

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

In the Matter of the Accusation Against:

C & H SMOG CHECK & REPAIR CORPORATION
dba C & H SMOG CHECK & REPAIR, INC.
PHUONG KIM NGUYEN, Owner
1795 S. 10th Street
San Jose, CA 95112
Mailing Address:
449 Printy Avenue
Milpitas, CA 95035

Automotive Repair Dealer Registration No.
ARD 263879
Smog Check Station License No. RC 263879
Lamp Station License No. LS 263879
Brake Station License No. BS 263879

and

KHOA ANH NGUYEN
1795 South 10th Street
San Jose, CA 95112

Advanced Emission Specialist Technician
License No. EA 148672
Brake Adjuster License No. BA 148672
Lamp Adjuster License No. LA 148672

Respondents.

Case No. 79/12-123

OAH No. 2012060087

DECISION

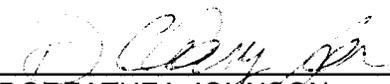
The attached Stipulated Revocation of Licenses and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent C & H Smog Check & Repair Corporation, dba C & H Smog Check & Repair, Inc., Phuong Kim Nguyen, Automotive Repair Dealer Registration No. ARD 263879, Smog Check Station License No. RC 263879, Lamp Station License No. LS 263879, and Brake Station License No. BS 263879.

This Decision shall become effective

12/6/12

DATED: _____

001 3 1 2012



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
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6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

12 **C & H SMOG CHECK & REPAIR**
13 **CORPORATION;**
14 **dba C & H SMOG CHECK & REPAIR,**
15 **INC.;**
16 **PHUONG KIM NGUYEN**
17 **449 Printy Avenue**
18 **Milpitas, California 95035**

19 **Automotive Repair Dealer License Number**
20 **ARD 263879**
21 **Smog Check Station License Number RC**
22 **263879**
23 **Lamp Station License Number LS 263879,**
24 **class A**
25 **Brake Station License Number BS 263879,**
26 **class C**

27 Respondent.

Case Number 79/12-123

OAH Number 2012060087

28 **STIPULATED REVOCATION OF**
LICENSES AND ORDER

29 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
30 proceeding that the following matters are true:

31 **PARTIES**

32 1. Complainant John Wallauch is the Chief of the Bureau of Automotive Repair
33 (Bureau), Department of Consumer Affairs. He brought this action solely in his official capacity

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1 and is represented in this matter by Kamala D. Harris, Attorney General of the State of California,
2 by Gregory Tuss, Deputy Attorney General.

3 2. C & H Smog Check & Repair Corporation; dba C & H Smog Check & Repair, Inc.;
4 Phuong Kim Nguyen (collectively respondent) is represented in this proceeding by attorney
5 William Ferreira, whose address is:

6 William Ferreira
7 Automotive Defense Specialists
8 582 Market Street, #1608
9 San Francisco, California 94104

10 3. On or about January 25, 2011, the Bureau issued Automotive Repair Dealer License
11 Number 263879 to respondent. This automotive repair dealer license was in full force and effect
12 at all times relevant to this Stipulated Revocation of Licenses and Order, and will expire on
13 January 31, 2013, unless renewed.

14 4. On or about February 24, 2011, the Bureau issued Smog Check Station License
15 Number RC 263879 to respondent. This smog check station license was in full force and effect at
16 all times relevant to this Stipulated Revocation of Licenses and Order, and will expire on January
17 31, 2013, unless renewed.

18 5. On or about February 24, 2011, the Bureau issued Lamp Station License Number LS
19 263879, class A, to respondent. This lamp station license was in full force and effect at all times
20 relevant to this Stipulated Revocation of Licenses and Order, and will expire on January 31, 2013,
21 unless renewed.

22 6. On or about February 24, 2011, the Bureau issued Brake Station License Number BS
23 263879, class C, to respondent. This brake station license was in full force and effect at all times
24 relevant to this Stipulated Revocation of Licenses and Order, and will expire on January 31, 2013,
25 unless renewed.

26 JURISDICTION

27 7. Accusation Number 79/12-123 was filed before the Director of Consumer Affairs
28 (Director) for the Bureau, and is currently pending against respondent. This Accusation and all
other statutorily required documents were properly served on respondent on May 1, 2012.

1 Respondent timely filed a Notice of Defense contesting the Accusation. A copy of Accusation
2 Number 79/12-123 is attached as exhibit A and incorporated by reference.

