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

11 In the Matter of the Accusation Against:

Case Number: 79/19-16991

12 **DARREN THANH PHAM**
13 **dba EXPRESS SMOG CHECK**
14 **320 Couch Street Suite D**
15 **Vallejo, CA 94590**

A C C U S A T I O N

16 **Automotive Repair Dealer No. ARD 276292**
17 **Smog Check Station License No RC 276292**

18 **DARREN PHAM**
19 **155 Blue Bird Ct.**
20 **Vallejo, CA 94591**

21 **Smog Check Inspector (EO) License No. EO 151194**
22 **Smog Check Repair Technician (EI) License No. EI 151194**

23 **REGINALD LOUIE LITAN GRENAS**
24 **912 Javan Way**
25 **Suisun, CA 94585**

26 **Mailing Address**
27 **246 San Marino Ave.**
28 **Vallejo, CA 94589**

Smog Check Inspector (EO) License No. EO 631676
Smog Check Repair Technician (EI) License No. EI 631676

JAY M. CARUNGCONG
410 Mokelumne Dr.
Vallejo, CA 94589

Smog Check Inspector (EO) License No. EO 638623

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. On or about April 18, 2014, the Bureau issued Automotive Repair Dealer Registration
7 Number ARD 276292 (Registration) to Darren Thanh Pham (Respondent Pham) dba Express
8 Smog Check. The Registration was in full force and effect at all times relevant to the charges
9 brought herein and will expire on April 20, 2021, unless renewed.

10 **Smog Check Test and Repair Station License**

11 3. On or about September 10, 2014, the Bureau issued Smog Check, Test Only, Station
12 License Number RC 276292 (Smog Station License) to Respondent Pham. The Smog Station
13 License was in full force and effect at all times relevant to the charges brought herein and will
14 expire on April 30, 2021, unless renewed.

15 **Smog Check Inspector Licenses**

16 4. In 2005, the Director issued Advanced Emission Specialist Technician License
17 Number EA 151194 to Respondent Pham. Respondent Pham's advanced emission specialist
18 technician license expired on July 31, 2013, and was cancelled on September 12, 2013. Pursuant
19 to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
20 renewed, pursuant to Respondent Pham's election, as Smog Check Inspector License EO 151194
21 and Smog Check Repair Technician License EI 151194.¹ Respondent Pham's Smog Check
22 Inspector License will expire on July 31, 2021, unless renewed. Respondent Pham's Smog Check
23 Repair Technician License expired on July 31, 2017 and has not been renewed.

24 5. On or about January 19, 2010, the Director issued Advanced Emission Specialist
25 Technician License Number EA 631676 to Reginald Louie Litan Grenas (Respondent Grenas).

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
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.

1 Respondent Grenas's advanced emission specialist technician license was due to expire on June
2 30, 2014, but was cancelled on June 24, 2014. Pursuant to California Code of Regulations, title
3 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent Grenas's
4 election, as Smog Check Inspector License EO 631676 and Smog Check Repair Technician
5 License EI 631676. Respondent Grenas's Smog Check Inspector and Smog Check Repair
6 Technician Licenses will expire on June 30, 2022, unless renewed.

7 6. On or about October 5, 2015, the Director issued Smog Check Inspector License
8 Number EO 638623 to Jay M. Carungcong (Respondent Carungcong). Respondent Carungcong's
9 Smog Check Inspector License will expire on November 30, 2021, unless renewed.

10 JURISDICTION

11 7. 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 STATUTORY AND REGULATORY PROVISIONS

14 8. Section **9884.7** of the Business and Professions Code ("Code") states, in pertinent
15 part:

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

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

24 . . .

25 (4) Any other conduct that constitutes fraud.

26 . . .

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

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

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

10. 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.

11. Section **44012** of the Health and Safety Code requires that tests at smog check stations be performed in accordance with procedures prescribed by the department.

12. Section **44059** of the Health and Safety Code states, in pertinent part:
“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 or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

13. Section **44072.2** of the Health and Safety Code states, in pertinent part:
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:

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

...

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

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

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

14. 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.

15. Section **44072.8** of the Health and Safety Code states:

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

16. Section **44072.10** of the Health and Safety Code states:

“... (c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

“(1) Clean piping, as defined by the department.”

...

