

BEFORE THE DIRECTOR OF THE

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DEPARTMENT OF CONSUMER AFFAIRS

BUREAU OF AUTOMOTIVE REPAIR

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**HOA LE LY- PRESIDENT/SECRETARY/TREASURER**

**L H SMOG CHECK dba L H SMOG CHECK**

313 South Harbor Blvd. #B

Santa Ana, CA 92704

Automotive Repair Dealer Registration No. ARD 301067

Smog Check Test Only Station License No. TC 301067

and

**KAI DAI TRI**

14892 Valencia Plz.

Westminster, CA 92683

Smog Check Inspector License No. EO 642011

Respondents.

Case No. 79/23-3968

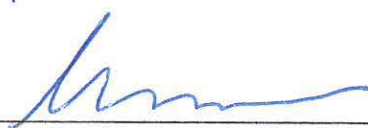
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DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on Jan. 27, 2026.

IT IS SO ORDERED Dec. 23, 2025.



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GRACE ARUPO RODRIGUEZ  
Assistant Deputy Director  
Legal Affairs Division  
Department of Consumer Affairs

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DEPARTMENT OF CONSUMER AFFAIRS  
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**KAI DAI TRI**

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**Case No. 79/23-3968**

**OAH No. 2023120186.1**

## **PROPOSED DECISION**

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 15, 2025, and November 5, 2025.

Daniel J. Cross, Deputy Attorney General, Department of Justice, State of California, represented complainant Patrick Dorais, Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), State of California.

Thinh Doan, Attorney at Law, represented respondent Hoa Le Ly, President, Secretary, and Treasurer, L H Smog Check dba L H Smog Check. Ms. Ly was present at the hearing and testified with the assistance of a Vietnamese interpreter.

Kai Dai Tri, respondent, was not present at the hearing, as he surrendered his license, effective February 19, 2025. The decision herein does not pertain to Mr. Tri and only pertains to respondent Hoa Le Ly, President, Secretary, and Treasurer, L H Smog Check dba L H Smog Check.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 5, 2025.

## **FACTUAL FINDINGS**

### **Registration and License History**

1. On November 12, 2021, the Bureau issued Automotive Repair Dealer Registration No. ARD 301067 to L H Smog Check, dba L H Smog Check, Hoa Le Ly, President, Secretary, and Treasurer (L H Smog, Ms. Ly, or respondent). The registration

was in full force and effect at all times relevant herein and will expire on November 30, 2026, unless renewed.

2. On December 2, 2021, the Bureau issued Smog Check, Test Only Station No. TC 301067 to L H Smog Check, dba L H Smog Check, Hoa Le Ly, President, Secretary, and Treasurer, which was in full force and effect at all times relevant herein and will expire on November 30, 2025, unless renewed.

3. On January 31, 2022, the Bureau issued a STAR Station certification to L H Smog Check. The certification remains active unless the ARD registration and/or Smog Check Test Only Station license is revoked, canceled, licenses become delinquent, or the certification is suspended.

### **Jurisdictional Background**

4. On August 28, 2023, complainant signed the Accusation in his official capacity. The Accusation alleged L H Smog's automotive repair dealer (ARD) registration and smog check test only station (smog check station) license should be disciplined for conduct that occurred between January 2, 2023, and March 8, 2023, on the following five causes for discipline:<sup>1</sup>

- Pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), L H Smog's ARD registration is subject to discipline because its employee, Mr. Tri, made or authorized untrue or misleading statements and certified vehicles passed smog inspection including one that was observed by a

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<sup>1</sup> The decision herein pertains only to the first through fifth causes for discipline, as the sixth through eighth causes for discipline were allegations against Mr. Tri only.

Bureau inspector during a fraudulent inspection, and when smog certifications were issued for 10 additional vehicles using the clean plugging method, but the vehicles were not inspected or tested as required by Health and Safety Code section 44012.

- Pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), L H Smog's ARD registration is subject to discipline because its employee committed acts which constitute fraud at L H Smog by performing a fraudulent inspection observed by a Bureau inspector and issuing electronic certificates of compliance for 10 additional vehicles without performing bona fide inspections of the emission control devices and systems.
- Pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44072.10, subdivision (c), L H Smog's smog check station license is subject to discipline because its employee failed to comply with the Motor Vehicle Inspection Program and regulations adopted pursuant to it, based on violations of Health and Safety Code sections 44012 (failed to test emission control systems and devices of a vehicle observed during a fraudulent inspection and 10 additional vehicles) and 44015 (issued electronic certificates of compliance, but failed to properly test and inspect the vehicles.)
- Pursuant to Health and Safety Code section 44072.2, subdivision (c), L H Smog's smog check station license is subject to discipline because its employee failed to comply with California Code of Regulations, title 16, sections 3340.35, subdivision (c), (issued electronic certificates of compliance, but failed to inspect the vehicle observed during a fraudulent inspection and the 10 additional vehicles to ensure they had the required

emission control equipment and devices installed and functioning correctly), and 3340.42 (failed to conduct required smog tests on the vehicle observed during a fraudulent inspection and the 10 additional vehicles in accordance with the Bureau's specifications.)

- Pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10, subdivision (c), L H Smog's smog check station license is subject to discipline because its employee committed acts involving dishonesty, fraud, or deceit by issuing electronic certificates of compliance for the vehicle observed during a fraudulent inspection and 10 additional vehicles without performing bona fide inspections of the emission control devices and systems.

5. A Default Decision and Order, only as to L H Smog Check, dba L H Smog Check, Hoa Le Ly, President, Secretary, and Treasurer, was ordered on May 19, 2025, effective May 27, 2025, and revoked the ARD license.

6. An Order Granting Petition to Vacate Default Decision, was issued on June 13, 2025, granting L H Smog and Ms. Ly's petition to vacate the default decision.

7. At the hearing on September 15, 2025, respondent's counsel, Mr. Doan, first made an appearance more than two hours after the start of the hearing. Mr. Doan requested to represent Ms. Ly despite not providing earlier notice that he was representing her in this matter. Mr. Doan's request to represent Ms. Ly was granted. Mr. Doan also requested a continuance of one to two months to prepare for the hearing. Complainant objected to a continuance. It is noted that Mr. Doan was quite familiar with this case. Prior to the hearing, Mr. Doan appeared as Ms. Ly's interpreter at her meeting with the Bureau, he assisted Ms. Ly with filing her motion to vacate the

default decision, and he helped Ms. Ly with other matters involving this case. Hence, respondent's request for a continuance was denied.

### **Complainant's Evidence**

8. Beginning March 9, 2015, California's Smog Check Program was updated to require the use of an On-Board Diagnostic Inspection System (OIS). The program ensures vehicles do not emit excessive and toxic pollutants that are harmful to individuals and the environment. It requires vehicles to be tested by licensed inspectors at licensed smog stations biannually and/or when re-registered in order to detect non-compliant vehicles, so they are repaired or taken off the road. The OIS is required for inspections of most gasoline vehicles that are model-year 2000 and newer. Inspectors are given a personal access code to access the emissions inspection system (EIS). The OIS system consists of a data acquisition device (DAD), computer, bar code scanner, and printer. The DAD is an on-board diagnostic (OBD) scan tool that retrieves OBD data from the vehicle being tested. The OIS software communicates with the Bureau's Vehicle Information Database (VID).

9. The inspector accesses the OIS platform with a personal code and scans the barcode on the vehicle for the vehicle identification number (VIN), scans any documents, verifies the vehicle being tested reflects the vehicle in the VID and verifies the odometer reading. The inspector connects the DAD to the vehicle to be certified. The On-Board Diagnostic, generation II, system (OBD II), test function occurs when the DAD is connected to the vehicle. The inspector is prompted to start the inspection by linking the DAD to the vehicle, and after the data is collected, the inspector is prompted to disconnect the DAD and turn off the vehicle's engine. The DAD transmits the vehicle's data to the OIS platform, which is sent to the VID. The inspector then conducts a visual and functional test of the vehicle.

10. "Clean plugging" refers to the use of another vehicle's properly functioning OBD II or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to vehicles that are not in smog compliance and/or not present for testing.

### **OBSERVED FRAUDULENT INSPECTION OF THE 2002 TACOMA**

11. On March 8, 2023, Nicholas Magana, a Bureau Automotive Program Specialist, conducted an inspection at L H Smog. At the time of the inspection, the Bureau's VID showed a smog inspection was actively in process at L H Smog for a 2002 Toyota Tacoma Double Cab PreRunner, VIN #5TEGN92N12Z012724, CA License #54082R2 (2002 Tacoma). However, while Mr. Magana was parked across the parking lot, he did not see a 2002 Tacoma in the inspection bays of L H Smog Check. He drove through the parking lot and did not see the 2002 Tacoma. He then parked in front of the left inspection bay of L H Smog and entered the facility. An unidentified male (John Doe) yelled out "BAR, it's the BAR, BAR." Mr. Magana observed a 2007 Lexus ES 350, CA License #7YHG945 (2007 Lexus), in the right inspection bay, and no vehicle was in the left inspection bay. Ms. Ly was lying in a hammock and facing the OIS analyzer that was next to the 2007 Lexus. John Doe began to quickly gather an electronic defeat device that was next to the OIS equipment. Mr. Magana asked John Doe not to remove any of the equipment. John Doe did not comply and exited the facility with the electronic defeat device and the other equipment. Mr. Magana followed John Doe and John Doe then threw the electronic defeat device on the ground. Mr. Magana returned to the facility and asked Ms. Ly to give him invoices from that day. She did not comply.

12. Mr. Magana reviewed the smog inspection history for the 2002 Tacoma. There were three recent smog inspection failures. In fact, on March 6, 2023, the 2002

Tacoma failed a smog inspection at L H Smog because of an illuminated malfunction indicator lamp and a service fault code of P0420 for Catalyst System Efficiency Below Threshold Bank 1.

