

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

In the Matter of the Accusation Against:

**SIDS AUTOMOTIVE
SAMAAN NASER SHIHAB
aka SAMAAN N. S.N SHIHAB, Partner
aka SAM SHIHAB, Partner
MAMDOUHH AHMED BADR, Partner
Automotive Repair Dealer Registration
No. ARD 203664
Smog Check Station License No. RC 203664**

**SAMAAN NASER SHIHAB
Advanced Emission Specialist Technician
License No. EA 145456**

and

**RAMIRO HERNANDEZ
Advanced Emission Specialist Technician
License No. EA 135126**

Respondents.

Case No. 79/08-74

OAH No. 2010011263

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter, except that, pursuant to the provisions of Government Code Section 11517(c)(2)(B), the proposed penalty is reduced from \$18,301.35 to \$14,760.00 as follows:

ORDER

I. As to Respondent Sids

The licenses issued to Respondent Sids Automotive (ARD No. 203664, RC 203664) are hereby revoked or invalidated, and that revocation or invalidation stayed, on the following terms and conditions:

1. Respondent's licenses shall be placed on probation for a period of three years from the effective date of this order.
2. Respondent's licenses, and each of them, shall be suspended for a period of 30 days beginning on the effective date of this order.
3. If Respondent fully complies with probation at the end of the three-year period, the licenses shall be fully restored.
4. Respondent shall pay costs in the amount of \$8,496, in monthly installments of \$300 per month, until the entire amount is paid, beginning 30 days after the effective date of this order. Failure to pay the costs may be deemed a violation of probation.
5. During the period of probation, Respondent shall:
 - a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
 - b. Post a prominent sign where it operates the smog check station and ARD, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
 - c. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
 - d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

- e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- f. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- g. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration or licenses held by Respondent.

II. As to Respondent Shihab

The Advanced Emission Specialist Technician License No. EA 145456, issued to Respondent Samaan Naser Shihab, is hereby revoked, and that revocation stayed, on the following terms and conditions:

1. Respondent's license shall be placed on probation for a period of three years from the effective date of this order.
2. Respondent's license shall be suspended for a period of 30 days beginning on the effective date of this order.
3. If Respondent fully complies with probation at the end of the three-year period, the license shall be fully restored.
4. Respondent shall pay costs in the amount of \$4,247.00 in monthly installments of \$130 per month, until the entire amount is paid, beginning 30 days after the effective date of this order. Failure to pay the costs may be deemed a violation of probation.
5. During the period of probation, Respondent shall:
 - a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
 - b. Post a prominent sign where he operates under his technician's license, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

- c. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
- e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- f. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- g. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration or licenses held by Respondent.

6. Furthermore, during the period of probation, Respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, Respondent's license shall be immediately suspended until such proof is received.

III. As to Respondent Hernandez

The Advanced Emission Specialist Technician License No. EA 135126, issued to Respondent Ramiro Hernandez, is hereby revoked, and that revocation stayed, on the following terms and conditions:

1. Respondent's license shall be placed on probation for a period of three years from the effective date of this order.
2. Respondent's license shall be suspended for a period of 7 days beginning on the effective date of this order.

3. If Respondent fully complies with probation at the end of the three-year period, the license shall be fully restored.

4. Respondent shall pay costs in the amount of \$2,017 in monthly installments of \$62 per month, until the entire amount is paid, beginning 30 days after the effective date of this order. Failure to pay the costs may be deemed a violation of probation.

5. During the period of probation, Respondent shall:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
- b. Post a prominent sign where he operates under his technician's license, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
- c. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
- e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- f. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- g. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration or licenses held by Respondent.

6. Furthermore, during the period of probation, Respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, Respondent's license shall be immediately suspended until such proof is received.

This Decision shall become effective on 8-11-10.

IT IS SO ORDERED this 6th day of August, 2010.



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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SAMAAN NASER SHIHAB
Advanced Emission Specialist Technician
License No. EA 145456

RAMIRO HERNANDEZ
Advanced Emission Specialist Technician
License No. EA 135126

Respondents.

PROPOSED DECISION

The hearing in the above-captioned matter took place on June 21, 2010, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Complainant was represented by Michael W. Valentine, Deputy Attorney General. Respondents Samaan Naser Shihab (Respondent Shihab) and Ramiro Hernandez (Respondent Hernandez) appeared and represented themselves. There was no appearance by Mamdouh Badr.

At the outset of the hearing, the parties stipulated to the truth of the main factual allegations against Respondents, that is, the factual allegations of paragraphs 1 through 65, but not those parts asserting legal conclusions, including but not limited to paragraphs 22, 23, 66 through 69. Respondents Shihab and Hernandez presented evidence of the facts and circumstances of the events, and in mitigation and to establish rehabilitation.

Thereafter, the case was argued and the matter submitted for decision on the hearing date. As noted in the body of this Proposed Decision, some allegations of the Accusation were not supported by the evidence, and therefore findings establishing those claims were not made, notwithstanding the stipulation. However, as set forth below, the bulk of the allegations are sustained, and a disciplinary order must follow.

FACTUAL FINDINGS

1. Complainant Sherry Mehl brought the action in the above-captioned matter while acting in her official capacity as the Chief of the Bureau of Automotive Repair (Bureau).

2. On March 23, 1999, the Bureau issued Automotive Repair Dealer Registration (ARD) number ARD 203664 to Sids Automotive, with Respondent Shihab and Ahmed Badr as partners in the firm. (Hereafter Respondent Sids.) On June 3, 2003, that registration was revoked, but the revocation was stayed, with the firm placed on probation for 18 months. The registration was otherwise in full force and effect at all times relevant to this matter. The registration will expire in February 2011 unless renewed. Respondent Sids does business at 16593 D Street, in Victorville, which place will at times hereafter be referred to as the facility.

3. On March 7, 2000, Smog Check Station License number RC 203664 was issued to Sids Automotive. That license was disciplined in June 2003 in the same manner as was the ARD.

4. Respondent Samaan N. Shihab is licensed as an Advanced Emission Specialist Technician, holding license number EA 145456, and he has been so licensed since 2002. His license will expire in February 2012 unless renewed.

5. Respondent Ramiro Hernandez is also is licensed as an Advanced Emission Specialist Technician, holding license number EA 135126, and he has been so licensed since 1997. His license will expire in December 2011 unless renewed.

The April 2007 Undercover Operation

6. (A) On April 11, 2007, the Bureau sent a 1993 Mazda Automobile to Respondent's facility for a smog test. The car, which is owned by the Bureau, was driven by a Bureau undercover operator to the facility. Prior to that time, a Bureau mechanic¹ had modified the car's engine so that the water thermosensor wire was

¹ The job title for the Bureau's mechanics is Program Representative. While their job duties include more than the maintenance and documentation of vehicles,

removed from the engine control module (ECM), which in turn activated the vehicle's Malfunction Indicator Lamp (MIL), known colloquially as the "check engine light."

(B) The operator met with Hernandez, who told him that the car would fail because the MIL was on. He asked if the operator would like the car "pre-tested," to give an idea of what was wrong. The operator agreed. Hernandez tested the vehicle, and told the operator it failed as a gross polluter.

(C) The operator had signed a work order before the pretest, but did not receive a copy from Hernandez. That document did not show the vehicle's odometer reading at the time that the operator signed it. Contrary to the allegations of the Accusation, the document did set forth an estimate for parts and labor. The operator paid \$25 for the test. Hernandez told him to bring the car back on another day for a diagnosis, so it could be determined why the car would not pass a full smog test. The operator received a Vehicle Inspection Report (VIR) that indicated that the timing was not correct because the engine RPM was out of specification.

(D) The operator brought the car back to Respondent's shop on April 17, 2007, and agreed to pay \$97.50 for a diagnosis. He again signed a work order, but again did not receive a copy of it from Hernandez. The operator left the car at the shop. Later that day, he was called by Jesse Hanson, who then worked for Respondent Sids, and the latter told the operator that the Mazda's catalytic converter, oxygen sensor, and coolant temperature sensor needed replacement, and that such repairs would cost approximately \$357.19, including the diagnosis. The operator authorized the repairs. However, the authorization was shown on the document as an "in person" authorization, and not the telephonic authorization that it was.

