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

13 In the Matter of the Accusation Against:

Case No. 79/23-3968

14 **HOA LE LY -**
15 **PRESIDENT/SECRETARY/TREASURER**
16 **L H SMOG CHECK DBA L H SMOG**
17 **CHECK**
18 **313 South Harbor Blvd. # B.**
19 **Santa Ana, CA 92704**

ACCUSATION

20 **Automotive Repair Dealer Registration**
21 **Number ARD 301067, Smog Check, Test**
22 **Only Station Number TC 301067**

23 **-and-**

24 **KAI DAI TRI**
25 **14892 Valencia Plz,**
26 **Westminster, CA 92683**

27 **Smog Check Inspector License Number EO**
28 **642011**

Respondents.

PARTIES

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

1 2. On or about November 12, 2021, the Bureau of Automotive Repair issued
2 Automotive Repair Dealer Registration Number ARD 301067 to L H Smog Check, dba L H
3 Smog Check, Hoa Le Ly, President (Respondent L H Smog Check or Respondents). The
4 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
5 charges brought herein and will expire on November 30, 2023, unless renewed.

6 3. On or about December 2, 2021, the Bureau of Automotive Repair issued Smog
7 Check, Test Only Station Number TC 301067 to L H Smog Check, dba L H Smog Check, Hoa
8 Le Ly, President. The Smog Check, Test Only Station was in full force and effect at all times
9 relevant to the charges brought herein and will expire on November 30, 2023, unless renewed.

10 4. Respondent L H Smog Check is also certified as a STAR Station. The certification
11 was issued on January 31, 2022 and will remain active unless the ARD registration and/or Smog
12 Check Station license is revoked, cancelled, licenses become delinquent, or the certification is
13 suspended.

14 5. On or about June 10, 2019, the Bureau of Automotive Repair issued Smog Check
15 Inspector License Number EO 642011 to Kai Dai Tri (Respondent Tri or Respondents). The
16 Smog Check Inspector License expires on May 31, 2025, unless renewed.

JURISDICTION

17
18 6. This Accusation is brought before the Director of the Department of Consumer
19 Affairs (“Director”) for the Bureau, under the authority of the following laws.

20 7. Code section 22 subdivision (a), of the Business and Professions Code¹ states:

21 “Board” as used in any provision of this Code, refers to the board in which the
22 administration of the provision is vested, and unless otherwise expressly provided,
23 shall include “bureau,” “commission,” “committee,” “department,” “division,”
24 “examining committee,” “program,” and “agency.”

24 8. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes
25 “registration” and “certificate.”

26
27 ¹ All statutory references herein shall be to the Business and Professions Code unless
28 specifically stated otherwise.

1 9. Section 9884.7 of the Business and Professions Code² provides that the Director may
2 revoke an ARD registration.

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

7 11. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
8 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
9 the Motor Vehicle Inspection Program.

10 12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
11 expiration or suspension of a license by operation of law, or by order or decision of the Director
12 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
13 the Director of jurisdiction to proceed with disciplinary action.

14 **STATUTORY PROVISIONS**

15 13. Section 9884.7 of the Code states:

16 (a) The director, where the automotive repair dealer cannot show there was a
17 bona fide error, may deny, suspend, revoke, or place on probation the registration of
18 an automotive repair dealer for any of the following acts or omissions related to the
19 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.

20 (1) Making or authorizing in any manner or by any means whatever any
21 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.

22 ...

23 (4) Any other conduct which constitutes fraud.

24 ...

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

26 ///

27 _____
28 ² All statutory references herein shall be to the Business and Professions Code unless
specifically stated otherwise.

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

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

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

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

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

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

10 . . .

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

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

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

16 **REGULATORY PROVISIONS**

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

18 The bureau may suspend or revoke the license of or pursue other legal action
19 against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate
of compliance or a certificate of noncompliance.

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

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

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

24 18. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

25

26 (c) A licensed station shall issue a certificate of compliance or noncompliance
27 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
28 emission control equipment and devices installed and functioning correctly. . . .