“(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.”

17. California Code of Regulations, title 16, section **3340.24**, states:

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

18. California Code of Regulations, title 16, section **3340.30**, states, in pertinent part:

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

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

4 . . .

5 19. California Code of Regulations, title 16, section **3340.41(c)**, states:

6 “No person shall enter into the BAR-97 Emissions Inspection System or the OBD
7 Inspection System any vehicle identification information or emission control system
8 identification data for any vehicle other than the one being tested. Nor shall any person
9 knowingly enter into the BAR-97 Emissions Inspection System or the OBD Inspection System
10 any false information about the vehicle being tested.”

11 20. California Code of Regulations, title 16, section **3340.42**, states:

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

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

16 . . .

17 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
18 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
19 The OBD test failure criteria are specified in section 3340.42.2.”

20 21. California Code of Regulations, title 16, section **3340.45**, states:

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

23 (1) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
24 manual became effective on or after January 1, 2013. This manual shall remain in effect until
25 subparagraph (2) is implemented.

26 “(2) Smog Check Manual, dated November 2, 2017, which is hereby incorporated by
27 reference. This manual shall become effective on August 2, 2018.”

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1 **COSTS**

2 22. Section 125.3 of the Code provides, in pertinent part, that a Board (including the
3 Bureau of Automotive Repair) may request the administrative law judge to direct a licentiate
4 found to have committed a violation or violations of the licensing act to pay a sum not to exceed
5 the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate
6 to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of
7 investigation and enforcement costs may be included in a stipulated settlement.

8 **SMOG PROGRAM AND CLEAN PLUGGING ALLEGATIONS**

9 23. California's Smog Check Program requires the owners of most motor vehicles in
10 California to take and pass a Smog Check inspection and receive a Certificate of Compliance
11 every two years when renewing their registration and also when the vehicle's title is transferred.
12 These inspections are performed by Smog Check inspectors at Smog Check Stations, both of
13 which are licensed by the Bureau of Automotive Repair (BAR).

14 24. The Smog Check inspection in certain Enhanced areas of the State is an Acceleration
15 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
16 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons, Carbon
17 Monoxide, Oxides of Nitrogen, Carbon Dioxide, and Oxygen. The inspection involves a test of
18 the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the State, or depending on a
19 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed
20 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a
21 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute
22 (RPM).

23 25. The inspector also performs visual and functional tests on the vehicle as outlined in
24 the Smog Check Manual. The visual inspection of the emission control components verifies the
25 required emission control devices are present and properly connected. Functional tests are also
26 performed which, depending on the vehicle, may include checking the ignition timing,
27 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test
28

1 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
2 cap.

3 26. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
4 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
5 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
6 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.
7 Gas powered vehicles with a gross vehicle weight rating over 14,000 pounds require an
8 inspection on the EIS.

9 27. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
10 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
11 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
12 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
13 vehicle. The bar code scanner is used to input technician information, the vehicle identification
14 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
15 Reports.

16 28. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
17 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
18 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
19 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
20 number of specific data values each PCM uses related to emissions controls.

21 29. As part of the BAR-OIS smog inspections, the technician also performs a visual and
22 functional test on the vehicle being inspected. The visual inspection of the emission control
23 components verifies the required emission control devices are present and properly connected and
24 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
25 makes the determination whether or not the vehicle passes the inspection based on the results of
26 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
27 compliance is issued. The information from the smog inspection is then transmitted to the
28 Vehicle Information Data (VID).

1 30. The Bureau can access the VID to view test data on smog check inspections
2 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
3 particular vehicle which has been tested.

4 31. The Bureau has become aware of methods some Smog Check stations and Smog
5 Check inspectors use to fraudulently issue smog certificates to vehicles that will not pass a Smog
6 Check test on their own, or in some instances, are not even present during the time the test is
7 performed.

8 32. One method is known as "clean plugging." "Clean plugging" is the act of using one
9 vehicle's properly functioning OBDII system, or another source, to generate passing data readings
10 or diagnostic information for the purpose or fraudulently issue a smog certificate of compliance to
11 a vehicle that is not in smog compliance and/or not present for testing. The vehicle being tested is
12 not the one being issued the certificate of compliance.