(E) The operator returned to the facility the next day, and paid for the repairs, which were invoiced at \$392.19. He received an invoice, number 19096, and a second VIR. The VIR stated that the catalytic converter, and the oxygen and coolant temperature sensors had been replaced, and that the engine timing had been set. The VIR was signed by Respondent Martinez, but it also references Respondent Shihab as one of the technicians working on the car. Contrary to the allegations of the Accusation, invoice number 19996 shows a registration number and business address for Respondent Sids.

their primary role in these situations is to induce some fault in the vehicle, so as to test a licensee's abilities, and to document the condition of the Bureau vehicle before and after an undercover run. In the experience of the ALJ, the "program representatives" are experienced and well-trained mechanics, typically ASE-certified and licensed as smog check technicians, a factor considered in weighing evidence presented by them. (Gov. Code, § 11425.50, subd. (c).)

7. A Bureau-employed mechanic inspected the Mazda on April 19, 2007. He discovered that the thermosensor wire had been put back in its correct place. The oxygen sensor and coolant temperature sensor had been replaced, but the catalytic converter had not been replaced. While the thermosensor wire had been reconnected, it was done in a less-than-workmanlike way; it was secured with silicon, but not mechanically attached as it should have been.² There was no need to replace the two sensors, or the catalytic converter, as all had been inspected by a qualified Bureau mechanic before the undercover operation, and found to be in good working order.

8. The invoice did not reveal that the thermosensor wire was reconnected, instead showing replacement of the sensor itself. In all the circumstances, this is misleading, in that it implies that the wire was disconnected and reconnected by someone at Respondent Sids in the course of replacing the sensor, which was not removed.

The May 10, 2007 Undercover Operation

9. On May 10, 2007, the Bureau performed another undercover operation, using a 1986 Chevrolet Monte Carlo. In this instance, Bureau personnel had modified the car by creating an open electrical ground in the throttle position sensor (TPS), which caused the MIL to illuminate and which also caused the tailpipe emissions to reach gross polluter levels. An operator employed by the Bureau took the car to Respondent Sids and spoke to Respondent Hernandez.

10. (A) As in the prior undercover operation, Hernandez asked the operator if he wanted a pretest of the vehicle, at a cost of \$25. Respondent Hernandez stated that he did not want to send information to the DMV which would show failure. The operator agreed, and signed a work order, but did not receive a copy of it. The work order did not state the vehicle's odometer reading. Contrary to the allegations of the Accusation, this document did state the labor charge.

(B) After inspecting the Chevrolet, Hernandez told the operator it failed as a gross polluter, and told him it would cost \$97 for a diagnosis, which the operator agreed to pay. He paid \$25 for the pretest, and received an invoice and VIR signed by Hernandez. That VIR showed the timing test as a fail, and a reference on the VIR attributes that to the engine RPM being outside of specifications. Another employee of Respondent Sids, "Rusty" Shihab, prepared a separate work order for the diagnosis. Although the operator signed it, he did not receive a copy of it at any time before he left the facility.

² This finding is based on the declaration of Mr. Blasjo, Exhibit 7, attachment 8, at pages 4 and 5.

(C) The operator called the facility later that day and spoke to Rusty. The latter told the operator that he had adjusted the timing and wanted to adjust the carburetor, but that he would need to remove the carburetor and a plug to do so. This, Rusty told the operator, would cause a charge for an extra one-half of an hour of labor, but that such was necessary to make the care car pass a smog inspection. The operator authorized that work.

(D) Approximately one hour later, the operator called the facility and spoke to Respondent Shihab, who told the operator the carburetor must be rebuilt; removal and adjustment had not reduced the emissions. He also asserted that the TBS needed to be replaced in order to have the car pass an emissions test. Respondent Shihab estimate the repairs at approximately \$700, and the operator authorized them, although the documentation was not properly performed.

(E) On May 14, 2010, the operator returned to the Sids facility and paid \$608.70 for the repairs to the car, including a smog test. He was given an invoice for the repairs, and a VIR dated May 11, signed by Respondent Hernandez.

11. The day after the operator picked up the car, it was inspected by a Bureau mechanic, the same one who had inspected, modified, and documented the vehicle before the undercover operation. He found that the wire for the TPS had been repaired, but that the TPS was not properly adjusted. Unnecessary repairs had been performed, in that the carburetor had been in good condition and properly adjusted before the undercover operation, and the vehicle timing had been properly adjusted as well.

12. The invoice for the repairs improperly stated that the operator had given authorization in person, rather than telephonically, as had actually occurred.

The Undercover Operation of June 6, 2007

13. The Bureau conducted a third undercover operation at Respondent Sids on June 6, 2007, using a 2000 Mazda Protégé which it owns, and which had been inspected, modified, and documented by Bureau personnel. Specifically, the voltage supply wire to the mass air flow (MAF) sensor had been broken, which caused the MIL to be illuminated, and which also caused excessive tailpipe emissions. A Bureau operative using an alias took the car to the facility, and spoke to Respondent Shihab, requesting a smog inspection.

14. (A) Respondent Shihab told the operator he wanted to run a pretest because the check engine light was on. She signed a work order, but he did not give her a copy of it, and it did not show the odometer reading. He proceeded to conduct a smog test. The work order did show an estimate for the labor.

(B) At about 10:20 a.m., he told the operator that he had found some cut wires in the car, which his mechanic was repairing, and that he would then test the car. A few minutes later, the operator came to car, and found Respondent Hernandez in it. He told her he wanted to test drive it, and asked her to come with him. She accompanied him on the drive, of several miles, and during that time he pointed out that the MIL had not come back on. He told her the car would now pass an inspection.

(C) After Hernandez and the operator returned to the facility, he told her to go to the customer waiting area while he performed the smog inspection. Approximately 10 minutes later, he came to that area and gave her a “thumbs up,” indicating that the car had passed the inspection. However, when the operator then asked Respondent Shihab for the cost of all the work, he told her more tests needed to be performed. When she said that Hernandez had indicated it had passed, Shihab said he needed to perform other diagnostic tests, and that she should leave the car at the facility. He told her that the repairs would cost approximately \$200.

(D) The operator returned the next day. Respondent Shihab showed her a list of “scheduled services,” telling her that the car needed the additional repairs there listed, estimating the cost for them to be approximately \$300. He charged her \$187.50 for the smog inspection and repairs that had been performed, and gave her an invoice, a VIR dated June 6, 2007, and the list of scheduled services.

15. The car was inspected on June 7, 2000, by a Bureau mechanic, who verified that the broken wire to the MAF sensor had been repaired.

16. Contrary to the allegations of the Accusation, the invoice provided by Respondent Shihab to the operator did list the repairs performed, in that it states: ASM FAILURE DIAGNOSIS MIL ON code p02 mass air flow low input found broken sensor wire repair and test drove ok SET OBD 2 MONITORS” (Ex. 7, attachment 20.)

17. The list of scheduled services is, primarily, a list of systems to be inspected at 90,000 miles. It does show that some items should be replaced at that time, such as the air cleaner, oil, and oil filter. The list otherwise does not show that other items must be repaired, but only inspected. It is common knowledge that manufacturers set service intervals for air cleaners, engine oil, and filters, as well as for the inspection of components such as timing belts and other engine belts. Indeed, such service intervals are often set out in a car’s handbook. While there is a handwritten notation that the cost is \$300, it is not clear that this cost is for the numerous inspections, or for repairs, or both. (See Ex. 7, attachment 20.) Because the car showed approximately 73,000 miles on the odometer at that time, it can not be found that the scheduled services list set out misrepresentations, at least on this record.

Subsequent Communications By the Bureau with Respondents

18. On August 8, 2007, Mr. Gottenbos met with Respondents Shihab and Hernandez at the facility. He reviewed various invoices held by Respondent Sids, including those pertaining to the three undercover investigations. Only the invoices and VIR for the 2000 Mazda inspection could be located by Respondent Shihab.

19. Mr. Gottenbos returned to the facility two days later to see if the other documents had been located. Shihab had some documents pertaining to the 1993 Mazda, and said he could reprint the final invoices for that job, and the work on the Chevrolet.

20. Respondent Shihab explained that he had tested the components of the 1993 Mazda, and found the temperature sensor and oxygen sensors to be defective. He also claimed he tested the catalytic converter three times, and it failed each time. As to the Chevrolet, he insisted that the carburetor was leaking internally and at the gaskets, and that the TPS was defective, and that the repairs were necessary.

