

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General - 103312
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2617
Facsimile: (619) 645-2061
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **THAO VAN NGUYEN – OWNER, DBA**
14 **KEARNY MESA SMOG CHECK**
15 **4191 Convoy Street, Suite A**
16 **San Diego, CA 92111**
17 **Automotive Repair Dealer Registration No.**
18 **ARD 240219**
19 **Smog Check Test Only Station No. TC**
20 **240219**

and

21 **THAO VAN NGUYEN**
22 **3651 Hondo Street**
23 **San Diego, CA 92105**
24 **Smog Check Repair Technician License No.**
25 **EI 151145**
26 **Smog Check Inspector License No.**
27 **EO 151145**
28 **(Formerly Advanced Emission Specialist**
Technician License No. EA 151145)

and

29 **THOMAS NGUYEN**
30 **4757 Clairemont Mesa Blvd. #304**
31 **San Diego, CA 92117**
32 **Smog Check Repair Technician License No.**
33 **EI 146585**
34 **Smog Check Inspector License No.**
35 **EO 146585**
36 **(Formerly Advanced Emission Specialist**
37 **Technician License No. EA 146585)**

Respondents.

Case No. 79/12-169

OAH Case No. 2013030111

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

Complainant alleges:

1 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. On July 13, 2005, the Bureau issued Automotive Repair Dealer Registration Number
7 ARD 240219 (registration) to Thao Van Nguyen – Owner, DBA Kearny Mesa Smog Check
8 (Respondent Kearny Mesa). The registration was in full force and effect at all times relevant to
9 the charges brought herein and will expire on June 30, 2014, unless renewed.

10 **Smog Check Test Only Station License**

11 3. On July 22, 2005, the Bureau issued Smog Check Test Only Station Number TC
12 240219 (station license) to Respondent Kearny Mesa. The station license was in full force and
13 effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless
14 renewed.

15 **Smog Check Inspector & Smog Check Repair Technician Licenses**

16 4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist
17 Technician License Number EA 151145 (technician license) to Thao Van Nguyen (Respondent
18 Thao Nguyen). Respondent Thao Nguyen's technician license expired on December 31, 2012.
19 Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), Respondent
20 Nguyen's technician license was renewed pursuant to Respondent Thao Nguyen's election as
21 Smog Check Inspector License No. EO 151145 (inspector license) and Smog Check Repair
22 Technician License No. EI 151145 (technician license), effective January 7, 2013.¹ Respondent
23 Thao Nguyen's inspector and technician licenses were in full force and effect at all times relevant
24 to the charges brought herein and will expire on December 31, 2014, unless renewed.

25
26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

5. On a date uncertain in 2003, the Bureau issued Advanced Emission Specialist Technician License Number EA 146585 (technician license) to Thomas Nguyen (Respondent Thomas Nguyen). Respondent Thomas Nguyen's technician license was due to expire on October 31, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), Respondent Thomas Nguyen's technician license was renewed pursuant to Respondent Nguyen's election as Smog Check Inspector License No. EO 146585 (inspector license) and Smog Check Repair Technician License No. EI 146585 (technician license), effective October 15, 2012. Respondent Thomas Nguyen's inspector and technician licenses were in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2014, unless renewed.

JURISDICTION

6. Business & Professions Code (Code) section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

7. Health and Safety Code (H&S Code) section 44002 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.

8. H&S Code section 44035 states

(a) A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. The department shall adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses and qualifications and the conduct of the hearings.

(b) The department or its representatives, including quality assurance inspectors, shall be provided access to licensed stations for the purpose of examining property, station equipment, repair orders, emissions equipment maintenance records, and any emission inspection items, as defined by the department.

9. California Code of Regulations, title 16 (CCR), section 3340.28, subdivision (e), states that "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced

1 Emission Specialist Technician license issued prior to the effective date of this regulation, the
2 licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or
3 both.

4 STATUTORY PROVISIONS

5 10. Code section 9884.7 states, in pertinent part:

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

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

15 (2) Causing or allowing a customer to sign any work order that does not
16 state the repairs requested by the customer or the automobile's odometer reading at
17 the time of repair.

18

19 (4) Any other conduct that constitutes fraud.

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

23 (b) Except as provided for in subdivision (c), if an automotive repair dealer
24 operates more than one place of business in this state, the director pursuant to
25 subdivision (a) shall only suspend, revoke, or place on probation the registration of
26 the specific place of business which has violated any of the provisions of this chapter.
27 This violation, or action by the director, shall not affect in any manner the right of the
28 automotive repair dealer to operate his or her other places of business.

