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

12 In the Matter of the Accusation Against:

Case No. 79/16-131

13 **FIRST QUALITY AUTO REPAIR & BODY**
14 **Nua Thanh Pham, Owner**
6528 International Blvd.
Oakland, CA 94621

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
ARD 165589
16 **Smog Check Station License No. RC 165589**
17 **Brake Station License No. BS 165589, class C**
Lamp Station License No. LS 165589, class A

18 **NUA THANH PHAM**
19 **6504 International Blvd. #2**
Oakland, CA 94621

20 **Smog Check Inspector License No. EO 152661**
21 **Smog Check Repair Technician License No.**
EI 152661
22 **(Formerly Advanced Emission Specialist**
Technician License No. EA 152661),

23 **and**
24
25
26
27
28

1 **NHAN THANH TRUONG**
2 **110 Mars Ct.**
3 **Pittsburg, CA 94565,**

4 **Smog Check Inspector License No. EO 139748**
5 **Smog Check Repair Technician License No.**
6 **EI 139748**
7 **(Formerly Advanced Emission Specialist**
8 **Technician License No. EA 139748)**
9 **Brake Adjuster License No. BA 139748, class C**
10 **Lamp Adjuster License No. LA 139748, class A,**

11 Respondents.

12 Complainant Patrick Dorais alleges:

13 **PARTIES**

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

16 2. In 1992, the bureau issued Automotive Repair Dealer Registration No. ARD
17 165589 to respondent First Quality Auto Repair and Body (First Quality); Nua Thanh Pham,
18 Owner. This automotive repair dealer registration was in full force and effect at all times relevant
19 to the charges brought in this accusation and will expire on March 31, 2017, unless renewed.

20 3. On or about November 10, 2004, the bureau issued Smog Check Station License
21 No. RC 165589 to respondent First Quality; Nua Thanh Pham, Owner. This smog check station
22 license was in full force and effect at all times relevant to the charges brought in this accusation
23 and will expire on March 31, 2017, unless renewed.

24 4. On or about August 6, 2013, the bureau issued Brake Station License No. BS
25 165589, class C, to respondent First Quality; Nua Thanh Pham, Owner. This brake station license
26 was in full force and effect at all times relevant to the charges brought in this accusation and will
27 expire on March 31, 2017, unless renewed.

28 5. On or about August 8, 2013, the bureau issued Lamp Station License No. LS
165589, class A, to respondent First Quality; Nua Thanh Pham, Owner. This lamp station license
was in full force and effect at all times relevant to the charges brought in this accusation and will
expire on March 31, 2017, unless renewed.

1 6. In 2006, the bureau issued Advanced Emission Specialist Technician License No.
2 EA 152661 to respondent Nua Thanh Pham. This advanced emission specialist technician license
3 was due to expire on November 30, 2013. However, on August 13, 2013, it was cancelled and
4 renewed as Smog Check Inspector License No. EO 152661 and Smog Check Repair Technician
5 License No. EI 152661.¹ This smog check inspector license and smog check repair license were
6 in full force and effect at all times relevant to the charges brought in this accusation and will
7 expire on November 30, 2017, unless renewed.

8 7. In 2001, the bureau issued Advanced Emission Specialist Technician License No.
9 EA 139748 to respondent Nhan Thanh Truong. This advanced emission specialist technician
10 license was due to expire on April 30, 2013. However, on January 14, 2013, it was cancelled and
11 renewed as Smog Check Inspector License No. EO 139748 and Smog Check Repair Technician
12 License No. EI 139748. This smog check inspector license and smog check repair license were in
13 full force and effect at all times relevant to the charges brought in this accusation and will expire
14 on April 30, 2017, unless renewed.

15 8. In 1999, the bureau issued Brake Adjuster License No. BA 139748, class C, to
16 respondent Nhan Thanh Truong. This brake adjuster license was in full force and effect at all
17 times relevant to the charges brought in this accusation and will expire on April 30, 2020, unless
18 renewed.

19 9. In 2001, the bureau issued Lamp Adjuster License No. LA 139748, class A, to
20 respondent Nhan Thanh Truong. This lamp adjuster license was in full force and effect at all
21 times relevant to the charges brought in this accusation and will expire on April 30, 2017, unless
22 renewed.

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25 _____
26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections
27 3340.28, 3340.29, and 3340.30 were amended to restructure advanced emission specialist (EA)
28 licenses as smog check inspector (EO) and smog check repair technician (EI) licenses. A
advanced emission specialist (EA) license issued prior to August 1, 2012, could be renewed as a
smog check inspector (EO) license, smog check technician (EI) license, or both. (Cal. Code
Regs., tit. 16, § 3340.28, subd. (e).)

