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6 **BEFORE THE**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
9 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:
10 **1 OZONE SMOG CORP., DBA**
11 **1 OZONE SMOG CORP**
12 **MOHAMMAD MHUESSN, PRES.**
13 **MOHAMMAD ZAKIY, SEC.**
14 **MOSHIAN D. KUMAN, TREAS.**
15 4095 Power Inn Road
16 Sacramento, CA 95826
17 Automotive Repair Dealer Registration No.
18 ARD 261939
19 Smog Check Test Only Station License No. TC
20 261939

21 Mailing address: P. O. Box 245528,
22 Sacramento, CA 95824

23 and

24 **JIMMY PHI NGUYEN**
25 8538 Spiceberry Court
26 Elk Grove, CA 95624
27 Advanced Emission Specialist Technician
28 License No. EA 632673

Respondents.

Case No. 79/12-131

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

23 **FINDINGS OF FACT**

24 1. On or about June 7, 2012, Complainant John Wallauch, in his official capacity as the
25 Chief of the Bureau of Automotive Repair ("Bureau), Department of Consumer Affairs, filed
26 Accusation No. 79/12-131 against 1 Ozone Smog Corp., dba 1 Ozone Smog Corp, Mohammad
27 Mhuessn, President, Mohammad Zakiy, Secretary, and Moshian D. Kuman, Treasurer,
28 ("Respondent Ozone Smog") and Jimmy Phi Nguyen ("Respondent Nguyen"), collectively

1 referred to as Respondents, before the Director of Consumer Affairs. (A true and correct copy of
2 the Accusation is attached hereto and marked Exhibit A.)

3 **Automotive Repair Dealer Registration**

4 2. On or about May 13, 2010, the Bureau issued Automotive Repair Dealer Registration
5 Number ARD 261939 to Respondent Ozone Smog. The Automotive Repair Dealer Registration
6 was in full force and effect at all times relevant to the charges brought in Accusation No. 79/12-
7 131 and will expire on April 30, 2013, unless renewed.

8 **Smog Check Test Only Station License**

9 3. On or about June 10, 2010, the Bureau issued Smog Check Test Only Station License
10 Number TC 261939 to Respondent Ozone Smog. The Smog Check Test Only Station License
11 was in full force and effect at all times relevant to the charges brought in Accusation No. 79/12-
12 131 and will expire on April 30, 2013, unless renewed.

13 **Advanced Emission Specialist Technician License**

14 4. On or about November 22, 2010, the Bureau issued Advanced Emission Specialist
15 Technician License Number EA 632673 ("technician license") to Respondent Nguyen. The
16 technician license was in full force and effect at all times relevant to the charges brought herein
17 and will expire on December 31, 2012, unless renewed.

18 5. On or about June 14, 2012, Respondent Ozone Smog was served by Certified and
19 First Class Mail copies of the Accusation No. 79/12-131, Statement to Respondent, Notice of
20 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
21 11507.6, and 11507.7) at Respondents' address of record which, pursuant to Business and
22 Professions Code section 136, is required to be reported and maintained with the Bureau.
23 Respondent's address of record was, and is, 4095 Power Inn Road, Sacramento, CA, 95826.
24 Respondent Ozone Smog provided a separate mailing address, that is, P. O. Box 245528,
25 Sacramento, CA, 95824, to Complainant's attorney. The afore-mentioned documents were also
26 mailed to Respondent Ozone Smog's mailing address by Certified and First Class Mail.

27 6. On or about June 14, 2012, Respondent Nguyen was served by Certified and First
28 class Mail copies of the Accusation No. 79/12-131, Statement to Respondent, Notice of Defense,

1 Request for Discovery, and Discovery Statutes (Government Code sections 2250.5, 11507.6, and
2 11507.7) at Respondent Nguyen's address of record which, pursuant to Business and Professions
3 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
4 address of record was and is 8538 Spiceberry Court, Elk Grove, CA, 95624.

5 7. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 8. On or about July 17, 2012, the aforementioned documents served on Respondent
9 Ozone Smog by Certified and First Class Mail addressed to 4095 Power Inn Road, Sacramento,
10 CA, 95826, were returned by the U.S. Postal Service marked "Unclaimed." The aforementioned
11 documents served on Respondent Ozone Smog at P. O. Box 245528, Sacramento, CA, 95824,
12 were not returned. The aforementioned documents served on Respondent Nguyen were not
13 returned. The address of record for Respondent Ozone Smog is the same as the address on file
14 with the Bureau. Respondents failed to maintain an updated address with the Bureau and the
15 Bureau has made attempts to serve the Respondents at the address on file. Respondents have not
16 made themselves available for service and therefore, have not availed themselves of their right to
17 file a notice of defense and appear at hearing.

