

1 XAVIER BECERRA
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 KEVIN J. SCHETTIG
Deputy Attorney General
4 State Bar No. 234240
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6272
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 79/17-12498

13 **CITY HI-TECH INC., OWNER, dba CITY**
14 **TECH AUTO REPAIR; RICKY THAI,**
15 **PRESIDENT/TREASURER**
16 **ANTHONY VAN THAI, SECRETARY**
17 **8419 Garvey Ave.**
18 **Rosemead, CA 91770**

ACCUSATION

19 **Automotive Repair Dealer Registration No.**
20 **ARD 254340**
21 **Smog Check Station License No. RC 254340**

22 **and**

23 **ANTHONY VAN THAI**
24 **8224 Garibaldi Avenue**
25 **San Gabriel, CA 91775**

26 **Smog Check Inspector License No. EO**
27 **140611**
28 **Smog Check Repair Technician License No.**
EI 140611

Respondents.

///

///

///

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about April 3, 2008, the Bureau issued Automotive Repair Dealer Registration
6 Number ARD 254340 to City Hi-Tech Inc., dba City Tech Auto Repair, with Ricky Thai as
7 President and Treasurer and Anthony Van Thai as Secretary ("Respondent City Tech Auto
8 Repair"). The Automotive Repair Dealer Registration was in full force and effect at all times
9 relevant to the charges brought herein and will expire on January 31, 2019, unless renewed.

10 3. On or about April 16, 2008, the Bureau issued Smog Check Station License Number
11 RC 254340 to Respondent City Tech Auto Repair. The Smog Check Station License was in full
12 force and effect at all times relevant to the charges brought herein and will expire on January 31,
13 2019, unless renewed.

14 4. In 2002, the Bureau issued Advanced Emission Specialist (EA) Technician License
15 Number 140611 to Anthony Van Thai ("Respondent Van Thai"). The technician license was
16 cancelled on August 9, 2012 and renewed, pursuant to Respondent Van Thai's election, as Smog
17 Check Inspector License Number EO 140611 and Smog Check Repair Technician License
18 Number EI 140611, effective August 9, 2012.¹ The Smog Check Inspector License and Smog
19 Check Repair Technician License were in full force and effect at all times relevant to the charges
20 brought herein and will expire on August 31, 2018, unless renewed.

21 **JURISDICTION**

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

25 ///

26 _____
27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 6. Business and Professions Code section 9884.7 provides that the Director may revoke
2 an automotive repair dealer registration.

3 7. Business and Professions Code section 9884.13 provides, in pertinent part, that the
4 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
5 disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or
6 permanently invalidating (suspending or revoking) a registration.

7 8. Health and Safety Code section 44002 provides, in pertinent part, that the Director
8 has all the powers and authority granted under the Automotive Repair Act for enforcing the
9 Motor Vehicle Inspection Program.

10 9. Health and Safety Code section 44072.6 provides, in pertinent part, that the
11 expiration or suspension of a license by operation of law, or by order or decision of the Director,
12 or a court of law, or the voluntary surrender of the license shall not deprive the Director of
13 jurisdiction to proceed with disciplinary action.

14 10. Section 118, subdivision (b), of the Code provides that suspension, expiration,
15 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed
16 with a disciplinary action during the period within which the license may be renewed, restored,
17 reissued or reinstated.

18 STATUTORY PROVISIONS

19 11. Section 9884.7 of the Code states in pertinent part:

20 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
21 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
22 dealer for any of the following acts or omissions related to the conduct of the business of the
23 automotive repair dealer, which are done by the automotive repair dealer or any automotive
24 technician, employee, partner, officer, or member of the automotive repair dealer.

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

28 ...

1 (4) Any other conduct that constitutes fraud.

2 ...

