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

In the Matter of the Accusation Against**:** **TUAT XUAN PHAM** **dba SKY FC** 1168 Peach Court San Jose, CA 95116 **Mailing Address** 931 Branham Lane Apt D San Jose, CA 95136 **Automotive Repair Dealer Registration No. ARD 311340** **Smog Check Station License No. TC 311340** **TUAT XUAN PHAM** 3623 Bridal Place Ct San Jose, CA 95121 **Smog Check Inspector License No. EO 644755** Respondent.	Case No. 79/25-6010 **ACCUSATION**

PARTIES

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

2. On or about January 27, 2025, the Bureau issued Automotive Repair Dealer Registration Number ARD 311340 to Tuat Xuan Pham (Respondent) dba Sky Fc. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2027, unless renewed.

3. On or about April 3, 2025, the Bureau issued Smog Check Station License Number TC 311340 to Respondent. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2027, unless renewed. The Smog Check Station License was STAR certified on July 18, 2025.

4. On or about December 20, 2023, the Bureau issued Smog Check Inspector License Number EO 644755 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 February 28, 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.

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.
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> . . .
>
> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
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> . . .
>
> (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.
>
> . . .
>
> (e) For purposes of this section, "fraud" includes, but is not limited to, violations of this chapter involving misrepresentations and all of the following:
>
> (1) Any act or omission that is included within the definition of either "actual fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573 of the Civil Code.
>
> (2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.
>
> (3) A promise or representation not made honestly and in good faith.
>
> (4) An intentional failure to disclose a material fact.
>
> (5) Any act in violation of Section 484 of the Penal Code.

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

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

. . .

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

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

13. Section 44059 of the Health and Safety Code states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

14. Section 44072.2 of the Health and Safety Code states:

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

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

. . .

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

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

. . .

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

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

When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee

may be likewise revoked or suspended by the director.

16. Section 44072.10, of the Health and Safety Code states, in pertinent part:

. . .

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

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

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

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

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

. . .

REGULATORY PROVISIONS

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

. . .

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

. . .

18. California Code of Regulations, title 16, section 3340.15, states:

A smog check station shall meet the following requirements for licensure and shall comply with these requirements at all times while licensed.

(a) The testing and repairing of vehicles shall be performed only in a work area of the station that has been approved by the Bureau. Other work may be performed in the approved area, as desired. Except for heavy-duty vehicles, the work area shall be within a building and shall be large enough to accommodate the type of vehicle being serviced. In the case of the testing and repair of heavy-duty vehicles the work area need not be in a building, but the emissions inspection system used at the station may only be used within a building. The work area shall be kept clean and orderly.

19. 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.

. . .

20. 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.

. . .

21. 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.

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22. 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.

23. 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

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

SMOG PROGRAM AND CLEAN PLUGGING ALLEGATIONS

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

26. California's Smog Check Program requires the owners of most motor vehicles in California to take and pass a Smog Check inspection and receive a Certificate of Compliance every two years when renewing their registration and also when the vehicle's title is transferred.

These inspections are performed by Smog Check Inspectors at Smog Check Stations, both of which are licensed by BAR.

27. 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).

28. The inspector also performs visual and functional tests on the vehicle as outlined in the Smog Check Manual. The visual inspection of the emission control components verifies the required emission control devices are present and properly connected. Functional tests are also performed which, depending on the vehicle, may include checking the ignition timing, malfunction indicator light (MIL), exhaust gas recirculation (EGR) system, a low-pressure test of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas cap.

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

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

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

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

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

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

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

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

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

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

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

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

37. During normal engine operation at idle, engine speed is relatively steady around its target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or MAF readings are also steady. For the engine speed to increase, the throttle would have to be opened to increase airflow through the engine. The engine's management systems supply fuel and spark timing appropriate to any changes in throttle position and engine speed. An increase in throttle, measured by the TPS, which increases engine RPM, would result in a corresponding increase in MAF as well as a change in MAP.

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

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

40. The BAR initiated an investigation of Respondent's smog check station Sky Fc. The investigation revealed Respondent personally performed 10 smog inspections using clean-plugging methods. Respondent issued 10 certificates of compliance to the clean plugged vehicles.

