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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against**:** **PHUONG VU TRAN** **DBA MONTEREY SMOG CHECK** **1565 Monterey Rd.** **San Jose, CA 95110** **355 Colville Dr** **San Jose, CA 95123** **Automotive Repair Dealer Registration No. ARD 283241** **Smog Check Test Only Station License No. TC 283241** **PHUONG TRAN** **355 Colville Dr** **San Jose, CA 95123** **Smog Check Inspector License No. EO 638362** Respondent.	Case No. 79/24-21864 **ACCUSATION**

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 April 7, 2016, Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 283241 to Phuong Vu Tran (Respondent) dba Monterey Smog

Check. The Automotive Repair Dealer Registration will expire on April 30, 2026, unless renewed.

3. On or about May 5, 2016, Bureau of Automotive Repair issued Smog Check Test Only Station License Number TC 283241 to Respondent. The Smog Check Test Only Station License will expire on April 30, 2026, unless renewed.

4. On or about July 17, 2015, Bureau of Automotive Repair issued Smog Check Inspector License Number EO 638362 to Respondent. The Smog Check Test Station License will expire on April 30, 2027, unless renewed.

JURISDICTION

5. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau, under the authority of the following laws.

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

7. Section 9884.13 of the Code 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.

8. 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.

9. 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 any investigation of, or action or disciplinary proceedings against the licensee, or to render a decision suspending or revoking the license.

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STATUTORY PROVISIONS

10. Section 9884.7 of the Code states:

(a) The director, if 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.

. . .

(4) Any other conduct that constitutes fraud.

. . .

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

. . .

(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.

. . .

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

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

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

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

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

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

11. Section 44012 of the Health and Safety Code states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed

testing in all other program areas, and shall ensure all of the following:

. . .

12. Section 44032 of the Health and Safety Code states:

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

13. Section 44059 of the Health and Safety 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 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.

14. Section 44072.2 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:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, " 44000, et seq.)] 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.

. . .

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

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, in pertinent part:

. . .

(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, clean plugging, clean glassing, clean tanking, or any other fraudulent inspection practice, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

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

. . .

REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 3340.1, states:

. . .

"Clean plugging" means using a substitute vehicle's OBD system, or another source, to generate data readings or diagnostic information in order to cause the OIS to issue a certificate of compliance for the test vehicle.

. . .

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

(a) Any disciplinary or reinstatement proceeding under this article involving licensed stations, licensed technicians, or fleet owners licensed pursuant to section 44020 of the Health and Safety Code shall be conducted in accordance with chapter 5 (commencing with section 11500) of division 3, Title 2 of the Government Code.

. . .

(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.

. . .

19. California Code of Regulations, title 16, section 3340.30, states:

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

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

. . .

20. California Code of Regulations, title 16, section 3340.41, states:

. . .

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

. . .

(h) No licensed station shall have in the approved testing area at any time any electronic device or software capable of simulating the OBD data stream from a vehicle or manipulating OBD VIN, calibration identification, calibration verification number, MIL-status, readiness, or diagnostic trouble codes collected from a vehicle during a Smog Check Inspection.

. . .

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

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

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

. . .

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

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

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

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

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

All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the Smog Check Manual, dated January 2021, which is hereby incorporated by reference.

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COST RECOVERY

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

SMOG PROGRAM AND CLEAN PLUGGING ALLEGATIONS

24. California's Smog Check Program identifies motor vehicles with excess emissions so they can be properly repaired or retired. The program has greatly reduced air pollution and helped improve the health of many Californians.

25. California's Smog Check Program requires the owners of most motor vehicles in California to take and pass a Smog Check inspection and receive a Certificate of Compliance every two years when renewing their registration and also when the vehicle's title is transferred. These inspections are performed by Smog Check Inspectors at Smog Check Stations, both of which are licensed by BAR.

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

27. The inspector also performs visual and functional tests on the vehicle as outlined in the Smog Check Manual. The visual inspection of the emission control components verifies the required emission control devices are present and properly connected. Functional tests are also

performed which, depending on the vehicle, may include checking the ignition timing, malfunction indicator light (MIL), exhaust gas recirculation (EGR) system, a low-pressure test of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas cap.

28. BAR implemented a statewide change requiring the use of the On-Board Diagnostic Inspection System (BAR-OIS) instead of the EIS for the smog testing of 2000 model year and newer gas powered and 1998 and newer diesel vehicles.

