

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**TAMARA DEANNE DOYLE-MEMBER;
DOYLE AUTOMOTIVE LLC,
DOING BUSINESS AS DAN'S SMOG
CHECK STATION**

4555 University Ave.
San Diego, CA 92105

Automotive Repair Dealer Registration
ARD 270606
Smog Check, Test Only, Station
License No. TC 270606

MAZDA MEHRAZ

4546 Lisann St.
San Diego, CA 92117
Smog Check Inspector License No. EO
637139

and

MAN CAO NGUYEN

1644 Towell Lane
Escondido, CA 92029

Smog Check Inspector License No.
EO 632531
Smog Check Repair Technician
License No. EI 632531 (formerly
Advanced Emission Specialist
Technician License No. EA 632531)

Respondents.

Case No. 79/15-132

OAH No. 2015070404


DECISION

The attached Stipulated Settlement and Disciplinary Order Re: Man Cao Nguyen's License No. 632531 is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter, only as to respondent Man Cao Nguyen, Smog Check Inspector License No. EO 632531, and

Smog Check Repair Technician License No. EI 632531 (formerly Advanced Emission Specialist Technician License No. EA 632531).

This Decision shall become effective April 26, 2016.

DATED: April 1, 2016



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
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8 *Attorneys for Complainant*

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:
14 **TAMARA DEANNE DOYLE-MEMBER;**
15 **DOYLE AUTOMOTIVE LLC,**
16 **DOING BUSINESS AS DAN'S SMOG**
17 **CHECK STATION**
18 **4555 University Ave.**
19 **San Diego, CA 92105**

20 **Automotive Repair Dealer Registration**
21 **ARD 270606**
22 **Smog Check, Test Only, Station License No.**
23 **TC 270606**

24 **MAZDA MEHRAZ**
25 **4546 Lisann St.**
26 **San Diego, CA 92117**
27 **Smog Check Inspector License No. EO**
28 **637139**

and

29 **MAN CAO NGUYEN**
30 **1644 Towell Lane**
31 **Escondido, CA 92029**

32 **Smog Check Inspector License No. EO**
33 **632531**
34 **Smog Check Repair Technician License No.**

Case No. 79/15-132

OAH No. 2015070404

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER RE: MAN CAO
NGUYEN'S LICENSE NO. 632531

1 **EI 632531 (formerly Advanced Emission**
2 **Specialist Technician License No. EA**
3 **632531)**

Respondents.

4 In the interest of a prompt and speedy settlement of this matter, consistent with the public
5 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of
6 Automotive Repair the parties hereby agree to the following Stipulated Settlement and
7 Disciplinary Order which will be submitted to the Director for the Director's approval and
8 adoption as the final disposition of the Accusation solely with respect to Man Cao Nguyen. It
9 does not apply to Tamara Deanne Doyle or Mazda Mehrnaz.

10 PARTIES

11 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
12 brought this action solely in his official capacity and is represented in this matter by Kamala D.
13 Harris, Attorney General of the State of California, by Adrian R. Contreras, Deputy Attorney
14 General.

15 2. Respondent Man Cao Nguyen (Respondent) is representing himself in this proceeding
16 and has chosen not to exercise his right to be represented by counsel.

17 3. On or about September 27, 2010, the Bureau issued Advanced Emission Specialist
18 (EA) Technician License No. 632531 to Respondent, which was due to expire on June 30, 2014.
19 Under California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
20 renewed, under Nguyen's election, as Smog Check Inspector License No. EO 632531 and Smog
21 Check Repair Technician License No. EI 632531, effective September 19, 2014. The Smog
22 Check Inspector License and Smog Check Repair Technician License (collectively technician
23 licenses) were in full force and effect at all times relevant to the charges brought herein and will
24 expire on June 30, 2016, unless renewed.

25 JURISDICTION

26 4. Accusation No. 79/15-132 was filed before the Director of Consumer Affairs
27 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
28

1 Respondent. The Accusation and all other statutorily required documents were properly served
2 on Respondent on June 12, 2015. Respondent timely filed a Notice of Defense contesting the
3 Accusation.

4 5. A copy of Accusation No. 79/15-132 is attached as exhibit A and incorporated herein
5 by reference.

