

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

In the Matter of the Accusation Against:

**ELENA GOMEZ, OWNER, DOING
BUSINESS AS E & S SMOG**

1046 South Brampton Avenue
Rialto, CA 92376

5310 Mission Boulevard, Unit D
Jurupa Valley, CA 92509

Automotive Repair Dealer Registration No.
ARD 272951

Smog Check-Test Only Station License No.
TC 272951

HANI NGUYEN

8753 Tourmaline Court
Riverside, CA 92509

Smog Check Inspector License No. EO
635606

Respondents.

Case No. 79/15-50

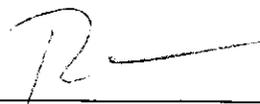
OAH No. 2014120191

DECISION

The attached Stipulated Revocation and Disciplinary Order Only for Elena Gomez 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 Elena Gomez, Automotive Repair Dealer Registration No. ARD 272951, and Smog Check-Test Only Station License No. TC 272951.

This Decision shall become effective April 12, 2016.

DATED: March 19, 2016



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/15-50

13 **ELENA GOMEZ, OWNER, DOING**
14 **BUSINESS AS E & S SMOG**
15 **1046 South Brampton Avenue**
16 **Rialto, CA 92376**

OAH No. 2014120191

STIPULATED REVOCATION AND
DISCIPLINARY ORDER ONLY FOR
ELENA GOMEZ

17 **5310 Mission Boulevard, Unit D**
18 **Jurupa Valley, CA 92509**

19 **Automotive Repair Dealer Registration No.**
20 **ARD 272951**
21 **Smog Check-Test Only Station License No.**
22 **TC 272951**

23 **HANI NGUYEN**
24 **8753 Tourmaline Court**
25 **Riverside, CA 92509**

26 **Smog Check Inspector License No. EO**
27 **635606**

28 Respondents.

29 In the interest of a prompt and speedy settlement of this matter, consistent with the public
30 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of
31 Automotive Repair the parties hereby agree to the following Stipulated Revocation and

1 Disciplinary Order which will be submitted to the Director for the Director's approval and
2 adoption as the final disposition of the Accusation solely with respect to Respondent Elena
3 Gomez. It does not apply to Hani Nguyen or Marvin Cruz.

4 PARTIES

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

9 2. Respondent Elena Gomez, Owner, doing business as E & S Smog (Respondent) is
10 represented in this proceeding by attorney William Dean Ferreira, Esq., whose address is: 582
11 Market Street, Suite 1608, San Francisco, CA, 94104.

12 3. On or about May 8, 2013, the Bureau of Automotive Repair issued Automotive
13 Repair Dealer Registration Number ARD 272951 (Registration) to Respondent. The Registration
14 was in full force and effect at all times relevant to the charges brought herein. It expired on May
15 31, 2015, and has not been renewed.

16 4. On or about June 12, 2013, the Bureau of Automotive Repair issued Smog Check-
17 Test Only Station License Number TC 272951 (Station License) to Respondent. The Station
18 License was in full force and effect at all times relevant to the charges brought herein. It expired
19 on May 31, 2015, and has not been renewed.

20 JURISDICTION

21 5. Accusation No. 79/15-50 was filed before the Director of Consumer Affairs
22 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
23 Respondent. The Accusation and all other statutorily required documents were properly served
24 on Respondent on October 7, 2014. Respondent timely filed a Notice of Defense contesting the
25 Accusation.

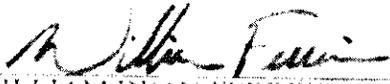
26 6. A copy of Accusation No. 79/15-50 is attached as exhibit A and incorporated herein
27 by reference.

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I have read and fully discussed with Respondent Gomez the terms and conditions and other matters contained in the above Stipulated Revocation and Disciplinary Order. I approve its form and content.

DATED: 10/16/15


WILLIAM DEAN FERREIRA, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 10/19/15

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General


ADRIAN R. CONTRERAS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/15-50

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **ELENA GOMEZ, OWNER, DOING**
14 **BUSINESS AS E & S SMOG**
15 **1046 South Brampton Avenue**
Rialto, CA 92376

16 **5310 Mission Boulevard, Unit D**
Jurupa Valley, CA 92509

17 **Automotive Repair Dealer Registration No.**
18 **ARD 272951**
19 **Smog Check-Test Only Station License No.**
TC 272951