(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.

11. H&S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with
procedures prescribed by the department and may require loaded mode dynamometer
testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard
diagnostic system, or other appropriate test procedures as determined by the
department in consultation with the state board. The department shall implement

1 testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or
2 two-speed idle testing, on model year 2000 and newer vehicles only, beginning no
3 earlier than January 1, 2013. However, the department, in consultation with the state
4 board, may prescribe alternative test procedures that include loaded mode
5 dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems
6 that the department and the state board determine exhibit operational problems. The
7 department shall ensure, as appropriate to the test method, the following:

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

11

12 (f) A visual or functional check is made of emission control devices
13 specified by the department, including the catalytic converter in those instances in
14 which the department determines it to be necessary to meet the findings of Section
15 44001. The visual or functional check shall be performed in accordance with
16 procedures prescribed by the department.

17

18 12. H&S Code section 44015 states in pertinent part:

19

20 (b) If a vehicle meets the requirements of Section 44012, a smog check
21 station licensed to issue certificates shall issue a certificate of compliance or a
22 certificate of noncompliance.

23

24 13. H&S Code section 44032 states:

25 No person shall perform, for compensation, tests or repairs of emission
26 control devices or systems of motor vehicles required by this chapter unless the
27 person performing the test or repair is a qualified smog check technician and the test
28 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.

14. H&S Code section 44072.2 states, in pertinent part:

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 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.

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

2 15. H&S Code, section 44072.8 of the H&S Code states:

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

5 **REGULATORY PROVISIONS**

6 16. CCR section 3340.30 states in pertinent part:

7 A licensed smog check inspector and/or repair technician shall comply with
8 the following requirements at all times while licensed:

9 (a) Inspect, test and repair vehicles, as applicable, in accordance with
section 44012 of the Health and Safety Code, section 44035 of the Health and Safety
10 Code, and section 3340.42 of this article.

11

12 17. CCR section 3340.35 states in pertinent part:

13

14 (c) A licensed station shall issue a certificate of compliance or
15 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.

16

17 18. CCR section 3340.42 states:

18 With the exception of diesel-powered vehicles addressed in subsection (f) of
this section, the following emissions test methods and standards apply to all vehicles:

19 (a) A loaded-mode test, except as otherwise specified, shall be the test
method used to inspect vehicles registered in the enhanced program areas of the state.
20 The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide
and oxides of nitrogen emissions, as contained in the bureau's specifications
21 referenced in subsection (b) of Section 3340.17 of this article. The loaded-mode test
shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis
22 dynamometer, certified by the bureau.

23 On and after March 31, 2010, exhaust emissions from a vehicle subject to
this inspection shall be measured and compared to the emissions standards shown in
24 the VLT Row Specific Emissions Standards (Cutpoints) Table, dated March 2010,
which is hereby incorporated by reference. If the emissions standards for a specific
25 vehicle is not included in this table then the exhaust emissions shall be compared to
the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle
26 passes the loaded-mode test if all of its measured emissions are less than or equal to
the applicable emission standards specified in the applicable table.

27 (b) A two-speed idle mode test, unless a different test is otherwise specified
28 in this article, shall be the test method used to inspect vehicles registered in all
program areas of the state, except in those areas of the state where the enhanced

1 program has been implemented. The two-speed idle mode test shall measure
2 hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again
3 at idle RPM, as contained in the bureau's specifications referenced in subsection (b)
4 of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this
5 inspection shall be measured and compared to the emission standards set forth in this
6 section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if
7 all of its measured emissions are less than or equal to the applicable emissions
8 standards specified in Table III.

9

10 (e) In addition to the test methods prescribed in this section, the following
11 tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog
12 Check inspection:

13 (1) A visual inspection of the vehicle's emissions control systems. During
14 the visual inspection, the technician shall verify that the following emission control
15 devices, as applicable, are properly installed on the vehicle:

16 (A) air injection systems,

17 (B) computer(s) and related sensors and switches,

18 (C) crankcase emissions controls, including positive crankcase ventilation,

19 (D) exhaust gas after treatment systems, including catalytic converters,

20 (E) exhaust gas recirculation (EGR) systems,

21 (F) fuel evaporative emission controls,

22 (G) fuel metering systems, including carburetors and fuel injection,

23 (H) ignition spark controls, and

24 (I) any emissions control systems that are not otherwise prompted by the
25 Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

26

27 19. CCR section 3373 states:

28 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.