21. As set forth above, none of the components were defective, as documented by Bureau staff. Indeed, the catalytic converter, allegedly defective, was not even replaced.

The Respondent's Contentions

22. (A) Notwithstanding the stipulation, Respondent Hernandez argued that he had proceeded properly, in the matter of finding the engine timing incorrectly set in both the 1993 Mazda and the Chevrolet. He cited manuals, including those generated by the Bureau, for the proposition that if a sensor has been found to have been tampered with, then it must be repaired before the functional tests (including timing) are performed. He further pointed to those documents to show that faulty temperature information can affect vehicle timing.

(B) A Bureau representative, Mr. Gottenbos, testified in response to these technical issues raised by Respondent Hernandez. He is a qualified mechanic with many years experience. He testified because a temperature signal can cause an onboard computer to alter engine RPM, Respondent needed to bypass the vehicle's on-board computer. There are various ways to do that, specified by the manufacturer of each vehicle.

(C) Based on the testimony, it appears that Respondent Hernandez misapprehended the steps he needed to take once it was determined that a temperature sensor wire, or other component, had been tampered with. However, it appears from his testimony, including from his credible demeanor, that he was acting in good faith

when he tested the timing, and that his actions were the result of a mistake, and not from some intent to mislead or defraud the customer.

23. Respondent Hernandez acknowledged that he made mistakes in other matters, such as failing to list the odometer reading, and not promptly providing a copy of the work order. On the latter point he mentioned that the computer at his work area would only print one copy of the document, and he did not go to the office to obtain a photocopy, which he acknowledges he should have.

24. As noted above, Respondent Hernandez appeared credible in his testimony, by his demeanor and by the content of it. It should be noted that in regard to the third undercover operation, he apparently located the damaged wire that had been "induced" by the Bureau, and made clear to the operator that the car would now pass the smog check, which it did. It appears that in that instance he proceeded properly, and without any intent to mislead the consumer.

25. Respondent Shihab also testified, acknowledging responsibility for the violations that had occurred at his facility. At the advice of the Bureau, he has changed his policy of "pass or don't pay," which was in place at the time of the undercover runs. He has hired a new service writer, replacing Mr. Hanson. He has obtained a new computer program for the mechanics and technicians to use, which system cuts down on diagnostic and repair errors. He has taken classes at Victor Valley College in an effort to improve his professional skills. He noted that the wrongful conduct occurred three years ago, and that his efforts at improvement have occurred in the intervening time. This appeared to be a change of attitude since the meeting with Mr. Gottenbos in August 2007. At this time, Respondent Shihab evinced a clear intent to comply with the statutes and regulations in the future, if for no other reason than to protect his rather considerable investment of time and money into the business.

Other Matters, including Costs

26. As noted in Factual Finding 2, the ADR and Smog Check Station license issued to Sids has previously been disciplined. In that case, Respondent Shihab was found to have issued certificates of compliance in 2001 even though he was not then licensed to do so. He did this by using his employee's access code, and he signed his technician's name to the VIR issued in the course of inspection. Such acts, aside from violating various statutes and regulations regarding the method of performing smog checks, constituted fraud and dishonest dealing in that the partnership was issuing invalid certificates of compliance.

27. There is no evidence that Respondent failed to comply with the probation then stipulated to.

28. (A) In this matter the Bureau has incurred costs in the investigation and prosecution of this case, in the amount of \$18,301.35, of which \$10,752.60 is the Bureau's cost. That cost is heavily weighted to the cost of preparing and documenting the undercover vehicles.

(B) Mr. Hernandez makes between \$500 and \$700 per week as a technician working at the facility. Mr. Shihab acknowledged that he makes between \$4,000 and \$5,000 per month, after his expenses.

29. All allegations upon which findings have not been made are deemed unsubstantiated or surplusage.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to Business and Professions Code section 9884.7 and Health and Safety Code section 44072.2 was established, based on Factual Findings 1 through 5.

2. (A) As noted in the preamble, the Respondents stipulated to the truth of the factual allegations against them, although not to the legal assertions. However, in preparing this proposed decision, the ALJ has discerned that some of the allegations of the Accusation can not be sustained by the documentary and other evidence received in the course of the hearing. This is especially the case regarding the allegations to the effect that the work orders provided at the time of the "pre-tests" did not list parts and labor. In fact, they did, showing the labor as being the pre-test, valued at \$25. (Ex. 7, attachments 10, 16, & 20.) Therefore, the Fifth Cause for Discipline, part b-1, the Eighteenth Cause for Discipline, part b-1, and the Thirtieth Cause for Discipline, part b, are not sustained, based on Factual Findings 6(C), 10(A), and 14(A).

(B) As set forth in Factual Finding 17, the allegation that Respondent Shihab made misrepresentations in the list of Scheduled Services for the 2000 Mazda, can not be sustained. Again, the actual document, part of Attachment 20 to Exhibit 7, does not support such a strong allegation, as virtually the entire list of services are inspections tied to a service interval. Repairs in the usual sense are not called for; replacement of engine oil, oil cleaners, and air cleaners being closer to regular maintenance rather than repairs. The document shows that the proposed services are tied to the 90,000 mile service interval. Regardless of the condition of the vehicle at that time, it is fair to inform the customer that a service interval is approaching which would call for inspections and service such as an oil change. A mechanic in the field would be ignorant of the fact that the vehicle is documented as being in good condition; he or she would be aware that the car is seven years old and apparently has some 73,000 miles on it. (The Bureau makes efforts to "age" its undercover vehicles, so that they will appear to be several years old with tens of thousands of miles of

service behind them.) Thus, it is reasonable, and not dishonest, for a mechanic to make recommendations to inspect a seven-year-old vehicle at a future date and fraudulent and dishonest conduct can not be found in such a situation. Therefore, the Twenty-Seventh cause for discipline has not been sustained.

3. (A) Section 9884.7, subdivision (a), of the Business and Professions Code provides, in part, that the director of the Bureau may, “where the automotive repair dealer cannot show there was a bona fide error,” discipline the registration for various enumerated acts, such as false and misleading statements (subd. (a)(1)), fraud (subd. (a)(4)), or conduct constituting gross negligence (subd. (a)(5)). The statute places the burden on the Bureau to prove grounds for discipline, and it allocates to the licensee the burden of proving a “bona fide error.” (Evid. Code, § 500.)

(B) The term “bona fide error” is not defined in the statute, but plainly refers to a mistake that arises in the context of a good faith act.³

(C) In this case it is concluded that Respondent Hernandez acted in good faith in the matter of checking and adjusting the timing during the first undercover operation, based on Factual Finding 22, and that he likewise did so in connection with the inspection of the Chevrolet. Therefore, that part of the First Cause for Discipline, alleged at paragraph 22 b of the Accusation, is not sustained, nor is that part of the Fourteenth Cause for Discipline, alleged at paragraph 40 c of the Accusation.

4. (A) Cause was established to discipline the ARD issued to Respondent Sids for violation of Business and Professions Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements that were untrue or misleading, in more than one instance, and in connection with two inspection and repair transactions, based on Factual Findings 6, 7, 9, 10(C), 10(D), 11, 13, 20, and 21.

(B) Based on the foregoing, cause was also established to discipline the ARD issued to Respondent Sids for violation of Business and Professions Code section 9884.7, subdivision (a)(4), in that Respondent committed acts of fraud in connection with two repair transactions.

5. Cause was established to discipline the ARD issued to Respondent Sids for violation of Business and Professions Code section 9884.7, subdivision (a)(2), in that

³ Black’s Law Dictionary (4th ed. 1968) defines an error as “a mistaken judgment or incorrect belief as to the existence or effect of matters of fact, . . .” (p. 637, right column) while bona fide is defined as “in or with good faith; honestly, openly, and sincerely; without deceit or fraud.” (*Id.*, p. 223, right column.)

Respondent's employees or co-owner caused customers to sign work orders that did not set forth the odometer reading, based on Factual Findings 6(C), 10(A), and 14(A).