JURISDICTION

10. This accusation is brought before the Director of the Department of Consumer Affairs (Director) for the bureau under the authority of the following laws.

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

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

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

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

13. Business and Professions Code section 9884.13 states:

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

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

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

1 15. Business and Professions Code section 9889.1 states:

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

7 16. Business and Professions Code section 9889.7 states:

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

12 17. Health and Safety Code section 44002 states:

13 “The department shall have the sole and exclusive authority within the state for
14 developing and implementing the motor vehicle inspection program in accordance with this
15 chapter.

16 “For the purposes of administration and enforcement of this chapter, the department, and
17 the director and officers and employees thereof, shall have all the powers and authority granted
18 under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475)
19 and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions
20 Code and under Chapter 33 (commencing with Section 3300) of Title 16 of the California Code
21 of Regulations. Inspections and repairs performed pursuant to this chapter, in addition to meeting
22 the specific requirements imposed by this chapter, shall also comply with all requirements
23 imposed pursuant to Division 1 (commencing with Section 1) and Division 1.5 (commencing
24 with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the
25 Business and Professions Code and Chapter 33 (commencing with Section 3300) of Title 16 of
26 the California Code of Regulations.”

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 **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 “(3) Failing or refusing to give to a customer a copy of any document requiring his or her
22 signature, as soon as the customer signs the document.

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

24 ...

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

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

28 “All work done by an automotive repair dealer, including all warranty work, shall be

1 recorded on an invoice and shall describe all service work done and parts supplied. . . . One copy
2 of the invoice shall be given to the customer and one copy shall be retained by the automotive
3 repair dealer.”

4 22. Business and Professions Code section 9889.3 states in part:

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

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

9 . . .

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

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

12 . . .

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

15 23. Business and Professions Code section 9889.16 states in part:

16 “Whenever a licensed adjuster in a licensed station upon an inspection or after an
17 adjustment, made in conformity with the instructions of the bureau, determines that the lamps or
18 the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when
19 requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form
20 prescribed by the director.”

21 24. Business and Professions Code section 9889.22 states:

22 “The willful making of any false statement or entry with regard to a material matter in any
23 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
24 by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the
25 Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.”

26 25. Business and Professions Code section 17200 states:

27 “As used in this chapter, unfair competition shall mean and include any unlawful, unfair
28 or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and

1 any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
2 Business and Professions Code.”

3 26. Business and Professions Code section 17500 states in part:

4 “It is unlawful for any person, firm, corporation or association, or any employee thereof
5 with intent directly or indirectly to dispose of real or personal property or to perform services,
6 professional or otherwise, or anything of any nature whatsoever or to induce the public to enter
7 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated
8 before the public in this state, or to make or disseminate or cause to be made or disseminated
9 from this state before the public in any state, in any newspaper or other publication, or any
10 advertising device, or by public outcry or proclamation, or in any other manner or means
11 whatever, including over the Internet, any statement, concerning that real or personal property or
12 those services, professional or otherwise, or concerning any circumstance or matter of fact
13 connected with the proposed performance or disposition thereof, which is untrue or misleading,
14 and which is known, or which by the exercise of reasonable care should be known, to be untrue or
15 misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so
16 made or disseminated any such statement as part of a plan or scheme with the intent not to sell
17 that personal property or those services, professional or otherwise, so advertised at the price
18 stated therein, or as so advertised.”

19 27. Health and Safety Code section 44012 states in part:

20 “The test at the smog check stations shall be performed in accordance with procedures
21 prescribed by the department and may require loaded mode dynamometer testing in enhanced
22 areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other
23 appropriate test procedures as determined by the department in consultation with the state
24 board. . . . The department shall ensure, as appropriate to the test method, the following:

25 . . .

26 “(f) A visual or functional check is made of emission control devices specified by the
27 department, including the catalytic converter in those instances in which the department
28 determines it to be necessary to meet the findings of Section 44001. The visual or functional

1 check shall be performed in accordance with procedures prescribed by the department.”

2 28. Health and Safety Code section 44015 states in part:

3 “(a) A licensed smog check station shall not issue a certificate of compliance, except as
4 authorized by this chapter

5 “(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed
6 to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.”

7 29. Health and Safety Code section 44032 states in part:

8 “Qualified technicians shall perform tests of emission control devices and systems in
9 accordance with Section 44012.”

10 30. Health and Safety Code section 44059 states:

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

15 31. Health and Safety Code section 44072.2 states in part:

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

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

21 . . .