29 COST RECOVERY

30 20. Code section 125.3 provides, in pertinent part, that a Bureau may request the
31 administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

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

4 21. On or about January 30, 2012, a Bureau undercover operator drove a Bureau-
5 documented 2001 Honda Prelude to Respondent's facility and requested a smog inspection. The
6 vehicle could not pass the visual portion of a smog inspection because the vehicle's fuel
7 evaporative canister (EVAP canister) was missing. The operator signed a work order and
8 received an estimate prior to the smog inspection. Alex Yeargan, a licensed smog check
9 inspector and smog check repair technician employed by Respondent Kearny Mesa, performed
10 the smog inspection and issued electronic Certificate of Compliance No. [REDACTED] for that
11 vehicle. The operator paid \$51 for the smog inspection and received a copy of Invoice No. [REDACTED]
12 and the Vehicle Inspection Report.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Misleading Statements)**

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

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 23. Respondent Kearny Mesa has subjected its registration to discipline under Code
24 section 9884.7, subdivision (a)(4), in that on or about January 30, 2012, its employee Alex
25 Yeargan committed acts which constitute fraud by issuing electronic Certificate of Compliance
26 No. [REDACTED] for the 2001 Honda Prelude without performing a bona fide inspection of the
27 emission control devices and systems on that vehicle, thereby depriving the People of the State of
28 California of the protection afforded by the Motor Vehicle Inspection Program.

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 24. Respondent Kearny Mesa has subjected its station license to discipline under H&S
4 Code section 44072.2, subdivision (a), in that on or about January 30, 2012, regarding the 2001
5 Honda Prelude, its employee Alex Yeargan violated sections of that Code, as follows:

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

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

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

14 **FOURTH CAUSE FOR DISCIPLINE**

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

16 25. Respondent Kearny Mesa has subjected its station license to discipline under H&S
17 Code section 44072.2, subdivision (c), in that on or about January 30, 2012, regarding the 2001
18 Honda Prelude, its employee Alex Yeargan violated sections of the California Code of
19 Regulations, title 16, as follows:

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

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

25 **FIFTH CAUSE FOR DISCIPLINE**

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

27 26. Respondent Kearny Mesa subjected its station license to discipline under H&S Code
28 section 44072.2, subdivision (d), in that on or about January 30, 2012, regarding the 2001 Honda

1 Prelude, its employee Alex Yeargan committed acts involving dishonesty, fraud or deceit
2 whereby another was injured by issuing electronic Certificate of Compliance No. [REDACTED] for
3 that vehicle without performing a bona fide inspection of the emission control devices and
4 systems on the vehicle, thereby depriving the People of the State of California of the protection
5 afforded by the Motor Vehicle Inspection Program.

6 **SEPTEMBER 23, 2010 UNDERCOVER OPERATION**

7 27. On September 23, 2010, a Bureau undercover operator received custody of a 1986
8 Chevrolet from Bureau personnel with its ignition timing adjusted beyond specifications so that it
9 could not pass a smog inspection. Bureau personnel had also installed a tamper seal on the
10 vehicle to show whether any inspection done would have been properly performed. The operator
11 drove the vehicle to Respondents' facility and requested a smog inspection. The operator signed
12 work order no. [REDACTED] and received an estimate copy prepared for the inspection by Respondent
13 Thomas Nguyen, but it did not contain the vehicle's odometer reading. Respondent Thomas
14 Nguyen, a licensed smog check inspector and smog check repair technician employed by
15 Respondent Kearny Mesa, performed the inspection and issued electronic smog certificate of
16 compliance no. [REDACTED] as indicated by the Vehicle Inspection Report (VIR) he gave the
17 operator, and the information he input into the Vehicle Information Database (VID) for the 1986
18 Chevrolet. The operator paid Respondent Thomas Nguyen \$53.00 for the inspection and received
19 invoice no. [REDACTED] from Respondent Thomas Nguyen, which also did not contain the vehicle's
20 odometer reading. The operator returned the vehicle to Bureau personnel, who examined the
21 tamper seal and determined that it had not been disturbed.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Invoice Requirements)**

24 27. Respondent Kearny Mesa's registration is subject to disciplinary action pursuant to
25 Code section 9884.2, in that Respondent failed to include the 1986 Chevrolet's odometer reading
26 on the estimate and invoice for the smog inspection performed on it on September 23, 2010.

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SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

28. Respondent Kearny Mesa subjected its station license to discipline under H&S Code section 44072.2, subdivision (d), in that on September 23, 2010, regarding the 1986 Chevrolet, its owner, Respondent Nguyen committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

29. Respondent Kearny Mesa's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. Section 44012, subdivision (f): Respondent failed to ensure that a visual/functional check of emission control devices was performed on the 1986 Chevrolet in accordance with procedures prescribed by the department.

b. Section 44015, subdivision (b): Respondent issued an electronic smog certificate of compliance for the 1986 Chevrolet without ensuring that the vehicle was properly inspected in accordance with H&S Code section 44012.

NINTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

30. Respondent Kearny Mesa's smog check station license is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the provisions of the CCR, as follows:

a. Section 3340.35, subdivision (c): Respondent issued an electronic smog certificate of compliance for the 1986 Chevrolet even though the vehicle had not been inspected in accordance with section 3340.42.

1 b. Section 3340.42: Respondent failed to ensure that the required smog tests were
2 conducted on the 1986 Chevrolet in accordance with Bureau specifications.

3 **TENTH CAUSE FOR DISCIPLINE**

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

5 31. Respondent Thomas Nguyen's inspector and technician licenses are subject to
6 disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that he failed to
7 comply with the following sections of that Code:

8 a. Section 44012, subdivision (f): Respondent failed to ensure that a visual/functional
9 check of emission control devices was performed on the 1986 Chevrolet in accordance with
10 procedures prescribed by the department.

11 b. Section 44032: Respondent failed to perform tests of emission control devices and
12 systems in accordance with H&S Code section 44012.

13 c. Section 44035: Respondent failed to meet or maintain the standards prescribed for
14 qualification, equipment, performance, or conduct of a smog technician.

15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

17 32. Respondent Thomas Nguyen's inspector and technician licenses are subject to
18 disciplinary action pursuant to H&S Code section 44072.2, subdivision (c), in that he failed to
19 comply with the provisions of the CCR as follows:

20 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the 1986
21 Chevrolet in accordance with H&S Code sections 44012 and 3340.42..

22 b. Section 3340.42: Respondent failed to ensure that the required smog tests were
23 conducted on the 1986 Chevrolet in accordance with Bureau specifications.

24 **TWELFTH CAUSE FOR DISCIPLINE**

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

26 33. Respondent Thomas Nguyen's inspector and technician licenses are subject to
27 discipline under H&S Code section 44072.2, subdivision (d), in that on September 23, 2010, he
28 committed acts involving dishonesty, fraud, or deceit, by issuing electronic Certificate of

1 Compliance No. [REDACTED] for the 1986 Chevrolet vehicle without performing a bona fide
2 inspection of the emission control devices and systems on the vehicle, thereby depriving the
3 People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 PRIOR CITATIONS

6 34. To determine the degree of penalty, if any, to be imposed upon Respondents,
7 Complainant alleges as follows:

8 a. On June 1, 2007, the Bureau issued Citation No. C07-0967 to Respondent Thao
9 Nguyen against his station license for violations of H&S Code section 44012, subdivision (f)
10 (failure to perform a visual/functional check of emission control devices) and CCR, section
11 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested).
12 Respondent issued a certificate of compliance to a Bureau vehicle with a missing air suction
13 valve. The Bureau assessed a civil penalty of \$500. Respondent complied with this citation on
14 July 16, 2007.

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

23 c. On January 29, 2010, the Bureau issued Citation No. C2010-0758 to Respondent
24 Thao Nguyen against his station license for violations of H&S Code section 44012, subdivision
25 (f) (failure to perform a visual/functional check of emission control devices) and CCR, section
26 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested).
27 Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing
28 adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of \$500.

1 Respondent complied with this citation on March 8, 2010.

2 d. On January 29, 2010, the Bureau issued Citation No. M2010-0759 to Respondent
3 Thao Nguyen against his technician license for violations of H&S Code section 44032, (qualified
4 technicians shall perform tests of emission control systems and devices in accordance with
5 section 44012 of that Code) and CCR, section 3340.30, subdivision (a) (qualified technicians
6 shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the H&S
7 Code, and CCR, section 3340.42). Respondent issued a certificate of compliance to a Bureau
8 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. Respondent
9 was required to attend an 8-hour training course. Respondent complied with this citation on
10 March 17, 2010.

11 e. On June 24, 2010, the Bureau issued Citation No. C2010-1353 to Respondent Thao
12 Nguyen against his station license for violations of H&S Code section 44012, subdivision (f)
13 (failure to perform a visual/functional check of emission control devices) and CCR, section
14 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested).
15 Respondent issued a certificate of compliance to a Bureau vehicle with a missing fuel evaporative
16 canister. The Bureau assessed a civil penalty of \$1,500. Respondent complied with this citation
17 on August 16, 2010.