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

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

Clean Plug 1:

43. On or about April 3, 2025, Respondent issued smog certificate # UM321451C to a 2003 Nissan Frontier. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

44. The Dynamic Data and Dynamic Data Charts for the 2003 Nissan Frontier shows between time stamp 193 and 19541 engine speed is steady around 700 rpm. At time stamp 20141 engine speed drops to 379 rpm. During this time the throttle is at 3.9% opening. The MAF is at 9.86gps. At time stamp 20612 the engine speed begins to accelerate. Between time stamp 21984 and 36806 the engine speed is accelerated then held steady at around 1700 rpm. During this time the throttle is decreased to 1.6% then increases to 2.7% then decreases to 1.6% then increases to 4.3% then decreases to 2% then to 0.4% opening. The MAF remains steady at 9.59gps until time stamp 23807 then decreases to 8.25gps then increases 9.26gps then decreases to 8.46gps then increases to 10.03gps then decreases to 7.92gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and/ or MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 2:

45. On or about April 3, 2025, Respondent issued smog certificate # UM321453C to a 2001 Ford F150. Respondent did not perform a legitimate smog inspection on the vehicle.

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

46. The Dynamic Data and Dynamic Data Charts for the 2001 Ford F150 shows between time stamp 23 and 23776 engine speed is steady around 650 rpm. During this time the throttle is at 17.3% opening. The MAF is at 8.25gps. Between time stamp 26489 and 42298 the engine speed is accelerated then held steady at around 1350 rpm. During this time the throttle decreases to 14.9% then increases to 16.1% then decreases to 15.7% then to 14.5% then increases to 15.7% then decreases to 15.3% then increases to 18% then decreases to 14.1% then increases to 16.1% then to 16.9% opening. The MAF decrease from 9.12gps to 7.97gps then increases to 9.29gps then to 9.99gps then decreases to 8.29gps then increases to 8.58gps then to 8.7gps then decreases to 7.95gps then increases to 7.98gps then to 10.19gps then decreases to 9.23gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 3:

47. On or about April 3, 2025, Respondent issued smog certificate # UM321454C to a 2003 Ford Econoline E250. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

48. The Dynamic Data and Dynamic Data Charts for the 2003 Ford Econoline E250 shows between time stamp 21 and 20739 engine speed is steady around 850 rpm. During this time the throttle is at 18.4% opening. The MAF is at 5.03gps. Between time stamp 22561 and 38447 the engine speed is accelerated then held steady around 1700 rpm. During this time the throttle is decreased to 18% then decreases to 12.5% then increases to 16.1% then decreases to 12.5% then increases to 15.7% then to 17.3% then decreases to 12.9% then increases to 17.6% then decreases to 14.5% then increases to 15.3% opening. The MAF decreases to 4.41gps then decreases to 3.61gps then increases to 4.73gps then to 4.77gps then decreases to 2.82gps then to 2.75gps then increases to 5.04gps then decreases to 4.26gps then to 2.8gps then increase sto 4.51gps. The steady idle and steady elevated engine speeds with the associated varying throttle

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

Clean Plug 4:

49. On or about April 4, 2025, Respondent issued smog certificate # UM321460C to a 2001 Subaru Legacy Outback. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

50. The Dynamic Data and Dynamic Data Charts for the 2001 Subaru Legacy Outback shows between time stamp 180 and 20733 engine speed is steady around 625 rpm. During this time the throttle is at 0% opening. The MAP is at 27kpa.The MAF is at 2.38gps. At time stamp 21489 the engine speed begins to accelerate the throttle opening increases to 2.7% opening. The MAP increases to 28kpa. the MAF decreases to .36gps, below the maximum value at idle. Between time stamp 24198 and 394705 the engine speed is accelerated then held steady around 1800 rpm. During this time the throttle is increased to 2.7% then decreases to 0.4% then increases to 4.3% then decreases to 1.2% opening. The MAP at 28kpa and decreases to 20kpa then increases to 24kpa then to 30kpa. The MAF decreases to 0.36gps then increases to 0.88gps then to 1.39gps then decreases to 0.23gps then increase to 1.9gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and/ or MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 5:

51. On or about April 5, 2025, Respondent issued smog certificate # UM321478C to a 2001 Honda Accord. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

