

1 ROB BONTA
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 ARTIN DEROHANIAN
Deputy Attorney General
4 State Bar No. 266131
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6561
6 Facsimile: (213) 897-2804
E-mail: Artin.DerOhanian@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

13 **MOSTAFA GHAREBAGHI, INC**
14 **DBA 5 POINTS SMOG;**
15 **MORTEZA GHAREBAGHI**
AKA MOCCEZA GHAREBAGHI–
16 **PRESIDENT/SECRETARY/TREASURER**

17 1369 Saviers Rd.
Oxnard, CA 93033

18 **Automotive Repair Dealer Registration**
No. ARD 285810
19 **Smog Check, Test Only, Station License**
No. TC 285810,

20 and

21
22 **ANDRE DOUGLAS HERNANDEZ**
120 Clark Ct.
23 Oxnard, CA 93033

24 **Smog Check Technician License**
No. EO 635942

25 Respondents.
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Case No. 79/25-19999

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

1 **PARTIES**

2 1. Patrick Dorais (Complainant) brings this Accusation and Petition to Revoke
3 Probation solely in male official capacity as the Chief of the Bureau of Automotive Repair
4 (Bureau), Department of Consumer Affairs.

5 **Respondent 5 Points Smog**

6 2. On or about January 19, 2017, the Bureau issued Automotive Repair Dealer
7 Registration Number ARD 285810 to Mostafa Gharebaghi Inc., dba 5 Points Smog, Morteza
8 Gharebaghi, Pres/Sec/Treas (Respondent 5 Points Smog). The Automotive Repair Dealer
9 Registration was in full force and effect at all times relevant to the charges brought herein and
10 will expire on January 31, 2027, unless renewed.

11 3. On or about January 30, 2017, the Bureau issued Smog Check, Test-Only, Station
12 License Number TC 285810 to Respondent 5 Points Smog. The Smog Check, Test-Only, Station
13 License was in full force and effect at all times relevant to the charges brought herein and will
14 expire on January 31, 2027, unless renewed.

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

19 **Respondent Hernandez**

20 5. On or about August 26, 2013, the Bureau issued Smog Check Inspector License
21 Number EO 635942 to Andre Douglas Hernandez (Respondent Hernandez). The Smog Check
22 Inspector License was in full force and effect at all times relevant to the charges brought herein
23 and will expire on July 31, 2027, unless renewed.

24 **DISCIPLINARY HISTORY**

25 6. In a disciplinary action titled "*In the Matter of the Accusation Against: Mostafa*
26 *Gharebaghi Inc., dba 5 Points Smog, Morteza Gharebaghi,*" Case No. 79/21-16673, OAH Case
27 No. 2022080498, the Director of the Department of Consumer Affairs issued a Decision and
28 Order effective March 23, 2023, in which Respondent's Automotive Repair Dealer Registration

No. ARD 285810 and Smog Check, Test Only, Station License No. TC 285810, were revoked. However, the revocations were stayed and Respondent's Automotive Repair Dealer Registration and Smog Check, Test Only, Station License were placed on probation for three (3) years with certain terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

JURISDICTION FOR ACCUSATION

7. This Accusation is brought before the Director for the Bureau under the authority of the following laws.

8. Section 477 of the 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.

9. Section 9884.7 of the Code provides that the Director may revoke an automotive repair dealer registration.

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

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

12. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

13. Health and Safety 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.

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(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.

17. Health and Safety Code section 44015, subdivision (b), provides:

(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.

18. Health and Safety Code section 44032 provides:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified smog check technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

19. Health and Safety Code section 44059 provides:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

20. Health and Safety Code section 44072.2 states:

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

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

...

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

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

21. Health and Safety Code section 44072.10 states:

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, clean plugging, clean glassing, clean tanking, or any other fraudulent inspection practice, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

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1 (3) Tampering with a vehicle in a manner that would cause the vehicle to
2 falsely pass or falsely fail an inspection.

3 (4) Intentional or willful violation of this chapter or any regulation, standard,
4 or procedure of the department implementing this chapter. ...

5 **REGULATORY PROVISIONS FOR ACCUSATION**

6 22. California Code of Regulations, title 16, section 3340.24, subdivision (c)
7 states:

8 The bureau may suspend or revoke the license of or pursue other legal
9 action against a licensee, if the licensee falsely or fraudulently issues or
10 obtains a certificate of compliance or a certificate of noncompliance.

11 23. California Code of Regulations, title 16, section 3340.30 states, in pertinent
12 part:

13 A licensed smog check inspector and/or repair technician shall comply
14 with the following requirements at all times while licensed:

15 (a) Inspect, test and repair vehicles, as applicable, in accordance with
16 section 44012 of the Health and Safety Code, section 44035 of the Health and
17 Safety Code, and section 3340.42 of this article. ...

18 24. California Code of Regulations, title 16, section 3340.35 provides, subdivision (c),
19 provides, in pertinent part:

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

25 25. California Code of Regulations, title 16, section 3340.41, states, in pertinent
26 part:

27 ...

28 (c) No person shall enter into the emissions inspection system any vehicle
identification information or emission control system identification data for any
vehicle other than the one being tested. Nor shall any person knowingly enter into
the emissions inspection system any false information about the vehicle being
tested. ...

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

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

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

1 (1) A loaded-mode test shall be the test method used to inspect 1976 -
2 1999 model-year vehicle, except diesel-powered, registered in the enhanced
3 program areas of the state. The loaded-mode test shall measure hydrocarbon,
4 carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as
5 contained in the bureau's specifications referenced in subsection (a) of Section
6 3340.17 of this article. The loaded-mode test shall use Acceleration
7 Simulation Mode (ASM) test equipment, including a chassis dynamometer,
8 certified by the bureau.