### **CLEAN PLUGGING OF 10 ADDITIONAL VEHICLES**

13. Thereafter, Mr. Magana conducted a review of the VID data for smog inspections at L H Smog. The Bureau alleges that between January 2, 2023, and March 8, 2023, L H Smog engaged in fraudulent smog check inspections when 10 vehicles, identified below, were issued certificates of compliance by using the clean plugging method, resulting in fraudulent certificates of compliance. There was a pattern of discrepancies as shown by the information transmitted during the inspections and the documented information known about these vehicles, such as incorrect engine speed in revolutions per minute (RPM) readings, incorrect throttle position as measured by a throttle position sensor (TPS) readings, incorrect parameter identification (PID) counts, and incorrect manifold air pressure sensor (MAP) readings, and incorrect mass air flow sensor (MAF) readings. The following are alleged discrepancies for the 10 vehicles:

- Vehicle 1 – 2006 Tahoe: On January 2, 2023, a smog test was done on a 2006 Chevrolet Tahoe C1500, VIN #1GNEC13V46R135780, CA License #5SRW248 (2006 Tahoe), and smog certificate #TC239105C was issued by Mr. Tri. At 545 RPM, there was a throttle between 1.2 and 5.5 percent, MAP between 36 and 45kpa, and MAF between 3.27 and 5.09gps. At 1500 RPM, there was a throttle between 2.7 and 5.5 percent, MAP between 37 and 44kpa, and MAF between 2.92 and 4.77gps. The varying throttle positions, MAP, and MAF readings are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to the 2006 Tahoe being certified, causing the issuance of a fraudulent smog certificate.

- Vehicle 2 – 2000 BMW: On January 7, 2023, a smog test was done on a 2000 BMW 328 CI, VIN #WBABM5349YJN93627, CA License #7CBZ624 (2000 BMW), and smog certificate #TC369510C was issued by Mr. Tri. At 750 RPM, there was a throttle between 2 and 5.5 percent and MAF between 3.75 and 4.97gps. At 1500 RPM, there was a throttle between 1.2 and 4.3 percent and MAF between 2.89 and 3.97gps. The varying throttle positions and MAF reading are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to the 2000 BMW being certified, causing the issuance of a fraudulent smog certificate.
- Vehicle 3 – 2003 Escape: On January 23, 2023, a smog test was done on a 2003 Ford Escape XLT, VIN#1FMYU93153KC15653, CA License #5ZHS346 (2003 Escape), and smog certificate #TC766475C was issued by Mr. Tri. At 750 RPM, there was a throttle between 13.3 and 17.3 percent and MAF between 2.79 and 4.86gps. At 1650 RPM, there was a throttle between 12.5 and 17.6 percent and MAF between 2.89 and 4.92gps. The varying throttle positions and MAF reading are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to the 2003 Escape being certified, causing the issuance of a fraudulent smog certificate.
- Vehicle 4 – 2005 Express: On February 6, 2023, a smog test was done on a 2005 Chevrolet Express G2500, VIN #1GCGG25V451168039, CA License #99508S2 (2005 Express), and smog certificate #IT064014C was issued by Mr. Tri. At 490 RPM, there was a throttle between 0.8 and 5.5 percent, MAP between 34 and 44kpa, and MAF between 5.8 and 7.56gps. At 1560 RPM, there was a throttle between 0.0 and 5.5 percent, MAP between 33kpa and

45kpa, and MAF between 5.7 and 7.11gps. The varying throttle positions, MAP, and MAF readings are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to the 2005 Express being certified, causing the issuance of a fraudulent smog certificate.

- Vehicle 5 – 2002 PT Cruiser: On February 11, 2023, a smog test was done on a 2002 Chrysler PT Cruiser Classic, VIN #3C4FY48B12T271882, CA License 6FMS842 (2002 PT Cruiser), and smog certificate #TC954981C was issued by Mr. Tri. At 750 RPM, there was a throttle between 12.9 and 18 percent and MAP between 25 and 30kpa. At 1850 RPM, there was a throttle between 12.9 and 18 percent and MAP between 16 and 29kpa. The varying throttle positions and MAP reading are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to the 2002 PT Cruiser being certified, causing the issuance of a fraudulent smog certificate.
- Vehicle 6 – 2001 Silverado: On February 13, 2023, a smog test was done on a 2001 Chevrolet Silverado C1500, VIN#2GCEC19T211169927, CA License 8S25738 (2001 Silverado), and smog certificate #TC954987C was issued by Mr. Tri. At 500 RPM, there was a throttle between 2.4 and 5.5 percent, MAP between 36 and 44kpa, and MAF between 3.64 and 5.1gps. At 1750 RPM, there was a throttle between 1.2 and 3.1 percent, MAP between 33 and 38kpa, and MAF between 2.88 and 5.06gps. The varying throttle positions, MAF, and MAP readings are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to

the 2001 Silverado being certified, causing the issuance of a fraudulent smog certificate.