6. Cause was established to discipline the ARD issued to Respondent Sids pursuant to Business and Professions Code section 9884.7, subdivision (a)(3), in that Respondent's employees or co-owner failed to provide a customer with a signed copy of a work order, in connection with three inspection and repair transactions. This Conclusion is based on Factual Findings 6(C), 10(A), and 14(A).

7. Respondent Sids failed to comply with section 9884.9, subdivision (a), of the Business and Professions Code, on two occasions, by failing to properly document how additional work was authorized, based on Factual Findings 6(D) and 10(D). Respondent's ARD is therefore subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

8. It was not established that Respondent Sids violated Business and Professions Code section 9884.7, subdivision (a)(6), by violating California Code of Regulations (CCR), title 16, section 3356,⁴ subdivision (a), by failing to show its registration number and corresponding business name and address on invoice number 19096, based on Factual Finding 6(E).

9. Cause was established to discipline the Smog Check Station License issued to Respondent Sids pursuant to Health and Safety Code section 44072.2, subdivision (a), for failure to comply with section 44016 by improperly diagnosing and repairing the 1993 Mazda and 1986 Chevrolet, based on Factual Findings 6, 7, 9, 10(C) and 10(D), 11, 13, 20, and 21.

10. It was not established that the pre-inspections performed by Respondents violated Health and Safety Code section 44012, based on Factual Finding 29. Therefore, cause was not established to discipline the Smog Check Station License issued to Respondent Sids on that basis.

11. Cause was established to discipline the Smog Check Station License issued to Respondent Sids pursuant to Health and Safety Code section 44072.2, subdivision (c), for failure to comply with the CCR section 3340.41, subdivisions (c) and (d), based on Factual Findings 6 through 12.

12. Cause was established to discipline the Smog Check Station License issued to Respondent Sids pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud, or deceit based on Factual Findings 6, 7, 9, 10(C), 10(D), 11, 13, 20, and 21.

⁴ All further references to the CCR are to title 16 thereof.

13. Cause was established to discipline the Advanced Emission Specialist's license held by Respondent Hernandez pursuant to Health and Safety Code section 44072.2, subdivision (c), for failure to comply with CCR section 3340.41, subdivisions (c) and (d), based on Factual Findings 6 through 12.

14. Cause was established to discipline the Advanced Emission Specialist's license held by Respondent Shihab pursuant to Health and Safety Code section 44072.2, subdivision (a), for violating section 44016 by improperly diagnosing and repairing the 1993 Mazda and 1986 Chevrolet, and for violating section 44059, for making false entries in a VIR, based on Factual Findings 6, 7, 9, 10(C) and 10(D), 11, 13, 20, and 21.

15. Cause was established to discipline the Advanced Emission Specialist's license held by Respondent Shihab pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud or deceit, based on Factual Findings 6, 7, 9, 10(C) and 10(D), 11, 13, 20, and 21.

16. The Bureau is entitled to recover its reasonable costs pursuant to Business and Professions Code section 125.3, based on Legal Conclusions 4 through 7, and 11 through 15, and each of them. Based on Factual Finding 28, the total costs claimed is \$18,301.35, on its face a reasonable amount given the nature and extent of the investigation. Because the wrongdoing of Respondent Sids and its co-owner was more extensive and more severe than that by Respondent Hernandez, the costs should be allocated.⁵ Therefore, Respondent Hernandez shall be obligated to pay \$2,500, which he may pay in installments. The balance of the costs, \$15,801.35, shall be paid by Respondents Sids and Shihab, two thirds by Respondent Sids, the balance by Respondent Shihab, also in installments.

17. The Bureau has developed guidelines for use in determining what sort of discipline should flow from violations of the statutes and regulations that it is charged with enforcing. The guidelines are incorporated into the regulations, at CCR section 3395.4 (hereafter Guidelines). The Guidelines list a number of factors in aggravation, and the ones most applicable to Respondent Sids and Respondent Shihab pertain to the prior license discipline. Regarding Respondent Hernandez, the record indicates that he did not properly understand some testing issues, but his acts do not have the air of dishonesty. On the other hand, Respondent Shihab was directly involved in the sale of unneeded components, and the sale of an expensive component that was never installed (the catalytic converter), and Respondent Shihab continued with that dishonest activity through the time of the August 2007 conference.

⁵ Thus of the nine legal conclusions where cause for discipline was found, only one runs specifically against Hernandez, the rest run against Sids or Shihab, although some of Respondent Sids liability is based on Hernandez's shortcomings.

18. The Guidelines call for minimum discipline in the form of stayed orders of revocation, 30 to 60 days of suspension, and at least two years probation.

19. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Given that dishonesty and fraud was established in this case, and that one of the owners of the ARD was involved directly in those two instances, a significant disciplinary order must issue. Because there is no evidence of misconduct in the past three years, and because Respondent Shabib has demonstrated a change of attitude, the maximum sanction will not be imposed in this case. However, the ARD, Smog Check Station license, and Mr. Shihab's technician's license must be suspended so that the serious nature of the misconduct is brought home to the owner of the firm. A suspension of thirty days is ordered in this case, less than the guidelines amount, so as not to put the facility out of business. A lesser sanction should be sufficient to curb misconduct by Respondent Hernandez. Probation shall be imposed on all Respondents, with standard terms.

ORDER

I: As to Respondent Sids

The licenses issued to Respondent Sids Automotive. (ARD No. 203664, RC 203664), are hereby revoked or invalidated, and that revocation or invalidation stayed, on the following terms and conditions:

1. Respondent's licenses shall be placed on probation for a period of three years from the effective date of this order.
2. Respondents' licenses, and each of them, shall be suspended for a period of 30 days beginning on the effective date of this order.
3. If Respondent fully complies with probation, at the end of the three-year period, the licenses shall be fully restored.
4. Respondent shall pay costs in the amount of \$10,535 in monthly installments of \$300 per month, until the entire amount is paid, beginning 30 days after the effective date of this order. Failure to pay the costs may be deemed a violation of probation.
5. During the period of probation, Respondent shall:
 - a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Post a prominent sign where it operates the smog check station and ARD, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

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

d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

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

f. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

g. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registrations or licenses held by Respondent.

II. As to Respondent Shihab

The Advanced Emission Specialist Technician's license issued to Respondent Samaan Naser Shihab, No. EA 145456, is hereby revoked, and that revocation stayed, on the following terms and conditions:

1. Respondent's license shall be placed on probation for a period of three years from the effective date of this order.

2. Respondents' license shall be suspended for a period of 30 days beginning on the effective date of this order.

3. If Respondent fully complies with probation, at the end of the three-year period, the license shall be fully restored.

4. Respondent shall pay costs in the amount of \$5,266.35 in monthly installments of \$150 per month, until the entire amount is paid, beginning 30 days after the effective date of this order. Failure to pay the costs may be deemed a violation of probation.

5. During the period of probation, Respondent shall:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
- b. Post a prominent sign where he operates under his technician's license, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
- c. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
- e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- f. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

g. Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registrations or licenses held by Respondent.

5. Furthermore, during the period of probation, Respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, Respondents' license shall be immediately suspended until such proof is received.

As to Respondent Hernandez

The Advanced Emission Specialist Technician's license issued to Respondent Ramiro Hernandez, No. EA 135126, is hereby revoked, and that revocation stayed, on the following terms and conditions:

1. Respondent's license shall be placed on probation for a period of three years from the effective date of this order.
2. Respondents' license shall be suspended for a period of 7 days beginning on the effective date of this order.
3. If Respondent fully complies with probation, at the end of the three-year period, the license shall be fully restored.
4. Respondent shall pay costs in the amount of \$2,500 in monthly installments of \$75 per month, until the entire amount is paid, beginning 30 days after the effective date of this order. Failure to pay the costs may be deemed a violation of probation.
5. During the period of probation, Respondent shall:
 - a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
 - b. Post a prominent sign where he operates under his technician's license, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and

frequented by customers and shall remain posted during the entire period of actual suspension.

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

d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

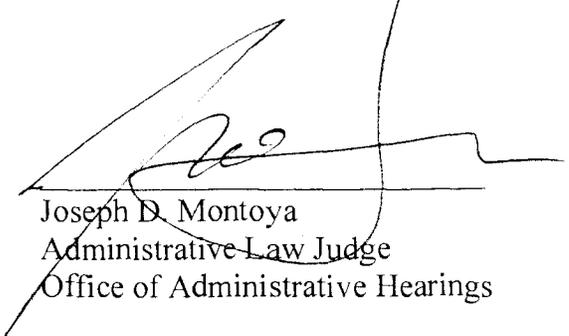
e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

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

g. Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registrations or licenses held by Respondent.