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

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

24 32. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

25 “The bureau may suspend or revoke the license of or pursue other legal action against a
26 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
27 certificate of noncompliance.”

28 33. California Code of Regulations, title 16, section 3340.30, states in part:

1 "A licensed smog check inspector and/or repair technician shall comply with the
2 following requirements at all times while licensed:

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

6 34. California Code of Regulations, title 16, section 3340.35, subdivision (c), states in
7 part:

8 "A licensed station shall issue a certificate of compliance or noncompliance to the owner
9 or operator of any vehicle that has been inspected in accordance with the procedures specified in
10 section 3340.42 of this article and has all the required emission control equipment and devices
11 installed and functioning correctly."

12 35. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

13 "No person shall enter into the emissions inspection system any vehicle identification
14 information or emission control system identification data for any vehicle other than the one
15 being tested. Nor shall any person knowingly enter into the emissions inspection system any
16 false information about the vehicle being tested."

17 36. California Code of Regulations, title 16, section 3340.42, states in part:

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

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

22 ...

23 "(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
24 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer."

25 37. California Code of Regulations, title 16, section 3340.45, subdivision (a) states in
26 part:

27 "All Smog Check inspections shall be performed in accordance with requirements and
28 procedures prescribed."

1 38. California Code of Regulations, title 16, section 3371, states in part:

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

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

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

11 **COST RECOVERY**

12 40. Section 125.3, subdivision (a), states:

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

18 **SMOG CHECK PROGRAM**

19 41. Beginning March 9, 2015, California's Smog Check Program requires smog
20 inspectors and stations to use a functional computer test during smog inspections for most model
21 year 2000 and newer gasoline and hybrid vehicles, and most 1998 and newer diesel vehicles.
22 This test requires using a cable to connect the station's inspection system to the onboard
23 diagnostic computer system of vehicle being tested. The inspection system then retrieves
24 information from the vehicle's computer, including the vehicle's eVIN, the communication
25 protocol, and the number of Parameter Identifications (PIDs). This data is sent to the bureau's
26 vehicle information database.

27 42. The Vehicle Identification Number (VIN) is physically present on all vehicles.
28 The VIN is manually entered into the inspection system by the smog check technician. The VIN

1 also is programmed into the vehicle's computer on 2005 and newer vehicles, and was often
2 programmed into the computer on earlier vehicles. This electronically-programmed VIN (eVIN)
3 is transmitted by the vehicle's computer during a smog check and should match the physical VIN
4 on the vehicle that is manually entered by the technician.

5 43. The communication protocol describes the specified communication language
6 used by the vehicle's computer to communicate with the station's inspection system. The
7 communication protocol is programmed into the vehicle's computer during manufacture and does
8 not change.

9 44. PIDs are data points reported by the vehicle's computer to the station's inspection
10 device. Examples of PIDs are engine speed (rpm), vehicle speed, engine temperature, and other
11 input and output values used by the inspection device. The PID count is the number of data points
12 reported by the vehicle's computer. The PID count is programmed into the vehicle's computer
13 during manufacture and does not change.

14 45. The bureau is aware of methods used by some stations and inspectors to issue
15 improper or fraudulent smog certificates. One method is known as "clean plugging." Clean
16 plugging is connecting the test cable to a properly-functioning vehicle instead of the vehicle
17 actually being smog tested. The properly-functioning vehicle then generates passing diagnostic
18 readings that are attributed to the vehicle being tested.

19 46. However, a vehicle's eVIN, communication protocol, and PID count provide a
20 unique combination. These data points can be compared to the eVIN, the communication
21 protocol, and the PID count provided by similar vehicles inspected to determine whether a vehicle
22 has been clean plugged.

23 FACTUAL ALLEGATIONS

24 CLEAN PLUGS

25 47. A bureau representative performed a focused review of the bureau's vehicle
26 information database for vehicles that respondent Pham issued certificates of compliance at
27 respondent First Quality between January 2, 2015, and April 6, 2016. The representative

28 ///

1 obtained the following information for each test detail:

- 2 • VIN: VIN entered by smog inspector
- 3 • Cert ID: certificate of compliance number
- 4 • eVIN
- 5 • Communication protocol
- 6 • PID count: number of data points reported by the vehicle computer

7 48. The data transmitted during 19 of these inspections was inconsistent with the data
8 transmitted by similar vehicles inspected. Consequently, the representative concluded that
9 respondent Pham fraudulently issued 19 smog check certificates by using clean plugging.