1 relay information; and the number of Parameter Identifications (“PIDs”), which is the number of
2 specific data values each PCM uses related to emissions controls.

3 23. If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
4 inspection and a Certificate of Compliance is issued and transmitted electronically to the Vehicle
5 Information Database (“VID”). These Certificates of Compliance are purchased in blocks of fifty
6 (50) through the EIS or OIS from the VID, using a pre-arranged electronic bank account debit
7 system or by check, via mail, from Bureau Headquarters in Sacramento. Each Certificate of
8 Compliance has a unique control number so that it can be tracked to determine which Smog
9 Check Station purchased the Certificate of Compliance and to which vehicle it was issued.

10 24. The VID contains registration data from Department of Motor Vehicles (“DMV”)
11 plus emission standards, vehicle smog check inspections, smog check stations and technicians,
12 and Certificates of Compliance. The VID receives the passing smog check results immediately
13 following the inspection. During the vehicle registration process, the DMV accesses the VID to
14 verify that the vehicle has been tested and certified. The Bureau can also access the VID to view
15 test data on smog check inspections performed at any Smog Check Station, or search for, retrieve,
16 and print a test record for a particular vehicle which has been tested. The EIS or OIS, depending
17 on the test type, also prints a Vehicle Inspection Report (“VIR”), which is a physical record of the
18 test results and shows the Certificate of Compliance number that was issued if the vehicle passed
19 the smog inspection.

20 25. The smog check technician must sign the VIR under penalty of perjury to indicate
21 that the inspection was done within Bureau guidelines. Smog Check Stations are required by law
22 to maintain a copy of the VIR along with a copy of the repair invoice for three years. The
23 consumer’s VIR serves as a receipt and proof that the VID was updated and a Certificate of
24 Compliance was issued. Licensed Smog Check Technicians are the only persons authorized by
25 the Bureau to perform official inspections. They are issued a personal access code and a license,
26 which are used to gain access to the EIS and OIS to perform smog check inspections.
27 Unauthorized use of another technician’s access code or license is prohibited.

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1 26. Respondents have engaged in numerous acts or omissions constituting violations of
2 the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*) and Motor
3 Vehicle Inspection Program (Health and Safety Code section 44000 *et seq.*) through their practice
4 of “clean plugging.”³ Respondent Tri’s OIS Test Data available on the State database indicates
5 that Respondent Tri is involved in fraudulent smog inspection activities. A Bureau representative
6 initiated an investigation based on information transmitted to the VID for smog check inspections
7 performed by Respondent Tri. The investigation revealed that the data related to certain vehicles
8 certified by Respondent Tri contained a pattern of unmistakable discrepancies between the
9 information transmitted during the inspections and documented information known about the
10 vehicles at issue.

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

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

25
26

³ “Clean plugging” refers to the use of another vehicle’s properly functioning On Board
27 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
28 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.

1 28. During normal engine operation at idle, engine speed is relatively steady around its
2 target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or
3 MAF readings are also steady. In order for the engine speed to increase, the throttle would have to
4 be opened in order to increase airflow through the engine. The engine's management systems
5 supply fuel and spark timing appropriate to any changes in throttle position and engine speed. An
6 increase in throttle, measured by the TPS, which increases engine RPM, would result in
7 corresponding increases in MAF as well as a change in MAP. Stated another way, any movement
8 in the throttle from the idle position will result in an increase of airflow through the engine with
9 corresponding increases RPM and MAF along with changes in MAP.

10 29. During an OIS Smog Check inspection, along with other visual and functional
11 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
12 with the engine idling and, when requested by the OIS analyzer, and an elevated or increased
13 engine speed. The increase in engine speed is performed by the inspector by stepping on the
14 throttle pedal or manually opening the throttle resulting in a corresponding increase in engine
15 RPMs by allowing an increase in airflow into the engine.