18 9. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
23 may nevertheless grant a hearing.

24 10. Respondents have failed to file a Notice of Defense within fifteen (15) days after
25 service upon them of the Accusation, and therefore waived their right to a hearing on the merits
26 of Accusation No. 79/12-131.

27 11. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the
hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

1 c. Respondent Ozone Smog violated Health and Safety (“H&S”) Code sections 44072.2,
2 subdivision (a), 44012, and 44015, subdivision (b);

3 d. Respondent Ozone Smog violated H&S Code section 44072.2, subdivision (c), and
4 California Code of Regulations, title 16 (“Regulations”) sections 3340.35, subdivision (c), and
5 3304.42;

6 e. Respondent Ozone Smog violated H&S Code section 44072.2, subdivision (d);

7 f. Respondent Nguyen violated H&S Code sections 44072.2, subdivision (a), 44012,
8 and 44032;

9 g. Respondent Nguyen violated H&S Code section 44072.2, subdivision (c), and
10 Regulations sections 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42; and

11 h. Respondent Nguyen violated H&S Code section 44072.2, subdivision (d).

12 **ORDER**

13 **IT IS SO ORDERED** that Automotive Repair Dealer Registration Number ARD 261939
14 and Smog Check Test Only Station License Number TC 261939 issued to 1 Ozone Smog Corp.,
15 dba 1 Ozone Smog Corp, Mohammad Mhuessn, President, Mohammad Zakiy, Secretary, and
16 Moshian D. Kuman, Treasurer, (“Respondent Ozone Smog”) and Advanced Emission Smog
17 Technician License Number EA 632673 issued to Jimmy Phi Nguyen (“Respondent Nguyen”),
18 collectively referred to as Respondents, are REVOKED.

19 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
20 written motion requesting that the Decision be vacated and stating the grounds relied on within
21 seven (7) days after service of the Decision on Respondent. The motion should be sent to the

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1 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Boulevard,
2 Rancho Cordova, CA, 95670. The agency in its discretion may vacate the Decision and grant a
3 hearing on a showing of good cause, as defined in the statute.

4 This Decision shall become effective on 10/30/12.

5 It is so ORDERED October 11, 2012

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DORATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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10 Attachments:

11 Exhibit A: Accusation

12 Exhibit B: Copies of Returned Envelopes –
13 1 Ozone Smog, dba 1 Ozone Smog Corp.

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Exhibit A
Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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16 Automotive Repair Dealer Registration No.
ARD 261939
17 Smog Check Test Only Station License No. TC
261939,
18
19 Mailing Address: P.O. Box 245528,
Sacramento, CA 95824

20 **and**

21 **JIMMY PHI NGUYEN**
8538 Spiceberry Court
22 Elk Grove, CA 95624
Advanced Emission Specialist Technician
23 License No. EA 632673

24 Respondents.

Case No. 79/12-131

ACCUSATION - SMOG CHECK

25 Complainant alleges:

26 **PARTIES**

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

1 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

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

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

20 COST RECOVERY

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

25 SURVEILLANCE OPERATION – MARCH 29, 2012

26 15. On or about March 29, 2012, the Bureau performed a surveillance operation at
27 Respondent Ozone Smog's facility located at 4095 Power Inn Road, Sacramento, California. The
28 surveillance operation and information obtained from the Bureau's Vehicle Information Database
("VID") revealed that between 0943 hours and 1731 hours, Respondent Nguyen performed
twelve (12) smog inspections that resulted in the issuance of electronic certificates of compliance
for the vehicles set forth in Table 1, below, certifying that he had tested and inspected those
vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact,

1 Respondent Nguyen performed the smog inspections using the clean piping method¹ by using the
 2 tail pipe emissions of vehicles other than the vehicles being certified in order to issue the
 3 electronic certificates of compliance. The vehicles certified were not in the test bay at the time of
 4 the smog inspections. Further, Respondent Nguyen allowed Alan Sayareh (a non-licensed
 5 individual) to assist in the performance of smog inspections on vehicles 1, 2, 3, and 6.