13 33. The Bureau initiated an investigation of Respondent Pham's smog check station.
14 Respondents were found to have performed three fraudulent smog inspections using clean-
15 plugging methods. All three fraudulent smog inspections were performed at Respondent Pham's
16 Smog Station. Respondent Grenas personally performed two of the clean-plugs. Respondent
17 Carungcong personally performed one of the clean-plugs. Respondent Pham issued the three
18 fraudulent certificates of compliance.

19 34. A Bureau representative reviewed data for the three clean-plugged vehicles inspected
20 by Respondents. The data revealed that the three vehicles that were purportedly tested by
21 Respondent were not and could not have been connected to the DAD when they were being
22 certified because the OBD-II data purportedly transmitted by those vehicles could not have been
23 transmitted by those vehicles.

24 35. Respondents clean plugged and issued fraudulent certificates of compliance to the
25 following three vehicles:

26 ///

27 ///

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1 a) Clean Plug# 1 - 2015 Subaru XV Crosstrek (Performed by Respondent Grenas)

2

| Certificate # | eVIN | Protocol | PID count |
|--------------------------------|-------------------|-----------|-----------|
| 3 QU022116C | | | |
| 4 Fraudulent Inspection 6/1/19 | Not Reported | I914 | 16 |
| 5 Expected OBDII Value | JF2GPACC6F8238579 | ICAN11bt5 | 48 3 |

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7 b) Clean Plug #2 – 2002 Chrysler Sebring Limited (Performed by Respondent
8 Carungcong)

9

| Certificate # | eVIN | Protocol | PID count |
|----------------------------------|--------------|----------|-----------|
| 10 QU227650C | | | |
| 11 Fraudulent Inspection 6/18/19 | Not Reported | I914 | 16 |
| 12 Expected OBDII Value | Not Reported | JVPW | 22/3 |

13

14 c) Clean Plug #3 –2011 Mercedes Benz Sprinter 2500 (Performed by Respondent
15 Grenas)

16

| Certificate # | eVIN | Protocol | PID count |
|-----------------------------------|----------------------|-----------|-------------------|
| 17 RA715075C | | | |
| 18 Fraudulent Inspection 11/19/19 | JTJYWRBZ7F2002422 | ICAN11bt5 | 40 29 |
| 19 Expected OBDII Value | Not Usually Reported | ICAN11bt5 | 58 12 or 58 12 16 |

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23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Misleading Statements - Registration)**

25 36. Respondent Pham has subjected his registration to discipline under Code section
26 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or which by
27 exercise of reasonable care should have known were untrue or misleading, as set forth above in
28

1 paragraphs 33-35, above. Respondents fraudulently purported to test three vehicles, and certified
2 that the three vehicles passed inspection and were in compliance with applicable laws and
3 regulations. In fact, Respondents conducted the inspections on those vehicles using clean-
4 plugging methods.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud - Registration)**

7 37. Respondent Pham has subjected his registration to discipline under Code section
8 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud, as set forth above in
9 paragraphs 33-35, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Violation of the Motor Vehicle Inspection Program)**

12 38. Respondent Pham has subjected his Station License, Smog Check Inspector and/or
13 Smog Check Repair Technician licenses to discipline under Health and Safety Code sections
14 44072.10 and 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and
15 applicable regulations, through conduct described in paragraphs 33-35, as follows:

16 a. **Section 44012:** Respondent Pham failed to ensure that smog inspections were
17 performed on three vehicles in accordance with procedures prescribed by the department.

18 b. **Section 44059:** Respondent Pham willfully made false entries for the electronic
19 certificates of compliance by certifying that vehicles had been inspected as required when, in fact,
20 they had not.

21 c. **Section 3340.24, subdivision (c):** Respondent Pham falsely or fraudulently issued
22 electronic certificates of compliance to certain vehicles without performing bona fide inspections
23 of the emission control devices and systems on those vehicles.

24 d. **Section 3340.30, subdivision (a):** Respondent Pham failed to inspect the vehicles in
25 accordance with Health and Safety Code section 44012 and California code of Regulations title
26 16, section 3340.42.

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28 ///

1 e. **Section 3340.41, subdivision (c):** Respondent entered vehicle identification
2 information for a vehicle other than the one being tested into the BAR-OIS. Respondent Pham
3 knowingly entered false information about the vehicle being tested into the BAR-OIS.

