

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

In the Matter of the Accusation Against:

**SUN AUTOMOTIVE REPAIR;
DIB M. SALEH**
27178 E. 3rd St.
Highland, CA 92346
Automotive Repair Dealer Registration
No. ARD 198721
Smog Check Station License No.
RC 198721

and

MAZEN D. SALEH
27178 E. 3rd St.
Highland, CA 92346
Smog Check Inspector License No. EO
140079
Smog Check Repair Technician License
No. EI 140079 (formerly Advanced
Emissions Specialist Technician License
No. EA 140079)

Respondents.

Case No. 79/13-89

OAH No. 2013110306

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; except that the following typographical error is corrected as follows:

Page 2, line 17: The expiration date of "March 31, 2015" is corrected to "March 31, 2016."

This Decision shall become effective

July 17, 2015

DATED:

June 25, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
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7

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22 No. EI 140079
(formerly Advanced Emissions Specialist
23 Technician License No. EA 140079)
24 Respondents.

Case No. 79/13-89
OAH No. 2013110306
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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1 EO 140079 and Smog Check Repair Technician License No. EI 140079, effective August 9,
2 2012. These licenses will expire on August 31, 2016, unless renewed.

3 **JURISDICTION**

4 6. Accusation No. 79/13-89 was filed before the Director of Consumer Affairs
5 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
6 Respondents. The Accusation and all other statutorily required documents were properly served
7 on Respondents on June 4, 2013. Respondents timely filed their Notice of Defense contesting the
8 Accusation.

9 7. A copy of Accusation No. 79/13-89 is attached as Exhibit A, and incorporated herein
10 by reference.

11 **ADVISEMENT AND WAIVERS**

12 8. Respondents have carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 79/13-89. Respondents have also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

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

23 10. Respondents voluntarily, knowingly, and intelligently waive and give up each and
24 every right set forth above.

25 **CULPABILITY**

26 11. Respondents admit the truth of each and every charge and allegation in Accusation
27 No. 79/13-89.

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1 **DISCIPLINARY ORDER**

2 *IT IS HEREBY ORDERED* that Smog Check Inspector License No. EO 140079 and Smog
3 Check Repair Technician License No EI 140079 issued to Mazen D. Saleh, and Smog Check
4 Station License Number RC 198721 issued to Dib. M. Saleh, are revoked.

5 *IT IS FURTHER ORDERED* that Automotive Repair Dealer Registration No. ARD 198721
6 issued to to Dib M. Saleh, dba Sun Automotive Repair is revoked. However, the revocation is
7 stayed and Respondent is placed on probation for three (3) years, on the following terms and
8 conditions.

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

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

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

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

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

25 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
26 Respondent has failed to comply with the terms and conditions of probation, the Department may,
27 after giving notice and opportunity to be heard temporarily or permanently invalidate the
28 registration.

1 I have read and fully discussed with Respondent Sun Auto Repair, Dib M. Saleh, and
2 Mazen D. Saleh the terms and conditions and other matters contained in the above Stipulated
3 Settlement and Disciplinary Order. I approve its form and content.

4
5 DATED: 11.5.14


TIMOTHY KNIGHT
Attorney for Respondents

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7
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9 **ENDORSEMENT**

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

12 Dated: Nov 6, 2014

13 Respectfully submitted,

14 KAMALA D. HARRIS
Attorney General of California
15 GREGORY J. SALUTE
Supervising Deputy Attorney General

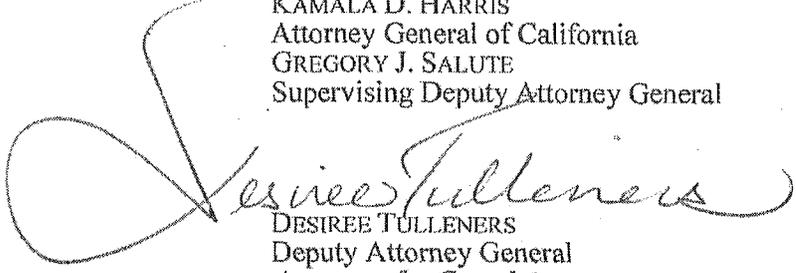

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17 DESIREE TULENERS
18 Deputy Attorney General
Attorneys for Complainant
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Exhibit A

Accusation No. 79/13-89

1 KAMALA D. HARRIS
Attorney General of California
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Supervising Deputy Attorney General
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16 and

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19 **Smog Check Inspector License**
No. EO 140079
20 **Smog Check Repair Technician License**
No. EI 140079
21 **(formerly Advanced Emissions Specialist**
22 **Technician License No. EA 140079)**

23 Respondents.

Case No. 79/13-89
ACCUSATION
Smog Check

24 Complainant alleges:

25 **PARTIES**

26 1. John Wallauch (Complainant) brings this Accusation solely in his official capacity
27 as the Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs.