5. Furthermore, during the period of probation, Respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, respondents' license shall be immediately suspended until such proof is received.

July 23, 2010



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

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7
8

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

12 In the Matter of the Accusation Against:

Case No. 79/08-74

13 SIDS AUTOMOTIVE
SAMAAN NASER SHIHAB,
14 a.k.a. SAMAAN N S N SHIHAB,
a.k.a. SAM SHIHAB, PARTNER
15 MAMDOUHH AHMED BADR, PARTNER
16593 D Street
16 Victorville, CA 92392

A C C U S A T I O N

SMOG CHECK

17 Automotive Repair Dealer Reg. No. ARD 203664
Smog Check Station License No. RC 203664,

18 SAMAAN NASER SHIHAB
19 14550 La Mesa Road
Victorville, CA 92392

20 Advanced Emission Specialist Technician License
21 No. EA 145456,

22 and

23 RAMIRO HERNANDEZ
15621 Wyandot Road
24 Apple Valley, CA 92307-3086

25 Advanced Emission Specialist Technician License
26 No. EA 135126

Respondents.

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Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration No. ARD 203664

2. On or about March 23, 1999, the Director of Consumer Affairs (“Director”) issued Automotive Repair Dealer Registration Number ARD 203664 (formerly AB 203664; hereinafter “registration”) to Sids Automotive (“Respondent Sids Automotive”), with Samaan Naser Shihab, also known as Samaan N S N Shihab and Sam Shihab, and Mamdouh Ahmed Badr as partners. On June 3, 2003, Respondent’s registration was revoked; however, the revocation was stayed and Respondent was placed on probation for a period of 18 months, as set forth below. Respondent’s registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2009, unless renewed.

Smog Check Station License No. RC 203664

3. On or about March 7, 2000, the Director issued Smog Check Station License Number RC 203664 (formerly RB 203664) to Respondent Sids Automotive. On June 3, 2003, Respondent’s smog check station license was revoked; however, the revocation was stayed and Respondent was placed on probation for a period of 18 months, as set forth below. Respondent’s smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2009, unless renewed.

Advanced Emission Specialist Technician License No. EA 145456

4. In or about 2002, the Director issued Advanced Emission Specialist Technician License Number EA 145456 (“technician license”) to Samaan Naser Shihab (“Respondent Shihab” or “Shihab”). Respondent’s technician license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2010, unless renewed.

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

5 (2) Causing or allowing a customer to sign any work order which does
6 not state the repairs requested by the customer or the automobile's odometer
7 reading at the time of repair.

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

10 (4) Any other conduct which constitutes fraud.

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12 (6) Failure in any material respect to comply with the provisions of this
13 chapter or regulations adopted pursuant to it.

14

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

21 11. Bus. & Prof. Code section 9884.8 states, in pertinent part:

22 All work done by an automotive repair dealer, including all warranty
23 work, shall be recorded on an invoice and shall describe all service work done
24 and parts supplied . . .

25 12. Bus. & Prof. Code section 9884.9, states, in pertinent part:

26 (a) The automotive repair dealer shall give to the customer a written
27 estimated price for labor and parts necessary for a specific job. No work shall be
28 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 . . .

(b) The automotive repair dealer shall include with the written estimated
price a statement of any automotive repair service which, if required to be done,

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will be done by someone other than the dealer or his employees. No service shall be done by other than the dealer or his employees without the consent of the customer, unless the customer cannot reasonably be notified. The dealer shall be responsible, in any case, for any such service in the same manner as if he or his employees had done the service . . .

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

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

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

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

. . . .

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

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

15. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

Cost Recovery

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

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1 been repaired and was within manufacturer's specifications at the time the vehicle was taken to
2 the facility.

3 d. Respondent Sids Automotive's partner/technician, Respondent Shihab,
4 represented on the VIR dated April 18, 2007, that the total cost of the emission-related parts and
5 labor on the Bureau's 1993 Mazda Protege was \$303 (excluding tax), but represented on Invoice
6 # 19096 that the total cost of the parts and labor were \$388 (excluding tax).

7 e. Respondent Sids Automotive represented on Invoice # 19096 that the
8 catalytic converter on the Bureau's 1993 Mazda Protege was replaced when, in fact, that part was
9 not replaced on the vehicle as invoiced.

10 f. Respondent Sids Automotive represented on Invoice # 19096 that on April
11 17, 2007, the operator had authorized a revised estimate price of \$357.19 for the repairs on the
12 Bureau's 1993 Mazda Protege "in Person". In fact, the operator had authorized the repairs by
13 telephone.

14 g. Respondent Sids Automotive represented on Invoice # 19096 that the
15 odometer reading on the Bureau's 1993 Mazda Protege was 811,464 at the time the vehicle was
16 taken to the smog check facility, when, in fact, the odometer reading was 81,257.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Failure to Record Odometer Reading)**

19 23. Respondent Sids Automotive's registration is subject to disciplinary action
20 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(2), in that Respondent's
21 technician, Respondent Hernandez, caused or allowed the operator to sign Estimate # 033270,
22 which did not state the odometer reading of the Bureau's 1993 Mazda Protege at the time of
23 repair.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Failure to Provide Copy of Signed Document)**

26 24. Respondent Sids Automotive's registration is subject to disciplinary action
27 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent's

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1 technician, Respondent Hernandez, failed to give the operator copies of the work orders as soon
2 as the operator signed the documents.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 25. Respondent Sids Automotive's registration is subject to disciplinary action
6 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
7 acts constituting fraud, as follows:

8 a. Respondent's employee, Hanson, made false or misleading representations
9 to the operator regarding the Bureau's 1993 Mazda Protege, as set forth in subparagraph 22 (a)
10 above, in order to induce the operator to purchase unnecessary repairs on the vehicle, then sold
11 the operator unnecessary repairs, including the replacement of the catalytic converter, oxygen
12 sensor, and water thermosensor.

13 b. Respondent charged and obtained payment from the operator for replacing
14 the catalytic converter on the Bureau's 1993 Mazda Protege when, in fact, that emission-related
15 component was not replaced on the vehicle as invoiced.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Violations of the Bus. & Prof. Code)**

18 26. Respondent Sids Automotive's registration is subject to disciplinary action
19 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
20 comply with provisions of that Code, as follows:

21 a. **Section 9884.8:** Respondent Sids Automotive failed to record on Invoice
22 # 19096 all service work performed on the Bureau's 1993 Mazda Protege in that Respondent
23 failed to state that the water thermosensor wire had been pushed back in the correct position in
24 the ECU terminal connector.

25 b. **Section 9884.9, subdivision (a):**

26 1. Respondent Sids Automotive's technician, Respondent Hanson,
27 failed to provide the operator with a written estimate for parts and/or labor necessary for a

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1 specific job prior to performing the pre-test inspection and diagnosis on the Bureau's
2 1993 Mazda Protege.

3 2. Respondent Sids Automotive exceeded the revised estimate price
4 of \$357.19 for the repairs on the Bureau's 1993 Mazda Protege without the operator's
5 oral or written consent.

6 3. Respondent Sids Automotive failed to properly document on
7 Invoice # 19096 the operator's authorization for the additional repairs on the Bureau's
8 1993 Mazda Protege. Respondent documented that the operator had authorized a revised
9 estimate price of \$357.19 "in Person", when, in fact, the operator had authorized the
10 repairs by telephone.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Violations of the Bus. & Prof. Code)**

13 27. Respondent Sids Automotive's registration is subject to disciplinary action
14 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
15 comply with California Code of Regulations, title 16, section 3356, subdivision (a), by failing to
16 show its registration number and corresponding business name and address on Invoice # 19096.

17 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

22 a. **Section 44012:** Respondent Sids Automotive's technician, Respondent
23 Hernandez, failed to perform the emission control tests/pre-test inspection on the Bureau's 1993
24 Mazda Protege in accordance with procedures prescribed by the department, as set forth in
25 subparagraph 22 (b) above.