3 **ADVISEMENT AND WAIVERS**

4 8. Respondent has carefully read, fully discussed with counsel, and understands the
5 charges and allegations in Accusation Number 79/12-123. Respondent also has carefully read,
6 fully discussed with counsel, and understands the effects of this Stipulated Revocation of
7 Licenses and Order.

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

15 10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
16 every right set forth above.

17 **CULPABILITY**

18 11. Respondent admits the truth of each and every charge and allegation in Accusation
19 Number 79/12-123, agrees that cause exists for discipline, and accepts the Bureau's revocation of
20 Automotive Repair Dealer License Number ARD 263879.

21 12. Respondent admits the truth of each and every charge and allegation in Accusation
22 Number 79/12-123, agrees that cause exists for discipline, and accepts the Bureau's revocation of
23 Smog Check Station License Number RC 263879.

24 13. Respondent admits the truth of each and every charge and allegation in Accusation
25 Number 79/12-123, agrees that cause exists for discipline, and accepts the Bureau's revocation of
26 Lamp Station License Number LS 263879, class A.

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1 true, correct, and admitted by respondent for the purpose of any Statement of Issues or any other
2 proceeding seeking to deny or restrict licensure

3 **ACCEPTANCE**

4 I have carefully read the above Stipulated Revocation of Licenses and Order and have fully
5 discussed it with my attorney, William Ferreira. I understand the stipulation and the effect it will
6 have on Automotive Repair Dealer License Number ARD 263879, Smog Check Station License
7 Number RC 263879, Lamp Station License Number LS 263879, class A; and Brake Station
8 License Number BS 263879, class C. I enter into this Stipulated Revocation of Licenses and
9 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
10 of the Director of Consumer Affairs.

11
12 DATED: 9/20/12 *Phuong Kim Nguyen*
13 C & H SMOG CHECK & REPAIR
14 CORPORATION; C & H SMOG CHECK &
15 REPAIR, INC.; PHUONG KIM NGUYEN
16 Respondent

17 I have read and fully discussed with respondent C & H Smog Check & Repair Corporation,
18 C & H Smog Check & Repair, Inc.; Phuong Kim Nguyen the terms and conditions and other
19 matters contained in this Stipulated Revocation of Licenses and Order. I approve its form and
20 content.

21
22 DATED: 9/20/12 *William Ferreira*
23 WILLIAM FERREIRA
24 Attorney for Respondent

25 ///

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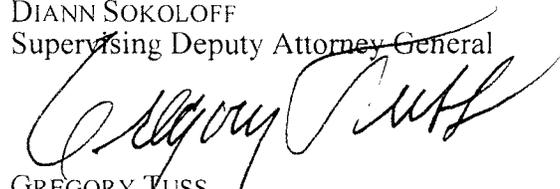
1 **ENDORSEMENT**

2 The foregoing Stipulated Revocation of Licenses and Order is hereby respectfully
3 submitted for consideration by the Director of Consumer Affairs.

4 Dated: 9.24.12

Respectfully submitted,

5 KAMALA D. HARRIS
6 Attorney General of California
7 DIANN SOKOLOFF
8 Supervising Deputy Attorney General



9 GREGORY TUSS
10 Deputy Attorney General
11 *Attorneys for Complainant*

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Exhibit A

Accusation Number 79/12-123

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
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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:

Case No. 79/12-123

13 **C & H SMOG CHECK & REPAIR CORPORATION,**
14 **dba C & H SMOG CHECK & REPAIR, INC.**
15 **PHUONG KIM NGUYEN, President**
16 **1795 S. 10th Street**
San Jose, CA 95112
Mailing Address:
449 Printy Avenue Milpitas
Milpitas, CA 95035

A C C U S A T I O N

S M O G C H E C K

17 **Automotive Repair Dealer Reg. No. ARD 263879**
18 **Smog Check Station License No. RC 263879**
19 **Lamp Station License No. LS 263879**
20 **Brake Station License No. BS 263879**

21 **and**

22 **KHOA ANH NGUYEN**
23 **1795 South 10th Street**
24 **San Jose, CA 95112**

25 **Advanced Emission Specialist Technician License No.**
26 **EA 148672**
27 **Brake Adjuster License No. BA 148672**
28 **Lamp Adjuster License No. LA 148672**

Respondents.