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1 automotive repair dealer or to render a decision temporarily or permanently invalidating
2 (suspending or revoking) a registration.

3 7. Health and Safety Code section 440022 provides that the Director has all the powers
4 and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle
5 Inspection Program.

6 8. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
7 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
8 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
9 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

10 STATUTORY PROVISIONS

11 9. Section 9884.7 of the Code states, in pertinent part:

12 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
13 error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an
14 automotive repair dealer for any of the following acts or omissions related to the conduct of the
15 business of the automotive repair dealer, which are done by the automotive repair dealer or any
16 automotive technician, employee, partner, officer, or member of the automotive repair dealer.

17 (1) Making or authorizing in any manner or by any means whatever any statement
18 written or oral which is untrue or misleading, and which is known, or which by
19 the exercise of reasonable care should be known, to be untrue or misleading.

20 ...
21 (4) Any other conduct which constitutes fraud.

22 ...
23 (6) Failure in any material respect to comply with the provisions of this chapter [the
24 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations
25 adopted pursuant to it.

26 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
27 than one place of business in this state, the director pursuant to subdivision (a) shall only refuse to
28 validate, or shall only invalidate temporarily or permanently the registration of the specific place
of business which has violated any of the provisions of this chapter. This violation, or action by
the director, shall not affect in any manner the right of the automotive repair dealer to operate his
or her other places of business.

(c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate
temporarily or permanently, the registration for all places of business operated in this state by an
automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a
course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.”

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1 10. Section 9884.13 of the Code provides that the expiration of a valid registration
2 shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an
3 automotive repair dealer or to render a decision invalidating a registration temporarily or
4 permanently.

5 11. Section 477, subdivision (a) of the Code provides, in pertinent part, that "Board"
6 includes "bureau," "commission," "committee," "department," "division," "examining
7 committee," "program," and "agency." Subdivision (b) provides that "License" includes
8 certificate, registration or other means to engage in a business or profession regulated by the
9 Code.

10 12. Section 118(b) of the Code states:

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

18 13. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

25

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

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

28 14. Health and Safety 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.

 15. Health and Safety Code section 44072.8 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

1 or suspended by the director.”

2 VID DATA REVIEW

3 16. Beginning in June of 2012, a representative of BAR conducted a detailed review of
4 VID data for all smog inspections performed at Respondent RC for the period of February 28,
5 2012, through April 18, 2012.

6 17. The review of the OBD II functional tests² showed a pattern of the same OBD II
7 diagnostic trouble codes (P0700, P0740 and P0841), stored in the memory of the power train
8 control module (PCM) on thirty- two (32) different vehicles that received smog certificates in the
9 two (2) month period. The BAR specifically examined the VID data, in detail, for ten (10) of the
10 vehicles that were certified from February 28, 2012, to April 12, 2012, and it was determined that
11 none of them support the P0700 OBD II code. Vehicles numbered 1, 2, 3 and 5, 6, 7 did not
12 support the P0740 OBD II code. Vehicles numbered 2 through 10 also did not support the P0841
13 OBD II code, as set forth in Table 1 in paragraph 18 below. All ten (10) vehicles were certified
14 with pending OBD II codes stored in the PCM memory that, according to the original equipment
15 manufacturer (OEM) service information, are not supported.

16 18. The VID data also showed that all the inspections on these vehicles were performed
17 under the technician license of Respondent Saleh. The BAR concluded that Respondent Saleh
18 performed the smog inspections on the vehicles using a different vehicle(s) during the OBD II
19 tests, a method known as “clean plugging,”³ resulting in the issuance of fraudulent certificates of
20 compliance for the vehicles that were tested, as outlined in the following table.

21 ² The On Board Diagnostic, generation II (“OBD II”), functional test is an automated
22 function of the BAR-97 Emissions Inspection System analyzer (“EIS”). The EIS includes a
23 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
24 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
25 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
26 Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically
27 retrieves information from the vehicle’s on-board computer about the status of the readiness
28 indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
II functional test, it will fail the overall inspection.

³ Clean-plugging is the use of the OBD II readiness monitor status and stored code status
of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that
is not in compliance due to the noncompliant vehicle’s failure to complete the minimum number
of self tests, known as monitors, or due to the presence of a stored fault code that indicates an
emission control system or component failure. Clean plugging occurs during the inspection of a
(continued...)

OBDII Clean Plug Table No. 1

Vehicle Certified								
#	Test Date Start-End	Year	Make	Model	License #	Unsupported Code	Certificate #	Tech. Id. #
1	2/28/2012 1001 - 1012	2002	Lexus	ES300	4WKE677	P0700, P0740	XD108100C	140079
2	3/8/2012 1047 - 1101	1999	Chevrolet	Cavalier	6MXH836	P0700, P0740, P0841	XD896963C	140079
3	3/13/2012 1311 - 1330	2004	Pontiac	Grand Prix	6FJM047	P0700, P0740, P0841	XD896974C	140079
4	3/13/2012 1435 - 1450	2001	Oldsmobile	Bravada	4RLM293	P0700, P0841	XD896976C	140079
5	3/22/2012 0922 - 0945	2004	Toyota	Sienna	UGOLADY	P0700, P0740, P0841	XD896984C	140079
6	3/26/2012 1338 - 1407	2005	Toyota	Camry	5MDB696	P0700, P0740, P0841	XD896991C	140079
7	3/28/2012 1323 - 1333	2005	Hyundai	Accent	5MDL099	P0700, P0740, P0841	XD896993C	140079
8	4/4/2012 1622 - 1637	2004	Nissan	Quest	5GUE955	P0700, P0841	XF630402C	140079
9	4/5/2012 1620 - 1634	1999	Chevrolet	Camaro	4DYJ854	P0700, P0841	XF630405C	140079
10	4/12/2012 1339 - 1348	2000	Nissan	Frontier	7X20089	P0700, P0841	XF630410C	140079

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

19. Respondent ARD's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that, Respondent RC and/or Respondent Saleh made or authorized statements which they knew, or in the exercise of reasonable care should have known to be untrue or misleading as follows:

Respondent RC certified that vehicles 1 through 10, identified in Table 1 of paragraph 18 above, had passed inspection and were in compliance with applicable laws and regulations. In

vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters information into the EIS for the vehicle the technician wishes to certify, and then plugs the OBD II system connector from the EIS into another vehicle that has a properly functioning OBD II system for the purpose of obtaining a "Passing" OBD II functional test result.

1 fact, Respondent RC and Respondent Saleh conducted the inspections on the vehicles using
2 clean-plugging methods, in that, a different vehicle(s) was substituted during the OBD II
3 functional tests in order to issue smog certificates of compliance for the vehicles, and the vehicles
4 were not tested or inspected, as required by Health and Safety Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 *(Fraud)*

7 20. Respondent ARD's registration is subject to disciplinary action pursuant to Code
8 section 9884.7, subdivision (a)(4), in that, Respondent RC and/or Respondent Saleh committed
9 acts that constitute fraud by issuing electronic smog certificates of compliance for the vehicles 1
10 through 10, identified in Table 1 of paragraph 18 above, without performing bona fide inspections
11 of the emission control devices and systems on the vehicles, thereby depriving the People of the
12 State of California of the protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 21. Respondent RC's smog check station license is subject to disciplinary action pursuant
16 to Health & Safety Code section 44072.2, subdivision (a), in that, Respondent RC failed to
17 comply with the following sections of that Code:

18 a. Section 44012: Respondent RC failed to ensure that all emission control
19 devices and systems required by law for vehicles 1 through 10, identified in Table 1 of paragraph
20 18 above, were installed and functioning correctly in accordance with test procedures.

21 b. Section 44012, subdivision (f): Respondent RC failed to ensure that the
22 emission control tests were performed on vehicles 1 through 10, identified in Table 1 of
23 paragraph 18 above, in accordance with procedures prescribed by the department.

24 c. Section 44015, subdivision (b): Respondent RC issued electronic smog
25 certificates of compliance for vehicles 1 through 10, identified in Table 1 of paragraph 18 above,
26 without ensuring that the vehicles were properly tested and inspected to determine if they were in
27 compliance with Health & Safety Code section 44012.

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1 a. Section 44012, subdivision (a): Respondent Saleh failed to ensure that all
2 emission control devices and systems required by law for vehicles 1 through 10, identified in
3 Table 1 of paragraph 18 above, were installed and functioning correctly in accordance with test
4 procedures.

5 b. Section 44012, subdivision (f): Respondent Saleh failed to perform the
6 emission control tests on vehicles 1 through 10, identified in Table 1 of paragraph 18 above, in
7 accordance with procedures prescribed by the department.

8 c. Section 44059: Respondent Saleh willfully made false entries for electronic
9 certificates of compliance for vehicles 1 through 10, identified in Table 1 of paragraph 18 above,
10 by certifying that the vehicles had been inspected as required when, in fact, they had not.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

13 25. Respondent Saleh's technician licenses are subject to disciplinary action pursuant to
14 Health & Safety Code section 44072.2, subdivision (c), in that, Respondent Saleh failed to
15 comply with provisions of California Code of Regulations, title 16, as follows:

16 a. Section 3340.24, subdivision (c): Respondent Saleh falsely or fraudulently
17 issued electronic smog certificates of compliance for vehicles 1 through 10, identified in Table 1
18 of paragraph 18 above.

19 b. Section 3340.30, subdivision (a): Respondent Saleh failed to inspect and test
20 vehicles 1 through 10, identified in Table 1 of paragraph 18 above, in accordance with Health &
21 Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section
22 3340.42.

23 c. Section 3340.41, subdivision (c): Respondent Saleh entered into the emissions
24 inspection system vehicle identification information or emission control system identification
25 data for a vehicle other than the one being tested for vehicles 1 through 10, identified in Table 1
26 of paragraph 18 above.

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1 d. Section 3340.42: Respondent Saleh failed to conduct the required smog tests
2 on vehicles 1 through 10, identified in Table 1 of paragraph 18 above, in accordance with the
3 Bureau's specifications.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 *(Dishonesty, Fraud, or Deceit)*

6 26. Respondent Saleh's technician licenses are subject to disciplinary action pursuant to
7 Health & Safety Code section 44072.2, subdivision (d), in that, Respondent Saleh committed
8 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
9 certificates of compliance for the vehicles 1 through 10, identified in Table 1 of paragraph 18
10 above, without performing bona fide inspections of the emission control devices and systems on
11 the vehicles, thereby depriving the People of the State of California of the protection afforded by
12 the Motor Vehicle Inspection Program.

13 **OTHER MATTERS**

14 27. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or
15 place on probation the registration for all places of business operated in this state by Dib M.
16 Saleh, dba Sun Automotive Repair, upon a finding that Respondent ARD has, or is, engaged in a
17 course of repeated and willful violations of the laws and regulations pertaining to an automotive
18 repair dealer.

19 28. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License
20 Number RC 198721, issued to Dib M. Saleh, dba Sun Automotive Repair, is revoked or
21 suspended, any additional license issued under the same chapter in the name of said licensee may
22 be likewise revoked or suspended by the Director.

23 29. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
24 License No. EO 140079 and Smog Check Repair Technician License No, EI 140079 issued to
25 Respondent Mazen D. Saleh are revoked or suspended, any additional license issued under the
26 same 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 issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 198721, issued to Dib M. Saleh, dba Sun Automotive Repair;
2. Revoking or suspending Smog Check Station License Number RC 198721, issued to Dib M. Saleh, dba Sun Automotive Repair;
3. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Dib M. Saleh;
4. Revoking or suspending Smog Check Inspector License No. EO 140079 and Smog Check Repair Technician License No. EI 140079 issued to Mazen D. Saleh;
5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Mazen D. Saleh
6. Ordering Respondents ARD, RC, Dib M. Saleh, and/or Mazen D. Saleh to pay the Director the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
7. Taking such other and further action as deemed necessary and proper.

DATED: 5/24/13

John Wallauch by Doug Balatti
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California