52. The Dynamic Data and Dynamic Data Charts for the 2001 Honda Accord shows between time stamp 114 and 19790 engine speed is steady around 750 rpm. During this time the throttle is at 9.8% opening. The MAP is at 28kpa. At time stamp 20018 rpm drops to 489 and then continues to drop to 276 rpm then increases to 401 rpm at time stamp 20471. The

throttle opening continues to slightly increase to 11.0% opening. The MAP decreases to 21kpa. At time stamp 20705 the engine speed begins to accelerate the throttle opening increases to 11% opening. The MAP decreases to 21kpa. Between time stamp 22385 and 36598 the engine speed is accelerated then held steady at around 1800 rpm. During this time the throttle is at 11% then decreases to 10.6% then to 7.8% then increases to 11.8% then decreases to 9.8% then to 9.4% then to 9% opening. The MAP is at 28kpa and then decreases to 21kpa then increases to 30kpa then decreases to 16kpa then increases to 20kpa. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and/ or MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 6:

53. On or about April 5, 2025, Respondent issued smog certificate # UM321489C to a 2000 Honda Accord. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

54. The Dynamic Data and Dynamic Data Charts for the 2000 Honda Accord shows between time stamp 113 and 20943 engine speed is steady around 750 rpm. During this time the throttle is at 9.8% opening. The MAP is at 27kpa. At time stamp 21474 the engine speed begins to accelerate the throttle opening increases to 11.8% opening. The MAP decreased to 24kpa. Between time stamp 22700 and 38198 the engine speed is accelerated then held steady around 1650 rpm. During this time the throttle is increased to 11.8% then decreases to 7.1% then increases to 9.4% then decreases to 8.6% then to 7.5% then increases to 11.4% then decreases to 10.2% then to 7.1% then to 6.3% opening. The MAP is at 24kpa and then decreases to 16kpa then increases to 23kpa then decreases to 20kpa then increases to 28kpa then decreases to 21kpa then increases to 27kpa. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and/ or MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 7:

55. On or about April 5, 2025, Respondent issued smog certificate # UM321490C to a 2001 Toyota Corolla. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

56. The Dynamic Data and Dynamic Data Charts for the 2001 Toyota Corolla shows between time stamp 131 and 19168 engine speed is steady at around 750 rpm. During this time the throttle is at 10.6% opening. The MAF is at 1.98gps. At time stamp 20283 the engine speed begins to accelerate the throttle opening decreases to 7.8% opening. The MAP decreases to 0.81gps. The throttle opening is below the maximum value at idle and MAF is below the maximum value at idle. Between time stamp 21792 and 36797 the engine speed is accelerated then held steady at around 2000 rpm. During this time the throttle is decreased to 7.8% then increases to 11.4% then decreases to 6.3% then increases to 6.7% then to 7.5% then to 10.6% then decreases to 8.2% then increases to 11.8% opening. The MAF at 0.81gps then increases to 2.45gps then decreases to 2.36gps then to 1.12gps then increases to 1.96gps then decreases to 1.68gps then to 1.06gps then to 0.16gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and/ or MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 8:

57. On or about April 5, 2025, Respondent issued smog certificate # UM321491C to a 2001 Toyota Corolla. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

58. The Dynamic Data and Dynamic Data Charts for the 2001 Toyota Corolla shows between time stamp 144 and 19336 engine speed is steady around 700 rpm. During this time the throttle is at 11.4% opening. The MAF is at 1.43gps. At time stamp 20212 the engine speed begins to accelerate, the throttle opening increased to 11.8% opening. The MAF increases to 1.58gps. Between time stamp 20711 and 36739 the engine speed is accelerated then held steady at around 2000 rpm. During this time the throttle is increased to 11.8% then decreases to 8.6%

then increases to 9.8% then decreases to 6.7% then increases to 11.4% then decreases to 9.4% then to 7.8% opening. The MAF is at 1.58gps then decreases to .87gps then to 0.4gps then increases to 0.86gps then to 1.34gps then decreases to 0.29gps then increases to 0.41gps then to 1.63gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and/ or MAF readings are not characteristic or expected for normal engine operation.