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1 Complainant alleges:

2 **PARTIES/LICENSE INFORMATION**

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

5 **C & H Smog Check & Repair Corporation dba C & H Smog Check & Repair, Inc.**

6 2. On or about January 25, 2011, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 263879 ("registration") to C & H Smog
8 Check & Repair Corporation ("Respondent C & H"), doing business as C & H Smog Check &
9 Repair, Inc., with Phuong Kim Nguyen as president. Respondent's registration was in full force
10 and effect at all times relevant to the charges brought herein and will expire on January 31, 2013,
11 unless renewed.

12 3. On or about January 26, 2011, the Director issued Smog Check Station License
13 Number RC 263879 to Respondent C & H. Respondent's smog check station license was in full
14 force and effect at all times relevant to the charges brought herein and will expire on January 31,
15 2013, unless renewed.

16 4. On or about January 28, 2011, the Director issued Lamp Station License Number
17 LS 263879 to Respondent C & H. Respondent's lamp station license was in full force and effect
18 at all times relevant to the charges brought herein and will expire on January 31, 2013, unless
19 renewed.

20 5. On or about January 27, 2011, the Director issued Brake Station License Number
21 BS 263879 to Respondent C & H. Respondent's brake station license was in full force and effect
22 at all times relevant to the charges brought herein and will expire on January 31, 2013, unless
23 renewed.

24 **Khoa Anh Nguyen**

25 6. In or about 2004, the Director issued Advanced Emission Specialist Technician
26 License Number EA 148672 ("technician license") to Khoa Anh Nguyen ("Respondent
27 Nguyen"). Respondent's technician license was in full force and effect at all times relevant to the
28 charges brought herein and will expire on September 30, 2012, unless renewed.

STATUTORY PROVISIONS

15. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

....

(4) Any other conduct that constitutes fraud.

....

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

....

(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.

16. Bus. & Prof. Code section 9889.3 states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

....

(c) Violates any of the regulations promulgated by the director pursuant to this chapter.

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

17. Bus. & Prof. Code section 9889.9 states that “[w]hen any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and

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1 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the
2 director.”

3 18. Bus. & Prof. Code section 22, subdivision (a), states:

4 “Board” as used in any provision of this Code, refers to the board in
5 which the administration of the provision is vested, and unless otherwise expressly
6 provided, shall include “bureau,” “commission,” “committee,” “department,”
7 “division,” “examining committee,” “program,” and “agency.”

8 19. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
9 “license” includes “registration” and “certificate.”

10 20. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

17

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

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

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

25 COST RECOVERY

26 22. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
27 the administrative law judge to direct a licentiate found to have committed a violation or
28 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 #1: 1992 TOYOTA PICKUP

2 23. On August 22, 2011, an undercover operator of the Bureau ("operator") took the
3 Bureau's 1992 Toyota pickup to Respondent C & H's facility. The operator met with an
4 employee, who later identified himself as "Khoa", and requested brake, lamp, and smog
5 inspections on the vehicle. The front brake rotors on the Bureau-documented vehicle were
6 machined below the manufacturer's minimum service specifications, the rear brake drums were
7 machined beyond the manufacturer's maximum service specifications, both headlamps were out
8 of adjustment, the back-up lamp bulb was defective, and the P.A.I.R. (pulse air injection)/air
9 suction system reed valve assembly had been removed from the vehicle. Khoa told the operator
10 that the services would cost a total of \$140. The operator went around to the front of the building
11 while another male employee drove the vehicle into the shop area. The operator entered the shop
12 and noted that the vehicle was on a lift. The operator observed the male employee remove all
13 four wheels on the vehicle and inspect the undercarriage. The male employee told the operator
14 that the back-up light was out and asked her if she wanted it replaced. The operator declined the
15 repair, stating that her "husband could do it". Khoa had the operator sign a written estimate and
16 gave her a copy. The male employee reinstalled the wheels on the vehicle, lowered the vehicle,
17 and drove it over to the smog check area. The operator never saw Khoa or the male employee
18 inspect the brakes. Khoa opened the vehicle's hood and inspected the underhood area, then
19 performed a smog test on the vehicle. After the test was completed, Khoa informed the operator
20 that they had replaced the back-up light at no charge. Khoa entered the office area and exited a
21 short while later. Khoa told the operator that the vehicle had passed. The operator paid Khoa
22 \$140 in cash and received copies of an invoice, a vehicle inspection report ("VIR"), Certificate of
23 Brake Adjustment No. BC1328468, and Certificate of Lamp Adjustment No. LC1308618. That
24 same day, electronic smog Certificate of Compliance No. OG258621C was issued for the vehicle.