4 f. **Section 3340.42:** Respondent Pham failed to conduct the required smog tests and
5 inspections on certain vehicles in accordance with the Bureau's specifications.

6 g. **Section 3340.45** Respondent Pham violated the procedures contained in the Smog
7 Check Manual by entering vehicle identification information for a vehicle that was not being
8 tested. Respondent Pham knowingly entered false information about the vehicle being tested.

9 **FOURTH CAUSE FOR DISCIPLINE**

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

11 39. Respondent Pham subjected his Station License, Smog Check Inspector, and/or Smog
12 Check Repair Technician licenses to discipline under Health and Safety Code sections 44072.10
13 and 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit,
14 whereby another was injured by issuing electronic certificates of compliance for vehicles without
15 performing bona fide inspections of the emission control devices and systems on the vehicles,
16 thereby depriving the People of the State of California of the protection afforded by the Motor
17 Vehicle Inspection Program, as set forth above in paragraph 33-35, above.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

20 40. Respondent Grenas has subjected his Smog Check Inspector and Smog Check Repair
21 Technician licenses to discipline under Health and Safety Code sections 44072.10 and 44072.2,
22 subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations,
23 through conduct described in paragraphs 33-35, as follows:

24 a. **Section 44012:** Respondent Grenas failed to ensure that smog inspections were
25 performed on vehicles in accordance with procedures prescribed by the department.

26 b. **Section 44059:** Respondent Grenas willfully made false entries for the electronic
27 certificates of compliance by certifying that vehicles had been inspected as required when, in fact,
28 they had not.

1 c. **Section 3340.24, subdivision (c):** Respondent Grenas falsely or fraudulently caused
2 electronic certificates of compliance to be issued to vehicles without performing bona fide
3 inspections of the emission control devices and systems on those vehicles.

4 d. **Section 3340.30, subdivision (a):** Respondent Grenas failed to inspect vehicles in
5 accordance with Health and Safety Code section 44012 and California code of Regulations title
6 16, section 3340.42.

7 e. **Section 3340.41, subdivision (c):** Respondent Grenas entered vehicle identification
8 information for a vehicle other than the one being tested into the BAR-OIS. Respondent
9 knowingly entered false information about the vehicle being tested into the BAR-OIS.

10 f. **Section 3340.42:** Respondent Grenas failed to conduct the required smog tests and
11 inspections on vehicles in accordance with the Bureau's specifications.

12 g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check
13 Manual by entering vehicle identification information for a vehicle that was not being tested.
14 Respondent knowingly entered false information about the vehicle being tested.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud or Deceit – Smog Check License)**

17 41. Respondent Grenas subjected his Smog Check Inspector and Smog Check Repair
18 Technician licenses to discipline under Health and Safety Code sections 44072.10 and 44072.2,
19 subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby another
20 was injured by issuing electronic certificates of compliance for vehicles without performing bona
21 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
22 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program, as set forth above in paragraphs 33-35, above.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

26 42. Respondent Carungcong has subjected his Smog Check Inspector license to discipline
27 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
28

1 violated sections of that Code and applicable regulations, through conduct described in
2 paragraphs 33-35, as follows:

3 a. **Section 44012:** Respondent Carungcong failed to ensure that a smog inspection was
4 performed on a vehicle in accordance with procedures prescribed by the department.

5 b. **Section 44059:** Respondent Carungcong willfully made a false entry for an
6 electronic certificate of compliance by certifying that a vehicle had been inspected as required
7 when, in fact, they had not.

8 c. **Section 3340.24, subdivision (c):** Respondent Carungcong falsely or fraudulently
9 caused an electronic certificate of compliance to be issued to a vehicle without performing bona
10 fide inspections of the emission control devices and systems on that vehicle.

11 d. **Section 3340.30, subdivision (a):** Respondent Carungcong failed to inspect a vehicle
12 in accordance with Health and Safety Code section 44012 and California code of Regulations title
13 16, section 3340.42.

14 e. **Section 3340.41, subdivision (c):** Respondent Carungcong entered vehicle
15 identification information for a vehicle other than the one being tested into the BAR-OIS.
16 Respondent knowingly entered false information about the vehicle being tested into the BAR-
17 OIS.

