

## FACTUAL FINDINGS

1. In 2006, the Bureau issued respondent Advanced Emission Specialist (EA) Technician license number 153759. The EA license expired in September 2012, and was cancelled in October 2012. The license was renewed pursuant to respondent's election as Smog Check Inspector (EO) license number 153759 and Smog Check Repair Technician (EI) license number 153759, effective October 2012. The EO and EI licenses will expire on September 30, 2020.<sup>2</sup>

2. On March 16, 2018, complainant acting solely in his official capacity, signed and thereafter filed the Accusation and Petition to Revoke Probation (2018 Accusation and Petition to Revoke Probation). Complainant contends that grounds exist to revoke respondent's licenses based on respondent's failure to perform a visual and/or functional check of the emission control devices on an undercover vehicle in accordance with required procedures and laws, failing to inspect and test the subject vehicle, knowingly entering false information into the emission inspection system, and failing to conduct the required smog tests on the subject vehicle. Complainant also alleged grounds exist to revoke respondent's licenses because he committed a dishonest, fraudulent, or deceitful act by issuing an electronic smog Certificate of Compliance for the undercover vehicle without performing a bona fide inspection of the emission control devices and systems, and he committed dishonest, fraudulent, or deceitful acts whereby another was injured. Complainant further seeks to revoke probation on respondent's licenses and impose the stayed order of revocation due to respondent's failure to obey all laws.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

### *Prior Disciplinary Action*

4. On or about December 11, 2014, complainant, in his official capacity, signed and subsequently filed, an Accusation against respondent (2014 Accusation), alleging six causes for discipline based upon conduct occurring during an undercover smog inspection and field inspection on September 19, 2013. The causes for discipline included making or authorizing untrue statements that respondent knew or should have known were untrue or misleading; fraud; failing to provide a copy of a signed document; violating the motor vehicle inspection program by failing to perform emission control tests and using his brother's license and confidential access code to access and enter false information into the

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<sup>2</sup> The Accusation and Petition to Revoke Probation alleges the Bureau issued Brake Adjuster License No. BA 153759, Class C, and Lamp Adjuster License No. LA 153759, Class A, to respondent, with both licenses set to expire in September 2021. However, the certification of license history for respondent submitted in evidence at the hearing does not establish that either license was issued to respondent.

EIS unit; failing to comply with regulations, including failing to conduct the required smog tests; and committing dishonest, fraudulent or deceitful acts whereby another was injured.

5. The general facts underlying the 2014 Accusation were that in September 2013, respondent and his facility were the subject of an undercover operation, wherein a Bureau operator requested a smog inspection for an undercover vehicle that could not pass the visual portion of the smog inspection because the vehicle's exhaust recirculation valve and exhaust gas recirculation valve cooler had been removed. Respondent performed the smog inspection, then informed the operator that the vehicle failed the inspection due to a missing exhaust gas recirculation valve and exhaust gas cooler. Later that day, the Bureau conducted a field inspection at respondent's facility and respondent admitted that he had used his brother's license number and access code to perform the smog inspection on the undercover vehicle. Respondent was not qualified or eligible to perform the smog inspection due to a low "STAR" score.

6. Pursuant to a Stipulated Settlement and Disciplinary Order that was adopted by the Bureau and became effective on July 22, 2015 (2015 Settlement and Disciplinary Order), respondent admitted the truth of each and every charge and allegation in the 2014 Accusation. Respondent's Smog Check Repair Technician License No. EI 153759 and Smog Check Inspector License Number EO 153759 were revoked; however, the revocation was stayed and respondent's licenses were placed on probation for three years with certain terms and conditions.<sup>3</sup> The terms and conditions at issue are as follows:

Condition 2: **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

Condition 7: **Jurisdiction.** If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

Condition 8: **Violation of Probation.** Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, set aside the stay order and impose the stayed discipline (revocation) of respondent's licenses.

