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

12 In the Matter of the Accusation Against:

Case No. 79/16-51

13 **DIEM THI NGUYEN, OWNER**  
14 **DOING BUSINESS AS COLEMAN AUTO**  
15 **REPAIR**  
16 **660 Coleman Avenue #5**  
17 **San Jose, CA 95110**

OAH No. 2016010037

**ACCUSATION**

**SMOG CHECK**

18 **Automotive Repair Dealer Registration No.**  
19 **ARD 275901**

20 **Smog Check Station License No. RC 275901**

21 **AND**

22 **DIEM HUYEN THI NGUYEN**  
23 **3595 Bayou Drive**  
24 **San Jose, CA 95111**

25 **Smog Check Inspector License No. EO**  
26 **637330**

27 Respondent.  
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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, Department of Consumer Affairs.

5 2. On or about March 18, 2014, the Bureau of Automotive Repair issued Automotive  
6 Repair Dealer Registration Number ARD 275901 to Diem Thi Nguyen, Owner, doing business as  
7 Coleman Auto Repair ("Respondent Coleman"). The Automotive Repair Dealer Registration was  
8 in full force and effect at all times relevant to the charges brought in this Accusation and will  
9 expire on March 31, 2016, unless renewed.

10 3. On or about March 25, 2014, the Bureau of Automotive Repair issued Smog Check  
11 Station License Number RC 275901 to Diem Thi Nguyen, doing business as Coleman Auto  
12 Repair ("Respondent Coleman"). The Smog Check Station License was in full force and effect at  
13 all times relevant to the charges brought in this Accusation and will expire on March 31, 2016,  
14 unless renewed.

15 4. On or about September 22, 2014, the Bureau of Automotive Repair issued Smog  
16 Check Inspector License Number EO 637330 to Diem Huyen Thi Nguyen ("Respondent  
17 Nguyen"). The Smog Check Inspector License was in full force and effect at all times relevant to  
18 the charges brought in this Accusation and will expire on August 31, 2016, unless renewed.

19 JURISDICTION

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

23 6. Business and Professions Code ("Code") section 118, subdivision (b), provides that  
24 the suspension/expiration/surrender/cancellation of a license shall not deprive the  
25 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period  
26 within which the license may be renewed, restored, reissued or reinstated.

27 7. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid  
28 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
2 temporarily or permanently.

3 8. Code section 9889.1 provides, in pertinent part, that the Director may suspend or  
4 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the  
5 Automotive Repair Act.

6 9. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
7 license by operation of law or by order or decision of the Director or a court of law, or the  
8 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
9 disciplinary proceedings.

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

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

17 12. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"  
18 "commission," "committee," "department," "division," "examining committee," "program," and  
19 "agency." "License" includes certificate, registration or other means to engage in a business or  
20 profession regulated by the code.

### 21 STATUTORY AND REGULATORY PROVISIONS

22 13. Section 9884.7 of the Code states:

23 "(a) The director, where the automotive repair dealer cannot show there was a bona fide  
24 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair  
25 dealer for any of the following acts or omissions related to the conduct of the business of the  
26 automotive repair dealer, which are done by the automotive repair dealer or any automotive  
27 technician, employee, partner, officer, or member of the automotive repair dealer.  
28

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

4           ...

5           “(4) Any other conduct which constitutes fraud.

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

8           14. Health and Safety Code, section 44072.2, states, in pertinent part:

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

12           “(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health  
13 and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the  
14 licensed activities.

15           ...

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

17           15. Health and Safety Code section 44032 states:

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

23           16. Health and Safety Code section 44012 states:

24           “The test at the smog check stations shall be performed in accordance with procedures  
25 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded  
26 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,  
27 and shall ensure all of the following:

28           ...

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

5           17. California Code of Regulations, title 16, section 3340.42, states:

6           “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by  
7 section 3340.45.

8           “(a) All vehicles subject to a smog check inspection, shall receive one of the following test  
9 methods:

10           ...

11           “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered  
12 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.  
13 The OBD test failure criteria are specified in section 3340.42.

14           “(b) In addition to subsection (a), all vehicles subject to the smog check program shall  
15 receive the following:

16           “(1) A visual inspection of emission control components and systems to verify the vehicle's  
17 emission control systems are properly installed.

18           “(2) A functional inspection of emission control systems as specified in the Smog Check  
19 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper  
20 operation.”