- Vehicle 7 – 2002 Silverado: On February 24, 2023, a smog test was done on a 2002 Chevrolet Silverado C1500, VIN #2GCEC19X621421425, CA License #6Z00837 (2002 Silverado), and smog certificate #IT208204C was issued by Mr. Tri. At 725 RPM, there was a throttle between 0.0 and 5.5 percent, MAP between 32 and 42kpa, and MAF between 6.65 and 7.46gps. At 1600 RPM, there was a throttle between 0.0 and 5.1 percent, MAP between 32 and 46kpa, and MAF between 6 and 7.62gps. The varying throttle positions, MAF, and MAP readings are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to the 2002 Silverado being certified, causing the issuance of a fraudulent smog certificate.
- Vehicle 8 – 2002 Odyssey: On March 1, 2023, a smog test was done on a 2002 Honda Odyssey EX, VIN #2HKRL18652H560485, CA License #4WJB851 (2002 Odyssey), and smog certificate #IT315624C was issued by Mr. Tri. At 675 RPM, there was a throttle between 11.4 and 11.8 percent and MAP between 24 and 27kpa. At 1700 RPM, there was a throttle between 7.1 and 8.6 percent and MAP between 17 and 30kpa. The varying throttle positions and MAP reading are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to the 2002 Odyssey being certified, causing the issuance of a fraudulent smog certificate.
- Vehicle 9 – 2004 Dakota: On March 2, 2023, a smog test was done on a 2004 Dodge Dakota Quad Sport, VIN #1D7HL38NX4S506642, CA License

#8K26431 (2004 Dakota), and smog certificate #IT315628C was issued by Mr. Tri. At 575 RPM, there was a throttle between 6.3 and 11.8 percent and MAP between 17 and 30kpa. At 1500 RPM, there was a throttle between 7.8 and 10.2 percent and MAP between 19 and 24kpa. The varying throttle positions and MAP reading are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to the 2004 Dakota being certified, causing the issuance of a fraudulent smog certificate.

- Vehicle 10 – 2004 Silverado: On March 4, 2023, a smog test was done on a 2004 Chevrolet Silverado C1500, VIN #2GCEC19T141234402, CA License #22673V1 (2004 Silverado), and smog certificate #IT454456C was issued by Mr. Tri. At 500 RPM, there was a throttle between 8.6 and 9.4 percent, MAP between 33kpa and 42kpa, and MAF between 3.32gps and 4.37gps. At 1450 RPM, there was a throttle between 7.5 and 10.2 percent, MAP between 32kpa and 43kpa, and MAF between 3.05 and 4.57gps. The varying throttle positions, MAF, and MAP readings are not characteristic or expected for normal engine operation and are discrepancies that show the DAD was not connected to the 2004 Silverado being certified, causing the issuance of a fraudulent smog certificate.

### **MR. MAGANA'S INVESTIGATIVE REPORT, DECLARATION, AND TESTIMONY**

14. The following is a summary of the testimony of Nicholas Magana, which is consistent with his investigative report, time-stamped photos, and his multiple station inspection reports of L H Smog. Mr. Magana is employed as an Automotive Program Specialist with the Bureau. His duties include reviewing smog check data, researching anomalies, and compiling reports indicating his findings and conclusions.

He reviews data collected by the Bureau from smog inspections and conducts comparative analyses. His expertise in the automotive field includes working with cars from the age of 15 and 25 years of automotive experience before joining the Bureau in 2008. He holds licenses both as a Smog Check Repair Technician and Inspector, in addition to certifications such as the Automotive Service Excellence (ASE) Master Technician with advanced diagnostics.

15. Mr. Magana testified to the integrity of vehicle emissions testing as it is crucial for environmental protection and public health. He conducted an investigation of L H Smog that revealed its fraudulent practices pertaining to emissions standards and the suspicion of the use of "clean plugging," which is a practice designed to circumvent emissions testing. His investigation involved data collection and analysis and direct observation. He reviewed vehicle inspection report and OIS data from the Bureau's VID to detect discrepancies. He conducted live surveillance at L H Smog and seized a simulator or "defeat" device that mimics emissions data.

16. On March 8, 2023, Mr. Magana went to L H Smog as part of his investigation and observed a fraudulent smog inspection occurring in real time. He noted the Bureau's VID indicated a smog test was purportedly being conducted on the 2002 Tacoma. Notably, at the recorded test time, no 2002 Tacoma was present at the facility; instead, a 2007 Lexus was visible in the inspection bay. An unidentified individual, John Doe, hastily removed and discarded a simulator device that is designed to fake emission readings. Mr. Magana followed John Doe and seized one such "defeat device," and observed Mr. Tri as silent and uncooperative when questioned. The facility owner, Ms. Ly, was present at the time of the incident and was lying in a hammock and then walking around the shop and in and out of the shop. Ms. Ly would not provide copies of the invoices that Mr. Magana requested.