If during the period of probation, an accusation and/or petition to revoke probation has been filed against respondent's license

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<sup>3</sup> Additionally, Respondent's Automotive Repair Dealer Registration No. ARD 260402 and Smog Check Station License No. RC 260402 were revoked.

or the Attorney General's Office has been requested to prepare an accusation and/or petition to revoke probation against respondent's licenses, the probationary period shall automatically be extended and shall not expire until the accusation and/or petition has been acted upon by the Bureau.

7. On or about July 28, 2017, respondent petitioned the Bureau for a reduction of penalty relating to his probation. His petition was granted on March 29, 2018, and his licenses were to be fully restored upon full and complete payment to the Bureau of any remaining balance of the cost recovery ordered pursuant to the Stipulated Settlement and Disciplinary Order.<sup>4</sup>

#### *California's Smog Check Program*

8. A proper smog inspection, in compliance with the applicable statutes and regulations of the Bureau, includes a visual inspection. During a properly performed smog inspection, the technician is prompted to visually inspect all emission control systems. The vehicle must pass a visual inspection and all required functional tests in order for a smog check Certificate of Compliance to be issued. If the technician locates an aftermarket device, the technician must determine whether the device is an approved device. Any missing, modified and unapproved, disconnected, and/or defective emissions controls constitute a visual inspection failure. The results of the entire inspection at a smog inspection station are printed on a Vehicle Inspection Report (VIR). The VIR designates whether the vehicle passed or failed the smog inspection.

#### *Undercover Operation*

##### PREPARATION FOR UNDERCOVER OPERATION AT THE DOCUMENTATION LAB

9. The Bureau conducts undercover operations with the purpose of ensuring smog technicians and smog check stations perform smog inspections in accordance with the procedures prescribed by the Bureau. In conducting an undercover operation, staff at the Bureau's Sacramento Forensic Documentation Laboratory (Documentation Lab) prepare vehicles for subsequent undercover operations.

10. Richard Meyers, a Program Representative I at the Documentation Lab, testified at the hearing and submitted two declarations. Mr. Meyers maintains state fleet vehicles and prepares Bureau vehicles for undercover operations. On July 28, 2017, through August 22, 2017, Mr. Meyers prepared a 2002 Ford Mustang for the undercover smog inspection at issue here. The vehicle remained in Mr. Meyers's possession or was secured in the Documentation Lab at all times while the vehicle was in his custody.

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<sup>4</sup> It is important to note that the 2018 Accusation and Petition to Revoke Probation was filed before the petition for reduction of penalty was granted.

11. Mr. Meyers road tested the vehicle to verify that the engine, transmission, chassis/suspension, and the brake operation performed correctly. He found the vehicle to perform normally and safely with no warning lights or abnormal conditions. The vehicle passed the smog inspection and he obtained the VIR. The vehicle was equipped with a K&N Cold Air Intake System (K&N). Mr. Meyers verified the K&N was legal by using the Aftermarket Parts Label affixed near the part. The Label contains a CARB Executive Order number that can be used to verify approval.

Mr. Meyers photographed the vehicle's under-hood Emission Control Label and the Mass Air Flow Sensor that was properly installed on the engine. He photographed and then installed a DiabloSport Tuning system, a non-approved add-on device, to the vehicle's Mass Air Flow Sensor. Such a modification will cause the vehicle to fail the visual portion of a properly performed smog inspection. Mr. Meyers conceded that he was unsure of the setting he placed the device on, which affected the vehicle's emissions system. If the device was in the stock setting, Mr. Meyers agreed that the device could not have increased the vehicle's emissions. Mr. Meyers photographed the DiabloSport Tuning system that was mounted to the vehicle. He installed and photographed tamper indicators on the vehicle to detect the replacement, removal, or loosening of the DiabloSport Tuning system.

Next, Mr. Meyers road tested the vehicle to verify the engine, transmission, chassis/suspension, and the brake operation performed in a safe and correct manner. He performed another smog check inspection and determined the vehicle failed the visual inspection because the DiabloSport Tuning System, a non-approved add-on aftermarket device, was installed. He then obtained the VIR for the failed inspection, as the vehicle required the removal of the DiabloSport Tuning System before a Smog Check Certificate of Compliance could be properly issued. Mr. Meyers then secured the vehicle in the Documentation Lab.