16 **Station Inspection of Respondent's Shop March 8, 2023**

17 30. On March 8, 2023, Bureau Program Representative Nicholas Magana (Magana)
18 arrived at a location near L H Smog Check at or around 1220 hours. He checked to see that the
19 camera time stamp matched the VID. While checking the VID time, Magana noted that a Smog
20 Check inspection for a 2002 Toyota Tacoma Double Cab PreRunner, VIN
21 #5TEGN92N12Z012724, CA License #54082R2 (2002 Tacoma) was in process. At 1222, he
22 observed there was no 2002 Tacoma in the L H Smog Check inspection bays.

23 31. Magana drove to L H Smog Check arriving at or around 1227. Prior to entering the
24 inspection bay, he drove through the parking lot looking for the 2002 Tacoma, which he did not
25 find. He parked his car blocking the empty left inspection bay. Upon entering the facility, he
26 heard an unidentified male (John Doe) yell out "BAR, it's the BAR, BAR." Magana found a 2007
27 Lexus ES 350, CA license #7YHG945 (2007 Lexus), in the right inspection bay. Owner Hoa Le
28 Ly (Ly) was lying in a hammock facing in the direction of the OIS analyzer next to the 2007

1 Lexus. John Doe made his way to the OIS analyzer and gathered electronic defeat device
2 equipment. Magana asked John Doe not to take anything from the inspection bay, but he
3 continued, exiting the inspection bay with the electronic defeat device equipment.

4 32. John Doe left the inspection bay area and walked away into the parking lot with his
5 gathered electronic defeat device equipment. Magana followed John Doe, asking him to surrender
6 the equipment. John Doe surrendered one (1) piece of the equipment which he had taken from L
7 H Smog Check.

8 33. Magana returned to the inspection bay area of L H Smog Check. He asked Ly to
9 provide him with the day's invoices including the just completed 2002 Tacoma. She could not or
10 would not provide him with any paperwork. Magana reviewed the Smog Check inspection history
11 for the 2002 Tacoma. He saw the 2002 Tacoma had three (3) recent Smog Check inspection
12 failures. On March 6, 2023, at L H Smog Check, just two (2) days prior to his observation of the
13 fraudulent inspection at L H Smog Check, the 2002 Tacoma failed its Smog Check Inspection.
14 Specifically the 2002 Tacoma failed for an illuminated MIL light and service fault code of P0420-
15 Catalyst System Efficiency Below Threshold Bank 1.

16 34. Magana conducted a detailed review of the VID data for the Smog Check inspections
17 performed at L H Smog Check. The review showed a pattern of vehicles being certified with
18 engine operating parameters not corresponding to normal engine operation, confirming the
19 vehicles receiving smog certificates were not tested during the OBD II functional test, which
20 constitutes clean plugging. His comprehensive review into the Smog Check activities at L H
21 Smog Check confirmed ten (10) additional Smog Check Certificates of Compliance were
22 fraudulently issued by Respondent Tri during the smog inspection using the "clean plugging"
23 method as follows:

24 **Clean Plug #1**

25 35. Magana's review indicates on January 2, 2023, a 2006 Chevrolet Tahoe C1500, VIN
26 #1GNEC13V46R135780, CA License #5SRW248 (2006 Tahoe), was tested and smog certificate
27 #TC239105C was issued under licensed Smog Check Technician #EO 642011, Kai Dai Tri. The
28 Dynamic PID Charts for the 2006 Tahoe shows between time stamp 379 and 18659 engine speed

1 is steady at around 545 RPM. During this time the throttle is varying between 1.2% and 5.5%
2 opening. The MAP is varying between 36kpa and 45kpa. The MAF is also varying between
3 3.27gps and 5.09gps. At time stamp 19022 the engine speed begins to accelerate. Between time
4 stamp 21806 and 37486 the engine speed is accelerated then held steady at around 1500 RPM.
5 During this time the throttle is varying between 2.7% and 5.5%, no more than idle throttle. The
6 MAP is varying between 37kpa and 44kpa. The MAF is also varying between 2.92gps and
7 4.77gps, less than idle mass air flow.