17. Mr. Magana explained that clean plugging is a fraudulent scheme where the DAD, which connects to a vehicle's OBD-II system during inspection, is plugged into a simulator or a different vehicle. This manipulation generates artificially "clean" emissions data, enabling vehicles that fail to meet the standards to pass inspection. Mr. Magana identified patterns inconsistent with real engine operations. Upon his review of VID data, he discovered L H Smog had clean plugged the following 10 vehicles: a 2006 Tahoe; a 2000 BMW; a 2003 Escape; a 2005 Express; a 2002 PT Cruiser; a 2001 Silverado; a 2002 Silverado; a 2002 Odyssey; a 2004 Dakota; and a 2004 Silverado. Mr. Tri had issued smog certificates for each of these vehicles. The parameters reviewed by Mr. Magana included RPM, throttle position sensor, MAF, and MAP. The data from the suspect smog tests showed contradictory values, indicating the data was not from active vehicle engines but from electronic simulators or other vehicles using the clean plugging method.

18. Mr. Magana also testified to prior compliance and equipment issues that L H Smog had with the Bureau prior to his observation of the fraudulent smog inspection on March 8, 2023. He conducted station inspections on May 18, 2022, and June 6, 2022, and spoke with Ms. Ly and Mr. Tri, in English, regarding concerns about equipment that was not compliant and smog inspections at the facility. During those visits, Mr. Magana issued station inspection reports that were signed by Ms. Ly or Mr. Tri. Mr. Magana also met in-person with Ms. Ly at a formal meeting with the Bureau, with Mr. Doan as her interpreter, and again was asked how she planned to comply and cooperate with oversight of her facility.

## **Respondent's Evidence**

### **MS. LY'S TESTIMONY**

19. The following is a summary of the testimony of Ms. Ly. She is a 70-year-old Vietnamese immigrant who arrived in the United States in 1993. She stated that she has limited English proficiency, speaking only basic words such as "yes," "no," "hi," and "bye," and she is unable to read or write English. She did not receive a formal education in Vietnam or the United States. Ms. Ly became the owner of L H Smog during the COVID-19 pandemic in 2021. She purchased the business after previously working at a restaurant where she met the former owner, who invited her to invest in his smog checking business. Initially hesitant about investing, she decided to buy the business. The former owner assured her that owning the business would be straightforward: she only needed to hire licensed technicians to run the operations, while she would own the shop and oversee it. Ms. Ly contended that she did not fully understand what was involved.

20. At the time Ms. Ly bought L H Smog, she employed a technician named Mr. My, who was referred by a friend. The facility had two machines - one used for smog testing older cars and another for smog testing newer vehicles. However, only the newer machine was approved to be activated by the Bureau. Ms. Ly said there was a five-month delay before Mr. Magana activated the second machine. He visited her shop four to five times, and she did not have a Vietnamese interpreter during those visits. She had to pay rent and other expenses despite being unable to fully operate her business. She contended the Bureau also turned her machines on and off and this caused additional interruptions.

21. Her first technician, Mr. My, became ill so she hired another technician named Mr. Tri who took on all responsibilities related to smog inspections. She let go of Mr. Tri, due to problems, and replaced him with another technician, Mr. Nguyen, who still works for her. Ms. Ly contended that she did not conduct any of the smog inspections and she had no knowledge of the identity of John Doe.

22. Ms. Ly testified she was stressed and frustrated with the Bureau representatives being able to shut down her smog inspection machines and she felt she had done nothing wrong. She did not testify regarding her ability to pay costs to the Bureau that were requested by complainant in this matter.

23. Ms. Ly submitted no supporting evidence other than her testimony.

### **Cost Recovery**

24. Complainant sought recovery of investigation costs of \$6,417.20 and \$225.88, and enforcement costs of \$26,578.25, for a total of \$33,221.33.

25. Mr. Magana signed a declaration with attached documents entitled "Case Hours" and "Costs Spreadsheets" that listed the time he spent between March 8, 2023, and March 23, 2023, performing "Documents/Evidence," "Interview Parties," "Report Writing," and "Surveillance/Undercover." The total time he spent was 61 hours and at the hourly rate of \$105.20, amounted to \$6,417.20. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and the \$6,417.20 costs requested were reasonable.

26. Mauricio Cabeza signed a declaration with attached documents entitled "Case Hours" and "Costs Spreadsheets" that listed the time he spent on March 22, 2023, performing "Review" on this matter. The total time he spent was two hours and

at the hourly rate of \$112.94, amounted to \$225.88. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and the \$225.88 costs requested were reasonable.

27. The Deputy Attorney General who prosecuted the case executed a declaration requesting enforcement costs of \$26,578.25, for tasks performed through September 10, 2025. Attached to his declaration was a document entitled "Matter Time Activity by Professional Type," that identified the tasks performed, the persons who performed the tasks (Daniel Cross, Erin Sunseri, Gregory Salute, Cecilia Zissen, and Karina Gutierrez), the time spent on each task, and the hourly rate of the persons performing the tasks for the costs, from August 8, 2023, through September 10, 2025. The declaration and the attachment seeking enforcement costs of \$26,578.25 complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(2), and those costs were reasonable.

