

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

In the Matter of the Accusation Against:

**K B SMOG CENTER
HIEN C. KIEU, Parnter
JUSTIN CUONG BUI, Partner
8545 Unsworth Avenue, #B
Sacramento, CA 95828**

Automotive Repair Dealer Registration
No. ARD 235816
Smog Check Station License No. RC 235816
Official Lamp Station License No. LS 235816
Official Brake Station License No. BS 235816

and

**HIEN CONG KIEU
8545 Unsworth Avenue
Sacramento, CA 95828**

Advanced Emission Specialist Technician
License No. EA 146486
Brake Adjuster License No. BA 146846
Lamp Adjuster License No. LA 146846

Respondents.

Case No. 79/11-98

OAH No. 2011100677

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective _____

4/19/12

DATED: March 13, 2012



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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Deputy Attorney General
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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

Case No. 79/11-98

13 **K B SMOG CENTER**
HIEN C. KIEU, PARTNER
14 **JUSTIN CUONG BUI, PARTNER**
8545 Unsworth Avenue, #B
15 **Sacramento, CA 95828**
Automotive Repair Dealer Reg. No. ARD
16 **235816**
Smog Check Station License No. RC 235816
17 **Lamp Station License No. LS 235816**
Brake Station License No. BS 235816

OAH No. 2011100677

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 **and**

20 **HIEN CONG KIEU**
8545 Unsworth Avenue
Sacramento, CA 95828
21 **Advanced Emission Specialist Technician**
License No. EA 146486
22 **Brake Adjuster License No. BA 146486**
Lamp Adjuster License No. LA 146486

23
24 Respondents.

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1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
5 brought this action solely in her official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Geoffrey S. Allen, Deputy Attorney
7 General.

8 2. Respondents K B Smog Center (Respondent K B Smog Center), Hien Cong Kieu
9 (Respondent Kieu), and Justin Cuong Bui (Respondent Bui) are representing themselves in this
10 proceeding and have chosen not to exercise their rights to be represented by counsel.

11 3. In 2004, the Director of Consumer Affairs (Director) issued Automotive Repair
12 Dealer Registration Number ARD 235816 to Respondent K B Smog Center with Respondent
13 Kieu and Respondent Bui as partners. Respondent K B Smog Center's Registration was in full
14 force and effect at all times relevant to the charges brought herein and expired on September 30,
15 2011, and has not been renewed.

16 4. On or about November 16, 2004, the Director issued Smog Check Station License
17 Number RC 235816 to Respondent K B Smog Center with Respondent Kieu and Respondent Bui
18 as partners. Respondent K B Smog Center's Smog Check Station License was in full force and
19 effect at all times relevant to the charges brought herein and expired on September 30, 2011, and
20 has not been renewed.

21 5. On or about December 17, 2004, the Director issued Lamp Station License Number
22 LS 235816 to Respondent K B Smog Center with Respondent Kieu and Respondent Bui as
23 partners. Respondent K B Smog Center's Lamp Station License was in full force and effect at all
24 times relevant to the charges brought herein and expired on September 30, 2011, and has not been
25 renewed.

26 6. On or about December 17, 2004, the Director issued Brake Station License Number
27 BS 235816 to Respondent K B Smog Center with Respondent Kieu and Respondent Bui as
28 partners. Respondent K B Smog Center's Brake Station License was in full force and effect at all

1 times relevant to the charges brought herein and expired on September 30, 2011, and has not been
2 renewed.

3 7. In 2003, the Director issued Advanced Emission Specialist Technician License
4 Number EA 146486 to Respondent Kieu. Respondent Kieu's Technician License was in full
5 force and effect at all times relevant to the charges brought herein and will expire on September
6 30, 2012, unless renewed.

7 8. In 2004, the Director issued Brake Adjuster License Number BA 146486 to
8 Respondent Kieu. Respondent Kieu's Brake Adjuster License was in full force and effect at all
9 times relevant to the charges brought herein and will expire on September 30, 2012, unless
10 renewed.

11 9. In 2004, the Director issued Lamp Adjuster License Number LA 146486 to
12 Respondent Kieu. Respondent Kieu's Lamp Adjuster License was in full force and effect at all
13 times relevant to the charges brought herein and will expire on September 30, 2012, unless
14 renewed

15 10. In 2003, the Director issued Advanced Emission Specialist Technician License
16 Number EA 146705 to Respondent Bui. Respondent Bui's Technician License was in full force
17 and effect at all times relevant to the charges brought herein and expired on August 31, 2011, and
18 has not been renewed.

