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

In the Matter of the Accusation Against**:** **MORTEZA GHAREBAGHI – PRESIDENT/SECRETARY/TREASURER MOSTAFA GHAREBAGHI, INC dba 5 POINTS SMOG** **1369 Saviers Rd.** **Oxnard, CA 93033** **Automotive Repair Dealer Registration No. ARD 285810** **Smog Check, Test Only, Station License No. TC 285810** Respondent.	Case No. 79/21-16673 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about January 19, 2017, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 285810 to Morteza Gharebaghi – President/ Secretary/

Treasurer of Mostafa Gharebaghi, Inc. dba 5 Points Smog (Respondent Morteza). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2023, unless renewed.

3. On or about January 27, 2017, the Bureau of Automotive Repair issued Smog Check, Test Only, Station License Number TC 285810 to Morteza Gharebaghi – President/ Secretary/ Treasurer of Mostafa Gharebaghi, Inc. dba 5 Points Smog (Respondent Morteza). The Smog Check, Test Only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2023, unless renewed.

4. On or about February 17, 2017, the Bureau of Automotive Repair issued STAR Station Certification to 5 Points Smog. The STAR Station Certification will remain active unless the aforementioned ARD registration and/or Smog Check Station license is revoked, canceled, licenses become delinquent or certification is invalidated.

JURISDICTION

5. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

6. Code section 118, subdivision (b) states:

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

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

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

STATUTORY PROVISIONS

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

10. Section 9884.7 of the Code states:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
>
> (2) Causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.
>
> (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
>
> (4) Any other conduct which constitutes fraud.
>
> (5) Conduct constituting gross negligence.
>
> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
>
> (7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.
>
> (8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of automobiles.
>
> (9) Having repair work done by someone other than the dealer or his or her

employees without the knowledge or consent of the customer unless the dealer can demonstrate that the customer could not reasonably have been notified.

(10) Conviction of a violation of Section 551 of the Penal Code.

Upon denying of registration, the director shall notify the applicant thereof, in writing, by personal service or mail addressed to the address of the applicant set forth in the application, and the applicant shall be given a hearing under Section 9884.12 if, within 30 days thereafter, he or she files with the bureau a written request for hearing, otherwise the denial is deemed affirmed.

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

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

11. Section 9884.8 of the Code states:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

12. Section 9884.9 of the Code states:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the

following:

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

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

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

_____

(signature or initials)

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

(b) The automotive repair dealer shall include with the written estimated price a statement of any automotive repair service that, if required to be done, will be done by someone other than the dealer or his or her employees. No service shall be done by other than the dealer or his or her employees without the consent of the customer, unless the customer cannot reasonably be notified. The dealer shall be responsible, in any case, for any service in the same manner as if the dealer or his or her employees had done the service.

(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto body or collision repairs, shall provide an itemized written estimate for all parts and labor to the customer. The estimate shall describe labor and parts separately and shall identify each part, indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part shall be identified on the written estimate and the written estimate shall indicate whether the crash part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer aftermarket crash part.

(d) A customer may designate another person to authorize work or parts supplied in excess of the estimated price, if the designation is made in writing at the time that the initial authorization to proceed is signed by the customer. The bureau may specify in regulation the form and content of a designation and the procedures to be followed by the automotive repair dealer in recording the designation. For the purposes of this section, a designee shall not be the automotive repair dealer providing repair services or an insurer involved in a claim that includes the motor vehicle being repaired, or an employee or agent or a person acting on behalf of the dealer or insurer.

13. Section 44012 of the Health and Safety Code states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions

(a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

14. Section 44015 of the Health and Safety Code states:

(a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 44014.5.

(3) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c)(1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity authorized to perform referee functions for a vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years" duration. No repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost limit specified in Section 44017.

(2) An economic hardship extension shall be issued, upon request of a qualified low-income motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-income vehicle owner would suffer an economic hardship if the extension is not issued, and that all appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section 44017.1 have been performed.

(d) No repair cost waiver or economic hardship extension shall be issued under any of the following circumstances:

(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that owner. However, a repair cost waiver or economic hardship extension may be issued for a motor vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as determined by the department. For waivers or extensions issued in the program operative on or after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per owner.

(2) Upon initial registration of all of the following:

(A) A direct import motor vehicle.

(B) A motor vehicle previously registered outside this state.

(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

(D) A motor vehicle that has had an engine change.

(E) An alternate fuel vehicle.

