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

In the Matter of the Accusation and Petition to Revoke Probation Against: **MAHMOUD SAMY SABAHAT** **26665 Aracena Drive** **Mission Viejo, CA 92691** **Smog Check Technician No. EA144511** Respondent.	Case No. 79/13-22 **ACCUSATION AND** **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Complainant John Wallauch brings this Petition to Revoke Probation solely in his 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 2001, the Bureau issued Advanced Emission Specialist License Number EA144511 (technician license) to Respondent Mahmoud Samy Sabahat. Respondent's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2013, unless renewed.

PRIOR DISCIPLINARY ACTION

3. Pursuant to the Decision and Order in Accusation No. 79/08-65, attached hereto as Exhibit A and incorporated herein by reference, the Director of Consumer Affairs (Director) revoked Respondent's technician License No. EA144511, effective December 8, 2011. However, the revocation of Respondent's technician license was stayed and placed on probation for three years with certain terms and conditions including those set forth as follows:

> **Term 1 – Obey all laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
>
> **Term 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 permanently revoke the license.

JURISDICTION

4. This Petition to Revoke Probation and Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118(b) of the Code states:

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

6. Health and Safety Code (H&S Code) section 44002 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. H&S Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

8. H&S Code section 44002 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.

9. H&S Code section 44072.2 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 (H&S Code, secs. 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 acts involving dishonesty, fraud or deceit whereby another is injured.
>
> . . . .

10. H&S Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director, or a court of law, or the voluntary surrender of the license shall not deprive the Director of the jurisdiction to proceed with disciplinary action.

COST RECOVERY

11. 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 – MAY 19, 2012

12. On May 19, 2012, a Bureau undercover operator drove a Bureau documented 2003 Jeep Liberty to Smog Stop, located at 33047 Calle Aviador, Unit D, San Juan Capistrano, California, where Respondent was employed as a smog technician. Respondent performed a smog inspection and issued electronic Certificate of Compliance No. [redacted] to the 2003 Jeep

Liberty, certifying that the vehicle was in compliance with all laws and regulations; however, the vehicle should not have passed the visual portion of the smog inspection, because the vehicle's Positive Crankcase Ventilation (PCV) system components had been removed by Bureau personnel.

I. ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

13. Respondent has subjected his technician license to discipline under H&S Code section 44072.2, subdivision (a), in that on or about May 19, 2012, regarding the 2003 Jeep Liberty, he violated the following sections of the H&S Code:

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, in that the vehicle's PCV system components were missing.

SECOND CAUSE FOR DISCIPLINE

(Violations of Regulation Pursuant to the Motor Vehicle Inspection Program)

14. Respondent has subjected his technician license to discipline under H&S Code 44072.2, subdivision (c), in that on May 19, 2012, regarding the 2003 Jeep Liberty, he violated the following sections of the California Code of Regulations (Regulations), title 16:

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

b. **Section 3340.41, subdivision (c):** Respondent entered false information into the Emissions Inspection System for electronic Certificate of Compliance No. [redacted] by entering "Pass" for the positive crankcase ventilation system even though that system was

missing from this vehicle.

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)

15. Respondent has subjected his technician license to disciplinary action pursuant to H&S Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. [redacted] for the 2003 Jeep Liberty 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 DISCIPLINE

16. To determine the degree of discipline, if any, Complainant alleges that on June 1, 2006, the Bureau issued Citation No. M06-0776 against Respondent's technician license for violations of H&S Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with H&S Code section 44012); and Regulations, section 3340.30(a) (qualified technicians shall inspect, test, and repair vehicles in accordance with H&S Code sections 44012, 44035, and Regulations, section 3340.42. Respondent had issued a certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed a penalty requiring Respondent to complete an eight-hour training course, which Respondent complied with on July 3, 2006.

II. PETITION TO REVOKE PROBATION

CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

17. At all times after the effective date of Respondent's probation, Probation Term No. 1 required Respondent to comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

18. Respondent's probation is subject to revocation because he failed to comply with Probation Term No. 1 in that he has failed to obey all laws since December 8, 2011, as more fully set forth in paragraphs 12 through 15, above.

OTHER MATTERS

19. Under H&S Code section 44072.8, if Advanced Emissions Specialist Technician License No. EA144511, is revoked or suspended, any additional license under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation and Petition to Revoke Probation, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Advanced Emission Specialist Technician License Number EA 144511, issued to Mahmoud Samy Sabahat;

2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Mahmoud Samy Sabahat;

3. Vacating the stay and reimposing the order of revocation of Advanced Emission Specialist Technician License Number EA 144511, issued to Mahmoud Samy Sabahat;

4. Ordering Mahmoud Samy Sabahat 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,

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

Dated: October 16, 2012

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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

In the Matter of the Accusation Against: **IN & OUT SMOG** **MAHMOUD SAMY SABAHAT, President** 26665 Aracena Drive Mission Viejo, CA 92691 Automotive Repair Dealer Registration No. AJ 223632 Smog Check Station License No. TJ 223632 and **MAHMOUD SAMY SABAHAT** 26665 Aracena Drive Mission Viejo, CA 92691 Advanced Emission Specialist Technician License No. EA 144511 Respondents.	Case No. 79/08-65 OAH No. L-2008110393

DECISION

The attached Stipulated Revocation 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 12/8/11.