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

22           “(c) The bureau may suspend or revoke the license of or pursue other legal action against a  
23 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
24 certificate of noncompliance.”

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

26           “(c) A licensed station shall issue a certificate of compliance or noncompliance to the  
27 owner or operator of any vehicle that has been inspected in accordance with the procedures  
28

1 specified in section 3340.42 of this article and has all the required emission control equipment  
2 and devices installed and functioning correctly.”

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

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

8 21. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

9 “A smog check technician shall comply with the following requirements at all times while  
10 licensed.

11 “(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
12 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
13 3340.42 of this article.”

#### 14 COST RECOVERY

15 22. Section 125.3 of the Code provides, in pertinent part, that a Board may request the  
16 administrative law judge to direct a licentiate found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case.

#### 19 FACTUAL ALLEGATIONS

20 23. Between August 17, 2015, and September 14, 2015, Bureau representative Martin  
21 J. Sexton reviewed the OIS Data for vehicles inspected by Respondent Nguyen using the BAR-  
22 OIS at Coleman Auto Repair between March 10, 2015, and August 25, 2015. During Sexton’s  
23 investigation, he accessed the Vehicle Information Database (“VID”), and performed a focused  
24 review of BAR-OIS test data for Coleman Auto Repair. BAR-OIS test data is the OBD  
25 information transmitted during a smog inspection from the computer of the vehicle being  
26 inspected to the BAR-OIS. Beginning March 9, 2015, California’s Smog Check Program was  
27 updated and now requires smog inspectors and stations to use the BAR-OIS computer system  
28 during smog inspections, for most model year 2000 and newer gasoline and hybrid vehicles, and

1 most 1998 and newer diesel vehicles. The BAR-OIS consists of a BAR-certified Data  
2 Acquisition Device (“DAD”), computer, bar code scanner, and printer. The DAD serves as an on-  
3 board diagnostic (“OBD”) scan tool. The DAD is an interface box that connects the computer  
4 containing the BAR-OIS software to the diagnostic link connector (“DLC”) of the vehicle being  
5 inspected. When requested by the BAR-OIS software, the DAD retrieves data from the vehicle’s  
6 on-board computer system (“OBD II”).

7 24. The information obtained by the BAR-OIS software during a smog inspection is  
8 organized in a detailed inspection report for each vehicle inspected and is known as a BAR-OIS  
9 Test Detail. The BAR-OIS Test Detail contains information segregated into eight different blocks  
10 titled as follows: Station, Vehicle, Test Status, Visual Details, Functional Details, OBDII Details,  
11 OBDII Readiness Monitor Status, and OBDII DTC Details. For the purposes of Sexton’s  
12 investigation of Respondent Coleman, he focused on information in the “Vehicle” and “OBDII  
13 Details” blocks because they contain a unique combination of information for the vehicle being  
14 inspected and “like vehicles” inspected. Like vehicles are vehicles of the same manufacturer,  
15 model, and model year that were inspected on the BAR-OIS. The unique combination of  
16 information analyzed by Sexton includes the eVIN, PID count, and protocol. Sexton compared  
17 the eVIN, communication protocol, and PID count for a vehicle that was certified to like vehicles.

18 25. Sexton identified twelve vehicles certified by Respondent Coleman and  
19 Respondent Nguyen between March 10, 2015, and August 25, 2015, that failed to transmit the  
20 expected eVIN, protocol, and PID count. The data transmitted during Respondent Nguyen’s  
21 inspections either differed from the OIS data the vehicles transmitted during other inspections, or  
22 the data was inconsistent with the OIS data transmitted by “like vehicles” inspected, or both.

23 26. The OIS Data transmitted by the vehicles during the other inspections was  
24 consistent with the OIS Data transmitted by like vehicles inspected. The OIS Data transmitted by  
25 the twelve vehicles identified by Sexton was not consistent with OIS Data for like vehicles  
26 inspected. The protocol and PID count for these vehicles was the same in ten of the twelve  
27 passing inspections performed by Respondent Nguyen.