10 **Clean Plug #1**

11 49. On April 6, 2015, respondent Pham issued a smog certificate of compliance for a
12 2002 Lexus ES300, VIN ending 891. The bureau's vehicle information database showed the
13 eVIN ending 495, the communication protocol as ICAN29bt500, and the PID count as 37.

14 50. Comparative test data for 6,166 similar 2002 Lexus ES300 vehicles show that
15 99.32% of the time no eVIN is reported, the communication protocol is I914, and the PID count
16 is 21.

17 51. Furthermore, on March 2, 2015, this Lexus had failed a smog check in Pleasanton,
18 California. During that inspection, no eVIN was reported, the communication protocol was I914,
19 and the PID count was 21.

20 **Clean Plug #2**

21 52. On May 9, 2015, respondent Pham issued a smog certificate of compliance for a
22 2002 Toyota Prius, VIN ending 364. The bureau's vehicle information database showed the
23 eVIN ending 055,² the communication protocol as ICAN29bt500, and the PID count as 39.

24 53. Comparative test data for 257 similar 2002 Toyota Prius vehicles show that
25 95.33% of the time no eVIN is reported, the communication protocol is I914, and the PID count
26 is 17/8/3.

27 _____
28 ² This VIN also appears in Clean Plug #3, #5, #6, #7, #8, #9, #14, #16, and #18.

1 54. Furthermore, on May 8, 2015, this Toyota had failed a smog check at respondent
2 First Quality. During that inspection, no eVIN was reported, the communication protocol was
3 I9140808, and the PID count was 17.

4 **Clean Plug #3**

5 55. On May 23, 2015, respondent Pham issued a smog certificate of compliance for a
6 2000 Toyota Camry Solara SE, VIN ending 807. The bureau's vehicle information database
7 showed the eVIN ending 055, the communication protocol as ICAN29bt500, and the PID count
8 as 39.

9 56. Comparative OIS test data for 130 similar 2000 Toyota Camry Solara SE vehicles
10 show that 97.69% of the time no eVIN is reported, the communication protocol is I914, and the
11 PID count is 17.

12 **Clean Plug #4**

13 57. On May 28, 2015, respondent Pham issued a smog certificate of compliance for a
14 2000 Honda Civic DX, VIN ending 891. The bureau's vehicle information database showed the
15 eVIN ending 842,³ the communication protocol as ICAN29bt500, and the PID count as 45.

16 58. Comparative OIS test data for 1,207 similar 2000 Honda Civic DX vehicles show
17 that 98.26% of the time no eVIN is reported, the communication protocol is I914, and the PID
18 count is 16.

19 59. Furthermore, on May 28, 2015, this Honda had failed a smog check at respondent
20 First Quality. During that inspection, no eVIN was reported, the communication protocol was
21 I9140808, and the PID count was 16.

22 **Clean Plug #5**

23 60. On June 3, 2015, respondent Pham issued a smog certificate of compliance for a
24 2000 Dodge Grand Caravan SE/Sport, VIN ending 988. The bureau's vehicle information
25 database showed the eVIN ending 055, the communication protocol as ICAN29bt500, and the
26 PID count as 39.

27 ³ This VIN also appears in Clean Plug #10. It corresponds to a vehicle registered by
28 the DMV to respondent Pham.

1 61. Comparative OIS test data for 2,935 similar 2000 Dodge Grand Caravan SE/Sport
2 vehicles show that 97.07% of the time no eVIN is reported, the communication protocol is I914,
3 and the PID count is 15/3.

4 **Clean Plug #6**

5 62. On June 3, 2015, respondent Pham issued a smog certificate of compliance for a
6 2000 Toyota Tundra Limited, VIN ending 536. The bureau's vehicle information database
7 showed the eVIN ending 055, the communication protocol as ICAN29bt500, and the PID count
8 as 39.

9 63. Comparative OIS test data for 831 similar 2000 Toyota Tundra Limited vehicles
10 show that 99.16% of the time no eVIN is reported, the communication protocol is I914, and the
11 PID count is 20.

12 **Clean Plug #7**

13 64. On June 8, 2015, respondent Pham issued a smog certificate of compliance for a
14 2005 Mercedes-Benz S500, VIN ending 775. The bureau's vehicle information database showed
15 the eVIN ending 055, the communication protocol as ICAN29bt500, and the PID count as 39.

16 65. Comparative OIS test data for 746 similar 2005 Mercedes-Benz S500 vehicles
17 show that 99.46% of the time no eVIN is reported, the communication protocol is KWPF, and the
18 PID count is 24.