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

5 12. Section 9889.22 states:

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

10 13. Section 44012 of the Health and Safety Code states:

11 “The test at the smog check stations shall be performed in accordance with procedures
12 prescribed by the department and may require loaded mode dynamometer testing in enhanced
13 areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other
14 appropriate test procedures as determined by the department in consultation with the state board.
15 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
16 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
17 no earlier than January 1, 2013. However, the department, in consultation with the state board,
18 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
19 idle testing for vehicles with onboard diagnostic systems that the department and the state board
20 determine exhibit operational problems. The department shall ensure, as appropriate to the test
21 method, the following:

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

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

27 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
28 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded

1 mode are tested in accordance with procedures prescribed by the department. In determining how
2 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure
3 that the emission reduction targets for the enhanced program are met.

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

7 (e) For diesel-powered vehicles, a visual inspection is made of emission control devices and
8 the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
9 department, that may include, but are not limited to, onboard diagnostic testing. The test may
10 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
11 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

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

18 (h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a
19 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
20 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
21 would have passed a tailpipe test.

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

26 14. Section 44015 of the Health and Safety Code, subdivision (b), states:

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

1 15. Section 44032 of the Health and Safety Code states:

2 “No person shall perform, for compensation, tests or repairs of emission control devices or
3 systems of motor vehicles required by this chapter unless the person performing the test or repair
4 is a qualified smog check technician and the test or repair is performed at a licensed smog check
5 station. Qualified technicians shall perform tests of emission control devices and systems in
6 accordance with Section 44012.”

7 16. Section 44059 of the Health and Safety Code states:

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

12 17. Section 44072.2 of the Health and Safety code states, in pertinent part:

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

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

18 ...

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

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

21 ...

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

24 18. Section 44072.8 of the Health and Safety Code states:

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

28 ///

REGULATORY PROVISIONS

19. California Code of Regulations, title 16, section 3340.30, subdivision (a), states:

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

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

...

20. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:

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

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

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

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

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

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

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

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

(2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This manual shall become effective on or after January 1, 2013.”

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

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

COST RECOVERY

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

FACTUAL BACKGROUND

25. At all times alleged herein, Respondent Van Thai was acting in the course and within the scope of an owner, technician, employee, partner, officer, or member of Respondent City Tech Auto Repair.

26. The OBD II communication protocol describes the specified communication “language” used by the OBD II system electronic control unit to communicate to scan tools and other devices such as the On-Board Diagnostic Inspection System (OIS). The communication protocol is programmed into the OBD II system electronic control unit during manufacture and does not change.

27. Parameter Identifications (PIDs) are data points reported by the OBD II system electronic control unit to the scan tool or On-Board Diagnostic Inspection System. Examples of Parameter Identifications are engine speed (rpm), vehicle speed, engine temperature, and other input and output values utilized by the OBD II system electronic control unit. The PID count is the number of data points reported by the OBD II system electronic control unit, and is programmed during manufacture.

1 28. The Vehicle Identification Number that is physically present on all vehicles is also
2 required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on
3 2005 and newer vehicles, and on many occasions was programmed into the OBD II system
4 electronic control unit in earlier model-years. This electronically programmed Vehicle
5 Identification Number, also known as the "eVIN," is captured by the Bureau during a Smog
6 Check and should match the physical Vehicle Identification Number on the vehicle.

7 29. A Bureau representative initiated an investigation in which he reviewed specific OIS
8 Test Data for Respondent City Tech Auto Repair. The investigation revealed that the data related
9 to certain vehicles certified by Respondent City Tech Auto Repair contained a pattern of
10 unmistakable discrepancies between the information transmitted during the inspections and
11 documented information known about the subject vehicles. The review showed a pattern of
12 vehicles being certified with communication protocols and PID amounts that do not match the
13 expected protocols or PID amounts for the vehicles being certified. This confirms that the
14 vehicles receiving smog certificates from Respondent City Tech Auto Repair were not tested
15 during the OBD II functional test, and were instead fraudulently tested during the smog
16 inspection using the clean plugging method² as follows:

17 a. Clean Plug Number 1, June 19, 2016

18 OIS Test Data indicate on June 19, 2016, a 2004 Mazda MPV Wagon, VIN
19 JM3LW28A540529736, California License No. 7P49633, was tested and issued a smog
20 certificate number QC463713C by licensed Smog Check Technician, Respondent Van Thai,
21 license number EO 140611. The OIS Test Data for the 2004 Mazda MPV Wagon show the eVIN
22 was transmitted as JM1DE1KZ1D0160723, the communication protocol was transmitted as
23 ICAN11bt5 and the PID count was 43.