6 **Table 1**

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
1. 3/29/2012 0951 hours to 1003 hours	1985 Oldsmobile - Lic. No. 5NCL423	1994 Ford Pickup - Lic. No. 8Y98360	XF439805C	Respondent Nguyen performed the smog inspection with the assistance of Alan Sayareh. The Ford Pickup is registered to Sayareh.
2. 3/29/2012 1006 hours to 1015 hours	1993 Toyota Paseo - Lic. No. 4LCC050	1998 Honda Accord - Lic. No. 5HMM745	XF439806C	Respondent Nguyen performed the inspection with the assistance of Alan Sayareh.
3. 3/29/2012 1129 hours to 1135 hours	2002 Cadillac Seville - No License Plate	2001 Cadillac Deville - No License Plate	XF439810C	Respondent Nguyen performed the inspection with the assistance of Alan Sayareh.
4. 3/29/2012 1151 hours to 1158 hours	1996 Ford Contour - Lic. No. 3PFL345	1998 Acura 2.5LT - Lic. No. 6FJP275	XF439812C	Respondent Nguyen performed the inspection.
5. 3/29/2012 1215 hours to 1223 hours	2006 Dodge Charger - Lic. No. 6HNA601	1997 Ford Expedition - Lic. No. 6KCW614	XF439813C	Respondent Nguyen performed the inspection.

26 ¹ "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
 27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
 28 compliance or are not present in the smog check area during the time of the certification.

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
6. 3/29/2012 1304 hours to 1311 hours	1985 Oldsmobile Ninety-Eight Regency - Lic. No. 2BDT475	2002 Dodge Intrepid - Lic. No. 5BZF587	XF439816C	Respondent Nguyen performed the inspection with the assistance of Alan Sayareh.
7. 3/29/2012 1330 hours to 1335 hours	1999 Volvo V70 AWD - No License Plate	2002 Dodge Intrepid - Lic. No. 5BZF587	XF439817C	Respondent Nguyen performed the inspection.
8. 3/29/2012 1357 hours to 1404 hours	1993 Chevrolet K1500 - Lic. No. 3CBP197	1997 Ford Expedition - Lic. No. 6KCW614	XF439819C	Respondent Nguyen performed the inspection.
9. 3/29/2012 1415 hours to 1423 hours	1988 Mazda B- Series - Lic. No. 3N18922	1991 Acura Legend - Lic. No. 4PCZ538	XF439820C	Respondent Nguyen performed the inspection. The Acura is registered to Nguyen.
10. 3/29/2012 1506 hours to 1513 hours	1998 Honda Civic - Lic. No. 6DMP106	2002 Dodge Intrepid - Lic. No. 5BZF587	XF439823C	Respondent Nguyen performed the smog inspection.
11. 3/29/2012 1554 hours to 1559 hours	1998 Ford Explorer - Lic. No. 6KXC152	1997 Ford Expedition - Lic. No. 6KCW614	XF439824C	Respondent Nguyen performed the inspection.
12. 3/29/2012 1626 hours to 1630 hours	2002 Nissan Altima - No License Plate	2002 Dodge Intrepid - Lic. No. 5BZF587	XF439827C	Respondent Nguyen performed the inspection.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

16. Respondent Ozone Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about March 29, 2012, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when Respondent Ozone Smog issued electronic certificates of compliance for the vehicles set

1 forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws
2 and regulations when, in fact, those vehicles had been clean piped.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 17. Respondent Ozone Smog has subjected its registration to discipline under Code
6 section 9884.7, subdivision (a)(4), in that on or about March 29, 2012, Respondent Ozone Smog
7 committed acts which constitute fraud by issuing electronic certificates of compliance for the
8 vehicles set forth in Table 1, above, without performing bona fide inspections of the emission
9 control devices and systems on those vehicles, thereby depriving the People of the State of
10 California of the protection afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 18. Respondent Ozone Smog has subjected its station license to discipline under Health
14 and Safety Code section 44072.2, subdivision (a), in that on or about March 29, 2012, regarding
15 the vehicles set forth in Table 1, above, it violated sections of that Code, as follows:

16 a. **Section 44012:** Respondent Ozone Smog failed to ensure that the emission
17 control tests were performed on those vehicles in accordance with procedures prescribed by the
18 department.

19 b. **Section 44015, subdivision (b):** Respondent Ozone Smog issued electronic
20 certificates of compliance without properly testing and inspecting the vehicles to determine if
21 they were in compliance with section 44012 of that Code.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

24 19. Respondent Ozone Smog has subjected its station license to discipline under Health
25 and Safety Code section 44072.2, subdivision (c), in that on or about March 29, 2012, regarding
26 the vehicles set forth in Table 1, above, Respondent Ozone Smog violated sections of the
27 California Code of Regulations, title 16, as follows:

1 a. **Section 3340.35, subdivision (c):** Respondent Ozone Smog issued electronic
2 certificates of compliance even though those vehicles had not been inspected in accordance with
3 section 3340.42 of that Code.

4 b. **Section 3340.42:** Respondent Ozone Smog failed to conduct the required smog
5 tests and inspections on those vehicles in accordance with the Bureau's specifications.