19 **Clean Plug #8**

20 66. On June 18, 2015, respondent Pham issued a smog certificate of compliance for a
21 2005 Nissan Maxima SE/SL, VIN ending 825. The bureau's vehicle information database
22 showed the eVIN ending 055, the communication protocol as ICAN29bt500, and the PID count
23 as 39.

24 67. Comparative OIS test data for 5,680 similar 2005 Nissan Maxima SE/SL vehicles
25 show that 95.70% of the time no eVIN is reported, the communication protocol is I914, and the
26 PID count is 22.

27 ///

28

1 **Clean Plug #9**

2 68. On June 26, 2015, respondent Pham issued a smog certificate of compliance for a
3 2003 Toyota Prius, VIN ending 041. The bureau's vehicle information database showed the
4 eVIN ending 055, the communication protocol as ICAN29bt500, and the PID count as 39.

5 69. Comparative OIS test data for 265 similar 2003 Toyota Prius vehicles show that
6 96.60% of the time no eVIN is reported, the communication protocol is I914, and the PID count
7 is 17/8/3.

8 **Clean Plug #10**

9 70. On July 13, 2015, respondent Pham issued a smog certificate of compliance for a
10 2002 Lincoln Navigator, VIN ending 011. The bureau's vehicle information database showed the
11 eVIN ending 842, the communication protocol as ICAN29bt500, and the PID count as 45.

12 71. Comparative OIS test data for 472 similar 2002 Lincoln Navigator vehicles show
13 that 98.52% of the time no eVIN is reported, the communication protocol is JPWM, and the PID
14 count is 20.

15 **Clean Plug #11**

16 72. On July 30, 2015, respondent Pham issued a smog certificate of compliance for a
17 2001 Toyota Corolla CE/LE/S, VIN ending 196. The bureau's vehicle information database
18 showed the eVIN ending 937,⁴ the communication protocol as ICAN29bt500, and the PID count
19 as 47.

20 73. Comparative OIS test data for 22,071 similar 2001 Toyota Corolla CE/LE/S
21 vehicles show that 98.00% of the time no eVIN is reported, the communication protocol is I914,
22 and the PID count is 16.

23 **Clean Plug #12**

24 74. On August 18, 2015, respondent Pham issued a smog certificate of compliance for
25 a 2002 Saturn L300, VIN ending 162. The bureau's vehicle information database showed the
26 eVIN ending 388, the communication protocol as ICAN29bt500, and the PID count as 42.

27
28 ⁴ This VIN also appears in Clean Plug #13.

1 75. Comparative OIS test data for 1,072 similar 2002 Saturn L300 vehicles show that
2 96.83% of the time no eVIN is reported, the communication protocol is I914, and the PID count
3 is 19/1.

4 **Clean Plug #13**

5 76. On September 1, 2015, respondent Pham issued a smog certificate of compliance
6 for a 2000 Ford Expedition XLT, VIN ending 931. The bureau's vehicle information database
7 showed the eVIN ending 937, the communication protocol as ICAN29bt500, and the PID count
8 as 47.

9 77. Comparative OIS test data for 3,229 similar 2000 Ford Expedition XLT vehicles
10 show that 97.09% of the time no eVIN is reported, the communication protocol is JPWM, and the
11 PID count is 20.

12 **Clean Plug #14**

13 78. On September 5, 2015, respondent Pham issued a smog certificate of compliance
14 for a 2000 Toyota RAV4, VIN ending 213. The bureau's vehicle information database showed
15 the eVIN ending 055, the communication protocol as ICAN29bt500, and the PID count as 39.

16 79. Comparative OIS test data for 2,659 similar 2000 Toyota RAV4 vehicles show
17 that 99.32% of the time no eVIN is reported, the communication protocol is I914, and the PID
18 count is 17.

19 **Clean Plug #15**

20 80. On September 16, 2015, respondent Pham issued a smog certificate of compliance
21 for a 2000 Ford Expedition Eddie Bauer, VIN ending 989. The bureau's vehicle information
22 database showed the eVIN ending 055, the communication protocol as ICAN29bt500, and the
23 PID count as 39.

24 81. Comparative OIS test data for 1,869 similar 2000 Ford Expedition Eddie Bauer
25 vehicles show that 97.86% of the time no eVIN is reported, the communication protocol is
26 JPWM, and the PID count is 20.

27 **Clean Plug #16**

28 82. On October 2, 2015, respondent Pham issued a smog certificate of compliance to a

1 2000 Lexus ES300, VIN ending 482. The bureau's vehicle information database showed the
2 eVIN ending 055, the communication protocol as ICAN29bt500, and the PID count as 39.