18 f. **Section 3340.42:** Respondent Carungcong failed to conduct the required smog tests
19 and inspections on vehicles in accordance with the Bureau's specifications.

20 g. **Section 3340.45** Respondent Carungcong violated the procedures contained in the
21 Smog Check Manual by entering vehicle identification information for a vehicle that was not
22 being tested. Respondent knowingly entered false information about the vehicle being tested.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Dishonesty, Fraud or Deceit – Smog Check License)**

25 43. Respondent Carungcong subjected his Smog Check Inspector license to discipline
26 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he
27 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing an
28 electronic certificate of compliance for a vehicle without performing bona fide inspections of the

1 emission control devices and systems on the vehicle, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
3 in paragraphs 33-35, above.

4 **UNDERCOVER OPERATION**

5 44. In 2019, a Bureau Representative prepared a 2012 Honda (Honda) to fail a smog
6 inspection due to the removal of the Positive Crankcase Ventilation (PCV) valve and hose
7 assembly. The Bureau Representative installed a non-approved open breather element in place of
8 the PCV valve and large vacuum cap on the PCV valve intake manifold vacuum supply port. In
9 this condition the Honda would not pass a properly performed smog inspection. The Honda
10 would fail the visual portion of the smog inspection.

11 45. On or about October 14, 2019, an undercover operation was performed at Respondent
12 Pham's smog check station to confirm compliance with the Smog Check Program. An operator
13 drove the Honda to Express Smog Check and requested a smog inspection.

14 46. The Honda passed the smog inspection. The operator was given two copies of an
15 invoice and a Vehicle Inspection Report (VIR). Smog Certificate of Compliance # RA010545C
16 was issued for the Honda by Respondent Pham. Respondent Carungcong personally performed
17 the inspection. Respondent Carungcong entered "Pass" into the OIS for the Visual Inspection
18 category "Crankcase Emission Controls," when in fact Respondent should have entered
19 "Tampered" because the Honda had been tampered with. The VIR stated "Pass" for the Visual
20 Inspection category "Crankcase Emission Controls." Respondent Carungcong signed the VIR
21 under penalty of perjury.

22 **NINTH CAUSE FOR DISCIPLINE**

23 (False or misleading Statements)

24 47. Respondent Pham has subjected his Automotive Repair Dealer Registration to
25 disciplinary action under section 9884.7, subdivision(a)(1), in that Respondent Pham by and
26 through Respondent Carungcong, made false or misleading statements that he knew or should
27 have known were false or misleading as follows:
28

1 a. Respondent Pham by and through Respondent Carungcong, transmitted information
2 to the Vehicle Information Database stating the Honda had properly installed Crankcase Emission
3 Controls.

4 b. Respondent Pham by and through Respondent Carungcong, created a VIR stating the
5 Honda had properly installed Crankcase Emission Controls.

6 **TENTH CAUSE FOR DISCIPLINE**

7 (Violation of Laws and Regulations)

8 48. Respondent Pham has subjected his Automotive Repair Dealer Registration to
9 disciplinary action under section 9884.7, subdivision (a)(6), in that Respondent Pham violated the
10 following laws and regulations:

11 a. Respondent Pham violated Code section 9884.9(a) by failing to provide the operator
12 with a written estimate prior to performing the smog inspection.

13 b. Respondent Pham violated California Code of Regulations, Title 16, section 3340.24,
14 subdivision (c), in that Respondent Pham falsely issued a certificate of compliance to the Honda.

15 c. Respondent Pham violated California Code of Regulations, Title 16, section 3340.35,
16 subdivision (c), in that Respondent Pham issued a certificate of compliance to a vehicle that did
17 not have all the required emission control equipment and devices installed and functioning
18 correctly.

19 d. Respondent Pham violated California Code of Regulations, Title 16, section 3340.42,
20 subdivision (b) in that Respondent failed to provide a proper visual inspection of the Honda.

21 e. Respondent Pham violated California Code of Regulations, Title 16, section 3340.42,
22 in conjunction with California Code of Regulations, Title 16, section 3340.45, subdivision (b), in
23 that Respondent failed to provide a proper visual inspection on the Honda as prescribed in the
24 Smog Check Manual.

25 f. Respondent Pham violated California Code of Regulations, Title 16, section 3353, in
26 that Respondent Pham failed to provide the operator with a written estimate.

