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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. 79/19-12094

14 **VIVEK BERRY, OWNER**
dba SAN LEANDRO TEST ONLY
15 **1948 Davis St. #B**
San Leandro, CA 94577

ACCUSATION

16 **Mailing Address:**
17 **1043 Olive Ave**
Fremont, CA 94539

18 **Automotive Repair Dealer No. ARD 270349**
19 **Smog Check, Test Only, License No. TC 270349**

20 **ERICK ANH BUI**
21 **1223 Drake Ave.**
San Leandro, CA 94579

22 **Smog Check Inspector (EO) license No. EO 149871**
23 **Smog Check Repair (EI) Technician No. EI 149871**

24 Respondents.
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1 and has not been renewed.¹

2 **JURISDICTION**

3 6. This Accusation is brought before the Director of the Department of Consumer
4 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

5 **STATUTORY PROVISIONS**

6 7. Section 9884.7 of the Business and Professions Code states:

7 (a) The director, where the automotive repair dealer cannot show there was a
8 bona fide error, may deny, suspend, revoke, or place on probation the registration of
9 an automotive repair dealer for any of the following acts or omissions related to the
10 conduct of the business of the automotive repair dealer, which are done by the
11 automotive repair dealer or any automotive technician, employee, partner, officer, or
12 member of the automotive repair dealer.

13 (1) Making or authorizing in any manner or by any means whatever any
14 statement written or oral which is untrue or misleading, and which is known, or which
15 by the exercise of reasonable care should be known, to be untrue or misleading.

16 ...

17 (4) Any other conduct which constitutes fraud.

18 ...

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

21 ...

22 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place
23 on probation the registration for all places of business operated in this state by an
24 automotive repair dealer upon a finding that the automotive repair dealer has, or is,
25 engaged in a course of repeated and willful violations of this chapter, or regulations
26 adopted pursuant to it.

27 8. Section 9884.13 of the Business and Professions Code provides, in pertinent part, that
28 the expiration of a valid registration shall not deprive the director or chief of jurisdiction to
proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision
invalidating a registration temporarily or permanently.

9. Section 9889.22 of the Business and Professions Code states:

¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28, 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

1 The willful making of any false statement or entry with regard to a material
2 matter in any oath, affidavit, certificate of compliance or noncompliance, or
3 application form which is required by this chapter or Chapter 5 (commencing with
4 Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes
5 perjury and is punishable as provided in the Penal Code.

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

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

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

14 (a) Emission control systems required by state and federal law are reducing
15 excess emissions in accordance with the standards adopted pursuant to subdivisions
16 (a) and (c) of Section 44013.

17 (b) Motor vehicles are preconditioned to ensure representative and stabilized
18 operation of the vehicle's emission control system.

19 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
20 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle
21 mode or loaded mode are tested in accordance with procedures prescribed by the
22 department. In determining how loaded mode and evaporative emissions testing
23 shall be conducted, the department shall ensure that the emission reduction targets for
24 the enhanced program are met.

25 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
26 system and crankcase ventilation system are tested to reduce any nonexhaust sources
27 of volatile organic compound emissions, in accordance with procedures prescribed by
28 the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion
of those vehicles is technologically and economically feasible, a visual inspection is
made of emission control devices and the vehicle's exhaust emissions in an idle mode
or loaded mode are tested in accordance with procedures prescribed by the
department. The test may include testing of emissions of any or all of the pollutants
specified in subdivision (c) and, upon the adoption of applicable standards,
measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified
by the department, including the catalytic converter in those instances in which the
department determines it to be necessary to meet the findings of Section 44001. The
visual or functional check shall be performed in accordance with procedures
prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the
emission standards for that vehicle's class and model-year as prescribed by the
department.

1 (h) The test procedures may authorize smog check stations to refuse the testing
2 of a vehicle that would be unsafe to test, or that cannot physically be inspected, as
3 specified by the department by regulation. The refusal to test a vehicle for those
4 reasons shall not excuse or exempt the vehicle from compliance with all applicable
5 requirements of this chapter.

6 12. Section 44015, subdivision (b), of the Health and Safety Code states:

7 If a vehicle meets the requirements of Section 44012, a smog check station
8 licensed to issue certificates shall issue a certificate of compliance or a certificate of
9 noncompliance.

10 13. Section 44032 of the Health and Safety Code states:

11 No person shall perform, for compensation, tests or repairs of emission control
12 devices or systems of motor vehicles required by this chapter unless the person
13 performing the test or repair is a qualified smog check technician and the test or
14 repair is performed at a licensed smog check station. Qualified technicians shall
15 perform tests of emission control devices and systems in accordance with Section
16 44012.