3 83. Comparative OIS test data for 4,619 similar 2000 Lexus ES300 vehicles show that
4 99.07% of the time no eVIN is reported, the communication protocol is I914, and the PID count
5 is 20.

6 **Clean Plug #17**

7 84. On October 7, 2015, respondent Pham issued a smog certificate of compliance for
8 a 2007 Audi A6 4.2 Quattro, VIN ending 425. The bureau's vehicle information database
9 showed that no eVIN was reported, the communication protocol as I9140808, and the PID count
10 as 21.

11 85. Comparative OIS test data for 64 similar 2007 Audi A6 4.2 Quattro vehicles show
12 that 95.31% of the time an eVIN is reported, the communication protocol is ICAN11bt5, and the
13 PID count is 46/14.

14 **Clean Plug #18**

15 86. On October 14, 2015, respondent Pham issued a smog certificate of compliance
16 for a 2000 BMW Z3 2.8, VIN ending 774. The bureau's vehicle information database showed the
17 eVIN ending 055, the communication protocol as ICAN29bt500, and the PID count as 39.

18 87. Comparative OIS test data for 80 similar 2000 BMW Z3 2.8 vehicles show that
19 98.75% of the time no eVIN is reported, the communication protocol is I914, and the PID count
20 is 23/1.

21 **Clean Plug #19**

22 88. On March 26, 2016, respondent Pham issued a smog certificate of compliance for
23 a 2002 BMW X5 3.0I, VIN ending 015. The bureau's vehicle information database showed the
24 eVIN ending 616, the communication protocol as ICAN11bt500, and the PID count as 45.

25 89. Comparative OIS test data for 1,000 similar 2002 BMW X5 3.0I vehicles show
26 that they may or may not report an eVIN. However, 91.4% of the time the communication
27 protocol is I914, and the PID count is 23/1.

28 90. Furthermore, this BMW had passed a smog check in Oakland, California, on

1 October 6, 2014. During that inspection, no eVIN was reported, the communication protocol was
2 I9140808, and the PID count was 23.

3 91. Additionally, this BMW had failed a smog check in Oakland, California, on
4 February 18, 2016. During that inspection, no eVIN was reported, the communication protocol
5 was I9140808, and the PID count was 23.

6 BRAKE AND LAMP COVERT AUDIT

7 92. A bureau representative modified a 2002 Dodge by installing front disc brake
8 rotors and rear brake drums that were outside specifications. Additionally, the representative
9 adjusted both headlights outside manufacturer specifications. The bureau's Handbook for Brake
10 Adjusters and Stations requires a technician to inspect and measure all brake linings to ensure that
11 they are within specifications before he allows a vehicle to pass a brake inspection.

12 93. Additionally, the representative adjusted both headlights on the Dodge so they
13 aimed outside specifications. The bureau's Handbook for Lamp Adjusters and Stations requires a
14 technician to inspect and aim all headlights to ensure that they are within specifications before he
15 allows a vehicle to pass a lamp inspection.

16 94. On August 6, 2015, a bureau operator conducted a covert audit by driving the
17 Dodge to respondent First Quality and asking for a brake and lamp inspection. The driver signed
18 a work order and estimate but did not receive a copy of it. The driver saw that the inspector did
19 not remove the wheels, inspect or measure the brake linings, or adjust the headlights. After the
20 inspection, the driver received brake and lamp certificates of compliance. He did not receive a
21 copy of the invoice.

22 95. The bureau representative re-examined the Dodge. The wheels had not been
23 removed and the front disc brake rotors and rear brake drums had not been replaced. The
24 headlights had not been adjusted.

25 96. The bureau interviewed respondent Truong after the covert audit. Respondent
26 Truong said he performed the brake and lamp inspection on the Dodge.

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FOURTH CAUSE FOR DISCIPLINE
Violation of Statutes and Regulations

Business and Professions Code sections 9884.7, subdivision (a)(6), 9889.3, subdivisions (a), (c), and (h); Health and Safety Code section 44072.2, subdivisions (a) and (c)

100. Respondent First Quality has subjected its automotive repair dealership registration, smog check station license, brake station license, and lamp station license to discipline for violating the Business and Professions Code, the Health and Safety Code, and regulations adopted by the Bureau (Bus. & Prof. Code, §§ 9884.7, subd. (a)(6), 9889.3, subds. (a), (c) & (h); Health & Saf. Code, § 44072.2, subds. (a) & (c)). As set forth in paragraphs 41-96 above, respondent First Quality violated the following statutes and regulations:

a. Respondent First Quality committed perjury by issuing 19 false and fraudulent smog certificates of compliance, and false and fraudulent brake and lamp certificates of compliance (Bus. & Prof. Code, § 9889.22; Health & Saf. Code, § 44059).

