

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

In the Matter of the Accusation/Petition to Revoke
Probation Against:

MAHMOUD SAMY SABAHAHAT,
26665 Aracena Drive
Mission Viejo, CA 92691

Advanced Emission Specialist Technician
License No. EA 144511 (to be designated upon
renewal as EO 144511 and/or EI 144511)

Case No. 79/13-22

OAH No. 2012110583

Respondent.

DECISION

The attached Stipulated Revocation of License and 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

7/24/13

DATED: July 3, 2013



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
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Attorneys for Complainant

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

11 In the Matter of the Accusation/Petition to
12 Revoke Probation Against:

13 **MAHMOUD SAMY SABAHAT,**
14 **26665 Aracena Drive**
Mission Viejo, CA 92691

15 **Advanced Emission Specialist Technician**
16 **License No. EA 144511 (to be designated**
upon renewal as EO 144511 and/or EI
17 **144511)**

Respondent.

Case No. 79/13-22

OAH No. 2012110583

13 **STIPULATED REVOCATION**
14 **OF LICENSE AND ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Complainant John Wallauch is the Chief of the Bureau of Automotive Repair
22 (Bureau). He brought this action solely in his official capacity and is represented in this matter by
23 Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy
24 Attorney General.

25 2. Respondent Mahmoud Samy Sabahat is represented in this proceeding by attorney
26 Jenos Heidari, Madison, Harbor LLC, whose address is 17702 Mitchell North, Irvine, CA 92614.

27 3. On a date uncertain in 2001, the Bureau issued Advanced Emission Specialist License
28 Number EA144511 (technician license) to Respondent Mahmoud Samy Sabahat. Respondent's

1 technician license was in full force and effect at all times relevant to the charges brought herein
2 and will expire on November 30, 2013, unless renewed. Upon timely renewal of the license, the
3 license will be redesignated as EO 144511 and/or EI 144511.¹

4 JURISDICTION

5 4. Accusation/Petition to Revoke Probation No. 79/13-22 (Accusation) was filed before
6 the Director of Consumer Affairs (Director), for the Bureau, and is currently pending against
7 Respondent. The Accusation and all other statutorily required documents were properly served
8 on Respondent on October 16, 2012. Respondent timely filed his Notice of Defense contesting
9 the Accusation. A copy of the Accusation is attached as Exhibit A and incorporated by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 79/13-22. Respondent also has carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Revocation of License and
14 Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
17 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 79/13-22, agrees that cause exists for discipline, and hereby stipulates that his Advanced
26

27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 Emission Specialist Technician License currently designated as EA 144511 and as redesignated
2 upon timely renewal as EO 144511 and/or EI 144511 be revoked by the Director.

3 9. Respondent understands that by signing this stipulation he enables the Director to
4 issue his order revoking his technician license without further process.

5 CONTINGENCY

6 10. This stipulation shall be subject to approval by the Director or the Director's designee.
7 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau may
8 communicate directly with the Director and staff regarding this stipulation and revocation,
9 without notice to or participation by Respondent or his counsel. By signing the stipulation,
10 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
11 stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt
12 this stipulation as the Decision and Order, the Stipulated Revocation and Disciplinary Order shall
13 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
14 between the parties, and the Director shall not be disqualified from further action by having
15 considered this matter.

16 11. The parties understand and agree that facsimile copies of this Stipulated Revocation
17 of License and Order, including facsimile signatures thereto, shall have the same force and effect
18 as the originals.

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

25 13. In consideration of the foregoing admissions and stipulations, the parties agree that
26 the Director may, without further notice or formal proceeding, issue and enter the following
27 Order:
28

1 ORDER

2 IT IS HEREBY ORDERED that Advanced Emission Specialist Technician License
3 currently designated as EA 144511, and as redesignated upon timely renewal as EO 144511
4 and/or EI 144511, issued to Respondent Mahmoud Samy Sabahat is revoked.

5 1. The revocation of Respondent's Advanced Emission Specialist Technician License
6 by the Director shall constitute the imposition of discipline against Respondent. This stipulation
7 constitutes a record of the discipline and shall become a part of Respondent's license history with
8 the Bureau.

9 2. Respondent shall lose all rights and privileges as an Advanced Emission Specialist
10 Technician in California as of the effective date of the Director's Decision and Order.

11 3. Respondent shall cause to be delivered to the Bureau his pocket license and, if one
12 was issued, his wall certificate on or before the effective date of the Decision and Order.

13 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
14 California, the Bureau shall treat it as a new application for licensure. Respondent must comply
15 with all the laws, regulations and procedures for licensure in effect at the time the application or
16 petition is filed, and all of the charges and allegations contained in Accusation/Petition to Revoke
17 Probation No. 79/13-22 shall be deemed to be true, correct and admitted by Respondent when the
18 Director determines whether to grant or deny the application or petition.

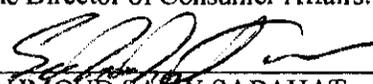
19 5. Respondent shall pay the agency its costs of investigation and enforcement in the
20 amount of \$8,000.00 prior to issuance of a new or reinstated license.

