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

In the Matter of the Accusation Against:

MILLBRAE TEST ONLY SMOG CENTER
SHAHIN NAZARIAN, Owner
110 El Camino Real
Millbrae, CA 94030-2606

Automotive Repair Dealer Registration
No. ARD 255465
Smog Check, Test Only, Station License
No. TC 255465

SHAHIN NAZARIAN
120 Moore Court
San Bruno, CA 94066

Advanced Emission Specialist Technician
License No. EA 152011

Respondents.

MILLBRAE AUTO REPAIR
SHAHIN NAZARIAN, Owner
120 El Camino Real
Millbrae, CA 94030-2606

Automotive Repair Dealer Registration
No. ARD 257463

Affiliated Registration.

Case No. 79/11-63

OAH No. 2011060190

DECISION

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

This Decision shall become effective 12/14/11.

DATED: November 15, 2011

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **MILLBRAE TEST ONLY SMOG CENTER** **110 El Camino Real** **Millbrae, CA 94030-2606** **SHAHIN NAZARIAN, OWNER** **Automotive Repair Dealer Registration** **No. ARD 255465** **Smog Check Test Only Station License** **No. TC 255465** **SHAHIN NAZARIAN** **120 Moore Court** **San Bruno, CA 94066** **Advanced Emission Specialist Technician License** **No. EA 152011** Respondents **MILLBRAE AUTO REPAIR** **120 El Camino Real** **Millbrae, CA 94030-2606** **SHAHIN NAZARIAN, OWNER** **Automotive Repair Dealer Registration** **No. ARD 257463** Affiliated Registration	Case No. 79/11-63 OAH No. 2011060190 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Aspasia A. Papavassiliou, Deputy Attorney General.

2. Shahin Nazarian (Respondent), individually and as owner of Millbrae Test Only Smog Center and Millbrae Auto Repair, is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about July 9, 2008, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration No. ARD 255465 to Respondent as owner of Millbrae Test Only Smog Center. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-63 and will expire on June 30, 2012, unless renewed.

4. On or about August 15, 2008, the Bureau of Automotive Repair issued Smog Check Test Only Station License No. TC 255465 to Respondent as owner of Millbrae Test Only Smog Center. The Smog Check Test Only Station License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-63 and will expire on June 30, 2012, unless renewed.

5. In 2005, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License No. EA 152011 to Respondent. The Advanced Emission Specialist Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-63 and will expire on March 31, 2013, unless renewed.

6. On or about March 5, 2009, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration No. ARD 257463 to Respondent as owner of Millbrae Auto Repair. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-63 and will expire on February 29, 2012, unless renewed.

JURISDICTION

7. Accusation No. 79/11-63 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 31, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 79/11-63 is attached as exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

8. Respondent has carefully read, and understands the charges and allegations in Accusation No. 79/11-63. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

11. Respondent understands and agrees that the charges and allegations in Accusation No. 79/11-63, if proven at a hearing, constitute cause for imposing discipline upon his Automotive Repair Dealer Registrations, Smog Check Test Only Station License, and Advanced Emission Specialist Technician License.

12. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

basis for the charges in the Accusation, and that Respondent gives up his right to contest those charges.

13. Respondent agrees that his Automotive Repair Dealer Registrations, Smog Check Test Only Station License, and Advanced Emission Specialist Technician License are subject to discipline and he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

14. Respondent has never been the subject of any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

RESERVATION

15. The admissions made by Respondent in this stipulation are only for the purposes of this proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of Automotive Repair, or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

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

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

19. 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 ORDERED that the following registrations are invalidated:

Automotive Repair Dealer Registration No. ARD 255465, issued to Shahin Nazarian (Respondent) as owner of Millbrae Test Only Smog Center; and

Autotmotive Repair Dealer Registration No. ARD 257463, issued to Shahin Nazarian (Respondent) as owner of Millbrae Auto Repair.

IT IS FURTHER ORDERED that the following licenses are revoked:

Smog Check Test Only Station License No. TC 255465, issued to Shahin Nazarian (Respondent) as Owner of Millbrae Test Only Smog Center; and

Advanced Emission Specialist Technician License No. EA 152011, issued to Shahin Nazarian (Respondent).