17 14. Section 44059 of the Health and Safety Code states:

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

23 15. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

27 (a) Violates any section of this chapter and the regulations adopted pursuant to
28 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.

...

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

...

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

16. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the

1 expiration or suspension of a license by operation of law, or by order or decision of the Director
2 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
3 the Director of jurisdiction to proceed with disciplinary action.

4 17. Section 44072.8 of the Health and Safety Code states:

5 When a license has been revoked or suspended following a hearing under this article, any
6 additional license issued under this chapter in the name of the licensee may be likewise revoked
7 or suspended by the director.

8 18. Section 44072.10, subdivision (c), of the Health and Safety Code states:

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

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

14 ...

15 **REGULATORY PROVISIONS**

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

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

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

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

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

26 ...

27 21. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:

28 A licensed station shall issue a certificate of compliance or noncompliance to
the owner or operator of any vehicle that has been inspected in accordance with the
procedures specified in section 3340.42 of this article and has all the required
emission control equipment and devices installed and functioning correctly. The
following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by
the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

22. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

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

23. California Code of Regulations, title 16, section 3340.42, states, in pertinent part that "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45."

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

(a) All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the following:

(1) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This manual became effective on or after January 1, 2013. This manual shall remain in effect until subparagraph (2) is implemented.

(2) Smog Check Manual, dated November 2, 2017, which is hereby incorporated by reference. This manual shall become effective on August 2, 2018.

25. California Code of Regulations, title 16, section 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COST RECOVERY

26. Section 125.3 of the Code provides, in pertinent part, that a Board (including the Bureau of Automotive Repair) may request the administrative law judge to direct a licentiate 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 licentiate to comply subjecting the license to not being renewed or reinstated.

FACTUAL ALLEGATIONS

27. 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.

1 These inspections are performed by Smog Check inspectors at Smog Check Stations, both of
2 which are licensed by the Bureau of Automotive Repair (BAR).

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

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

19 30. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
20 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
21 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
22 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.

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

1 Reports.

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

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

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

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

22 36. One method is known as "clean plugging." "Clean plugging" is the act of using one
23 vehicle's properly functioning OBDII system, or another source, to generate passing data readings
24 or diagnostic information for the purpose or fraudulently issue a smog certificate of compliance to
25 a vehicle that is not in smog compliance and/or not present for testing. The vehicle being tested is
26 not the one being issued the certificate of compliance.

27 37. The Bureau initiated an investigation of Respondent Vivek Barry's smog station, San
28 Leandro Test Only. Beginning on or about March 1, 2018 and continuing until about July 29,

2019, Respondent Bui was found to have performed five fraudulent smog inspections using clean-plugging methods at Respondent Vivek Berry's smog station San Leandro Test Only. Respondent Vivek Berry issued the five fraudulent certificates of compliance.

38. A Bureau representative reviewed data for the five clean-plugged vehicles inspected by Respondent Bui at Respondent Vivek Berry's smog station. The data revealed that the five vehicles that were purportedly tested by the Respondents were not and could not have been connected to the DAD when they were being certified because the OBD-II data purportedly transmitted by those vehicles could not have been transmitted by those vehicles.

39. Respondent Vivek Berry and Respondent Bui clean plugged and issued fraudulent certificates of compliance to the following five vehicles at Respondent Vivek Berry's smog station:

a) Clean Plug# 1 - 2003 Honda Civic Hybrid, License No. 5BAT513

Certificate # HP432419C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (3/1/2018)	JTDKDTB37C1025756	ICAN11bt5	<u>39/26</u>
Expected OBDII Value	Not expected	I914	<u>4/17/7</u>

b) Clean Plug #2 – 2009 Toyota Corolla Base, License No. 6XHJ040

Certificate # HV029852C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (5/25/2018)	Not Reported	I914	<u>16</u>
Expected OBDII Value	JTDBL40E399061273	ICAN11bt5	<u>39</u>

c) Clean Plug #3 – 2002 Toyota Camry LE, License No. 5XZF256

Certificate # HX779922C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (11/26/2018)	4T3ZA3BB9DU075091	ICAN11bt5	<u>42/20</u>
Expected OBDII Value	Not expected	I914	<u>17</u>

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d) Clean Plug #4 – 2011 Honda CR-V EXL, License No. 6RRN248