6 ADVISEMENT AND WAIVERS

7 6. Respondent has carefully read, and understands the charges and allegations in
8 Accusation No. 79/15-132. Respondent has also carefully read, and understands the effects of
9 this Stipulated Settlement and Disciplinary Order.

10 7. Respondent is fully aware of his legal rights in this matter, including the right to a
11 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
12 his own expense; the right to confront and cross-examine the witnesses against him; the right to
13 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
14 the attendance of witnesses and the production of documents; the right to reconsideration and
15 court review of an adverse decision; and all other rights accorded by the California
16 Administrative Procedure Act and other applicable laws.

17 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
18 every right set forth above.

19 CULPABILITY

20 9. Respondent admits the truth of each and every charge and allegation in Accusation
21 No. 79/15-132.

22 10. Respondent agrees that his Smog Check Inspector License and Smog Check Repair
23 Technician License are subject to discipline and he agrees to be bound by the Director's
24 probationary terms as set forth in the Disciplinary Order below.

25 CONTINGENCY

26 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or
27 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
28 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of

1 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
2 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
3 that they may not withdraw its agreement or seek to rescind the stipulation prior to the time the
4 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision
5 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
6 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
7 Director shall not be disqualified from further action by having considered this matter.

8 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
9 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
10 signatures thereto, shall have the same force and effect as the originals.

11 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
14 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
15 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
16 writing executed by an authorized representative of each of the parties.

17 14. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the Director may, without further notice or formal proceeding, issue and enter the following
19 Disciplinary Order:

20 **DISCIPLINARY ORDER**

21 IT IS HEREBY ORDERED that Smog Check Inspector License No. EO 632531 and Smog
22 Check Repair Technician License No. EI 632531 issued to Respondent Man Cao Nguyen
23 (Respondent) are both revoked. However, the revocation as to each is stayed and Respondent's
24 licenses are placed on probation for two (2) years on the following terms and conditions:

25 1. **Obey All Laws.** Comply with all statutes, regulations, and rules governing
26 automotive inspections, estimates, and repairs.

27 2. **Reporting.** Respondent or Respondent's authorized representative must report in
28 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the

Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

4. **Jurisdiction.** If an accusation or petition to revoke probation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation or petition to revoke probation, and the period of probation shall be extended until such decision.

5. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, suspend or revoke Respondent's licenses.

6. **Training Course.** During the period of probation, Respondent shall attend and successfully complete a Bureau-certified 68 hour Level 1 Engine and Emission Controls Fundamentals training course. Said course shall be completed and proof of completion submitted to the Bureau within six months of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the six months period, Respondent's licenses shall be immediately suspended until such proof is received.

7. **Cost Recovery.** Payment to the Bureau of the amount of cost recovery in the amount of \$1,000.00, payable in twenty-four monthly equal installments of \$41.66 with the final payment due twelve months before the termination of probation. All payments shall be by cashier's check or money order. Failure to complete payment of cost recovery within this time frame shall constitute a violation of probation which may subject Respondent's licenses to outright revocation; however, the Director or the Director's Bureau of Automotive Repair designee may elect to continue probation until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Smog Check Inspector License and Smog Check

1 Repair Technician License. I enter into this Stipulated Settlement and Disciplinary Order
2 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
3 Director of Consumer Affairs.

4
5 DATED:

02/05/2016


MAN CAO NGUYEN
Respondent

7
8 ENDORSEMENT


9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Director of Consumer Affairs.

11 Dated:

2/5/16

Respectfully submitted,

13 KAMALA D. HARRIS
Attorney General of California
14 GREGORY J. SALUTE
Supervising Deputy Attorney General

15 
16 ADRIAN R. CONTRERAS
17 Deputy Attorney General
18 *Attorneys for Complainant*

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Exhibit A

Accusation No. 79/15-132

1 KAMALA D. HARRIS
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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
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15 4555 University Ave.
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ARD 270606
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18 TC 270606

19 MAZDA MEHRAZ
4546 Lisann St.
20 San Diego, CA 92117

21 Smog Check Inspector License No. EO
22 637139
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Case No. 79/15-132
ACCUSATION
smog check

1 **MAN CAO NGUYEN**
2 **1644 Towell Lane**
3 **Escondido, CA 92029**

4 **Smog Check Inspector License No. EO**
5 **632531**

6 **Smog Check Repair Technician License No.**
7 **EI 632531 (formerly Advanced Emission**
8 **Specialist Technician License No. EA**
9 **632531)**

10 Respondents.

11 Complainant alleges:

12 **PARTIES**

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

15 2. On or about October 19, 2012, the Bureau issued Automotive Repair Dealer
16 Registration No. ARD 270606 to Respondent Tamara Deanne Doyle, Member; Doyle Automotive
17 LLC, doing business as Dan's Smog Check Station (collectively Dan's Smog Check Station). The
18 registration was in full force and effect at all times relevant to the charges brought herein and will
19 expire on October 31, 2015, unless renewed.

