

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

In the Matter of the Statement of Issues Against:

**ABDI HUSSEIN FUGFUGOSH D.B.A.  
SUNNY'S 76**

100 MacArthur Boulevard  
Oakland, CA 94610

Case No. 79/14-62S

Respondent.

**DECISION**

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

This Decision shall become effective

April 7, 2014

DATED: \_\_\_\_\_

MAR 18 2014

  
\_\_\_\_\_  
DONALD CHANG

Assistant Chief Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSHUA A. ROOM  
Supervising Deputy Attorney General  
3 BRETT A. KINGSBURY  
Deputy Attorney General  
4 State Bar No. 243744  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1192  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
Against:

12 **ABDI HUSSEIN FUGFUGOSH D.B.A.**  
13 **SUNNY'S 76**  
14 **100 MacArthur Boulevard**  
**Oakland, CA 94610**

15 Respondent.

Case No. 79/14-62s

16 **STIPULATED SETTLEMENT AND**  
17 **DISCIPLINARY ORDER**

18 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
19 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of  
20 Automotive Repair, the parties hereby agree to the following Stipulated Settlement and  
21 Disciplinary Order, which will be submitted to the Director for the Director's approval and  
22 adoption as the final disposition of the Statement of Issues.

23 **PARTIES**

24 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He  
25 brought this action solely in his official capacity and is represented in this matter by Kamala D.  
26 Harris, Attorney General of the State of California, by Brett A. Kingsbury, Deputy Attorney  
27 General.

2. Respondent Abdi Hussein Fugfugosh d.b.a. Sunny's 76, 100 MacArthur Boulevard, Oakland, California, 94610 ("Respondent") is representing itself in this proceeding and has chosen not to exercise its right to be represented by counsel.

3. On or about July 8, 2013, Respondent filed an application dated July 1, 2013, with the Director of Consumer Affairs to obtain an automotive repair dealer registration. The Bureau denied the application on August 14, 2013. On or about August 22, 2013, Respondent appealed the Bureau's decision.

4. On or about July 8, 2013, the Bureau of Automotive Repair received an application for a smog check station license from Respondent. The Bureau denied the application on August 14, 2013. On or about August 22, 2013, Respondent appealed the Bureau's decision.

## JURISDICTION

5. Statement of Issues No. 79/14-62s was filed before the Director of Consumer Affairs ("Director"), for the Bureau of Automotive Repair ("Bureau"), and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on December 2, 2013.

6. A copy of Statement of Issues No. 79/14-62s is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

7. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 79/14-62s. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

3                                   CULPABILITY

4       10.   Respondent understands and agrees that the charges and allegations in Statement of  
5 Issues No. 79/14-62s, if proven at a hearing, constitute cause for denying its applications for an  
6 automotive repair dealer registration and smog check station license.

7       11.   For the purpose of resolving the Statement of Issues without the expense and  
8 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could  
9 establish a factual basis for the charges in the Statement of Issues, and that Respondent hereby  
10 gives up its right to contest those charges.

11       12.   Respondent agrees its applications are subject to denial and they agrees to be bound  
12 by the Director's probationary terms as set forth in the Disciplinary Order below.

13                                   CONTINGENCY

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

24       14.   The parties understand and agree that Portable Document Format (PDF) and facsimile  
25 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
26 signatures thereto, shall have the same force and effect as the originals.

27       15.   This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
4 writing executed by an authorized representative of each of the parties.

5 16. In consideration of the foregoing admissions and stipulations, the parties agree that  
6 the Director may, without further notice or formal proceeding, issue and enter the following  
7 Disciplinary Order:

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that an automotive repair dealer registration will be issued to  
10 Respondent Abdi Hussein Fugfugosh d.b.a. Sunny's 76, 100 MacArthur Blvd., Oakland,  
11 California, 94610, and immediately revoked. Furthermore, a smog check station license will be  
12 issued to Respondent and immediately revoked. The revocations will be stayed and the  
13 Respondent placed on one (1) year probation on the following terms and conditions.

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

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

20 3. **Report Financial Interest.** Within 30 days of the effective date of this action,  
21 Respondent shall report any financial interest which any partners, officers, or owners of the  
22 Respondent facility may have in any other business required to be registered pursuant to Section  
23 9884.6 of the Business and Professions Code.

24 4. **Random Inspections.** Respondent shall provide Bureau representatives unrestricted  
25 access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of  
26 completion.

27 5. **Jurisdiction.** If an accusation is filed against Respondent during the term of  
28 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter

1 until the final decision on the accusation, and the period of probation shall be extended until such  
2 decision.

3 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that  
4 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
5 after giving notice and opportunity to be heard, temporarily or permanently invalidate the  
6 automotive repair dealer registration and/or suspend or revoke the smog check station license.