Certificate # QU963533C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (7/6/2019)	1HGCM56745A1134936	I914	<u>21</u>
Expected OBDII Value	5J6RE3H7XBL039718	ICAN29bt5	<u>37/20</u>

e) Clean Plug #5 – 2008 GMC Yukon XL Denali, License No. 7ZLX114

Certificate # QW160350C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (7/29/2019)	#####	JPWM	<u>19</u>
Expected OBDII Value	1GKFC66898J181336	ICAN11bt5	<u>44/7/8</u>

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements - Registration)

40. Respondent Vivek Berry has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading, as set forth above in paragraphs 37-39. Respondent Vivek Berry fraudulently purported to test the five vehicles, and certified that the five vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using clean-plugging methods.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

41. Respondent Vivek Berry has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud, as set forth above in paragraphs 36-39.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program – Smog Station License)

42. Respondent Vivek Berry has subjected his station license to discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he violated

1 sections of that Code and applicable regulations, as set forth above in paragraphs 36-39, as
2 follows:

3 a. Health and Safety Code section 44012: Respondent Vivek Berry failed to ensure that
4 the smog inspections were performed on the five clean-plugged vehicles in accordance with
5 procedures prescribed by the department.

6 b. Health and Safety Code section 44012, subdivision (f): Respondent Vivek Berry
7 failed to perform a visual and/or functional check of required emission control devices.

8 c. Health and Safety Code section 44015, subdivision (b): Respondent Vivek Berry
9 allowed a smog inspection and issued certificated of compliance to a vehicle that did not meet the
10 requirements of Health and Safety Code section 44012.

11 d. Health and Safety Code section 44059: Respondent Vivek Berry willfully made false
12 entries for the electronic certificates of compliance by certifying that the five clean-plugged
13 vehicles had been inspected as required when, in fact, they had not.

14 e. California Code of Regulations, title 16, section 3340.24, subdivision (c):
15 Respondent Vivek Berry falsely or fraudulently issued electronic certificates of compliance for
16 the five clean plugged vehicles without performing bona fide inspections of the emission control
17 devices and systems on the vehicles.

18 f. California Code of Regulations, title 16, section 3340.35, subdivision (c):
19 Respondent Vivek Berry issued a certificate of compliance for a vehicle not properly tested.

20 g. California Code of Regulations, title 16, section 3340.41, subdivision (c):
21 Respondent Vivek Berry entered vehicle identification information for a vehicle other than the
22 one being tested into the emissions inspection system. Respondent Vivek Berry knowingly
23 entered false information about the vehicle being tested into the emissions inspection system.

24 h. California Code of Regulations, title 16, section 3340.42: Respondent Vivek Berry
25 failed to conduct the required smog tests and inspections on those vehicles in accordance with the
26 Bureau's specifications.

27 i. California Code of Regulations, title 16, section 3340.45: Respondent Vivek Berry
28 violated the procedures contain in the Smog Check Manual by entering vehicle identification

1 information for a vehicle that was not being tested. Respondent knowingly entered any false
2 information about the vehicle being tested.

3 j. California Code of Regulations, title 16, section 3373: Respondent Vivek Berry
4 caused documents to be false or misleading, to deceive customers, prospective customers, or the
5 public.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit – Smog Station License)**

8 43. Respondent Vivek Berry subjected his Smog Check, Test Only, Station License to
9 discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that
10 he committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing
11 electronic certificates of compliance for vehicles without performing bona fide inspections of the
12 emission control devices and systems on the vehicles, thereby depriving the People of the State of
13 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
14 in paragraphs 36-39.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Violations of the Motor Vehicle Inspection Program – Smog Check Licenses)**

17 44. Respondent Bui has subjected his Smog Check Inspector and Smog Check Repair
18 Technician Licenses to discipline under Health and Safety Code sections 44072.10 and 44072.2,
19 subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations, as set
20 forth above in paragraphs 36-39, as follows:

21 a. Health and Safety Code section 44012: Respondent Bui failed to ensure that the
22 smog inspections were performed on the five clean-plugged vehicles in accordance with
23 procedures prescribed by the department.

24 b. Health and Safety Code section 44012, subdivision (f): Respondent Bui failed to
25 perform a visual and/or functional check of required emission control devices.

26 c. Health and Safety Code section 44032: Respondent Bui was compensated for a smog
27 check inspection at his smog check station for a smog inspection that was performed by an
28 unlicensed individual instead of a qualified smog check technician.

1 d. Health and Safety Code section 44059: Respondent Bui willfully made false entries
2 for the electronic certificates of compliance by certifying that the five clean-plugged vehicles had
3 been inspected as required when, in fact, they had not.