20 3. On or about January 9, 2013, the Bureau issued Smog Check Test Only Station
21 License No. TC 270606 to Dan's Smog Check Station. The license was in full force and effect at
22 all times relevant to the charges brought herein and will expire on October 31, 2015, unless
23 renewed.

24 4. On or about July 24, 2014, the Bureau issued Smog Check Inspector License No. EO
25 637139 to Respondent Mazda Mehrnaz (Mehraz). The Smog Check Inspector License was in full
26 force and effect at all times relevant to the charges brought herein and will expire on March 31,
27 2016, unless renewed.

28 5. On or about September 27, 2010, the Bureau issued Advanced Emission Specialist
(EA) Technician License No. 632531 to Respondent Man Cao Nguyen (Nguyen), which was due
to expire on June 30, 2014. Under California Code of Regulations, title 16, section 3340.28,
subdivision (e), the license was renewed, under Nguyen's election, as Smog Check Inspector

1 License No. EO 632531 and Smog Check Repair Technician License No. EI 632531, effective
2 September 19, 2014. The Smog Check Inspector License and Smog Check Repair Technician
3 License (collectively technician licenses) were in full force and effect at all times relevant to the
4 charges brought herein and will expire on June 30, 2016, unless renewed.

5 JURISDICTION

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

8 7. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
9 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
10 disciplinary action during the period within which the license may be renewed, restored, reissued
11 or reinstated.

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

16 9. Section 9884.20 of the Code states:

17 "All accusations against automotive repair dealers shall be filed within three years after the
18 performance of the act or omission alleged as the ground for disciplinary action, except that with
19 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the
20 accusation may be filed within two years after the discovery, by the bureau, of the alleged facts
21 constituting the fraud or misrepresentation."

22 10. Section 9884.22 of the Code states:

23 "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny
24 at any time any registration required by this article on any of the grounds for disciplinary action
25 provided in this article. The proceedings under this article shall be conducted in accordance with
26 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
27 Code, and the director shall have all the powers granted therein.

28 "...."

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

4 12. Section 44072 of the Health and Safety Code states:

5 "Any license issued under this chapter and the regulations adopted pursuant to it may be
6 suspended or revoked by the director. The director may refuse to issue a license to any applicant
7 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted
8 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
9 of the Government Code, and the director shall have all the powers granted therein."

10 13. Section 44072.4 of the Health and Safety Code states:

11 "The director may take disciplinary action against any licensee after a hearing as provided in
12 this article by any of the following:

13 "(a) Imposing probation upon terms and conditions to be set forth by the director.

14 "(b) Suspending the license.

15 "(c) Revoking the license."

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

20 15. Section 44072.7 of the Health and Safety Code states:

21 "All accusations against licensees shall be filed within three years after the act or omission
22 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a
23 violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after
24 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation
25 prohibited by that section."

26 ///

27 ///

28 ///

1 16. Section 44072.8 of the Health and Safety Code states:

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

5 **STATUTORY PROVISIONS**

6 17. Section 22 of the Code states:

7 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the
8 administration of the provision is vested, and unless otherwise expressly provided, shall include
9 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and
10 'agency.'

11 "(b) Whenever the regulatory program of a board that is subject to review by the Joint
12 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2
13 (commencing with Section 473), is taken over by the department, that program shall be designated
14 as a 'bureau.'"

15 18. Section 23.7 of the Code states:

16 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or
17 other means to engage in a business or profession regulated by this code or referred to in Section
18 1000 or 3600."

19 19. Section 9884.7 of the Code states:

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

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

28 ". . . .

1 “(4) Any other conduct that constitutes fraud.

2 “...