28

1           27.     Sexton's review of the BAR-OIS data for the vehicles certified by Respondents  
2 Coleman and Nguyen during the above time period revealed a pattern of fraudulent smog  
3 inspections that resulted in the issuance of fraudulent certificates of compliance. There were at  
4 least twelve instances in which Respondent Nguyen certified vehicles that were not connected to  
5 the DAD during the smog inspection. Respondent Nguyen therefore clean plugged twelve  
6 vehicles, resulting in Respondent Coleman's issuing twelve fraudulent Certificates of Compliance  
7 between March 10, 2015, and August 25, 2015. The details of each instance of clean plugging is  
8 as follows:

9           28.     **Clean Plug Number 1:**

10           a.     Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
11 on March 10, 2015, Respondent Nguyen inspected a 2005 Ford Explorer XLT/XLT/SPT/NBX,  
12 VIN 1FMZU73E15ZA68043, and Respondent Coleman's issued smog certificate of compliance  
13 PO953387. The OIS Test Data shows that during Nguyen's inspection, the eVIN was not  
14 transmitted, the communication protocol is listed as JVPW1850, and the PID count was 20.  
15 Comparative OIS Test Data for approximately 1,156 like 2005 Ford Explorers  
16 XLT/XLT/SPT/NBX shows that 99.57% of the time they transmit their eVIN, they transmit a  
17 communication protocol of ICAN11bt5, and they transmit a PID count of 47.

18           b.     Furthermore, on March 3, 2015, the same 2005 Ford Explorer  
19 XLT/XLT/SPT/NBX was inspected using the BAR-OIS. During that inspection, the eVIN was  
20 transmitted, the communication was through the expected protocol of ICAN11bt5, and the PID  
21 count was the expected number of 47.

22           29.     **Clean Plug Number 2:**

23           a.     Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
24 on March 25, 2015, Respondent Nguyen inspected a 2005 Honda Accord LX, VIN  
25 1HGCM55475A073170 and Respondent Coleman's issued smog certificate of compliance  
26 PQ459712. The OIS Test Data shows that during Nguyen's inspection, the eVIN was not  
27 transmitted, the communication protocol is listed as JVPW1850, and the PID count was 20.  
28 Comparative OIS Test Data for approximately 555 like 2005 Honda Accord LX vehicles shows

1 that 98.92% of the time they transmit their eVIN, they transmit a communication protocol of I914,  
2 and they transmit a PID count of 21.

3 b. Furthermore, on August 6, 2015, the same 2005 Honda Accord LX was inspected  
4 using the BAR-OIS. During that inspection, the eVIN was transmitted, the communication was  
5 through the expected protocol of I914, and the expected PID count of 21 was transmitted.

6 30. **Clean Plug Number 3:**

7 a. Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
8 on March 28, 2015, Respondent Nguyen inspected a 2007 Dodge Charger SE/SXT, VIN  
9 2B3KA43H47H770725 and Respondent Coleman's issued smog certificate of compliance  
10 PQ459735. The OIS Test Data shows that during Nguyen's inspection, the eVIN was not  
11 transmitted, the communication protocol is listed as JVPW1850, and the PID count was 20.  
12 Comparative OIS Test Data for approximately 45 like 2007 Dodge Charger SE/SXT vehicles  
13 shows that 97.78% of the time they transmit their eVIN, they transmit a communication protocol  
14 of ICAN11bt5, and they transmit a PID count of 12/43. In some cases, the PID count contains  
15 more than one number depending upon how many control units are being measured by the DLC.

16 31. **Clean Plug Number 4:**

17 a. Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
18 on April 4, 2015, Respondent Nguyen inspected a 2005 Dodge Caravan SE, VIN  
19 1D4GP25B85B251573, and Respondent Coleman's issued smog certificate of compliance  
20 PQ570682. The OIS Test Data shows that during Nguyen's inspection, the eVIN was not  
21 transmitted, the communication protocol is listed as I9140808, and the PID count was 16.  
22 Comparative OIS Test Data for approximately 726 like 2005 Dodge Caravan SE vehicles shows  
23 that 99.59% of the time they transmit their eVIN, they transmit a communication protocol of  
24 JVPW, and they transmit a PID count of 3/18.

25 32. **Clean Plug Number 5:**

26 a. Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
27 on April 6, 2015, Respondent Nguyen inspected a 2007 Chevrolet Equinox LS, VIN  
28 2CNDL13F476003799 and Respondent Coleman's issued smog certificate of compliance

1 PQ570691. The OIS Test Data shows that during Nguyen's inspection, the eVIN was not  
2 transmitted, the communication protocol is listed as JVPW1850, and the PID count was 20.  
3 Comparative OIS Test Data for approximately 900 like 2007 Equinox LS vehicles shows that  
4 99.56% of the time they transmit their eVIN, they transmit a communication protocol of  
5 ICAN11bt5, and they transmit a PID count of 7/40.