#### SEPTEMBER 14, 2017 SMOG INSPECTION OF 2002 FORD MUSTANG

12. On September 1, 2017, Mr. Meyers released custody of the 2002 Ford Mustang to Shawn Hunter, Program Representative I for the Bureau, at the Documentation Lab. Mr. Hunter secured the vehicle at the Bureau's secured storage facility. On September 14, 2017, Mr. Hunter retrieved the vehicle from the Bureau's secured storage facility. Mr. Hunter testified at hearing and submitted a declaration and investigative report.

13. Mr. Hunter reviewed the information packet prepared by Mr. Meyers and inspected the vehicle. He then visually verified the DiabloSport Tuning system was installed on the vehicle and that the under-hood emission label was present. Mr. Hunter released the vehicle to [REDACTED] a Bureau undercover operator, at the secured storage facility. Mr. Hunter gave [REDACTED] instructions to drive the vehicle to a prearranged location in Lodi, California. The two met at the prearranged location, and Mr. Hunter, again, inspected the vehicle to verify the DiabloSport Tuning system was installed and the under-hood emission label was present. Mr. Hunter photographed the introduced malfunction and the under-hood

emission label, and then instructed [REDACTED] to drive to Alpine Smog and Auto Sales, where respondent worked, located in Lodi, California, and request a smog inspection.

14. [REDACTED] testified at hearing and submitted a declaration. He drove the 2002 Ford Mustang to Alpine Smog and Auto Sales, and he requested a smog inspection. [REDACTED] used an assumed name, signed an estimate and the inspection was performed by respondent. [REDACTED] paid \$50 for the inspection, then received an estimate, invoice and a VIR from the facility. The VIR indicated that the "Overall Test Result" was a "PASS." The VIR also stated, "Congratulations! Your vehicle passed the Smog Check inspection, which helps California reach its daily goal of removing smog-forming emissions from the air. . . . Visual Inspection: PASS . . ."

15. Following the inspection, Mr. Hunter and [REDACTED] then met at the prearranged location, where Mr. Hunter inspected the vehicle to confirm the DiabloSport Tuning system was still installed and the under-hood emission label was still present. [REDACTED] gave Mr. Hunter the invoice and the VIR. [REDACTED] returned the vehicle to Mr. Hunter at the Bureau's secured storage facility, where Mr. Hunter secured the vehicle.

16. On October 17, 2017, Mr. Hunter released custody of the vehicle to Mr. Meyers, who secured the vehicle in the Documentation Lab. On October 18, 2017, Mr. Meyers re-inspected the vehicle and performed a smog inspection. The vehicle failed the visual portion of the smog inspection because the DiabloSport Tuning System was installed to the vehicle's Mass Air Flow Sensor. Mr. Meyers obtained a printout of the inspection and then photographed the installed DiabloSport Tuning System and the tamper indicators, which showed that the device had not been disturbed.

#### *Respondent's Testimony and Evidence*

17. Respondent testified at hearing. He has been a licensed smog technician since 2006 and he estimates he has performed smog inspections on approximately 10,000 cars. He is the station manager at Alpine Smog and Auto Sales.

18. Respondent testified about the circumstances underlying the 2014 Accusation. At the time, respondent and his brother were working at the smog shop where the undercover operation took place. Both respondent and his brother were licensed smog technicians. He admitted to using his brother's license to smog vehicles on the day of the undercover operation. Respondent fully acknowledged his misconduct and testified he learned his lesson. He complied with the terms of probation, including paying all fines and taking a training course. According to respondent, during probation, he was able to identify modifications to undercover vehicles while performing smog inspections of undercover vehicles. The Bureau did not contest his assertion.

19. As for the 2002 Ford Mustang at issue, respondent believed the DiabloSport Tuning System was in a stock or non-modified condition and that the device was merely acting as a monitor and not effecting emissions on the vehicle. He testified that if he saw an

installed DiabloSport Tuning System in the future, he would fail the vehicle during the smog inspection. He also explained the steps he would take to avoid similar conduct in the future. Whether the vehicle failed or passed the smog inspection did not affect whether he would get paid for the inspection.