DATED: November 1, 2011

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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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: **IN & OUT SMOG, MAHMOUD SAMY SABAHAT, President** **26665 Aracena Drive** **Misson Viejo, CA 92691** **Automotive Repair Dealer No. AJ223632** **Smog Check Station No. TJ223632** **and** **MAHMOUD SAMY SABAHAT** **26665 Aracena Drive** **Misson Viejo, CA 92691** **Smog Check Technician No. EA144511** Respondents.	Case No. 79/08-65 OAH No. L-2008110393 **STIPULATED REVOCATION 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 (Bureau). She brought this action solely in her official capacity, and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy Attorney General.

2. Respondents In & Out Smog, Mahmoud Samy Sabahat, President, and Mahmoud Samy Sabahat are represented in this proceeding by attorney Warren Morten, whose address is Madison Harbor, ALC, Attorneys at Law, 17702 Mitchell North, Irvine, CA 92614.

3. On or about February 24, 2003, the Bureau issued Automotive Repair Dealer No. AJ223632 Registration to Respondent In & Out Smog, with Mahmoud Samy Sabahat as President. The Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 79/08-65, and will expire on September 30, 2011, unless renewed.

4. On or about April 23, 2003, the Bureau issued Smog Check, Test Only, Station License No. TJ223632 to Respondent In & Out Smog, with Mahmoud Samy Sabahat as President. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/08-65, and will expire on September 30, 2011, unless renewed.

5. In or around 2001, the Bureau issued Advanced Emission Specialist (EA) Technician License No. EA 144511 to Respondent Mahmoud Samy Sabahat. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/08-65, and will expire on November 30, 2011, unless renewed.

JURISDICTION

6. Accusation No. 79/08-65 was filed before the Director of Consumer Affairs (Director), for the Bureau, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on December 2, 2009. Respondents timely filed their Notices of Defense contesting the Accusation. A copy of Accusation No. 79/08-65 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 79/08-65. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Revocation and Settlement and Disciplinary Order.

8. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine

the witnesses against them; the right to present evidence and to testify on their 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. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

10. Respondents admit the truth of each and every charge and allegation in Accusation No. 79/08-65.

11. Respondents stipulate to the revocation of their Automotive Repair Dealer Registration and Smog Check Test Only Station License, and further agree that Respondents' Advanced Emission Specialist (EA) Technician License is subject to discipline. Respondents agree to be bound by the Director's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Director or his designee. Respondents understand and agree that counsel for Complainant and the staff of the Bureau 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 Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their 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 Revocation and 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.

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

14. This Stipulated Revocation 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 Revocation 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.

15. 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 Registration No. AJ223632 and Smog Check, Test Only, Station License No. TJ223632 issued to Respondent In & Out Smog, Mahmoud Samy Sabahat, President, are revoked.

IT IS FURTHER ORDERED that Advanced Emission Specialist Technician License No. EA 144511 issued to Respondent Mahmoud Samy Sabahat is revoked. However, the revocation is stayed and Respondent is placed on probation for three 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 permanently revoke the license.

7. **Continuing Education Courses.** During the period of probation, Respondent shall attend and successfully complete a Bureau certified 16-hour training course 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 of $21,371.27 shall be made at the time Respondent Sabahat applies for a new and/or reinstatement of an Automotive Repair Dealer registration and/or Smog Check Station License.

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ACCEPTANCE

As President of In & Out Smog and holder of Advanced Emission Specialist License No. EA 144511, I have carefully read the above Stipulated Revocation and Disciplinary Order and have fully discussed it with my attorney, Warren Morten. I understand the stipulation and understand that my Automotive Repair Dealer registration and Smog Check, Test Only, Station license will be revoked; and my Advanced Emission Specialist Technician license will be revoked, with the revocation stayed, and placed on probation. I enter into this Stipulated Revocation and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 9/29/2011

MAHMOUD SAMY SABAHAT
President, In & Out Smog and holder of
Advanced Emission Specialist License No. EA 144511
Respondents

I have read and fully discussed with Respondents In & Out Smog, Mahmoud Samy Sabahat as President, and Mahmoud Samy Sabahat, individually, the terms and conditions and other matters contained in the above Stipulated Revocation and Disciplinary Order. I approve its form and content.