8 36. The steady idle and steady elevated engine speeds with the associated varying throttle
9 positions and subsequent varying MAP and MAF readings are not characteristic or expected for
10 normal engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition
11 Device (DAD) was not connected to the 2006 Tahoe being certified, causing the issuance of a
12 fraudulent Smog Certificate of Compliance.

13 **Clean Plug #2**

14 37. Magana's review indicates on January 7, 2023, a 2000 BMW 328 CI, VIN
15 #WBABM5349YJN93627, CA Licence #7CBZ624 (2000 328 CI), was tested and smog
16 certificate #TC369510C was issued under licensed Smog Check Technician #EO 642011, Kai
17 Dai Tri. The Dynamic PID Charts for the 2000 328 CI shows between time stamps 974 and
18 25537 engine speed is steady at around 750 RPM. During this time the throttle is varying between
19 2% and 5.5% opening. The MAF is also varying between 3.75 and 4.97gps. Between time stamp
20 26505 and 47073 the engine speed is accelerated then held steady at around 1500 RPM. During
21 this time the throttle is varying between 1.2% and 4.3%, less than idle. The MAF is also varying
22 between 2.89gps and 3.97gps, less air than at engine idle.

23 38. The steady idle and steady elevated engine speeds with the associated varying throttle
24 positions and subsequent varying MAF readings are not characteristic or expected for normal
25 engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device
26 (DAD) was not connected to the 2000 328 CI being certified, causing the issuance of a fraudulent
27 Smog Certificate of Compliance.

28 ///

1 **Clean Plug #3**

2 39. Magana’s review indicates on January 23, 2023, a 2003 Ford Escape XLT,
3 VIN#1FMYU93153KC15653, CA License #5ZHS346 (2003 Escape), was tested and smog
4 certificate #TC766475C was issued under licensed Smog Check Technician #EO 642011, Kai
5 Dai Tri. The Dynamic PID Charts for the 2003 Escape shows between time stamp 378 and 17109
6 engine speed is steady at around 750 RPM. During this time the throttle is varying between
7 13.3% and 17.3% opening. The MAF is also varying between 2.79 and 4.86gps. Between time
8 stamp 18472 and 36763 the engine speed is accelerated then held steady at around 1650 RPM.
9 During this time, the throttle is varying between 12.5% and 17.6%. The MAF is also varying
10 between 2.89 and 4.92gps.

11 40. The steady idle and steady elevated engine speeds with the associated varying throttle
12 positions and subsequent varying MAF readings are not characteristic or expected for normal
13 engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device
14 (DAD) was not connected to the 2003 Escape being certified, causing the issuance of a fraudulent
15 Smog Certificate of Compliance.

16 **Clean Plug # 4**

17 41. Magana’s review indicates on February 6, 2023, a 2005 Chevrolet Express G2500,
18 VIN #1GCGG25V451168039, CA License #99508S2 (2005 Express), was tested and smog
19 certificate #IT064014C was issued under licensed Smog Check Technician #EO 642011, Kai Dai
20 Tri. The Dynamic PID Charts for the 2005 Express shows between time stamp 401 and 21441
21 engine speed is steady at around 490 RPM. During this time, the throttle is varying between 0.8%
22 and 5.5% opening. The MAP is varying between 34kpa and 44kpa. The MAF is varying between
23 5.8 and 7.56gps. Between time stamp 21863 and 41489 the engine speed is accelerated then held
24 steady at around 1560 RPM. During this time the throttle is varying between 0% and 5.5%, less
25 than or equal to idle. The MAP is varying between 33kpa and 45kpa. The MAF is varying
26 between 5.7 and 7.11gps, less than idle.

27 42. The steady idle and steady elevated engine speeds with the associated varying throttle
28 positions and subsequent varying MAP and MAF readings are not characteristic or expected for

1 normal engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition
2 Device (DAD) was not connected to the 2005 Express being certified, causing the issuance of a
3 fraudulent Smog Certificate of Compliance.