19 11. The Director issued Automotive Repair Dealer Registration Number ARD 260618 to
20 Respondent Kieu. Respondent Kieu's Registration will expire on December 31, 2012, unless
21 renewed.

22 JURISDICTION

23 12. Accusation No. 79/11-98 (Accusation) was filed before the Director, for the Bureau
24 of Automotive Repair (Bureau), and is currently pending against Respondents. The Accusation
25 and all other statutorily required documents were properly served on Respondents on June 29,
26 2011. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of the
27 Accusation is attached as Exhibit A and incorporated herein by reference.
28

CONTINGENCY

1
2 19. This stipulation shall be subject to approval by the Director or his designee.
3 Respondents understand and agree that counsel for Complainant and the staff of the Bureau may
4 communicate directly with the Director and staff of the Department of Consumer Affairs
5 regarding this stipulation and settlement, without notice to or participation by Respondent. By
6 signing the stipulation, Respondents understand and agree that they may not withdraw their
7 agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon
8 it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated
9 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
10 be inadmissible in any legal action between the parties, and the Director shall not be disqualified
11 from further action by having considered this matter.

12 20. The parties understand and agree that facsimile copies of this Stipulated Settlement
13 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
14 effect as the originals.

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

21 22. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Director may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

DISCIPLINARY ORDER

24
25 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 235816,
26 Smog Check Station License No. RC 235816, Brake Station License No. BS 235816, and Lamp
27 Station License No. LS 235816, issued to Respondent K B Smog Center are revoked.
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1 IT IS ALSO ORDERED that Automotive Repair Dealer Registration No. ARD 260618
2 Advanced Emission Specialist Technician License No. EA 146486, Brake Adjuster License No.
3 BA 146486, and Lamp Adjuster License No. LA 146486 issued to Respondent Kieu are revoked.

4 IT IS ALSO ORDERED that Advanced Emission Specialist Technician License No.
5 146705 issued to Respondent Bui is revoked.

6 23. The revocation of Respondents' Automotive Repair Dealer Registrations, Smog
7 Check Station License, Advanced Emission Specialist Technician Licenses, Brake Station
8 License, Brake Adjuster License, Lamp Adjuster License, and their Lamp Station License by the
9 Bureau shall constitute the imposition of discipline against Respondents. This stipulation
10 constitutes a record of the discipline and shall become a part of Respondents' license history with
11 the Bureau.

12 24. Respondents shall lose all rights and privileges as an Automotive Repair Dealer,
13 Smog Check Station, Brake Station, Lamp Station, Advanced Emission Specialist Technicians,
14 Brake Adjuster, and Lamp Adjuster and their in California as of the effective date of the
15 Director's Decision and Order.

16 25. Respondents shall cause to be delivered to the Bureau their license certificates on or
17 before the effective date of the Decision and Order.

18 26. If Respondents ever apply for licensure or petition for reinstatement in the State of
19 California, the Bureau shall treat it as a new application for licensure. Respondents must comply
20 with all the laws, regulations and procedures for licensure in effect at the time the application or
21 petition is filed, and all of the charges and allegations contained in the Accusation shall be
22 deemed to be true, correct and admitted by Respondents when the Director determines whether to
23 grant or deny the application or petition.

24 27. Respondents shall, jointly and severally, pay to the Bureau the full costs associated
25 with its investigation and enforcement pursuant to Business and Professions Code section 125.3
26 in the amount of \$3,444.20 payable in full upon the filing of an application for registration,
27 licensure or petition for reinstatement of any license or registration issued by the Bureau.
28

Exhibit A

Accusation No. 79/11-98

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
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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 **K B SMOG CENTER**
14 **HIEN C. KIEU, PARTNER**
15 **JUSTIN CUONG BUI, PARTNER**
16 **8545 Unsworth Avenue, #B**
17 **Sacramento, CA 95828**
18 **Automotive Repair Dealer Reg. No. ARD 235816**
19 **Smog Check Station License No. RC 235816**
20 **Lamp Station License No. LS 235816**
21 **Brake Station License No. BS 235816**

22 and

23 **HIEN CONG KIEU**
24 **8545 Unsworth Avenue**
25 **Sacramento, CA 95828**
26 **Advanced Emission Specialist Technician**
27 **License No. EA 146486**
28 **Brake Adjuster License No. BA 146486**
Lamp Adjuster License No. LA 146486

Respondents.