DATED: 9/29/2011

~~WARREN MORTEN~~ Robert Sabahat
Attorney for Respondent

ENDORSEMENT

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

DATED: 9-29-11

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

G. MICHAEL GERMAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/08-65

ORIGINAL

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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: IN & OUT SMOG MAHMOUD SAMY SABAHAT, PRESIDENT 33047 Calle Aviador, #D San Juan Capistrano, CA 92675 Automotive Repair Dealer Reg. No. AJ 223632 Smog Check, Test Only, Station License No. TJ 223632, and MAHMOUD SAMY SABAHAT 26665 Aracena Drive Mission Viejo, CA 92691 Advanced Emission Specialist Technician License No. EA 144511 Respondents.	Case No. 79/08-65 **A C C U S A T I O N** SMOG CHECK

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Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration No. AJ 223632

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

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

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

Advanced Emission Specialist Technician License No. EA 144511

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

JURISDICTION

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

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

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

7. Health and Safety Code ("Health & Saf. Code") section 44002 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.

8. Health & Saf. Code section 44072.6 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.

STATUTORY PROVISIONS

9. Bus. & Prof. Code section 9884.7 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.
>
> (2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.
>
> (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
>
> (4) Any other conduct which constitutes fraud.
>
> . . . .
>
> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
>
> . . . .
>
> (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.

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

> The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the 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 . . .

11. Bus. & Prof. Code section 477 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 Bus. & Prof. Code.

12. Health & Saf. Code section 44072.2 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 . . .

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.

Cost Recovery

14. 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.

UNDERCOVER OPERATION: 1991 MAZDA 626

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

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

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SECOND CAUSE FOR DISCIPLINE

(Failure to Record Odometer Reading)

17. Respondent In & Out Smog's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(2), in that it caused or allowed the operator to sign a repair order that did not state the odometer reading of the Bureau's 1991 Mazda 626 at the time of repair.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent In & Out Smog's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act which constitutes fraud. Respondent issued an electronic smog certificate of compliance for the Bureau's 1991 Mazda 626 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.

FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1991 Mazda 626 in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for the Bureau's 1991 Mazda 626 without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

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FIFTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1991 Mazda 626.

b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate of compliance for the Bureau's 1991 Mazda 626 even though the vehicle had not been inspected in accordance with section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1991 Mazda 626 in accordance with the Bureau's specifications.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

21. Respondent In & Out Smog's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that it committed a dishonest, fraudulent, or deceitful act whereby another is injured. Respondent issued an electronic smog certificate of compliance for the Bureau's 1991 Mazda 626 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.

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UNDERCOVER OPERATION: 1986 CHEVROLET ASTRO VAN

22. On May 5, 2007, an undercover operator with the Bureau, using the fictitious name "John Hurley" (hereinafter "operator"), took the Bureau's 1986 Chevrolet Astro van to Respondent In & Out Smog's facility and requested a smog inspection. The air injection system had been removed from the Bureau-documented vehicle. The operator signed a repair order for the inspection, but did not receive a copy of the document or a written estimate. After the inspection was completed, the operator paid the facility $59.95 and received copies of an invoice and a vehicle inspection report signed by Respondent Sabahat. That same day, electronic smog Certificate of Compliance #[redacted] was issued for the vehicle.

SEVENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

23. Respondent In & Out Smog's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which it knew or in the exercise of reasonable care should have known to be untrue or misleading. Respondent In & Out Smog's smog check technician, Respondent Sabahat, certified under penalty of perjury on the vehicle inspection report that he performed the smog inspection on the Bureau's 1986 Chevrolet Astro van in accordance with all Bureau requirements and that the vehicle passed the inspection and was in compliance with applicable laws and regulations. In fact, the air injection system was missing on the vehicle and as such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Copy of Signed Document)

24. Respondent In & Out Smog's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that it failed to provide the operator with a copy of the repair order as soon as the operator signed the document.

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NINTH CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent In & Out Smog's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act which constitutes fraud. Respondent issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Astro van 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.

TENTH CAUSE FOR DISCIPLINE

(Violations of the Code)

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

ELEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1986 Chevrolet Astro van in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Astro van without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section 44012.

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TWELFTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Astro van.

b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Astro van even though the vehicle had not been inspected in accordance with section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1986 Chevrolet Astro van in accordance with the Bureau's specifications.

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

29. Respondent In & Out Smog's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured. Respondent issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Astro van 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.

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FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent failed to perform the emission control tests on the Bureau's 1986 Chevrolet Astro van in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries on the vehicle inspection report, as set forth in paragraph 23 above, resulting in the issuance of a fraudulent certificate of compliance for the Bureau's 1986 Chevrolet Astro van.

FIFTEENTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Astro van.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1986 Chevrolet Astro van in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1986 Chevrolet Astro van in accordance with the Bureau's specifications.

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

32. Respondent Sabahat's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed a dishonest, fraudulent, or deceitful act whereby another is injured. Respondent issued an electronic smog certificate of compliance for the Bureau's 1986 Chevrolet Astro van 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.

DISCIPLINE CONSIDERATIONS

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

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

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

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

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

OTHER MATTERS

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

35. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TJ 223632, issued to In & Out Smog, 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.

36. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 144511, issued to Mahmoud Samy Sabahat, 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.

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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

03562-110-SD2007802025
phd; 02/25/2008