4 **Clean Plug # 5**

5 43. Magana's review indicates on February 11, 2023, a 2002 Chrysler PT Cruiser Classic,
6 VIN #3C4FY48B12T271882, CA License 6FMS842 (2002 PT Cruiser), was tested and smog
7 certificate #TC954981C was issued under licensed Smog Check Technician #EO 642011, Kai
8 Dai Tri. The Dynamic PID Charts for the 2002 PT Cruiser shows between time stamp 371 and
9 17923 engine speed is steady at around 750 RPM. During this time the throttle is varying between
10 12.9% and 18% opening. The MAP is varying between 25kpa and 30kpa. Between time stamp
11 18322 and 36234 the engine speed is accelerated then held steady at around 1850 RPM. During
12 this time the throttle is varying between 12.9% and 18%, the same as idle. The MAP is varying
13 between 16kpa and 29kpa.

14 44. The steady idle and steady elevated engine speeds with the associated varying throttle
15 positions and subsequent varying MAP readings are not characteristic or expected for normal
16 engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device
17 (DAD) was not connected to the 2002 PT Cruiser being certified, causing the issuance of a
18 fraudulent Smog Certificate of Compliance.

19 **Clean Plug # 6**

20 45. Magana's review indicates on February 13, 2023, a 2001 Chevrolet Silverado C1500,
21 VIN#2GCEC19T211169927, CA License 8S25738 (2001 Silverado), was tested and smog
22 certificate #TC954987C was issued under licensed Smog Check Technician #EO 642011, Kai
23 Dai Tri. The Dynamic PID Charts for the 2001 Silverado shows between time stamp 383 and
24 19768 engine speed is steady at around 500 RPM. During this time the throttle is varying between
25 2.4% and 5.5% opening. The MAP is varying between 36pka and 44kpa. The MAF is also
26 varying between 3.64gps and 5.1gps. Between time stamp 20149 and 38597 the engine speed is
27 accelerated then held steady at around 1750 RPM. During this time the throttle is varying
28

1 between 1.2% and 3.1%, less than idle. The MAP is varying between 33kpa and 38kpa. The MAF
2 is also varying between 2.88 and 5.06gps, less than idle.

3 46. The steady idle and steady elevated engine speeds with the associated varying throttle
4 positions and subsequent varying MAP and MAF readings are not characteristic or expected for
5 normal engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition
6 Device (DAD) was not connected to the 2001 Silverado being certified, causing the issuance of a
7 fraudulent Smog Certificate of Compliance.

8 **Clean Plug # 7**

9 47. Magana's review indicates on February 24, 2023, a 2002 Chevrolet Silverado C1500,
10 VIN #2GCEC19X621421425, CA License #6Z00837 (2002 Silverado), was tested and smog
11 certificate #IT208204C was issued under licensed Smog Check Technician #EO 642011, Kai Dai
12 Tri. The Dynamic PID Charts for the 2002 Silverado shows between time stamp 388 and 21979
13 engine speed is steady at around 725 RPM. During this time the throttle is varying between 0%
14 and 5.5% opening. The MAP is varying between 32kpa and 42 kpa. The MAF is also varying
15 between 6.65gps and 7.46gps. Between time stamp 22383 and 39504 the engine speed is
16 accelerated then held steady at around 1600 RPM. During this time the throttle is varying
17 between 0% and 5.1%, less than idle. The MAP is varying between 32kpa and 46kpa. The MAF
18 is also varying between 6gps and 7.62gps.

19 48. The steady idle and steady elevated engine speeds with the associated varying throttle
20 positions and subsequent varying MAP and MAF readings are not characteristic or expected for
21 normal engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition
22 Device (DAD) was not connected to the 2002 Silverado being certified, causing the issuance of a
23 fraudulent Smog Certificate of Compliance.