b. Respondent First Quality committed unfair competition by issuing 19 false and fraudulent smog certificates of compliance, and false and fraudulent brake and lamp certificates of compliance (Bus. & Prof. Code, § 17200).

c. Respondent First Quality made untrue or misleading statements by issuing 19 false and fraudulent smog certificates of compliance, and false and fraudulent brake and lamp certificates of compliance (Bus. & Prof. Code, § 17500).

d. Respondent First Quality did not perform the functional portion of smog tests in accordance with department procedures on 19 vehicles (Health & Saf. Code, § 44012, subd (f)).

e. Respondent First Quality issued smog certificates of compliance for 19 vehicles that did not meet the functional portion of the smog test procedure (Health & Saf. Code, § 44015).

f. Respondent First Quality issued 19 false and fraudulent smog certificates of compliance (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)).

g. Respondent First Quality issued 19 false and fraudulent smog certificates of compliance, and brake and lamp certificates of compliance, for vehicles which were not tested

1 in accordance with department procedures (Cal. Code Regs., tit. 16, § 3340.35, subd. (c)).

2 h. Respondent First Quality did not perform onboard diagnostic tests on 19
3 vehicles that it ostensibly smog checked (Cal. Code Regs., tit. 16, § 3340.42, subd. (a)(3)).

4 i. Respondent First Quality did not perform smog tests in accordance with
5 department procedures on 19 vehicles (Cal. Code Regs., tit. 16, § 3340.45, subd. (a)).

6 j. Respondent First Quality made false statements or misleading statements
7 by issuing 19 false and fraudulent smog certificates of compliance, and false and fraudulent brake
8 and lamp certificates of compliance (Cal. Code Regs., tit. 16, § 3371).

9 k. Respondent First Quality made false statements or misleading statements
10 on a record by issuing 19 false and fraudulent smog certificates of compliance, and false and
11 fraudulent brake and lamp certificates of compliance (Cal. Code Regs., tit. 16, § 3373).

12 **RESPONDENT PHAM**

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **Fraud**

15 **Health and Safety Code section 44072.2, subdivision (d)**

16 101. Respondent Pham has subjected his smog check inspector license and smog check
17 repair technician license to discipline for fraud (Health & Saf. Code, § 44072.2, subd. (d)). As set
18 forth in paragraphs 41-91 above, respondent Pham issued 19 false and fraudulent smog
19 certificates of compliance.

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **Violation of Statutes and Regulations**

22 **Health and Safety Code section 44072.2, subdivisions (a) and (c)**

23 102. Respondent Pham has subjected his smog check inspector license and smog check
24 repair technician license to discipline for violating the Business and Professions Code, the Health
25 and Safety Code, and regulations adopted by the Bureau (Health & Saf. Code, § 44072.2, subds.
26 (a) & (c)). As set forth in paragraphs 41-91 above, respondent Pham violated the following
27 statutes and regulations:

28 a. Respondent Pham committed unfair competition by issuing 19 false and
fraudulent smog certificates of compliance (Bus. & Prof. Code, § 17200).

b. Respondent Pham made untrue or misleading statements by issuing 19

1 false and fraudulent smog certificates of compliance (Bus. & Prof. Code, § 17500).

2 c. Respondent Pham committed perjury by issuing 19 false and fraudulent
3 smog certificates of compliance (Health & Saf. Code, § 44059).

4 d. Respondent Pham did not perform the functional portion of smog tests in
5 accordance with department procedures on 19 vehicles (Health & Saf. Code, § 44012, subd (f)).

6 e. Respondent Pham did not perform tests of emission control devices and
7 systems on 19 vehicles (Health & Saf. Code, § 44032).

8 f. Respondent Pham issued 19 false and fraudulent smog certificates of
9 compliance (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)).

10 g. Respondent Pham did not perform smog tests in accordance with statutes
11 and department procedures on 19 vehicles (Cal. Code Regs., tit. 16, § 3340.30, subd. (a)).

12 h. Respondent Pham entered information and data into the emission
13 inspection system for 19 vehicles other than those being tested (Cal. Code Regs., tit. 16,
14 § 3340.41, subd. (c)).

15 i. Respondent Pham did not perform onboard diagnostic tests on 19 vehicles
16 that he ostensibly smog checked (Cal. Code Regs., tit. 16, § 3340.42, subd. (a)(3)).

