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

11
12 In the Matter of the Accusation Against:

Case No. 79/12-169

13 **KEARNY MESA SMOG CHECK**
4191 Convoy Street, Suite A
14 San Diego, CA 92111
THAO VAN NGUYEN, OWNER
15 **Automotive Repair Dealer Registration No.**
ARD 240219
16 **Smog Check Test Only Station No. TC**
240219

A C C U S A T I O N
S M O G C H E C K

17 **AND**

18
19 **THAO VAN NGUYEN**
3651 Hondo Street
20 San Diego, CA 92105
Advanced Emission Specialist Technician
License No. EA 151145

21
22 Respondents.

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24 Complainant alleges:

25 **PARTIES**

26 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
27 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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1 This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

2 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
3 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,
4 engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it."

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

9 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
10 "commission," "committee," "department," "division," "examining committee," "program," and
11 "agency." "License" includes certificate, registration or other means to engage in a business or
12 profession regulated by the Code.

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

16 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

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1 **COST RECOVERY**

2 11. Code section 125.3 provides, in pertinent part, that a Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **UNDERCOVER OPERATION – JANUARY 30, 2012**

7 12. On or about January 30, 2012, a Bureau undercover operator drove a Bureau-
8 documented 2001 Honda Prelude to Respondent's facility and requested a smog inspection. The
9 vehicle could not pass the visual portion of a smog inspection because the vehicle's fuel
10 evaporative canister ("EVAP Canister") was missing. The operator signed a work order and
11 received an estimate prior to the smog inspection. Alex Yeargan, a licensed smog technician,
12 performed the smog inspection and issued electronic Certificate of Compliance No. OK272358C
13 for that vehicle. The operator paid \$51 for the smog inspection and received a copy of Invoice
14 No. 36339 and the Vehicle Inspection Report.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Misleading Statements)**

17 13. Respondent has subjected his registration to discipline under Code section 9884.7,
18 subdivision (a)(1), in that on or about January 30, 2012, he made statements which he knew or
19 which by exercise of reasonable care he should have known were untrue or misleading when he
20 issued electronic Certificate of Compliance No. OK272358C for the 2001 Honda Prelude
21 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
22 the vehicle's EVAP canister was missing.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 14. Respondent has subjected his registration to discipline under Code section 9884.7,
26 subdivision (a)(4), in that on or about January 30, 2012, he committed acts which constitute fraud
27 by issuing electronic Certificate of Compliance No. OK272358C for the 2001 Honda Prelude
28 without performing a bona fide inspection of the emission control devices and systems on that

1 vehicle, thereby depriving the People of the State of California of the protection afforded by the
2 Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program)**

5 15. Respondent has subjected his station license to discipline under Health and Safety
6 Code section 44072.2, subdivision (a), in that on or about January 30, 2012, regarding the 2001
7 Honda Prelude, he violated sections of that Code, as follows:

8 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
9 control devices and systems required by law were installed and functioning correctly in
10 accordance with test procedures.

11 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
12 on that vehicle in accordance with procedures prescribed by the department.

13 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
14 Compliance No. OK272358C without properly testing and inspecting the vehicle to determine if
15 it was in compliance with section 44012 of that Code.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

18 16. Respondent has subjected his station license to discipline under Health and Safety
19 Code section 44072.2, subdivision (c), in that on or about January 30, 2012, regarding the 2001
20 Honda Prelude, he violated sections of the California Code of Regulations, title 16, as follows:

21 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
22 Compliance No. OK272358C even though that vehicle had not been inspected in accordance with
23 section 3340.42 of that Code.

24 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and
25 inspections on that vehicle in accordance with the Bureau's specifications.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit)**

3 17. Respondent subjected his station license to discipline under Health and Safety Code
4 section 44072.2, subdivision (d), in that on or about January 30, 2012, regarding the 2001 Honda
5 Prelude, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
6 issuing electronic Certificate of Compliance No. OK272358C for that vehicle without performing
7 a bona fide inspection of the emission control devices and systems on the vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **PRIOR CITATIONS**

11 18. To determine the degree of penalty, if any, to be imposed upon Respondent,
12 Complainant alleges as follows:

13 a. On June 1, 2007, the Bureau issued Citation No. C07-0967 to Respondent against his
14 station license for violations of Health and Safety Code section 44012, subdivision (f) (failure to
15 perform a visual/functional check of emission control devices) and California Code of
16 Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of
17 compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a
18 Bureau vehicle with a missing air suction valve. The Bureau assessed a civil penalty of \$500.
19 Respondent complied with this citation on July 16, 2007.

