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7

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

12 In the Matter of the Accusation Against:

Case No. 77/21-6469

13 **MA'S AUTO REPAIR & SMOG STATION**
14 **YVONNE LU- President/Secretary/Treasurer**
15 **2660 S. El Camino Real**
16 **San Mateo, CA 94403**

ACCUSATION

17 **Automotive Repair Dealer Registration No. ARD 270337**
18 **Smog Check Station License No. RC 270337**
19 **Brake Station License No. BS 270337, Class C**
20 **Lamp Station License No. LS 270337, Class A**

21 **And**

22 **QUYEN BOI LY**
23 **1322 Kelly Ave**
24 **San Leandro, CA 94577**

25 **Mailing Address:**
26 **18481 Carlwyn Dr.**
27 **Castro Valley, CA 94546**

28 **Smog Check Inspector License No. EO 139757**
Smog Check Repair Technician License No. EI 139757,
Brake Adjuster License No. BA 139757, Class C
Lamp Adjuster License No. LA 139757, Class A

Respondents.

PARTIES

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

2. On or about September 25, 2012, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 270337 to Respondent Ma's Auto Repair & Smog Station (Respondent Ma) with Yvonne Lu as the President/Secretary/Treasurer. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

3. On or about October 10, 2012, the Bureau of Automotive Repair issued Smog Check Station License Number RC 270337 to Respondent Ma. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

4. On or about October 10, 2012, the Bureau of Automotive Repair issued Brake Station License Number BS 270337, Class C, to Respondent Ma. The Brake Station License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

5. On or about October 10, 2012, the Bureau of Automotive Repair issued Lamp Station License Number LS 270337, Class A, to Respondent Ma. The Lamp Station License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

6. In 2003, the Director issued Advanced Emission Specialist Technician License Number EA 139757 to Respondent Quyen Boi Ly (Respondent Ly). Respondent Ly's advanced emission specialist technician license expired on March 31, 2013, and was cancelled on February 14, 2013. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent Ly's election, as Smog Check Inspector License EO 139757 and Smog Check Repair Technician License EI 139757. ¹ Respondent Ly's Smog

¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28, 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced

1 Check Inspector License and Smog Check Repair Technician License will expire on March 31,
2 2023, unless renewed.

3 7. On or about November 12, 2009, the Bureau of Automotive Repair issued Brake
4 Adjuster License Number BA 139757, Class C, to Respondent Ly. The Brake Adjuster License
5 was in full force and effect at all times relevant to the charges brought herein and will expire on
6 March 31, 2025, unless renewed.

7 8. On or about November 9, 2009, the Bureau of Automotive Repair issued Lamp
8 Adjuster License Number LA 139757, Class A, to Respondent Ly. The Lamp Adjuster License
9 will expire on March 31, 2025, unless renewed.

10 **JURISDICTION**

11 9. This Accusation is brought before the Director of the Department of Consumer
12 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
13 All section references are to the Business and Professions Code (Code) unless otherwise
14 indicated.

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

19 11. Section 477 of the Code states:

20 As used in this division:

21 (a) "Board" includes "bureau," "commission," "committee," "department,"
22 "division," "examining committee," "program," and "agency."

23 (b) "License" includes certificate, registration or other means to engage in a
24 business or profession regulated by this code.

25 12. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
26 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
27 proceeding against an automotive repair dealer or to render a decision invalidating a registration

28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

temporarily or permanently.

13. Section 9889.1 of the Code states:

Any license issued pursuant to Articles 5 and 6 [commencing with section 9887.1 of the Automotive Repair Act] , may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 9889.2. 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.

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

15. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

16. Section 9884.7 of the Code states:

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

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

(2) Causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

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

(4) Any other conduct which constitutes fraud.

(5) Conduct constituting gross negligence.

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

1 (7) Any willful departure from or disregard of accepted trade standards for good
2 and workmanlike repair in any material respect, which is prejudicial to another
3 without consent of the owner or his or her duly authorized representative.

4 (8) Making false promises of a character likely to influence, persuade, or induce
5 a customer to authorize the repair, service, or maintenance of automobiles.

6 (9) Having repair work done by someone other than the dealer or his or her
7 employees without the knowledge or consent of the customer unless the dealer can
8 demonstrate that the customer could not reasonably have been notified.

9 ...

10 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place
11 on probation the registration for all places of business operated in this state by an
12 automotive repair dealer upon a finding that the automotive repair dealer has, or is,
13 engaged in a course of repeated and willful violations of this chapter, or regulations
14 adopted pursuant to it.

15 ...

16 (e) For purposes of this section, "fraud" includes, but is not limited to,
17 violations of this chapter involving misrepresentations and all of the following:

18 (1) Any act or omission that is included within the definition of either "actual
19 fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573
20 of the Civil Code.

