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7

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

10  
11 In the Matter of the Accusation Against:  
12 **IN & OUT SMOG AND OIL CHANGE**  
10344 1/2 West Olympic Blvd.  
13 Los Angeles, CA 90064  
**AMIR HOSSEIN LOTFIZADEH**  
14 **Automotive Repair Dealer Registration No.**  
**ARD 243065**  
15 **Smog Check Test Only Station License No.**  
**TC 243065,**  
16

17 and

18 **AMIR HOSSEIN LOTFIZADEH**  
18236 Nordoff Street  
19 Northridge, CA 91325  
**Advanced Emission Specialist Technician**  
20 **License No. EA 146857**

21 Respondents.

Case No. 79112-38

**A C C U S A T I O N**

**S M O G C H E C K**

22 Complainant alleges:

23 **PARTIES**

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

26 **Automotive Repair Dealer Registration**

27 2. On a date uncertain in 2005, the Bureau issued Automotive Repair Dealer  
28 Registration Number ARD 243065 ("registration") to Amir Hossein Lotfizadeh ("Respondent"),

1 doing business as In & Out Smog and Oil Change. The registration was in full force and effect at  
2 all times relevant to the charges brought herein and will expire on December 31, 2011, unless  
3 renewed.

4 **Smog Check Test Only Station License**

5 3. On or about April 24, 2006, the Bureau issued Smog Check Test Only Station  
6 License Number TC 243065 ("station license") to Respondent. The station license was in full  
7 force and effect at all times relevant to the charges brought herein and will expire on December  
8 31, 2011, unless renewed.

9 **Advanced Emission Specialist Technician License**

10 4. On a date uncertain in 2003, the Bureau issued Advanced Emission Specialist  
11 Technician License Number EA 146857 ("technician license") to Respondent. The technician  
12 license was in full force and effect at all times relevant to the charges brought herein and will  
13 expire on February 28, 2013, unless renewed.

14 **STATUTORY PROVISIONS**

15 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent  
16 part:

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

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

26 (3) Failing or refusing to give to a customer a copy of any document  
27 requiring his or her signature, as soon as the customer signs the document.

28 (4) Any other conduct that constitutes fraud.

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

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

6 6. Code section 118, subdivision (b) states:

7 The suspension, expiration, or forfeiture by operation of law of a license  
8 issued by a board in the department, or its suspension, forfeiture, or cancellation by  
9 order of the board or by order of a court of law, or its surrender without the written  
10 consent of the board, shall not, during any period in which it may be renewed,  
11 restored, reissued, or reinstated, deprive the board of its authority to institute or  
12 continue a disciplinary proceeding against the licensee upon any ground provided by  
13 law or to enter an order suspending or revoking the license or otherwise taking  
14 disciplinary action against the licensee on any such ground.

15 7. Code section 9884.9 states, in pertinent part:

16 (a) The automotive repair dealer shall give to the customer a written  
17 estimated price for labor and parts necessary for a specific job. No work shall be done  
18 and no charges shall accrue before authorization to proceed is obtained from the  
19 customer. No charge shall be made for work done or parts supplied in excess of the  
20 estimated price without the oral or written consent of the customer that shall be  
21 obtained at some time after it is determined that the estimated price is insufficient and  
22 before the work not estimated is done or the parts not estimated are supplied. Written  
23 consent or authorization for an increase in the original estimated price may be  
24 provided by electronic mail or facsimile transmission from the customer. The bureau  
25 may specify in regulation the procedures to be followed by an automotive repair  
26 dealer if an authorization or consent for an increase in the original estimated price is  
27 provided by electronic mail or facsimile transmission. If that consent is oral, the  
28 dealer shall make a notation on the work order of the date, time, name of person  
authorizing the additional repairs and telephone number called, if any, together with a  
specification of the additional parts and labor and the total additional cost, and shall  
do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the  
notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or  
initials to an acknowledgment of notice and consent, if there is an oral consent of the  
customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original  
estimated price.

\_\_\_\_\_  
(signature or initials)"

8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
2 temporarily or permanently.

3 9. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"  
4 "commission," "committee," "department," "division," "examining committee," "program," and  
5 "agency." "License" includes certificate, registration or other means to engage in a business or  
6 profession regulated by the Code.

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

10 11. Section 44072.2 of the Health and Safety Code 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 (c) Violates any of the regulations adopted by the director pursuant to  
18 this chapter.