21 ACCEPTANCE

22 I have carefully read the above Stipulated Revocation of License and Order and have fully
23 discussed it with my attorney, Jenos Heidari, Madison, Harbor LLC,. I understand the stipulation
24 and the effect it will have on my Advanced Emission Specialist Technician License. I enter into
25 this Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and
26 agree to be bound by the Decision and Order of the Director of Consumer Affairs.

27 DATED: _____

6-5-13


MAHMOUD SAMY SABAHAHAT
Respondent

1 I have read and fully discussed with Respondent Mahmoud Samy Sabahat the terms and
2 conditions and other matters contained in this Stipulated Revocation of License and Order. I
3 approve its form and content.

4 DATED: 6/5/13


JENOS HEIDARI, MADISON, HARBOR LLC,
Attorney for Respondent

6
7 ENDORSEMENT

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

10 DATED: June 5, 2013

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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2 LINDA K. SCHNEIDER
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E-mail: Michael.German@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against:

14 **MAHMOUD SAMY SABAHAH**
15 **26665 Aracena Drive**
16 **Mission Viejo, CA 92691**

17 **Smog Check Technician No. EA144511**

Respondent.

Case No. *79/13-22*

ACCUSATION AND
PETITION TO REVOKE PROBATION

18 Complainant alleges:

19 **PARTIES**

20 1. Complainant John Wallauch brings this Petition to Revoke Probation solely in his
21 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of
22 Consumer Affairs.

23 **Advanced Emission Specialist Technician License**

24 2. On a date uncertain in 2001, the Bureau issued Advanced Emission Specialist License
25 Number EA144511 (technician license) to Respondent Mahmoud Samy Sabahat. Respondent's
26 technician license was in full force and effect at all times relevant to the charges brought herein
27 and will expire on November 30, 2013, unless renewed.

1 **STATUTORY PROVISIONS**

2 8. H&S Code section 44002 provides, in pertinent part, that the Director has all the
3 powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle
4 Inspection Program.

5 9. H&S Code section 44072.2 states, in pertinent part:

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

9 (a) Violates any section of this chapter [the Motor Vehicle Inspection Program
10 (H&S Code, secs. 44000, et seq.)] and the regulations adopted pursuant to it, which
11 related to the licensed activities.

12

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

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

17

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

22 **COST RECOVERY**

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

27 **UNDERCOVER OPERATION – MAY 19, 2012**

28 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

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

5 **I. ACCUSATION**

6 **FIRST CAUSE FOR DISCIPLINE**

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

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

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

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

16 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
17 and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle's
18 PCV system components were missing.

19 **SECOND CAUSE FOR DISCIPLINE**

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

21 14. Respondent has subjected his technician license to discipline under H&S Code
22 44072.2, subdivision (c), in that on May 19, 2012, regarding the 2003 Jeep Liberty, he violated
23 the following sections of the California Code of Regulations (Regulations), title 16:

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

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

1 missing from this vehicle.

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

4 **THIRD CAUSE FOR DISCIPLINE**

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

6 15. Respondent has subjected his technician license to disciplinary action pursuant to
7 H&S Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
8 fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No.
9 [REDACTED] for the 2003 Jeep Liberty without performing a bona fide inspection of the emission
10 control devices and systems on that vehicle, thereby depriving the People of the State of
11 California of the protection afforded by the Motor Vehicle Inspection Program.

12 **PRIOR DISCIPLINE**

13 16. To determine the degree of discipline, if any, Complainant alleges that on June 1,
14 2006, the Bureau issued Citation No. M06-0776 against Respondent's technician license for
15 violations of H&S Code section 44032 (qualified technicians shall perform tests of emission
16 control systems and devices in accordance with H&S Code section 44012); and Regulations,
17 section 3340.30(a) (qualified technicians shall inspect, test, and repair vehicles in accordance with
18 H&S Code sections 44012, 44035, and Regulations, section 3340.42. Respondent had issued a
19 certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
20 specifications. The Bureau assessed a penalty requiring Respondent to complete an eight-hour
21 training course, which Respondent complied with on July 3, 2006.

22 **II. PETITION TO REVOKE PROBATION**

23 **CAUSE TO REVOKE PROBATION**

24 **(Failure to Obey All Laws)**

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

28

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

4 **OTHER MATTERS**

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

8 **PRAYER**

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

- 12 1. Revoking or suspending Advanced Emission Specialist Technician License Number
13 EA 144511, issued to Mahmoud Samy Sabahat;
- 14 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
15 and Safety Code in the name of Mahmoud Samy Sabahat;
- 16 3. Vacating the stay and reimposing the order of revocation of Advanced Emission
17 Specialist Technician License Number EA 144511, issued to Mahmoud Samy Sabahat;
- 18 4. Ordering Mahmoud Samy Sabahat to pay the Bureau of Automotive Repair the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3; and,
- 21 5. Taking such other and further action as deemed necessary and proper.
- 22