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

7 20. Section 44012 of the Health and Safety Code states:

8 “The test at the smog check stations shall be performed in accordance with procedures
9 prescribed by the department and may require loaded mode dynamometer testing in enhanced
10 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other
11 appropriate test procedures as determined by the department in consultation with the state board.
12 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
13 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
14 no earlier than January 1, 2013. However, the department, in consultation with the state board,

15 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
16 idle testing for vehicles with onboard diagnostic systems that the department and the state board
17 determine exhibit operational problems. The department shall ensure, as appropriate to the test
18 method, the following:

19 “(a) Emission control systems required by state and federal law are reducing excess
20 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section
21 44013.

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

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

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

4 “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices and
5 the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
6 department, that may include, but are not limited to, onboard diagnostic testing. The test may
7 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the
8 adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

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

15 “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a
16 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
17 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
18 would have passed a tailpipe test.

19 “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle
20 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
21 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle
22 from compliance with all applicable requirements of this chapter.”

23 21. Section 44015 of the Health and Safety Code states:

24 “(a) A licensed smog check station shall not issue a certificate of compliance, except as
25 authorized by this chapter, to any vehicle that meets the following criteria:

26 “(1) A vehicle that has been tampered with.

27 “(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of
28 Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision

1 (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error
2 can explain the irregularity, or whether the vehicle otherwise meets smog check requirements,
3 allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a referee
4 or another smog check station.

5 “(3) A vehicle that, prior to repairs, has been initially identified by the smog check station as
6 a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-
7 only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections
8 44014 and 44014.2.

9 “(4) A vehicle described in subdivision (c).

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

12 “(c)(1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity
13 authorized to perform referee functions for a vehicle that has been properly tested but does not
14 meet the applicable emission standards when it is determined that no adjustment or repair can be

15 made that will reduce emissions from the inspected motor vehicle without exceeding the applicable
16 repair cost limit established under Section 44017 and that every defect specified by paragraph (2)
17 of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section
18 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be
19 accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3
20 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No repair cost waiver
21 shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost
22 limit specified in Section 44017.

23 “(2) An economic hardship extension shall be issued, upon request of a qualified low-income
24 motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that
25 has been properly tested but does not meet the applicable emission standards when it is determined
26 that no adjustment or repair can be made that will reduce emissions from the inspected motor
27 vehicle without exceeding the applicable repair cost limit, as established pursuant to Section
28 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in

1 paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-
2 income vehicle owner would suffer an economic hardship if the extension is not issued, and that all
3 appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section
4 44017.1 have been performed.

5 “(d) No repair cost waiver or economic hardship extension shall be issued under any of the
6 following circumstances:

7 “(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the
8 previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension
9 may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that
10 owner. However, a repair cost waiver or economic hardship extension may be issued for a motor
11 vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as
12 determined by the department. For waivers or extensions issued in the program operative on or
13 after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per
14 owner.

15 “(2) Upon initial registration of all of the following:

16 “(A) A direct import motor vehicle.

17 “(B) A motor vehicle previously registered outside this state.

18 “(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

19 “(D) A motor vehicle that has had an engine change.

20 “(E) An alternate fuel vehicle.

21 “(F) A specially constructed vehicle.

22 “(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance shall
23 be valid for 90 days.

24 “(f) Excluding any vehicle whose transfer of ownership and registration is described in
25 subdivision (d) of Section 4000.1 of the Vehicle Code, and except as otherwise provided in
26 Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle
27 dealer shall be responsible for having a smog check inspection performed on, and a certificate of
28 compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate

1 issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle is
2 sold and registered to a retail buyer, whichever occurs first.

3 "(g) A test may be made at any time within 90 days prior to the date otherwise required."

4 22. Section 44035 of the Health and Safety Code states:

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

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

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

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

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

21 "...

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

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

24 "..."

25 24. Section 44072.10 of the Health and Safety Code states:

26 "...
27
28

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

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

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

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

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

10 REGULATORY PROVISIONS

11 25. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
12 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
13 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
14 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

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

16 “... ”

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

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

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

24 “... ”

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

26 “... ”

27 “(c) No person shall enter into the emissions inspection system any vehicle identification
28 information or emission control system identification data for any vehicle other than the one being

1 tested. Nor shall any person knowingly enter into the emissions inspection system any false
2 information about the vehicle being tested.

3 "..."

4 28. California Code of Regulations, title 16, section 3340.42 states:

5 "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
6 section 3340.45.