21 (2) A misrepresentation in any manner, whether intentionally false or due to
22 gross negligence, of a material fact.

23 (3) A promise or representation not made honestly and in good faith.

24 (4) An intentional failure to disclose a material fact.

25 (5) Any act in violation of Section 484 of the Penal Code.

26 17. Section 9889.3 of the Code states:

27 The director may suspend, revoke, or take other disciplinary action against a
28 license as provided in this article [Article 7 (commencing with section 9889.1) of
Chapter 20.3 of Division 3 of the Business and Professions Code] if the licensee or
any partner, officer, or director thereof:

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

(b) Is convicted of any crime substantially related to the qualifications,
functions and duties of the licenseholder in question.

(c) Violates any of the regulations promulgated by the director pursuant to this
chapter [the Automotive Repair Act].

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

(e) Has misrepresented a material fact in obtaining a license.

(f) Aids or abets an unlicensed person to evade the provisions of this chapter.

(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have the records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the record available for inspection.

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

(i) Is convicted of a violation of Section 551 of the Penal Code.

18. Section 9889.22 of the Code states:

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

19. Section 44002 of the Health and Safety Code states:

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

...

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

...”

REGULATORY PROVISIONS

20. California Code of Regulations, title 16, section 3305, states:

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

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

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

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

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

2 “(5) The bureau's Handbook for Lamp Adjusters and Stations, May 2015, which is
hereby incorporated by reference.

3 ...”

4 21. California Code of Regulations, title 16, section 3316, states:

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

7 ...

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

12 ...

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

15 ...”

16 22. California Code of Regulations, title 16, section 3321, states:

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

19 ...

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

24 ...

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

28 ...

1 “(d) After correcting specified defects, official brake adjusters shall certify that
2 defects indicated on citations or other enforcement forms have been corrected.

3 “(1) The adjuster shall inform the customer of any other defective conditions present
4 or likely to occur in the future, which have come to the adjuster's attention in
5 conjunction with inspection of the vehicle and correction of specified defects. The
6 adjuster shall inform the customer of the percentage of braking material left on
7 pads/shoes, as appropriate.

8 ...”

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

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

15 (a) Firm Name and Address. The dealer's firm name and address as they
16 appear on the State registration certificate as an automotive repair dealer; and

17 (b) Telephone Number. If a telephone number appears in an advertisement or
18 on an advertising sign, this number shall be the same number as that listed for the
19 dealer's firm name and address in the telephone directory, or in the telephone
20 company records if such number is assigned to the dealer subsequent to the
21 publication of such telephone directory.

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

23 No automotive repair dealer or individual in charge shall, in filling out an
24 estimate, invoice, or work order, or record required to be maintained by section
25 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
26 information which will cause any such document to be false or misleading, or where
27 the tendency or effect thereby would be to mislead or deceive customers, prospective
28 customers, or the public.

29 **COST RECOVERY**

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

36 ///

37 ///

1 **FACTUAL ALLEGATIONS (BRAKE & LAMP PROGRAMS)**

2 26. Brake and Lamp Certificates of adjustment are generally required by the Department
3 of Motor Vehicles to register a salvaged vehicle or a specially constructed vehicle. A brake or
4 lamp inspection may also be required to clear an enforcement document issued by California
5 Highway Patrol or another police agency.

6 27. A salvaged vehicle is one that has been damaged to such an extent that the vehicle's
7 insurer deems it too expensive to repair. The California Vehicle Code Section 544 defines a
8 salvaged vehicle as follows:

9 "Total loss salvage vehicle" means either of the following:

10 (a) A vehicle, other than a non-repairable vehicle, of a type
11 subject to registration that has been wrecked, destroyed, or damaged,
12 to the extent that the owner, leasing company, financial
13 institution, or the insurance company that insured or is responsible
14 for repair of the vehicle, considers it uneconomical to repair the
15 vehicle and because of this, the vehicle is not repaired by or for
16 the person who owned the vehicle at the time of the event resulting
17 in damage.

18 (b) A vehicle that was determined to be uneconomical to repair,
19 for which a total loss payment has been made by an insurer, whether
20 or not the vehicle is subsequently repaired, if prior to or upon
21 making the payment to the claimant, the insurer obtains the agreement
22 of the claimant to the amount of the total loss settlement, and
23 informs the client that, pursuant to subdivision (a) or (b) of
24 Section 11515, the total loss settlement must be reported to the
25 Department of Motor Vehicles, which will issue a salvage certificate
26 for the vehicle.
27
28

28. Brake and/or Lamp inspections are performed by licensed Brake and/or Lamp adjusters at official Brake and/or Lamp Stations. Certificates for salvage title vehicles are only to be issued when the vehicle's brake and lamp systems conform with the requirements of the Vehicle Code and manufacturer specifications.