6 b. Furthermore, the same 2007 Chevrolet Equinox LS was inspected on a BAR-OIS  
7 on September 27, 2014, and again on February 16, 2015. During those inspections, the eVIN was  
8 transmitted, the communication was through the expected protocol of ICAN11bt5, and the  
9 expected PID count of 40 was transmitted.

10 **33. Clean Plug Number 6**

11 a. Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
12 on April 18, 2015, Respondent Nguyen inspected a 2005 Honda Civic EX, VIN  
13 2HGES26895H541822, and Respondent Coleman's issued smog certificate of compliance  
14 YR070916. The OIS Test Data shows that during Nguyen's inspection, the eVIN was not  
15 transmitted, the communication protocol is listed as JVPW1850, and the PID count was 20.  
16 Comparative OIS Data for approximately 461 like 2005 Honda Civic EX vehicles shows that  
17 99.57% of the time they transmit their eVIN, they transmit a communication protocol of I914, and  
18 they transmit a PID count of 17.

19 **34. Clean Plug Number 7**

20 a. Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
21 on May 5, 2015, Respondent Nguyen inspected a 2005 Ford Expedition XLT, VIN  
22 1FMPU16565LB12931, and Respondent Coleman's issued smog certificate of compliance  
23 PQ983391. The OIS Test Data shows that during Nguyen's inspection, the eVIN was not  
24 transmitted, the communication protocol is listed as JVPW1850, and the PID count was 17.  
25 Comparative OIS data for approximately 628 like 2005 Ford Expedition XLT vehicles shows that  
26 98.89% of the time they transmit their eVIN, they transmit a communication protocol of  
27 ICAN11bt5, and they transmit a PID count of 44.

28 ///

1           35.     **Clean Plug Number 8**

2           a.     Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
3 on June 6, 2015, Respondent Nguyen inspected a 2007 Toyota Tundra Double Cab SR5, VIN  
4 5TBRT54117S450528, and Respondent Coleman's issued smog certificate of compliance  
5 PS538864. The OIS Test Data shows the eVIN was not transmitted, the communication protocol  
6 is listed as JVPW1850, and the PID count was 20. Comparative OIS Data for approximately 466  
7 like 2007 Toyota Tundra Double Cab SR5 vehicles shows that 99.36% of the time they transmit  
8 their eVIN, they transmit a protocol of ICAN11bt5, and they transmit a PID count of 17/47.

9           36.     **Clean Plug Number 9**

10          a.     Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
11 on July 11, 2015, Respondent Nguyen inspected a 2007 Saturn Aura XE, VIN  
12 1G8ZS57N67F133363, and Respondent Coleman's issued smog certificate of compliance  
13 PU099953. The OIS Test Data shows the eVIN was not transmitted, the communication protocol  
14 is listed as JVPW1850, and the PID count was 20. Comparative OIS Data for approximately  
15 1,722 like 2007 Saturn Aura XE vehicles shows that 99.71% of the time they transmit their eVIN,  
16 they transmit a communication protocol of ICAN11bt5, and they transmit a PID count of 7/43.

17          37.     **Clean Plug Number 10**

18          a.     Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
19 on July 23, 2015, Respondent Nguyen inspected a 2005 Mitsubishi Montero Limited, VIN  
20 JA4MW51S15J002560, and Respondent Coleman's issued smog certificate of compliance  
21 PU386909. The OIS Test Data shows that the eVIN was not transmitted, the communication  
22 protocol is listed as JVPW1850, and the PID count was 20. Comparative OIS Data for  
23 approximately 184 like Mitsubishi Montero Limited vehicles shows that 99.46% of the time they  
24 transmit their eVIN, they had the same communication protocol of I914, and they transmit a PID  
25 count of 21.

26          38.     **Clean Plug Number 11**

27          a.     Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
28 on August 22, 2015, Respondent Nguyen inspected a 2007 Lincoln Navigator L, VIN

1 5LMFL27517LJ15075, and Respondent Coleman's issued smog certificate of compliance  
 2 PU816193. The OIS Test Data shows the eVIN was not transmitted, the communication protocol  
 3 is listed as JVPW1850, and the PID count was 20. Comparative OIS Data for approximately 251  
 4 like 2007 Lincoln Navigator L vehicles shows that 99.2% of the time they transmit their eVIN, the  
 5 communication protocol is ICAN11bt5, and they transmit a PID count of 16/43.