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

18 (2) A two-speed idle mode test shall be the test method used to inspect
19 1976 - 1999 model-year vehicles, except diesel-powered, registered in all
20 program areas of the state, except in those areas of the state where the
21 enhanced program has been implemented. The two-speed idle mode test shall
22 measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high
23 RPM and again at idle RPM, as contained in the bureau's specifications
24 referenced in subsection (a) of Section 3340.17 of this article. Exhaust
25 emissions from a vehicle subject to this inspection shall be measured and
26 compared to the emission standards set forth in this section and as shown in
27 TABLE III. A vehicle passes the two-speed idle mode test if all of its
28 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:

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

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

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

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

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

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

13 (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
14 applicable emissions standards for the vehicle included in the tables described
15 in subsection (a), as applicable. However, the provisions described in section
44017 of the Health and Safety Code may apply.

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

18 27. California Code of Regulations, title 16, section 3340.45, states, in pertinent
19 part, that all Smog Check inspections shall be performed in accordance with requirements
20 and procedures prescribed.

21 **COST RECOVERY FOR ACCUSATION**

22 28. Code section 125.3 provides, in pertinent part, that the Bureau may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement
25 of the case, with failure of the licentiate to comply subjecting the license to not being renewed or
26 reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a
27 stipulated settlement.

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1 **UPDATED SMOG CHECK PROGRAM – ON BOARD DIAGNOSTIC SYSTEM**

2 29. On or about March 9, 2015, California's Smog Check Program was updated to keep
3 pace with ever-advancing technology. The program update requires the use of an On-Board
4 Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all
5 areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles
6 and most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition
7 Device (DAD), computer, bar code scanner, and printer.

8 30. The DAD is an On-Board Diagnostic (OBD) scan tool that, when requested by the
9 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between
10 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used
11 to input technician information, the vehicle identification number, and the Department of Motor
12 Vehicle (DMV) renewal information. The vehicle identification number (VIN) that is physically
13 present on all vehicles is required to be programmed into the vehicle's On-Board Diagnostics —
14 Generation II (OBD II) on 2005 and newer vehicles, and on many occasions was programmed
15 into the OBD II computer in earlier model-years. The electronically programmed VIN is referred
16 to as the “eVIN”, is captured by the Bureau during a smog check inspection and should match the
17 physical VIN on the vehicle. The printer is used to provide a vehicle inspection report, which
18 shows the inspection results and the Smog Check Certificate of Compliance Number for passing
19 vehicles. Data retrieved and recorded during an OIS smog check includes the eVIN, the
20 communication protocol¹, and the number of Parameter Identifications (PID)².

21 **REVIEW OF OIS TEST DATA**

22 31. Bureau Representative H.B. reviewed BAR-OIS test data pertaining to smog
23 inspections conducted at 5 Points Smog. H.B. found that Respondent had performed smog check

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26 ¹ The OBD II communication protocol describes the specified communication “language” used by
27 the OBD II computer to communication to scan tools and other devices such as the BAR-OIS. The
28 communication protocol is programmed into the vehicle's on-board computer during manufacture and does
not change.

² PIDs are data points reported by the vehicle's on-board computer to a scan tool or BAR-OIS,
such as engine speed, vehicle speed, engine temperature, etc. The PID count is the number of data points.

inspections on ten (10) vehicles identified below using a method known as "clean plugging,"³ resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Vehicle 1 – 2006 BMW 650

32. BAR-OIS data showed that on January 11, 2024, Respondents performed a smog check inspection on a 2006 BMW 650 (Vehicle 1), resulting in the issuance of Certificate of Compliance No. TQ721874C, under the license of Smog Check Inspector Respondent Hernandez. The OIS test detail showed that the eVIN recorded during the inspection did not match the physical VIN on Vehicle 1. The PID count recorded during the inspection on Vehicle 1 was not consistent with the PID count for the make and model of this vehicle by other smog check stations.

33. H.B. utilized the Bureau's database and found that Vehicle 1 had been previously tested by an unrelated smog check facility on December 14, 2023. The BAR-OIS test data from that inspection showed the eVIN had been transmitted as expected, and the communication protocol and PID count had been consistent with the make and model of Vehicle 1.

34. H.B. utilized the Bureau's database and found that the eVIN transmitted during the inspection of Vehicle 1 on January 11, 2024, matched a 2004 Mini Cooper. The communication protocol and PID count transmitted to the Bureau's database during the inspection of Vehicle 1 were consistent with the communication protocol and PID count for the 2004 Mini Cooper. H.B. concluded that Respondent used the 2004 Mini Cooper's properly functioning OBD II system during the smog inspection of Vehicle 1, resulting in the issuance of a fraudulent smog certificate of compliance for Vehicle 1.

Vehicle 2 – 2006 Mercedes-Benz C 230

35. BAR-OIS data showed that on January 22, 2024, Respondents performed a smog check inspection on a 2006 Mercedes-Benz C 230 (Vehicle 2), resulting in the issuance of Certificate of Compliance No. TS033706C, under the license of Smog Check Inspector Respondent Hernandez. The OIS test detail showed that the eVIN recorded during the inspection

³ Clean plugging is the use of a vehicle's properly functioning OBD II system, or another source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog certificate of compliance to another vehicle.

1 did not match the physical VIN on Vehicle 2. The PID count recorded during the inspection on
2 Vehicle 2 was not consistent with the PID count for the make and model of this vehicle by other
3 smog check stations.

4 36. H.B. utilized the Bureau's database and found that Vehicle 2 had been previously
5 tested by an unrelated smog check facility on April 14, 2023. The BAR-OIS test data from that
6 inspection showed the eVIN had been transmitted as expected, and the communication protocol
7 and PID count had been consistent with the make and model of Vehicle 2.

8 37. H.B. utilized the Bureau's database and found that the eVIN transmitted during the
9 inspection of Vehicle 2 on January 22, 2024, matched the same 2004 Mini Cooper identified
10 during the inspection of Vehicle 1. The communication protocol and PID count transmitted to the
11 Bureau's database during the inspection of Vehicle 2 were consistent with the communication
12 protocol and PID count for the 2004 Mini Cooper. H.B. concluded that Respondent used the 2004
13 Mini Cooper's properly functioning OBD II system during the smog inspection of Vehicle 2,
14 resulting in the issuance of a fraudulent smog certificate of compliance for Vehicle 2.