25 24. On August 26, 2011, the Bureau inspected the vehicle and found that the defective
26 back-up lamp bulb had been replaced; however, both headlamps were still out of adjustment, the
27 front brake rotors and rear brake drums were not within manufacturer's specifications, and the
28 P.A.I.R./air suction system reed valve assembly was still missing.

1 FIRST CAUSE FOR DISCIPLINE

2 (Untrue or Misleading Statements)

3 25. Respondent C & H's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which it
5 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
6 follows:

7 a. Respondent C & H's technician, Respondent Nguyen, certified under penalty of
8 perjury on the VIR that the Bureau's 1992 Toyota pickup had passed the inspection and was in
9 compliance with applicable laws and regulations: In fact, the P.A.I.R./air suction system reed
10 valve assembly had been removed from the vehicle and as such, the vehicle would not pass the
11 inspection required by Health & Saf. Code section 44012.

12 b. Respondent C & H's technician, Respondent Nguyen, certified under penalty of
13 perjury on Brake Certificate No. BC1328468 that the drums and rotors on the Bureau's 1992
14 Toyota pickup were in a satisfactory condition. In fact, the front brake rotors were machined
15 below the manufacturer's minimum service specifications and the rear brake drums were
16 machined beyond the manufacturer's maximum service specifications.

17 c. Respondent C & H's technician, Respondent Nguyen, certified under penalty of
18 perjury on Lamp Certificate No. LC1308618 that the applicable adjustment had been performed
19 on the lighting system on the Bureau's 1992 Toyota pickup. In fact, both headlamps were out of
20 adjustment.

21 SECOND CAUSE FOR DISCIPLINE

22 (Fraud)

23 26. Respondent C & H's registration is subject to disciplinary action pursuant to Bus. &
24 Prof. Code section 9884.7, subdivision (a)(4), Respondent committed acts constituting fraud, as
25 follows:

26 a. Respondent issued an electronic smog certificate of compliance for the Bureau's 1992
27 Toyota pickup without ensuring that a bona fide inspection was performed of the emission control

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

3 b. Respondent obtained payment from the operator for performing the applicable
4 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 1992
5 Toyota pickup as specified by the Bureau and in accordance with the Vehicle Code. In fact,
6 Respondent failed to perform the necessary inspections, adjustments, and repairs in compliance
7 with Bureau Regulations or the Vehicle Code.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Violations of Regulations)**

10 27. Respondent C & H's registration is subject to disciplinary action pursuant to Bus. &
11 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
12 provisions of California Code of Regulations, title 16, in the following material respects:

13 a. **Section 3305, subdivision (a)**: Respondent failed to ensure that the inspection of the
14 brake system and inspection and adjustment of the lighting system were performed on the
15 Bureau's 1992 Toyota pickup in accordance with the specifications, instructions, and directives
16 issued by the Bureau and the vehicle manufacturer.

17 b. **Section 3316, subdivision (d)(2)**: Respondent issued Lamp Certificate No.
18 LC1308618 as to the Bureau's 1992 Toyota pickup when all of the lamps, lighting equipment,
19 and/or related electrical systems on the vehicle were not in compliance with Bureau regulations.

20 c. **Section 3321, subdivision (c)(2)**: Respondent issued Brake Certificate No.
21 BC1328468 as to the Bureau's 1992 Toyota pickup when the brake system on the vehicle had not
22 been completely tested or inspected.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with Regulations)**

25 28. Respondent C & H's brake and lamp station licenses are subject to disciplinary action
26 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
27 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
28 (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 27 above.

1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 29. Respondent C & H's brake and lamp station licenses are subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed acts
5 involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 26
6 above.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Violations of Regulations)**

9 30. Respondent Nguyen's brake and lamp adjuster licenses are subject to disciplinary
10 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he failed to comply
11 with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a),
12 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 27 above.

13 **SEVENTH CAUSE FOR DISCIPLINE**

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

15 31. Respondent Nguyen's brake and lamp adjuster licenses are subject to disciplinary
16 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that he committed an act
17 involving dishonesty, fraud, or deceit whereby another was injured, as set forth in subparagraph
18 26 (a) above.

19 **EIGHTH CAUSE FOR DISCIPLINE**

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

21 32. Respondent C & H's smog check station license is subject to disciplinary action
22 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
23 comply with the following sections of that Code:

24 a. **Section 44012, subdivision (a):** Respondent failed to ensure that the visual
25 inspection of the emission control devices and system on the Bureau's 1992 Toyota pickup was
26 performed in accordance with procedures prescribed by the department.