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

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

31. Data retrieved and recorded during an OIS smog check includes: the eVIN, which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the PCM uses to relay information; and Parameter Identifications (PIDs), which are specific data values each PCM uses related to emissions controls.

32. PIDs are data points reported by the vehicle on-board computer to a scan tool or BAR-OIS. Examples of PIDs are engine speed, mass air flow, manifold absolute pressure, engine temperature, and other input and output values utilized by the vehicle's on-board computer.

33. eVINs may be identified multiple times during the BAR-OIS smog inspection. A vehicle's eVin is identified by the BAR-OIS during both the static portion of the OBD II test and during the dynamic portion of the OBD II test. A vehicle's eVIN will not change between the static and dynamic portion of the OBD II test.

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

35. During an OIS inspection, engine operating parameters are retrieved from the vehicle's OBD II system and recorded to the VID. This is accomplished during the functional portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

a. Engine speed in revolutions per minute (RPM),

b. Throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft. The throttle position is measured in a percentage of opening from 0% at idle to up to 100% at full throttle.

c. Manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle are as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle, and 101 kpa at full throttle (atmospheric pressure at sea level).

d. Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract. Air flow is measured in grams per second (gps).

36. During normal engine operation at idle, engine speed is relatively steady around its target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or MAF readings are also steady. For the engine speed to increase, the throttle would have to be opened to increase airflow through the engine. The engine's management systems supply fuel and

spark timing appropriate to any changes in throttle position and engine speed. An increase in throttle, measured by the TPS, which increases engine RPM, would result in a corresponding increase in MAF as well as a change in MAP.

37. BAR has become aware of methods some Smog Check stations and Smog Check inspectors use to issue smog certificates to vehicles that will not pass a Smog Check test on their own, or in some instances, are not even present during the time the test is performed.

38. One method is known as "clean plugging." "Clean plugging" is the act of using one vehicle's properly functioning OBD II system, or another source such as an electronic defeat device, to generate passing data readings or diagnostic information for the purpose of issuing a smog certificate of compliance to a vehicle that is not in smog compliance and/or not being tested.

39. The BAR initiated an investigation of Respondent's smog check station Monterey Smog Check. The investigation revealed Respondent personally performed 38 smog inspections using clean-plugging methods. Respondent issued 38 certificates of compliance to the clean plugged vehicles.

40. A BAR representative closely reviewed data for the clean-plugged vehicles inspected and certified by Respondent. The data revealed that vehicles that were purportedly tested by Respondents were not and could not have been connected to the DAD during the entire portion of the OBD II inspection.

41. For 10 of the vehicles the review showed a pattern of vehicles being certified with engine operating parameters not corresponding to normal engine operation. Those vehicles received smog certificates but were not tested during the OBD II functional test. The results of those inspections are as follows.

Clean Plug 1:

42. On or about October 8, 2024, Respondent issued smog certificate # JB268294C to a 2002 Honda Accord EX. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

43. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Honda Accord EX show between time stamp 234 and 22129 engine speed is steady at around 700 RPM. During this time the throttle is varying between 11.8% and 7.8% opening. The MAP is varying between 30kpa and 20kpa. At time stamp 22498 the engine speed begins to accelerate. Between time stamp 22498 and 39189 the engine speed is accelerated, then held steady at around 1800 RPM. During this time the throttle is varying between 7.1% and 11.0%. The MAP is varying between 29kpa and 18kpa. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP readings are not characteristic or expected for normal engine operation.

Clean Plug 2:

44. On or about October 14, 2024, Respondent issued smog certificate # UE461710C to a 2002 Chevrolet Silverado C2500 Heavy Duty. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

45. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Chevrolet Silverado C2500 Heavy Duty show between time stamp 77 and 22262 engine speed is steady at around 575 RPM. During this time the throttle is varying between 5.1% and 0% opening. The MAP is varying between 38kpa and 46kpa and MAF varying between 7.3gps and 6.03gps. At time stamp 22660 the engine speed begins to accelerate. Between time stamp 23043 and 39565 the engine speed is accelerated, then held steady at around 1950 RPM. During this time the throttle is varying between .4% and 5.5%. The MAP is varying between 33kpa and 46kpa and MAF varying between 6.98gps and 5.32gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAF and MAP readings are not characteristic or expected for normal engine operation.