24 **Clean Plug # 8**

25 49. Magana's review indicates on March 1, 2023, a 2002 Honda Odyssey EX, VIN
26 #2HKRL18652H560485, CA License #4WJB851 (2002 Odyssey), was tested and smog
27 certificate #IT315624C was issued under licensed Smog Check Technician #EO 642011, Kai Dai
28 Tri. The Dynamic PID Charts for the 2002 Odyssey shows between time stamp 905 and 20331

1 engine speed is steady at around 675 RPM. During this time the throttle is varying between
2 11.4% and 11.8% opening. The MAP is varying between 24kpa and 27kpa. Between time stamp
3 21256 and 40603 the engine speed is accelerated then held steady at around 1700 RPM. During
4 this time the throttle is varying between 7.1% and 8.6%, less than idle. The MAP is varying
5 between 17kpa and 30kpa.

6 50. The steady idle and steady elevated engine speeds with the associated varying throttle
7 positions and subsequent varying MAP readings are not characteristic or expected for normal
8 engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device
9 (DAD) was not connected to the 2002 Odyssey being certified, causing the issuance of a
10 fraudulent Smog Certificate of Compliance.

11 **Clean Plug # 9**

12 51. Magana's review indicates on March 2, 2023, a 2004 Dodge Dakota Quad Sport ,
13 VIN #1D7HL38NX4S506642, CA License #8K26431 (2004 Dakota), was tested and smog
14 certificate #IT315628C was issued under licensed Smog Check Technician #EO 642011, Kai Dai
15 Tri. The Dynamic PID Charts for the 2004 Dakota shows between time stamp 408 and 18910
16 engine speed is steady at around 575 RPM. During this time the throttle is varying between 6.3%
17 and 11.8% opening. The MAP is also varying between 17kpa and 30kpa. Between time stamp
18 19316 and 38510 the engine speed is accelerated then held steady at around 1500 RPM. During
19 this time the throttle is varying between 7.8% and 10.2% The MAP is varying between 19kpa and
20 24kpa.

21 52. The steady idle and steady elevated engine speeds with the associated varying throttle
22 positions and subsequent varying MAP readings are not characteristic or expected for normal
23 engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device
24 (DAD) was not connected to the 2004 Dakota being certified, causing the issuance of a fraudulent
25 Smog Certificate of Compliance.

26 **Clean Plug # 10**

27 53. Magana's review indicates on March 4, 2023, a 2004 Chevrolet Silverado C1500,
28 VIN #2GCEC19T141234402, CA License #22673V1 (2004 Silverado), was tested and smog

1 certificate #IT454456C was issued under licensed Smog Check Technician #EO 642011, Kai Dai
2 Tri. The Dynamic PID Charts for the 2004 Silverado shows between time stamp 394 and 23554
3 engine speed is steady at around 500 RPM. During this time the throttle is varying between 8.6%
4 and 9.4% opening. The MAP is varying between 33kpa and 42kpa. The MAF is also varying
5 between 3.32gps and 4.37gps. Between time stamp 23973 and 43683 the engine speed is
6 accelerated then held steady at around 1450 RPM. During this time the throttle is varying
7 between 7.5% and 10.2%. The MAP is varying between 32kpa and 43kpa. The MAF is varying
8 between 3.05 and 4.57gps.

9 54. The steady idle and steady elevated engine speeds with the associated varying throttle
10 positions and subsequent varying MAF and MAP readings are not characteristic or expected for
11 normal engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition
12 Device (DAD) was not connected to the 2004 Silverado being certified, causing the issuance of a
13 fraudulent Smog Certificate of Compliance.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements - Respondent L H Smog Check)**

16 55. Respondent L H Smog Check's registration is subject to disciplinary action pursuant
17 to section 9884.7, subdivision (a)(1), in that between January 2, 2023 and March 8, 2023,
18 Respondent Tri made or authorized statements which he knew or in the exercise of reasonable
19 care should have known to be untrue or misleading, as follows: Respondent Tri certified that the
20 vehicles set forth above in paragraphs 21-54, had passed inspection and were in compliance with
21 applicable laws and regulations. In fact, Respondent Tri conducted the inspections on those
22 vehicles using the clean plugging method in order to issue smog certificates of compliance, and
23 did not test or insect the vehicles as required by Health and Safety Code section 44012.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Fraud - Respondent L H Smog Check)**