15 **Vehicle 3 – 2010 Kia Forte EX**

16 38. BAR-OIS data showed that on February 19, 2024, Respondents performed a smog
17 check inspection on a 2010 Kia Forte EX (Vehicle 3), resulting in the issuance of Certificate of
18 Compliance No. TS444087C, under the license of Smog Check Inspector Respondent Hernandez.
19 The OIS test detail showed that the eVIN recorded during the inspection did not match the
20 physical VIN on Vehicle 3. The PID count recorded during the inspection on Vehicle 3 was not
21 consistent with the PID count for the make and model of this vehicle by other smog check
22 stations.

23 39. H.B. utilized the Bureau's database and found that Vehicle 3 had been previously
24 tested by an unrelated smog check facility on January 22, 2024. The BAR-OIS test data from that
25 inspection showed the eVIN had been transmitted as expected, and the communication protocol
26 and PID count had been consistent with the make and model of Vehicle 3.

27 40. H.B. utilized the Bureau's database and found that the eVIN transmitted during the
28 inspection of Vehicle 3 on February 19, 2024, matched the same 2004 Mini Cooper identified

1 during the inspections of Vehicle 1 and Vehicle 2. The communication protocol and PID count
2 transmitted to the Bureau's database during the inspection of Vehicle 3 were consistent with the
3 communication protocol and PID count for the 2004 Mini Cooper. H.B. concluded that
4 Respondent used the 2004 Mini Cooper's properly functioning OBD II system during the smog
5 inspection of Vehicle 3, resulting in the issuance of a fraudulent smog certificate of compliance
6 for Vehicle 3.

7 **Vehicle 4 – 2014 Kia Soul +**

8 41. BAR-OIS data showed that on April 6, 2024, Respondents performed a smog check
9 inspection on a 2014 Kia Soul + (Vehicle 4), resulting in the issuance of Certificate of
10 Compliance No. TU593033C, under the license of Smog Check Inspector Respondent
11 Hernandez. The OIS test detail showed that the eVIN recorded during the inspection did not
12 match the physical VIN on Vehicle 4. The PID count recorded during the inspection on Vehicle 4
13 was not consistent with the PID count for the make and model of this vehicle by other smog
14 check stations.

15 42. H.B. utilized the Bureau's database and found that Vehicle 4 had been subsequently
16 tested by an unrelated smog check facility on June 18, 2025. The BAR-OIS test data from that
17 inspection showed the eVIN had been transmitted as expected, and the communication protocol
18 and PID count had been consistent with the make and model of Vehicle 4.

19 43. H.B. utilized the Bureau's database and found that the eVIN transmitted during the
20 inspection of Vehicle 4 on April 6, 2024, matched a 2007 Hyundai Veracruz GLS. The
21 communication protocol and PID count transmitted to the Bureau's database during the
22 inspection of Vehicle 4 were consistent with the communication protocol and PID count for the
23 2007 Hyundai Veracruz GLS. H.B. concluded that Respondent used the 2007 Hyundai Veracruz
24 GLS's properly functioning OBD II system during the smog inspection of Vehicle 4, resulting in
25 the issuance of a fraudulent smog certificate of compliance for Vehicle 4.

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Vehicle 5 – 2009 Chevrolet Express G2500

44. BAR-OIS data showed that on April 27, 2024, Respondents performed a smog check inspection on a 2009 Chevrolet Express G2500 (Vehicle 5), resulting in the issuance of Certificate of Compliance No. TW539704C, under the license of Smog Check Inspector Respondent Hernandez. The OIS test detail showed that the eVIN recorded during the inspection did not match the physical VIN on Vehicle 5. The PID count recorded during the inspection on Vehicle 5 was not consistent with the PID count for the make and model of this vehicle by other smog check stations.

45. H.B. utilized the Bureau's database and found that Vehicle 5 had been previously tested by Respondent on April 20, 2024. The BAR-OIS test data from that inspection showed the eVIN had been transmitted as expected, and the communication protocol and PID count had been consistent with the make and model of Vehicle 5.

46. H.B. utilized the Bureau's database and found that the eVIN transmitted during the inspection of Vehicle 5 on April 27, 2024, matched a 2008 GMC Yukon XL C1500. The communication protocol and PID count transmitted to the Bureau's database during the inspection of Vehicle 5 were consistent with the communication protocol and PID count for the 2008 GMC Yukon XL C1500. H.B. concluded that Respondent used the 2008 GMC Yukon XL C1500's properly functioning OBD II system during the smog inspection of Vehicle 5, resulting in the issuance of a fraudulent smog certificate of compliance for Vehicle 5.

Vehicle 6 – 2016 Honda Accord Sport

47. BAR-OIS data showed that on December 6, 2024, Respondents performed a smog check inspection on a 2016 Honda Accord Sport (Vehicle 6), resulting in the issuance of Certificate of Compliance No. UG944468C, under the license of Smog Check Inspector Respondent Hernandez. The OIS test detail showed that the eVIN recorded during the inspection did not match the physical VIN on Vehicle 6.

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1 48. H.B. utilized the Bureau's database and found that Vehicle 6 had been previously
2 tested by an unrelated smog check facility on December 6, 2023. The BAR-OIS test data from
3 that inspection showed the eVIN had been transmitted as expected, and the communication
4 protocol and PID count had been consistent with the make and model of Vehicle 6.

5 49. H.B. utilized the Bureau's database and found that the eVIN transmitted during the
6 inspection of Vehicle 6 on December 6, 2024, matched a 2017 Honda Accord LX. The
7 communication protocol and PID count transmitted to the Bureau's database during the
8 inspection of Vehicle 6 were consistent with the communication protocol and PID count for the
9 2017 Honda Accord LX. H.B. concluded that Respondent used the 2017 Honda Accord LX's
10 properly functioning OBD II system during the smog inspection of Vehicle 6, resulting in the
11 issuance of a fraudulent smog certificate of compliance for Vehicle 6.