7 "(a) All vehicles subject to a smog check inspection, shall receive one of the following test
8 methods:

9 "(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year
10 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-
11 mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen
12 emissions, as contained in the bureau's specifications referenced in subsection (a) of Section
13 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test
14 equipment, including a chassis dynamometer, certified by the bureau.

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

23 "(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-
24 year vehicles, except diesel-powered, registered in all program areas of the state, except in those
25 areas of the state where the enhanced program has been implemented. The two-speed idle mode
26 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
27 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of
28 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be

1 measured and compared to the emission standards set forth in this section and as shown in TABLE
2 III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or
3 equal to the applicable emissions standards specified in Table III.

4 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
5 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
6 The OBD test failure criteria are specified in section 3340.42.2.

7 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
8 receive the following:

9 “(1) A visual inspection of emission control components and systems to verify the vehicle's
10 emission control systems are properly installed.

11 “(2) A functional inspection of emission control systems as specified in the Smog Check
12 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
13 operation.

14 “. . . .”

15 29. California Code of Regulations, title 16, section 3395.4 states:

16 “In reaching a decision on a disciplinary action under the Administrative Procedure Act
17 (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of
18 Administrative Hearing, the Bureau of Automotive Repair shall consider the disciplinary guidelines
19 entitled ‘Guidelines for Disciplinary Penalties and Terms of Probation’ [May, 1997] which are
20 hereby incorporated by reference. The ‘Guidelines for Disciplinary Penalties and Terms of
21 Probation’ are advisory. Deviation from these guidelines and orders, including the standard terms
22 of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion
23 determines that the facts of the particular case warrant such deviation -for example: the presence
24 of mitigating factors; the age of the case; evidentiary problems.”

25 COSTS

26 30. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.

4 **FACTS**

5 31. At all times alleged in this Accusation, Tamara Deanne Doyle, Mehraz, and Nguyen
6 were acting in the course and within the scope of a technician, employee, partner, officer, or
7 member of Dan's Smog Check Station.

8 **FIRST UNDERCOVER RUN**

9 32. On August 26, 2014, a Bureau undercover operator drove a Bureau-documented 1988
10 Toyota to Dan's Smog Check Station for inspection. The following introduced malfunction was
11 placed on the vehicle: installation of a damaged fuel neck so that the vehicle would fail the
12 functional check for the Low Pressure Fuel Evaporative Test. The undercover operator drove to
13 the facility and requested a smog inspection. Dan's Smog Check Station and Mehraz performed
14 the inspection. Certificate of Compliance [REDACTED] was issued for the inspection. After the
15 inspection was completed, the undercover operator paid Dan's Smog Check Station for the
16 inspection. Dan's Smog Check Station gave the undercover operator a Vehicle Inspection Report
17 and an invoice. The undercover operator then left the facility and transferred custody of the
18 vehicle to a Bureau representative.

19 33. A Bureau representative later reinspected the vehicle. The vehicle was still in the
20 condition that would cause the vehicle to fail the functional check for the Low Pressure Fuel
21 Evaporative Test. In light of this condition, a certificate of compliance should not have been
22 issued for Dan's Smog Check Station's and Mehraz's inspection.

23 **SECOND UNDERCOVER RUN**

24 34. On September 22, 2014, a Bureau undercover operator drove a Bureau-documented
25 1990 Toyota to Dan's Smog Check Station for inspection. The following introduced malfunction
26 was placed on the vehicle: a leak in the Fuel Evaporative system by installing a defective Fuel
27 Evaporative Hose so that the vehicle would fail the functional check for the Low Pressure Fuel
28 Evaporative Test. The undercover operator drove to the facility and requested a smog inspection.

1 Dan's Smog Check Station and Nguyen performed the inspection. Certificate of Compliance
2 [REDACTED] was issued for the inspection. After the inspection was completed, the undercover
3 operator paid Dan's Smog Check Station for the inspection. Dan's Smog Check Station gave the
4 undercover operator a Vehicle Inspection Report and an invoice. The undercover operator then
5 left the facility and transferred custody of the vehicle to a Bureau representative.

6 35. A Bureau representative later reinspected the vehicle. The vehicle was still in the
7 condition that would cause the vehicle to fail the functional check for the Low Pressure Fuel
8 Evaporative Test. In light of this condition, a certificate of compliance should not have been
9 issued for Dan's Smog Check Station's and Nguyen's inspection.

