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

13 In the Matter of the Accusation Against:

Case No. 79/12-75

14 **SMOG STOP TEST ONLY**
15 **ABE I. RABADI, OWNER**
3186 Madison Street
16 **Riverside, CA 92505**
Automotive Repair Dealer Reg. No. ARD 259545
17 **Smog Check, Test Only, Station License No.**
18 **TC 259545,**

ACCUSATION

(Smog Check)

19 **ABE I. RABADI**
3610 Banbury Drive, Apt. 2-E
20 **Riverside, CA 92505**
Advanced Emission Specialist Technician
21 **License No. EA 631177,**

22 **and**

23 **YOUSEF K. ZEIT**
3845 Polk St., Apt. 57
24 **Riverside, CA 92505**
Advanced Emission Specialist Technician
25 **License No. EA 632736**

Respondents.

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1 Complainant alleges:

2 **PARTIES/LICENSE INFORMATION**

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

5 **Smog Stop Test Only; Abe I. Rabadi, Owner**

6 2. On or about September 25, 2009, the Director of Consumer Affairs ("Director")
7 issued Automotive Repair Dealer Registration Number ARD 259545 ("registration") to Abe I.
8 Rabadi ("Respondent Rabadi"), owner of Smog Stop Test Only. On February 6, 2012,
9 Respondent's registration was revoked; however, the revocation was stayed and Respondent was
10 placed on probation for three (3) years on terms and conditions, as set forth in paragraph 32
11 below. Respondent's registration will expire on September 30, 2012, unless renewed.

12 3. On or about September 29, 2009, the Director issued Smog Check, Test Only, Station
13 License Number TC 259545 ("smog check station license") to Respondent Rabadi. On February
14 6, 2012, Respondent's smog check station license was revoked; however, the revocation was
15 stayed and Respondent was placed on probation for three (3) years on terms and conditions, as set
16 forth in paragraph 32 below. Respondent's smog check station license will expire on September
17 30, 2012, unless renewed.

18 **A & Z Smog Test Only; Abe I. Rabadi, Owner**

19 4. On or about March 2, 2010, the Director issued Automotive Repair Dealer
20 Registration Number ARD 261018 to Respondent Rabadi, owner of A & Z Smog Test Only. On
21 February 6, 2012, Respondent's registration was revoked, as set forth in paragraph 32 below.

22 5. On or about April 22, 2010, the Director issued Smog Check, Test Only, Station
23 License Number TC 261018 to Respondent Rabadi, owner of A & Z Smog Test Only. On
24 February 6, 2012, Respondent's smog check station license was revoked, as set forth in paragraph
25 32 below.

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

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5 (4) Any other conduct that constitutes fraud.

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

12 13. Code section 22, subdivision (a), states:

13 "Board" as used in any provision of this Code, refers to the board in
14 which the administration of the provision is vested, and unless otherwise expressly
15 provided, shall include "bureau," "commission," "committee," "department,"
16 "division," "examining committee," "program," and "agency."

17 14. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes
18 "registration" and "certificate."

19 15. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

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

16. Health & Saf. Code section 44072.10 states, in pertinent part:

. . . .

(c) The department shall revoke the license of any smog check technician
or station licensee who fraudulently certifies vehicles or participates in the fraudulent
inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
the following:

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(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . .

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

COST RECOVERY

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

BACKGROUND

19. In or about May 2011, the Bureau initiated an investigation of Respondent Rabadi's ("Rabadi") smog check station, Smog Stop Test Only, based on a review of information from the Bureau's Vehicle Information Database ("VID") which indicated that Rabadi and/or his employees may be engaging in fraudulent smog check inspections.

20. On May 31, 2011, a representative of the Bureau conducted a detailed review of the VID data for all smog inspections performed at Rabadi's facility for the period of April 1, 2011, through May 31, 2011. The representative found that the VID recorded the same two diagnostic trouble codes ("code") during the OBD II test¹ on the 20 vehicles identified below regardless of the make or model of the vehicle. The Bureau obtained information indicating that the codes were not applicable to the vehicles. Rabadi performed the smog inspections on vehicles 1 through 16; Respondent Zeit ("Zeit") performed the inspections on vehicles 17 through 20. The Bureau concluded that Rabadi and Zeit performed the smog inspections on the vehicles using a

¹ The On Board Diagnostic, generation II (OBD II), functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