Case No. 79111-98

A C C U S A T I O N

(Smog Check)

Complainant alleges:

PARTIES/LICENSE INFORMATION

1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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1 **K B Smog Center**

2 2. In 2004, the Director of Consumer Affairs ("Director") issued Automotive Repair
3 Dealer Registration Number ARD 235816 ("registration") to K B Smog Center ("Respondent K B
4 Smog Center") with Hien C. Kieu and Justin Cuong Bui as partners. Respondent's registration
5 was in full force and effect at all times relevant to the charges brought herein and will expire on
6 September 30, 2011, unless renewed.

7 3. On or about November 16, 2004, the Director issued Smog Check Station License
8 Number RC 235816 to Respondent K B Smog Center. Respondent's smog check station license
9 was in full force and effect at all times relevant to the charges brought herein and will expire on
10 September 30, 2011, unless renewed.

11 4. On or about December 17, 2004, the Director issued Lamp Station License Number
12 LS 235816 to Respondent K B Smog Center. Respondent's lamp station license was in full force
13 and effect at all times relevant to the charges brought herein and will expire on September 30,
14 2011, unless renewed.

15 5. On or about December 17, 2004, the Director issued Brake Station License Number
16 BS 235816 to Respondent K B Smog Center. Respondent's brake station license was in full force
17 and effect at all times relevant to the charges brought herein and will expire on September 30,
18 2011, unless renewed.

19 **Hien Cong Kieu**

20 6. In 2003, the Director issued Advanced Emission Specialist Technician License
21 Number EA 146486 ("technician license") to Hien Cong Kieu ("Respondent Kieu").
22 Respondent's technician license was in full force and effect at all times relevant to the charges
23 brought herein and will expire on September 30, 2012, unless renewed.

24 7. In 2004, the Director issued Brake Adjuster License Number BA 146486 to
25 Respondent Kieu. Respondent's brake adjuster license was in full force and effect at all times
26 relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

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19. Health & Saf. 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 [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] 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.

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

20. Health & Saf. Code section 44072.10 states, in pertinent part:

....

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

....

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

21. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

COST RECOVERY

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

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1 **UNDERCOVER OPERATION: 1998 HONDA CIVIC**

2 23. On June 24, 2010, an undercover operator with the Bureau ("operator") took the
3 Bureau's 1998 Honda Civic to Respondent K B Smog Center's facility and requested a smog
4 inspection. An aftermarket and illegally modified emissions related part, an adjustable camshaft
5 timing gear¹, had been installed on the Bureau-documented vehicle. The operator signed and
6 received a copy of a written estimate for the inspection. After the inspection was completed, the
7 operator paid the facility \$40 and received copies of an invoice and a vehicle inspection report
8 ("VIR"). The VIR indicated that Respondent Kieu had performed the smog inspection on the
9 vehicle. That same day, electronic smog Certificate of Compliance No. NU466667C was issued
10 for the vehicle.

11 24. The Bureau inspected the vehicle following the undercover operation and found that
12 the adjustable camshaft timing gear was still on the vehicle.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 25. Respondent K B Smog Center's registration is subject to disciplinary action pursuant
16 to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
17 statement which it knew or in the exercise of reasonable care should have known to be untrue or
18 misleading, as follows: Respondent K B Smog Center's technician, Respondent Kieu, certified
19 under penalty of perjury on the VIR that the Bureau's 1998 Honda Civic had passed the
20 inspection and was in compliance with applicable laws and regulations. In fact, an aftermarket
21 and illegally modified emissions related part was installed on the vehicle and as such, the vehicle
22 would not pass the inspection required by Health & Saf. Code section 44012.

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27 ¹ The adjustable camshaft timing gear has not been approved by the California Air
28 Resources Board for installation on emissions controlled vehicles.

1 act involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph
2 33 above.

3 **MATTERS IN AGGRAVATION**

4 35. To determine the degree of discipline, if any, to be imposed on Respondents,
5 Complainant alleges as follows:

6 **Respondent K B Smog Center**

7 a. On or about August 16, 2006, the Bureau issued Citation No. C07-0056 against
8 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
9 perform a visual/functional check of emission control devices according to procedures prescribed
10 by the department), and California Code of Regulations, title 16, section ("Regulation") 3340.35,
11 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
12 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing
13 air injection system. The Bureau assessed civil penalties totaling \$500 against Respondent for the
14 violations. Respondent complied with the citation on September 20, 2006.

15 b. On or about May 13, 2009, the Bureau issued Citation No. C09-1297 against
16 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
17 perform a visual/functional check of emission control devices according to procedures prescribed
18 by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
19 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
20 Bureau undercover vehicle with a missing positive crankcase ventilation ("PCV") valve. The
21 Bureau assessed civil penalties totaling \$500 against Respondent for the violations. Respondent
22 complied with the citation on July 6, 2009.