10 **THIRD UNDERCOVER RUN**

11 36. On December 12, 2014, a Bureau undercover operator drove a Bureau-documented
12 1992 Toyota to Dan's Smog Check Station for inspection. The following introduced malfunction
13 was placed on the vehicle: installation of a fuel evaporative hose with a hole in it so that the vehicle
14 would fail the functional check for the Low Pressure Fuel Evaporative Test. The undercover
15 operator drove to the facility and requested a smog inspection. Dan's Smog Check Station and
16 Nguyen performed the inspection. Certificate of Compliance [REDACTED] was issued for the
17 inspection. After the inspection was completed, the undercover operator paid Dan's Smog Check
18 Station \$53.00. Dan's Smog Check Station gave the undercover operator a Vehicle Inspection
19 Report and an invoice. The undercover operator then left the facility and transferred custody of
20 the vehicle to a Bureau representative.

21 37. A Bureau representative later reinspected the vehicle. The vehicle was still in the
22 condition that would cause the vehicle to fail the functional check for the Low Pressure Fuel
23 Evaporative Test. In light of this condition, a certificate of compliance should not have been
24 issued for Dan's Smog Check Station's and Nguyen's inspection.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 38. Complainant re-alleges and incorporates by reference the allegations set forth above in
28 paragraphs 31-37.

39. Dan's Smog Check Station's Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1), in that Dan's Smog Check Station made or authorized statements which Dan's Smog Check Station knew or in the exercise of reasonable care should have known to be untrue or misleading.

40. Dan's Smog Check Station certified that Dan's Smog Check Station inspected the vehicle(s) described in paragraphs 31-37, when in fact the vehicle(s) were not inspected.

SECOND CAUSE FOR DISCIPLINE

(Violations of Motor Vehicle Inspection Program)

41. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 31-40.

42. Dan's Smog Check Station's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that Dan's Smog Check Station failed to comply with the following sections of that Code:

a. **Section 44012**: failed to perform the tests of the emission control systems and devices on the vehicle(s) in paragraphs 31-40 in accordance with procedures prescribed by the Department.

b. **Section 44015**: issued a certificate of compliance for the vehicle(s) in 31-40 without properly testing and inspecting them to determine if they were in compliance with Health & Safety Code section 44012.

c. Section 44035: failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicle(s) in paragraphs 31-40 or certifying that such test(s) had been performed, when in fact they were never performed.

THIRD CAUSE FOR DISCIPLINE

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

43. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 31-42.

44. Dan's Smog Check Station's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that Dan's Smog Check Station failed to comply with the following sections of Title 16, California Code of Regulations:

a. **Section 3340.35, subdivision (c):** failed to inspect and test the vehicle(s) in paragraphs 31-42 in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicle(s) had all the required emission control equipment and devices installed and functioning correctly.

b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection System false information about the vehicle(s) in paragraphs 31-42, providing result(s) for smog inspection(s) which were not actually performed.

c. **Section 3340.42**; failed to conduct the required smog tests on the vehicle(s) in paragraphs 31-42 in accordance with the Bureau's specifications.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, Deceit)

45. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 31-44.

46. Dan's Smog Check Station's Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(4), and Dan's Smog Check Station's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), in that Dan's Smog Check Station committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicle(s) in paragraphs 31-44 without performing bona fide inspections of the emission control devices and systems on the vehicle(s), thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 47. Complainant re-alleges and incorporates by reference the allegations set forth above in
4 paragraphs 31-46.

5 48. Mehraz's Smog Check Inspector License is subject to disciplinary action under Health
6 and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that
7 Mehraz failed to comply with the following sections of that Code:

8 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
9 on the vehicle(s) in paragraphs 31-46 in accordance with procedures prescribed by the
10 Department.

11 b. **Section 44015**: issued a certificate of compliance for the vehicle(s) in paragraphs 31-
12 46 without properly testing and inspecting them to determine if they were in compliance with
13 Health & Safety Code section 44012.

14 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
15 equipment, performance, or conduct by failing to properly perform a smog inspection on the
16 vehicle(s) in paragraphs 31-46 or certifying that such test(s) had been performed, when in fact they
17 were never performed.

18 **SIXTH CAUSE FOR DISCIPLINE**

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

20 49. Complainant re-alleges and incorporates by reference the allegations set forth above in
21 paragraphs 31-48.