## **LEGAL CONCLUSIONS**

### **Public Protection**

1. "Protection of the public shall be the highest priority for the Bureau of Automotive Repair in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 9880.3.)

2. Health and Safety Code section 43000 states that air pollutants from automobiles are "the primary cause of air pollution"; elimination of such air pollutants is necessary to protect and preserve "the public health and well-being" and to prevent

"irritation to the senses, interference with visibility, and damage to vegetation and property"; and "the state has a responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants." California's Motor Vehicle Inspection Program was enacted to assure that California meets or exceeds emission reduction targets. (Health & Saf. Code, § 44000, et seq.) Smog testing and related repairs are conducted by bureau licensed smog check stations and smog check technicians. (Health & Saf. Code, § 44014.)

### **Burden and Standard of Proof**

3. Complainant bears the burden of proof of establishing that the charges in the Accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582.)

4. The standard of proof in proceedings to discipline automotive repair dealers, smog check stations, and/or smog check technicians is the preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.)

5. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.]" (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the quality of the evidence. The quantity of the evidence presented by each side is irrelevant." (*Ibid.*) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

6. In disciplinary proceedings, the burden is on the respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

### **Statutory and Regulatory Authority**

7. Business and Professions Code section 9884.7 provides:

(a) The director, where the automotive repair dealer<sup>2</sup> 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.

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<sup>2</sup> An "automotive repair dealer" is a "person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles." (Bus. & Prof. Code, § 9880.1, subd. (a).) Automotive repair dealers are governed by the Automotive Repair Act. (Bus. & Prof. Code, §§ 9880, et seq.)

[1] . . . [1]

(4) Any other conduct that constitutes fraud.

[1] . . . [1]

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

[1] . . . [1]

(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.

8. Business and Professions Code section 9884.13 states, 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.

9. Health and Safety Code section 44072.2 provides:

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.

[11] . . . [11]

(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. . . .

10. Health and Safety Code section 44072.8 provides:

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.

11. Health and Safety Code section 44072.10, subdivision (c), states, "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.

(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.

12. Health and Safety Code section 44012 provides that tests at smog check stations "shall be performed in accordance with procedures prescribed by the department and may require . . . testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles . . . ."

13. Health and Safety Code section 44015, subdivisions (a) and (b), requires that a "licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to . . ."a vehicle that has been tampered with," and "a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

14. Health and Safety Code section 44059 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.

15. Health and Safety Code section 44032 provides:

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.

16. California Code of Regulations title 16, section 3340.24, subdivision (c), states, "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."

17. 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.

18. California Code of Regulations, title 16, section 3340.35, subdivision (c), requires a licensed smog check station to "issue a certificate of compliance or

noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly.”

19. California Code of Regulations, title 16, section 3340.41, subdivision (c), mandates that:

No person shall enter into . . . the OBD Inspection System any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into . . . the OBD Inspection System any false information about the vehicle being tested.

20. 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:

[1] . . . [1]

(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.

(c) The bureau may require any combination of the inspection methods in sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and Safety Code section 44014.7 as a means of identifying potential operational problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

### **Case Law Regarding Fraud**

21. The expansive definition of fraud has been discussed by the appellate court as follows:

[F]raud embraces multifarious means whereby one person gains an advantage over another and means in effect bad faith, dishonesty or overreaching. . . . 'It is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get an advantage over another. No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling and unfair ways by which another is cheated.'

*(Wayne v. Bureau of Private Investigators and Adjusters, Department of Professional and Vocational Standards (1962) 201 Cal.App.2d 427, 437-438 [citations omitted].)*

Indeed, "[T]here is no absolute or fixed rule for determining what facts will constitute fraud; whether or not it is found depends upon the particular facts of the case under inquiry." (*Ach v. Finkelstein* (1968) 264 Cal.App.2d 667, 674-675.) And continuing, "Fraud may be proved by direct evidence or it may be inferred from all of the circumstances in the case." (*Ibid.*)

### **Cause Exists to Discipline**

22. Cause exists to discipline L H Smog's ARD registration, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), as complainant demonstrated by a preponderance of evidence that L H Smog made or authorized untrue or misleading statements when its employee certified vehicles passed smog inspection including one vehicle that was observed by a Bureau inspector during a fraudulent inspection, and when the employee issued smog certifications for 10 additional vehicles using the clean plugging method, and the vehicles were not inspected or tested, as required by Health and Safety Code section 44012.

23. Cause exists to discipline L H Smog's ARD registration, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), as complainant demonstrated by a preponderance of evidence that L H Smog committed acts constituting fraud when it performed a fraudulent inspection observed by a Bureau inspector and issued electronic certificates of compliance for 10 additional vehicles without performing bona fide inspections of the emission control devices and systems.