Clean Plug 9:

59. On or about April 5, 2025, Respondent issued smog certificate # UM390915C to a 2005 Mini Cooper S. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

60. The Dynamic Data and Dynamic Data Charts for the 2005 Mini Cooper S shows between time stamp 125 and 19874 engine speed is steady around 800 rpm. The throttle is fixed at 10.2% opening The MAP is fixed at 53kpa. At time stamp 21118 the engine speed begins to accelerate. The throttle opening and MAP is fixed. Between time stamp 22354 and 37237 the engine speed is accelerated then held steady around 1550 rpm. During the steady elevated engine RPM, the throttle is fixed at 10.2% opening. The MAP is fixed at 53kpa. The steady idle and steady elevated engine speeds with the associated fixed throttle positions and subsequent fixed MAP readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 10:

61. On or about April 12, 2025, Respondent issued smog certificate # UM554491C to a 2000 Toyota Echo. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

62. The Dynamic Data and Dynamic Data Charts for the 2000 Toyota Echo shows between time stamp 133 and 20167 engine speed is steady around 750 rpm. During this time the throttle is at 11.4% opening. The MAF is at 2.28gps. At time stamp 20933 the engine speed

begins to accelerate the throttle opening remains at the same 11.4% opening. The MAF decreased to 1.58gps. Between time stamp 21294 and 36846 the engine speed is accelerated then held steady around 1850 rpm. During this time the throttle is 11.4% then decreases to 8.6% then to 7.1% then increases to 11% then decreases to 6.3% then increases to 10.6% then decreases to 6.7% opening. The MAF is at 1.58gps then decreases to 0.87gps then to 0.37gps then increases to 0.43gps then to 1.35gps then to 2.32gps then decreases to 0.98gps then increases to 2.3gps. The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and/ or MAF readings are not characteristic or expected for normal engine operation.

Station Inspections and Interviews

63. On or about May 2, 2025, a field visit was conducted at Respondent's Smog Station Sky Fc. A Bureau program representative reviewed the VID that day. It showed that Respondent was performing a smog inspection at Sky Fc. Upon arrival at Sky Fc, a Bureau program representative reviewed the VID which indicated a smog inspection was in progress. However, Sky Fc was closed with no technician present. The representative did not observe any vehicle nor employee present at Sky Fc.

64. On or about May 13, 2025, Respondent agreed to meet at the Bureau's San Jose Field Office to discuss the May 2, 2025, field visit. Respondent admitted that he been performing mobile Smog Inspections outside of the approved testing location. Respondent admitted performing over 100 off-site inspections.

65. On August 8, 2025, Respondent admitted to performing 400 to 500 illegal smog inspections via clean plugging methods. Respondent admitted to using an electronic defeat device.

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FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Registration)

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

SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

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

THIRD CAUSE FOR DISCIPLINE

(False or Misleading Records-Registration)

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

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit – Smog Licenses)

69. Respondent has subjected his Smog Check Station License and Smog Check Inspector License to discipline under Health and Safety Code sections 44072.10 and/or 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving

the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Respondent participated in clean-plugging as set forth above in the Smog Program and Clean Plugging Allegations above.

FIFTH CAUSE FOR DISCIPLINE

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

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

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

b. **Section 3340.15, subdivision (a):** Respondent inspected vehicles outside of the Bureau approved work area.

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

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

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

f. **Section 3340.41, subdivision (h):** Respondent had electronic devices 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 in the approved testing area of the station.

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

h. **Section 3340.45:** Respondent violated the procedures contained in the Smog Check Manual by entering vehicle identification information for vehicles that were not being tested.

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

OTHER MATTERS

71. 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.

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

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 311340, issued to Tuat Xuan Pham dba Sky Fc;

2. Revoking or suspending Smog Check Station License Number TC 311340, issued to Tuat Xuan Pham dba Sky Fc;

3. Revoking or suspending Smog Check Inspector License Number EO 644755, issued to Tuat Xuan Pham;

4. Revoking or suspending any additional Automotive Repair Dealer Registration(s) issued to Tuat Xuan Pham;

5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Tuat Xuan Pham;

6. Ordering Tuat Xuan Pham 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: 2026.01.26 11:24:52 -08'00'

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

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