24 ///

25 ///

26 _____
27 ² Clean plugging refers to the use of another vehicle's properly functioning On Board
28 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that
are not in smog compliance and/or not present for testing.

1 Similar OIS Test Data for 2004 Mazda MPV Wagon vehicles show they do not transmit the
2 eVIN, they have the expected communication protocol I914 and they transmit a PID count of
3 22/6.

4 DMV registration information indicates VIN JM1DE1KZ1D0160723 corresponds to a
5 2013 Mazda, not to a 2004 Mazda MPV Wagon.

6 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device ("DAD")
7 was not connected to the 2004 Mazda MPV Wagon being certified, resulting in the issuance of a
8 fraudulent Smog Certificate of Compliance.

9 b. Clean Plug Number 2, August 8, 2016

10 OIS Test Data indicate on August 8, 2016, a 2010 Toyota Rav4, VIN
11 JTMZF4DV7AD028536, California License No. 6NSM739, was tested and issued a smog
12 certificate number ZH563399C by licensed Smog Check Technician, Respondent Van Thai,
13 license number EO 140611. The OIS Test Data for the 2010 Toyota Rav4 show the incorrect
14 eVIN was transmitted as JTMZD33V275056474, the communication protocol was transmitted as
15 ICAN11bt5 and the PID count was 39.

16 Similar OIS Test Data for 2010 Toyota Rav4 vehicles show they transmit the correct eVIN,
17 they have the expected communication protocol ICAN11bt5 and they transmit a PID count of 40.

18 In addition, the OIS Test Data shows that a 2007 Toyota Rav4, VIN
19 JTMZD33V275056474, was the vehicle used to generate the fraudulent Smog Certificate of
20 Compliance for the 2010 Toyota Rav4. The 2007 Toyota Rav4 was certified at another licensed
21 Smog Check facility on March 16, 2017. The OIS Test Data transmitted for the 2007 Toyota
22 Rav4 matches the OIS Test Data for the fraudulent inspection of the 2010 Toyota Rav4 for the
23 eVIN, communication protocol and PID count.

24 The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2010
25 Toyota Rav4 being certified, resulting in the issuance of a fraudulent Smog Certificate of
26 Compliance.

27 ///

28 ///

1 c. Clean Plug Number 3, December 10, 2016

2 OIS Test Data indicate on December 10, 2016, a 2005 Nissan Altima S, VIN
3 1N4AL11D95N455321, California License No. 5LXJ041, was tested and issued a smog
4 certificate number ZL410666C by licensed Smog Check Technician, Respondent Van Thai,
5 license number EO 140611. The OIS Test Data for 2005 Nissan Altima S show the incorrect
6 eVIN was transmitted as 1N4AL2AP8AN494928, the communication protocol was transmitted as
7 ICAN11bt5 and the PID count was 40.

8 Similar OIS Test Data for 2005 Nissan Altima S vehicles show they transmit the correct
9 eVIN, they have the expected communication protocol I914 and they transmit a PID count of 18.

10 On January 9, 2015, another licensed Smog Check facility performed a Smog Check
11 Inspection on the 2005 Nissan Altima S/SL, VIN 1N4AL11D95N455321, California License No.
12 5LXJ041. The OIS Test Details show the vehicle transmitted the correct eVIN, had the expected
13 communication protocol I914, and transmitted a PID count of 18.

14 In addition, the OIS Test Data shows that a 2010 Nissan Altima Base, VIN
15 1N4AL2AP8AN494928, was the vehicle used to generate the fraudulent Smog Certificate of
16 Compliance for the 2005 Nissan Altima S. The 2010 Altima Base was certified at City Tech
17 Auto Repair on November 12, 2016. The OIS Test Data transmitted for the 2010 Nissan Altima
18 Base matches the OIS Test Data for the fraudulent inspection of the 2005 Nissan Altima S for the
19 eVIN, communication protocol and PID count.

20 The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2005
21 Nissan Altima S being certified, resulting in the issuance of a fraudulent Smog Certificate of
22 Compliance.