26 b. **Section 44016:** Respondent Sids Automotive's partner/technician,
27 Respondent Shihab, failed to perform the repairs on the Bureau's 1993 Mazda Protege in
28 accordance with established specifications and procedures, as follows: Respondent Shihab failed

1 to properly diagnose and repair the cause of the emissions failure on the vehicle by determining
2 that the catalytic converter, oxygen sensor, and water thermosensor needed replacement when, in
3 fact, those emission-related components were functioning properly and not in need of
4 replacement. Further, Respondent Shihab unnecessarily replaced the oxygen sensor, and water
5 thermosensor.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

9 29. Respondent Sids Automotive's smog check station license is subject to
10 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
11 Respondent failed to comply with the provisions of California Code of Regulations, title 16, as
12 follows:

13 a. **Section 3340.41, subdivision (c):** Respondent Sids Automotive's
14 technician, Respondent Hernandez, and partner/technician Shihab, knowingly entered into the
15 emissions inspection system false information about the Bureau's 1993 Mazda Protege.

16 b. **Section 3340.41, subdivision (d):** Respondent Sids Automotive's
17 partner/technician, Respondent Shihab, failed to follow applicable specifications and procedures
18 when diagnosing the cause of the emissions failure and performing the repairs on the Bureau's
19 1993 Mazda Protege, as set forth in subparagraph 28 (b) above.

20 c. **Section 3340.42:** Respondent Sids Automotive's technician, Respondent
21 Hernandez, failed to conduct the required smog tests/pre-test inspection on the Bureau's 1993
22 Mazda Protege in accordance with the Bureau's specifications.

23 **NINTH CAUSE FOR DISCIPLINE**

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

25 30. Respondent Sids Automotive's smog check station license is subject to
26 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
27 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
28 forth in paragraph 25 above.

1 TENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 31. Respondent Hernandez's technician license is subject to disciplinary
4 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
5 to comply with provisions of that Code, as follows:

6 a. Section 44012: Respondent failed to perform the emission control
7 tests/pre-test inspection on the Bureau's 1993 Mazda Protege in accordance with procedures
8 prescribed by the department.

9 b. Section 44059: Respondent willfully made a false entry on the VIR dated
10 April 11, 2007, as set forth in subparagraph 22 (b) above.

11 ELEVENTH CAUSE FOR DISCIPLINE

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

14 32. Respondent Hernandez's technician license is subject to disciplinary
15 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
16 to comply with provisions of California Code of Regulations, title 16, as follows:

17 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test
18 the Bureau's 1993 Mazda Protege in accordance with Health & Saf. Code sections 44012 and
19 44035, and California Code of Regulations, title 16, section 3340.42.

20 b. 3340.41, subdivision (c): Respondent knowingly entered into the
21 emissions inspection system false information about the Bureau's 1993 Mazda Protege.

22 c. Section 3340.42: Respondent failed to conduct the required smog tests on
23 the Bureau's 1993 Mazda Protege in accordance with the Bureau's specifications.

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1 TWELFTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 33. Respondent Shihab's technician license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
5 comply with provisions of that Code, as follows:

6 a. **Section 44016:** Respondent failed to perform the repairs on the Bureau's
7 1993 Mazda Protege in accordance with established specifications and procedures, as follows:
8 Respondent failed to properly diagnose and repair the cause of the emissions failure on the
9 vehicle by determining that the catalytic converter, oxygen sensor, and water thermosensor
10 needed replacement when, in fact, those emission-related components were functioning properly
11 and not in need of replacement. Further, Respondent Shihab unnecessarily replaced the oxygen
12 sensor, and water thermosensor.

13 b. **Section 44059:** Respondent willfully made false entries on the VIR dated
14 April 18, 2007, as set forth in subparagraphs 22 (c) and (d) above.

15 THIRTEENTH CAUSE FOR DISCIPLINE

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

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

21 a. **3340.41, subdivision (c):** Respondent knowingly entered into the
22 emissions inspection system false information about the Bureau's 1993 Mazda Protege.

23 b. **Section 3340.41, subdivision (d):** Respondent failed to perform the
24 repairs on the Bureau's 1993 Mazda Protege in accordance with established specifications and
25 procedures, as set forth in subparagraph 33 (a) above.

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1 the smog inspection. Shihab told the operator that the repairs would cost about \$700. The
2 operator authorized the repairs.

3 38. On May 14, 2007, the operator returned to the facility, paid \$608.70 for
4 the repairs, and received copies of various documents, including Invoice # 19355 and a VIR
5 dated May 11, 2007, signed by Hernandez.

6 39. On May 15, 2007, Bureau Representative Steven M. Gauronski
7 ("Gauronski") inspected the vehicle, using Invoice # 19355 for comparison. Gauronski found
8 that the TPS ground wire connector was repaired, however, there was no mention of this repair
9 on the invoice. Further, the TPS was not adjusted to specifications and unnecessary repairs had
10 been performed on the vehicle, as set forth below.

11 **FOURTEENTH CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 40. Respondent Sids Automotive's registration is subject to disciplinary action
14 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
15 authorized statements which it knew or in the exercise of reasonable care should have known to
16 be untrue or misleading, as follows:

17 a. Respondent Sids Automotive's employee, Rusty, represented to the
18 operator that he would have to charge him an additional one-half hour of labor to adjust the
19 carburetor on the Bureau's 1986 Chevrolet Monte Carlo and that this repair was needed so that
20 the vehicle would pass a smog inspection. In fact, the carburetor was properly adjusted at the
21 time the vehicle was taken to the facility and was not in need of adjustment.

22 b. Respondent Sids Automotive's partner/technician, Respondent Shihab,
23 represented to the operator that the carburetor on the Bureau's 1986 Chevrolet Monte Carlo
24 needed to be rebuilt, that the TPS needed to be replaced, and that these repairs were needed so
25 that the vehicle would pass the smog inspection. In fact, the only repair needed on the vehicle
26 was the repair of the TPS ground circuit. Further, the carburetor did not need to be removed or
27 overhauled/rebuilt as it was in good functional condition and properly adjusted at the time the

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1 vehicle was taken to the facility. In addition, the TPS was new, was properly adjusted, and was
2 not in need of replacement.

3 c. Respondent Sids Automotive's technician, Respondent Hernandez,
4 represented on the VIR dated May 10, 2007, that the Bureau's 1986 Chevrolet Monte Carlo
5 failed the functional ignition timing test. In fact, the ignition timing was within manufacturer's
6 specifications at the time the vehicle was taken to the facility.

7 d. Respondent Sids Automotive represented on Invoice # 19355 that on May
8 10, 2007, at 1247 hours, the operator authorized a revised estimate price of \$672.59 for the
9 repairs on the Bureau's 1986 Chevrolet Monte Carlo "in Person" and that this authorization was
10 given to Hanson. In fact, the operator had authorized the repairs by telephone at 1230 hours and
11 authorization was given to Respondent Shihab.

12 e. Respondent Sids Automotive represented on Invoice # 19355 that on May
13 10, 2007, at 1544 hours, the operator had authorized \$426.20 in additional repairs and that the
14 authorization was given to Respondent Shihab. In fact, the operator was not contacted at that
15 time regarding additional repairs on the vehicle.

16 **FIFTEENTH CAUSE FOR DISCIPLINE**

17 **(Failure to Record Odometer Reading)**

18 41. Respondent Sids Automotive's registration is subject to disciplinary action
19 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(2), in that Respondent's
20 technician, Respondent Hernandez, caused or allowed the operator to sign Estimate # 034009,
21 which did not state the odometer reading of the Bureau's 1986 Chevrolet Monte Carlo at the time
22 of repair.

23 **SIXTEENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Provide Copy of Signed Document)**

25 42. Respondent Sids Automotive's registration is subject to disciplinary action
26 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent's
27 technician, Respondent Hernandez, and employee, Rusty, failed to give the operator copies of the
28 work orders as soon as the operator signed the documents.

1 SEVENTEENTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 43. Respondent Sids Automotive's registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
5 an act constituting fraud, as follows: Respondent Sids Automotive's employee, Rusty, and
6 partner/technician, Respondent Shihab, made false or misleading representations to the operator
7 regarding the Bureau's 1986 Chevrolet Monte Carlo, as set forth in subparagraphs 40 (a) and (b)
8 above, in order to induce the operator to purchase unnecessary repairs on the vehicle, then sold
9 the operator unnecessary repairs, including the adjustment and rebuilding of the carburetor and
10 the replacement of the TPS.