29. The Brake Certificate of Adjustment utilizes check boxes for specific brake system components, which if applicable to the vehicle, must be visually inspected for defects and/or measured to verify whether it meets a satisfactory condition. For example, checking the box marked “Drums/Rotors” indicates that drums and/or rotor dimensions were within the manufacturer’s specifications.

30. The Lamp Certificate of Adjustment also utilizes boxes for specific lamp equipment, which, if applicable to the vehicle, must be inspected for proper operation. For example, checking the box marked “License Plate Lamps,” indicates that the license plate lights were inspected and were in good working condition. Checking the box marked “Insp. Headlights” and “Optical” indicates that the headlights were inspected for correct aim, using an optical aimer.

31. The Brake and Lamp Certificates of Adjustment have the following statement above where the adjuster is required to sign the certificate:

“All items above are of an approved type and I have performed the applicable inspection, adjustment, or repair as specified by the Bureau of Automotive Repair and the vehicle manufacturer, and in accordance with Title 13 and Title 16 of the California Code of Regulations, the Vehicle Code, and the Business and Professions Code. I hereby certify under penalty under the laws of the State of California that the above is true and correct.”

UNDERCOVER OPERATION ONE

32. In 2020 and 2021, a Bureau Representative documented a 2000 Chevrolet (2000 Chevrolet) for use in an undercover operation. The 2000 Chevrolet was documented in such a manner that it should have failed an official brake inspection and an official lamp inspection. The left front brake rotor was under the minimum manufacturer service specifications. The right rear brake drum was above the manufacturer's maximum diameter service specifications. The vertical aim of the left headlight was misadjusted low.

33. On or about June 8, 2021, an undercover operator took the 2000 Chevrolet to Respondent Ma's facility and asked for Brake and Lamp inspections on the 2000 Chevrolet. An Employee of Respondent Ma said the inspections were \$159.00 and had the operator sign an estimate. Respondent Ma gave the operator an unsigned copy of the written estimate. The employee of Respondent Ma told the operator he would call the operator with the results of the inspections.

34. On or about June 8, 2021, the operator called Respondent Ma's facility and was told the 2000 Chevrolet was ready for pickup. The operator returned to Respondent Ma's station. An employee of Respondent Ma asked the operator to sign an invoice for \$159.90 and pay that amount. The operator signed the invoice and paid \$159.90. The operator was given an unsigned copy of the invoice. The operator was given Certificate of Compliance - Lamp Adjustment # 3357877 and Certificate of Compliance - Brake Adjustment # 3325394. Both the Brake and Lamp Certificates of Adjustment were issued under Respondent Ma's and Respondent Ly's licenses.

35. Respondent Ly's Lamp Adjuster license was expired at the time the Lamp Certificate of Adjustment was issued.

36. On June 15, 2021, a Bureau employee performed a re-inspection of the 2000 Chevrolet. The tamper indicators installed on the headlamp adjuster of the 2000 Chevrolet were found intact and undisturbed, and headlamp remained improperly adjusted. The 2000 Chevrolet did not qualify for a Certificate of Compliance- Lamp Adjustment.

37. The left front brake rotor was still under the minimum manufacturer service specifications. The right rear brake drum was still above the manufacturer's maximum diameter service specifications. The 2000 Chevrolet did not qualify for a Certificate of Compliance- Brake Adjustment.

FIRST CAUSE FOR DISCIPLINE

(False or Misleading Statements)

38. Respondent Ma's Automotive Repair Dealer Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1) in that Respondent Ma made or authorized

1 statements which were untrue or misleading, and which Respondent Ma knew, or through the
2 exercise of reasonable care should have known were untrue or misleading. The Lamp Certificate
3 of Compliance stated the 2000 Chevrolet's lamp systems including headlights were in compliance
4 with applicable code, regulations, and manufacturer specifications when in fact they were not.
5 The invoices indicated that lamp inspections were performed and the lamps were in a condition to
6 receive a certificate of compliance. This was not true. The Brake Certificate of Compliance
7 stated the 2000 Chevrolet's brake systems were in compliance with applicable code, regulations,
8 and manufacturer specifications when in fact they were not. The invoices indicated that brake
9 inspections were performed and the brakes were in a condition to receive a certificate of
10 compliance. This was not true. The circumstances are further described in paragraphs 32-37,
11 above.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Fraud)