12 **Vehicle 7 – 2005 Nissan Frontier Crew Cab LE**

13 50. BAR-OIS data showed that on January 4, 2025, Respondents performed a smog
14 check inspection on a 2005 Nissan Frontier Crew Cab LE (Vehicle 7), resulting in the issuance of
15 Certificate of Compliance No. UI479236C, under the license of Smog Check Inspector
16 Respondent Hernandez. The OIS test detail showed that the eVIN recorded during the inspection
17 did not match the physical VIN on Vehicle 7. The PID count recorded during the inspection on
18 Vehicle 7 was not consistent with the PID count for the make and model of this vehicle by other
19 smog check stations.

20 51. H.B. utilized the Bureau's database and found that Vehicle 7 had been previously
21 tested by an unrelated smog check facility on April 23, 2024. The BAR-OIS test data from that
22 inspection showed the eVIN had been transmitted as expected, and the communication protocol
23 and PID count had been consistent with the make and model of Vehicle 7.

24 52. H.B. utilized the Bureau's database and found that the eVIN transmitted during the
25 inspection of Vehicle 7 on January 4, 2025, matched the same 2004 Mini Cooper identified
26 during the inspections of Vehicle 1, Vehicle 2 and Vehicle 3. The communication protocol and
27 PID count transmitted to the Bureau's database during the inspection of Vehicle 7 were consistent
28 with the communication protocol and PID count for the 2004 Mini Cooper. H.B. concluded that

Respondent used the 2004 Mini Cooper's properly functioning OBD II system during the smog inspection of Vehicle 7, resulting in the issuance of a fraudulent smog certificate of compliance for Vehicle 7.

Vehicle 8 – 2005 Dodge Stratus SXT

53. BAR-OIS data showed that on March 8, 2025, Respondents performed a smog check inspection on a 2005 Dodge Stratus SXT (Vehicle 8), resulting in the issuance of Certificate of Compliance No. UK746810C, under the license of Smog Check Inspector Respondent Hernandez. The OIS test detail showed that the eVIN recorded during the inspection did not match the physical VIN on Vehicle 8. The PID count recorded during the inspection on Vehicle 8 was not consistent with the PID count for the make and model of this vehicle by other smog check stations.

54. H.B. utilized the Bureau's database and found that Vehicle 8 had been previously tested by an unrelated smog check facility on March 28, 2023. The BAR-OIS test data from that inspection showed the eVIN had been transmitted as expected, and the communication protocol and PID count had been consistent with the make and model of Vehicle 8.

55. H.B. utilized the Bureau's database and found that the eVIN transmitted during the inspection of Vehicle 6 on March 8, 2025, matched a 2004 GMC Envoy XL. The communication protocol and PID count transmitted to the Bureau's database during the inspection of Vehicle 8 were consistent with the communication protocol and PID count for the 2004 GMC Envoy XL. H.B. concluded that Respondent used the 2004 GMC Envoy XL's properly functioning OBD II system during the smog inspection of Vehicle 8, resulting in the issuance of a fraudulent smog certificate of compliance for Vehicle 8.

Vehicle 9 – 2011 Nissan Altima Base

56. BAR-OIS data showed that on June 20, 2025, Respondents performed a smog check inspection on a 2011 Nissan Altima Base (Vehicle 8), resulting in the issuance of Certificate of Compliance No. UQ769387C, under the license of Smog Check Inspector Respondent Hernandez. The OIS test detail showed that the eVIN recorded during the inspection did not match the physical VIN on Vehicle 9. The PID count recorded during the inspection on Vehicle 9

1 was not consistent with the PID count for the make and model of this vehicle by other smog
2 check stations.

3 57. H.B. utilized the Bureau's database and found that Vehicle 9 had been previously
4 tested by an unrelated smog check facility on April 7, 2025. The BAR-OIS test data from that
5 inspection showed the eVIN had been transmitted as expected, and the communication protocol
6 and PID count had been consistent with the make and model of Vehicle 9.

7 58. H.B. utilized the Bureau's database and found that the eVIN transmitted during the
8 inspection of Vehicle 6 on June 20, 2025, matched a 2012 Nissan Altima S. The communication
9 protocol and PID count transmitted to the Bureau's database during the inspection of Vehicle 9
10 were consistent with the communication protocol and PID count for the 2012 Nissan Altima S.
11 H.B. concluded that Respondent used the 2012 Nissan Altima S's properly functioning OBD II
12 system during the smog inspection of Vehicle 9, resulting in the issuance of a fraudulent smog
13 certificate of compliance for Vehicle 9.

14 **Vehicle 10 – 2011 Nissan Altima Base**

15 59. BAR-OIS data showed that on June 21, 2025, Respondents performed a smog check
16 inspection on a 2011 Nissan Altima Base (Vehicle 10), resulting in the issuance of Certificate of
17 Compliance No. UQ678850C, under the license of Smog Check Inspector Respondent
18 Hernandez. The OIS test detail showed that the eVIN recorded during the inspection did not
19 match the physical VIN on Vehicle 10.

20 60. H.B. utilized the Bureau's database and found that Vehicle 10 had been previously
21 tested by an unrelated smog check facility on October 21, 2023. The BAR-OIS test data from that
22 inspection showed the eVIN had been transmitted as expected, and the communication protocol
23 and PID count had been consistent with the make and model of Vehicle 10.

24 61. H.B. utilized the Bureau's database and found that the eVIN transmitted during the
25 inspection of Vehicle 10 on June 21, 2025, matched the same 2012 Nissan Altima S identified
26 during the inspection of Vehicle 9. The communication protocol and PID count transmitted to the
27 Bureau's database during the inspection of Vehicle 10 were consistent with the communication
28 protocol and PID count for the 2012 Nissan Altima S. H.B. concluded that Respondent used the

1 2012 Nissan Altima S's properly functioning OBD II system during the smog inspection of
2 Vehicle 10, resulting in the issuance of a fraudulent smog certificate of compliance for Vehicle
3 10.