11 EIGHTEENTH CAUSE FOR DISCIPLINE

12 (Violations of the Bus. & Prof. Code)

13 44. Respondent Sids Automotive's registration is subject to disciplinary action
14 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
15 comply with provisions of that Code, as follows:

16 a. Section 9884.8: Respondent Sids Automotive failed to record on Invoice
17 # 19355 all service work performed on the Bureau's 1986 Chevrolet Monte Carlo in that
18 Respondent failed to state that the TPS ground wire connector was repaired on the vehicle.

19 b. Section 9884.9, subdivision (a):

20 1. Respondent Sids Automotive's technician, Respondent Hernandez,
21 and employee, Rusty, failed to provide the operator with written estimates for parts
22 and/or labor necessary for a specific job prior to performing the pre-test inspection and
23 diagnosis on the Bureau's 1986 Chevrolet Monte Carlo.

24 2. Respondent Sids Automotive failed to properly document on
25 Invoice # 19355 the operator's authorization for the additional repairs on the Bureau's
26 1986 Chevrolet Monte Carlo, as set forth in subparagraphs 40 (c) and (d) above.

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1 **NINETEENTH CAUSE FOR DISCIPLINE**

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

3 45. Respondent Sids Automotive's smog check station license is subject to
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
5 Respondent failed to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent Sids Automotive's technician, Respondent
7 Hernandez, failed to perform the emission control tests/pre-test inspection on the Bureau's 1986
8 Chevrolet Monte Carlo in accordance with procedures prescribed by the department, as set forth
9 in subparagraph 40 (b) above.

10 b. **Section 44016:** Respondent Sids Automotive's employee, Rusty, and
11 partner/technician, Respondent Shihab, failed to perform the repairs on the Bureau's 1986
12 Chevrolet Monte Carlo in accordance with established specifications and procedures by failing to
13 properly diagnose and repair the cause of the emissions failure, as follows:

14 1. Respondent Sids Automotive's employee, Rusty, adjusted the ignition
15 timing on the vehicle when, in fact, the ignition timing was within manufacturer's
16 specifications at the time the vehicle was taken to the facility and was not in need of
17 adjustment. Further, Rusty determined that the carburetor was in need of adjustment
18 when, in fact, the carburetor was properly adjusted at the time the vehicle was taken to the
19 facility and was not in need of adjustment.

20 2. Respondent Sids Automotive's partner/technician, Respondent Shihab,
21 determined that the carburetor needed to be rebuilt and that the TPS needed to be
22 replaced when, in fact, the carburetor was in good functional condition and properly
23 adjusted and the TPS was new, was properly adjusted, and was not in need of
24 replacement. Further, Respondent Shihab unnecessarily rebuilt the carburetor and
25 replaced the TPS, and failed to properly adjust the TPS in that the TPS idle voltage was
26 0.98 volts out of specifications.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

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

4 46. Respondent Sids Automotive's smog check station license is subject to
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
6 Respondent failed to comply with the provisions of California Code of Regulations, title 16, as
7 follows:

8 a. **Section 3340.41, subdivision (c):** Respondent Sids Automotive's
9 technician, Respondent Hernandez, knowingly entered into the emissions inspection system false
10 information about the Bureau's 1986 Chevrolet Monte Carlo.

11 b. **Section 3340.41, subdivision (d):** Respondent Sids Automotive's
12 employee, Rusty, and partner/technician, Respondent Shihab, failed to follow applicable
13 specifications and procedures when diagnosing the cause of the emissions failure and performing
14 the repairs on the Bureau's 1986 Chevrolet Monte Carlo, as set forth in subparagraph 45 (b)
15 above.

16 c. **Section 3340.42:** Respondent Sids Automotive's technician, Respondent
17 Hernandez, failed to conduct the required smog tests/pre-test inspection on the Bureau's 1986
18 Chevrolet Monte Carlo in accordance with the Bureau's specifications.

19 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

21 47. Respondent Sids Automotive's smog check station license is subject to
22 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
23 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set
24 forth in paragraph 43 above.

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TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

48. Respondent Hernandez’s technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to perform the emission control tests/pre-test inspection on the Bureau’s 1986 Chevrolet Monte Carlo in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made a false entry on the VIR dated May 10, 2007, as set forth in subparagraph 40 (c) above.

TWENTY-THIRD CAUSE FOR DISCIPLINE

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

49. Respondent Hernandez’s technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

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

b. **3340.41, subdivision (c):** Respondent knowingly entered into the emissions inspection system false information about the Bureau’s 1986 Chevrolet Monte Carlo.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau’s 1986 Chevrolet Monte Carlo in accordance with the Bureau’s specifications.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

50. Respondent Shihab’s technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44016 of that Code by failing to perform the repairs on the Bureau’s 1986

1 Chevrolet Monte Carlo in accordance with established specifications and procedures, as follows:
2 Respondent failed to properly diagnose and repair the cause of the emissions failure on the
3 vehicle. Respondent determined that the carburetor needed to be rebuilt and that the TPS needed
4 to be replaced when, in fact, the carburetor was in good functional condition and properly
5 adjusted and the TPS was new, was properly adjusted, and was not in need of replacement.
6 Further, Respondent unnecessarily rebuilt the carburetor and replaced the TPS, and failed to
7 properly adjust the TPS in that the TPS idle voltage was 0.98 volts out of specifications.

8 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

11 51. Respondent Shihab's technician license subject to disciplinary action
12 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
13 comply with California Code of Regulations, title 16, section 3340.41, subdivision (c), as
14 follows: Respondent failed to perform the repairs on the Bureau's 1986 Chevrolet Monte Carlo
15 in accordance with established specifications and procedures, as set forth in paragraph 50 above.

16 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

18 52. Respondent Shihab's technician license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
20 dishonest, fraudulent or deceitful act whereby another is injured, as set forth in paragraph 43
21 above.

22 **UNDERCOVER OPERATION #3: 2000 MAZDA PROTEGE**

23 53. On June 6, 2007, an undercover operator with the Bureau, using the alias
24 "Valerie Richards" (hereinafter "operator"), took the Bureau's 2000 Mazda Protege to
25 Respondent Sids Automotive's smog check facility. The voltage supply wire to the mass air flow
26 ("MAF") sensor on the Bureau-documented vehicle had been broken, causing the MIL to
27 illuminate on the dashboard, triggering a diagnostic trouble code of P0102, and causing excessive
28 tailpipe emissions. The operator met with Shihab and requested a smog inspection on the

1 vehicle. Shihab had the operator sign a work order, but did not give her a copy. Shihab told the
2 operator that he wanted to perform a pre-test inspection on the vehicle because the "check
3 engine" light was on and as such, the vehicle would not pass the inspection. The operator
4 authorized the pre-test inspection.

5 54. At approximately 1020 hours, Shihab told the operator that he had found
6 some cut wires, which his mechanic was in the process of repairing, and that he would be testing
7 the vehicle. At approximately 1040 hours, the operator walked over to the vehicle and spoke
8 with Hernandez, who was inside the vehicle. Hernandez told the operator that some of the
9 vehicle's monitors were not ready and that he would have to take the vehicle for a 10-mile test
10 drive. Hernandez asked the operator to accompany him on the test drive so that she could see
11 that the vehicle was fixed. During the test drive, Hernandez told the operator that the vehicle
12 appeared to be repaired and that the check engine light had not come back on. Hernandez stated
13 that the vehicle would pass an inspection with no problem.

14 55. At approximately 1100 hours, Hernandez and the operator returned to the
15 facility. Hernandez asked the operator to return to the waiting area while he performed another
16 smog inspection. At approximately 1110 hours, Hernandez walked into the waiting area and
17 gave the operator a "thumbs up" sign. The operator asked Shihab for the total cost of the repairs.
18 Shihab stated that the vehicle was not ready. The operator told Shihab that Hernandez indicated
19 to her that the vehicle had passed the inspection. Shihab stated that he needed to perform other
20 diagnostic tests on the vehicle before it would pass a smog inspection, that the operator would
21 have to leave the vehicle at the facility, and that the total cost of the repairs would be about \$200.