23 d. Clean Plug Number 4, January 30, 2017

24 OIS Test Data indicate on January 30, 2017, a 2001 Toyota Rav4, VIN
25 JTEGH20V210014266, California License No. 4PZY467, was tested and issued a smog
26 certificate number ZN789229C by licensed Smog Check Technician, Respondent Van Thai,
27 license number EO 140611. The OIS Test Data for 2001 Toyota Rav4 show the eVIN was
28

1 transmitted as JTLKT324464115045, the communication protocol was transmitted as ICAN11bt5
2 and the PID count was 34.

3 Similar OIS Test Data for 2001 Toyota Rav4 vehicles show they do not transmit the eVIN,
4 they have the expected communication protocol I914 and they transmit a PID count of 21.

5 On December 16, 2016, City Tech Auto Repair performed a Smog Check Inspection on the
6 2001 Toyota Rav4, VIN JTEGH20V210014266, California License No. 4PZY467. The OIS Test
7 Details show the vehicle failed the inspection, did not transmit the eVIN, had the expected
8 communication protocol I914, and transmitted a PID count of 21.

9 In addition, the OIS Test Data shows that a 2006 Toyota Scion XB, VIN
10 JTLKT324464115045, was the vehicle used to generate the fraudulent Smog Certificate of
11 Compliance for the 2001 Toyota Rav4. The 2006 Toyota Scion XB was certified at another
12 licensed Smog Check facility on February 27, 2017. The OIS Test Data transmitted for the 2006
13 Toyota Scion XB matches the OIS Test Data for the fraudulent inspection of the 2001 Toyota
14 Rav4 for the eVIN, communication protocol and PID count.

15 The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2001
16 Toyota Rav4 being certified, resulting in the issuance of a fraudulent Smog Certificate of
17 Compliance.

18 e. Clean Plug Number 5, June 16, 2017

19 OIS Test Data indicate on June 16, 2017, a 2000 Mercedes-Benz E320, VIN
20 WDBJF65J9YB056105, California License No. 7ECA053, was tested and issued a smog
21 certificate number ZT9677048C by licensed Smog Check Technician, Respondent Van Thai,
22 license number EO 140611. The OIS Test Data for 2000 Mercedes-Benz E320 show the eVIN
23 was not transmitted, the communication protocol was transmitted as KWPF and the PID count
24 was 22.

25 Similar OIS Test Data for 2000 Mercedes-Benz E320 vehicles show they do not transmit
26 the eVIN, they have the expected communication protocol I914 and they transmit a PID count of
27 21.

28 ///

1 On May 21, 2015, City Tech Auto Repair performed a Smog Check Inspection on the 2000
2 Mercedes-Benz E320, VIN WDBJF65J9YB056105, California License No. 7ECA053. The OIS
3 Test Details show the vehicle did not transmit the eVIN, had the expected communication
4 protocol I914, and transmitted a PID count of 21.

5 The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2000
6 Mercedes-Benz E320 being certified, resulting in the issuance of a fraudulent Smog Certificate of
7 Compliance.

8 f. Clean Plug Number 6, July 14, 2017

9 OIS Test Data indicate on July 14, 2017, a 2008 Ford Econoline E250 Van, VIN
10 1FTNS24L88DA03703, California License No. 8T03232, was tested and issued a smog
11 certificate number ZV794100C by licensed Smog Check Technician, Respondent Van Thai,
12 license number EO 140611. The OIS Test Data for 2008 Ford Econoline E250 Van show the
13 incorrect eVIN was transmitted as 1FDWE3FL3EDA13027, the communication protocol was
14 transmitted as ICAN11bt5 and the PID count was 43.

15 Similar OIS Test Data for 2008 Ford Econoline E250 Van vehicles show they transmit the
16 correct eVIN, they have the expected communication protocol ICAN11bt5 and they transmit a
17 PID count of 45.

18 On July 9, 2015, City Tech Auto Repair performed a Smog Check Inspection on the 2008
19 Ford Econoline E250 Van, VIN 1FTNS24L88DA03703, California License No. 8T03232. The
20 OIS Test Details show the vehicle transmitted the correct eVIN, had the expected communication
21 protocol ICAN11bt5, and transmitted a PID count of 45.