26 56. Respondent L H Smog Check's registration is subject to disciplinary action pursuant
27 to section 9884.7, subdivision (a)(4), in that between January 2, 2023, and March 8, 2023,
28 Respondent L H Smog Check's employee Respondent Tri committed acts which constitute fraud

1 by issuing electronic certificates of compliance for the vehicles set forth above in paragraphs 21-
2 54, without performing bona fide inspections of the emission control devices and systems on
3 those vehicles, thereby depriving the People of the State of California of the protection afforded
4 by the Motor Vehicle Inspection Program.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with the Motor Vehicle Inspection Program –**
7 **Respondent L H Smog Check)**

8 57. Respondent L H Smog Check’s smog station license is subject to disciplinary action
9 pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health
10 and Safety Code section 44072.10 subdivision (c), in that between January 2, 2023 and March 8,
11 2023, regarding the vehicles set forth above in paragraphs 21-54, Respondent L H Smog Check
12 failed to comply with the following sections of the Health and Safety Code:

13 (a) **Section 44012**: Respondent L H Smog Check’s employee Respondent Tri failed to
14 ensure that the emission control tests were performed on the vehicles, in accordance with
15 procedures prescribed by the department.

16 (b) **Section 44015**: Respondent L H Smog Check’s employee Respondent Tri issued
17 electronic certificates of compliance for the vehicles, without ensuring that the vehicles were
18 properly tested and inspected to determine if they were in compliance with Health and Safety
19 Code section 44012.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program -**
22 **Respondent L H Smog Check)**

23 58. Respondent L H Smog Check’s smog station license is subject to disciplinary action
24 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between January 2,
25 2023 and March 8, 2023, regarding the vehicles set forth above in paragraphs 21-54, Respondent
26 Tri failed to comply with the following provisions of the California Code of Regulations, Title 16,
27 as follows:

28 ///

1 (a) **Section 3340.35, subdivision (c)**: Respondent L H Smog Check’s employee
2 Respondent Tri issued electronic certificates of compliance even though those vehicles had not
3 been inspected in accordance with section 3340.42, Title 16, of the California Code of
4 Regulations.

5 (b) **Section 3340.42**: Respondent L H Smog Check’s employee Respondent Tri failed to
6 conduct the required smog tests and inspections on those vehicles in accordance with the
7 Bureau’s specifications.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Dishonesty, Fraud or Deceit - Respondent L H Smog Check)**

10 59. Respondent L H Smog Check’s smog station license is subject to disciplinary action
11 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
12 and Safety Code section 44072.10 subdivision (c), in that between January 2, 2023 and March 8,
13 2023, regarding the vehicles set forth above in paragraphs 21-54, Respondent L H Smog Check’s
14 employee Respondent Tri committed acts involving dishonesty, fraud or deceit whereby another
15 was injured by issuing electronic certificates of compliance for those vehicles without performing
16 bona fide inspections of the emission control devices and systems on the vehicles, thereby
17 depriving the People of the State of California of the protection afforded by the Motor Vehicle
18 Inspection Program.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Violations of the Motor Vehicle Inspection Program – Respondent Tri)**

21 60. Respondent Tri’s smog check inspector license is subject to discipline pursuant to
22 Health and Safety Code section 44072.2, subdivision (a), in that between January 2, 2023 and
23 March 8, 2023, regarding the vehicles set forth above in paragraphs 21-54, Respondent Tri failed
24 to comply with section 44012 of the Health and Safety Code in a material respect, as follows:
25 Respondent Tri failed to perform the emission control tests on those vehicles in accordance with
26 procedures prescribed by the department.

27 ///

28 ///

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
3 **Respondent Tri)**

4 61. Respondent Tri’s smog check inspector license is subject to discipline pursuant to
5 Health and Safety Code section 44072.2, subdivision (c), in that between January 2, 2023 and
6 March 8, 2023, regarding the vehicles set forth above in paragraphs 21-54, Respondent Tri failed
7 to comply with provisions of the California Code of Regulations, title 16, as follows:

8 (a) **Section 3340.30, subdivision (a)**: Respondent Tri failed to inspect and test those
9 vehicles in accordance with Health and Safety Code section 44012.