17 j. Respondent Pham did not perform smog tests in accordance with
18 department procedures on 19 vehicles (Cal. Code Regs., tit. 16, § 3340.45, subd. (a)).

19 k. Respondent Pham made false statements or misleading statements on a
20 record by issuing 19 false and fraudulent smog certificates of compliance (Cal. Code Regs., tit.
21 16, § 3373).

22 **RESPONDENT TRUONG**

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **Fraud**

25 **Business and Professions Code section 9889.3, subdivision (d)**

26 103. Respondent Truong has subjected his smog check inspector license, smog check
27 repair technician license, brake adjuster license, and lamp adjuster license to discipline for fraud
28 (Bus. & Prof. Code, § 9889.3, subd. (d) & (c)). As set forth in paragraphs 92-96 above,
respondent Truong issued false or fraudulent brake and lamp certificates of compliance.

1 **EIGHTH CAUSE FOR DISCIPLINE**
2 **Violation of Statutes and Regulations**
3 **Business and Professions Code section 9889.3, subdivisions (a), (c), and (h)**

4 104. Respondent Truong has subjected his smog check inspector license, smog check
5 repair technician license, brake adjuster license, and lamp adjuster license to discipline for
6 violating the Business and Professions Code and regulations adopted by the bureau (Bus. & Prof.
7 Code, § 9889.3, subs. (a), (c), and (h)). As set forth in paragraphs 92-96 above, respondent
8 Truong violated the following statutes and regulations:

9 a. Respondent Truong issued false and fraudulent issued brake and lamp
10 certificates of compliance (Bus. & Prof. Code, § 9889.16).

11 b. Respondent Truong committed unfair competition by issuing false and
12 fraudulent brake and lamp certificates of compliance (Bus. & Prof. Code, § 17200).

13 c. Respondent Truong made untrue or misleading statements by issuing false
14 and fraudulent brake and lamp certificates of compliance (Bus. & Prof. Code, § 17500).

15 d. Respondent Truong issued false and fraudulent brake and lamp certificates
16 of compliance (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)).

17 e. Respondent Truong made false statements or misleading statements on a
18 record by issuing false and fraudulent brake and lamp certificates of compliance (Cal. Code
19 Regs., tit. 16, § 3373).

20 **OTHER MATTERS**

21 105. Business and Professions Code section 9884.7, subdivision (c), states in part:

22 “[T]he director may suspend, revoke, or place on probation the registration for all places
23 of business operated in this state by an automotive repair dealer upon a finding that the
24 automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this
25 chapter, or regulations adopted pursuant to it.”

26 106. Health and Safety Code section 44072.8 states:

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

1 PRAYER

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

4 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 165589
5 issued to respondent First Quality Auto Repair and Body; Nua Thanh Pham, Owner;

6 2. Revoking or suspending Smog Check Station License No. RC 165589 issued to
7 respondent First Quality Auto Repair and Body; Nua Thanh Pham, Owner;

8 3. Revoking or suspending Brake Station License No. BS 165589, class C, issued to
9 respondent First Quality Auto Repair and Body; Nua Thanh Pham, Owner;

10 4. Revoking or suspending Lamp Station License No. LS 165589, class A, issued to
11 respondent First Quality Auto Repair and Body; Nua Thanh Pham, Owner;

12 5. Revoking or suspending Smog Check Inspector License No. EO 152661 issued to
13 respondent Nua Thanh Pham;

14 6. Revoking or suspending Smog Check Repair Technician License No. EI 152661
15 issued to respondent Nua Thanh Pham;

16 7. Revoking or suspending Smog Check Inspector License No. EO 139748 issued to
17 respondent Nhan Thanh Truong;

18 8. Revoking or suspending Smog Check Repair Technician License No. EI 139748
19 issued to respondent Nhan Thanh Truong;

20 9. Revoking or suspending Brake Adjuster License No. BA 139748, class C, issued
21 to respondent Nhan Thanh Truong;

22 10. Revoking or suspending Lamp Adjuster License No. LA 139748, class A, issued
23 to respondent Nhan Thanh Truong;

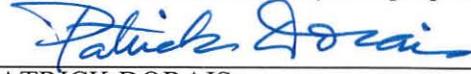
24 11. Ordering respondents First Quality Auto Repair, Nua Thanh Pham, and Nhan
25 Thanh Truong under Business and Professions Code section 125.3 to pay the bureau the
26 reasonable costs of the investigation and enforcement of this case; and

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

DATED: July 1, 2016 

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

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