18 f. On June 24, 2010, the Bureau issued Citation No. M2010-1354 to Respondent Thao
19 Nguyen against his technician license for violations of H&S Code section 44032, (qualified
20 technicians shall perform tests of emission control systems and devices in accordance with
21 section 44012 of that Code) and CCR, section 3340.30, subdivision (a) (qualified technicians shall
22 inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the H&S Code,
23 and CCR, section 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle
24 with a missing fuel evaporative canister. Respondent was required to attend a 16-hour training
25 course. Respondent complied with this citation on August 31, 2010.

26 g. On October 20, 2010, the Bureau issued Citation No. C2011-0494 to Respondent
27 Thao Nguyen against his station license for violations of H&S Code section 44012, subdivision
28 (f) (failure to perform a visual/functional check of emission control devices) and CCR, section

1 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested).
2 Respondent Kearny Mesa's employee, Respondent Thomas Nguyen, issued a certificate of
3 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's
4 specifications. The Bureau assessed a civil penalty of \$2,500. Respondent appealed this citation
5 on November 22, 2010. The Bureau withdrew this citation without prejudice on September 28,
6 2012, and its allegations are incorporated into this Second Amended Accusation, in the Sixth
7 through Ninth Causes for Discipline.

8 h. On October 20, 2010, the Bureau issued Citation No. M2011-0495 to Respondent
9 Thomas Nguyen against his smog technician license for violations of H&S Code section 44032,
10 (qualified technicians shall perform tests of emission control systems and devices in accordance
11 with section 44012 of that Code) and CCR, section 3340.30, subdivision (a) (qualified technicians
12 shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the H&S
13 Code, and CCR, section 3340.42). Respondent issued a certificate of compliance to a Bureau
14 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau
15 directed Respondent Thomas Nguyen to complete an eight-hour training course. Respondent
16 appealed this citation on November 22, 2010. The Bureau withdrew this citation without
17 prejudice on September 28, 2012, and its allegations are incorporated into this Second Amended
18 Accusation, in the Tenth through Twelfth Causes for Discipline.

19 OTHER MATTERS

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

24 36. Under H&S Code section 44072.8, if Smog Check Test Only Station License Number
25 TC 240219, issued to Thao Van Nguyen, doing business as Kearny Mesa Smog Check, is
26 revoked or suspended, any additional license issued under this chapter in the name of said
27 licensee may be likewise revoked or suspended by the director.

37. Pursuant to H&S code section 44072.8, if Smog Check Repair Technician License No. EI 151145 and Smog Check Inspector License No. EO 151145 (formerly Advanced Emission Specialist Technician License No. EA 151145), issued to Respondent Thao Van Nguyen are revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

38. Pursuant to H&S code section 44072.8, if Smog Check Repair Technician License No. EI 146585 and Smog Check Inspector License No. EO 14658 (formerly Advanced Emission Specialist Technician License No. EA 146585), issued to Respondent Thomas Nguyen are revoked or suspended, any additional license issued under this chapter 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 Consumer Affairs issue a decision:

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

2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Thao Van Nguyen;

3. Revoking, suspending or placing on probation Smog Check Test Only Station
Number TC 240219, issued to Thao Van Nguyen, doing business as Kearny Mesa Smog Check;

4. Revoking, suspending, or placing on probation any additional license issued under Chapter 5 of the Health & Safety Code in the name of Thao Van Nguyen;

5. Revoking, suspending, or placing on probation Smog Check Repair Technician License No. EI 151145 and Smog Check Inspector License No. EO 151145 (formerly Advanced Emission Specialist Technician License No. EA 151145), issued to Thao Van Nguyen;

6. Revoking, suspending or placing on probation any additional license issued under Chapter 5 of the Health and Safety Code in the name of Thao Van Nguyen;

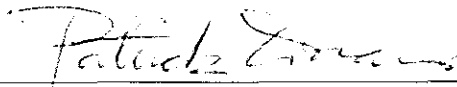
1 7. Revoking, suspending, or placing on probation Smog Check Repair Technician
2 License No. EI 146585 and Smog Check Inspector License No. EO 146585 (formerly Advanced
3 Emission Specialist Technician License No. EA 146585), issued to Thomas Nguyen;

4 8. Revoking, suspending or placing on probation any additional license issued under
5 Chapter 5 of the Health and Safety Code in the name of Thomas Nguyen;

6 9. Ordering Thao Van Nguyen and Thomas Nguyen, jointly and severally, to pay the
7 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
8 case, pursuant to Business and Professions Code section 125.3; and,

9 10. Taking such other and further action as deemed necessary and proper.
10

11 DATED: September 2, 2013


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

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