23 Dated: October 16, 2012

24 
25 JOHN WALLAUCH
26 Chief
27 Bureau of Automotive Repair
28 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 SABAHAHAT, 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 SABAHAHAT
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

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 79/08-65

12 **IN & OUT SMOG, MAHMOUD SAMY**
13 **SABAHAT, President**
14 **26665 Aracena Drive**
Misson Viejo, CA 92691

OAH No. L-2008110393

STIPULATED REVOCATION AND
DISCIPLINARY ORDER

15 **Automotive Repair Dealer No. AJ223632**
Smog Check Station No. TJ223632

and

16 **MAHMOUD SAMY SABAHAT**
17 **26665 Aracena Drive**
Misson Viejo, CA 92691

18 **Smog Check Technician No. EA144511**

19 Respondents.
20

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

23 PARTIES

24 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair
25 (Bureau). She brought this action solely in her official capacity, and is represented in this matter
26 by Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy
27 Attorney General.
28

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

5 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
6 every right set forth above.

7 CULPABILITY

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

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

15 CONTINGENCY

16 12. This stipulation shall be subject to approval by the Director or his designee.
17 Respondents understand and agree that counsel for Complainant and the staff of the Bureau may
18 communicate directly with the Director and staff of the Department of Consumer Affairs
19 regarding this stipulation and settlement, without notice to or participation by Respondents or
20 their counsel. By signing the stipulation, Respondents understand and agree that they may not
21 withdraw their agreement or seek to rescind the stipulation prior to the time the Director considers
22 and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the
23 Stipulated Revocation and Settlement and Disciplinary Order shall be of no force or effect, except
24 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
25 Director shall not be disqualified from further action by having considered this matter.

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

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

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

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

10 7. **Continuing Education Courses.** During the period of probation, Respondent shall
11 attend and successfully complete a Bureau certified 16-hour training course applicable to the class
12 of license held by the Respondent. Said course shall be completed and proof of completion
13 submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of
14 completion of the course is not furnished to the Bureau within the 60-day period, Respondents'
15 license shall be immediately suspended until such proof is received.

16 8. **Cost Recovery.** Payment to the Bureau of the full amount of cost recovery of
17 \$21,371.27 shall be made at the time Respondent Sabahat applies for a new and/or reinstatement
18 of an Automotive Repair Dealer registration and/or Smog Check Station License.

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1 ACCEPTANCE

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

10 DATED: 9/29/2011


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

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

19 DATED: 9/29/2011


20 ~~WARREN MORTEN~~ *Robert Sabahat*
21 Attorney for Respondent

22 ENDORSEMENT

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

25 DATED: 9-29-11

26 KAMALA D. HARRIS
27 Attorney General of California
28 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

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 KATHLEEN B.Y. LAM, State Bar No. 95379
Deputy Attorney General
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Telephone: (619) 645-2091
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9
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:
14 IN & OUT SMOG
MAHMOUD SAMY SABAHAHAT, PRESIDENT
15 33047 Calle Aviador, #D
San Juan Capistrano, CA 92675
16
Automotive Repair Dealer Reg. No. AJ 223632
17 Smog Check, Test Only, Station License
No. TJ 223632,
18
and
19 MAHMOUD SAMY SABAHAHAT
20 26665 Aracena Drive
Mission Viejo, CA 92691
21
Advanced Emission Specialist Technician
22 License No. EA 144511

23 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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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 . . .

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

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

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

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

24

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

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

26 13. Health & Saf. Code section 44072.8 states that when a license has been
27 revoked or suspended following a hearing under this article, any additional license issued under
28 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 # [REDACTED] 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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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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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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1 **PRAYER**

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

- 4 1. Temporarily or permanently invalidating Automotive Repair Dealer
5 Registration Number AJ 223632, issued to In & Out Smog;
- 6 2. Temporarily or permanently invalidating any other automotive repair
7 dealer registration issued to In & Out Smog;
- 8 3. Revoking or suspending Smog Check, Test Only, Station License Number
9 TJ 223632, issued to In & Out Smog;
- 10 4. Revoking or suspending any additional license issued under Chapter 5 of
11 the Health and Safety Code in the name of In & Out Smog;
- 12 5. Revoking or suspending Advanced Emission Specialist Technician
13 License Number EA 144511, issued to Mahmoud Samy Sabahat;
- 14 6. Revoking or suspending any additional license issued under Chapter 5 of
15 the Health and Safety Code in the name of Mahmoud Samy Sabahat;
- 16 7. Ordering Respondents In & Out Smog and Mahmoud Samy Sabahat to
17 pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement
18 of this case, pursuant to Business and Professions Code section 125.3;
- 19 8. Taking such other and further action as deemed necessary and proper.

20 DATED: 3-20-08.

21
22 
23 SHERRY MEHL
24 Chief
25 Bureau of Automotive Repair
26 Department of Consumer Affairs
27 State of California

28 Complainant