4 *Accusation As to Respondent 5 Points Smog*

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 62. Respondent 5 Points Smog's Automotive Repair Dealer Registration is subject to
8 disciplinary action under Code section 9884.7, subdivision (a)(1), in that, with respect to the
9 vehicles identified above, Respondent 5 Points Smog made or authorized statements which they
10 knew, or in the exercise of reasonable care should have known to be untrue or misleading, as
11 follows: Respondent 5 Points Smog certified that these vehicles had passed inspection and were in
12 compliance with applicable laws and regulations, when in fact, Respondent 5 Points Smog
13 conducted the inspections on the vehicles using the clean plugging method in order to issue smog
14 certificates of compliance for the vehicles. Complainant refers to, and by this reference
15 incorporates, the allegations set forth above in paragraphs 31 through 61, as though fully set forth
16 herein.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Fraud)**

19 63. Respondent 5 Points Smog's Automotive Repair Dealer Registration is subject to
20 disciplinary action under Code section 9884.7, subdivision (a)(4), in that, with respect to the
21 vehicles identified above, Respondent 5 Points Smog committed acts which constitute fraud by
22 issuing electronic smog certificates of compliance for these vehicles without performing bona
23 fide inspections of the emissions control devices and systems on those vehicles, thereby depriving
24 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
25 Program. Complainant refers to, and by this reference incorporates, the allegations set forth above
26 in paragraphs 31 through 61, as though fully set forth herein.

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Material Violation of Automotive Repair Act)**

3 64. Respondent 5 Points Smog's Automotive Repair Dealer Registration is subject to
4 disciplinary action under Code section 9884.7, subdivision (a)(6), in that, with respect to the
5 vehicles identified above, Respondent 5 Points Smog failed in a material respect to comply with
6 the provisions of this chapter or regulations adopted pursuant to it by issuing electronic smog
7 certificates of compliance for these vehicles without performing bona fide inspections of the
8 emissions control devices and systems on those vehicles, thereby depriving the People of the
9 State of California of the protection afforded by the Motor Vehicle Inspection Program.
10 Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraphs 31 through 61, as though fully set forth herein.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Violations of Motor Vehicle Inspection Program)**

14 65. Respondent 5 Points Smog's Smog Check, Test-and-Repair, Station License
15 is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in
16 that, with respect to the vehicles identified above, Respondent 5 Points Smog failed to comply
17 with the following sections of the Health and Safety Code:

18 a. **Section 44012:** Respondent 5 Points Smog failed to ensure that the emission control
19 tests were performed on the vehicles in accordance with procedures prescribed by the Bureau.

20 b. **Section 44015, subdivision (b):** Respondent 5 Points Smog issued electronic smog
21 certificates of compliance for the vehicles without ensuring that the vehicles were properly tested
22 and inspected to determine if they were in compliance with Health and Safety Code section
23 44012.

24 c. **Section 44059:** Respondent 5 Points Smog willfully made false entries for the
25 electronic smog certificates of compliance for the vehicles by certifying that the vehicles had
26 been inspected as required when, in fact, they had not.

27 Complainant refers to, and by this reference incorporates, the allegations set forth above in
28 paragraphs 31 through 61, as though fully set forth herein.

1 **FIFTH CAUSE FOR DISCIPLINE**

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

4 66. Respondent 5 Points Smog's Smog Check, Test-and-Repair, Station License is
5 subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in
6 that, with respect to the vehicles identified above, Respondent 5 Points Smog failed to comply
7 with provisions of the California Code of Regulations, title 16, as follows:

8 a. **Section 3340.24, subdivision (c):** Respondent 5 Points Smog issued false or
9 fraudulent certificates of compliance for the vehicles.

10 b. **Section 3340.35, subdivision (c):** Respondent 5 Points Smog issued electronic smog
11 certificates of compliance for the vehicles even though the vehicles had not been inspected in
12 accordance with section 3340.42 of the California Code of Regulations, title 16.

13 c. **Section 3340.41, subdivision (c):** Respondent 5 Points Smog knowingly entered
14 false information into the on-board diagnostic inspection system for the vehicles.

15 d. **Section 3340.42:** Respondent 5 Points Smog failed to ensure that the required smog
16 tests were conducted on the vehicles in accordance with the Bureau's specifications.

17 e. **Section 3373:** Respondent 5 Points Smog withheld or inserted statements or
18 information in an estimate, invoice, work order, or record required to be maintained by California
19 Code of Regulations, title 16, section 3340.15, subdivision (e), which caused the document to be
20 false or misleading for the vehicles.

21 Complainant refers to, and by this reference incorporates, the allegations set forth above in
22 paragraphs 31 through 61, as though fully set forth herein.

23 **SIXTH CAUSE FOR DISCIPLINE**

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

25 67. Respondent 5 Points Smog's Smog Check, Test-and-Repair, Station License is
26 subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in
27 conjunction with Health and Safety Code section 44072.10, subdivision (c), in that, with respect
28 to the vehicles identified above, Respondent 5 Points Smog committed dishonest, fraudulent, or

1 deceitful acts whereby another was injured by issuing electronic smog certificates of compliance
2 for the vehicles without performing bona fide inspections of the emission control devices and
3 systems on those vehicles, thereby depriving the People of the State of California of the
4 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
5 reference incorporates, the allegations set forth above in paragraphs 31 through 61, as though fully
6 set forth herein.

7 ***Accusation As to Respondent Hernandez***

8 **SEVENTH CAUSE FOR DISCIPLINE**

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

10 68. Respondent Hernandez's Smog Check Inspector License is subject to disciplinary
11 action under Health and Safety Code section 44072.2, subdivision (a), in that, with respect to the
12 vehicles identified above, Respondent Hernandez violated the following Health and Safety Code
13 sections:

14 a. **Section 44012, subdivision (a):** Respondent Hernandez failed to determine that all
15 emission control devices and systems required by law were installed and functioning correctly on
16 the vehicles in accordance with test procedures prescribed by the Bureau.

17 b. **Section 44012, subdivision (f):** Respondent Hernandez failed to perform emission
18 control tests on the vehicles in accordance with procedures prescribed by the Bureau.

19 c. **Section 44032:** Respondent Hernandez failed to perform tests of the emission control
20 devices and systems on the vehicles identified above in accordance with section 44012 of the
21 Health and Safety Code, in that the vehicles had been clean plugged.