14 39. Respondent Ma's Automotive Repair Dealer Registration is subject to disciplinary
15 action under section 9884.7, subdivision (a)(4) in that Respondent Ma committed fraud in
16 undercover operation one by issuing a Certificate of Compliance- Lamp Adjustment and
17 Certificate of Compliance- Brake Adjustment to the 2000 Chevrolet without performing bona fide
18 inspections of the 2000 Chevrolet. Respondent Ma charged the operator for a Lamp and Brake
19 inspections that were not performed. Respondent issued a Certificate of Compliance- Lamp
20 Adjustment and a Certificate of Compliance- Brake Adjustment to a vehicle that was not
21 qualified to receive those certificates. The circumstances are further described in paragraphs 32-
22 37, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 (Violation of Statutes and Regulations)

25 40. Respondent Ma's Automotive Repair Dealer Registration is subject to disciplinary
26 action under section 9884.7, subdivision (a)(6) in that Respondent Ma violated the Automotive
27 Repair Act and regulations promulgated pursuant to that act as follows:
28

- 1 a. Respondent violated California Code of Regulations, title 16, section 3305,
2 subdivision (a)(1), (a)(2) (a)(3) and/or(a)(4), in that the brake inspections performed
3 during undercover operation number two were not performed in accordance with the
4 standards published by Chevrolet, equipment manufacturers, industry publications, nor the
5 Brake Adjusters Handbook.
- 6 b. Respondent violated California Code of Regulations, title 16, section 3305,
7 subdivisions (a)(1), (a)(2) (a)(3) and/or(a)(5), in that the lamp inspections performed
8 during undercover operation number one were not performed in accordance with the
9 standards published by Chevrolet, equipment manufacturers, industry publications, nor the
10 Lamp Adjusters Handbook.
- 11 c. Respondent violated California Code of Regulations, title 16, section 3316,
12 subdivision (d)(2), by issuing a Certificate of Compliance- Lamp Adjustment to the 2000
13 Chevrolet that did not qualify for such a certificate. The circumstances are further
14 described in paragraphs 32-37, above.
- 15 d. Respondent violated California Code of Regulations, title 16, section 3321,
16 subdivision (c)(2), by issuing a Certificate of Compliance- Brake Adjustment to the 2000
17 Chevrolet that did not qualify for such a certificate. The circumstances are further
18 described in paragraphs 32-37, above.
- 19 e. Respondent violated California Code of Regulations, title 16, section 3371, in that
20 Respondent made false or misleading statements. The circumstances are described in
21 paragraphs 32-37, above.
- 22 f. Respondent violated California Code of Regulations, title 16, section 3373, in that
23 Respondent made false or misleading statements on an invoice by indicating bona-fide
24 brake and lamp inspections were performed on the 2000 Chevrolet during undercover
25 operation number one.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Violation of Trade Standards)

3 41. Respondent Ma's Automotive Repair Dealer Registration is subject to disciplinary
4 action under section 9884.7, subdivision (a)(7) in that Respondent willfully violated trade
5 standards for good and workmanlike repair in a material respect, which is prejudicial to another
6 by issuing a Brake and Lamp Certificate of Compliance to the 2003 Chevrolet without
7 performing bona fide Brake and lamp inspections of the 2000 Chevrolet. Respondent issued a
8 Brake and Lamp Certificates of Compliance to a vehicle that was not qualified to receive such
9 certificates. The circumstances are further described in paragraphs 32-37, above.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 (Violation of Statues and Regulations)

12 42. Respondent Ma's Brake and Lamp Station Licenses are subject to disciplinary action
13 under section 9889.3, subdivisions (a), (c) and/or (h), in that Respondent Ma violated the
14 Automotive Repair Act and regulations promulgated pursuant to that act as follows:

- 15 a. Respondent violated California Code of Regulations, title 16, section 3305,
16 subdivision (a)(1), (a)(2) (a)(3) and/or(a)(4), in that the brake inspections performed
17 during undercover operation number two were not performed in accordance with the
18 standards published by Chevrolet, equipment manufacturers, industry publications, nor the
19 Brake Adjusters Handbook.
- 20 b. Respondent violated California Code of Regulations, title 16, section 3305,
21 subdivisions (a)(1), (a)(2) (a)(3) and/or(a)(5), in that the lamp inspections performed
22 during undercover operation number one were not performed in accordance with the
23 standards published by Chevrolet, equipment manufacturers, industry publications, nor the
24 Lamp Adjusters Handbook.
- 25 c. Respondent violated California Code of Regulations, title 16, section 3316,
26 subdivision (d)(2), by issuing a Certificate of Compliance- Lamp Adjustment to the 2000
27 Chevrolet that did not qualify for such a certificate. The circumstances are further
28 described in paragraphs 32-37, above.