4 e. California Code of Regulations, title 16, section 3340.24, subdivision (c): Respondent
5 Bui falsely or fraudulently issued electronic certificates of compliance for the five clean plugged
6 vehicles without performing bona fide inspections of the emission control devices and systems on
7 the vehicles.

8 f. California Code of Regulations, title 16, section 3340.30, subdivision (a):
9 Respondent Bui failed to inspect and test the five clean-plugged vehicles in accordance with
10 Health and Safety Code section 44012 and California code of Regulations title 16, section
11 3340.42.

12 g. California Code of Regulations, title 16, section 3340.41, subdivision (c):
13 Respondent Bui entered vehicle identification information for a vehicle other than the one being
14 tested into the emissions inspection system. Respondent Bui knowingly entered false information
15 about the vehicle being tested into the emissions inspection system.

16 h. California Code of Regulations, title 16, section 3340.42: Respondent Bui failed to
17 conduct the required smog tests and inspections on those vehicles in accordance with the
18 Bureau's specifications.

19 i. California Code of Regulations, title 16, section 3340.45: Respondent Bui violated
20 the procedures contain in the Smog Check Manual by entering vehicle identification information
21 for a vehicle that was not being tested. Respondent knowingly entered any false information
22 about the vehicle being tested.

23 **NINTH CAUSE FOR DISCIPLINE**

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

25 45. Respondent Bui subjected his Smog Check Inspector and Smog Check Repair
26 Technician Licenses to discipline under Health and Safety Code sections 44072.10 and 44072.2,
27 subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby another
28 was injured by issuing electronic certificates of compliance for vehicles without performing bona

1 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
2 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
3 Program, as set forth above in paragraphs 36-39.

4 **DISCIPLINE CONSIDERATIONS**

5 46. To determine the degree of discipline, if any, to be imposed on Respondent Vivek
6 Berry, Complainant alleges the following:

- 7 a. On or about September 30, 2014, in a prior action, the Bureau issued Citation Number
8 C2014-1240 for violating Health and Safety Code section 44012, subdivision (f), and
9 ordered Respondent Vivek Berry to pay \$1,000.00. That Citation is now final.
- 10 b. On or about February 23, 2017, in a prior action, the Bureau issued Citation Number
11 C2017-538 for violating Health and Safety Code section 44012, subdivision (f), and
12 ordered Respondent Vivek Berry to pay \$2,000.00. That Citation is now final.
- 13 c. On or about June 7, 2018 in a prior action, the Bureau issued Citation Number C2018-
14 1403 for violating Health and Safety Code section 44012, subdivision (f), and ordered
15 Respondent Vivek Berry to pay \$3,000.00. That Citation is now pending on appeal.

16 47. To determine the degree of discipline, if any, to be imposed on Respondent Bui,
17 Complainant alleges the following:

- 18 a. On or about May 10, 2010, in a prior action, the Bureau issued Citation Number
19 M2010-1174 for violating Health and Safety Code section 14032 and California Code
20 of Regulations, title 16, section 3340.30, subdivision (a), and ordered Respondent Bui
21 to complete an eight-hour training course. That Citation is now final.
- 22 b. On or about June 7, 2018, in a prior action, the Bureau issued Citation Number M2018-
23 1404 for violating Health and Safety Code section 14032 and ordered Respondent Bui
24 to complete an eight-hour training course. That Citation is now pending on appeal.

25 **OTHER MATTERS**

26 48. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
27 or place on probation the registration for all places of business operated in this state by
28 Respondent Berry, upon a finding that Respondent Berry has, or is, engaged in a course of

1 repeated and willful violations of the laws and regulations pertaining to an automotive repair
2 dealer.

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

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

11 **PRAYER**

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 270349, issued to Vivek Berry doing business as San Leandro Test Only;

16 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
17 270349, issued to Vivek Berry doing business as San Leandro Test Only;

18 3. Revoking or suspending any additional Automotive Repair Dealer Registrations or
19 Smog Check Station Licenses, issued to Vivek Berry doing business as San Leandro Test Only;

20 4. Revoking or suspending Smog Check Inspector (EO) License Number EO 149871,
21 issued to Erick Anh Bui;

22 5. Revoking or suspending Smog Check Repair Technician (EI) License Number EI
23 149871, issued to Erick Anh Bui;

24 6. Revoking or suspending any additional Smog Check Inspector License, or Smog
25 Check Repair Technician license, issued to Erick Anh Bui;

26 7. Ordering Vivek Berry doing business as San Leandro Test Only and Erick Anh Bui to
27 pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement
28 of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: ____March 20, 2020____

Signature on File

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

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