Inspection**

13 77. On April 29, 2014, a Bureau representative conducted a field visit to respondent T
14 N Hi Tech. During the visit, the investigator reviewed the copies of brake and lamp certificates
15 of adjustment issued by the shop. The registered owner of the vehicle was not listed on some of
16 the certificates.

17 **Twenty-first Cause for Discipline (T N Hi Tech)**
18 **Failure to Properly Complete Certificates**
19 **Business and Professions Code sections 9884.7, subdivision (a)(6), and 9889.16;**
20 **California Code of Regulations, title 16, section 3305, subdivision (a)**

21 78. The allegations of paragraph 77 are realleged and incorporated by reference as if
22 fully set forth.

23 79. Respondent T N Hi Tech Auto Care has subjected its ARD registration, smog
24 check station license, STAR certification, brake station license, and lamp station license to
25 discipline for failing to properly complete brake and lamp adjustment certificates of adjustment
(Bus. & Prof. Code, §§ 9884.7, subd. (a)(6), 9889.16; Cal. Code Regs., tit. 16, § 3305, subd. (a)).
The registered owner of the vehicle was not listed on some of the certificates.

26 **VI. OTHER MATTERS**

27 80. Business and Professions Code section 9884.7, subdivision (c), states in part:
28 “Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation

1 the registration for all places of business operated in this state by an automotive repair dealer
2 upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and
3 willful violations of this chapter, or regulations adopted pursuant to it.”

4 81. Health and Safety Code section 44072.8 states:

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

8 VII. PRAYER

9 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
10 accusation, and that following the hearing, the Director of Consumer Affairs issues a decision:

11 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 202958
12 issued to respondent T N Hi Tech Auto Care; Thien Van Nguyen, Owner;

13 2. Revoking or suspending Smog Check Station License No. RC 202958 issued to
14 respondent T N Hi Tech Auto Care; Thien Van Nguyen, Owner;

15 3. Revoking or suspending the STAR Station certification issued to respondent T N
16 Hi Tech Auto Care; Thien Van Nguyen, Owner;

17 4. Revoking or suspending Brake Station License No. BS 202958, class A, issued to
18 respondent T N Hi Tech Auto Care; Thien Van Nguyen, Owner;

19 5. Revoking or suspending Lamp Station License No. LS 202958, class A, issued to
20 respondent T N Hi Tech Auto Care; Thien Van Nguyen, Owner;

21 6. Revoking or suspending Brake Adjuster License No. BA 95381, class A, issued to
22 respondent Steve Nguyen (a.k.a. Thien Van Nguyen);

23 7. Revoking or suspending Lamp Adjuster License No. LA 95381, class A, issued to
24 respondent Steve Nguyen (a.k.a. Thien Van Nguyen);

25 8. Revoking or suspending Brake Adjuster License No. BA 145082, class C, issued
26 to respondent Khanh-Vu Van Luong;

27 9. Revoking or suspending Lamp Adjuster License No. LA 145082, class A, issued
28 to respondent Khanh-Vu Van Luong;

1 10. Ordering respondent T N Hi Tech Auto Care; Thien Van Nguyen, Owner; under
2 Business and Professions Code section 125.3 to pay the Bureau of Automotive Repair the
3 reasonable costs of the investigation and enforcement of this case;

4 11. Ordering respondent respondent Steve Nguyen (a.k.a. Thien Van Nguyen) under
5 Business and Professions Code section 125.3 to pay the Bureau of Automotive Repair the
6 reasonable costs of the investigation and enforcement of this case;

7 12. Ordering respondent Khanh-Vu Van Luong under Business and Professions Code
8 section 125.3 to pay the Bureau of Automotive Repair the reasonable costs of the investigation
9 and enforcement of this case; and

10 13. Taking such other and further action as deemed necessary and proper.

11 DATED: October 20, 2015 Patrick Dorais

12 PATRICK DORAIS
13 Chief
14 Bureau of Automotive Repair
15 Department of Consumer Affairs
16 State of California
17 Complainant

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