1 d. Respondent violated California Code of Regulations, title 16, section 3321,
2 subdivision (c)(2), by issuing a Certificate of Compliance- Brake Adjustment to the 2000
3 Chevrolet that did not qualify for such a certificate. The circumstances are further
4 described in paragraphs 32-37, above.

5 e. Respondent violated California Code of Regulations, title 16, section 3371, in that
6 Respondent made false or misleading statements. The circumstances are described in
7 paragraphs 32-38, above.

8 f. Respondent violated California Code of Regulations, title 16, section 3373, in that
9 Respondent made false or misleading statements on an invoice by indicating bona-fide
10 brake and lamp inspections were performed on the 2000 Chevrolet during undercover
11 operation number one.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 (Dishonesty, Fraud or Deceit – Brake and Lamp Station Licenses)

14 43. Respondent Ma has subjected its Brake and Lamp Station Licenses to discipline
15 under Code section 9889.3, subdivision (d), in that Respondent committed acts involving
16 dishonesty, fraud or deceit, whereby another was injured. The circumstances are described in
17 paragraphs 32-37, above.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 (Dishonesty, Fraud or Deceit – Smog Station License)

20 44. Respondent Ma subjected his Smog Check Station License to discipline under Health
21 and Safety Code sections 44072.2, subdivision (d), in that Respondent committed acts involving
22 dishonesty, fraud or deceit, whereby another was injured. The circumstances are described in
23 paragraphs 32-38, above.

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 (Violation of Statutes and Regulations)

26 45. Respondent Ly's Brake and Lamp Adjuster Licenses are subject to disciplinary action
27 under section 9889.3, subdivisions (a), (c) and/or (h), in that Respondent violated the Automotive
28 Repair Act and regulations promulgated pursuant to that act as follows:

1 a. Respondent violated California Code of Regulations, title 16, section 3305,
2 subdivision (a)(1), (a)(2) (a)(3) and/or(a)(4), in that the brake inspections performed
3 during undercover operation number two were not performed in accordance with the
4 standards published by Chevrolet, equipment manufacturers, industry publications, nor the
5 Brake Adjusters Handbook.

6 b. Respondent violated California Code of Regulations, title 16, section 3305,
7 subdivisions (a)(1), (a)(2) (a)(3) and/or(a)(5), in that the lamp inspections performed
8 during undercover operation number one were not performed in accordance with the
9 standards published by Chevrolet, equipment manufacturers, industry publications, nor the
10 Lamp Adjusters Handbook.

11 c. Respondent violated California Code of Regulations, title 16, section 3316,
12 subdivision (d)(2), by issuing a Certificate of Compliance- Lamp Adjustment to the 2000
13 Chevrolet that did not qualify for such a certificate. The circumstances are further
14 described in paragraphs 32-38, above.

15 d. Respondent violated California Code of Regulations, title 16, section 3321,
16 subdivision (c)(2), by issuing a Certificate of Compliance- Brake Adjustment to the 2000
17 Chevrolet that did not qualify for such a certificate. The circumstances are further
18 described in paragraphs 32-37, above.

19 **NINTH CAUSE FOR DISCIPLINE**

20 (Dishonesty, Fraud or Deceit – Brake and Lamp Adjuster Licenses)

21 46. Respondent Ly has subjected his Brake and Lamp Adjuster licenses to discipline
22 under Code section 9889.3, subdivision (d), in that Respondent Ly committed acts involving
23 dishonesty, fraud or deceit, whereby another was injured. The circumstances are described in
24 paragraphs 32-39, above.

25 **TENTH CAUSE FOR DISCIPLINE**

26 (Dishonesty, Fraud or Deceit – Smog Inspector Licenses)

27 47. Respondent Ly has subjected his Smog Check Inspector and Smog Check Repair
28 Technician licenses to discipline under Health and Safety Code sections 44072.2, subdivision (d),

1 in that Respondent committed acts involving dishonesty, fraud or deceit, whereby another was
2 injured. The circumstances are described in paragraphs 32-39, above.

3 **UNDERCOVER OPERATION TWO**

4 48. In 2020, a Bureau program representative documented a 2002 Ford (2002 Ford) for
5 use in an undercover run. The 2002 Ford was documented in such a manner that it should have
6 failed an official brake inspection and an official lamp inspection. The left front brake rotor was
7 under the minimum manufacturer service specifications and the right rear brake drum was over
8 the maximum manufacturer service specifications. The program representative misadjusted the
9 vertical aim of the left headlamps low and right headlamp high.

10 49. On or about September 1, 2021, an undercover operator took the 2002 Ford to
11 Respondent Ma's Station and requested Brake and Lamp inspections. Respondent Ma (by and
12 through an employee) gave the operator an estimate to sign, which he did. The operator was not
13 provided with a copy of the estimate. Respondent Ma (by and through an employee) informed
14 the operator that the vehicle would be ready for pick-up around 1:00 P.M.