10 (b) **Section 3340.41, subdivision (c)**: Respondent Tri entered false information into the
11 EIS.

12 (c) **Section 3340.42**: Respondent Tri failed to conduct the required smog tests and
13 inspections on those vehicles in accordance with the Bureau’s specifications.

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 **(Dishonesty, Fraud or Deceit - Respondent Tri)**

16 62. Respondent Tri’s smog check inspector license is subject to discipline pursuant to
17 Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety
18 Code section 44072.10 subdivision (c), in that between January 2, 2023 and March 8, 2023,
19 regarding the vehicles set forth above in paragraphs 21-54, Respondent Tri committed acts
20 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
21 certificates of compliance for those vehicles without performing bona fide inspections of the
22 emission control devices and systems on the vehicles., thereby depriving the People of the State
23 of California of the protection afforded by the Motor Vehicle Inspection Program.

24 **DISCIPLINE CONSIDERATIONS**

25 63. By way of aggravation, Complainant alleges that on April 25, 2022, the Bureau
26 conducted a station inspection at L H Smog Check concerning an OIS and DAD disconnection.
27 Program Representative Marc Ortega (Ortega) spoke with station owner/president Hoa Le Ly
28 (Ly) through a Vietnamese translator, Program Representative Brian Vu. Ortega informed Ly the

1 OIS disconnection was caused by anomalous data transmitted to the VID under the station license
2 number. Ly stated she is at the shop every day. At that time, the Bureau informed Ly that
3 inappropriate activity will result in the station analyzers being disconnected from communicating
4 with the Bureau's database and/or disciplinary action.

5 64. On May 18, 2022, L H Smog Check failed its follow-up inspection by the Bureau for
6 multiple deficiencies. On June 6, 2022, L H Smog Check passed its second follow-up inspection.
7 At this time, the Bureau admonished both Respondent L H and Respondent Tri to perform
8 complete and accurate Smog Check inspections in compliance with all laws, regulations, Smog
9 Check Inspection Manual, and analyzer screen prompts.

10 **OTHER MATTERS**

11 65. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
12 may suspend, revoke, or place on probation the registration for all places of business operated in
13 this State by Respondent L H Smog Check upon a finding that Respondent L H Smog Check has,
14 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining
15 to an automotive repair dealer.

16 66. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
17 Number TC 301067 issued to Respondent L H Smog Check is revoked or suspended following a
18 hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the
19 name of said licensee may be likewise revoked or suspended by the Director.

20 67. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
21 Number EO 642011 issued to Respondent Tri, is revoked or suspended following a hearing under
22 this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name of said
23 licensee may be likewise revoked or suspended by the Director.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Director of the Department of Consumer Affairs issue a
27 decision:
28

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 301067, issued to L H Smog Check dba L H Smog Check, Hoa Le Ly, President;
- 3 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to L
4 H Smog Check or Hoa Le Ly;
- 5 3. Revoking or suspending Smog Check, Test Only Station Number TC 301067, issued
6 to L H Smog Check dba L H Smog Check, Hoa Le Ly, President;
- 7 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
8 Division 26 of the Health and Safety Code in the name of Respondent L H Smog Check or Hoa
9 Le Ly;
- 10 5. Revoking or suspending Smog Check Inspector Number EO 642011, issued to Kai
11 Dai Tri;
- 12 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
13 Division 26 of the Health and Safety Code in the name of Respondent Kai Dai Tri;
- 14 7. Ordering Hoa Le Ly and Kai Dai Tri to pay the Bureau of Automotive Repair the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3; and,
- 17 8. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: As of Digital Signature Date

21 PATRICK DORAIS
22 Chief
23 Bureau of Automotive Repair
24 Department of Consumer Affairs
25 State of California
26 *Complainant*

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