22 d. **Section 44059:** Respondent Hernandez willfully made false entries for the electronic
23 certificates of compliance by certifying that the vehicles had been inspected as required when, in
24 fact, they had not.

25 Complainant refers to, and by this reference incorporates, the allegations set forth above in
26 paragraphs 31 through 61, as though fully set forth herein.

27 ///

28 ///

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

4 69. Respondent Hernandez's Smog Check Inspector License is subject to disciplinary
5 action under Health and Safety Code section 44072.2, subdivision (c), in that, with respect to the
6 vehicles identified above, Respondent Hernandez failed to comply with provisions of the
7 California Code of Regulations, title 16, as follows:

8 a. **Section 3340.24, subdivision (c):** Respondent Hernandez issued false or fraudulent
9 electronic smog certificates of compliance for the vehicles.

10 b. **Section 3340.30, subdivision (a):** Respondent Hernandez failed to inspect and test
11 the vehicles in accordance with Health and Safety Code sections 44012 and 44035 and California
12 Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.41, subdivision (c):** Respondent Hernandez knowingly entered false
14 information into the on-board diagnostic inspection system for the vehicles.

15 d. **Section 3340.42:** Respondent Hernandez failed to ensure that the required smog tests
16 were conducted on the vehicles identified above in accordance with the Bureau's specifications.

17 Complainant refers to, and by this reference incorporates, the allegations set forth above in
18 paragraphs 31 through 61, as though fully set forth herein.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Dishonesty, Fraud, or Deceit – Respondent Hernandez)**

21 70. Respondent Hernandez's Smog Check Inspector License is subject to disciplinary
22 action under Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
23 and Safety Code section 44072.10, subdivision (c), in that, with respect to the vehicles identified
24 above, Respondent Hernandez committed acts involving dishonesty, fraud, or deceit when he
25 issued electronic smog certificates of compliance for the vehicles without performing bona fide
26 inspections of the emission control devices and systems on those vehicles, thereby depriving the
27 People of the State of California of the protection afforded by the Motor Vehicle Inspection
28 Program. Complainant refers to, and by this reference incorporates, the allegations set forth

above in paragraphs 31 through 61, as though fully set forth herein.

JURISDICTION FOR PETITION TO REVOKE PROBATION

71. At all times after the effective date of Respondent's probation, Condition 7 stated:

If Respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

72. Respondents probation is subject to revocation, in that it violated probation as set forth below:

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

73. At all times after the effective date of Respondent 5 Points Smog probation, Condition 1 stated:

During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by Respondent.

74. Respondent 5 Points Smog's probation is subject to revocation in that Respondent 5 Points Smog failed to comply with all statutes, regulations, and rules governing smog inspections as set forth in paragraphs 31 through 61, above.

DISCIPLINARY CONSIDERATIONS

Respondent 5 Points Smog

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

a. 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.

///

1 b. On April 10, 2019, Citation C2019-978 was issued to Respondent Morteza in the
2 amount of \$2,000.00 for violations of Health and Safety Code 44012, in that Respondent Morteza
3 issued Certificate of Compliance #IB946980C to a Bureau documented vehicle with a missing or
4 modified positive crankcase ventilation (PCV) system. The Citation Service Conference was held
5 on April 29, 2019. The citation was paid in full on May 31, 2019. The decision became effective
6 on May 30, 2019. That citation is now final.

7 c. On September 19, 2018, Citation C2018-2004 was issued to Respondent Morteza in
8 the amount of \$1,000.00, for violations of Health and Safety Code 44012, in that Respondent
9 Morteza issued Certificate of Compliance #QI608967c to a Bureau documented vehicle with an
10 evaporative emissions control modification causing an LPFET failure. The Citation Service
11 Conference was held on October 17, 2018, which was paid in full on October 26, 2018. The
12 decision became effective on November 18, 2018. That Citation is now final.

13
14 Respondent Hernandez

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

17 a. On February 25, 2022, Citation M2022-347 was issued to Respondent Hernandez for
18 violations of Health and Safety Code 44032, in that Respondent Hernandez issued Certificate of
19 Compliance to a Bureau documented vehicle with a missing catalytic converter. The citation was
20 paid in full and the decision became effective on April 12, 2022. That Citation is now final.

21 b. On April 10, 2019, Citation M2019-979 was issued to Respondent Hernandez for
22 violations of Health and Safety Code 44032, in that Respondent Hernandez issued Certificate of
23 Compliance to a Bureau documented vehicle with a missing or modified Positive Crankcase
24 Ventilation (PCV) System. The citation was paid in full and the decision became effective on
25 May 30, 2019. That Citation is now final.

26 c. On June 23, 2016, Citation M2016-1334 was issued to Respondent Hernandez for
27 violations of Health and Safety Code 44032, in that Respondent Hernandez issued Certificate of
28 Compliance to a Bureau documented vehicle with a missing or modified catalytic converter. The

1 citation was paid in full and the decision became effective on August 13, 2016. That Citation is
2 now final.

3 **OTHER MATTERS**

4 77. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
5 Number EO 635942 issued to Respondent Hernandez, is revoked or suspended, any additional
6 license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of
7 said licensee may be likewise revoked or suspended by the Director.

8 78. Pursuant to Business and Profession Code section 9884.7, subdivision (c), the
9 Director may suspend, revoke, or place on probation the registration for all places of business
10 operated in the state by Respondent 5 Points Smog upon finding that Respondent 5 Points Smog
11 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
12 pertaining to an automotive repair dealer.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
15 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of the
16 Department of Consumer Affairs issue a decision:

17 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
18 No. 79/21-16673 and imposing the disciplinary order that was stayed thereby revoking
19 Automotive Repair Dealer Registration No. ARD 285810 issued to Mostafa Gharebaghi Inc., dba
20 5 Points Smog, Morteza Gharebaghi, Pres/Sec/Treas;

21 2. Revoking or suspending Automotive Repair Dealer Registration No. ARD 285810,
22 issued to Mostafa Gharebaghi Inc., dba 5 Points Smog, Morteza Gharebaghi, Pres/Sec/Treas;

23 3. Revoking or suspending any other automotive repair dealer registration issued to
24 Mostafa Gharebaghi Inc. or Morteza Gharebaghi;

25 4. Revoking or suspending Smog Check, Test-Only, Station License No. TC 285810,
26 issued to Mostafa Gharebaghi Inc., dba 5 Points Smog, Morteza Gharebaghi, Pres/Sec/Treas.