15 50. On or about September 1, 2021, the operator had a phone call with Respondent Ma's
16 employee. The operator was informed that one license plate light bulb was out and the headlamps
17 were out of adjustment. The operator asked about the cost of the repairs and if the vehicle would
18 then pass brake and lamp certification. Respondent Ma, by and through an employee, informed
19 the operator that the total cost would be \$293.17 and the brake and lamp certificates would be
20 issued. The operator agreed with the license plate bulb repair and the headlamp adjustment.

21 51. On September 1, 2021, the operator returned to Respondent Ma and was greeted by
22 the employee who provided the operator with an invoice, requested payment, and a requested a
23 signature on the invoice. Following payment, Respondent Ma's employee provided the operator
24 an unsigned copy of the invoice, Certificate of Compliance – Lamp Adjustment #3357888 and
25 Certificate of Compliance - Brake Adjustment # 3565705. Both the Brake and Lamp inspections
26 were performed by Respondent Ly. Both the Brake and Lamp Certificates of Adjustments were
27 issued under Respondent Ma's and Respondent Ly's licenses. The box for the headlights on the
28

1 Certificate of Compliance- Lamp Adjustment was marked. The box for the brake drums/rotors on
2 the Certificate of Compliance- Brake Adjustment was marked.

3 52. On September 2, 2021, a program representative performed a re-inspection of the
4 2002 Ford and found the following:

5 a. The tamper indicators installed on the headlamp adjusters were broken. However, both
6 headlamps remained improperly adjusted and did not qualify for a Certificate of Compliance -
7 Lamp Adjustment.

8 b. The left front brake rotor and right rear brake drum remained on the vehicle. The left
9 front brake rotor was under the manufacturer's minimum discard thickness and the right rear
10 brake drum was over the manufacturer's maximum diameter discard specification. The 2002
11 Ford did not qualify for a Certificate of Compliance – Brake Adjustment.

12 **ELEVENTH CAUSE FOR DISCIPLINE**

13 (False or Misleading Statements)

14 53. Respondent Ma's Automotive Repair Dealer Registration is subject to disciplinary
15 action under section 9884.7, subdivision (a)(1) in that Respondent made or authorized statements
16 which were untrue or misleading, and which Respondent knew, or through the exercise of
17 reasonable care should have known were untrue or misleading. The Certificate of Compliance-
18 Brake Adjustment stated the 2002 Ford's brake systems were in compliance with applicable
19 codes and regulations when in fact they were not. The Certificate of Compliance- Lamp
20 Adjustment stated the 2002 Ford's headlights were in compliance with applicable codes and
21 regulations when in fact they were not. The certificates indicated full brake and lamp inspections
22 were performed when in fact they were not. The invoice indicates full brake and lamp
23 inspections were performed when they were not. The circumstances are further described in
24 paragraphs 48-52, above.

25 **TWELFTH CAUSE FOR DISCIPLINE**

26 (Fraud)

27 54. Respondent Ma's Automotive Repair Dealer Registration is subject to disciplinary
28 action under section 9884.7, subdivision (a)(4) in that Respondent committed fraud in undercover

operation two by issuing brake and lamp Certificates to the 2002 Ford without performing bona fide inspections on the 2002 Ford. Respondent charged the operator for brake and lamp inspections that were not fully performed. Respondent issued a brake and lamp certificates of compliance to a vehicle that was not qualified to receive the certificates. The circumstances are further described in paragraphs 48-53, above.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violation of Statutes and regulations)

55. Respondent Ma's Automotive Repair Dealer Registration is subject to disciplinary action under section 9884.7, subdivision (a)(6) in that Respondent violated the Automotive Repair Act and regulations promulgated pursuant to that act as follows:

- a. Respondent violated California Code of Regulations, title 16, section 3305, subdivision (a)(1), (a)(2) (a)(3) and/or(a)(4), in that the brake inspections performed during undercover operation number two were not performed in accordance with the standards published by Ford, equipment manufacturers, industry publications, nor the Brake Adjusters Handbook.
- b. Respondent violated California Code of Regulations, title 16, section 3305, subdivisions (a)(1), (a)(2) (a)(3) and/or(a)(5), in that the lamp inspections performed during undercover operation number one were not performed in accordance with the standards published by Ford, equipment manufacturers, industry publications, nor the Lamp Adjusters Handbook.
- c. Respondent violated California Code of Regulations, title 16, section 3316, subdivision (d)(2), by issuing a Certificate of Compliance- Lamp Adjustment to the 2002 Ford that did not qualify for such a certificate. The circumstances are further described in paragraphs 48-52, above.
- d. Respondent violated California Code of Regulations, title 16, section 3321, subdivision (c)(2), by issuing a Certificate of Compliance- Brake Adjustment to the 2002 Ford that did not qualify for such a certificate. The circumstances are further described in paragraphs 48-52, above.