20 **MARVIN CRUZ**
21 **12075 Bayless Street**
Moreno Valley, CA 92557

22 **Smog Check Inspector License No. EO**
23 **635840**

24 **HANI NGUYEN**
25 **8753 Tourmaline Court**
Riverside, CA 92509

26 **Smog Check Inspector License No. EO**
27 **635606**

28 Respondents.

Case No. 79/15-50

ACCUSATION

(SMOG CHECK)

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about May 8, 2013, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 272951 (Registration) to Elena Gomez, Owner, doing
7 business as F & S Smog (Respondent Gomez). The Registration was in full force and effect at all
8 times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

9 3. On or about June 12, 2013, the Bureau of Automotive Repair issued Smog Check-
10 Test Only Station License Number TC 272951 (Station License) to Respondent Gomez. The
11 Station License was in full force and effect at all times relevant to the charges brought herein and
12 will expire on May 31, 2015, unless renewed.

13 4. On or about August 5, 2013, the Bureau issued Smog Check Inspector License No.
14 EO 635840 (Inspector License) to Marvin Cruz (Respondent Cruz). Respondent Cruz's Inspector
15 License was in full force and effect at all times relevant to the charges brought herein and will
16 expire on September 30, 2015, unless renewed.

17 5. On or about June 10, 2013, the Bureau issued Smog Check Inspector License No. EO
18 635606 (Inspector License) to Hani Nguyen (Respondent Nguyen). Respondent Nguyen's
19 Inspector License was in full force and effect at all times relevant to the charges brought herein
20 and will expire on April 30, 2015, unless renewed.

21 **JURISDICTION**

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

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

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

5 9. Section 9884.20 of the Code states:

6 “All accusations against automotive repair dealers shall be filed within three years after the
7 performance of the act or omission alleged as the ground for disciplinary action, except that with
8 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,
9 the accusation may be filed within two years after the discovery, by the bureau, of the alleged
10 facts constituting the fraud or misrepresentation.”

11 10. Section 9884.22 of the Code states:

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

17 “ . . . ”

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

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

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

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1 (commencing with Section 473), is taken over by the department, that program shall be
2 designated as a "bureau."

3 18. Section 23.7 of the Code states:

4 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or
5 other means to engage in a business or profession regulated by this code or referred to in Section
6 1000 or 3600."

7 19. Section 9884.7 of the Code states:

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

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

16 "...

17 "(4) Any other conduct that constitutes fraud.

18 "...

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

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

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

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1 performed the smog inspection on the Bureau-documented 1999 Dodge. A certificate of
2 compliance was issued for this inspection.

3 29. At 1410 hours, Esteban returned to JR Smog Check Only with the vehicle. He told
4 the Operator that the test was completed, the vehicle passed inspection, and the paperwork was in
5 the vehicle. The Operator then left JR Smog Check Only and returned custody of the vehicle to a
6 Bureau representative.

7 30. A Bureau representative re-inspected the 1999 Dodge and found that the oxygen
8 sensor modification that was previously documented was still intact. The vehicle continued to
9 fail inspection because it had high NOx emissions.

10 SECOND UNDERCOVER RUN

11 31. On December 12, 2013, the Operator received custody of a Bureau-documented 1992
12 Plymouth. In its documented condition, the 1992 Plymouth had the internal material from the
13 catalytic converter removed; this would cause it to fail the tailpipe emissions test for excessive
14 levels of exhaust emissions. At 1320 hours, the Operator was instructed to take the vehicle to
15 Respondent Gomez's smog station, E & S Smog, and tell the employees there that the Operator
16 had a vehicle that needed to pass a smog inspection.

17 32. At 1339 hours, the Operator arrived at E & S Smog. A male employee of Respondent
18 Gomez approached the Operator. The Operator told the male employee that he brought in a
19 vehicle to pass inspection. The male employee asked the Operator if the Operator had received a
20 quote for the smog inspection. The Operator said he was quoted \$200.00 for the inspection. The
21 Operator told the employee that the vehicle would not pass its inspection. The Operator gave the
22 employee the keys and the vehicle was driven into the testing bay.

23 33. Respondent Cruz, using the licensure and access code of Nguyen, performed the
24 inspection on the Bureau-documented 1992 Plymouth. As a result of this inspection, a certificate
25 of compliance was issued.

26 34. An employee told the Operator that he owed \$200.00 for the inspection. The
27 Operator paid the \$200.00 and received an unsigned copy of the estimate and final invoice that
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1 listed the inspection cost at \$40.00. The Operator left the smog station with the vehicle and
2 returned custody of it to a Bureau representative.

3 35. A Bureau representative later re-inspected the vehicle. The condition of the catalytic
4 converter was the same as previously documented. The vehicle was still in a condition that would
5 fail a proper smog inspection because of excessive exhaust emissions.