22 56. On June 7, 2007, the operator returned to the facility. Shihab showed the
23 operator a document titled "Scheduled Services", which contained a list of automotive repairs or
24 services. Shihab told the operator that the vehicle needed the additional repairs printed on this
25 list and that the repairs would cost about \$300. The operator paid Shihab \$187.50 for the smog
26 inspection and repairs and received copies of Invoice # 19669, a VIR dated June 6, 2007, and the
27 Scheduled Services.

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1 57. Later that same day, Bureau Representative Hamlet Shamirian inspected
2 the vehicle and found that the broken wire to the MAF sensor had been repaired.

3 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 58. Respondent Sids Automotive's registration is subject to disciplinary action
6 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
7 authorized statements which it knew or in the exercise of reasonable care should have known to
8 be untrue or misleading, as follows: Respondent Sids Automotive's partner/technician,
9 Respondent Shihab, represented to the operator that the Bureau's 2000 Mazda Protege needed
10 \$300 in additional repairs listed on the Scheduled Services, including the inspection of the A/C
11 (air conditioning) compressor and refrigerant, ball joints (front), brake discs/rotors, brake
12 drums/shoes, brake line/hose connections, chassis and body nuts and bolts, cooling system, drive
13 belts, driveshaft/propeller shaft dust boots, exhaust system and heat shields, fuel hoses, fuel lines,
14 idle speed, steering linkage and steering operation, and timing belt; the lubrication of the door
15 hinges and locks; the replacement of the air cleaner/element, engine oil, engine oil filter, and
16 spark plugs; and rotation of the tires. In fact, the only repair needed on the vehicle was the repair
17 of the broken wire to the MAF sensor.

18 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

19 **(Failure to Record Odometer Reading)**

20 59. Respondent Sids Automotive's registration is subject to disciplinary action
21 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(2), in that Respondent's partner/
22 technician, Respondent Shihab, caused or allowed the operator to sign the work order which did
23 not state the odometer reading of the Bureau's 2000 Mazda Protege at the time of repair.

24 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

25 **(Failure to Provide Copy of Signed Document)**

26 60. Respondent Sids Automotive's registration is subject to disciplinary action
27 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent's partner/
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1 technician, Respondent Shihab, failed to give the operator a copy of the work order as soon as
2 she signed the document.

3 **THIRTIETH CAUSE FOR DISCIPLINE**

4 **(Violations of the Bus. & Prof. Code)**

5 61. Respondent Sids Automotive's registration is subject to disciplinary action
6 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
7 comply with provisions of that Code, as follows:

8 a. **Section 9884.8:** Respondent Sids Automotive failed to record on Invoice
9 # 19669 all service work performed on the Bureau's 2000 Mazda Protege in that Respondent
10 failed to state that the broken wire to the MAF sensor had been repaired.

11 b. **Section 9884.9, subdivision (a):** Respondent Sids Automotive's partner/
12 technician, Respondent Shihab, failed to provide the operator with written estimates for parts
13 and/or labor necessary for a specific job prior to performing the smog inspection, diagnosis, and
14 repairs on the Bureau's 2000 Mazda Protege.

15 **STATION VISIT**

16 62. On August 8, 2007, Bureau Representative Raymond Gottenbos
17 ("Gottenbos") visited Respondent Sids Automotive's facility and met with Respondents Shihab
18 and Hernandez to discuss various consumer complaints that had been filed against the facility.
19 Gottenbos performed an invoice review of emission-related repairs, including the repairs
20 performed on the three vehicles involved in the undercover operations detailed above. Shihab
21 could only locate the estimate, invoice, and VIR pertaining to the 2000 Mazda Protege.

22 63. On August 10, 2007, Gottenbos returned to the facility to determine
23 whether the invoices pertaining to the two other undercover vehicles had been located. Shahib
24 stated that he had some of the invoices and VIR's for the 1993 Mazda Protege, but could not find
25 the original documents for the 1986 Chevrolet Monte Carlo. Shihab was able to provide
26 Gottenbos with re-printed copies of the final invoices for both vehicles. Gottenbos questioned
27 Shihab regarding the repairs performed on the 1993 Mazda Protege. Shihab told Gottenbos that
28 he had tested the temperature sensor and oxygen sensor and that both were defective, and that he

1 performed three different tests on the catalytic converter and that the part failed each of these
2 tests. Shihab stated that a muffler shop down the street had replaced the catalytic converter, but
3 was unable to provide Gottenbos with a parts receipt for the catalytic converter. Gottenbos also
4 questioned Shihab regarding the repairs performed on the 1986 Chevrolet Monte Carlo. Shihab
5 stated, among other things, that the carburetor had internal leakage and was leaking around the
6 gaskets, that the TPS was defective, and that all of the repairs were necessary on the vehicle.

7 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 64. Respondent Sids Automotive's registration is subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
11 authorized statements which it knew or in the exercise of reasonable care should have known to
12 be untrue or misleading, as follows:

13 a. Respondent Sids Automotive's partner/technician, Respondent Shihab,
14 represented to Gottenbos that he had tested the temperature sensor (water thermosensor) and
15 oxygen sensor on the Bureau's 1993 Mazda Protege and that both were defective. In fact, the
16 water thermosensor and oxygen sensor were functioning properly and not defective.

17 b. Respondent Sids Automotive's partner/technician, Respondent Shihab,
18 represented to Gottenbos that he performed three different tests on the catalytic converter on the
19 Bureau's 1993 Mazda Protege, that the part failed each of these tests, and that the muffler shop
20 down the street had replaced the catalytic converter. In fact, the catalytic converter was
21 functioning properly, was not in need of replacement, and was not replaced on the vehicle as
22 invoiced.

23 c. Respondent Sids Automotive's partner/technician, Respondent Shihab,
24 represented to Gottenbos that the carburetor on the Bureau's 1986 Chevrolet Monte Carlo had
25 internal leakage and was leaking around the gaskets. In fact, the carburetor was in good
26 functional condition and properly adjusted at the time the vehicle was taken to Respondent Sids
27 Automotive's facility.

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1 d. Respondent Sids Automotive's partner/technician, Respondent Shihab,
2 represented to Gottenbos that the TPS on the Bureau's 1986 Chevrolet Monte Carlo was
3 defective, when, in fact, the TPS was new, was properly adjusted, and was not in need of
4 replacement at the time the vehicle was taken to Respondent Sids Automotive's facility.

5 **MATTERS IN AGGRAVATION**

6 65. To determine the degree of discipline, if any, to be imposed on
7 Respondent Sids Automotive, Complainant alleges as follows: On April 25, 2003, pursuant to
8 the Stipulated Settlement and Disciplinary Order adopted as the Decision of the Director in the
9 disciplinary proceeding titled *In the Matter of the Accusation Against: Sids Automotive*, Case No.
10 79/03-18, the Director revoked Respondent's Automotive Repair Dealer Registration Number
11 AB 203664 (now ARD 203664) and Smog Check Station License Number RB 203664 (now RC
12 203664) effective June 3, 2003. The revocations were stayed and Respondent was placed on
13 probation for 18 months subject to certain terms and conditions. Pursuant to the Stipulation,
14 Respondent admitted violating Bus. & Prof. Code sections 9884.7, subdivision (a)(1) (untrue or
15 misleading statements), and 9884.7, and subdivision (a)(4) (fraudulent acts); and Health & Saf.
16 Code sections 44072.2, subdivision (a) (failure to comply with Health & Saf. Code sections
17 44012, 44014, subdivision (a), 44015, and 44059), 44072.2, subdivision (c) (failure to comply
18 with California Code of Regulations, title 16, sections 3340.35, subdivision (c), 3340.41,
19 subdivision (b), and 3340.42), and 44072.2, subdivision (d) (dishonesty, fraud, or deceit).

20 **OTHER MATTERS**

21 66. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
22 Director may invalidate temporarily or permanently, the registrations for all places of business
23 operated in this state by Respondent Sids Automotive upon a finding that said Respondent has, or
24 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
25 an automotive repair dealer.

26 67. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station
27 License Number RC 203664, issued to Sids Automotive, is revoked or suspended, any additional

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8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Ramiro Hernandez;

9. Ordering Respondents Sids Automotive, Samaan Naser Shihab, and Ramiro Hernandez to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 03-10-08



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

Complainant