1 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
2 Division 26 of the Health and Safety Code in the name of Mostafa Gharebaghi Inc. or Morteza
3 Gharebaghi;

4 6. Revoking or suspending Smog Check Inspector License No. EO 635942, issued to
5 Andre Douglas Hernandez;

6 7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
7 Division 25 of the Health and Safety Code in the name of Andre Douglas Hernandez;

8 8. Ordering Mostafa Gharebaghi Inc., dba 5 Points Smog, Morteza Gharebaghi,
9 Pres/Sec/Treas and Andre Douglas Hernandez to pay the Director of the Department of Consumer
10 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
11 Business and Professions Code section 125.3; and,

12 9. Taking such other and further action as deemed necessary and proper.

13
14 DATED: As of Digital Signature Date

Dorais,

Patrick@DCA

Digitally signed by Dorais,
Patrick@DCA

Date: 2026.07.27 12:56:31
-07'00'

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/21-16673

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AFFAIRS
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 Road

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

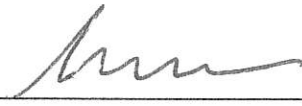
OAH No. 2022080498

DECISION

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

This Decision shall become effective on MAR 23 2023.

DATED: Feb. 8, 2023



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

1 ROB BONTA
Attorney General of California
2 KIM KASRELIOVICH
Supervising Deputy Attorney General
3 ARTIN DEROHANIAN
Deputy Attorney General
4 State Bar No. 266131
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6561
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

12
13 In the Matter of the Accusation Against:

Case No. 79/21-16673

14 **MORTEZA GHAREBAGHI –**
15 **PRESIDENT/SECRETARY/TREASURER**
16 **MOSTAFA GHAREBAGHI, INC. dba 5**
17 **POINTS SMOG**

OAH No. 2022080498

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18 **1369 Saviers Road**
19 **Oxnard, CA 93033**

20 **Automotive Repair Dealer Registration No.**
21 **ARD 285810**
22 **Smog Check, Test Only, Station License No.**
23 **TC 285810**

24 Respondent.

25 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
26 entitled proceedings that the following matters are true:

27 **PARTIES**

28 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
(Bureau). He brought this action solely in his official capacity and is represented in this matter by

1 Rob Bonta, Attorney General of the State of California, by Artin DerOhanian, Deputy Attorney
2 General.

3 2. Respondent Morteza Gharebaghi – President/Secretary/Treasurer of Mostafa
4 Gharebaghi, Inc. dba 5 Points Smog (Respondent) is represented in this proceeding by attorney
5 Michael B. Levin, Esq., whose address is: 3727 Camino del Rio South, Suite 200
6 San Diego, CA 92108

7 3. On or about January 19, 2017, the Bureau issued Automotive Repair Dealer
8 Registration No. ARD 285810 to Respondent. The Automotive Repair Dealer Registration was
9 in full force and effect at all times relevant to the charges brought in Accusation No. 79/21-
10 16673, and will expire on January 31, 2023, unless renewed.

11 4. On or about January 27, 2017, the Bureau issued Smog Check, Test Only, Station
12 License No. TC 285810 to Respondent. The Smog Check, Test Only, Station License was in full
13 force and effect at all times relevant to the charges brought in Accusation No. 79/21-16673, and
14 will expire on January 31, 2023, unless renewed.

15 **JURISDICTION**

16 5. Accusation No. 79/21-16673 was filed before the Director of the Department of
17 Consumer Affairs (Director), and is currently pending against Respondent. The Accusation and
18 all other statutorily required documents were properly served on Respondent on July 13, 2022.
19 Respondent timely filed its Notice of Defense contesting the Accusation.

20 6. A copy of Accusation No. 79/21-16673 is attached as exhibit A and incorporated
21 herein by reference.

22 **ADVISEMENT AND WAIVERS**

23 7. Respondent has carefully read, fully discussed with counsel, and understands the
24 charges and allegations in Accusation No. 79/21-16673. Respondent has also carefully read, fully
25 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
26 Order.

27 8. Respondent is fully aware of its legal rights in this matter, including the right to a
28 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine

1 the witnesses against them; the right to present evidence and to testify on its own behalf; the right
2 to the issuance of subpoenas to compel the attendance of witnesses and the production of
3 documents; the right to reconsideration and court review of an adverse decision; and all other
4 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

7 CULPABILITY

8 10. Respondent admits the truth of each and every charge and allegation in Accusation
9 No. 79/21-16673.

10 11. Respondent agrees that its Automotive Repair Dealer Registration is subject to
11 discipline and they agree to be bound by the Director's probationary terms as set forth in the
12 Disciplinary Order below.

13 CONTINGENCY

14 12. This stipulation shall be subject to approval by the Director or the Director's designee.
15 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of
16 Automotive Repair may communicate directly with the Director and staff of the Department of
17 Consumer Affairs regarding this stipulation and settlement, without notice to or participation by
18 Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that
19 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 13. 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 14. 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 15. 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 Automotive Repair Dealer Registration No. ARD 285810
10 and Smog Check, Test Only, Station License No. TC 285810 issued to Respondent Morteza
11 Gharebaghi – President/Secretary/Treasurer Mostafa Gharebaghi, Inc. dba 5 Points Smog are
12 revoked. However, the revocation is stayed and Respondent is placed on probation for three (3)
13 years on the following terms and conditions:

14 1. **Obey All Laws.** During the period of probation, Respondent shall comply with all
15 federal and state statutes, regulations and rules governing all BAR registrations and licenses held
16 by Respondent.

