

1 ROB BONTA
Attorney General of California
2 CHAR SACHSON
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (858) 899-5512
6 Facsimile: (415) 703-1107
E-mail: Justin.Surber@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/25-8669

13 **HUNG NGUYEN**
14 **DBA NINETY SMOG CHECK**
203 North 27th Street
San Jose, CA 95116

ACCUSATION

15 **Mailing Address**
16 3403 Marten Ave.
San Jose, CA 95148

17 **Automotive Repair Dealer Registration No. ARD 311043**
18 **Smog Check Test Only Station License No. TC 311043**

19 **HUNG NGUYEN**
3403 Marten Ave.
San Jose, CA 95148

20 **Smog Check Inspector License No. EO 644803**

21 Respondent.
22

23
24 **PARTIES**

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

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2. On or about December 12, 2024, the Bureau issued Automotive Repair Dealer Registration Number ARD 311043 to Hung Nguyen dba Ninety Smog Check (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2026, unless renewed.

3. On or about April 4, 2025, the Bureau issued Smog Check Test Only Station License Number TC 311043 to Respondent. The Smog Check Test Only Station License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2026, unless renewed.

4. On or about January 26, 2024, the Bureau issued Smog Check Inspector License Number EO 644803 to Respondent. The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2026, 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.

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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.

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 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.

14. 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.

15. 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

16. 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.

...

17. 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.

...

18. 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.

...

19. 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.

...

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:

...

(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.

21. 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.

COST RECOVERY

22. 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 FACTUAL ALLEGATIONS

23. 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 the Bureau of Automotive Repair (BAR). Smog inspection can only take place in Bureau approved work areas of Smog Stations.

24. 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).

25. 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

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

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

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

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

19 29. PIDs are data points reported by the vehicle on-board computer to a scan tool or
20 BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other
21 input and output values utilized by the vehicle's on-board computer.

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

1 is issued. The information from the smog inspection is then transmitted to the Vehicle
2 Information Data (VID).

3 31. The Bureau can access the VID to view test data on smog check inspections
4 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
5 particular vehicle which has been tested. The VID has an internal clock that is set to Pacific
6 Standard Time and records the time and date for each inspection. If a vehicle passes the Smog
7 Inspection, the vehicle information and test results are electronically transmitted to Department of
8 Motor Vehicles.

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

- 13 a. Engine speed in revolutions per minute (RPM),
- 14 b. Throttle position as measured by a throttle position sensor (TPS) mounted onto the
15 throttle shaft. The throttle position is measured in a percentage of opening from 0% at idle to up
16 to 100% at full throttle.
- 17 c. Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
18 connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a
19 normally aspirated vehicle are as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle,
20 and 101 kpa at full throttle (atmospheric pressure at sea level).
- 21 d. Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's
22 air intake tract. Air flow is measured in grams per second (gps).

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

26 34. One method is known as "clean plugging." "Clean plugging" is the act of using one
27 vehicle's properly functioning OBDII system, or another source such as an electronic defeat
28 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. The vehicle being certified is not being tested.

35. Defeat devices attempt to simulate engine operation during a Smog Check inspection by transmitting OBD II data to the VID which has been modified or replaced entirely for the purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a defeat device during a Smog Check inspection is clean plugging and is strictly prohibited.

36. Another method 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 is known as "Clean Piping." "Clean piping" is the act of using the emission sample of a known clean vehicle to substitute for the emissions of a vehicle that will not pass a smog inspection or is not present at the time of the test. The vehicle being certified is not being tested.

Clean Plugging Allegations

37. A Bureau representative performed a detailed review of the VID data for the Smog Check inspections performed at Respondent's Smog Check Station. 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. They were clean plugged.

38. Respondent personally performed 10 clean plugs. None of the 10 vehicles that were issued a certificate of compliance were legitimately inspected. An electronic defeat device was used to clean plug the vehicles.

Clean Plug 1:

39. On or about April 27, 2025, Respondent issued smog certificate # UO026925C to a 2003 Volkswagen GTI 20th Anniversary. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

40. The Dynamic data and PID Charts for the 2003 Volkswagen GTI 20th Anniversary shows between time stamp 848 and 33117 engine speed is steady at approximately 756 RPM.

1 During this time the MAF is fixed at 3.25 grams/sec, and the TPS is fixed at 11% opening. After
2 time stamp 33117 the engine RPM is increased, then held steady at approximately 1685 RPM.
3 From the time the engine RPM increases off idle to the higher RPM, the MAF are fixed at the
4 same 3.25 grams/sec, and the TPS is fixed at the same 11% opening. During the period the
5 dynamic data was collected, the only PID that changed was engine RPM. The MAF and TPS
6 readings remained unchanged even though the engine speed was increased. These readings are
7 not characteristic or expected for normal engine operation.