20 b. On January 29, 2010, the Bureau issued Citation No. C2010-0758 to Respondent
21 against his station license for violations of Health and Safety Code section 44012, subdivision (f)
22 (failure to perform a visual/functional check of emission control devices) and Regulation, section
23 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested).
24 Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing
25 adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of \$500.
26 Respondent complied with this citation on March 8, 2010.

27 c. On June 24, 2010, the Bureau issued Citation No. C2010-1353 to Respondent against
28 his station license for violations of Health and Safety Code section 44012, subdivision (f) (failure

1 to perform a visual/functional check of emission control devices) and Regulation, section
2 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested).

3 Respondent issued a certificate of compliance to a Bureau vehicle with a missing fuel evaporative
4 canister. The Bureau assessed a civil penalty of \$1,500. Respondent complied with this citation
5 on August 16, 2010.

6 d. On October 20, 2010, the Bureau issued Citation No. C2011-0494 to Respondent
7 against his station license for violations of Health and Safety Code section 44012, subdivision (f)
8 (failure to perform a visual/functional check of emission control devices) and Regulation, section
9 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested).

10 Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing
11 adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of
12 \$2,500. Respondent appealed this citation on November 24, 2010.

13 e. On June 1, 2007, the Bureau issued Citation No. M2007-0968 to Respondent against
14 his technician license for violations of Health and Safety Code section 44032, (qualified
15 technicians shall perform tests of emission control systems and devices in accordance with
16 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
17 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
18 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
19 compliance to a Bureau vehicle with a missing air suction valve. Respondent was required to
20 attend an 8-hour training course. Respondent complied with this citation on July 16, 2007.

21 f. On January 29, 2010, the Bureau issued Citation No. M2010-0759 to Respondent
22 against his technician license for violations of Health and Safety Code section 44032, (qualified
23 technicians shall perform tests of emission control systems and devices in accordance with
24 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
25 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
26 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
27 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's

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1 specifications. Respondent was required to attend an 8-hour training course. Respondent
2 complied with this citation on March 17, 2010.

3 g. On June 24, 2010, the Bureau issued Citation No. M2010-1354 to Respondent against
4 his technician license for violations of Health and Safety Code section 44032, (qualified
5 technicians shall perform tests of emission control systems and devices in accordance with
6 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
7 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
8 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
9 compliance to a Bureau vehicle with a missing fuel evaporative canister. Respondent was
10 required to attend a 16-hour training course. Respondent complied with this citation on August
11 31, 2010.

12 OTHER MATTERS

13 19. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
14 or permanently or refuse to validate, the registrations for all places of business operated in this
15 state by Thao Van Nguyen, upon a finding that he has, or is, engaged in a course of repeated and
16 willful violations of the laws and regulations pertaining to an automotive repair dealer.

17 20. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
18 License Number TC 240219, issued to Thao Van Nguyen, doing business as Kearny Mesa Smog
19 Check, is revoked or suspended, any additional license issued under this chapter in the name of
20 said licensee may be likewise revoked or suspended by the director, including but not limited to
21 Advanced Emission Specialist Technician License Number EA151145, issued to Thao Van
22 Nguyen.

23 PRAYER

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

26 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
27 Number ARD 240219, issued to Thao Van Nguyen, doing business as Kearny Mesa Smog
28 Check;

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- 2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Thao Van Nguyen;
- 3. Revoking or suspending Smog Check Test Only Station Number TC 240219, issued to Thao Van Nguyen, doing business as Kearny Mesa Smog Check;
- 4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Thao Van Nguyen, including but not limited to Advanced Emission Specialist Technician License Number EA 151145;
- 5. Ordering Thao Van Nguyen to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 6. Taking such other and further action as deemed necessary and proper.

DATED: June 21 2012


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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