7 7. **False and Misleading Advertising.** If the accusation involves false and misleading  
8 advertising, during the period of probation, Respondent shall submit any proposed advertising  
9 copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

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

15 ACCEPTANCE

16 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
17 stipulation and the effect it will have on my automotive repair dealer registration and smog check  
18 station license. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,  
19 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of  
20 Consumer Affairs.

21  
22 DATED: 2/10/14

  
23 ABDI HUSSEIN FUGUFUOSH D.B.A. SUNNY'S 76,  
24 100 MACARTHUR BLVD., OAKLAND,  
25 CALIFORNIA, 94610  
26 Respondent  
27  
28

///

///

///

ENDORSEMENT


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

Dated:

3/3/14

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JOSHUA A. ROOM  
Supervising Deputy Attorney General



BRETT A. KINGSBURY  
Deputy Attorney General  
*Attorneys for Complainant*

SF2013406107  
40858087.doc

**Exhibit A**

**Statement of Issues No. 79/14-62s**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSHUA A. ROOM  
Supervising Deputy Attorney General  
3 BRETT A. KINGSBURY  
Deputy Attorney General  
4 State Bar No. 243744  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1192  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

13 **ABDI HUSSEIN FUGFUGOSH D.B.A.**  
14 **SUNNY'S 76**  
100 MacArthur Boulevard  
Oakland, CA 94610

15 Respondent.

Case No. 79/14-625

16 **STATEMENT OF ISSUES**

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Patrick Dorais (Complainant) brings this Statement of Issues solely in his official  
21 capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.  
22 2. On or about July 8, 2013, the Bureau of Automotive Repair received an application  
23 for an automotive repair dealer registration from Abdi Hussein Fugfugosh d.b.a. Sunny's 76, 100  
24 MacArthur Boulevard, Oakland, California, 94610 (Respondent). On or about July 1, 2013, Abdi  
25 Hussein Fugfugosh certified under penalty of perjury to the truthfulness of all statements,  
26 answers, and representations in the application. The Bureau denied the application on August 14,  
27 2013.

1           3.     On or about July 8, 2013, the Bureau of Automotive Repair received an application  
2 for a smog check station license from Respondent. On a date uncertain prior to July 8, 2013,  
3 Abdi Hussein Fugfugosh certified under penalty of perjury to the truthfulness of all statements,  
4 answers, and representations in the application. The Bureau denied the application on August 14,  
5 2013.

6                               **JURISDICTIONAL & STATUTORY PROVISIONS**

7           4.     This Statement of Issues is brought before the Director of Consumer Affairs  
8 (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

9           5.     Section 477 of the Business and Professions Code provides, in pertinent part, that  
10 "Board" includes "bureau," "commission," "committee," "department," "division," "examining  
11 committee," "program," and "agency." "License" includes "certificate," "registration" or other  
12 means to engage in a business or profession regulated by the code.

13          6.     Section 480 of the Business and Professions Code states:

14           "(a) A board may deny a license regulated by this code on the grounds that the applicant has  
15 one of the following:

16           "....

17           "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
18 benefit himself or herself or another, or substantially injure another.

19           "(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
20 would be grounds for suspension or revocation of license.

21           "....

22           "(c) A board may deny a license regulated by this code on the ground that the applicant  
23 knowingly made a false statement of fact required to be revealed in the application for the  
24 license."

25          7.     Section 9884.7 of the Business and Professions Code states:

26           "(a) The director, where the automotive repair dealer cannot show there was a bona fide  
27 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair  
28 dealer for any of the following acts or omissions related to the conduct of the business of the

1 automotive repair dealer, which are done by the automotive repair dealer or any automotive  
2 technician, employee, partner, officer, or member of the automotive repair dealer.

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

6 "....

7 "(4) Any other conduct that constitutes fraud.

8 "...."

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

12 9. Section 44072 of the Health and Safety Code provides, in pertinent part, that the  
13 director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1.

14 10. Section 44072.1 of the Health and Safety Code states:

15 "The director may deny a license if the applicant, or any partner, officer, or director thereof,  
16 does any of the following:

17 "....

18 "(c) Has committed any act which, if committed by any licensee, would be grounds for the  
19 suspension or revocation of a license issued pursuant to this chapter.

20 "...."

21 11. Section 44072.2(e) of the Health and Safety Code provides that the director may take  
22 disciplinary action against a license if the licensee, or any partner, officer, or director thereof, has  
23 misrepresented a material fact in obtaining a license.

24 12. Section 118(a) of the Business and Professions Code states:

25 "The withdrawal of an application for a license after it has been filed with a board in the  
26 department shall not, unless the board has consented in writing to such withdrawal, deprive the  
27 board of its authority to institute or continue a proceeding against the applicant for the denial of  
28

1 the license upon any ground provided by law or to enter an order denying the license upon any  
2 such ground."