Clean Plug 3:

46. On or about October 17, 2024, Respondent issued smog certificate # UE461731C to a 2002 Toyota Tacoma Xtracab. Respondent did not perform a legitimate smog

inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

47. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Toyota Tacoma Xtracab show between time stamp 312 and 20739 engine speed is steady at around 675 RPM. During this time the throttle is varying between 9% and 10.2% opening. MAF is varying between 3.19gps and 4.62gps. At time stamp 21233 the engine speed begins to accelerate. Between time stamp 21655 and 37504 the engine speed is accelerated, then held steady at around 1850 RPM. During this time the throttle is varying between 11% and 8.2%, and MAF is varying between 4.95gps and 3.28gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 4:

48. On or about October 19, 2024, Respondent issued smog certificate # UE461749C to a 2001 Honda Civic LX. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

49. The Dynamic OBD Data and Dynamic Data Charts for the 2001 Honda Civic LX show between time stamp 280 and 20886 engine speed is steady at around 625 RPM. During this time the throttle is varying between 7.1% and 11.4% opening. MAP is varying between 29kpa and 17kpa, at time stamp 21265 the engine speed begins to accelerate. Between time stamp 22791 and 37842 the engine speed is accelerated, then held steady at around 1800 RPM. During this time the throttle is varying between 7.1% and 9.8%, and MAP is varying between 30kpa and 17kpa. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP readings are not characteristic or expected for normal engine operation.

Clean Plug 5:

50. On or about October 22, 2024, Respondent issued smog certificate # UE752312C to a 2004 Toyota Highlander. Respondent did not perform a legitimate smog inspection on the

vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

51. The Dynamic OBD Data and Dynamic Data Charts for the 2004 Toyota Highlander show, between time stamp 242 and 20347 engine speed is steady at around 700 RPM. During this time the throttle is varying between 17.3% and 13.3% opening. MAF is varying between 3.34gps and 5.08gps, at time stamp 20758 the engine speed begins to accelerate. Between time stamp 21136 and 38214 the engine speed is accelerated, then held steady at around 1800 RPM. During this time the throttle is varying between 13.7% and 17.6% and MAF is varying between 4.86gps and 3.25gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 6:

52. On or about October 28, 2024, Respondent issued smog certificate # UE752333C to a 2003 Toyota Camry LE. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

53. The Dynamic OBD Data and Dynamic Data Charts for the 2003 Toyota Camry LE show between time stamp 268 and 26112 engine speed is steady at around 675 RPM. During this time the throttle is varying between 15.3% and 17.3% opening. MAF is varying between 1.45gps and 2.24gps, at time stamp 26494 the engine speed begins to accelerate. Between time stamp 26958 and 42947 the engine speed is accelerated then, held steady at around 1675 RPM. During this time the throttle is varying between 12.9% and 18.0%, and MAF is varying between 1.97gps and .5gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAF are not characteristic or expected for normal engine operation.

Clean Plug 7:

54. On or about October 28, 2024, Respondent issued smog certificate # UE752334C to a 2001 GMC Safari XT. Respondent did not perform a legitimate smog inspection on the vehicle.

Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

55. The Dynamic OBD Data and Dynamic Data Charts for the 2001 GMC Safari XT show between time stamp 101 and 18871 engine speed is steady at around 600 RPM. During this time the throttle is varying between 1.6% and 5.5% opening. The MAP is varying between 32kpa and 46kpa, MAF is varying between 4.69gps and 3.18gps, at time stamp 19233 the engine speed begins to accelerate. Between time stamp 19586 and 35844 the engine speed is accelerated, then held steady at around 1800 RPM. During this time the throttle is varying between .4% and 3.9%, MAP is varying between 40kpa and 33kpa, and MAF is varying between 4.94gps and 3.03gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and/or MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 8:

56. On or about October 28, 2024, Respondent issued smog certificate # UE752338C to a 2000 Toyota Tundra Access Cab. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

57. The Dynamic OBD Data and Dynamic Data Charts for the 2000 Toyota Tundra Access Cab show between time stamp 303 and 20078 engine speed is steady at around 700 RPM. During this time the throttle is varying between 17.6% and 13.3% opening. MAF is varying between 6.03gps and 7.38gps, at time stamp 20440 the engine speed begins to accelerate. Between time stamp 20818 and 36925 the engine speed is accelerated, then held steady at around 1750 RPM. During this time the throttle is varying between 18% and 12.9%, and MAF is varying between 5.7gps and 7.02gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAF readings are not characteristic or expected for normal engine operation.