27 g. Respondent Pham violated California Code of Regulations, Title 16, section 3371, in
28 that Respondent Pham made untrue or misleading statements as described in paragraph 47, above.

1 h. Respondent Pham violated California Code of Regulations, Title 16, section 3373, in
2 that Respondent Pham made untrue or misleading statements on a Vehicle Inspection Report.
3 The Vehicle Inspection Report stated that the vehicle passed the Crankcase Emission Controls
4 visual inspection.

5 **ELEVENTH CAUSE FOR DISCIPLINE**

6 (Dishonest or Deceit)

7 49. Respondent Pham has subjected his Smog Check Station License to disciplinary
8 action under Health and Safety Code section 44072.2, subdivision (d), in that Respondent Pham
9 committed acts involving dishonesty or deceit whereby another was injured. The circumstances
10 are described in paragraphs 44-47, above.

11 **TWELFTH CAUSE FOR DISCIPLINE**

12 (Violation of Laws and Regulations)

13 50. Respondent Pham has subjected his Smog Check Station License to disciplinary
14 action under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or (g), in that
15 Respondent Pham violated the following laws and regulations:

16 a. Respondent Pham violated Health and Safety code section 44012, subdivision (f), in
17 the Respondent Pham failed to perform a smog check on the Honda according to the procedures
18 prescribed by the department. Respondent failed to perform a proper visual inspection.

19 b. Respondent Pham violated Health and Safety code section 44015, subdivision (a)(1),
20 in that Respondent Pham issued a certificate of compliance to a vehicle that had been tampered
21 with.

22 c. Respondent Pham violated California Code of Regulations, Title 16, section 3340.24,
23 subdivision (c), in that Respondent Pham falsely issued a certificate of compliance to the Honda.

24 d. Respondent Pham violated California Code of Regulations, Title 16, section 3340.35,
25 subdivision (c), in that Respondent Pham issued a certificate of compliance to a vehicle that did
26 not have all the required emission control equipment and devices installed and functioning
27 correctly.

28

1 e. Respondent Pham violated California Code of Regulations, Title 16, section 3340.42,
2 subdivision (b) in that Respondent Pham failed to perform a proper visual inspection of the
3 Honda.

4 f. Respondent Pham violated California Code of Regulations, Title 16, section
5 3340.42 in conjunction with California Code of Regulations, Title 16, section 3340.45,
6 subdivision (b), in that Respondent Pham failed to perform a proper visual inspection on the
7 Honda as prescribed in the Smog Check Manual.

8 **THIRTEENTH CAUSE FOR DISCIPLINE**

9 (Dishonesty or Deceit)

10 51. Respondent Carungcong has subjected his Smog Check Inspector License to
11 disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that
12 Respondent Carungcong committed acts involving dishonesty or deceit whereby another was
13 injured. The circumstances are described in paragraphs 44-47, above.

14 **FOURTEENTH CAUSE FOR DISCIPLINE**

15 (Violation of Laws and Regulations)

16 52. Respondent Carungcong has subjected his Smog Check Inspector License to
17 disciplinary action under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or
18 (g), in that Respondent Carungcong violated the following laws and regulations:

19 a. Respondent Carungcong violated Health and Safety code section 44012, subdivision
20 (f), in that Respondent Carungcong failed to perform a smog check on the Honda according to the
21 procedures prescribed by the department. Respondent failed to perform a proper visual
22 inspection.

23 b. Respondent Carungcong violated Health and Safety code section 44015, subdivision
24 (a)(1), in that Respondent Carungcong issued a certificate of compliance to a vehicle that had
25 been tampered with.

26 c. Respondent Carungcong violated California Code of Regulations, Title 16, section
27 3340.24, subdivision (c), in that Respondent Carungcong falsely issued a certificate of
28 compliance to the Honda.

1 d. Respondent Carungcong violated California Code of Regulations, Title 16, section
2 3340.35, subdivision (c), in that he caused Respondent Pham to issue a certificate of compliance
3 to a vehicle that did not have all the required emission control equipment and devices installed
4 and functioning correctly.

5 e. Respondent Carungcong violated California Code of Regulations, Title 16, section
6 3340.42, subdivision (b) in that Respondent Carungcong failed to perform a proper visual
7 inspection of the Honda.