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

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

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

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

#### **COST RECOVERY**

29 14. Code section 125.3 provides, in pertinent part, that a Board may request the  
30 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **UNDERCOVER OPERATION – JANUARY 25, 2011**

4 15. On or about January 25, 2011, a Bureau undercover operator drove a Bureau-  
5 documented 2002 Chevrolet Monte Carlo to Respondent's facility and requested a smog  
6 inspection. The vehicle could not pass the visual portion of a smog inspection because the  
7 vehicle's positive crankcase ventilation ("PCV") system was missing. The operator signed a  
8 work order/estimate but was not provided with a copy of that document prior to the smog  
9 inspection. Respondent performed the smog inspection and issued electronic Certificate of  
10 Compliance No. WR658505C for that vehicle. The operator paid \$60 for the smog inspection  
11 and received a copy of an invoice dated January 25, 2011, and an illegible copy of the Vehicle  
12 Inspection Report.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Misleading Statements)**

15 16. Respondent has subjected his registration to discipline under Code section 9884.7,  
16 subdivision (a)(1), in that on or about January 25, 2011, he made statements which he knew or  
17 which by exercise of reasonable care he should have known were untrue or misleading when he  
18 issued electronic Certificate of Compliance No. WR658505C for the 2002 Chevrolet Monte  
19 Carlo, certifying that the vehicle was in compliance with applicable laws and regulations when, in  
20 fact, the vehicle's PCV system was missing.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Failed to Provide a Copy of a Signed Document)**

23 17. Respondent has subjected his registration to discipline under Code section 9884,7,  
24 subdivision (a)(3), in that on or about January 25, 2011, Respondent failed to provide the operator  
25 with a copy of the work order as soon as she signed the document.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Fraud)

3 18. Respondent has subjected his registration to discipline under Code section 9884.7,  
4 subdivision (a)(4), in that on or about January 25, 2011, he committed acts which constitute fraud  
5 by issuing electronic Certificate of Compliance No. WR658505C for the 2002 Chevrolet Monte  
6 Carlo, without performing a bona fide inspection of the emission control devices and systems on  
7 that vehicle, thereby depriving the People of the State of California of the protection afforded by  
8 the Motor Vehicle Inspection Program.

9 FOURTH CAUSE FOR DISCIPLINE

10 (Failure to Provide a Written Estimate)

11 19. Respondent has subjected his registration to discipline under Code section 9884.7,  
12 subdivision (a)(6), in that on or about January 25, 2011, Respondent failed to comply with Code  
13 section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price  
14 for parts and labor for a specific job.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Violation of the Motor Vehicle Inspection Program)

17 20. Respondent has subjected his station license to discipline under Health and Safety  
18 Code section 44072.2, subdivision (a), in that on or about January 25, 2011, regarding the 2002  
19 Chevrolet Monte Carlo, he violated sections of that Code, as follows:

20 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission  
21 control devices and systems required by law were installed and functioning correctly in  
22 accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests  
24 on that vehicle in accordance with procedures prescribed by the department.

25 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
26 Compliance No. WR658505C without properly testing and inspecting the vehicle to determine if  
27 it was in compliance with section 44012 of that Code.

28

1 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of  
2 Compliance No. WR658505C by certifying that the vehicle had been inspected as required when,  
3 in fact, it had not.

4 **SIXTH CAUSE FOR DISCIPLINE**

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

6 21. Respondent has subjected his station license to discipline under Health and Safety  
7 Code section 44072.2, subdivision (c), in that on or about January 25, 2011, regarding the 2002  
8 Chevrolet Monte Carlo, he violated sections of the California Code of Regulations, title 16, as  
9 follows:

10 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
11 electronic Certificate of Compliance No. WR658505C without performing a bona fide inspection  
12 of the emission control devices and systems on that vehicle as required by Health and Safety  
13 Code section 44012.

14 b. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
15 Compliance No. WR658505C even though that vehicle had not been inspected in accordance  
16 with section 3340.42 of that Code.

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

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 22. Respondent has subjected his station license to discipline under Health and Safety  
22 Code section 44072.2, subdivision (d), in that on or about January 25, 2011, regarding the 2002  
23 Chevrolet Monte Carlo, he committed acts involving dishonesty, fraud or deceit whereby another  
24 was injured by issuing electronic Certificate of Compliance No. WR658505C for that vehicle  
25 without performing a bona fide inspection of the emission control devices and system on the  
26 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
27 Motor Vehicle Inspection Program.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 23. Respondent has subjected his technician license to discipline under Health and Safety  
4 Code section 44072.2, subdivision (a), in that on or about January 25, 2011, regarding the 2002  
5 Chevrolet Monte Carlo, he violated sections of that Code, as follows:

6 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission  
7 control devices and systems required by law were installed and functioning correctly in  
8 accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests  
10 on that vehicle in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent failed to perform tests of the emission control devices  
12 and systems on that vehicle in accordance with section 44012 of that Code.

13 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of  
14 Compliance No. WR658505C by certifying that the vehicle had been inspected as required when,  
15 in fact, it had not.