(F) A specially constructed vehicle.

(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance shall be valid for 90 days.

(f) Except as provided in Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle dealer shall be responsible for having a smog check inspection performed on, and a certificate of compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle is sold and registered to a retail buyer, whichever occurs first.

(g) A test may be made at any time within 90 days prior to the date otherwise required.

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

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

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

(b) Is convicted of any crime substantially related to the qualifications, functions, and duties of the licenseholder in question.

(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.

(e) Has misrepresented a material fact in obtaining a license.

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection.

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

REGULATORY PROVISIONS

16. California Code of Regulations, title 16, section 3340.35, states:

(a) A licensed station shall purchase certificates of compliance and noncompliance from the bureau or an authorized agent of the bureau only, and under the following terms and conditions:

(1) A certificate of compliance or noncompliance shall be purchased by a licensed station for a fee determined pursuant to section 3340.35.1 of these regulations; and

(2) Full payment is required at the time the certificates are ordered.

(b) A licensed station shall not sell or otherwise transfer unused certificates to another licensed station, to a new owner of the business, or to any person other than a customer whose vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this article.

(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. The following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

(d) No person shall sell, issue, cause or permit to be issued any certificate purported to be a valid certificate of compliance or noncompliance unless duly licensed to do so.

(e) A repair cost waiver or an economic hardship extension shall be the same fee as a certificate of compliance or noncompliance.

17. California Code of Regulations, title 16, section 3340.42, states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle are not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in those areas of the state where the enhanced program has been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as

contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emission standards set forth in this section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or equal to the applicable emissions standards specified in Table III.

(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer. The OBD test failure criteria are specified in section 3340.42.2.

(b) In addition to subsection (a), all vehicles subject to the smog check program shall receive the following:

(1) A visual inspection of emission control components and systems to verify the vehicle's emission control systems are properly installed.

(2) A functional inspection of emission control systems as specified in the Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper operation.

(c) The bureau may require any combination of the inspection methods in sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and Safety Code section 44014.7 as a means of identifying potential operational problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

18. California Code of Regulations, title 16, section 3340.45, states:

(a) All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the following:

(1) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This manual became effective on or after January 1, 2013. This manual shall remain in effect until subparagraph (2) is implemented.

(2) Smog Check Manual, dated November 2, 2017, which is hereby incorporated by reference. This manual shall become effective on August 2, 2018.

19. California Code of Regulations, title 16, section 3353, states:

No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:

(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written estimated price for labor and parts for a specific job.

(b) Estimate for Auto Body or Collision Repairs. Every dealer, when doing auto body or collision repairs, shall give to each customer a written estimated price for parts and labor for a specific job. Parts and labor shall be described separately and each part shall be identified, indicating whether the replacement part is new, used, rebuilt or reconditioned. The estimate shall also describe replacement crash parts as original equipment manufacturer (OEM) crash parts or non-OEM aftermarket crash parts.

(c) Additional Authorization. The dealer shall obtain the customer=s authorization before any additional work not estimated is done or parts not estimated are supplied. This authorization shall be in written, oral, or electronic form, and shall describe additional repairs, parts, labor and the total additional cost.

(d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For purposes of this article, to Atear down@ shall mean to disassemble, and Ateardown@ shall mean the act of disassembly. If it is necessary to tear down a vehicle component in order to prepare a written estimated price for required repair, the dealer shall first give the customer a written estimated price for the teardown. This price shall include the cost of reassembly of the component. The estimated price shall also include the cost of parts and necessary labor to replace items such as gaskets, seals and O rings that are normally destroyed by teardown of the component. If the act of teardown might prevent the restoration of the component to its former condition, the dealer shall write that information on the work order containing the teardown estimate before the work order is signed by the customer.

The repair dealer shall notify the customer orally and conspicuously in writing on the teardown estimate the maximum time it will take the repair dealer to reassemble the vehicle or the vehicle component in the event the customer elects not to proceed with the repair or maintenance of the vehicle and shall reassemble the vehicle within that time period if the customer elects not to proceed with the repair or maintenance. The maximum time shall be counted from the date of authorization of teardown.

After the teardown has been performed, the dealer shall prepare a written estimated price for labor and parts necessary for the required repair. All parts required for such repair shall be listed on the estimate. The dealer shall then obtain the

customer's authorization for either repair or reassembly before any further work is done.