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28 ///

1 inspection of the emission control devices and system on the Bureau's 1992 Toyota pickup in
2 accordance with procedures prescribed by the department.

3 **TWEFLTH CAUSE FOR DISCIPLINE**

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

6 36. Respondent Nguyen's technician license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
8 provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
10 1992 Toyota pickup in accordance with Health & Saf. Code sections 44012 and 44035, and
11 California Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
13 Bureau's 1992 Toyota pickup in accordance with the Bureau's specifications.

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

16 37. Respondent Nguyen's technician license is subject to disciplinary action pursuant to
17 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
18 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
19 compliance for the Bureau's 1992 Toyota pickup without performing a bona fide inspection of
20 the emission control devices and systems on the vehicle, thereby depriving the People of the State
21 of California of the protection afforded by the Motor Vehicle Inspection Program.

22 **UNDERCOVER OPERATION #2: 1995 HONDA CIVIC**

23 38. On September 14, 2011, an undercover operator of the Bureau ("operator") took the
24 Bureau's 1995 Honda Civic to Respondent C & H's facility and met with an employee, who later
25 identified himself as "Khoa". The operator requested brake, lamp, and smog inspections on the
26 vehicle. The front brake rotors on the Bureau-documented vehicle were machined below the
27 manufacturer's minimum service specifications, the rear brake drums were machined beyond the
28 manufacturer's maximum service specifications, both headlamps were out of adjustment, the

1 back-up lamp bulb was defective, and the ignition timing was not adjusted to manufacturer's
2 specifications. Khoa informed the operator that the inspections would cost a total of \$140, then
3 had the operator sign a written estimate and gave her a copy. Khoa drove the vehicle to the smog
4 test area and then onto the "rollers" (dynamometer) for the smog inspection. After the smog test
5 was completed, Khoa drove the vehicle to another area of the facility and raised it onto a hoist.
6 The operator observed another male employee remove all four wheels on the vehicle. Khoa went
7 over to the vehicle and checked the undercarriage. Khoa met with the operator and told her that
8 the vehicle failed the smog test because the ignition timing was out of specifications. Khoa
9 advised the operator that she could take the vehicle to her mechanic to have it adjusted and return
10 for a free retest. The operator asked Khoa if they could perform the repair. Khoa stated that they
11 could for an additional \$35. The operator authorized the ignition timing adjustment and signed an
12 estimate/invoice (No. 17726). The second employee reinstalled the wheels, lowered the vehicle
13 off of the lift, and drove it back into the smog testing area. Khoa opened the hood, checked the
14 underhood area, and ran the vehicle on the dynamometer. Later, Khoa escorted the operator into
15 the office area. Khoa told the operator that the brake pads were good, but the brake rotors were
16 too thin, and that the facility would not be able to certify the brakes. Khoa also stated that the
17 vehicle passed the lamp and smog inspections. The operator paid Khoa \$175 in cash and received
18 copies of Invoice Nos. 17726 and 17725, two VIR's, and Certificate of Lamp Adjustment No.
19 LC1315659.

20 39. On September 15, 2011, the Bureau inspected the vehicle and found that the ignition
21 timing was adjusted within manufacturer's specifications; however, the defective back-up lamp
22 bulb was still in place on the vehicle and both headlamps were still out of adjustment.

23 FOURTEENTH CAUSE FOR DISCIPLINE

24 (Untrue or Misleading Statements)

25 40. Respondent C & H's registration is subject to disciplinary action pursuant to Bus. &
26 Prof. Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which it

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1 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
2 follows:

3 a. Respondent C & H's technician, Respondent Nguyen, certified under penalty of
4 perjury on Lamp Certificate No. LC1315659 that the applicable adjustment or repair had been
5 performed on the lighting system on the Bureau's 1995 Honda Civic. In fact, both headlamps
6 were out of adjustment and the back-up lamp bulb was defective.

7 b. Respondent C & H represented on Invoice No. 17726 that the rear brake drums on the
8 Bureau's 1995 Honda Civic were "good". In fact, the rear brake drums were machined beyond
9 the manufacturer's maximum service specifications.

10 **FIFTEENTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 41. Respondent C & H's registration is subject to disciplinary action pursuant to Bus. &
13 Prof. Code section 9884.7, subdivision (a)(4), Respondent committed an act constituting fraud, as
14 follows: Respondent obtained payment from the operator for performing the applicable
15 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 1995
16 Honda Civic as specified by the Bureau and in accordance with the Vehicle Code. In fact,
17 Respondent failed to perform the necessary inspections, adjustment, or repairs in compliance with
18 Bureau Regulations or the Vehicle Code.