8 **Clean Plug 2:**

9 41. On or about April 28, 2025, Respondent issued smog certificate # UO026930C to a
10 2003 Ford F250 Super Duty. Respondent did not perform a legitimate smog inspection on the
11 vehicle. Respondent used an electronic defeat device to cause the OIS to issue a fraudulent
12 certificate of compliance to this vehicle.

13 42. The Dynamic data and PID Charts for the 2003 Ford F250 Super Duty shows
14 between time stamp 349 and 21524 engine speed is steady at approximately 772 RPM. During
15 this time the MAF is steady at 5.2 grams/sec, and the TPS is steady at 17.6% opening. After time
16 stamp 21524, the engine RPM is increased, then held steady at approximately 1789 RPM. During
17 this time the MAF is varying between 5.37 grams/sec and 6.57 grams/sec, and the TPS is varying
18 between 12.9% and 16.5% opening. When the RPM is raised and steady, MAF and TPS readings
19 are also expected to rise and be steady, not erratic and fluctuating. The elevated engine RPM with
20 the improbable MAF and TPS readings are not characteristic or expected for normal engine
21 operation.

22 **Clean Plug 3:**

23 43. On or about April 28, 2025, Respondent issued smog certificate # UO026932C to a
24 2003 Ford F350 Super Duty. Respondent did not perform a legitimate smog inspection on the
25 vehicle. Respondent used an electronic defeat device to cause the OIS to issue a fraudulent
26 certificate of compliance to this vehicle.

27 44. The Dynamic data and PID Charts for the 2003 Ford F350 Super Duty shows
28 between time stamp 349 and 20701 engine speed is steady at approximately 704 RPM. During

1 this time the MAF is steady at 6.92 grams/sec, and the TPS is steady at 20% opening. After time
2 stamp 20701, the engine RPM is increased, then held steady at approximately 1823 RPM. During
3 this time the MAF is varying between 5.29 grams/sec and 7.43 grams/sec, and the TPS is varying
4 between 19.6% and 23.5% opening. When the RPM is raised and steady, MAF and TPS readings
5 are also expected to rise and be steady, not erratic and fluctuating. The elevated engine RPM with
6 the improbable MAF and TPS readings are not characteristic or expected for normal engine
7 operation.

8 **Clean Plug 4:**

9 45. On or about May 4, 2025, Respondent issued smog certificate # UO026938C to a
10 2000 Ford F350 Super Duty. Respondent did not perform a legitimate smog inspection on the
11 vehicle. Respondent used an electronic defeat device to cause the OIS to issue a fraudulent
12 certificate of compliance to this vehicle.

13 46. The Dynamic data and PID Charts for the 2000 Ford F350 Super Duty shows
14 between time stamp 347 and 20887 engine speed is steady at approximately 625 RPM. During
15 this time the MAF is steady at 8.85 grams/sec, and the TPS is steady at 18.4% opening. After
16 time stamp 20887, the engine RPM is increased, then held steady at approximately 1789 RPM.
17 During this time the MAF is varying between 8 grams/sec and 10.07 grams/sec, and the TPS is
18 varying between 13.3% and 18% opening. When the RPM is raised and steady, MAF and TPS
19 readings are also expected to rise and be steady, not erratic and fluctuating. The elevated engine
20 RPM with the improbable MAF and TPS readings are not characteristic or expected for normal
21 engine operation.

22 **Clean Plug 5:**

23 47. On or about May 4, 2025, Respondent issued smog certificate # UO026943C to a
24 2005 Chevrolet Silverado C 1500. Respondent did not perform a legitimate smog inspection on
25 the vehicle. Respondent used an electronic defeat device to cause the OIS to issue a fraudulent
26 certificate of compliance to this vehicle.

27 48. The Dynamic data and PID Charts for the 2005 Chevrolet Silverado C 1500 shows
28 between time stamp 354 and 28095 engine speed is steady at approximately 687 RPM. During

1 this time the MAP is steady at 56 kPa, the MAF is steady at 7.12 grams/sec, and the TPS is steady
2 at 11.8% opening. After time stamp 28095, the engine RPM is increased, then held steady at
3 approximately 1943 RPM. During this time the MAP is varying between 48 kPa and 59 kPa, the
4 MAF is varying between 5.32 grams/sec and 7.53 grams/sec, and the TPS is varying between
5 9.8% and 10.2% opening. When the RPM is raised and steady, MAF and TPS readings are also
6 expected to rise and be steady, not erratic and fluctuating. The MAP should decrease and be
7 steady not erratic and fluctuating. The elevated engine RPM with the improbable MAP, MAF and
8 TPS readings are not characteristic or expected for normal engine operation.

