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

13 In the Matter of the Accusation Against:

Case No. 79/08-65

14 IN & OUT SMOG
15 MAHMOUD SAMY SABAHAAT, PRESIDENT
33047 Calle Aviador, #D
16 San Juan Capistrano, CA 92675

A C C U S A T I O N

S M O G C H E C K

17 Automotive Repair Dealer Reg. No. AJ 223632
Smog Check, Test Only, Station License
18 No. TJ 223632,

19 and

20 MAHMOUD SAMY SABAHAAT
26665 Aracena Drive
21 Mission Viejo, CA 92691

22 Advanced Emission Specialist Technician
License No. EA 144511

23 Respondents.
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1 Complainant alleges:

2 **PARTIES**

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

6 **Automotive Repair Dealer Registration No. AJ 223632**

7 2. On or about February 24, 2003, the Director of Consumer Affairs
8 ("Director") issued Automotive Repair Dealer Registration Number AJ 223632 ("registration") to
9 In & Out Smog ("Respondent In & Out Smog"), with Mahmoud Samy Sabahat ("Respondent
10 Sabahat") as president. Respondent In & Out Smog's registration was in full force and effect at
11 all times relevant to the charges brought herein and will expire on September 30, 2008, unless
12 renewed.

13 **Smog Check, Test Only, Station License No. TJ 223632**

14 3. On or about April 23, 2003, the Director issued Smog Check, Test Only,
15 Station License Number TJ 223632 ("smog check station license") to Respondent In & Out
16 Smog. Respondent In & Out's smog check station license was in full force and effect at all times
17 relevant to the charges brought herein and will expire on September 30, 2008, unless renewed.

18 **Advanced Emission Specialist Technician License No. EA 144511**

19 4. In or about 2001, the Director issued Advanced Emission Specialist
20 Technician License Number EA 144511 ("technician license") to Respondent Sabahat.
21 Respondent Sabahat's technician license was in full force and effect at all times relevant to the
22 charges brought herein and will expire on November 30, 2009, unless renewed.

23 **JURISDICTION**

24 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7
25 provides that the Director may invalidate an automotive repair dealer registration.

26 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
27 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a

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1 in a course of repeated and willful violations of this chapter, or regulations
2 adopted pursuant to it.

3 10. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

4 The automotive repair dealer shall give to the customer a written estimated
5 price for labor and parts necessary for a specific job. No work shall be done and
6 no charges shall accrue before authorization to proceed is obtained from the
7 customer. No charge shall be made for work done or parts supplied in excess of
8 the estimated price without the oral or written consent of the customer that shall
9 be obtained at some time after it is determined that the estimated price is
10 insufficient and before the work not estimated is done or the parts not estimated
11 are supplied. Written consent or authorization for an increase in the original
12 estimated price may be provided by electronic mail or facsimile transmission from
13 the customer. The bureau may specify in regulation the procedures to be followed
14 by an automotive repair dealer when an authorization or consent for an increase in
15 the original estimated price is provided by electronic mail or facsimile
16 transmission. If that consent is oral, the dealer shall make a notation on the work
17 order of the date, time, name of person authorizing the additional repairs and
18 telephone number called, if any, together with a specification of the additional
19 parts and labor and the total additional cost . . .

20 11. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board"
21 includes "bureau," "commission," "committee," "department," "division," "examining
22 committee," "program," and "agency." "License" includes certificate, registration or other means
23 to engage in a business or profession regulated by the Bus. & Prof. Code.

24 12. Health & Saf. Code section 44072.2 states, in pertinent part:

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

28 (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.

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(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 . . .

13. 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.

1 Cost Recovery

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

6 UNDERCOVER OPERATION: 1991 MAZDA 626

7 15. On October 18, 2006, an undercover operator with the Bureau, using the
8 fictitious name "Sue Walton" (hereinafter "operator"), took the Bureau's 1991 Mazda 626 to
9 Respondent In & Out Smog's facility and requested a smog inspection. The charcoal cannister
10 had been removed from the fuel evaporative system ("EVAP") on the Bureau-documented
11 vehicle. The operator signed and received a copy of a repair order/written estimate for the
12 inspection. After the inspection was completed, the operator paid the facility \$59.95 and
13 received copies of an invoice and a vehicle inspection report signed by smog check technician
14 Jamshid Tabrizlou ("Tabrizlou"). That same day, electronic smog Certificate of Compliance
15 # VB546244C was issued for the vehicle.