1 method known as "clean plugging",² resulting in the issuance of fraudulent certificates of
 2 compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified & License/VIN No.	Certificate No.
1. 04/05/2011 14:22 - 14:28	2000 Mazda Protégé; License No. 6CFW587	WT774621C
2. 04/08/2011 12:05 - 12:11	2001 Chevrolet Astro; License No. 5LMR721	WT841014C
3. 04/09/2011 10:15 - 10:23	2001 Ford Focus; License No. 5CJA509	WT841023C
4. 04/11/2011 11:12 - 11:23	1999 Chevrolet Astro; License No. 5JET363	WT841039C
5. 04/13/2011 15:59 - 16:09	2002 Ford Focus; License No. 4XHM617	WT916726C
6. 04/15/2011 12:12 - 12:20	2001 Mazda Tribute; License No. 5GQT919	WT916738C
7. 04/16/2011 11:54 - 12:00	2001 Ford Explorer Sport Trac; License No. 6G68344	WT987503C
8. 04/22/2011 12:37 - 12:52	2000 Mitsubishi Eclipse; License No. 6GXJ802	WV044232C
9. 05/02/2011 14:20 - 14:35	2000 Ford Mustang; License No. 4LLX613	WV208496C
10. 05/03/2011 16:33 - 16:49	2000 Mitsubishi Mirage; License No. 5FNK752	WV262114C
11. 05/07/2011 10:46 - 10:56	2001 Mazda MPV; License No. 4SNG686	WV262131C
12. 05/09/2011 09:29 - 09:37	1996 Nissan pickup; License No. 5J38943	WV262140C
13. 05/10/2011 14:11 - 14:27	1997 Toyota Camry; License No. 5FLM545	WV361558C
14. 05/11/2011 12:11 - 12:21	1998 Toyota Camry; VIN #4T1BF28K4WU045142	WV361563C
15. 05/13/2011 12:31 - 12:42	1997 Toyota Camry; License No. 3TSP759	WV361582C
16. 05/14/2011 12:06 - 12:13	2001 Chevrolet Suburban; License No. 6CNT415	WV361592C
17. 04/28/2011 11:40 - 11:48	1997 Ford F-150; VIN #1FTDX1726VKC65270	WV097989C

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

Date & Time of Inspection	Vehicle Certified & License/VIN No.	Certificate No.
18. 04/28/2011 13:18 - 13:29	2001 Acura MDX; License No. 4SEC999	WV097993C
19. 04/29/2011 10:12 - 10:34	1999 Chevrolet C1500 pickup; License No. 8X11320	WV208456C
20. 05/03/2011 09:08 - 09:16	2001 Ford F-150; License No. 7R97396	WV208500C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

21. Respondent Rabadi's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Rabadi certified that vehicles 1 through 16, identified in paragraph 20 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle (s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

b. Respondent Rabadi's technician, Respondent Zeit, certified that vehicles 17 through 20, identified in paragraph 20 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Zeit conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle (s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

22. Respondent Rabadi's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 20, identified in

1 paragraph 20 above, without performing bona fide inspections of the emission control devices
2 and systems on the vehicles, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program.

4 **THIRD CAUSE FOR DISCIPLINE**

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

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

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

12 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
13 vehicles 1 through 20, identified in paragraph 20 above, without ensuring that the vehicles were
14 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
15 section 44012.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Regulations Pursuant**
18 **to the Motor Vehicle Inspection Program)**

19 24. Respondent Rabadi's smog check station license is subject to disciplinary action
20 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
21 comply with provisions of California Code of Regulations, title 16, as follows:

22 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
23 compliance for vehicles 1 through 20, identified in paragraph 20 above, even though the vehicles
24 had not been inspected in accordance with section 3340.42.

25 b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
26 conducted on vehicles 1 through 20, identified in paragraph 20 above, in accordance with the
27 Bureau's specifications.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 25. Respondent Rabadi's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
5 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
6 certificates of compliance for vehicles 1 through 20, identified in paragraph 20 above, without
7 performing bona fide inspections of the emission control devices and systems on the vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **SIXTH CAUSE FOR DISCIPLINE**

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

12 26. Respondent Rabadi's technician license is subject to disciplinary action pursuant to
13 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
14 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
15 emission control tests on vehicles 1 through 16, identified in paragraph 20 above, in accordance
16 with procedures prescribed by the department.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations Pursuant**
19 **to the Motor Vehicle Inspection Program)**

20 27. Respondent Rabadi's technician license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
22 provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
24 through 16, identified in paragraph 20 above, in accordance with Health & Saf. Code sections
25 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

26 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
27 through 16, identified in paragraph 20 above, in accordance with the Bureau's specifications.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent Zeit's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
5 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
6 compliance for vehicles 17 through 20, identified in paragraph 20 above, without performing
7 bona fide inspections of the emission control devices and systems on the vehicles, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **MATTERS IN AGGRAVATION**