19 **SIXTEENTH CAUSE FOR DISCIPLINE**

20 **(Violations of Regulations)**

21 42. Respondent C & H's registration is subject to disciplinary action pursuant to Bus. &
22 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
23 provisions of California Code of Regulations, title 16, in the following material respects:

24 a. **Section 3305, subdivision (a):** Respondent failed to ensure that the inspection of the
25 brake system and inspection and adjustment of the lighting system were performed on the
26 Bureau's 1995 Honda Civic in accordance with the specifications, instructions, and directives
27 issued by the Bureau and the vehicle manufacturer.

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1 removed from the vehicle. A female employee had the operator sign a written estimate in the
2 amount of \$120 for the inspections. Respondent Nguyen ("Nguyen") met with the operator and
3 provided her with a copy of the estimate. The operator observed a male employee drive the
4 vehicle onto a hoist. The male employee raised the vehicle, removed the right front tire, and
5 checked the tire area using a measuring tool. The employee reinstalled the right front tire, then
6 removed the other three tires and measured the tire areas in the same manner. The operator never
7 saw Nguyen measure the brakes. The male employee lowered the vehicle and drove it near
8 Nguyen. Nguyen got into the vehicle and turned on the headlamp. The operator observed the
9 male employee in front of the vehicle. The employee appeared to be comparing the right
10 headlamp beam with the left headlamp beam. The operator never saw Nguyen or the male
11 employee use any machine to adjust the headlamps. Later, Nguyen performed a smog test on the
12 vehicle. After the smog test was completed, Nguyen told the operator that the vehicle passed all
13 of the tests and would be certified. The operator paid the facility \$120 in cash and received
14 copies of an invoice, a VIR, Certificate of Brake Adjustment No. BC1390980, and Certificate of
15 Lamp Adjustment No. LC1369629. That same day, electronic smog Certificate of Compliance
16 No. OI990204C was issued for the vehicle.

17 47. On February 2, 2012, the Bureau inspected the vehicle and found that both headlamps
18 were still out of adjustment, the front brake rotors and rear brake drums were not within
19 manufacturer's specifications, and the PCV system components were still missing.

20 **TWENTIETH CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 48. Respondent C & H's registration is subject to disciplinary action pursuant to Bus. &
23 Prof. Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which it
24 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
25 follows:

26 a. Respondent C & H's technician, Respondent Nguyen, certified under penalty of
27 perjury on the VIR that the Bureau's 2002 Dodge Durango had passed the inspection and was in
28 compliance with applicable laws and regulations. In fact, the PCV system components had been

1 removed from the vehicle and as such, the vehicle would not pass the inspection required by
2 Health & Saf. Code section 44012.

3 b. Respondent C & H's technician, Respondent Nguyen, certified under penalty of
4 perjury on Brake Certificate No. BC1390980 that the drums and rotors on the Bureau's 2002
5 Dodge Durango were in a satisfactory condition. In fact, the front brake rotors were machined
6 below the manufacturer's minimum service specifications and the rear brake drums were
7 machined beyond the manufacturer's maximum service specifications.

8 c. Respondent C & H's technician, Respondent Nguyen, certified under penalty of
9 perjury on Lamp Certificate No. LC1369629 that the applicable adjustment had been performed
10 on the lighting system on the Bureau's 2002 Dodge Durango. In fact, both headlamps were out of
11 adjustment.

12 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 49. Respondent C & H's registration is subject to disciplinary action pursuant to Bus. &
15 Prof. Code section 9884.7, subdivision (a)(4), Respondent committed acts constituting fraud, as
16 follows:

17 a. Respondent issued an electronic smog certificate of compliance for the Bureau's 2002
18 Dodge Durango without ensuring that a bona fide inspection was performed of the emission
19 control devices and systems on the vehicle, thereby depriving the People of the State of California
20 of the protection afforded by the Motor Vehicle Inspection Program.

21 b. Respondent obtained payment from the operator for performing the applicable
22 inspections and adjustments of the brake and lighting systems on the Bureau's 2002 Dodge
23 Durango as specified by the Bureau and in accordance with the Vehicle Code. In fact,
24 Respondent failed to perform the necessary inspections and adjustments in compliance with
25 Bureau Regulations or the Vehicle Code.