6 **THIRD UNDERCOVER RUN**

7 36. On February 10, 2014, the Operator received custody of a Bureau-documented 2002
8 Chrysler. In its documented condition, the 2002 Chrysler had the wires leading to the number 1
9 and 6 fuel injectors cut. This would cause the vehicle to fail the functional test because of an
10 illuminated malfunction indicator lamp. At 1345 hours, the Operator was instructed to take the
11 vehicle to Respondent Gomez's smog station, E & S Smog, and tell the employees that the
12 Operator had a vehicle that needed to pass a smog inspection.

13 37. At 1400 hours, the Operator arrived at E & S Smog and an employee from the
14 previous undercover run approached. The Operator told the employee that he had another vehicle
15 that needed to pass its smog inspection. The employee asked the Operator if the Operator wanted
16 the vehicle to be tested to see if it would pass or to just pass it. The Operator told the employee
17 that the Operator needed the vehicle to pass. The employee spoke with Respondent Cruz. The
18 employee then quoted the Operator \$250.00 for the smog inspection. The Operator agreed and
19 gave the keys to the employee. The employee drove the vehicle into the testing bay.

20 38. Respondent Cruz, using the licensure and access code of Nguyen, performed the
21 inspection on the Bureau-documented 2002 Chrysler. As a result of the smog inspection, a
22 certificate of compliance was issued.

23 39. Respondent Cruz told the Operator that the smog inspection was done. The Operator
24 paid Respondent Cruz \$250.00.

25 40. Respondent Cruz signed the Vehicle Inspection Report. The Operator was asked to
26 sign the estimate and invoice listing the smog inspection cost at \$40.00.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 45. Respondent Gomez's Station License is subject to disciplinary action under Health
4 and Safety Code sections 44072.10, subdivision(c) and 44072.2, subdivision (a), in that
5 Respondent Gomez failed to comply with the following sections of California Code of
6 Regulations, title 16:

7 a. **Section 3340.35, subdivision (c)**: Respondent Gomez failed to inspect and test
8 the vehicles described in paragraphs 25-42 in accordance with the procedures specified in section
9 3340.42 of the Regulations and failed to ensure that these vehicles had all the required emission
10 control equipment and devices installed and functioning correctly.

11 b. **Section 3340.41, subdivision (c)**: Respondent Gomez knowingly entered into
12 the Emissions Inspection System false information about the vehicles described in paragraphs 25-
13 42, providing results for smog inspections which were not properly performed.

14 c. **Section 3340.42**: Respondent Gomez failed to conduct the required smog tests
15 on the vehicles described in paragraphs 25-42 in accordance with the Bureau's specifications.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

18 46. Respondent Gomez's Registration is subject to disciplinary action under Code section
19 9884.7, subdivision (a)(4), and Respondent Gomez's Station License is subject to disciplinary
20 action under Health and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision
21 (d), in that Respondent Gomez committed dishonest, fraudulent, or deceitful acts whereby another
22 is injured by issuing smog inspection certificates for the vehicles described in paragraphs 25-42
23 without performing bona fide inspections of the emission control devices and systems on them,
24 thereby depriving the People of the State of California of the protection afforded by the Motor
25 Vehicle Inspection Program.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 47. Respondent Cruz's Inspector License is subject to disciplinary action under Health
4 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a), in that
5 Respondent Cruz failed to comply with the following sections of that Code:

6 a. **Section 44012**: Respondent Cruz failed to perform the tests of the emission
7 control systems and devices on the vehicles described in paragraphs 25-42 in accordance with
8 procedures prescribed by the Department.

9 b. **Section 44015**: Respondent Cruz issued certificates of compliance for the
10 vehicles described in paragraphs 25-42 without properly testing and inspecting them to determine
11 if they were in compliance with Health & Safety Code section 44012.

12 c. **Section 44035**: Respondent Cruz failed to meet or maintain the standards
13 prescribed for qualification, equipment, performance, or conduct by failing to properly perform
14 smog inspections on the vehicles described in paragraphs 25-42 or certifying that such tests had
15 been properly performed, when in fact they were not properly performed.

16 **SIXTH CAUSE FOR DISCIPLINE**

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

18 48. Respondent Cruz's Inspector License is subject to disciplinary action under Health
19 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a) in that
20 Respondent Cruz failed to comply with the following sections of California Code of Regulations,
21 title 16:

22 a. **Section 3340.35, subdivision (c)**: Respondent Cruz failed to inspect and test
23 the vehicles described in paragraphs 25-42 in accordance with the procedures specified in section
24 3340.42 of the Regulations and failed to ensure that these vehicles had all the required emission
25 control equipment and devices installed and functioning correctly.

