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

11 79/11-39

12 In the Matter of the Accusation Against:

Case No.

13 **NGUYEN'S AUTO SERVICES INC.**
14 **dba NGUYEN'S AUTO SERVICES II**

A C C U S A T I O N

15 15 N. 27th Street
San Jose, California 95116

SMOG CHECK

16 - and -

16 449 Printy Avenue
Milpitas, California 95035
17 **PHUONG KIM NGUYEN, President**
18 **Automotive Repair Dealer Registration No. ARD 240337**
Smog Check, Test and Repair, Station No. RC 240337

19 **NGUYEN TRONG NGUYEN**
20 449 Printy Avenue
Milpitas, California 95035
21 **Advanced Emission Specialist Technician License No.**
22 **EA 135062**

23 Respondents.

24
25 Sherry Mehl ("Complainant") alleges:

26 **PARTIES**

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

1 (6) Failure in any material respect to comply with the provisions of this chapter [the
2 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to
3 it.

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

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

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

17 7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
18 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
19 the Motor Vehicle Inspection Program.

20 8. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

TABLE 1

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.
1. 04/10/2009 1631 – 1640	2003 Dodge Caravan License No.(no plates) VIN: 1D4GP25RX3B290689	NI361243
2. 08/06/2009 1524 – 1543	2004 Subaru Impreza License No. (no plates) VIN: JF1GD29654G517576	NM336824
3. 08/10/20009 0952 – 0957	2004 BMW X3 License No. (no plates) VIN: WBXPA934X4WA61895	NM336833
4. 10/27/2009 1306 – 1355	1997 Acura 3.5RL License No. 4XPC865	NO337919
5. 10/27/2009 1514 – 1635	2000 Chevrolet Van License No. 6F09804	NO337920
6. 12/03/2009 1609 – 1635	1998 Volkswagen Beetle License No. (no plates) VIN: 3VWBB61C1WM015429	NO829777
7. 01/19/2010 1633 – 1643	1998 Pontiac Trans Sport License No. (no plates) VIN: 1GMDX03E1WD230969	NQ262026
8. 02/20/2010 1037 – 1042	2001 Subaru Impreza License No. 4SUP313	NQ722528
9. 02/24/2010 1342 – 1407	2001 Isuzu Rodeo License No. (no plates) VIN: 4S2CK58W514358898	NQ722546
10. 03/24/2010 1049 – 1114	1996 Volkswagen Golf License No. 3RMD529	NS151597

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

13. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that between April 10, 2009, and March 24, 2010, it made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that vehicles 1 through 10, set forth above in Table

functional test, it will fail the overall inspection.

² Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self test, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

1 1, had passed inspection and were in compliance with applicable laws and regulations. In fact,
2 Respondent conducted the inspections on those vehicles using the clean plugging method by
3 substituting or using different vehicles during the OBD II functional tests in order to issue smog
4 certificates of compliance for the 10 vehicles, and did not test or inspect the 10 vehicles as
5 required by Health and Safety Code section 44012.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 14. Respondent's registration is subject to discipline pursuant to Code section
9 9884.7(a)(4), in that between April 10, 2009, and March 24, 2010, it committed acts which
10 constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 10, set
11 forth above in Table 1, without performing bona fide inspections of the emission control devices
12 and systems on those vehicles, thereby depriving the People of the State of California of the
13 protection afforded by the Motor Vehicle Inspection Program.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Motor Vehicle Inspection Program)**

16 15. Respondent's station license is subject to discipline pursuant to Health and Safety
17 Code section 44072.2(a), in that between April 10, 2009, and March 24, 2010, regarding vehicles
18 1 through 10, set forth above in Table 1, it failed to comply with the following sections of that
19 Code:

20 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
21 performed on vehicles 1 through 10, in accordance with procedures prescribed by the department.

22 b. **Section 44015:** Respondent issued electronic certificates of compliance for vehicles 1
23 through 10, without ensuring that the vehicles were properly tested and inspected to determine if
24 they were in compliance with Health and Safety Code section 44012.