22 50. Mehraz's Smog Check Inspector License is subject to disciplinary action under Health
23 and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a) in that
24 Mehraz failed to comply with the following sections of Title 16, California Code of Regulations:

25 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicle(s) in
26 paragraphs 31-48 in accordance with the procedures specified in section 3340.42 of the
27 Regulations and failed to ensure that the vehicle(s) had all the required emission control equipment
28 and devices installed and functioning correctly.

1 b. **Section 44015**: issued a certificate of compliance for the vehicle(s) in paragraphs 31-
2 52 without properly testing and inspecting them to determine if they were in compliance with
3 Health & Safety Code section 44012.

4 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
5 equipment, performance, or conduct by failing to properly perform a smog inspection on the
6 vehicle(s) in paragraphs 31-52 or certifying that such test(s) had been performed, when in fact they
7 were never performed.

8 **NINTH CAUSE FOR DISCIPLINE**

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

10 55. Complainant re-alleges and incorporates by reference the allegations set forth above in
11 paragraphs 31-54.

12 56. Nguyen's technician licenses are subject to disciplinary action under Health and Safety
13 Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a) in that Nguyen
14 failed to comply with the following sections of Title 16, California Code of Regulations:

15 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicle(s) in
16 paragraphs 31-54 in accordance with the procedures specified in section 3340.42 of the
17 Regulations and failed to ensure that the vehicle(s) had all the required emission control equipment
18 and devices installed and functioning correctly.

19 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
20 System false information about the vehicle(s) in paragraphs 31-54, providing result(s) for smog
21 inspection(s) which were not actually performed.

22 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicle(s) in
23 paragraphs 31-54 in accordance with the Bureau's specifications.

24 **TENTH CAUSE FOR DISCIPLINE**

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

26 57. Complainant re-alleges and incorporates by reference the allegations set forth above in
27 paragraphs 31-56.

58. Nguyen's technician licenses are subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), in that Nguyen committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicle(s) in paragraphs 31-56 without performing bona fide inspections of the emission control devices and systems on the vehicle(s), thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

59. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this State by Dan's Smog Check Station upon a finding that Dan's Smog Check Station has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

60. Under Health & Safety Code section 44072.8, if Dan's Smog Check Station's Station License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of the Health and Safety Code in the name of Dan's Smog Check Station.

61. Under Health & Safety Code section 44072.8, if Nguyen's licenses are revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of the Health and Safety Code in the name of Nguyen.

62. Under Health & Safety Code section 44072.8, if Mehrnaz's license is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of the Health and Safety Code in the name of Mehrnaz.

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 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 270606
2 issued to Respondent Tamara Deanne Doyle, Member; Doyle Automotive LLC, doing business as
3 Dan's Smog Check Station;

4 2. Revoking or suspending Smog Check Test Only Station License No. TC 270606
5 issued to Respondent Tamara Deanne Doyle, Member; Doyle Automotive LLC, doing business as
6 Dan's Smog Check Station;

7 3. Revoking or suspending Smog Check Inspector License No. EO 637139 issued to
8 Mazda Mehraz;

9 4. Revoking or suspending Smog Check Inspector License No. EO 632531, and Smog
10 Check Repair Technician License No. EI 632531 (formerly Advanced Emission Specialist (EA)
11 Technician License No. 632531) issued to Man Cao Nguyen;

12 5. Revoking or suspending the registration for all places of business operated in this state
13 by Respondent Tamara Deanne Doyle, Member; Doyle Automotive LLC, doing business as Dan's
14 Smog Check Station;

15 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
16 and Safety Code in the name of Respondent Tamara Deanne Doyle, Member; Doyle Automotive
17 LLC, doing business as Dan's Smog Check Station;

18 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
19 and Safety Code in the name of Mazda Mehraz;

20 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Man Cao Nguyen;

22 9. Ordering Respondent Tamara Deanne Doyle, Member; Doyle Automotive LLC, doing
23 business as Dan's Smog Check Station; Mazda Mehraz; and Man Cao Nguyen to pay the Bureau
24 of Automotive Repair the reasonable costs of the investigation and enforcement of this case,
25 pursuant to Business and Professions Code section 125.3; and

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

DATED:

June 12, 2015

Patrick Doraïs

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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