6 **FIFTH CAUSE FOR DISCIPLINE**

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

8 20. Respondent Ozone Smog has subjected its station license to discipline under Health
9 and Safety Code section 44072.2, subdivision (d), in that on or about March 29, 2012, regarding
10 the vehicles set forth in Table 1, above, Respondent Ozone Smog committed acts involving
11 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
12 compliance for those vehicles without performing bona fide inspections of the emission control
13 devices and systems on those vehicles, thereby depriving the People of the State of California of
14 the protection afforded by the Motor Vehicle Inspection Program.

15 **SIXTH CAUSE FOR DISCIPLINE**

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

17 21. Respondent Nguyen has subjected his technician license to discipline under Health
18 and Safety Code section 44072.2, subdivision (a), in that on or about March 29, 2012, regarding
19 the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

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

23 b. **Section 44032:** Respondent Nguyen failed to perform tests of the emission
24 control devices and systems on those vehicles in accordance with section 44012 of that Code, in
25 that the vehicle had been clean piped.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent Nguyen has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (c), in that on or about March 29, 2012, regarding
5 the vehicles set forth in Table 1, above, he violated sections of the California Code of
6 Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Nguyen failed to inspect and
8 test those vehicles in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.41, subdivision (c):** Respondent Nguyen entered false
10 information into the Emission Inspection System for the electronic certificates of compliance by
11 entering vehicle emission control information for vehicles other than the vehicles being certified.

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

14 **EIGHTH CAUSE FOR DISCIPLINE**

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

16 23. Respondent Nguyen has subjected his technician license to discipline under Health
17 and Safety Code section 44072.2, subdivision (d), in that on or about March 29, 2012, he
18 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
19 electronic certificates of compliance for the vehicles set forth in Table 1, above, without
20 performing bona fide inspections of the emission control devices and systems on those vehicles,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 **DISCIPLINARY CONSIDERATION**

24 24. To determine the level of discipline in this matter, the following should be
25 considered:

26 a. On or about February 28, 2011, Citation No. C2011-0979 was issued against
27 Respondent Ozone Smog for violation of section 44012, subdivision (f), of the Health and Safety
28

1 Code and California Code of Regulations ("CCR"), title 16, section 3340.35, subdivision (c). The
2 total penalty assessed was \$2,000.00.

3 b. On or about October 29, 2010, Citation No. C2011-0514 was issued against
4 Respondent Ozone Smog for violation of section 44012, subdivision (f), of the Health and Safety
5 Code and CCR, title 16, section 3340.35, subdivision (c). The total penalty assessed was
6 \$1,500.00.

7 c. On or about July 15, 2010, Citation No. C2011-0062 was issued against
8 Respondent Ozone Smog for violation of section 44012, subdivision (f), of the Health and Safety
9 Code and CCR, title 16, section 3340.35, subdivision (c). The total fine assessed was \$1,000.00.

10 OTHER MATTERS

11 25. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
12 or may invalidate temporarily or permanently, the registrations for all places of business operated
13 in this state by 1 Ozone Smog Corp., upon a finding that it has, or is, engaged in a course of
14 repeated and willful violations of the laws and regulations pertaining to an automotive repair
15 dealer.

16 26. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
17 License Number TC 261939, issued to 1 Ozone Smog Corp., doing business as 1 Ozone Smog
18 Corp., is revoked or suspended, any additional license issued under this chapter in the name of
19 said licensee may be likewise revoked or suspended by the director.

20 27. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
21 Technician License Number EA 632673, issued to Jimmy Phi Nguyen, is revoked or suspended,
22 any additional license issued under this chapter in the name of said licensee may be likewise
23 revoked or suspended by the director.

24 PRAYER

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

27 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
28 Number ARD 261939, issued to 1 Ozone Smog Corp., doing business as 1 Ozone Smog Corp.,

- 1 2. Revoking, suspending or placing on probation any other automotive repair dealer
2 registration issued in the name of 1 Ozone Smog Corp.;
- 3 3. Revoking or suspending Smog Check Test Only Station License Number TC 261939,
4 issued to 1 Ozone Smog Corp., doing business as 1 Ozone Smog Corp.;
- 5 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of 1 Ozone Smog Corp.;
- 7 5. Revoking or suspending Advanced Emission Specialist Technician License Number
8 EA 632673, issued to Jimmy Phi Nguyen;
- 9 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
10 and Safety Code in the name of Jimmy Phi Nguyen;
- 11 7. Ordering 1 Ozone Smog Corp., and Jimmy Phi Nguyen to pay the Bureau of
12 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
13 pursuant to Business and Professions Code section 125.3; and,
- 14 8. Taking such other and further action as deemed necessary and proper.

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17 DATED: JUNE 7, 2012


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