22 DMV registration information indicates VIN 1FDWE3FL3EDA13027 is assigned to a
23 currently registered and insured 2014 Ford vehicle, not a 2008 Ford Econoline E250.

24 The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2008
25 Ford Econoline E250 Van being certified, resulting in the issuance of a fraudulent Smog
26 Certificate of Compliance.

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 30. Complainant re-alleges and incorporates by reference the allegations set forth in
4 paragraphs 25 through 29.

5 31. Respondent City Tech Auto Repair's Automotive Repair Dealer Registration is
6 subject to disciplinary action under section 9884.7, subdivision (a)(1) in conjunction with section
7 9889.22, in that Respondent City Tech Auto Repair made or authorized statements which
8 Respondent City Tech Auto Repair knew or in the exercise of reasonable care should have known
9 to be untrue or misleading.

10 32. Respondent City Tech Auto Repair certified that the vehicles at issue above had
11 passed inspection and were in compliance with all applicable laws and regulations, when in fact
12 and in truth Respondent City Tech Auto Repair unlawfully used the clean plugging method to
13 issue smog certificates of compliance.

14 **SECOND CAUSE FOR DISCIPLINE**

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

16 33. Complainant re-alleges and incorporates by reference the allegations set forth in
17 paragraphs 25 through 29.

18 34. Respondent City Tech Auto Repair's Automotive Repair Dealer Registration is
19 subject to disciplinary action under section 9884.7, subdivision (a)(4), in that Respondent City
20 Tech Auto Repair committed dishonest, fraudulent, or deceitful acts whereby another was injured
21 by issuing a smog certificate of compliance for the vehicles at issue without performing bona fide
22 inspections of the emission control devices and systems on the vehicles, thereby depriving the
23 People of the State of California of the protection afforded by the Motor Vehicle Inspection
24 Program.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Material Violation of the Automotive Repair Act)**

27 35. Complainant re-alleges and incorporates by reference the allegations set forth in
28 paragraphs 25 through 29.

36. Respondent City Tech Auto Repair's Automotive Repair Dealer Registration is subject to disciplinary action under section 9884.7, subdivision (a)(6), in that it failed in a "material respect to comply with the provisions of this chapter or the regulations adopted pursuant to it" when it issued smog certificates of compliance for the vehicles at issue without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

37. Complainant re-alleges and incorporates by reference the allegations set forth in paragraphs 25 through 29.

38. Respondent City Tech Auto Repair's Smog Check and Repair Station License is subject to discipline under Health and Safety Code section 44072.2, subdivision (a), in that Respondent City Tech Auto Repair failed to comply with the following sections of the Health and Safety Code:

a. **Section 44012:** Respondent City Tech Auto Repair failed to perform the tests of the emission control systems and devices on the vehicles at issue in accordance with the procedures prescribed by the Department.

b. **Section 44015, subdivision (b):** Respondent City Tech Auto Repair issued smog certificates of compliance for the vehicles at issue without properly testing and inspecting them to determine if they were in compliance with Health and Safety Code section 44012.

c. **Section 44059:** Respondent City Tech Auto Repair willfully made false entries for smog certificates of compliance for the vehicles at issue by certifying that those vehicles had been inspected as required when, in fact, they had not.

FIFTH CAUSE FOR DISCIPLINE

(Fraud)

39. Complainant re-alleges and incorporates by reference the allegations set forth in paragraphs 25 through 29.

40. Respondent City Tech Auto Repair's Automotive Repair Dealer Registration and Smog Check and Repair Station License are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that Respondent City Tech Auto Repair committed acts involving dishonesty, fraud and deceit when it issued smog certificates of compliance for the vehicles at issue without performing bona fide inspections of the emission control devices and systems on the vehicles.

SIXTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

41. Complainant re-alleges and incorporates by reference the allegations set forth in paragraphs 25 through 29.

42. Respondent City Tech Auto Repair's Smog Check and Repair Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that Respondent City Tech Auto Repair failed to comply with the following sections of Title 16, California Code of Regulations:

a. **Section 3340.35, subdivision (c):** Respondent City Tech Auto Repair failed to inspect and test the vehicles at issue in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the required emission control equipment and devices installed and functioning correctly.

b. **Section 3340.42:** Respondent City Tech Auto Repair failed to conduct the required smog tests and inspections on the vehicles at issue in accordance with the Bureau's specifications.

c. **Section 3340.45:** Respondent City Tech Auto Repair failed to perform smog check inspections on the vehicles at issue as prescribed in the operative Smog Check Manual.

d. **Section 3373:** Respondent City Tech Auto Repair issued false and misleading records when it issued smog certificates of compliance for the vehicles at issue without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 43. Complainant re-alleges and incorporates by reference the allegations set forth in
4 paragraphs 25 through 29.

5 44. Respondent Van Thai has subjected his Smog Check Inspector License and Smog
6 Check Repair Technician License to disciplinary action under section 9889.22, in that
7 Respondent Van Thai willfully made false statements or entries with regard to a material matter
8 on the smog certificates of compliance issued for the vehicles at issue.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Motor Vehicle Inspection Program)**

11 45. Complainant re-alleges and incorporates by reference the allegations set forth in
12 paragraphs 25 through 29.

13 46. Respondent Van Thai has subjected his Smog Check Inspector License and Smog
14 Check Repair Technician License to disciplinary action under Health and Safety Code section
15 44072.2, subdivision (a), in that Respondent Van Thai failed to comply with the following
16 sections of the Health and Safety Code:

17 a. **Section 44012:** Respondent Van Thai failed to perform the tests of the emission
18 control systems and devices on the vehicles at issue in accordance with the procedures described
19 by the Department.

20 b. **Section 44032:** Respondent Van Thai failed to perform tests of emission
21 control devices and systems in accordance with Section 44012.

22 c. **Section 44059:** Respondent Van Thai willfully made false entries for smog
23 certificates of compliance for the vehicles at issue by certifying that those vehicles had been
24 inspected as required when, in fact, they had not.

25 **NINTH CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 47. Complainant re-alleges and incorporates by reference the allegations set forth in
28 paragraphs 25 through 29.

1 48. Respondent Van Thai's Smog Check Inspector License and Smog Check Repair
2 Technician License are subject to disciplinary action under Health and Safety Code section
3 44072.2, subdivision (d), in that Respondent Van Thai committed acts involving dishonesty,
4 fraud and deceit when he issued smog certificates of compliance for the vehicles at issue without
5 performing bona fide inspections of the emission control devices and systems on the vehicles.

6 **TENTH CAUSE FOR DISCIPLINE**

7 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Programs)**

8 49. Complainant re-alleges and incorporates by reference the allegations set forth in
9 paragraphs 25 through 29.

10 50. Respondent Van Thai has subjected his Smog Check Inspector License and Smog
11 Check Repair Technician License to disciplinary action under Health and Safety Code section
12 44072.2, subdivision (c), in that Respondent Van Thai failed to comply with the following
13 sections of Title 16, California Code of Regulations:

14 a. **Section 3340.30, subdivision (a):** Respondent Van Thai failed to inspect and
15 test the vehicles at issue in accordance with Health and Safety Code section 44012.

16 b. **Section 3340.41, subdivision (c):** Respondent Van Thai entered false
17 information into the EIS for the smog certificates of compliance by entering vehicle emission
18 control information for a vehicle other than the vehicles being certified.

19 c. **Section 3340.45:** Respondent Van Thai failed to perform smog check
20 inspections on the vehicles at issue as prescribed in the operative Smog Check Manual.

21 **DISCIPLINE CONSIDERATIONS**

22 51. To determine the degree of discipline, if any, to be imposed on Respondents,
23 Complainant alleges that on or about April 26, 2012, in a prior action, the Bureau issued Citation
24 Number C2012-1446 to Respondent City Tech Auto Repair for its actions in violation of Health
25 and Safety Code, section 44012, subdivision (f), in that Respondent City Tech Auto Repair
26 unlawfully Smog Check inspected and certified a Bureau vehicle documented to fail a properly
27 performed Smog Check Inspection. On or about May 16, 2012, a Citation Service Conference
28

1 was held. The Decision became effective on June 15, 2012. That Citation is now final and is
2 incorporated by reference as if fully set forth.