6 b. Furthermore, on May 2, 2007, the same 2007 Navigator L was inspected using the  
 7 BAR-OIS. During that inspection, the eVIN was transmitted, the communication was through the  
 8 expected protocol of ICAN11bt500, and the expected PID count of 43 was transmitted.

9 **39. Clean Plug Number 12**

10 a. Sexton's review of the OIS Test OBD Inspection List for Coleman indicated that  
 11 on August 25, 2015, Respondent Nguyen inspected a 2005 Ford F250 Super Duty, VIN  
 12 1FTSF20P15ED29736, and Respondent Coleman's issued smog certificate of compliance  
 13 YV108051. The OIS Test Data shows that the eVIN was not transmitted, the communication  
 14 protocol is listed as JVPW1850, and the PID count was 20. Comparative data for approximately  
 15 141 like 2005 Ford F250 Super Duty vehicles shows that 98.58% of the time they transmit their  
 16 eVIN, they transmit a communication protocol of ICAN11bt500, and they transmit a PID count of  
 17 0/13/24 or 0/13/25.

18 b. On July 15, 2015, the same 2005 Ford F250 Super Duty was inspected on the  
 19 BAR-OIS. During that inspection, the eVIN was transmitted, the communication was through the  
 20 expected protocol ICAN11bt500, and the expected PID count of 25 was transmitted.

21 40. The relevant OIS Test Data analyzed by Sexton is summarized in Table I, below:

22 **TABLE 1**

<b>Clean Plug 1</b>	Cert. #PO953387	eVIN	Protocol	PID Count
	Failed Inspection 3/3/15	1FMZU73E15ZA68043	ICANbt500	47
	Passing Inspection 3/10/15	Not Present	JVPW1850	20
	Expected Value <sup>1</sup>	1FMZU73E15ZA68043	ICANbt500	47

1	<b>Clean Plug 2</b>	Cert. #PQ459712	eVIN	Protocol	PID Count
2		Inspection 8/6/15	1HGCM55475A073170	I9140808	21
3		Passing Inspection 3/25/15	Not Present	JVPW1850	20
4		Expected Value	1HGCM55475A073170	I9140808	21
5	<b>Clean Plug 3</b>	Cert. #PQ459735	eVIN	Protocol	PID Count
6		Passing Inspection 3/28/15	Not Present	JVPW1850	20
7		Expected Value	2B3KA43H47H770725	ICAN11bt500	12/43
8	<b>Clean Plug 4</b>	Cert. #PQ570682	eVIN	Protocol	PID Count
9		Passing Inspection 4/4/15	Not Present	I9140808	16
10		Expected Value	1D4GP25B85B251573	JVPW	3/18
11	<b>Clean Plug 5</b>	Cert. #PQ570691	eVIN	Protocol	PID Count
12		Inspection 9/27/14	2CNDL13F476003799	ICAN11bt500	40
13		Inspection 2/16/15	2CNDL13F476003799	ICAN11bt500	40
14		Inspection 3/25/15	2CNDL13F476003799	ICAN11bt500	40
15		Passing Inspection 4/6/15	Not present	JVPW1850	20
16		Expected Value	2CNDL13F476003799	ICAN11bt500	7/40
17	<b>Clean Plug 6</b>	Cert. #YR070916	eVIN	Protocol	PID Count
18		Passing Inspection 4/18/15	Not present	JVPW1850	20
19		Expected Value	2HGES26895H541822	I914	17
20	<b>Clean Plug 7</b>	Cert. #PQ983391	eVin	Protocol	PID Count
21		Passing Inspection 5/5/15	Not Present	JVPW1850	17
22		Expected Value	1FMPU16565LB12931	ICAN11bt500	44
23	<b>Clean Plug 8</b>	Cert. #PS538864	eVIN	Protocol	PID Count
24		Passing Inspection 6/6/15	Not present	JVPW1850	20
25		Expected Value	5TBRT54117S450528	ICAN11bt500	17/43
26	<b>Clean Plug 9</b>	Cert. #PU099953	eVIN	Protocol	PID Count
27		Passing Inspection 7/11/15	Not present	JVPW1850	20
28		Expected Value	1G8ZS57N67F133363	ICAN11bt500	7/43