16 FIRST CAUSE FOR DISCIPLINE

17 (Untrue or Misleading Statements)

18 16. Respondent In & Out Smog's registration is subject to disciplinary action
19 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
20 authorized a statement which it knew or in the exercise of reasonable care should have known to
21 be untrue or misleading. Respondent's smog check technician, Tabrizlou, certified under penalty
22 of perjury on the vehicle inspection report that he performed the smog inspection on the Bureau's
23 1991 Mazda 626 in accordance with all Bureau requirements and that the vehicle passed the
24 inspection and was in compliance with applicable laws and regulations. In fact, the charcoal
25 cannister for the EVAP was missing and as such, the vehicle would not pass the inspection
26 required by Health & Saf. Code section 44012.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

4 20. Respondent In & Out Smog's smog check station license is subject to
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
6 it failed to comply with the following sections of California Code of Regulations, title 16:

- 7 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently
8 issued an electronic smog certificate of compliance for the Bureau's 1991
9 Mazda 626.
- 10 b. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog
11 certificate of compliance for the Bureau's 1991 Mazda 626 even
12 though the vehicle had not been inspected in accordance with section
13 3340.42.
- 14 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on
15 the Bureau's 1991 Mazda 626 in accordance with the Bureau's
16 specifications.

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 21. Respondent In & Out Smog's smog check station license is subject to
20 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that it
21 committed a dishonest, fraudulent, or deceitful act whereby another is injured. Respondent
22 issued an electronic smog certificate of compliance for the Bureau's 1991 Mazda 626 without
23 performing a bona fide inspection of the emission control devices and systems on the vehicle,
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 **NINTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 25. Respondent In & Out Smog's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act
5 which constitutes fraud. Respondent issued an electronic smog certificate of compliance for the
6 Bureau's 1986 Chevrolet Astro van without performing a bona fide inspection of the emission
7 control devices and systems on the vehicle, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 **TENTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Code)**

11 26. Respondent In & Out Smog's registration is subject to disciplinary action
12 pursuant to Code section 9884.7, subdivision (a)(6), in that it failed to comply with section
13 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent failed to
14 provide the operator with a written estimate for parts and/or labor necessary for a specific job
15 prior to performing the smog inspection on the Bureau's 1986 Chevrolet Astro van.

16 **ELEVENTH CAUSE FOR DISCIPLINE**

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

18 27. Respondent In & Out Smog's smog check station license is subject to
19 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that it
20 failed to comply with the following sections of that Code:

- 21 a. **Section 44012:** Respondent failed to perform the emission control tests
22 on the Bureau's 1986 Chevrolet Astro van in accordance with procedures
23 prescribed by the department.
- 24 b. **Section 44015:** Respondent issued an electronic smog certificate of
25 compliance for the Bureau's 1986 Chevrolet Astro van without properly
26 testing and inspecting the vehicle to determine if it was in compliance with
27 Health & Saf. Code section 44012.

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1 TWELFTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Regulations Pursuant
3 to the Motor Vehicle Inspection Program)

4 28. Respondent In & Out Smog's smog check station license is subject to
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that it
6 failed to comply with the following sections of California Code of Regulations, title 16:

- 7 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently
8 issued an electronic smog certificate of compliance for the Bureau's 1986
9 Chevrolet Astro van.
- 10 b. Section 3340.35, subdivision (c): Respondent issued an electronic smog
11 certificate of compliance for the Bureau's 1986 Chevrolet Astro van even
12 though the vehicle had not been inspected in accordance with section
13 3340.42.
- 14 c. Section 3340.42: Respondent failed to conduct the required smog tests on
15 the Bureau's 1986 Chevrolet Astro van in accordance with the Bureau's
16 specifications.

17 THIRTEENTH CAUSE FOR DISCIPLINE

18 (Dishonesty, Fraud or Deceit)

19 29. Respondent In & Out Smog's smog check station license is subject to
20 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
21 Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured.
22 Respondent issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet
23 Astro van without performing a bona fide inspection of the emission control devices and systems
24 on the vehicle, thereby depriving the People of the State of California of the protection afforded
25 by the Motor Vehicle Inspection Program.