17 2. **Posting of Sign.** (Applicable only when actual suspension of a registration or station
18 license is ordered): During the period of suspension, Respondent shall prominently post a sign or
19 signs, provided by BAR, indicating the beginning and ending dates of the suspension and
20 indicating the reason for the suspension. The sign or signs shall be conspicuously displayed in a
21 location or locations open to and frequented by customers. The location(s) of the sign(s) shall be
22 approved by BAR and shall remain posted during the entire period of actual suspension.

23 3. **Quarterly Reporting.** During the period of probation, Respondent shall report either
24 by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no
25 more frequently than once each calendar quarter, on the methods used and success achieved in
26 maintaining compliance with the terms and conditions of probation.

27 4. **Report Financial Interests.** Respondent shall, within 30 days of the effective date
28 of the decision and within 30 days from the date of any request by BAR during the period of

1 probation, report any financial interest which any Respondent or any partners, officers, or owners
2 of any Respondent facility may have in any other business required to be registered pursuant to
3 Section 9884.6 of the Business and Professions Code.

4 **5. Access to Examine Vehicles and Records.** Respondent shall provide BAR
5 representatives unrestricted access to examine all vehicles (including parts) undergoing service,
6 inspection, or repairs, up to and including the point of completion. Respondent shall also provide
7 BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

8 **6. Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of
9 California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction
10 of California, Respondent shall notify BAR in writing within 10 days of the dates of departure
11 and return, and of the dates of cessation and resumption of business in California. All provisions
12 of probation other than cost reimbursement requirements, restitution requirements, training
13 requirements, and that Respondent obey all laws, shall be held in abeyance during any period of
14 time of 30 days or more in which Respondent is not residing or engaging in business within the
15 jurisdiction of California. All provisions of probation shall recommence on the effective date of
16 resumption of business in California. Any period of time of 30 days or more in which Respondent
17 is not residing or engaging in business within the jurisdiction of California shall not apply to the
18 reduction of this probationary period or to any period of actual suspension not previously
19 completed. Tolling is not available if business or work relevant to the probationary license or
20 registration is conducted or performed during the tolling period.

21 **7. Violation of Probation.** If Respondent violates or fails to comply with the terms and
22 conditions of probation in any respect, the Director, after giving notice and opportunity to be
23 heard may set aside the stay order and carry out the disciplinary order provided in the decision.
24 Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain
25 jurisdiction, and the period of probation shall be extended until final resolution of the matter.

26 **8. Maintain Valid License.** Respondent shall, at all times while on probation, maintain
27 a current and active registration and/or license(s) with BAR, including any period during which
28 suspension or probation is tolled. If Respondent's registration or license is expired at the time the

1 decision becomes effective, the registration or license must be renewed by Respondent within 30
2 days of that date. If Respondent's registration or license expires during a term of probation, by
3 operation of law or otherwise, then upon renewal Respondent's registration or license shall be
4 subject to any and all terms and conditions of probation not previously satisfied. Failure to
5 maintain a current and active registration and/or license during the period of probation shall also
6 constitute a violation of probation.

7 **9. Cost Recovery.** Respondent shall pay the Bureau of Automotive Repair \$4,950.00
8 for the reasonable costs of the investigation and enforcement of case No. 79/21-16673.
9 Respondent shall make such payment as follows: Thirty (30) monthly payments in the amount
10 of \$165.00 per month. Any agreement for a scheduled payment plan shall require full payment to
11 be completed no later than six (6) months before probation terminates. Respondent shall make
12 payment by check or money order payable to the Bureau of Automotive Repair and shall indicate
13 on the check or money order that it is for cost recovery payment for case No. 79/21-16673.
14 Any order for payment of cost recovery shall remain in effect whether or not probation is
15 tolled. Probation shall not terminate until full cost recovery payment has been made. BAR
16 reserves the right to pursue any other lawful measures in collecting on the costs ordered and past
17 due, in addition to taking action based upon the violation of probation.

18 **10. Completion of Probation.** Upon successful completion of probation, Respondent's
19 affected registration and/or license will be fully restored or issued without restriction, if
20 Respondent meets all current requirements for registration or licensure and has paid all
21 outstanding fees, monetary penalties, or cost recovery owed to BAR.

22 **11. License Surrender.** Following the effective date of a decision that orders a stay of
23 invalidation or revocation, if Respondent ceases business operations or is otherwise unable to
24 satisfy the terms and conditions of probation, Respondent may request that the stay be vacated.
25 Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right
26 to evaluate the Respondent's request and to exercise discretion whether to grant the request or
27 take any other action deemed appropriate or reasonable under the circumstances. Upon formal
28 granting of the request, the Director will vacate the stay order and carry out the disciplinary order

provided in the decision. Respondent may not petition the Director for reinstatement of the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If Respondent applies to BAR for a registration or license at any time after that date, Respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

12. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 285810 issued to Respondent is suspended for seven (7) consecutive days beginning on the effective date of the Decision and Order.

13. **Actual Suspension.** Smog Check, Test Only, Station License Number TC 285810 issued to Respondent is suspended for seven (7) consecutive days beginning on the effective date of the Decision and Order.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael B. Levin, Esq. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog Check, Test Only, Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of the Department of Consumer Affairs.

DATED: 12/28/2022

MORTEZA GHAREBAGHI

MORTEZA GHAREBAGHI – PRESIDENT/
SECRETARY/TREASURER MOSTAFA
GHAREBAGHI INC. DBA 5 POINTS SMOG
Respondent

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1 I have read and fully discussed with Respondent Morteza Gharebaghi – President/
2 Secretary/Treasurer Mostafa Gharebaghi, Inc. dba 5 Points Smog the terms and conditions and
3 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
4 form and content.

5 DATED: 12/28/2022

Michael B. Levin

6 MICHAEL B. LEVIN, ESQ.
7 *Attorney for Respondent*

8 **ENDORSEMENT**

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

11 DATED: December 29, 2022

12 Respectfully submitted,

13 ROB BONTA
14 Attorney General of California
15 KIM KASRELIOVICH
16 Supervising Deputy Attorney General

17 
18 ARTIN DEROHANIAN
19 Deputy Attorney General
20 *Attorneys for Complainant*

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