### 3 BACKGROUND

4 13. Question number 8(b) of the automotive repair dealer registration application asked:  
5 "Has any person listed in number 7 ever been an Owner, Partner, Corporate Officer,  
6 Member, Director, Trustee or Responsible Managing Employee of a Sole Proprietorship,  
7 Partnership, Corporation, Limited Liability Company or Limited Partnership that had an  
8 automotive repair dealer registration, smog check station license, lamp and/or brake station  
9 license, gold shield certification issued by the Bureau of Automotive Repair (BAR) denied,  
10 suspended, revoked, placed on probation or been issued a citation?" Respondent answered by  
11 checking the box for "NO."

12 14. Abdi Hussein Fugfugosh was listed in number 7 of the automotive repair dealer  
13 registration application.

14 15. Question number 9(d) of the smog check station license application asked:

15 "Has any person listed in number 8 been an Owner, Partner, Corporate Officer, Member,  
16 Director, Trustee or Responsible Managing Employee of a Sole Proprietorship, Partnership,  
17 Corporation, Limited Liability Company or Limited Partnership that had an Automotive Repair  
18 Dealer registration, Smog Check Station license, Lamp and/or Brake Station license, Gold Shield  
19 certification, current Smog Check Technician or Lamp and/or Brake Adjuster license issued by  
20 the Bureau of Automotive Repair denied, suspended, revoked, placed on probation or been issued  
21 a citation?" Respondent answered by checking the box for "NO."

22 16. Abdi Hussein Fugfugosh was listed in number 8 of the smog check station license  
23 application.

24 17. Abdi Hussein Fugfugosh d.b.a. Sunny's 76, 18950 Lake Chabot Road, Castro Valley,  
25 California, 94546, ARD257893/ TC257893, was issued Citation # C2012-0396 on November 2,  
26 2011. The citation was paid on January 3, 2012.

27 ///

28 ///

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Dishonesty)**

3 18. Respondent's application for an automotive repair dealer registration is subject to  
4 denial under section 480(a)(2) of the Business and Professions Code in that Respondent did an act  
5 involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or  
6 another, or to substantially injure another. The circumstances are described above in Background.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Basis for Discipline if Licensed)**

9 19. Respondent's application for an automotive repair dealer registration is subject to  
10 denial under sections 480(a)(3)(A), 9884.7(a)(1), and 9884.7(a)(4) of the Business and  
11 Professions Code in that Respondent did an act that if done by a licentiate of the business or  
12 profession in question, would be grounds for suspension or revocation of license. Specifically, as  
13 more fully discussed in Background, Respondent:

- 14 1. Made or authorized a written statement which was untrue or misleading, and which  
15 was known, or which by the exercise of reasonable care should have been known, to be  
16 untrue or misleading; and/or  
17 2. Engaged in conduct that constitutes fraud.

18 **THIRD CAUSE FOR DENIAL OF APPLICATION**

19 **(False Statement on Application)**

20 20. Respondent's application for an automotive repair dealer registration is subject to  
21 denial under section 480(c) of the Business and Professions Code in that Respondent knowingly  
22 made a false statement of fact required to be revealed in the application for the license. The  
23 circumstances are described above in Background.

24 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

25 **(Dishonesty)**

26 21. Respondent's application for a smog check station license is subject to denial under  
27 section 480(a)(2) of the Business and Professions Code and section 44002 of the Health and  
28 Safety Code in that Respondent did an act involving dishonesty, fraud, or deceit with the intent to

1 substantially benefit himself or herself or another, or substantially injure another. The  
2 circumstances are described above in Background.

3 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Basis for Discipline if Licensed)**

5 22. Respondent's application for a smog check station license is subject to denial under  
6 sections 44072.1(c) and 44072.2(e) of the Health and Safety Code in that Respondent committed  
7 an act that, if committed by any licensee, would be grounds for the suspension or revocation of a  
8 license. Specifically, as discussed more fully in Background, Respondent misrepresented a  
9 material fact in seeking to obtain a license.

10 **SIXTH CAUSE FOR DENIAL OF APPLICATION**


11 **(False Statement on Application)**

12 23. Respondent's application for a smog check station license is subject to denial under  
13 section 480(c) of the Business and Professions Code and section 44002 of the Health and Safety  
14 Code in that Respondent knowingly made a false statement of fact required to be revealed in the  
15 application for the license.

16 **PRAYER**

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

- 19 1. Denying the application of Abdi Hussein Fugfugosh d.b.a. Sunny's 76, 100  
20 MacArthur Boulevard, Oakland, California, 94610, for an automotive repair dealer registration;  
21 2. Denying the application of Abdi Hussein Fugfugosh d.b.a. Sunny's 76, 100  
22 MacArthur Boulevard, Oakland, California, 94610, for a smog check station license;  
23 3. Taking such other and further action as is deemed necessary and proper.

24 DATED: November 25, 2013 

25 PATRICK DORAIS  
26 Chief  
27 Bureau of Automotive Repair  
28 Department of Consumer Affairs  
State of California  
Complainant

SF2013406107/ 40814616.doc