16 **NINTH CAUSE FOR DISCIPLINE**

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

18 24. Respondent has subjected his technician license to discipline under Health and Safety  
19 Code section 44072.2, subdivision (c), in that on or about January 25, 2011, regarding the 2002  
20 Chevrolet Monte Carlo, he violated sections of the California Code of Regulations, title 16, as  
21 follows:

22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
23 electronic Certificate of Compliance No. WR658505C without performing a bona fide inspection  
24 of the emission control devices and systems on that vehicle as required by Health and Safety  
25 Code section 44012.

26 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle  
27 in accordance with Health and Safety Code section 44012.

28

1 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the  
2 Emission Inspection System for electronic Certificate of Compliance No. WR658505C by  
3 entering "Pass" for the visual inspection for the PCV system when, in fact, the vehicle could not  
4 pass the visual inspection because the vehicle's PCV system was missing.

5 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
6 inspections on that vehicle in accordance with the Bureau's specifications.

7 **TENTH CAUSE FOR DISCIPLINE**

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

9 25. Respondent has subjected his technician license to discipline under Health and Safety  
10 Code section 44072.2, subdivision (d), in that on or about January 25, 2011, regarding the 2002  
11 Chevrolet Monte Carlo, he committed acts involving dishonesty, fraud or deceit whereby another  
12 was injured by issuing electronic Certificate of Compliance No. WR658505C without performing  
13 a bona fide inspection of the emission control devices and systems on that vehicle, thereby  
14 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
15 Inspection Program.

16 **PRIOR CITATIONS**

17 26. To determine the degree of penalty, if any, to be imposed upon Respondent,  
18 Complainant alleges as follows:

19 a. On March 6, 2008, the Bureau issued Citation No. C08-0753 to Respondent against  
20 his registration and station licenses for violations of Health and Safety Code section 44012,  
21 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
22 California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing  
23 a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of  
24 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's  
25 specifications. The Bureau assessed a civil penalty of \$500. Respondent complied with this  
26 citation on June 6, 2008.

27 b. On February 2, 2009, the Bureau issued Citation No. C09-0885 to Respondent against  
28 his registration and station licenses for violations of Health and Safety Code section 44036,

1 subdivision (b) (all licensed smog check stations shall utilize original equipment and replacement  
2 parts that are certified by the department) and Regulation, section 3340.17, subdivision (c) (the  
3 analyzer shall be calibrated only with BAR-approved gases that are certified in accordance with  
4 section 3340.18 of that chapter). Respondent was found to have modified his EIS by attaching an  
5 air compressor in place of the BAR-approved certified Zero Air Gas. The Bureau assessed a civil  
6 penalty of \$1,000. Respondent complied with this citation on March 27, 2009.

7 c. On July 8, 2009, the Bureau issued Citation No. C2010-0005 to Respondent against  
8 his registration and station licenses for violations of Health and Safety Code section 44012,  
9 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
10 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
11 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a  
12 missing evaporative canister. The Bureau assessed a civil penalty of \$500. Respondent complied  
13 with this citation on September 24, 2009.

14 d. On December 30, 2009, the Bureau issued Citation No. C2010-0610 to Respondent  
15 against his registration and station licenses for violations of Health and Safety Code section  
16 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
17 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
18 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the  
19 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil  
20 penalty of \$2,000. Respondent appealed this citation on February 10, 2010. A citation hearing  
21 was held on August 9, 2011. Respondent has not complied with this citation.

22 e. On March 6, 2008, the Bureau issued Citation No. M08-0754 to Respondent against  
23 his technician license for violations of Health and Safety Code section 44032, (qualified  
24 technicians shall perform tests of emission control systems and devices in accordance with  
25 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
26 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
27 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
28 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition

1 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend an  
2 8-hour training course. Respondent complied with this citation on June 9, 2008.

3 f. On July 8, 2009, the Bureau issued Citation No. M2010-0006 to Respondent against  
4 his technician license for violations of Health and Safety Code section 44032, (qualified  
5 technicians shall perform tests of emission control systems and devices in accordance with  
6 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
7 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
8 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
9 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing  
10 evaporative canister. Respondent was required to attend an 8-hour training course. Respondent  
11 complied with this citation on November 3, 2009.

12 g. On December 30, 2009, the Bureau issued Citation No. M2010-0611 to Respondent  
13 against his technician license for violations of Health and Safety Code section 44032, (qualified  
14 technicians shall perform tests of emission control systems and devices in accordance with  
15 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
16 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
17 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
18 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition  
19 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend a  
20 16-hour training course. Respondent appealed this citation on February 10, 2010. A citation  
21 hearing was held on August 9, 2011. Respondent has not complied with this citation.

#### 22 OTHER MATTERS

23 27. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
24 or permanently or refuse to validate, the registrations for all places of business operated in this  
25 state by to Amir Hossein Lotfizadeh, upon a finding that he has, or is, engaged in a course of  
26 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
27 dealer.

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