1	<b>Clean Plug 10</b>	Cert. #PU386909	eVIN	Protocol	PID Count
2		Passing Inspection 7/23/15	Not present	JVPW1850	20
3		Expected Value	JA4MW51S15J002560	I914	21
4	<b>Clean Plug 11</b>	Cert. #PU816193	eVIN	Protocol	PID Count
5		Inspection 5/2/15	5LMFL27517LJ15075	ICAN11bt500	43
6		Passing Inspection 8/22/15	Not present	JVPW1850	20
7		Expected Value	5LMFL27517LJ15075	ICAN11bt500	16/43
8	<b>Clean Plug 12</b>	Cert. #YV108051	eVIN	Protocol	PID Count
9		Inspection 7/15/15	IFTSF20P15ED29736	ICAN11bt500	25
10		Passing Inspection 8/25/15	Not present	JVPW1850	20
11		Expected Value	1FTSF20P15ED29736	ICAN11bt500	0/13/25

12 **Respondent Coleman:**

13 FIRST CAUSE FOR DISCIPLINE

14 (Bus. & Prof Code, § 9884.7, subd. (a)(1))

15 (Making or Authorizing Untrue or Misleading Statements)

16 41. Respondent Coleman has subjected its Automotive Repair Dealer Registration to  
17 disciplinary action in that Respondent Coleman made untrue statements when it issued twelve  
18 fraudulent certificates of compliance and failed to comply with the Automotive Repair Act as set  
19 forth in paragraphs 23 through 40, above.

20 SECOND CAUSE FOR DISCIPLINE

21 (Bus. & Prof. Code, § 9884.7, subd. (a)(4))

22 (Fraud)

23 42. Respondent Coleman has subjected its Automotive Repair Dealer Registration to  
24 discipline in that Respondent Coleman engaged in fraud when it issued twelve fraudulent  
25 certificates of compliance as set forth in paragraphs 23 through 40, above. (Bus. & Prof. Code,  
26 section 9884.7, subd, (a)(4).)

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1 THIRD CAUSE FOR DISCIPLINE

2 (Bus. & Prof Code, § 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2, subds. (a), (c))  
3 (Failure to Comply with the Automotive Repair Act)

4 43. Respondent Coleman has subjected its Automotive Repair Dealer Registration and its  
5 Smog Station License to discipline in that it failed to comply with the Automotive Repair Act and  
6 sections of the Code and applicable regulations as set forth in paragraphs 23 through 40, above.

7 (Bus. & Prof Code, § 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2.) The violations are as  
8 follows:

9 a. **Health & Safety Code, § 44012, subd. (f):** Respondent Coleman failed to follow  
10 test procedures in accordance with the Onboard Inspection System (“OIS”) specifications when it  
11 failed to properly conduct the functional portion of the smog inspection by failing to connect  
12 twelve vehicles to the BAR-OIS when they were being certified.

13 b. **Cal. Code Regs., tit. 16, § 3340.24, subd. (c):** Respondent Coleman falsely or  
14 fraudulently issued certificates of compliance for vehicles without performing bona fide  
15 inspections of the emission control devices and systems on the vehicles as required by Health and  
16 Safety Code section 44012.

17 c. **Cal. Code Regs., tit. 16, § 3340.35, subd. (c):** Respondent Coleman issued  
18 certificates of compliance to vehicles that were not properly inspected in accordance with  
19 California Code of Regulations, title 16, section 3340.42.

20 d. **Cal. Code Regs., tit. 16, § 3340.42, subd. (b)(2):** Respondent Coleman failed to  
21 conduct the functional inspection in accordance with the smog check manual referenced in  
22 California Code of Regulations, title 16, section 3340.45.

23 FOURTH CAUSE FOR DISCIPLINE

24 (Health & Saf. Code, § 44072.2, subd. (d))  
25 (Dishonesty, Fraud, or Deceit)

26 44. Respondent Coleman has subjected its Smog Station License to discipline in that it  
27 committed acts involving dishonesty, fraud or deceit, whereby another was injured, by issuing  
28 twelve fraudulent certificates of compliance as set forth in paragraphs 23 through 40, above.