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1 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

2 (Violations of Regulations)

3 50. Respondent C & H's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
5 provisions of California Code of Regulations, title 16, in the following material respects:

6 a. **Section 3305, subdivision (a)**: Respondent failed to ensure that the inspection of the
7 brake system and inspection and adjustment of the lighting system were performed on the
8 Bureau's 2002 Dodge Durango in accordance with the specifications, instructions, and directives
9 issued by the Bureau and the vehicle manufacturer.

10 b. **Section 3316, subdivision (d)(2)**: Respondent issued Lamp Certificate No.
11 LC1369629 as to the Bureau's 2002 Dodge Durango when all of the lamps, lighting equipment,
12 and/or related electrical systems on the vehicle were not in compliance with Bureau regulations.

13 c. **Section 3321, subdivision (c)(2)**: Respondent issued Brake Certificate No.
14 BC1390980 as to the Bureau's 2002 Dodge Durango when the brake system on the vehicle had
15 not been completely tested or inspected.

16 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

17 (Failure to Comply with Regulations)

18 51. Respondent C & H's brake and lamp station licenses are subject to disciplinary action
19 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
20 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
21 (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 49 above.

22 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

23 (Dishonesty, Fraud, or Deceit)

24 52. Respondent C & H's brake and lamp station licenses are subject to disciplinary action
25 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed acts
26 involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 49
27 above.

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TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

53. Respondent Nguyen’s brake and lamp adjuster licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 49 above.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

54. Respondent Nguyen's brake and lamp adjuster licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that he committed an act involving dishonesty, fraud, or deceit whereby another was injured, as set forth in subparagraph 49 (a) above.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

55. Respondent C & H’s smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012, subdivision (a)**: Respondent failed to ensure that the visual inspection of the emission control devices and system on the Bureau’s 2002 Dodge Durango was performed in accordance with procedures prescribed by the department.

b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for the Bureau’s 2002 Dodge Durango without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

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1 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

4 56. Respondent C & H's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with the following sections of California Code of Regulations, title 16:

7 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
8 of compliance for the Bureau's 2002 Dodge Durango even though the vehicle had not been
9 inspected in accordance with section 3340.42.

10 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
11 conducted on the Bureau's 2002 Dodge Durango in accordance with the Bureau's specifications.

12 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

14 57. Respondent C & H's smog check station license is subject to disciplinary action
15 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
16 dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued
17 an electronic smog certificate of compliance for the Bureau's 2002 Dodge Durango without
18 ensuring that a bona fide inspection was performed of the emission control devices and systems
19 on the vehicle, thereby depriving the People of the State of California of the protection afforded
20 by the Motor Vehicle Inspection Program.

21 **THIRTIETH CAUSE FOR DISCIPLINE**

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

23 58. Respondent Nguyen's technician license is subject to disciplinary action pursuant to
24 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
25 section 44012, subdivision (a), of that Code, as follows: Respondent failed to perform the visual
26 inspection of the emission control devices and system on the Bureau's 2002 Dodge Durango in
27 accordance with procedures prescribed by the department.

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1 compliance to a vehicle that was improperly tested). On or about September 20, 2006,
2 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with the
3 ignition timing adjusted beyond specifications. The Bureau assessed civil penalties totaling \$500
4 against Respondent for the violations. Respondent paid the fine on November 13, 2006.

5 b. On or about January 30, 2007, the Bureau issued Citation No. C07-0510 against
6 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
7 determine that emission control devices and systems required by State and Federal law are
8 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,
9 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On
10 or about January 22, 2007, Respondent had issued a certificate of compliance to a Bureau
11 undercover vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed
12 civil penalties totaling \$1,000 against Respondent for the violations. Respondent paid the fine on
13 March 13, 2007.

14 c. On or about November 2, 2009, the Bureau issued Citation No. C2010-0432 against
15 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
16 perform a visual/functional check of emission control devices according to procedures prescribed
17 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
18 to a vehicle that was improperly tested). On or about October 14, 2009, Respondent had issued a
19 certificate of compliance to a Bureau undercover vehicle with a missing evaporative canister.
20 The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.
21 Respondent paid the fine on December 7, 2009.

22 **Respondent Nguyen**

23 d. On or about October 10, 2006, the Bureau issued Citation No. M07-0192 against
24 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
25 perform tests of emission control systems and devices in accordance with Health & Saf. Code
26 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
27 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
28 Regulation 3340.42). On or about September 20, 2006, Respondent had issued a certificate of

1 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
2 specifications. Respondent was directed to complete an 8 hour training course and to submit
3 proof of completion to the Bureau within 30 days from receipt of the citation. Respondent
4 completed the required training on November 22, 2006.