23 c. On or about November 2, 2009, the Bureau issued Citation No. C2010-0420 against
24 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
25 perform a visual/functional check of emission control devices according to procedures prescribed
26 by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
27 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
28 Bureau undercover vehicle with a missing fuel evaporative storage canister. The Bureau assessed

1 civil penalties totaling \$1,000 against Respondent for the violations. Respondent complied with
2 the citation on December 10, 2009.

3 d. On or about February 18, 2010, the Bureau issued Citation No. C2010-0843 against
4 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
5 perform a visual/functional check of emission control devices according to procedures prescribed
6 by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
7 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
8 Bureau undercover vehicle with a missing PCV valve. The Bureau assessed civil penalties
9 totaling \$2,000 against Respondent for the violations. Respondent complied with the citation on
10 April 21, 2010.

11 **Respondent Kieu**

12 e. On or about November 2, 2009, the Bureau issued Citation No. M2010-0421 against
13 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
14 perform tests of emission control systems and devices in accordance with Health & Saf. Code
15 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
16 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
17 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
18 vehicle with a missing fuel evaporative storage canister. Respondent was directed to complete an
19 8 hour training course and to submit proof of completion to the Bureau within 30 days from
20 receipt of the citation. Respondent complied with the citation and completed the training on
21 December 7, 2009.

22 **OTHER MATTERS**

23 36. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
24 suspend, revoke or place on probation the registration for all places of business operated in this
25 state by Respondent K B Smog Center upon a finding that said Respondent has, or is, engaged in
26 a course of repeated and willful violations of the laws and regulations pertaining to an automotive
27 repair dealer.

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1 37. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
2 Number RC 235816, issued to Respondent K B Smog Center is revoked or suspended, any
3 additional license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee
4 may be likewise revoked or suspended by the Director.

5 38. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Station License Number
6 LS 235816, issued to Respondent K B Smog Center, is revoked or suspended, any additional
7 license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
8 licensee may be likewise revoked or suspended by the Director.

9 39. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Station License Number
10 BS 235816, issued to Respondent K B Smog Center, is revoked or suspended, any additional
11 license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
12 licensee may be likewise revoked or suspended by the Director.

13 40. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
14 Technician License Number EA 146486, issued to Respondent Hien Cong Kieu, is revoked or
15 suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name
16 of said licensee may be likewise revoked or suspended by the Director.

17 41. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number
18 BA 146486, issued to Respondent Hien Cong Kieu, is revoked or suspended, any additional
19 license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
20 licensee may be likewise revoked or suspended by the Director.

21 42. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Adjuster License Number
22 LA 146486, issued to Respondent Hien Cong Kieu, is revoked or suspended, any additional
23 license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
24 licensee may be likewise revoked or suspended by the Director.

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1 PRAYER

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

4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
5 235816, issued to K B Smog Center;

6 2. Revoking or suspending any other automotive repair dealer registration issued to K B
7 Smog Center;

8 3. Revoking or suspending Smog Check Station License Number RC 235816, issued to
9 K B Smog Center;

10 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
11 and Safety Code in the name of K B Smog Center;

12 5. Revoking or suspending Lamp Station License Number LS 235816, issued to K B
13 Smog Center;

14 6. Revoking or suspending Brake Station License Number BS 235816, issued to K B
15 Smog Center;

16 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
17 Chapter 20.3 of the Business and Professions Code in the name of K B Smog Center;

18 8. Revoking or suspending Advanced Emission Specialist Technician License Number
19 EA 146486, issued to Hien Cong Kieu;

20 9. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Hien Cong Kieu;

22 10. Revoking or suspending Brake Adjuster License Number BA 146486, issued to Hien
23 Cong Kieu;

24 11. Revoking or suspending Lamp Adjuster License Number LA 146486, issued to Hien
25 Cong Kieu;

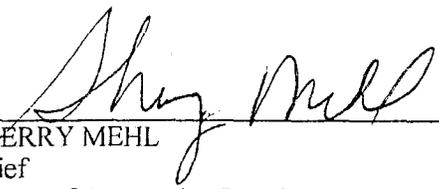
26 12. Revoking or suspending any additional license issued under Articles 5 and 6 of
27 Chapter 20.3 of the Business and Professions Code in the name of Hien Cong Kieu;

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1 13. Ordering K B Smog Center and Hien Cong Kieu to pay the Director of Consumer
2 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
3 Business and Professions Code section 125.3;

4 14. Taking such other and further action as deemed necessary and proper.

5
6 DATED: 6/10/11


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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