3 52. On or about August 27, 2015, in a prior action, the Bureau issued Citation Number
4 C2015-2037 to Respondent City Tech Auto Repair for its actions in violation of Health and
5 Safety Code section 44012, in that Respondent City Tech Auto Repair unlawfully Smog Check
6 inspected and certified a vehicle using the BAR-97 when the OIS test was required. On or about
7 September 8, 2015, a Citation Service Conference was held. The Decision became effective on
8 November 26, 2018. That Citation is now final and is incorporated by reference as if fully set
9 forth.

10 53. On or about April 26, 2012, in a prior action, the Bureau issued Citation Number
11 M2012-1447 to Respondent Van Thai for his actions in violation of Health and Safety Code,
12 section 44032 in that Respondent Van Thai unlawfully Smog Check inspected and certified a
13 Bureau vehicle documented to fail a properly performed Smog Check Inspection. On or about
14 May 16, 2012, a Citation Service Conference was held. The training was completed on May 23,
15 2012. That Citation is now final and is incorporated by reference as if fully set forth.

16 54. On or about August 27, 2015, in a prior action, the Bureau issued Citation and Order
17 of Abatement Number M2015-2038 to Respondent Van Thai for his actions in violation of Health
18 and Safety Code, section 44032 in that Respondent Van Thai unlawfully Smog Check inspected
19 and certified a vehicle using the BAR-97 when the OIS test was required. On or about September
20 8, 2015, a Citation Service Conference was held. The Decision became effective on November
21 30, 2015. That Citation is now final and is incorporated by reference as if fully set forth.

22 **OTHER MATTERS**

23 55. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily
24 or permanently or refuse to validate, the registrations for all places of business operated in this
25 state by Respondent City Hi-Tech, Inc. dba City Tech Auto Repair upon a finding that it has
26 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
27 automotive repair dealer.

28 ///

56. Pursuant to Health and Safety Code section 44072.8, if Smog Check and Repair Station License Number RC 254340 is revoked or suspended, the Director may likewise revoke or suspend any additional license, issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, to Respondent City Hi-Tech, Inc. dba City Tech Auto Repair.

57. Under Health and Safety Code section 44072.8, if Respondent Van Thai's Smog Check Inspector License Number EO 140611 and Smog Check Repair Technician License Number EI 140611 are revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, in the name of Respondent Van Thai may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 254340, issued to City Hi-Tech Inc., dba City Tech Auto Repair, with Ricky Thai as President and Treasurer and Anthony Van Thai as Secretary;

2. Revoking or suspending Smog Check Station License Number RC 254340, issued to City Hi-Tech Inc., dba City Tech Auto Repair, with Ricky Thai as President and Treasurer and Anthony Van Thai as Secretary;

3. Revoking or suspending Smog Check Inspector License No. EO 140611 issued to Anthony Van Thai;

4. Revoking or suspending Smog Check Repair Technician License No. EI 140611 issued to Anthony Van Thai;

5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of City Hi-Tech Inc.;

6. Revoking or suspending the registration for all places of business operated in this State in the name of City Hi-Tech Inc.;

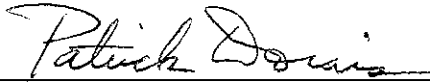
///

1 7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
2 Division 26 of the Health and Safety Code to Anthony Van Thai;

3 8. Ordering City Hi-Tech Inc., dba City Tech Auto Repair, with Ricky Thai as President
4 and Treasurer, Anthony Van Thai as Secretary and Anthony Van Thai to pay the Bureau of
5 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
6 pursuant to Business and Professions Code section 125.3; and,

7 9. Taking such other and further action as deemed necessary and proper.

8
9 DATED: February 16, 2018


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

10
11
12
13
14 LA2017507345
15 12932334.docx
16
17
18
19
20
21
22
23
24
25
26
27
28