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*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation and Petition to Revoke Probation Against:<br><br>**GEORGE SEROUR NAKHLA**<br>**1949 Phillips Way**<br>**Los Angeles, CA 90042**<br>**Advanced Emission Specialist Technician License No. EA 133386**<br><br>Respondent. | Case No. 79/12-60<br><br>**ACCUSATION AND PETITION TO REVOKE PROBATION**<br><br>Smog Check |

Complainant alleges:

**PARTIES**

1. Sherry Mehl ("Complainant") brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

**Advanced Emission Specialist Technician License**

2. On a date uncertain in 1998, the Bureau issued Advanced Emission Specialist Technician License Number EA 133386 ("technician license") to George Serour Nakhla ("Respondent"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

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## PRIOR DISCIPLINARY ACTION

3. Pursuant to the Decision and Stipulated Settlement and Disciplinary Order in Accusation Number 79/10-85, attached hereto as **Exhibit "A"** and incorporated herein by reference, effective October 11, 2010, the Director of Consumer Affairs ("Director") revoked Respondent's Advanced Emission Specialist Technician License No. EA 133386; however, the revocation was stayed, and Respondent was placed on probation for three (3) years with terms, including **Term 1**, set forth as follows:

**Term 1** - Obey all Laws: Comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

## STATUTORY PROVISIONS

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

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

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

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

7. Section 44072.8 of the Health and Safety Code states:

> 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.

8. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

## COST RECOVERY

9. Section 125.3 of the Code 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.

## ACCUSATION

## UNDERCOVER OPERATION OCTOBER 4, 2011

10. On or about October 4, 2011, a Bureau undercover operator ("operator") drove a Bureau-documented 1988 Toyota Corolla to Soto Smog Incorporated, located at 1867 ½ E. First Street, Los Angeles, California, for a smog inspection. The vehicle could not pass the visual portion of the smog inspection because the vehicle's air injection system was missing. The operator signed and received a copy of the work order. Respondent completed the smog inspection and issued electronic Certificate of Compliance No. WZ496099, certifying that he had tested and inspected that vehicle and that the vehicle was in compliance with applicable laws and regulations. The operator paid $60 for the smog inspection and received a copy of Invoice No. 3067 and the Vehicle Inspection Report.

## FIRST CAUSE FOR DISCIPLINE

### (Violations of the Motor Vehicle Inspection Program)

11. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about October 4, 2011, regarding the 1988 Toyota Corolla, he violated sections of that Code, as follows:

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

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

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

## SECOND CAUSE FOR DISCIPLINE

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

12. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about October 4, 2011, regarding the 1988 Toyota Corolla, he violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.41, subdivision (c)**: Respondent entered false information into the Emission Inspection System for the electronic certificate of compliance by entering "Pass" for the air injection system. In fact, the vehicle's air injection system was missing.

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

## THIRD CAUSE FOR DISCIPLINE

**(Dishonesty, Fraud or Deceit)**

13. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about October 4, 2011, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. WZ496099 for the 1988 Toyota Corolla without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## PETITION TO REVOKE PROBATION

14. The allegations of paragraphs 1 through 13 of the accusation above are incorporated herein by reference as though fully set forth and are realleged.

15. Grounds exist to revoke the probation and reimpose the order of revocation of Respondent's Advanced Emission Specialist Technician License Number EA 133386, in that Respondent failed to comply with all statutes, regulations, and rules governing estimates and inspections as required by Term 1 of the terms of the probation under Decision and Stipulated Settlement and Disciplinary Order No. 79/10-85, as set forth in paragraphs 10 through 13 of the accusation above.

## OTHER MATTERS

16. Under section 44072.8 of the Health and Safety Code, if Advanced Emission Specialist Technician License Number EA 133386, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

## 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. Vacating the stay and reimposing the order of revocation of Advanced Emission Specialist Technician License Number EA 133386, issued to George Serour Nakhla;

2. Revoking or suspending any other license issued under this chapter in the name of George Serour Nakhla;

3. Ordering George Serour Nakhla to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

4. Taking such other and further action as deemed necessary and proper.

DATED: 12/8/11

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

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**GEORGE SEROUR NAKHLA**<br>**dba SOTO SMOG INCORP., ET AL.**<br>918 N. Soto Street<br>Los Angeles, CA 90033<br><br>Automotive Repair Dealer Registration<br>No. ARD 223617<br>Smog Check Station License No. TC 223617<br>Smog Technician License No. EA 133386<br><br>Respondents. | Case No. 79/10-85 |

## DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective on 10-11-10.

DATED: September 7, 2010

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**GEORGE SEROUR NAKHLA DBA SOTO SMOG INCORP., ET. AL**<br>**918 N. Soto Street**<br>**Los Angeles, CA 90033**<br>**Automotive Repair Dealer License No. ARD 223617**<br>**Smog Check Station No. TC 223617**<br>**Smog Technician License No. EA 133386**<br><br>Respondents. | Case No. 79/10-85<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** |

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Gregory J. Salute, Supervising Deputy Attorney General.