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Clean Plug 9:

58. On or about October 28, 2024, Respondent issued smog certificate #UE752339C to a 2002 Chevrolet Suburban C1500. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

59. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Chevrolet Suburban C1500 show between time stamp 103 and 21627 engine speed is steady at around 675 RPM. During this time the throttle is varying between 5.1% and 0% opening. The MAP is varying between 43kpa and 32kpa, MAF is varying between 5.52gps and 7.66gps, at time stamp 22004 the engine speed begins to accelerate. Between time stamp 22348 and 39069 the engine speed is accelerated, then held steady at around 1700 RPM. During this time the throttle is varying between 4.7% and .8%, The MAP is varying between 38kpa and 45kpa and MAF is varying between 5.51gps and 7.29gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 10:

60. On or about October 28, 2024, Respondent issued smog certificate # UE752341C to a 2002 Toyota 4Runner SR5. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

61. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Toyota 4Runner SR5 shows between time stamp 229 and 21478 engine speed is steady at around 675 RPM. During this time the throttle is varying between 12.9% and 16.9% opening, MAF is varying between 3.05gps and 4.85gps, at time stamp 22196 the engine speed begins to accelerate. Between time stamp 22610 and 39002 the engine speed is accelerated, then held steady at around 1875 RPM. During this time the throttle is varying between 18% and 12.9%, and MAF is varying between 4.5gps and 3.03gps. The steady idle and steady elevated engine speeds with the associated

varying throttle positions and subsequent varying MAF readings are not characteristic or expected for normal engine operation.

62. For 28 of the clean plugged vehicles the eVIN transmitted during the dynamic portion of the OBD II inspection did not match the vehicle that was being certified (VIN/Static eVIN). This means that the vehicle certified was not connected to the DAD during the dynamic portion of the OBD II inspection and hence clean plugged. The following chart shows the vehicle certified, the date of the certification, the Certification number, and the VINs transmitted:

Date	**Vehicle**	**VIN / Static eVIN**	**Dynamic eVIN**	**Certificate ID #**
11/20/24	2005 Toyota Tundra	5TBRU34165S454816	5TDYK3DC8BS006714	UG417492C
11/20/24	2009 Mercedes-Benz ML350	4JGBB86E99A488310	5TDYK3DC8BS006714	UG417493C
11/20/24	2011 Chevrolet Suburban K1500	1GNSKJE30BR311090	5TDYK3DC8BS006714	UG417494C
11/20/24	2012 Chevrolet Malibu LS	1G1ZB5E07CF230796	5TDYK3DC8BS006714	UG417496C
11/20/24	2008 Dodge Grand Caravan SE	2D8HN44H68R633861	5TDYK3DC8BS006714	UG417497C
11/22/24	2005 Ford F150	1FTPW125X5KE85268	5TDYK3DC8BS006714	UG567205C
11/22/24	2015 Chevrolet Camaro SS	2G1FG1EW6F9144779	5TDYK3DC8BS006714	UG567208C
11/22/24	2006 Volkswagen Jetta	3VWDG71K56M625227	5TDYK3DC8BS006714	UG567209C
11/22/24	2018 Chevrolet Camaro SS	1G1FG1R78J0139038	5TDYK3DC8BS006714	UG567210C
11/22/24	2014 Jeep Grand Cherokee	1C4RJFDJ6EC551002	5TDYK3DC8BS006714	UG567211C
11/22/24	2012 Dodge Challenger SXT	2C3CDYAG5CH170029	5TDYK3DC8BS006714	UG567213C
11/22/24	2010 Chevrolet Malibu 1LT	1G1ZC5EB9AF181726	5TDYK3DC8BS006714	UG567214C
11/25/24	2009 Chevrolet Silverado K1500	1GCEK29J89Z123917	5TDYK3DC8BS006714	UG567227C
11/25/24	2008 Ford Escape	1FMCU04178KB05277	5TDYK3DC8BS006714	UG567229C