24. Cause exists to discipline L H Smog's smog check station license, pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, subdivision (c), as complainant demonstrated by a preponderance of evidence that L H Smog's employee failed to comply with the Motor Vehicle Inspection Program and regulations adopted pursuant to it, due to violations of Health and Safety Code sections 44012 when L H Smog failed to test emission control systems and devices of a vehicle observed during a fraudulent inspection and of 10 additional vehicles, and 44015 when L H Smog issued electronic certificates of compliance, but failed to properly test and inspect the vehicles.

25. Cause exists to discipline L H Smog's smog check station license, pursuant to Health and Safety Code section 44072.2, subdivision (c), as complainant demonstrated by a preponderance of evidence that L H Smog's employee failed to comply with California Code of Regulations, title 16, sections 3340.35, subdivision (c), when L H Smog issued electronic certificates of compliance, but failed to inspect the vehicle observed during a fraudulent inspection and the 10 additional vehicles to ensure they had the required emission control equipment and devices installed and functioning correctly, and 3340.42 when L H Smog failed to conduct required smog tests on the vehicle observed during a fraudulent inspection and the 10 additional vehicles.

26. Cause exists to discipline L H Smog's smog check station license, pursuant to Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), as complainant demonstrated by a preponderance of evidence that L H Smog's employee committed acts involving dishonesty, fraud, or deceit by issuing electronic certificates of compliance for the vehicle observed during a fraudulent inspection and 10 additional vehicles without performing bona fide inspections of the emission control devices and systems.

### **Appropriate Level of Discipline and Evaluation**

27. Motor vehicle engine exhaust pollution has been shown to create health hazards for human beings, with the hazards increasing with the level of pollution. The incidents of the Bureau's investigator observing a fraudulent smog inspection being done before his eyes at L H Smog and the incidents of clean plugging of the 10 additional vehicles at L H Smog resulted in the issuance of fraudulent certificates of compliance allowing multiple vehicles to further pollute the air of California thereby injuring the public.

28. California Code of Regulations, title 16, section 3395.4, provides that in reaching a decision on a disciplinary action, the Bureau shall consider the disciplinary guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Rev. March 2016]. These guidelines provide the recommended discipline for various violations. The recommended discipline for issuing fraudulent inspections (Health & Saf. Code, § 44072.2, subd. (d)) is revocation. Factors in aggravation and mitigation may be considered when fashioning the appropriate measure of discipline.

29. Business and Professions Code section 9889.9 and Health and Safety Code section 44072.8 provide when a license has been revoked following a hearing,

any additional license issued under the Automotive Repair Act and Motor Vehicle Inspection Program in the name of the licensee may be likewise revoked or suspended by the Department's Director. Revocation of the additional licenses is not mandatory.

30. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee elects to operate their business through employees, the licensee must be responsible to the licensing authority for their conduct and is responsible for the acts of their agents or employees done in the course of their business. A licensee may not insulate themselves from regulation by electing to function through employees or independent contractors. (*Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.)

31. In this case, the facts are particularly egregious. Ms. Ly is the owner of L H Smog. Mr. Tri was an employee and the facility's smog check inspector. They were familiar with Mr. Magana who had conducted station inspections at L H Smog on May 18, 2022, and June 6, 2022, and had spoken with Ms. Ly and Mr. Tri, in English, regarding concerns with compliance issues.

32. The Bureau's VID indicated suspicious activity occurring at L H Smog to include 10 separate smog check inspections during a short period of time between January 2, 2023, and March 8, 2023. This activity was indicative of clean plugging. The record contains credible documentation and testimony by Mr. Magana that clean plugging occurred in each of the 10 instances. Mr. Tri was the licensed smog inspector who conducted each of the 10 inspections at L H Smog. The evidence of clean plugging is strong, as the idling and engine speeds in each test were not characteristic or expected for the normal engine operations for each of the 10 vehicles. Moreover, the data reported by the OIS system that was sent to the Bureau's VID, during the smog test of each of the 10 vehicles, along with Mr. Magana's corroborating

testimony, demonstrated the DAD was not connected to each of the 10 vehicles, but was instead connected to a different vehicle or a device. After each of these 10 fraudulent smog inspections, L H Smog issued fraudulent smog certificates of compliance for each of the 10 vehicles.

33. This case does not end with the egregious clean plugging of the 10 vehicles at L H Smog. A disturbing incident occurred at L H Smog on March 8, 2023, for which respondent cannot punt the blame onto others. Mr. Magana arrived near L H Smog. He noticed the Bureau's VID showed a 2002 Tacoma was being tested at that moment at L H Smog. However, when he looked across the parking lot, he did not see a 2002 Tacoma in the inspection bays of L H Smog. Instead, he saw a 2007 Lexus in the process of being inspected. Mr. Magana entered L H Smog and observed John Doe using the facility's OIS equipment and holding a fraudulent smog inspection device called a "defeater." Investigator Magana observed respondent laying in a hammock next to the 2007 Lexus and facing John Doe. When John Doe realized Mr. Magana was in the facility, he yelled, "BAR, it's the BAR, BAR," and started to quickly gather the OIS equipment and defeater device and rapidly walk out of the facility. Mr. Magana's credible testimony and photos entered in evidence demonstrated that he asked John Doe to leave behind the fraudulent equipment, and John Doe walked away but threw the defeater device onto the ground. John Doe has never been identified or seen since. Ms. Ly refused Mr. Magana's request to see the facility's smog inspection documents for that day, and Ms. Ly walked in and out of the facility without speaking with Mr. Magana. Mr. Tri showed up at some point, sat silently, said absolutely nothing to Mr. Magana, and did not respond to his questions.