1 e. Respondent violated California Code of Regulations, title 16, section 3371, in that
2 Respondent made false or misleading statements. The circumstances are described in
3 paragraphs 48-53, above.

4 f. Respondent violated California Code of Regulations, title 16, section 3373, in that
5 Respondent made false or misleading statements on an invoice by indicating bona-fide
6 brake and lamp inspections were performed on the 2002 Ford during undercover operation
7 number two.

8 **FOURTEENTH CAUSE FOR DISCIPLINE**

9 (Violation of Trade Standards)

10 56. Respondent Ma's Automotive Repair Dealer Registration is subject to disciplinary
11 action under section 9884.7, subdivision (a)(7) in that Respondent willfully violated trade
12 standards for good and workmanlike repair in a material respect, which is prejudicial to another
13 by issuing brake and lamp certificates to the 2002 Ford without performing bona fide inspections
14 of the 2002 Ford. Respondent issued brake and lamp certificates to a vehicle that did not qualify
15 for those certificates. The circumstances are further described in paragraphs 48-52, above.

16 **FIFTEENTH CAUSE FOR DISCIPLINE**

17 (Violation of Statutes and Regulations)

18 57. Respondent Ma's Brake and Lamp Station Licenses are subject to disciplinary action
19 under section 9889.3, subdivisions (a), (c) and/or (h), in that Respondent violated the Automotive
20 Repair Act and regulations promulgated pursuant to that act as follows:

21 a. Respondent violated California Code of Regulations, title 16, section 3305,
22 subdivision (a)(1), (a)(2) (a)(3) and/or(a)(4), in that the brake inspections performed
23 during undercover operation number two were not performed in accordance with the
24 standards published by Ford, equipment manufacturers, industry publications, nor the
25 Brake Adjusters Handbook.

26 b. Respondent violated California Code of Regulations, title 16, section 3305,
27 subdivisions (a)(1), (a)(2) (a)(3) and/or(a)(5), in that the lamp inspections performed
28 during undercover operation number one were not performed in accordance with the

standards published by Ford, equipment manufacturers, industry publications, nor the Lamp Adjusters Handbook.

c. Respondent violated California Code of Regulations, title 16, section 3316, subdivision (d)(2), by issuing a Certificate of Compliance- Lamp Adjustment to the 2002 Ford that did not qualify for such a certificate. The circumstances are further described in paragraphs 48-52, above.

d. Respondent violated California Code of Regulations, title 16, section 3321, subdivision (c)(2), by issuing a Certificate of Compliance- Brake Adjustment to the 2002 Ford that did not qualify for such a certificate. The circumstances are further described in paragraphs 48-52, above.

e. Respondent violated California Code of Regulations, title 16, section 3371, in that Respondent made false or misleading statements. The circumstances are described in paragraphs 48-53, above.

f. Respondent violated California Code of Regulations, title 16, section 3373, in that Respondent made false or misleading statements on an invoice by indicating bona-fide brake and lamp inspections were performed on the 2002 Ford during undercover operation number two.

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit – Brake and Lamp Station Licenses)

58. Respondent Ma has subjected its Brake and Lamp Station Licenses to discipline under Code section 9889.3, subdivision (d), in that Respondent committed acts involving dishonesty, fraud or deceit, whereby another was injured. The circumstances are described in paragraphs 48-54, above.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit – Smog Station License)

59. Respondent Ma has subjected its Smog Check Station License to discipline under Health and Safety Code sections 44072.2, subdivision (d), in that Respondent committed acts

1 involving dishonesty, fraud or deceit, whereby another was injured. The circumstances are
2 described in paragraphs 48-54, above.

3 **EIGHTEENTH CAUSE FOR DISCIPLINE**

4 (Violation of Statutes and Regulations)

5 60. Respondent Ly's Brake and Lamp Adjuster Licenses are subject to disciplinary action
6 under section 9889.3, subdivisions (a), (c) and/or (h), in that Respondent violated the Automotive
7 Repair Act and regulations promulgated pursuant to that act as follows:

8 a. Respondent violated California Code of Regulations, title 16, section 3305,
9 subdivision (a)(1), (a)(2) (a)(3) and/or(a)(4), in that the brake inspections performed
10 during undercover operation number two were not performed in accordance with any of
11 the enumerated specifications/publications listed in this regulation.