5 e. On or about November 2, 2009, the Bureau issued Citation No. M2010-0433 against
6 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
7 perform tests of emission control systems and devices in accordance with Health & Saf. Code
8 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
9 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
10 Regulation 3340.42). On or about October 14, 2009, Respondent had issued a certificate of
11 compliance to a Bureau undercover vehicle with a missing evaporative canister. Respondent was
12 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
13 within 30 days from receipt of the citation. Respondent completed the required training on
14 December 6, 2009.

15 OTHER MATTERS

16 62. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
17 suspend, revoke or place on probation the registration for all places of business operated in this
18 state by Respondent C & H Smog Check & Repair Corporation, doing business as C & H Smog
19 Check & Repair, Inc., upon a finding that Respondent has, or is, engaged in a course of repeated
20 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

21 63. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
22 Number RC 263879, issued to Respondent C & H Smog Check & Repair Corporation, doing
23 business as C & H Smog Check & Repair, Inc., is revoked or suspended, any additional license
24 issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise
25 revoked or suspended by the Director.

26 64. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Station License Number
27 LS 263879, issued to Respondent C & H Smog Check & Repair Corporation, doing business as C
28 & H Smog Check & Repair, Inc., is revoked or suspended, any additional license issued under

1 Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said licensee may be
2 likewise revoked or suspended by the Director.

3 65. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Station License Number
4 BS 263879, issued to Respondent C & H Smog Check & Repair Corporation, doing business as C
5 & H Smog Check & Repair, Inc., is revoked or suspended, any additional license issued under
6 Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said licensee may be
7 likewise revoked or suspended by the Director.

8 66. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
9 Technician License Number EA 148672, issued to Respondent Khoa Anh Nguyen, is revoked or
10 suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name
11 of said licensee may be likewise revoked or suspended by the Director.

12 67. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number
13 BA 148672, issued to Respondent Khoa Anh Nguyen, is revoked or suspended, any additional
14 license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
15 licensee may be likewise revoked or suspended by the Director.

16 68. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Adjuster License Number
17 LA 148672, issued to Respondent Khoa Anh Nguyen, is revoked or suspended, any additional
18 license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
19 licensee may be likewise revoked or suspended by the Director.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 263879, issued to C & H Smog Check & Repair Corporation, doing business as C & H Smog
25 Check & Repair, Inc.;

26 2. Revoking or suspending any other automotive repair dealer registration issued to
27 C & H Smog Check & Repair Corporation;

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- 1 3. Revoking or suspending Smog Check Station License Number RC 263879, issued to
- 2 C & H Smog Check & Repair Corporation, doing business as C & H Smog Check & Repair, Inc.;
- 3 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 4 and Safety Code in the name of C & H Smog Check & Repair Corporation;
- 5 5. Revoking or suspending Lamp Station License Number LS 263879, issued to C & H
- 6 Smog Check & Repair Corporation, doing business as C & H Smog Check & Repair, Inc.;
- 7 6. Revoking or suspending Brake Station License Number BS 263879, issued to C & H
- 8 Smog Check & Repair Corporation, doing business as C & H Smog Check & Repair, Inc.;
- 9 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
- 10 Chapter 20.3 of the Business and Professions Code in the name of C & H Smog Check & Repair
- 11 Corporation;
- 12 8. Revoking or suspending Advanced Emission Specialist Technician License Number
- 13 EA 148672, issued to Khoa Anh Nguyen;
- 14 9. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 15 and Safety Code in the name of Khoa Anh Nguyen;
- 16 10. Revoking or suspending Brake Adjuster License Number BA 148672, issued to Khoa
- 17 Anh Nguyen;
- 18 11. Revoking or suspending Lamp Adjuster License Number LA 148672, issued to Khoa
- 19 Anh Nguyen;
- 20 12. Revoking or suspending any additional license issued under Articles 5 and 6 of
- 21 Chapter 20.3 of the Business and Professions Code in the name of Khoa Anh Nguyen;
- 22 13. Ordering C & H Smog Check & Repair Corporation, doing business as C & H Smog
- 23 Check & Repair, Inc, and Khoa Anh Nguyen to pay the Director of Consumer Affairs the
- 24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
- 25 Professions Code section 125.3;

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

DATED: April 24, 2012



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

SF2012900756