(Health & Saf. Code, § 44072.2, subd. (d).)

1 **Respondent Nguyen:**

2 **FIRST CAUSE FOR DISCIPLINE**

3 (Health & Saf. Code, § 44072.2, subs. (a), (c))  
4 (Violation of Motor Vehicle Inspection Program)

5 45. Respondent Nguyen has subjected his smog inspector's license to discipline in that he  
6 violated sections of the Code and applicable regulations when he failed to connect twelve vehicles  
7 to the BAR-OIS when they were being certified, as set forth in paragraphs 23 through 40, above.

8 (Health & Safe Code, § 44072.2, subs. (a), (c).) The circumstances are as follows:

9 a. **Health & Saf. Code, § 44012, subd. (f):** Respondent Nguyen failed to follow test  
10 procedures in accordance with the OIS specifications and failed to perform a functional inspection  
11 of required equipment.

12 b. **Health & Saf. Code, § 44032:** Respondent Nguyen failed to ensure that the emission  
13 control test were performed in accordance with the procedures prescribed by the department.

14 c. **Cal. Code Regs., tit. 16, § 3340.24, subd. (c):** Respondent Nguyen falsely or  
15 fraudulently caused certificates of compliance to be issued to vehicles without performing bona  
16 fide inspections of the emission control devices and systems on the vehicles as required by Health  
17 and Safety Code section 44012.

18 d. **Cal. Code Regs., tit. 16, § 3340.30, subd. (a):** Respondent Nguyen failed to inspect  
19 and test twelve vehicles in accordance with Health & Safety Code sections 44012 and 44035, and  
20 California Code of Regulations, title 16, section 3340.42.

21 e. **Cal. Code Regs., tit. 16, § 3340.35, subd. (c):** Respondent Nguyen caused  
22 certificates of compliance to be issued to vehicles that were not properly inspected in accordance  
23 with California Code of Regulations, title 16, section 3340.42.

24 f. **Cal. Code Regs., tit. 16, § 3340.41, subd. (c):** Respondent Nguyen entered into the  
25 BAR-OIS vehicle identification information or emission inspection information for a vehicle  
26 other than the vehicle being inspected, and also entered false information for the vehicle being  
27 inspected.  
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1 g. **Cal. Code Regs., tit. 16, § 3340.42, subd. (b)(2):** Respondent Nguyen failed to  
2 conduct the functional inspection in accordance with the smog check manual referenced in  
3 California Code of Regulations, title 16, section 3340.45

4 SECOND CAUSE FOR DISCIPLINE

5 (Health & Saf. Code, § 44072.2, subd. (d))  
6 (Violation of Motor Vehicle Inspection Program)

7 46. Respondent Nguyen has subjected his smog inspector's license to discipline in that he  
8 committed acts involving dishonesty, fraud, or deceit, whereby another was injured, when he  
9 caused twelve fraudulent certificates of compliance to be issued as set forth in paragraphs 23  
10 through 40, above. (Health & Saf. Code, § 44072.2, subd. (d).)

11 OTHER MATTERS

12 47. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,  
13 or place on probation the registration for all places of business operated in this state by  
14 Respondent Coleman, upon a finding that Respondent Coleman has, or is, engaged in a course of  
15 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
16 dealer.

17 48. Pursuant to Health & Safety Code section 44072.8, if Respondent Coleman's Station  
18 License is revoked or suspended, any additional license issued under this chapter in the name of  
19 said licensee may be likewise revoked or suspended by the director.

20 49. Pursuant to Health & Safety Code section 44072.8, if Respondent Nguyen's Smog  
21 Check Inspector License is revoked or suspended, any additional license issued under this chapter  
22 in the name of said licensee may be likewise revoked or suspended by the director.

23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
25 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

26 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
27 275901, issued to Diem Thi Nguyen, doing business as Coleman Auto Repair;

28 2. Revoking or suspending Smog Check Station License Number RC 275901, issued to  
Diem Thi Nguyen, doing business as Coleman Auto Repair;

1           3.    Revoking or suspending Smog Check Inspector License Number EO 637330, issued  
2 to Diem Huyen Thi Nguyen;

3           4.    Ordering Respondents to pay the Bureau of Automotive Repair the reasonable costs  
4 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
5 section 125.3;

6           5.    Taking such other and further action as deemed necessary and proper.

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8 DATED: March 8, 2016



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

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