11 32. To determine the degree of discipline, if any, to be imposed on Respondent Rabadi,
12 Complainant alleges as follows: On or about December 30, 2011, pursuant to the Stipulated
13 Settlement and Disciplinary Order Solely against Respondent Abe I. Rabadi, etc., adopted as the
14 Decision of the Director in the disciplinary action titled "In the Matter of the Accusation Against:
15 A & Z Smog Test Only", etc., Case No. 79-12-18, the Director revoked Automotive Repair
16 Dealer Registration Number ARD 261018 and Smog Check Station License Number TC 261018
17 issued to Rabadi, owner of A & Z Smog Test Only, effective February 6, 2012. Rabadi's
18 Automotive Repair Dealer Registration Number ARD 259545 and Smog Check, Test Only,
19 Station License Number TC 259545, issued to him as owner of Smog Stop Test Only, were also
20 revoked³; however, the revocations were stayed and Rabadi was placed on probation for three (3)
21 years on terms and conditions. Rabadi admitted that he "clean piped"⁴ two Bureau undercover
22 vehicles, in violation of Bus. & Prof. Code section 9884.7, subdivisions (a)(1) (untrue or
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24 ³ Rabadi's Automotive Repair Dealer Registration Number ARD 259545 and Smog
25 Check, Test Only, Station License Number TC 259545 were not Respondents in the matter, but
26 were subject to discipline pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), due to
the revocation of Automotive Repair Dealer Registration Number ARD 261018 and Smog Check
Station License Number TC 261018 issued to Rabadi, as owner of A & Z Smog Test Only.

27 ⁴ Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),
28 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to
cause the EIS to issue a certificate of compliance for another vehicle.

1 misleading statements) and (a)(4) (fraud); and Health & Saf. Code sections 44072.2, subdivision
2 (a) (violations of Health & Saf. Code sections 44012, subdivision (a), 44012, subdivision (f),
3 44015, subdivision (b, and 44059); 44072.2, subdivision (c) (violations of California Code of
4 Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42),
5 and 44072.2, subdivision (d) (dishonesty, fraud or deceit). Rabadi also admitted that he allowed
6 Respondent Samer George Zait to participate in the smog inspection of one of the undercover
7 vehicles while Samer George Zait's technician license was expired, in violation of Health & Saf.
8 Code sections 44072.2, subdivision (f) (aiding and abetting unlicensed activity), and 44072.2,
9 subdivision (a) (violation of Health & Saf. Code section 44014, subdivision (a)).

10 **OTHER MATTERS**

11 33. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
12 suspend, revoke or place on probation the registration for all places of business operated in this
13 state by Respondent Abe I. Rabadi, owner of Smog Stop Test Only, upon a finding that
14 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
15 regulations pertaining to an automotive repair dealer.

16 34. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
17 License Number TC 259545, issued to Abe I. Rabadi, owner of Smog Stop Test Only, is revoked
18 or suspended, any additional license issued under this chapter in the name of said licensee may be
19 likewise revoked or suspended by the director.

20 35. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
21 Technician License Number EA 631177, issued to Abe I. Rabadi, is revoked or suspended, any
22 additional license issued under this chapter in the name of said licensee may be likewise revoked
23 or suspended by the director.

24 36. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
25 Technician License Number EA 632736, issued to Yousef K. Zeit, is revoked or suspended, any
26 additional license issued under this chapter in the name of said licensee may be likewise revoked
27 or suspended by the director.

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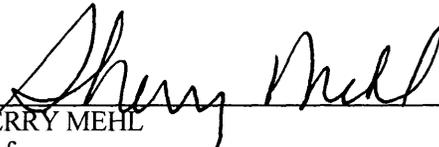
PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 259545, issued to Abe I. Rabadi, owner of Smog Stop Test Only;
2. Revoking or suspending any other automotive repair dealer registration issued to Abe I. Rabadi;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 259545, issued to Abe I. Rabadi, owner of Smog Stop Test Only;
4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 631177, issued to Abe I. Rabadi;
5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Abe I. Rabadi;
6. Revoking or suspending Advanced Emission Specialist Technician License Number EA 632736, issued to Yousef K. Zeit;
7. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Yousef K. Zeit;
8. Ordering Respondents Abe I. Rabadi, owner of Smog Stop Test Only, and Yousef K. Zeit to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
9. Taking such other and further action as deemed necessary and proper.

DATED: _____

2/3/12


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SD2011801841