2. Respondent George Serour Nakhla dba Soto Smog Incorp., et.al (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about October 24, 2002, the Bureau of Automotive Repair issued Automotive Repair Dealer License No. ARD 223617 to George Serour Nakhla dba Soto Smog Incorp., et. al (Respondent). The Automotive Repair Dealer License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/10-85 and will expire on September 30, 2010, unless renewed.

4. On or about October 29, 2002, the Bureau of Automotive Repair issued Smog Check Station No. TC 223617 to George Serour Nakhla dba Soto Smog Incorp., et. al (Respondent). The Smog Check Station was in full force and effect at all times relevant to the charges brought in Accusation No. 79/10-85 and will expire on September 30, 2010, unless renewed.

5. In or about 1998, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License No. EA 133386 to George Serour Nakhla dba Soto Smog Incorp., et. al (Respondent). The Advanced Emission Specialist Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/10-85 and will expire on September 30, 2010, unless renewed.

## JURISDICTION

6. Accusation No. 79/10-85 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 21, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 79/10-85 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

7. Respondent has carefully read, and understands the charges and allegations in Accusation No. 79/10-85. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to

present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Accusation No. 79/10-85.

11. Respondent agrees that Automotive Repair Dealer License No. ARD 223617, Smog Check Station No. TC 223617, and Smog Technician License No. EA 133386, are all subject to discipline and he agrees to be bound by the Director of Consumer Affairs (Director)'s imposition of discipline as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

12. Respondent George Serour Nakhla dba Soto Smog Incorp., et. al is admitting responsibility at an early stage in the proceedings.

CONTINGENCY

13. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer License No. ARD 223617, Smog Check Station No. TC 223617, and Smog Technician License No. EA 133386 issued to Respondent George Serour Nakhla dba Soto Smog Incorp., et. al (Respondent) are all revoked. However, the revocation as to Smog Technician License No. EA 133386 is stayed, and this license issued to Respondent is placed on probation for three (3) years on the following terms and conditions:

1. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

2. **Reporting.** Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. **Report Financial Interest.** Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and

Professions Code.

4. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

5. **Jurisdiction.** If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

6. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard suspend or revoke the license.

7. **Continuing Education Courses.** During the period of probation, Respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the Respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, Respondents' license shall be immediately suspended until such proof is received.

8. **Cost Recovery.** Payment to the Bureau of the full amount of cost recovery in the amount of $4660.00 shall be received no later than 6 months before probation terminates. Failure to complete payment of cost recovery within this time frame shall constitute a violation of probation which may subject Respondent's license to outright revocation; however, the Director or the Director's Bureau of Automotive Repair designee may elect to continue probation until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer License, and Smog Check Station, and Smog Technician License. I enter into this Stipulated Settlement and Disciplinary

Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 08-18-10

GEORGE SEROUR NAKHLA DBA SOTO SMOG INCORP., ET. AL
Respondent

ENDORSEMENT

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

Dated: 8-20-10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

GREGORY J. SALUTE
Supervising Deputy Attorney General
*Attorneys for Complainant*

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Exhibit A

Accusation No. 79/10-85

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**SOTO SMOG INCORPORTED**<br>**GEORGE SEROUR NAKHLA, President**<br>918 N. Soto Street<br>Los Angeles, CA 90033<br>**Automotive Repair Dealer License No. ARD 223617**<br>**Smog Check Station No. TC 223617**<br><br>Respondent. | 79/10-85<br>Case No.<br><br>**ACCUSATION**<br><br>SMOG CHECK |

Sherry Mehl ("Complainant") alleges:

**PARTIES**

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

**Automotive Repair Dealer Registration No. ARD 223617**

2. On or about October 24, 2002, the Bureau issued Automotive Repair Dealer Registration No. ARD 223617 ("registration") to Soto Smog Incorported ("Respondent") with George Serour Nakhla as the President. The registration will expire on or about September 30, 2010, unless renewed.

///

**Smog Check Test Only Station License No. TC 223617**

3. On or about October 29, 2002, the Bureau issued Smog Check Test Only Station License No. TC 223617 to George Serour Nakhla. The license will expire on or about September 30, 2010, unless renewed.

## STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
>
> (4) Any other conduct which constitutes fraud.
>
> (6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.
>
> (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 refuse to validate, or shall only invalidate temporarily or permanently 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.
>
> (c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

5. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding

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

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

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

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

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

9. Section 44072.8 of the Health and Safety Code states:

"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 Soto Smog Incorporated may be likewise revoked or suspended by the director."

## COST RECOVERY

10. 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.