11/25/24	2017 Volkswagen GTI S	3VW4T7AUXHM077175	5TDYK3DC8BS006714	UG567 231C
11/25/24	2016 Chevrolet Colorado LT	1GCGSCE34G1107280	5TDYK3DC8BS006714	UG567 32C
11/25/24	2005 Toyota Tundra	5TBRU34175S447969	5TDYK3DC8BS006714	UG567 233C
11/25/24	2010 Dodge Charger SXT	2B3CA3CV3AH126855	5TDYK3DC8BS006714	UG567 234C
11/26/24	2014 Chevrolet Camaro 2SS	2G1FK1EJ7E9236369	5TDYK3DC8BS006714	UG567 244C
11/26/24	2011 Subaru Impreza WRX STI	JF1GV8J60BL525505	5TDYK3DC8BS006714	UG567 245C
11/26/24	2014 Dodge Charger Super Bee	2C3CDXGJ7EH309836	5TDYK3DC8BS006714	UG567 247C
11/26/24	2011 Mitsubishi Lancer GSR	JA32W8FV0BU040811	5TDYK3DC8BS006714	UG567 248C
11/29/24	2007 Chevrolet Impala LT	2G1WT58N079379248	5TDYK3DC8BS006714	UG729 157C
11/29/24	2007 Toyota Sienna	5TDZK23CX7S008732	5TDYK3DC8BS006714	UG729 159C
11/29/24	2012Chevrolet Sonic LS	1G1JA5SH5C4120240	5TDYK3DC8BS006714	UG729 160C
11/29/24	2014 Mazda CX-5	JM3KE2BE1E0309246	5TDYK3DC8BS006714	UG729 162C
11/29/24	2012GMC Sierra C1500	3GTP1VE05CG186426	5TDYK3DC8BS006714	UG729 163C
12/10/24	2010 Infiniti EX35	JN1AJ0HR7AM756460	5TDYK3DC8BS006714	UI0649 16C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Registration)

63. Respondent has subjected his Automotive Repair Dealer Registration to discipline under Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading, as set forth above in the Smog Program and Clean Plugging Allegations. Respondent purported to test vehicles, and certified that the vehicles passed inspection and were in compliance with

applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using clean-plugging methods.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

64. Respondent has subjected his Automotive Repair Dealer Registration to discipline under Code section 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud, as set forth above in the Smog Program and Clean Plugging Allegations.

THIRD CAUSE FOR DISCIPLINE

(False or Misleading Records-Registration)

65. Respondent has subjected his Automotive Repair Dealer Registration to discipline under Code section 9884.7, subdivision (a)(6), in that he violated California Code of Regulations, title 16, section 3373, by creating and issuing false or misleading certificates of compliance and vehicle inspection reports for the 10 vehicles that were clean plugged as set forth above in the Smog Program and Clean Plugging Allegations. The certificates and inspection reports indicated the vehicles were tested in accordance with all Bureau requirements and the vehicles were qualified to receive certificates of compliance. This was false as the vehicles were clean plugged.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit – Smog Licenses)

66. Respondent has subjected his Smog Check Test Only Station and Smog Check Inspector License to discipline under Health and Safety Code sections 44072.10 and/or 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Respondent participated in clean-plugging as set forth above in the Smog Program and Clean Plugging Allegations above.

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FIFTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program- Smog Licenses)

67. Respondent has subjected his Smog Check Test Only Station and Smog Check Inspector License to discipline under Health and Safety Code sections 44072.10 and/or 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations, through conduct described in the Smog Program and Clean Plugging Allegations, as follows:

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

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

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

d. **Section 3340.41, subdivision (c)**: Respondent entered false information about vehicles being tested into OIS.

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

f. **Section 3340.45** Respondent violated the procedures contained in the Smog Check Manual by entering vehicle identification information for a vehicle that was not being tested.

g. **Section 44059:** Respondent willfully made false statements in issuing the Smog Certificates of compliance and on the Vehicle Inspection Reports.

OTHER MATTERS

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

69. Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Check Station License and/or Smog Check Inspector 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 283241, issued to Phuong Vu Tran dba Monterey Smog Check;

2. Revoking or suspending Smog Check Test Only Station License Number TC 283241, issued to Phuong Vu Tran dba Monterey Smog Check;

3. Revoking or suspending Smog Check Inspector License Number EO 638362, issued to Phuong Vu Tran;

4. Revoking or suspending any additional Automotive Repair Dealer Registration(s) issued to Phuong Vu Tran;

5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Phuong Vu Tran;

6. Ordering Phuong Vu Tran to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3 and if placed on probation, the costs of probation monitoring;

and,

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

DATED: As of Digital Signature Date

Dorais, Patrick@DCA

Digitally signed by Dorais, Patrick@DCA
Date: 2025.12.18 10:47:39 -08'00'

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