(e) Revising an Itemized Work Order. If the customer has authorized repairs according to a work order on which parts and labor are itemized, the dealer shall not change the method of repair or parts supplied without the written, oral, electronic authorization of the customer. The authorization shall be obtained from the customer as provided in subsection (c) and Section 9884.9 of the Business and Professions Code.

(f) Unusual Circumstances; Authorization Required. When the customer is unable to deliver the motor vehicle to the dealer during business hours or if the motor vehicle is towed to the dealer without the customer during business hours, and the customer has requested the dealer to take possession of the motor vehicle for the purpose of repairing or estimating the cost of repairing the motor vehicle, the dealer shall not undertake the diagnosing or repairing of any malfunction of the motor vehicle for compensation unless such dealer has complied with all of the following conditions:

(1) The dealer has prepared a work order stating the written estimated price for labor and parts as specified in subsection (a) or (b), necessary to repair the motor vehicle; and

(2) By telephone, fax or e-mail, the customer has been given all of the information on the work order and the customer has approved the work order; and

(3) The customer has given oral, written, or electronic authorization to the dealer to make the repairs and the dealer has documented the authorization as provided in subsection (c) and Section 9884.9 of the Business and Professions Code.

Any charge for parts or labor in excess of the original written estimated price must be separately authorized by the customer and documented by the dealer, as provided in Section 9884.9 of the Business and Professions Code.

20. California Code of Regulations, title 16, section 3356, states:

(a) All invoices for service and repair work performed, and parts supplied, as provided for in Section 9884.8 of the Business and Professions Code, shall comply with the following:

(1) The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau=s records. If the automotive repair dealer=s telephone number is shown, it shall comply with the requirements of subsection (b) of Section 3371 of this chapter.

(2) The invoice shall separately list, describe and identify all of the following:

(A) All service and repair work performed, including all diagnostic and warranty work, and the price for each described service and repair.

(B) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part. The description of each part shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

(C) The subtotal price for all service and repair work performed.

(D) The subtotal price for all parts supplied, not including sales tax.

(E) The applicable sales tax, if any.

(b) If a customer is to be charged for a part, that part shall be specifically listed as an item in the invoice, as provided in subparagraph (B) of paragraph (2) of subsection (a) above. If that-item is not listed in the invoice, it shall not be regarded as a part, and a separate charge may not be made for it.

(c) Separate billing in an invoice for items generically noted as shop supplies, miscellaneous parts, or the like, is prohibited.

(d) The automotive repair dealer shall give the customer a legible copy of the invoice and shall retain a legible copy as part of the automotive repair dealer=s records pursuant to Section 9884.11 of the Business and Professions Code and Section 3358 of this article.

COST RECOVERY

21. Business and Professions 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.

FACTUAL ALLEGATIONS

22. On or about December 21, 2021, a Bureau undercover operator drove a Bureau-documented 2007 Dodge Ram (2007 Dodge) to Respondent Morteza's facility 5 Points Smog, and requested a Smog Check inspection. The 2007 Dodge could not pass Smog Check inspection due to a missing catalytic converter. The operator did not sign and was not provided with an estimate. After the inspection was complete, the operator paid Respondent $49.95 and received a Vehicle Inspection Report (VIR). The VIR shows that Respondent Morteza's smog station issued an electronic Certificate of Compliance #SK871019C for the 2007 Dodge.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Automotive Repair Act)

23. Respondent Morteza is subject to disciplinary action under Code section 9884.7(a)(6) in that Respondent Morteza failed to comply with the Automotive Repair Act by issuing a Certificate of Compliance to a vehicle documented to fail a properly performed smog check inspection. Complainant hereby incorporates all the allegations contained in paragraph 22, as though set forth fully herein.

SECOND CAUSE FOR DISCIPLINE

(Improper Separate Billing)

24. Respondent Morteza is subject to disciplinary action under Code section 9884.8 in that Respondent Morteza charged a fee for electronic communication with the smog check database on the invoice issued to the operator. Complainant hereby incorporates all the allegations contained in paragraph 22, as though set forth fully herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Provide Estimate)

25. Respondent Morteza is subject to disciplinary action under Code section 9984.9(a) in that Respondent Morteza failed to provide an estimate before the smog check inspection started. Complainant hereby incorporates all the allegations contained in paragraph 22, as though set forth fully herein.