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1 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates of
2 compliance by certifying that those vehicles had been inspected as required, when in fact, they
3 had not.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

7 16. Respondent's station license is subject to discipline pursuant to Health and Safety
8 Code section 44072.2(c), in that between April 10, 2009, and March 24, 2010, regarding vehicles
9 1 through 10, set forth above in Table 1, it failed to comply with provisions of California Code of
10 Regulations, title 16, as follows:

11 a. **Section 3340.24(c):** Respondent falsely or fraudulently issued electronic certificates of
12 compliance for those vehicles without performing bona fide inspections of the emission control
13 devices and systems on the vehicles as required by Health and Safety Code section 44012.

14 b. **Section 3340.35(c):** Respondent issued electronic certificates of compliance even
15 though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

16 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections
17 on those vehicles in accordance with the Bureau's specifications.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 17. Respondent's station license is subject to discipline pursuant to Health and Safety
21 Code section 44072.2(d), in that between April 10, 2009, and March 24, 2010, regarding vehicles
22 1 through 10, set forth above in Table 1, it committed acts involving dishonesty, fraud or deceit
23 whereby another was injured by issuing electronic certificates of compliance for those vehicles
24 without performing bona fide inspections of the emission control devices and systems on the
25 vehicles, thereby depriving the People of the State of California of the protection afforded by the
26 Motor Vehicle Inspection Program.

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1 compliance without performing bona fide inspections of the emission control devices and systems
2 on those vehicles, thereby depriving the People of the State of California of the protection
3 afforded by the Motor Vehicle Inspection Program.

4 **OTHER MATTERS**

5 21. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
6 probation the registrations for all places of business operated in this state by Nguyen's Auto
7 Services Inc., doing business as Nguyen's Auto Services II, upon a finding that it has, or is,
8 engaged in a course of repeated and willful violation of the laws and regulations pertaining to an
9 automotive repair dealer.

10 22. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test and
11 Repair Station License Number RC 240337, issued to Nguyen's Auto Services Inc., doing
12 business as Nguyen's Auto Services II, is revoked or suspended, any additional license issued
13 under this chapter in the name of said licensee may be likewise revoked or suspended by the
14 director.

15 23. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist
16 Technician License Number EA 135062, issued to Nguyen Trong Nguyen, is revoked or
17 suspended, any additional license issued under this chapter in the name of said licensee may be
18 likewise revoked or suspended by the director.

19 **PRAYER**

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

22 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD
23 240337, issued to Nguyen's Auto Services Inc., doing business as Nguyen's Auto Services II;

24 2. Revoking or suspending any other automotive repair dealer registration issued to
25 Nguyen's Auto Services Inc., doing business as Nguyen's Auto Services II;

26 3. Revoking or suspending Smog Test and Repair Station License Number RC
27 240337, issued to Nguyen's Auto Services Inc., doing business as Nguyen's Auto Services II;

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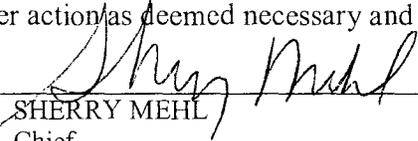
1 4. Revoking or suspending Advanced Emission Specialist Technician License
2 Number EA 135062, issued to Nguyen Trong Nguyen;

3 5. Revoking or suspending any additional license issued under Chapter 5 of the
4 Health and Safety Code in the name of Nguyen Trong Nguyen;

5 6. Ordering Nguyen Trong Nguyen and Nguyen's Auto Services, Inc., doing business
6 as Nguyen's Auto Services II to pay the Director of Consumer Affairs the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Code section 125.3; and,

8 7. Taking such other and further action as deemed necessary and proper.

9 DATED: 1-18-10



SHERRY MEHL
Chief
Bureau of Automotive Repair I/M Smog
Department of Consumer Affairs
State of California
Complainant

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