8 f. Respondent Carungcong violated California Code of Regulations, Title 16,
9 section 3340.42 in conjunction with California Code of Regulations, Title 16, section 3340.45,
10 subdivision (b), in that Respondent Carungcong failed to perform a proper visual inspection on
11 the Honda as prescribed in the Smog Check Manual.

12 **DISCIPLINARY CONSIDERATIONS**

13 53. To determine the degree of discipline, if any, to be imposed on Respondent Pham,
14 Complainant alleges that on or about January 2, 2019, Respondent Pham was issued Citation No.
15 C2019-34 for failing to perform a smog inspection according to the procedures prescribed by the
16 department. The citation is now final.

17 54. To determine the degree of discipline, if any, to be imposed on Respondent
18 Pham and Respondent Carungcong, Complainant alleges that on or about April 17, 2019, a
19 Bureau representative held a proactive conference with Respondent Carungcong at Respondent
20 Pham's Smog Check Station. Respondent Carungcong was acting as Respondent Pham's station
21 manager and in his individual capacity as a smog check inspector. The Bureau representative
22 informed Respondents Carungcong and Pham of improper smog inspections that were performed
23 by Respondent Carungcong at Respondent Pham's Station. Respondent Carungcong and Pham
24 were warned that future violations of the Automotive Repair Act and Smog Check Program may
25 result in disciplinary action.

26 55. To determine the degree of discipline, if any, to be imposed on Respondent Grenas,
27 Complainant alleges that on or about June 15, 2012, Respondent Grenas was issued Citation No.
28

1 M2012-1783 for failing to perform a smog inspection according to the procedures prescribed by
2 the department. The citation is now final.

3 **OTHER MATTERS**

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

8 57. Pursuant to Health & Safety Code section 44072.8, if Respondent Pham's Station
9 License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of
10 Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked
11 or suspended by the director.

12 58. Pursuant to Health & Safety Code section 44072.8, if Respondent Grenas's Smog
13 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
14 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
15 likewise revoked or suspended by the director.

16 59. Pursuant to Health & Safety Code section 44072.8, if Respondent Carungcong's
17 Smog Check Inspector License is revoked or suspended, any additional license issued under
18 Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may
19 be likewise revoked or suspended by the director.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number 276292
24 issued to Darren Thanh Pham dba Express Smog Check;

25 2. Revoking or suspending Smog Check Test and Repair Station License Number RC
26 276292 issued to Darren Thanh Pham dba Express Smog Check;

27 3. Revoking or suspending Smog Check Inspector (EO) License No. EO 151194
28 issued to Darren Thanh Pham;

- 1 4. Revoking or suspending Smog Check Repair technician (EI) License No. EI
2 151194 issued to Darren Thanh Pham;
- 3 5. Revoking or suspending any additional Automotive Repair Dealer Registration(s)
4 issued to Darren Thanh Pham;
- 5 6. Revoking or suspending any additional Smog Check Station License, Smog Check
6 Inspector License, or Smog Check Repair Technician license, issued to Darren Thanh Pham;
- 7 7. Ordering Darren Thanh Pham to pay the Bureau of Automotive Repair the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3;
- 10 8. Revoking or suspending Smog Check Inspector (EO) License No. EO 631676
11 issued to Reginald Louie Litan Grenas;
- 12 9. Revoking or suspending Smog Check Repair Technician (EI) License No. EI
13 631676 issued to Reginald Louie Litan Grenas;
- 14 10. Revoking or suspending any additional Smog Check Station License, Smog Check
15 Inspector License, or Smog Check Repair Technician license, issued to Reginald Louie Litan
16 Grenas;
- 17 11. Ordering Reginald Louie Litan Grenas to pay the Bureau of Automotive Repair
18 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 125.3;
- 20 12. Revoking or suspending Smog Check Inspector (EO) License No. EO 638623
21 issued to Jay M Carungcong;
- 22 13. Revoking or suspending any additional Smog Check Station License, Smog Check
23 Inspector License, or Smog Check Repair Technician license, issued to Jay M Carungcong;
- 24 14. Ordering Jay M Carungcong to pay the Bureau of Automotive Repair the
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
26 Professions Code section 125.3;

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

DATED: December 30, 2020

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