9 **Clean Plug 6:**

10 49. On or about May 15, 2025, Respondent issued smog certificate # UO491979C to a
11 2001 GMC Yukon. Respondent did not perform a legitimate smog inspection on the vehicle.
12 Respondent used an electronic defeat device to cause the OIS to issue a fraudulent certificate of
13 compliance to this vehicle.

14 50. The Dynamic data and PID Charts for the 2001 GMC Yukon shows between time
15 stamp 353 and 21572 engine speed is steady at approximately 664 RPM. During this time the
16 MAP is steady at 34 kPa, the MAF is steady at 5.21 grams/sec, and the TPS is steady at 5.9%
17 opening. After time stamp 21572, the engine RPM is increased, then held steady at approximately
18 2030 RPM. During this time the MAP is varying between 32 kPa and 41 kPa, the MAF is varying
19 between 5.63 grams/sec and 7.25 grams/sec, and the TPS is varying between 0% and 5.1%
20 opening. When the RPM is raised and steady, MAF and TPS readings are also expected to rise
21 and be steady, not erratic and fluctuating. The MAP should decrease and be steady not erratic and
22 fluctuating. The elevated engine RPM with the improbable MAP, MAF and TPS readings are not
23 characteristic or expected for normal engine operation.

24 **Clean Plug 7:**

25 51. On or about May 25, 2025, Respondent issued smog certificate # UO948817C to a
26 2003 Chevrolet Silverado K1500 Heavy Duty. Respondent did not perform a legitimate smog
27 inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS to issue a
28 fraudulent certificate of compliance to this vehicle.

1
2 52. The Dynamic data and PID Charts for the 2003 Chevrolet Silverado K1500 Heavy
3 Duty shows between time stamp 357 and 21123 engine speed is steady at approximately 819
4 RPM. During this time the MAP is steady at 37 kPa, the MAF is steady at 4.46 grams/sec, and the
5 TPS is steady at 5.5% opening. After time stamp 21123, the engine RPM is increased, then held
6 steady at approximately 2142 RPM. During this time the MAP is varying between 35 kPa and 42
7 kPa, the MAF is varying between 3.44 grams/sec and 4.52 grams/sec, and the TPS is varying
8 between 0% and 2.4% opening. When the RPM is raised and steady, MAF and TPS readings are
9 also expected to rise and be steady, not erratic and fluctuating. The MAP should decrease and be
10 steady not erratic and fluctuating. The elevated engine RPM with the improbable MAP, MAF
11 and TPS readings are not characteristic or expected for normal engine operation.

12 **Clean Plug 8:**

13 53. On or about May 25, 2025, Respondent issued smog certificate # UO948830C to a
14 2000 Ford Econoline E350 Super Duty Cutaway Van. Respondent did not perform a legitimate
15 smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS to
16 issue a fraudulent certificate of compliance to this vehicle.

17 54. The Dynamic data and PID Charts for the 2000 Ford Econoline E350 Super Duty
18 Cutaway Van shows between time stamp 340 and 20185 engine speed is steady at approximately
19 846 RPM. During this time the MAF is steady at 7.03 grams/sec, and the TPS is steady at 18.4%
20 opening. After time stamp 20185, the engine RPM is increased, then held steady at
21 approximately 2076 RPM. During this time the MAF is varying between 6.14 grams/sec and 7.6
22 grams/sec, and the TPS is varying between 12.5% and 18% opening. When the RPM is raised
23 and steady, MAF and TPS readings are also expected to rise and be steady, not erratic and
24 fluctuating. The elevated engine RPM with the improbable MAF and TPS readings are not
25 characteristic or expected for normal engine operation.

26 **Clean Plug 9:**

27 55. On or about May 25, 2025, Respondent issued smog certificate # UO948831 to a
28 2001 Ford F350 Super Duty. Respondent did not perform a legitimate smog inspection on the

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

3 56. The Dynamic data and PID Charts for the 2001 Ford F350 Super Duty shows
4 between time stamp 381 and 22193 engine speed is steady at approximately 816 RPM. During
5 this time the MAF is steady at 5.42 grams/sec, and the TPS is steady at 17.6% opening. After
6 time stamp 22193, the engine RPM is increased, then held steady at approximately 1817 RPM.
7 During this time the MAF is varying between 5.58 grams/sec and 7.21 grams/sec, and the TPS is
8 varying between 12.9% and 17.3% opening. When the RPM is raised and steady, MAF and TPS
9 readings are also expected to rise and be steady, not erratic and fluctuating. The elevated engine
10 RPM with the improbable MAF and TPS readings are not characteristic or expected for normal
11 engine operation.