FOURTH CAUSE FOR DISCIPLINE

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

26. Respondent Morteza is subject to disciplinary action under Health and Safety Code section 44072.2, subsection (c), in that on or about December 21, 2021, regarding the 2007 Dodge, he violated the following sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent Morteza issued Certificate of Compliance Number SK871019C even though that vehicle had not been inspected in accordance with section 3340.42 of Title 16 of the California Code of Regulations.

b. **Section 3340.21**: Respondent Morteza issued a Certificate of Compliance to a vehicle documented to fail a properly performed Smog Check inspection;

c. **Section 3340.45**: Respondent Morteza failed to follow the inspection requirements and procedures prescribed in the Bureau's Smog Check Inspection Manual;

d. **Section 3353, subsection (a)**: Respondent Morteza failed to provide a customer with an estimate of parts and labor before the start of the Smog Check inspection;

e. **Section 3356, subsection (g)**: Respondent Morteza charged a fee for electronic communication with the smog check database on the invoice, where separate billing for items generally noted as shop supplied, miscellaneous parts, fees for electronic communication and the like, is prohibited.

Complainant hereby incorporates all the allegations contained in paragraph 22, as though set forth fully herein.

FIFTH CAUSE FOR DISCIPLINE

(Improper Smog Check Test Methods and Standards - 3340.42)

27. Respondent Morteza has subjected his station license discipline under Health and Safety Code section 44072.2, subsection (a), in that on or about December 21, 2021, regarding the 2007 Dodge, he violated the following sections of the California Code of Regulations, title 16, as follows:

a. **Section 44012**: Respondent Morteza issued Certificate of Compliance Number SK871019C to a vehicle documents by the Bureau to fail a properly performed Smog Check inspection.

b. **Section 4412, subsection (f)**: Respondent Morteza failed to perform emission control tests on that vehicle in accordance with the procedures prescribed by the department;

c. **Section 44015, subsection (b)**: Respondent Morteza issued electronic Certificate of Compliance Number SK871019C without properly testing and inspecting that vehicle to determine if it was in compliance with section 44012 of that Code.

Complainant hereby incorporates all the allegations contained in paragraph 22, as though set forth fully herein.

PRIOR CITATIONS

28. To determine the degree of discipline, if any, to be imposed on Respondent Morteza, Complainant alleges as follows:

a. On September 19, 2018, Citation C2018-2004 was issued to Respondent Morteza in the amount of $1,000.00, for violations of Health and Safety Code 44012, in that Respondent Morteza issued Certificate of Compliance #QI608967c to a Bureau documented vehicle with an

evaporative emissions control modification causing an LPFET failure. The Citation Service Conference was held on October 17, 2018, which was paid in full on October 26, 2018. The decision became effective on November 18, 2018. That Citation is now final.

b. On April 10, 2019, Citation C2019-978 was issued to Respondent Morteza in the amount of $2,000.00 for violations of Health and Safety Code 44012, in that Respondent Morteza issued Certificate of Compliance #IB946980C to a Bureau documented vehicle with a missing or modified positive crankcase ventilation (PCV) system. The Citation Service Conference was held on April 29, 2019. The citation was paid in full on May 31, 2019. The decision became effective on May 31, 2019. That citation is now final.

c. On August 27, 2021, Citation C2021-690 was issued to Respondent Morteza in the amount of $3,000.00, for violations of Health and Safety Code 44012. The citation was paid in full on September 20, 2021, and the decision became effective on October 12, 2021. That citation is now final.

OTHER MATTERS

29. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently, or refuse to validate, the registrations for all places of business operated in this state by Respondent Morteza upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

30. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 285810, issued to Respondent Morteza Gharebaghi – President/ Secretary/ Treasurer of Mostafa Gharebaghi, Inc. dba 5 Points Smog, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 285810, issued to Respondent Morteza Gharebaghi – President/ Secretary/ Treasurer of Mostafa Gharebaghi, Inc. dba 5 Points Smog;

2. Revoking or suspending Smog Check, Test Only, Station License Number TC 285810, issued to Respondent Morteza Gharebaghi – President/ Secretary/ Treasurer of Mostafa Gharebaghi, Inc. dba 5 Points Smog;

3. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Respondent Morteza Gharebaghi

4. Ordering Respondent Morteza Gharebaghi – President/ Secretary/ Treasurer of Mostafa Gharebaghi, Inc. dba 5 Points Smog to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: As of Digital Signature Date

Dorais, Patrick@DCA

Digitally signed by Dorais, Patrick@DCA
Date: 2022.07.12 09:33:37 -07'00'

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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