26 b. **Section 3340.41, subdivision (c)**: Respondent Cruz knowingly entered into the
27 Emissions Inspection System false information about the vehicles described in paragraphs 25-42
28 providing results for smog inspections which were not properly performed.

1 c. Section 3340.42: Respondent Cruz failed to conduct the required smog tests on
2 all the vehicles in paragraphs 25-42 in accordance with the Bureau's specifications.

3 **SEVENTH CAUSE FOR DISCIPLINE**

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

5 49. Respondent Cruz's Inspector License is subject to disciplinary action under Health
6 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d), in that
7 Respondent Cruz committed dishonest, fraudulent, or deceitful acts whereby another is injured by
8 issuing smog inspection certificates for the vehicles described in paragraphs 25-42 without
9 performing bona fide inspections of the emission control devices and systems on them, thereby
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle
11 Inspection Program.

12 **EIGHTH CAUSE FOR DISCIPLINE**

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

14 50. Respondent Nguyen's Inspector License is subject to disciplinary action under Health
15 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a), in that
16 Respondent Nguyen failed to comply with the following sections of that Code:

17 a. Section 44035: Respondent Nguyen failed to meet or maintain the standards
18 prescribed for qualification, equipment, performance, or conduct for the inspections described in
19 paragraphs 31-42. Respondent Nguyen failed to maintain the security of Respondent Nguyen's
20 access code, disclosed Respondent Nguyen's access code to Respondent Cruz, and allowed
21 Respondent Cruz to use Respondent Nguyen's access code and licensure for inspections during
22 which Respondent Nguyen was not present.

23 **NINTH CAUSE FOR DISCIPLINE**

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

25 51. Respondent Nguyen's Inspector License is subject to disciplinary action under Health
26 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a) in that
27 Respondent Nguyen failed to comply with sections 3340.42 and 3340.45 of California Code of
28 Regulations, title 16. Respondent Nguyen failed to maintain the security of Respondent

1 Nguyen's access code, disclosed Respondent Nguyen's access code to Respondent Cruz, and
2 allowed Respondent Cruz to use Respondent Nguyen's access code and licensure for the
3 inspections described in paragraphs 31-42 during which Respondent Nguyen was not present.

4 **OTHER MATTERS**

5 52. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or
6 place on probation the registration for all places of business operated in this State by Respondent
7 Gomez upon a finding that Respondent Gomez has, or is, engaged in a course of repeated and
8 willful violations of the laws and regulations pertaining to an automotive repair dealer.

9 53. Under Health & Safety Code section 44072.8, if Respondent Gomez's Station
10 License is revoked or suspended, the Director may likewise revoke or suspend any additional
11 license issued under Chapter 5 of the Health and Safety Code in the name of Respondent Gomez.

12 54. Under Health & Safety Code section 44072.8, if Respondent Cruz's Inspector
13 License is revoked or suspended, the Director may likewise revoke or suspend any additional
14 license issued under Chapter 5 of the Health and Safety Code in the name of Respondent Cruz.

15 55. Under Health & Safety Code section 44072.8, if Respondent Nguyen's Inspector
16 License is revoked or suspended, the Director may likewise revoke or suspend any additional
17 license issued under Chapter 5 of the Health and Safety Code in the name of Respondent Nguyen.

18 **PRAYER**

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

- 21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 272951, issued to Elena Gomez, Owner, doing business as E & S Smog;
- 23 2. Revoking or suspending Smog Check-Test Only Station License Number TC 272951,
24 issued to Elena Gomez, Owner, doing business as E & S Smog;
- 25 3. Revoking or suspending Smog Check Inspector License No. EO 635840 issued to
26 Marvin Cruz;
- 27 4. Revoking or suspending Smog Check Inspector License No. EO 635606 issued to
28 Hani Nguyen;

1 5. Revoking or suspending the registration for all places of business operated in this
2 state by Elena Gomez, Owner, doing business as E & S Smog;

3 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
4 and Safety Code in the name of Elena Gomez, Owner, doing business as E & S Smog;

5 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Marvin Cruz;

7 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
8 and Safety Code in the name of Hani Nguyen;

9 9. Ordering Elena Gomez, Owner, doing business as E & S Smog; Marvin Cruz; and
10 Hani Nguyen to pay the Bureau of Automotive Repair the reasonable costs of the investigation
11 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

13 DATED: October 7, 2014



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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