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1 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

3 30. Respondent Sabahat's technician license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with
5 the following sections of that Code:

- 6 a. **Section 44012:** Respondent failed to perform the emission control tests
7 on the Bureau's 1986 Chevrolet Astro van in accordance with procedures
8 prescribed by the department.
- 9 b. **Section 44059:** Respondent willfully made false entries on the vehicle
10 inspection report, as set forth in paragraph 23 above, resulting in the
11 issuance of a fraudulent certificate of compliance for the Bureau's 1986
12 Chevrolet Astro van.

13 **FIFTEENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations Pursuant**
15 **to the Motor Vehicle Inspection Program)**

16 31. Respondent Sabahat's technician license is subject to disciplinary action
17 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with
18 the following sections of California Code of Regulations, title 16:

- 19 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
20 issued an electronic smog certificate of compliance for the Bureau's 1986
21 Chevrolet Astro van.
- 22 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
23 the Bureau's 1986 Chevrolet Astro van in accordance with Health & Saf.
24 Code sections 44012 and 44035, and California Code of Regulations, title
25 16, section 3340.42.
- 26 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on
27 the Bureau's 1986 Chevrolet Astro van in accordance with the Bureau's
28 specifications.

1 SIXTEENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 32. Respondent Sabahat's technician license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed a
5 dishonest, fraudulent, or deceitful act whereby another is injured. Respondent issued an
6 electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Astro van without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 DISCIPLINE CONSIDERATIONS

11 33. To determine the degree of discipline, if any, to be imposed on
12 Respondents, Complainant alleges as follows:

13 a. On or about February 28, 2006, the Bureau issued Citation No. C06-0498
14 against Respondent In & Out Smog for violations of Health & Saf. Code section 44012,
15 subdivision (f) (failure to determine that emission control devices and systems required by State
16 and Federal law are installed and functioning correctly in accordance with test procedures), and
17 California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing
18 a certificate of compliance to a vehicle that was improperly tested). Respondent had issued a
19 certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted
20 beyond specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for
21 the violations. Respondent complied with the citation and paid the fine on March 28, 2006.

22 b. On or about June 1, 2006, the Bureau issued Citation No. C06-0775
23 against Respondent In & Out Smog for violations of Health & Saf. Code section 44012,
24 subdivision (f) (failure to determine that emission control devices and systems required by State
25 and Federal law are installed and functioning correctly in accordance with test procedures), and
26 Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was
27 improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover
28 vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil

1 penalties totaling \$1,000 against Respondent for the violations. Respondent complied with the
2 citation and paid the fine on July 6, 2006.

3 c. On or about June 1, 2006, the Bureau issued Citation No. M06-0776
4 against Respondent Sabahat for violations of Health & Saf. Code section 44032 (qualified
5 technicians shall perform tests of emission control systems and devices in accordance with
6 Health & Saf. Code section 44012) and Regulation 3340.30, subdivision (a) (qualified
7 technicians shall inspect, test, and repair vehicles in accordance with Health & Saf. Code sections
8 44012 and 44035 and Regulation 3340.42). Respondent had issued a certificate of compliance to
9 a Bureau undercover vehicle with the ignition timing adjusted beyond specifications, as set forth
10 in subparagraph (b) above. Respondent was directed to complete an 8 hour training course, with
11 proof of completion submitted to the Bureau within thirty (30) days from receipt of the citation.
12 Respondent complied with the citation and completed the required training on or about July 3,
13 2006.

14 **OTHER MATTERS**

15 34. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
16 Director may refuse to validate, or may invalidate temporarily or permanently, the registrations
17 for all places of business operated in this state by Respondent In & Out Smog upon a finding that
18 said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
19 regulations pertaining to an automotive repair dealer.

20 35. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test
21 Only, Station License Number TJ 223632, issued to In & Out Smog, is revoked or suspended,
22 any additional license issued under this chapter in the name of said licensee may be likewise
23 revoked or suspended by the director.

24 36. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission
25 Specialist Technician License Number EA 144511, issued to Mahmoud Samy Sabahat, is
26 revoked or suspended, any additional license issued under this chapter in the name of said
27 licensee may be likewise revoked 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. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AJ 223632, issued to In & Out Smog;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to In & Out Smog;
3. Revoking or suspending Smog Check, Test Only, Station License Number TJ 223632, issued to In & Out Smog;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of In & Out Smog;
5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 144511, issued to Mahmoud Samy Sabahat;
6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Mahmoud Samy Sabahat;
7. Ordering Respondents In & Out Smog and Mahmoud Samy Sabahat 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;
8. Taking such other and further action as deemed necessary and proper.

DATED: 3-20-08


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

Complainant