12 **Clean Plug 10:**

13 57. On or about May 26, 2025, Respondent issued smog certificate # UO948833C to a
14 2003 Chevrolet Silverado C3500. Respondent did not perform a legitimate smog inspection on
15 the vehicle. Respondent used an electronic defeat device to cause the OIS to issue a fraudulent
16 certificate of compliance to this vehicle.

17 58. The Dynamic data and PID Charts for the 2003 Chevrolet Silverado C3500 shows
18 between time stamp 355 and 21351 engine speed is steady at approximately 808 RPM. During
19 this time the MAP is steady at 34 kPa, the MAF is steady at 5.85 grams/sec, and the TPS is steady
20 at 3.9% opening. After time stamp 21351, the engine RPM is increased, then held steady at
21 approximately 1816 RPM. During this time the MAP is varying between 35kPa and 45 kPa, the
22 MAF is varying between 5.39 grams/sec and 7.53 grams/sec, and the TPS is varying between
23 1.6% and 2.7% opening. When the RPM is raised and steady, MAF and TPS readings are also
24 expected to rise and be steady, not erratic and fluctuating. The MAP should decrease and be
25 steady not erratic and fluctuating. The elevated engine RPM with the improbable MAP, MAF and
26 TPS readings are not characteristic or expected for normal engine operation.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements - Registration)**

3 59. Respondent has subjected his Automotive Repair Dealer Registration to discipline
4 under Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he
5 knew or which by exercise of reasonable care should have known were untrue or misleading, as
6 set forth above in the Smog Program and Clean Plugging Allegations. Respondent purported to
7 test vehicles, and certified that the vehicles passed inspection and were in compliance with
8 applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles
9 using clean-plugging methods.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud - Registration)**

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

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(False or Misleading Records-Registration)**

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

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Dishonesty, Fraud or Deceit – Smog Check Licenses)**

26 62. Respondent has subjected his Smog Check Station License and Smog Check
27 Inspector License to discipline under Health and Safety Code sections 44072.10 and/or 44072.2,
28 subdivision (d), in that it committed acts involving dishonesty, fraud or deceit, whereby another

1 was injured by issuing electronic certificates of compliance for vehicles without performing bona
2 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
3 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program. Respondent participated in clean-plugging as set forth above in the Smog Program and
5 Clean Plugging Allegations above.

6 **FIFTH CAUSE FOR DISCIPLINE**

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

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

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

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

17 c. **Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in
18 accordance with Health and Safety Code section 44012 and California Code of Regulations, title
19 16, section 3340.42.

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

22 e. **Section 3340.41, subdivision (h):** Respondent had electronic devices or software
23 capable of simulating the OBD data stream from a vehicle or manipulating OBD VIN, calibration
24 identification, calibration verification number, MIL status, readiness, or diagnostic trouble codes
25 collected from a vehicle during a Smog Check Inspection in the approved testing area of the
26 station.

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

g. **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.

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

OTHER MATTERS

64. 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.

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

DISCIPLINE CONSIDERATIONS

66. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about March 19, 2025, the Bureau conducted an Initial Station Inspection with Respondent. Respondent was advised that no false information about the vehicle being tested will be entered in the analyzer, tests and inspections shall be performed in accordance with the Bureau's Smog Check Manual, and that compliance with the Automotive Repair Act was mandatory.

67. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 4, 2025, the Bureau conducted a follow-up Initial Station Inspection with Respondent. Respondent was advised that no false information about the vehicle being tested will be entered in the analyzer, tests and inspections shall be performed in accordance with the Bureau's Smog Check Manual, and that compliance with the Automotive Repair Act was mandatory.

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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 311043, issued to Hung Nguyen dba Ninety Smog Check;
 2. Revoking or suspending any additional Automotive Repair Dealer Registration(s) issued to Hung Nguyen;
 3. Revoking or suspending Smog Check Test Only Station License Number TC 311043, issued to Hung Nguyen;
 4. Revoking or suspending Smog Check Inspector License Number EO 644803, issued to Hung Nguyen;
 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Hung Nguyen;
 6. Ordering Hung Nguyen 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: 2025.11.21 13:45:24 -08'00'

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

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