FINALLY IT IS ORDERED that the above invalidations and revocations are stayed and that Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 255465 and Smog Check Test Only Station License No. TC 255465, issued to Respondent as owner of Millbrae Test Only Smog Center, are suspended for ten (10) consecutive days beginning on the effective date of the decision. In addition, Advanced Emission Specialist Technician License No. EA 152011, issued to Respondent, is suspended for sixty (60) consecutive days beginning on the effective date of the decision. (Automotive Repair Dealer Registration No. ARD 257463, issued

to Respondent as owner of Millbrae Auto Repair, is not suspended.)

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

3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

4. **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.

5. **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.

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

7. **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.

8. **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, temporarily or permanently invalidate the registration(s) and suspend or revoke the license(s).

9. **Continuing Education Course.** Respondent shall complete a "BAR Advanced Clean Air Car Course" and submit proof of completion to the Bureau within six (6) months from the effective date of the decision and order. If proof of completion of the course is not furnished

to the Bureau within the six-month period, Respondent's Advanced Emission Specialist Technician License shall be immediately suspended until such proof is received.

10. **Restrictions.** During the period of probation, Millbrae Test Only Smog Center shall not perform any form of smog inspection, or emission system diagnosis or repair, until Respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to properly perform such work, and BAR has been given 10 days notice of the availability of the equipment for inspection by a BAR representative.

11. **Cost Recovery**. Respondent's payment of cost recovery in the amount of $5,000 shall be received by the Bureau no later than six (6) months before Respondent's probation terminates. Respondent shall pay the cost recovery in equal monthly installments beginning on the first day of each month following the effective date of the Director's decision and order. Failure to comply with the payment schedule shall constitute a violation of probation which may subject Respondent's registrations to outright invalidation and his licenses to outright revocation; however, the Director or the Director's Bureau designee may elect to continue probation until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registrations, Smog Check Test Only Station License, and Advanced Emission Specialist Technician License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 10/16/11

SHAHIN NAZARIAN
Respondent

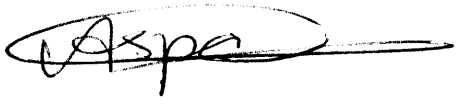
ENDORSEMENT

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

Dated: October 17, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General



ASPASIA A. PAPAVASSILIOU
Deputy Attorney General
Attorneys for Complainant

SF2010201519

Exhibit A

Accusation No. 79/11-63

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Attorney General of California
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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MILLBRAE TEST ONLY SMOG CENTER** **110 El Camino Real** **Millbrae, CA 94030-2606** **SHAHIN NAZARIAN, OWNER** **Automotive Repair Dealer Registration No. ARD 255465** **Smog Check Test Only Station License No. TC 255465** **SHAHIN NAZARIAN** **120 Moore Court** **San Bruno, CA 94066** **Advanced Emission Specialist Technician License No. EA 152011** Respondents.	Case No. 79/11-63 **ACCUSATION** **SMOG CHECK**

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.

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Automotive Repair Dealer Registration

2. On or about July 9, 2008, the Bureau issued Automotive Repair Dealer License Number ARD 255465 ("registration") to Shahin Nazarian doing business as Millbrae Test Only Smog Center ("Respondent Millbrae"). The registration will expire on June 30, 2011, unless renewed.

Smog Check Test Only Station License

3. On or about August 15, 2008, the Bureau issued Smog Check Test Only Station License Number TC 255465 ("station license") to Respondent Millbrae. The station license will expire on June 30, 2011, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 152011 ("technician license") to Shahin Nazarian ("Respondent Nazarian"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation 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.
>
> (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 that constitutes fraud.
>
> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
>
> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to

subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation 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.

6. Code section 9884.9, subdivision (a), states:

(a) 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 if 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, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

_____

(signature or initials)"

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

8. 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 Code.

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

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

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

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

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

> When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

COST RECOVERY

13. 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 – FEBRUARY 1, 2010

14. On or about February 1, 2010, a Bureau undercover operator drove a Bureau-documented 1993 Lexus SC300 to Respondent's facility and requested a smog inspection. The operator filled out and signed a work order; however, she was not provided with a copy of the document. The vehicle could not pass the functional portion of a smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications. Respondent performed the smog inspection and issued electronic Certificate of Compliance No. WH074212C for that vehicle even though the vehicle could not have passed the functional portion of the smog inspection. The operator paid $69.95 for the smog inspection and received a copy of Invoice No. 2593 and the Vehicle Inspection Report ("VIR").

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

15. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about February 1, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic Certificate of Compliance No. WH074212C for the 1993 Lexus SC300, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

SECOND CAUSE FOR DISCIPLINE

(Failure to Provide a Customer with a Signed Document)

16. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(3), in that on February 1, 2010, he failed to provide the operator with a copy of the work order as soon as she signed the document.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about February 1, 2010, he committed acts which constitute fraud by issuing electronic Certificate of Compliance No. WH074212C for the 1993 Lexus SC300,

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.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

18. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about February 1, 2010, he failed to comply with section 9884.9, subdivision (a) by failing to provide the operator with a written estimated price for parts and labor for a specific job.

FIFTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

19. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about February 1, 2010, regarding the 1993 Lexus SC300, he violated sections of that Code, as follows:

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

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

c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate of Compliance No. WH074212C without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

d. **Section 44059**: Respondent willfully made false entries for the electronic Certificate of Compliance No. WH074212C, certifying that the vehicle had been inspected as required when, in fact, it had not.

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SIXTH CAUSE FOR DISCIPLINE

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

20. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about February 1, 2010, regarding the 1993 Lexus SC300, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. WH074212C without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of Compliance No. WH074212C even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

21. Respondent subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about February 1, 2010, regarding the 1993 Lexus SC300, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. WH074212C for that vehicle 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.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

22. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about February 1, 2010, regarding the 1993 Lexus SC300, above, he violated sections of that Code, as follows:

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

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

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

d. **Section 44059**: Respondent willfully made false entries for electronic Certificate of Compliance No. WH074212C, certifying that the vehicle had been inspected as required when, in fact, it had not.

NINTH CAUSE FOR DISCIPLINE

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

23. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about February 1, 2010, regarding the 1993 Lexus SC300, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. WH074212C without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c)**: Respondent entered false information into the Emission Inspection System ("EIS") for electronic Certificate of Compliance No. WH074212C by entering "Pass" for the ignition timing when, in fact, the vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

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

TENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

24. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about February 1, 2010, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. WH074212C without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

PRIOR CITATIONS

25. To determine the degree of penalty, if any, to be imposed upon Respondent, Complainant alleges as follows:

a. On December 1, 2008, the Bureau issued Citation No. C09-0669 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with missing air injection components. The Bureau assessed a civil penalty of $500. Respondent complied with this citation on January 9, 2009.

b. On May 15, 2009, the Bureau issued Citation No. C09-1315 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a civil penalty of $1,000. Respondent complied with this citation on July 3, 2009.

c. On October 14, 2009, the Bureau issued Citation No. C2010-0357 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)

and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing evaporative emission control system canister. The Bureau assessed a civil penalty of $2,000. Respondent complied with this citation on November 30, 2009.

d. On December 1, 2008, the Bureau issued Citation No. M09-0670 to Respondent against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with missing air injection components. Respondent was required to attend an 8-hour training course. Respondent complied with this citation on January 31, 2009.

e. On May 15, 2009, the Bureau issued Citation No. M09-1316 to Respondent against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with missing PCV components. Respondent was required to attend a 16-hour training course. Respondent complied with this citation on August 5, 2009.

f. On October 14, 2009, the Bureau issued Citation No. M2010-0358 to Respondent against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section

3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing evaporative emission control system canister. Respondent was required to attend a 68-hour training course. Respondent complied with this citation on November 30, 2009.

OTHER MATTERS

26. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by to Shahin Nazarian doing business as Millbrae Test Only Smog Center, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

27. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 255465, issued to Shahin Nazarian doing business as Millbrae Test Only Smog Center, 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.

28. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 152011, issued to Shahin Nazarian is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 255465, issued to Shahin Nazarian doing business as Millbrae Test Only Smog Center;

2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Shahin Nazarian;

3. Revoking or suspending Smog Check Test Only Station License Number TC 255465, issued to Shahin Nazarian doing business as Millbrae Test Only Smog Center;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Shahin Nazarian;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 152011, issued to Shahin Nazarian;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Shahin Nazarian;

7. Ordering Shahin Nazarian 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,

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

DATED: 1/25/11

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

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