34. The incident on March 8, 2023, at L H Smog was a disgrace to the smog inspection profession and ethics expected of those licensed and registered by the

Bureau. The incident was evidence of L H Smog getting caught in the act of fraudulent clean plugging of the 2002 Tacoma, and it is a blatant disregard for the statues, regulations, and policies that must be followed by a licensee of a registered ARD and licensed smog check testing facility.

35. In addition, the excuses set forth by Ms. Ly during the hearing are not persuasive. Ms. Ly asserted she should not be disciplined for several reasons, to include: she is 70 years old; she does not read or write in English, and speaks only basic words in English such as "yes," "no," "hi," and "bye"; she has no formal education in Vietnam or the United States; she did not have a Vietnamese interpreter during the station inspections conducted by Mr. Magana on May 18, 2022, and June 6, 2022; she was stressed financially after she purchased the facility because Bureau representatives would lock her smog testing machines and not unlock them until sometime later; and she purchased the facility from a person who told her she could have licensed inspectors do the smog inspections.

36. The record demonstrates Ms. Ly has resided in the United States since 1993, which is 32 years ago. Mr. Magana credibly testified that he communicated with Ms. Ly in English during his station inspections on May 18, 2022, and June 6, 2022, and he made no observations that she did not understand their conversations, nor did she report to him that she did not understand their conversations or that she did not understand the station reports that she signed. On this record, it is unpersuasive that Ms. Ly did not understand her conversations with Mr. Magana or the station reports that she signed.

37. Moreover, Ms. Ly's contention of her financial stressors during the transition of her becoming the owner of L H Smog and while the Bureau was checking that the facility and its equipment were validly functioning, are not persuasive. Such

stressors are not uncommon in the transfer of ownership of businesses and should be expected when becoming a new business owner. Ms. Ly's excuse that the previous owner told her that owning the facility would be easy is also not persuasive. It would seem foolish to anyone that owning any business is going to be "easy."

38. These excuses by Ms. Ly have nothing to do with the fact that 10 vehicles were clean plugged at her facility, L H Smog, and another vehicle, to wit: a 2002 Tacoma, was observed by Mr. Magana, in real time, being clean plugged at L H Smog by John Doe while respondent was lying casually in a hammock next to the vehicle that was being used to do the clean plugging. Ms. Ly cannot punt her responsibility. She is responsible for ensuring that nothing nefarious is happening at her facility, L H Smog, and that the pertinent laws and policies are being followed at all times.

39. Based on all the above, the appropriate discipline in this matter to ensure protection of the public is revocation.

### **Costs**

40. Business and Professions Code section 125.3, subdivision (a), authorizes an administrative law judge to direct a licensee who has violated the applicable licensing act to pay a sum not to exceed the reasonable costs of investigation and prosecution. The certification of costs in all respects satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and the certification supports a finding that costs in the amount of \$33,221.33 are reasonable in both the nature and extent of the work performed.

41. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth five factors to be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of

investigation and prosecution under statutes like Business and professions Code section 125.3. Those factors are: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

42. Applying the *Zuckerman* factors to this case leads to the following conclusions: L H Smog was not successful in getting some of the charges reduced; L H Smog did assert a good faith belief in the merits of its position; L H Smog did not raise a colorable challenge to the proposed discipline; L H Smog did not express a financial ability to pay costs, although L H Smog may have a lesser ability to pay the full costs upon revocation of its ARD registration and smog test station license; and the scope of the investigation was very appropriate in light of the alleged misconduct.

43. In consideration of all the factors of this case, the costs to be paid by L H Smog to the Bureau shall be reduced from \$33,221.33 to \$20,000.

## **ORDER**

1. Automotive Repair Dealer Registration No. ARD 301067 issued to respondent L H Smog<sup>1</sup> Check, dba L H Smog Check, Hoa Le Ly, President, Secretary, and Treasurer, is revoked.

2. Smog Check, Test Only Station License No. TC 301067 issued to respondent L H Smog Check, dba L H Smog Check, Hoa Le Ly, President, Secretary, and Treasurer, is revoked.

3. Respondent L H Smog Check, dba L H Smog Check, Hoa Le Ly, President, Secretary, and Treasurer, shall pay complainant's costs of investigation and enforcement of \$20,000, which may be paid on such terms as may be determined by the Bureau.

DATE: December 5, 2025



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings