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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 and Petition to Revoke Probation Against: **GURNUR INTERNATIONAL CORPORATION, DBA G I C GERMAN AUTO HAUS** 3725 San Leandro Street Oakland, California 94601-4024 **RASIN GURAY MENTESE, PRESIDENT** Automotive Repair Dealer Registration No. ARD 136179 and Smog Check Station License No. RC 136179 and In the Matter of the Accusation Against: **LEYZER G. MALCHIK** 216 Ladera Place Union City, California 94587-4645 Advanced Emission Specialist Technician License No. EA 136980 Respondents.	Case No. 79/09-61 **ACCUSATION AGAINST RESPONDENTS GURNUR INTERNATIONAL AND MALCHIK** **PETITION TO REVOKE PROBATION AGAINST RESPONDENT GURNUR INTERNATIONAL CORPORATION ONLY** SMOG CHECK

Sherry Mehl ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

Automotive Repair Dealer Registration

2. On or about November 24, 1987, the Bureau issued Automotive Repair Dealer Registration No. ARD 136179 ("registration") to Gurnur International Corporation doing business as G I C German Auto Haus ("Respondent Gurnur"). The registration will expire on November 30, 2009, unless renewed.

Smog Check Station License

3. On or about January 20, 1988, the Bureau issued Smog Check Station License No. RC 136179 ("station license") to Respondent Gurnur. The station license will expire on November 30, 2009, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist Technician License No. EA 136980 ("technician license") to Leyzer G. Malchik ("Respondent Malchik"). The technician license will expire on October 31, 2010, unless renewed.

PRIOR DISCIPLINARY ACTION

5. Pursuant to the Decision and Order in Accusation No. 77/05-53, attached hereto as **Exhibit "A"** and incorporated herein by reference, effective February 8, 2006, the Director of Consumer Affairs ("Director") revoked Official Lamp Station License No. LL 136179 and Official Brake Station License No. BL 136179. Further, Respondent's Automotive Repair Dealer Registration No. ARD 136179 (formerly AL 136179) and Smog Station License No. RC 136179 (formerly RL 136179) were revoked; however, the revocations against the registration and smog station licenses were stayed and Respondent was placed on probation for three (3) years with terms, including Term 1, set forth below.

> **Term 1 - Obey all Laws:** Respondent shall comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

STATUTORY PROVISIONS

6. 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 refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct which constitutes fraud.

(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 refuse to 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.

7. 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.

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(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.

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(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.

8. 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.

9. 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.

10. 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.

11. Section 44072.2 of the Health and Safety Code states:

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.

12. 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.

13. 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."

14. 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.

ACCUSATION

UNDERCOVER OPERATION - JANUARY 17, 2008

15. On or about January 17, 2008, a Bureau undercover operator using the alias "East Bay Landscaping" ("operator") drove a Bureau documented 1998 Ford E-150 Van, to Respondent Gurnur's facility and requested a smog inspection. The vehicle could not pass a smog inspection because the vehicle's positive crankcase ventilation ("PCV") system was missing. The operator filled out a work order; however, the operator was not asked to sign the document. The operator received a copy of the unsigned work order. Respondent Malchik performed the smog inspection and issued electronic Certificate of Compliance No. MY062074, certifying that the vehicle was in compliance with all applicable laws and regulations. In fact, the vehicle could not pass the visual portion of the smog inspection because the vehicle's PCV system was missing.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

16. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about January 17, 2008, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading by issuing electronic Certificate of Compliance No. MY062074 for the 1998 Ford E-150 Van,

certifying that it was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because its PCV system was missing.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about January 17, 2008, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. MY062074 for the 1998 Ford E-150 Van without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Automotive Repair Act)

18. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about January 17, 2008, Respondent failed to materially comply with Code section 9884.9, subdivision (a) by failing to obtain the operator's authorization for repair by failing to obtain the operator's signature on the work order.

FOURTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

19. Respondent Gurnur has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about January 17, 2008, with regard to the 1998 Ford E-150 Van, it violated sections of that Code, as follows:

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

c. **Section 44015, subdivision (b):** Respondent Gurnur issued electronic Certificate of Compliance No. MY062074 for that vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

d. **Section 44059:** Respondent Gurnur willfully made false entries for electronic Certificate of Compliance No. MY062074 by certifying that the vehicle had been inspected as required when, in fact, it had not.

FIFTH CAUSE FOR DISCIPLINE

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

20. Respondent Gurnur has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about January 17, 2008, regarding the 1998 Ford E-150 Van, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Gurnur falsely or fraudulently issued electronic Certificate of Compliance No. MY062074 for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c):** Respondent Gurnur issued electronic Certificate of Compliance No. MY062074 for that vehicle even though the vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

21. Respondent Gurnur has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about January 17, 2008, regarding the 1998 Ford E-150 Van, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. MY062074 for that vehicle 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.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

22. Respondent Malchik has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about January 17, 2008, regarding the 1998 Ford E-150 Van, he violated sections of that Code, as follows:

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

c. **Section 44032:** Respondent Malchik 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 Malchik entered false information for electronic Certificate of Compliance No. MY062074 by certifying that the vehicle had been inspected as required when, in fact, it had not.

EIGHTH CAUSE FOR DISCIPLINE

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

23. Respondent Malchik has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about January 17, 2008, regarding the 1998 Ford E-150 Van, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Malchik falsely or fraudulently issued electronic Certificate of Compliance No. MY062074 for that vehicle without

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performing a bona fide inspection of the emission control devices and systems on the vehicle as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c):** Respondent Malchik entered false information into the Emission Inspection System ("EIS") by entering "Pass" for the PCV system when in fact, the PCV system was missing from this vehicle.

NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

24. Respondent Malchik has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about January 17, 2008, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. MY062074 for the 1998 Ford E-150 Van 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.

UNDERCOVER OPERATION - MARCH 7, 2008

25. On or about March 7, 2008, a Bureau undercover operator using the alias "Niquita Johnson" ("operator") drove a Bureau documented 2001 Chevrolet Tahoe, to Respondent Gurnur's facility and requested a smog inspection. The vehicle could not pass a smog inspection because the vehicle's air injection system was missing components. The operator filled out and signed a work order; however, the operator was not provided with a copy of the document. Respondent Malchik performed the smog inspection and issued electronic Certificate of Compliance No. MY768163, certifying that the vehicle was in compliance with all applicable laws and regulations. In fact, the vehicle could not pass the visual portion of the smog inspection because the vehicle's air injection system was missing components.

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TENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

26. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about March 7, 2008, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading by issuing electronic Certificate of Compliance No. MY768163 for the 2001 Chevrolet Tahoe, certifying that it was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle's air injection system was missing components.

ELEVENTH CAUSE FOR DISCIPLINE

(Fraud)

27. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about March 7, 2008, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. MY768163 for the 2001 Chevrolet Tahoe 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.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Provide Signed Document)

28. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(3), in that on or about March 7, 2008, Respondent failed to provide the operator with a copy of the work order as soon as she signed the document.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

29. Respondent Gurnur has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 7, 2008, with regard to the 2001 Chevrolet Tahoe, it violated sections of that Code, as follows:

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

c. **Section 44015, subdivision (b):** Respondent Gurnur issued electronic Certificate of Compliance No. MY768163 for that vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

d. **Section 44059:** Respondent Gurnur willfully made false entries for electronic Certificate of Compliance No. MY768163 by certifying that the vehicle had been inspected as required when, in fact, it had not.

FOURTEENTH CAUSE FOR DISCIPLINE

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

30. Respondent Gurnur has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 7, 2008, regarding the 2001 Chevrolet Tahoe, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Gurnur falsely or fraudulently issued electronic Certificate of Compliance No. MY768163 for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c):** Respondent Gurnur issued electronic Certificate of Compliance No. MY768163 for that vehicle even though the vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

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FIFTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

31. Respondent Gurnur has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 7, 2008, regarding the 2001 Chevrolet Tahoe, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. MY768163 for that vehicle 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.

SIXTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

32. Respondent Malchik has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 7, 2008, regarding the 2001 Chevrolet Tahoe, he violated sections of that Code, as follows:

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

c. **Section 44032:** Respondent Malchik 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 Malchik entered false information for electronic Certificate of Compliance No. MY768163 by certifying that the vehicle had been inspected as required when, in fact, it had not.

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SEVENTEENTH CAUSE FOR DISCIPLINE

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

33. Respondent Malchik has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 7, 2008, regarding the 2001 Chevrolet Tahoe, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Malchik falsely or fraudulently issued electronic Certificate of Compliance No. MY768163 for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c):** Respondent Malchik entered false information into the EIS by entering "N/A" for the air injection system when in fact, the air injection system is a required emission control device for this vehicle.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

34. Respondent Malchik has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 7, 2008, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. MY768163 for the 2001 Chevrolet Tahoe 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.

UNDERCOVER OPERATION - MARCH 28, 2008

35. On or about March 28, 2008, a Bureau undercover operator using the alias "Ruben Garcia" ("operator") drove a Bureau documented 1994 Dodge 2500 Ram to Respondent Gurnur's facility and requested a smog inspection. The vehicle could not pass a smog inspection

because the vehicle's exhaust gas recirculation ("EGR") system was non functional. The operator filled out and signed a work order. The operator was provided with a copy of the document. Respondent Malchik performed the smog inspection and issued electronic Certificate of Compliance No. NA045506, certifying that the vehicle was in compliance with all applicable laws and regulations. In fact, the vehicle could not pass the functional portion of the smog inspection because the vehicle's EGR system was non functional.

NINETEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

36. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about March 28, 2008, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading by issuing electronic Certificate of Compliance No. NA045506 for the 1994 Dodge Ram, certifying that it was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the functional portion of the smog inspection because the vehicle's EGR system was non functional.

TWENTIETH CAUSE FOR DISCIPLINE

(Fraud)

37. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about March 28, 2008, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NA045506 for the 1994 Dodge Ram 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.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

38. Respondent Gurnur has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 28, 2008, with regard to the 1994 Dodge Ram, it violated sections of that Code, as follows:

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

c. **Section 44015, subdivision (b):** Respondent Gurnur issued electronic Certificate of Compliance No. NA045506 for that vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

d. **Section 44059:** Respondent Gurnur willfully made false entries for electronic Certificate of Compliance No. NA045506 by certifying that the vehicle had been inspected as required when, in fact, it had not.

TWENTY-SECOND CAUSE FOR DISCIPLINE

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

39. Respondent Gurnur has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 28, 2008, regarding the 1994 Dodge Ram, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Gurnur falsely or fraudulently issued electronic Certificate of Compliance No. NA045506 for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c):** Respondent Gurnur issued electronic Certificate of Compliance No. NA045506 for that vehicle even though the vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

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TWENTY-THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

40. Respondent Gurnur has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 28, 2008, regarding the 1994 Dodge Ram, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NA045506 for that vehicle 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.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

41. Respondent Malchik has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 28, 2008, regarding the 1994 Dodge Ram, he violated sections of that Code, as follows:

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

c. **Section 44032:** Respondent Malchik 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 Malchik entered false information for electronic Certificate of Compliance No. NA045506 by certifying that the vehicle had been inspected as required when, in fact, it had not.

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TWENTY-FIFTH CAUSE FOR DISCIPLINE

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

42. Respondent Malchik has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 28, 2008, regarding the 1994 Dodge Ram, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Malchik falsely or fraudulently issued electronic Certificate of Compliance No. NA045506 for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle as required by Health and Safety Code section 44012.

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

c. **Section 3340.41, subdivision (c):** Respondent Malchik entered false information into the EIS by entering "Pass" for the EGR system when in fact, the vehicle's EGR system was non functional.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

43. Respondent Malchik has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 28, 2008, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NA045506 for the 1994 Dodge Ram 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.

PETITION TO REVOKE PROBATION

44. The allegations of paragraphs 1 through 43 of the accusation above are incorporated herein by reference as though fully set forth and are realleged.

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45. Grounds exist to revoke the probation and reimpose the order of revocation of Respondent Gurnur's Automotive Repair Dealer Registration No. ARD 136179 and Smog Check Station License No. RC 136179, in that Respondent Gurnur failed to comply with all statutes, regulations, and rules governing estimates and inspections as required by Term 1 of the terms of its probation under Decision and Order No. 77/05-53, as set forth in paragraphs 15 through 43 of the accusation above.

OTHER MATTERS

46. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Gurnur International Corporation doing business as G I C German Auto Haus, upon a finding that it has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

47. Under section 44072.8 of the Health and Safety Code, if Smog Check Station License No. RC 136179, issued to Gurnur International Corporation doing business as G I C German Auto Haus, 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.

48. Under section 44072.8 of the Health and Safety Code, if Advanced Emission Specialist Technician License No. EA 136980, issued to Leyzer G. Malchik, 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. Vacating the stay and reimposing the order of revocation of Automotive Repair Dealer Registration No. ARD 136179, issued to Gurnur International Corporation doing business as G I C German Auto Haus;

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2. Temporarily or permanently invalidating any other automotive repair dealer registration issued in the name of Gurnur International Corporation doing business as G I C German Auto Haus;

3. Vacating the stay and reimposing the order of revocation of Smog Check Station License No. RC 136179, issued to Gurnur International Corporation doing business as G I C German Auto Haus;

4. Revoking or suspending any other license issued under this chapter in the name of Gurnur International Corporation doing business as G I C German Auto Haus;

5. Revoking or suspending Advanced Emission Specialist Technician License No. EA 136980, issued to Leyzer G. Malchik;

6. Revoking or suspending any other license issued under this chapter in the name of Leyzer G. Malchik;

7. Ordering Gurnur International Corporation and Leyzer G. Malchik to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 1-16-09

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

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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: **GURNUR INTERNATIONAL CORPORATION** **DOING BUSINESS AS** **GIC GERMAN AUTO HAUS** 3725 San Leandro Street Oakland, California 94601 Automotive Repair Dealer Registration No. AL 136179 Smog Check Station License No. RL 136179 Official Brake Station License No. BL 136179A Official Lamp Station License No. LL 136179A and **MUSTAFA OZDEN** 3400 Richmond Parkway, No. 3718 Richmond, California 94806 Advanced Emission Specialist Technician License No. EA 134514 Brake Adjuster License No. JC 134514C Lamp Adjuster License No. RY 134514A Respondents.	Case No. **ACCUSATION** 77/05-53

Richard Ross ("Complainant") alleges:

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PARTIES

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

Automotive Repair Dealer Registration

2. On or about November 24, 1987, the Bureau issued Automotive Repair Dealer Registration Number AL 136179 ("registration") to Gurnur International Corporation, doing business as GIC German Auto Haus ("Respondent Gurnur"). The registration will expire on November 30, 2005, unless renewed.

Smog Check Station License

3. On or about January 20, 1998, the Bureau issued Smog Check Station License Number RL 136179 ("station license") to Respondent Gurnur. The station license will expire on November 30, 2005, unless renewed.

Official Brake Station License

4. On or about March 11, 1993, the Bureau issued Official Brake Station License Number BL 136179, classification A ("brake station license") to Respondent Gurnur. The brake station license will expire on November 30, 2005, unless renewed.

Official Lamp Station License

5. On or about March 8, 1993, the Bureau issued Official Lamp Station License Number LL 136179, classification A ("lamp station license") to Respondent Gurnur. The lamp station license will expire on November 30, 2005, unless renewed.

Advanced Emission Specialist Technician License

6. On or about November 14, 2001, the Bureau issued Advanced Emission Specialist Technician License Number EA 134514 ("technician license") to Mustafa Ozden ("Respondent Ozden"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2006, unless renewed.

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Brake Adjuster License

7. On or about March 6, 2001, the Bureau issued Brake Adjuster License Number JC 134514C ("adjuster license") to Respondent Ozden. The adjuster license expired on January 31, 2005, and has not been renewed.

Lamp Adjuster License

8. On or about December 28, 2000, the Bureau issued Lamp Adjuster License Number RY 134514A ("adjuster license") to Respondent Ozden. The adjuster license expired on January 31, 2005, and has not been renewed.

STATUTORY AND REGULATORY PROVISIONS

9. 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 refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
>
> (2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer.
>
> (4) Any other conduct which constitutes fraud.
>
> (6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Code section 9880, et seq.)] 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 refuse to 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.

10. Code section 9884.9 states, in pertinent part:

(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 when an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, 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 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.

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

12. Code section 9889.1 provides, in pertinent part, that the Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with Code section 9887.1) of the Automotive Repair Act.

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13. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a license by operation of law or by order or decision of the Director or a court of law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any disciplinary proceedings.

14. Code section 9889.9 states:

> When any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.

15. Code section 9889.3 states, in pertinent part:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article [Article 7 (commencing with Code section 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or director thereof:
>
> (a) Violates any section of the Code which relates to his or her licensed activities.
>
> (c) Violates any of the regulations promulgated by the director pursuant to this chapter [the Automotive Repair Act].
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.
>
> (h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

16. Code section 9889.16 states:

> Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the bureau determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station.

17. Code section 9889.22 states:

> The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter [the Automotive Repair Act] or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the

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Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

18. California Code of Regulations, title 16, section 3305 states, in pertinent part:

(a) Performance Standards. All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems shall be performed in official stations in accordance with current standards, specifications, instructions, and directives issued by the bureau and by the manufacturer of the device or vehicle.

19. California Code of Regulations, title 16, section 3316 states, in pertinent part:

(d)(2) Inspection of the Entire Lighting System. Where all of the lamps, lighting equipment, and related electrical systems on a vehicle have been inspected and found in compliance with all requirements of the Vehicle Code and bureau regulations, the certificate shall certify that the entire system meets all such requirements.

20. California Code of Regulations, title 16, section 3316 states, in pertinent part:

(c)(2) Inspection of the Entire Brake System. Where the entire brake system on any vehicle has been inspected or tested and found in compliance with all requirements of the Vehicle Code and bureau regulations, and the vehicle has been road-tested, the certificate shall certify that the entire system meets all such requirements.

21. 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.

22. 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 NO. 1 - 1996 FORD CROWN VICTORIA

23. On or about October 28, 2003, Paramjit Justin Gir ("operator") from Veteran's Cab Company drove a Bureau documented 1996 Ford Crown Victoria, California

License No. 6U00775, to Respondent Gurnur's facility for brake and lamp inspections. The rear license plate lights were inoperable, the left headlight assembly was misadjusted outward, and the right rear tail light lens was cracked. The operator spoke with a male employee of Respondent Gurnur, later identified as Bulent E. Atayola. Atayola was not a licensed brake and lamp adjuster; however, he performed the inspections. The vehicle was not moved or test driven during the inspection. Atayola told the operator to replace the rear license plate bulbs and return for a certificate. Later that day, after replacing the light bulbs in the rear license plate the operator returned to Respondent Gurnur's facility. The operator signed the invoice dated October 28, 2003, and was provided with a copy of the document. Atayola signed and issued Brake Certificate No. 1888843 and Lamp Certificate No. 1889142. Respondent Ozden, who is the only licensed adjuster employed at Respondent Gurnur's facility, was present during the entire inspection process.

24. The Bureau reinspected the vehicle. The inspection revealed that the wheels had not been removed, making it impossible for a proper brake inspection to have occurred. The left headlight remained misadjusted outward. The headlights had not been aimed or adjusted.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

25. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about October 28, 2003, it made statements which it knew or which by the exercise of reasonable care should have been known, to be untrue or misleading, as follows:

a. Respondent Gurnur allowed the issuance of Brake Certificate No. BA-1888843 certifying that the brakes were satisfactory when, in fact, the brakes had not been inspected.

b. Respondent Gurnur allowed the issuance of Lamp Certificate No. LA-1889142, certifying that the headlights had been aimed and adjusted when, in fact, the left headlight remained misadjusted outward.

c. Respondent Gurnur allowed the issuance of Brake Certificate No. BA-1888843 and Lamp Certificate No. LA-1889142, certifying that the vehicle's brake and lamp systems had been inspected by a licensed brake and lamp adjuster when, in fact, Bulent E. Atayola, an unlicensed person, performed the inspections and signed and issued the certificates.

d. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888843 that the vehicle was equipped with air brakes when, in fact, the vehicle is equipped with power assisted hydraulic brakes.

e. Respondent Gurnur falsely represented on Lamp Certificate No. LA-1889142 that the vehicle was equipped with lighting equipment not on this vehicle.

SECOND CAUSE FOR DISCIPLINE

(Invoice Requirements)

26. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(2), in that on or about October 28, 2003, it allowed the operator to sign the invoice dated October 28, 2003, that did not state the repairs requested by the operator.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

27. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about October 28, 2003, it committed fraud by allowing the issuance of Brake Certificate No. BA-1888843 and Lamp Certificate No. LA-1889142, certifying that the brake and lamp systems were satisfactory when, in fact, the vehicle's brake system had not been inspected and the lamp system had not been adjusted or aimed.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Code)

28. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about October 28, 2003, it failed to comply with provisions of Code sections, as follows:

a. **Section 9884.9 subdivision (a)**: Respondent Gurnur failed to provide the operator with a written estimated price for parts and labor for a specific job.

b. **Section 9889.16**

i. Respondent Gurnur allowed Brake Certificate No. BA-1888843 to be issued certifying that the brakes were satisfactory when, in fact, the brakes had not been inspected.

ii. Respondent Gurnur allowed Lamp Certificate No. LA-1889142 to be issued certifying that the headlights had been adjusted and aimed when, in fact, the left headlight remained misadjusted outward.

c. **Section 9889.22**

i. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888843 that the brakes were satisfactory when, in fact, the brakes had not been inspected.

d. Respondent Gurnur falsely represented on Lamp Certificate No. LA-1889142 that the headlights had been adjusted and aimed when, in fact, the left headlight remained misadjusted outward.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

29. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on October 28, 2003, it failed to comply with the following sections of the California Code of Regulations, title 16:

a. **Section 3305, subdivision (a):** Respondent Gurnur failed to perform the brake and lamp inspections in accordance with current standards, specifications, instructions, and directives issued by the Bureau.

b. **Section 3316, subdivision (d)(2):** Respondent Gurnur failed to inspect the entire lighting system of the vehicle.

c. **Section 3321, subdivision (c)(2):** Respondent Gurnur failed to inspect the entire brake system of the vehicle.

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SIXTH CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Activity)

30. Respondent Gurnur has subjected its official brake and lamp station licenses to discipline under Code sections 9889.3, subdivision (f), in that on or about October 28, 2003, Respondent Gurnur aided and abetted Bulent E. Atayola, an unlicensed person, to evade the provisions of the chapter by allowing him to perform a brake and lamp inspection on the 1996 Ford Crown Victoria.

SEVENTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

31. Respondent Gurnur has subjected its official brake and lamp station licenses to discipline under Code section 9889.3. subdivision (d), in that on or about October 28, 2003, it committed acts involving dishonesty, fraud, or deceit, as follows:

a. Respondent Gurnur allowed the issuance of Brake Certificate No. BA-1888843 and Lamp Certificate No. LA-1889142, certifying that the brake and lamp systems on the vehicle had been inspected when, in fact, the brakes had not been inspected and the left headlight was misadjusted outward.

b. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888843 and Lamp Certificate No. LA-1889142 that the vehicle had been inspected by a licensed adjuster when, in fact, Bulent E. Atayola, an unlicensed person, performed those inspections and signed the certificates.

EIGHTH CAUSE FOR DISCIPLINE

(Violations Relating to Licensed Activities)

32. Respondent Gurnur has subjected its official brake and lamp station licenses to discipline under Code sections 9889.3, subdivisions (a), (c), and (h), in that on October 28, 2003, it committed acts in violation of the Code and the California Code of Regulations, title 16, relating to Respondent Gurnur's licensed activities, as set forth in paragraphs 28 through 31, above.

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NINTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

33. Respondent Ozden has subjected his brake and lamp adjuster licenses to discipline under Code section 9889.3. subdivision (d), in that on or about October 28, 2003, he committed acts involving dishonesty, fraud, or deceit, by informing Bureau representatives that he had performed the brake and lamp inspections of the 1996 Ford Crown Victoria and that he had signed and issued the corresponding certificates when, in fact, he had not performed those inspections and had not signed and issued the certificates.

TENTH CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Activity)

34. Respondent Ozden has subjected his brake and lamp adjuster licenses to discipline under Code sections 9889.3, subdivision (f), in that on or about October 28, 2003, Respondent Ozden aided and abetted Bulent E. Atayola, an unlicensed person, to evade the provisions of the chapter by allowing him to perform a brake and lamp inspection on the 1996 Ford Crown Victoria.

ELEVENTH CAUSE FOR DISCIPLINE

(Violations Relating to Licensed Activities)

35. Respondent Ozden has subjected his brake and lamp adjuster licenses to discipline under Code sections 9889.3, subdivisions (a) and (h), in that on October 28, 2003, he committed acts in violation of the Code relating to his licensed activities, as set forth in paragraphs 33 and 34, above.

UNDERCOVER OPERATION NO. 2 - 1993 FORD CROWN VICTORIA

36. On or about October 28, 2003, Bureau undercover operator Enrique Lopez drove a 1993 Ford Crown Victoria, California License Plate No. 5U96585, owned by Friendly Cab Company to Respondent Gurnur's facility for brake and lamp inspections. The Bureau had previously documented the vehicle's brake and lamp systems. The left headlight assembly was misadjusted outward. The operator spoke with Bulent E. Atayola, an employee of Respondent Gurnur. Atayola was not a licensed brake and lamp adjuster; however, he performed the

inspection. The vehicle was not moved or test driven during the inspection. The operator signed the invoice dated October 28, 2003, and was provided with a copy of the document. Atayola signed and issued Brake Certificate No. 1888844 and Lamp Certificate No. 1889143. Respondent Ozden, who is the only licensed adjuster employed at Respondent Gurnur's facility, was present during the entire inspection process.

37. The Bureau reinspected the vehicle. The inspection revealed that the wheels had not been removed, making it impossible for a proper brake inspection to have occurred. The left headlight remained misadjusted outward. The headlights had not been aimed or adjusted.

TWELFTH CAUSE FOR DISCIPLINE

(Misleading Statements)

38. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about October 28, 2003, it made statements which it knew or which by the exercise of reasonable care should have been known to be untrue or misleading, as follows:

a. Respondent Gurnur allowed the issuance of Brake Certificate No. BA-1888844, certifying that the brakes were satisfactory when, in fact, the brakes had not been inspected.

b. Respondent Gurnur allowed the issuance of Lamp Certificate No. LA-1889143, certifying that the headlights had been aimed and adjusted when, in fact, the left headlight remained misadjusted outward.

c. Respondent Gurnur allowed the issuance of Brake Certificate No. BA-1888844 and Lamp Certificate No. LA-1889143, certifying that the vehicle's brake and lamp systems had been inspected by a licensed brake and lamp adjuster when, in fact, Bulent E. Atayola, an unlicensed person, performed the inspections and signed and issued the certificates.

d. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888844 that the vehicle was equipped with air brakes when, in fact, the vehicle is equipped with power assisted hydraulic brakes.

e. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888844 that the brake shoes and lining had been inspected when, in fact, the brake system had not been inspected.

f. Respondent Gurnur falsely represented on Lamp Certificate No. LA-1889143 that the vehicle was equipped with lighting equipment not on this vehicle.

THIRTEENTH CAUSE FOR DISCIPLINE

(Invoice Requirements)

39. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(2), in that on or about October 28, 2003, it allowed the operator to sign the invoice dated October 28, 2003, that did not state the repairs requested by the operator.

FOURTEENTH CAUSE FOR DISCIPLINE

(Fraud)

40. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about October 28, 2003, it committed fraud by allowing the issuance of Brake Certificate No. BA-1888844 and Lamp Certificate No. LA-1889143, certifying that the brake and lamp systems were satisfactory when, in fact, the vehicle's brake system had not been inspected and the lamp system had not been adjusted or aimed.

FIFTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Code)

41. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about October 28, 2003, it failed to comply with provisions of Code sections, as follows:

a. **Section 9884.9 subdivision (a)**: Respondent Gurnur failed to provide the operator with a written estimated price for parts and labor for a specific job.

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b. **Section 9889.16**

i. Respondent Gurnur allowed Brake Certificate No. BA-1888844 to be issued, certifying that the brakes were satisfactory when, in fact, the brakes had not been inspected.

ii. Respondent Gurnur allowed Lamp Certificate No. LA-1889143 to be issued, certifying that the headlights had been adjusted and aimed when, in fact, the left headlight remained misadjusted outward.

c. **Section 9889.22**

i. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888844 that the brakes were satisfactory when, in fact, the brakes had not been inspected.

d. Respondent Gurnur falsely represented on Lamp Certificate No. LA-1889143 that the headlights had been adjusted and aimed when, in fact, the left headlight remained misadjusted outward.

SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

42. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on October 28, 2003, it failed to comply with the following sections of the California Code of Regulations, title 16:

a. **Section 3305, subdivision (a):** Respondent Gurnur failed to perform the brake and lamp inspections in accordance with current standards, specifications, instructions, and directives issued by the Bureau.

b. **Section 3316, subdivision (d)(2):** Respondent Gurnur failed to inspect the entire lighting system of the vehicle.

c. **Section 3321, subdivision (c)(2):** Respondent Gurnur failed to inspect the entire brake system of the vehicle.

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SEVENTEENTH CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Activity)

43. Respondent Gurnur has subjected its official brake and lamp station licenses to discipline under Code sections 9889.3, subdivision (f), in that on or about October 28, 2003, Respondent Gurnur aided and abetted Bulent E. Atayola, an unlicensed person, to evade the provisions of the chapter by allowing him to perform a brake and lamp inspection on the 1993 Ford Crown Victoria.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

44. Respondent Gurnur has subjected its official brake and lamp station licenses to discipline under Code section 9889.3. subdivision (d), in that on or about October 28, 2003, it committed acts involving dishonesty, fraud, or deceit, as follows:

a. Respondent Gurnur allowed the issuance of Brake Certificate No. BA-1888844 and Lamp Certificate No. LA-1889143, certifying that the brake and lamp systems on the vehicle had been inspected when, in fact, the brakes had not been inspected and the left headlight was misadjusted outward.

b. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888844 and Lamp Certificate No. LA-1889143 that the vehicle had been inspected by a licensed adjuster when, in fact, Bulent E. Atayola, an unlicensed person, performed those inspections.

NINETEENTH CAUSE FOR DISCIPLINE

(Violations Relating to Licensed Activities)

45. Respondent Gurnur has subjected its official brake and lamp station licenses to discipline under Code sections 9889.3, subdivisions (a), (c), and (h), in that on October 28, 2003, he committed acts in violation of the Code and the California Code of Regulations, title 16, relating to Respondent Gurnur's licensed activities, as set forth in paragraphs 41 through 44, above.

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TWENTIETH CAUSE FOR DISCIPLINE

(Failure to Comply with Chapter Requirements)

46. Respondent Ozden has subjected his brake and lamp adjuster licenses to discipline under Code section 9889.3. subdivision (d), in that on or about October 28, 2003, he committed acts involving dishonesty, fraud, or deceit, by informing Bureau representatives that he had performed the brake and lamp inspections of the 1993 Ford Crown Victoria and that he had signed and issued the corresponding certificates when, in fact, he had not performed those inspections and had not signed and issued the certificates.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Activity)

47. Respondent Ozden has subjected his brake and lamp adjuster licenses to discipline under Code sections 9889.3, subdivision (f), in that on or about October 28, 2003, Respondent Ozden aided and abetted Bulent E. Atayola, an unlicensed person, to evade the provisions of the chapter by allowing him to perform a brake and lamp inspection on the 1993 Ford Crown Victoria.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations Relating to Licensed Activities)

48. Respondent Ozden has subjected his brake and lamp adjuster licenses to discipline under Code sections 9889.3, subdivisions (a) and (h), in that on October 28, 2003, he committed acts in violation of the Code relating to his licensed activities, as set forth in paragraphs 46 and 47, above.

UNDERCOVER OPERATION NO. 3 - 1996 FORD CROWN VICTORIA

49. On or about October 28, 2003, Paramjit Justin Gir who was acting as an undercover operator ("operator") drove a 1993 Ford Crown Victoria, California License Plate No. 6K01500, owned by Veteran's Cab Company, to Respondent Gurnur's facility for brake and lamp inspections. The Bureau had previously documented the vehicle's brake and lamp systems. The left headlight assembly was misadjusted outward. The operator spoke with Bulent E. Atayola, an employee of Respondent Gurnur. Atayola was not a licensed brake and lamp

adjuster; however, he performed the inspections. The vehicle was not moved or test driven during the inspection. The operator signed the invoice dated October 28, 2003, and was provided with a copy of the document. Atayola signed and issued Brake Certificate No. 1888846 and Lamp Certificate No. 1889145. Respondent Ozden, who is the only licensed adjuster employed at Respondent Gurnur's facility, was present during the entire inspection process.

50. The Bureau reinspected the vehicle. The inspection revealed that the wheels had not been removed, making it impossible for a proper brake inspection to have occurred. The left headlight remained misadjusted outward. The headlights had not been aimed or adjusted.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Misleading Statements)

51. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about October 28, 2003, it made statements which it knew or which by the exercise of reasonable care should have been known to be untrue or misleading, as follows:

a. Respondent Gurnur allowed the issuance of Brake Certificate No. BA-1888846, certifying that the brakes were satisfactory when, in fact, the brakes had not been inspected.

b. Respondent Gurnur allowed the issuance of Lamp Certificate No. LA-1889145, certifying that the headlights had been aimed and adjusted when, in fact, the left headlight remained misadjusted outward.

c. Respondent Gurnur allowed the issuance of Brake Certificate No. BA-1888846 and Lamp Certificate No. LA-1889145, certifying that the vehicle's brake and lamp systems had been inspected by a licensed brake and lamp adjuster when, in fact, Bulent E. Atayola, an unlicensed person, performed the inspections and signed and issued the certificates.

d. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888846 that the vehicle was equipped with air brakes when, in fact, the vehicle is equipped with power assisted hydraulic brakes.

e. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888846 that the brake shoes and lining had been inspected when, in fact, the brake system had not been inspected.

f. Respondent Gurnur falsely represented on Lamp Certificate No. LA-1889145 that the vehicle was equipped with lighting equipment not on this vehicle.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Invoice Requirements)

52. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(2), in that on or about October 28, 2003, it allowed the operator to sign the invoice dated October 28, 2003, that did not state the repairs requested by the operator.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Fraud)

53. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about October 28, 2003, it committed fraud by allowing the issuance of Brake Certificate No. BA-1888846 and Lamp Certificate No. LA-1889145 certifying that the brake and lamp systems were satisfactory when, in fact, the vehicle's brake system had not been inspected and the lamp system had not been adjusted or aimed.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Code)

54. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about October 28, 2003, it failed to comply with provisions of Code sections, as follows:

a. **Section 9884.9 subdivision (a)**: Respondent Gurnur failed to provide the operator with a written estimated price for parts and labor for a specific job.

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b. **Section 9889.16**

i. Respondent Gurnur allowed Brake Certificate No. BA-1888846 to be issued, certifying that the brakes were satisfactory when, in fact, the brakes had not been inspected.

ii. Respondent Gurnur allowed Lamp Certificate No. LA-1889145 to be issued, certifying that the headlights had been adjusted and aimed when, in fact, the left headlight remained misadjusted outward.

c. **Section 9889.22**

i. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888846 that the brakes were satisfactory when, in fact, the brakes had not been inspected.

d. Respondent Gurnur falsely represented on Lamp Certificate No. LA-1889145 that the headlights had been adjusted and aimed when, in fact, the left headlight remained misadjusted outward.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

55. Respondent Gurnur has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on October 28, 2003, it failed to comply with the following sections of the California Code of Regulations, title 16:

a. **Section 3305, subdivision (a):** Respondent Gurnur failed to perform the brake and lamp inspections in accordance with current standards, specifications, instructions, and directives issued by the Bureau.

b. **Section 3316, subdivision (d)(2):** Respondent Gurnur failed to inspect the entire lighting system of the vehicle.

c. **Section 3321, subdivision (c)(2):** Respondent Gurnur failed to inspect the entire brake system of the vehicle.

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TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Activity)

56. Respondent Gurnur has subjected its official brake and lamp station licenses to discipline under Code sections 9889.3, subdivision (f), in that on or about October 28, 2003, Respondent Gurnur aided and abetted Bulent E. Atayola, an unlicensed person, to evade the provisions of the chapter by allowing him to perform a brake and lamp inspection on the 1996 Ford Crown Victoria.

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

57. Respondent Gurnur has subjected its official brake and lamp station licenses to discipline under Code section 9889.3. subdivision (d), in that on or about October 28, 2003, it committed acts involving dishonesty, fraud, or deceit, as follows:

a. Respondent Gurnur allowed the issuance of Brake Certificate No. BA-1888846 and Lamp Certificate No. LA-1889145, certifying that the brake and lamp systems on the vehicle had been inspected when, in fact, the brakes had not been inspected and the left headlight was misadjusted outward.

b. Respondent Gurnur falsely represented on Brake Certificate No. BA-1888846 and Lamp Certificate No. LA-1889145 that the vehicle had been inspected by a licensed adjuster when, in fact, Bulent E. Atayola, an unlicensed person, performed those inspections.

THIRTIETH CAUSE FOR DISCIPLINE

(Violations Relating to Licensed Activities)

58. Respondent Gurnur has subjected its official brake and lamp station licenses to discipline under Code sections 9889.3, subdivisions (a), (c), and (h), in that on October 28, 2003, he committed acts in violation of the Code and the California Code of Regulations, title 16, relating to Respondent Gurnur's licensed activities, as set forth in paragraphs 54 through 57, above.

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THIRTY-FIRST CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

59. Respondent Ozden has subjected his brake and lamp adjuster licenses to discipline under Code section 9889.3. subdivision (d), in that on or about October 28, 2003, he committed acts involving dishonesty, fraud, or deceit, by informing Bureau representatives that he had performed the brake and lamp inspections on the 1996 Ford Crown Victoria and that he had signed and issued the corresponding certificates when, in fact, he had not performed those inspections and had not signed and issued the certificates.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Activity)

60. Respondent Ozden has subjected his brake and lamp adjuster licenses to discipline under Code sections 9889.3, subdivision (f), in that on or about October 28, 2003, Respondent Ozden aided and abetted Bulent E. Atayola, an unlicensed person, to evade the provisions of the chapter by allowing him to perform a brake and lamp inspection on the 1996 Ford Crown Victoria.

THIRTY-THIRD CAUSE FOR DISCIPLINE

(Violations Relating to Licensed Activities)

61. Respondent Ozden has subjected his brake and lamp adjuster licenses to discipline under Code sections 9889.3, subdivisions (a) and (h), in that on October 28, 2003, he committed acts in violation of the Code relating to his licensed activities, as set forth in paragraphs 59 and 60, above.

OTHER MATTERS

62. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Gurnur International Corporation doing business as GIC German Auto Haus upon a finding that it has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

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63. Under Health and Safety Code section 44072.8, if Smog Check Station License Number RL 136179 issued to Gurnur International Corporation 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.

64. Under Code section 9889.9, if Official Brake Station License Number BL 136179 issued to Gurnur International Corporation is revoked or suspended, any additional license issued under Articles 5 and 6 of this chapter in the name of said licensee may be likewise revoked or suspended by the director.

65. Under Code section 9889.9, if Official Lamp Station License Number LL 136179 issued to Gurnur International Corporation is revoked or suspended, any additional license issued under Articles 5 and 6 of this chapter in the name of said licensee may be likewise revoked or suspended by the director.

66. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 010814 issued to Edward Lay 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.

67. Under Code section 9889.9, if Lamp Adjuster License Number JC 134514C issued to Mustafa Ozden is revoked or suspended, any additional license issued under Articles 5 and 6 of this chapter in the name of said licensee may be likewise revoked or suspended by the director.

68. Under Code section 9889.9, if Brake Adjuster License Number RY 134514A issued to Mustafa Ozden is revoked or suspended, any additional license issued under Articles 5 and 6 of 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:

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1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AL 136179 issued to Gurnur International Corporation, doing business as GIC German Auto Haus;

2. Temporarily or permanently invaliding any other automotive repair dealer registration issued to Gurnur International Corporation, doing business as GIC German Auto Haus;

3. Revoking or suspending Smog Check Station License Number RL 136179 issued to Gurnur International Corporation, doing business as GIC German Auto Haus;

4. Revoking or suspending any additional license issued under this chapter in the name of Gurnur International Corporation, doing business as GIC German Auto Haus;

5. Revoking or suspending Official Brake Station License Number BL 136179A issued to Gurnur International Corporation, doing business as GIC German Auto Haus.

6. Revoking or suspending any additional license issued under this chapter in the name of Gurnur International Corporation, doing business as GIC German Auto Haus;

7. Revoking or suspending Official Lamp Station License Number LL 136179A issued to Gurnur International Corporation, doing business as GIC German Auto Haus.

8. Revoking or suspending any additional license issued under this chapter in the name of Gurnur International Corporation, doing business as GIC German Auto Haus;

9. Revoking or suspending Advanced Emission Specialist Technician License Number EA 134514 issued to Mustafa Ozden;

10. Revoking or suspending any additional license issued under this chapter in the name of Mustafa Ozden;

11. Revoking or suspending Brake Adjuster License Number JC 134514C issued to Mustafa Ozden;

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12. Revoking or suspending any additional license issued under this chapter in the name of Mustafa Ozden;

13. Revoking or suspending Lamp Adjuster License Number RY 134514A, issued to Mustafa Ozden.

14. Revoking or suspending any additional license issued under this chapter in the name of Mustafa Ozden;

15. Ordering Gurnur International Corporation and Mustafa Ozden to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: 6/12/05

RICHARD ROSS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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