///

## UNDERCOVER OPERATION – SEPTEMBER 9, 2009

11. On or about September 9, 2009, a Bureau undercover operator ("operator") drove a Bureau documented 1987 Chevrolet Nova to Respondent's facility and requested a smog inspection. The vehicle was missing the Exhaust Gas Recirculation ("EGR") system, rendering the vehicle incapable of passing a smog inspection. Respondent quoted the operator $60 for the smog inspection. The operator completed and signed Estimate No. 23145, and was provided with a copy. Gilbert Castillote, a licensed technician, performed the smog inspection and issued electronic Certificate of Compliance No. WD293462, certifying that he had tested and inspected the 1987 Chevrolet Nova, and that the vehicle was in compliance with applicable laws and regulations, when in fact, the vehicle could not have passed the visual portion of the smog inspection, in that the vehicle's EGR system was missing. The operator paid Respondent $60, and was provided with a copy of Invoice No. 23145.

## FIRST CAUSE FOR DISCIPLINE

**(Untrue or Misleading Statements)**

12. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about September 9, 2009, it made statements which it knew or which by exercise of reasonable care should have known to be untrue or misleading by issuing electronic Certificate of Compliance No. WD293462 for the 1987 Chevrolet Nova, certifying that the vehicle was in compliance with applicable laws and regulations, when in fact, it could not have passed the visual portion of the smog inspection because the vehicle's EGR system was missing.

## SECOND CAUSE FOR DISCIPLINE

**(Fraud)**

13. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about September 9, 2009, it committed acts constituting fraud by issuing electronic Certificate of Compliance No. WD293462 for the 1987 Chevrolet Nova without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## THIRD CAUSE FOR DISCIPLINE

**(Failure to Comply with Chapter Requirements)**

14. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about September 9, 2009, regarding the 1987 Chevrolet Nova, it failed to comply with the following sections of that Code:

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

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

c. Section 44015(b): Respondent issued electronic Certificate of Compliance No. WD293462 without properly testing and inspecting the vehicle to determine if it was in compliance with Code section 44012.

d. Section 44059: Respondent willfully made false entries for electronic Certificate of Compliance No. WD293462 by certifying that the vehicle had been tested and inspected as required, when in fact, it had not.

## FOURTH CAUSE FOR DISCIPLINE

**(Failure to Comply with Regulations)**

15. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(c), in that on or about September 9, 2009, regarding the 1987 Chevrolet Nova, it failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. Section 3340.24(c): Respondent falsely or fraudulently issued electronic Certificate of Compliance No. WD293462, in that the vehicle could not pass the visual portion of the smog inspection because the vehicle's EGR system was missing.

b. Section 3340.35(c): Respondent issued electronic Certificate of Compliance No. WD293462 even though the vehicle had not been tested and inspected in accordance with the procedures specified in Code section 3340.42.

///

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

## FIFTH CAUSE FOR DISCIPLINE

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

16. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(d), in that on or about September 9, 2009, it committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing electronic Certificate of Compliance No. WD293462 for the 1987 Chevrolet Nova without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## PRIOR CITATIONS

17. To determine the degree of discipline, if any, Complainant alleges the following:

**Automotive Repair Dealer Registration and Smog Check Test Only Station License May 23, 2008**

a. On or about May 23, 2008, the Bureau issued Citation No. C08-1040 against Respondent's registration and station licenses for violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover vehicle that was missing the positive crankcase ventilation system. The Bureau assessed civil penalties totaling $500 against Respondent for the violations. Respondent complied with this citation on July 8, 2008.

**November 24, 2008**

b. On or about November 24, 2008, the Bureau issued Citation No. C09-0660 against Respondent's registration and station licenses for violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for

issuing a certificate of compliance to a Bureau undercover vehicle that was missing an evaporative canister. The Bureau assessed civil penalties totaling $1,000 against Respondent for the violations. Respondent complied with this citation on January 16, 2009.

**May 19, 2009**

c. On or about May 19, 2009, the Bureau issued Citation No. C09-1335 against Respondent's registration and station licenses for violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed civil penalties totaling $2,000 against Respondent for the violations. Respondent complied with this citation on July 15, 2009.

## OTHER MATTERS

18. Under Code section 9884.7(c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Soto Smog Incorporated, upon a finding that it has, or is, engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer.

19. Under Health and Safety Code section 44072.8, if Smog Check Station License Number TC 223617, issued to Soto Smog Incorporated, is revoked or suspended, any additional license issued under this chapter in the name of Soto Smog Incorporated may be likewise revoked or suspended by the director.

## 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. Temporarily or permanently invalidating Automotive Repair Dealer Registration No. ARD 223617, issued to Soto Smog Incorporated;

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2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Soto Smog Incorported;

3. Revoking or suspending Smog Check Test Only Station License Number TC 223617, issued to Soto Smog Incorported;

4. Revoking or suspending any additional license issued under Chapter 5 of Health and Safety Code in the name of Soto Smog Incorported;

5. Ordering Soto Smog Incorported to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

6. Taking such other and further action as deemed necessary and proper.

DATED: 6/23/10

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

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