12 b. Respondent violated California Code of Regulations, title 16, section 3305,
13 subdivisions (a)(1), (a)(2) (a)(3) and/or(a)(5), in that the lamp inspections performed
14 during undercover operation number one were not performed in accordance with the
15 standards published by Ford, equipment manufacturers, industry publications, nor the
16 Lamp Adjusters Handbook.

17 c. Respondent violated California Code of Regulations, title 16, section 3316,
18 subdivision (d)(2), by issuing a Certificate of Compliance- Lamp Adjustment to the 2002
19 Ford that did not qualify for such a certificate. The circumstances are further described in
20 paragraphs 48-52, above.

21 d. Respondent violated California Code of Regulations, title 16, section 3321,
22 subdivision (c)(2), by issuing a Certificate of Compliance- Brake Adjustment to the 2002
23 Ford that did not qualify for such a certificate. The circumstances are further described in
24 paragraphs 48-52, above.

25 **NINETEENTH CAUSE FOR DISCIPLINE**

26 (Dishonesty, Fraud or Deceit – Brake and Lamp Adjuster Licenses)

27 61. Respondent Ly has subjected his Brake and Lamp Adjuster licenses to discipline
28 under Code section 9889.3, subdivision (d), in that Respondent committed acts involving

1 dishonesty, fraud or deceit, whereby another was injured. The circumstances are described in
2 paragraphs 48-53, above.

3 **TWENTIETH CAUSE FOR DISCIPLINE**

4 (Dishonesty, Fraud or Deceit – Smog Inspector Licenses)

5 62. Respondent Ly subjected his Smog Check inspector and Smog Check Repair
6 Technician licenses to discipline under Health and Safety Code sections 44072.2, subdivision (d),
7 in that Respondent committed acts involving dishonesty, fraud or deceit, whereby another was
8 injured. The circumstances are described in paragraphs 48-53, above.

9 **DISCIPLINE CONSIDERATIONS**

10 63. To determine the degree of discipline, if any, to be imposed on Respondent Ma,
11 Complainant alleges that on or about April 25, 2016, the Bureau issued Citation C2016-862 to
12 Respondent Ma. That citation is now final.

13 64. To determine the degree of discipline, if any, to be imposed on Respondent Ly,
14 Complainant alleges that on or about April 25, 2016, the Bureau issued Citation M2016-863 to
15 Respondent Ly. That citation is now final.

16 **OTHER MATTERS**

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

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

25 67. Pursuant to Code section 9889.9, if Lamp Station License Number LS 270337, Class
26 A, issued to Respondent Ma, is revoked or suspended, any additional license issued under
27 Articles 5 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be
28 likewise revoked or suspended by the Director.

68. Pursuant to Code section 9889.9, if Brake Station License Number BS 270337, Class C, issued to Respondent Ma, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise revoked or suspended by the Director.

69. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 139757, Class A, issued to Respondent Ly, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise revoked or suspended by the Director.

70. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 139757, Class C, issued to Respondent Ly, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise revoked or suspended by the Director.

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

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 270337, issued to Ma's Auto Repair & Smog Station;

2. Revoking or suspending Smog Check Station License Number RC 270337, issued Ma's Auto Repair & Smog Station;

3. Revoking or suspending Brake Station License Number BS 270337, issued Ma's Auto Repair & Smog Station;

4. Revoking or suspending Lamp Station License Number LS 270337, issued to Ma's Auto Repair & Smog Station;

1 5. Revoking or suspending any other Automotive Repair Dealer Registration, Smog
2 Station License, Brake Station License, or Lamp Station License issued to Ma's Auto Repair &
3 Smog Station;

4 6. Ordering Ma's Auto Repair & Smog Station to pay the Bureau of Automotive Repair
5 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
6 Professions Code section 125.3; and,

7 7. Revoking or suspending Smog Check Inspector License Number EO 139757, issued
8 to Quyen Boi Ly;

9 8. Revoking or suspending Smog Check Repair License Number EI 139757, issued to
10 Quyen Boi Ly;

11 9. Revoking or suspending Brake Adjuster License Number BA 139757, issued to
12 Quyen Boi Ly;

13 10. Revoking or suspending Lamp Adjuster License Number LA 139757, issued to
14 Quyen Boi Ly;

15 11. Revoking or suspending any other Smog Station License, Brake Station License, or
16 Lamp Station License issued to Quyen Boi Ly;

17 12. Ordering Quyen Boi Ly to pay the Bureau of Automotive Repair the reasonable costs
18 of the investigation and enforcement of this case, pursuant to Business and Professions Code
19 section 125.3; and,

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

21
22
23 DATED: As of Digital Signature Date_

Dorais,
Patrick@DCA

Digitally signed by Dorais,
Patrick@DCA
Date: 2022.04.11 12:48:28 -07'00'

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

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