20. Respondent is currently married. He has one daughter and he is expecting another daughter. He is the primary source of income for his family. Respondent does not have stocks, bonds, or real estate. Respondent does not have a criminal record.

### *Discussion*

21. Respondent should not have issued a Certificate of Compliance for the Bureau's 2002 Ford Mustang. The vehicle should not have passed the visual inspection component of the smog inspection because an unapproved aftermarket performance device was installed on the vehicle at the time of inspection and was clearly visible. Respondent did not contest that he erroneously issued the Certificate of Compliance for the undercover 2002 Ford Mustang.

22. It is important to note, however, that while the vehicle should have failed the visual inspection component of the smog inspection, Mr. Meyers could not affirmatively say whether the device actually modified the vehicle's emissions. Therefore, the evidence did not clearly establish that respondent's conduct of issuing an electronic smog certificate of compliance for the 2002 Ford Mustang resulted in an injury to another.

23. Additionally, the uncontested evidence showed that respondent, while on probation, actively discovered modifications to undercover vehicles that were sent to his place of employment during undercover operations. Taking into account all of the evidence presented at hearing, the health, safety, and welfare of the public would be adequately protected if the probation period for respondent's licenses is extended for an additional period of time with certain terms and conditions.

### *Costs of Enforcement*

24. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the Administrative Law Judge to direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Complainant submitted in evidence a certification of prosecution and declaration of Deputy Attorney General Stephanie Alamo-Latif, which set forth the prosecution costs in the amount of \$7,292.50, through January 28, 2019. The certification provides an explanation of the work performed by the Attorney General's Office on this matter, the time spent on each task, the cost to complete the task, and the person who completed the task. A total of 45.25 hours was spent on the prosecution of this case. Based upon the complexity of the issues raised in the Accusation, 45.25 hours spent prosecuting this matter is unreasonable. Accordingly, the prosecution costs requested by complainant are not found to be reasonable. Based upon the complexity of this matter, no

more than one-half of the prosecution costs (\$3,646.25) can be considered reasonable for purposes of Business and Professions Code section 125.3.

## LEGAL CONCLUSIONS

1. The control and elimination of air pollutants is of prime importance for the protection and preservation of the public health and well-being, and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property. (Health & Saf. Code, §43000, subd. (b).)

2. Qualified technicians are to perform tests of emission control devices and systems in accordance with Health and Safety Code section 44012. (Health & Saf. Code, § 44012, subd. (f).) In performing smog tests, a visual or functional check must be made of emission control devices, and the visual or functional check “shall be performed in accordance with procedures prescribed by the department.” (Health & Saf. Code, § 44012, subd. (f).) Health and Safety Code section 44032 provides that “[q]ualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.”

3. California Code of Regulations, title 16, section 3340.30, provides that a smog check technician shall inspect, test and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and section 3340.42 of this article. Pursuant to California Code of Regulations, title 16, section 3340.35, subdivision (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 . . . .”

4. California Code of Regulations, title 16, section 3340.41, subdivision (c) states, in pertinent part:

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.

5. California Code of Regulations, title 16, section 3340.42, provides, in relevant part:

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

[¶] . . . [¶]

(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 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. . . .

6. Pursuant to Health and Safety Code section 44072.2, the director may suspend, revoke, or take other disciplinary action against a license, as provided in [Article 7 – Denial, Suspension, and Revocation] if the licensee, or any partner, officer, or director does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program [Health and Safety 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.

7. Health and Safety Code section 9889.3 states, in relevant part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or director hereof:

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

8. Health and Safety Code section 44072.8 states:

When a license has been revoked or suspended following a hearing under this article, any additional license issued under



this chapter in the name of the licensee may be likewise revoked or suspended by the director.

9. Business and Professions Code section 9887.1 gives the director the authority to issue licenses for official lamp and brake adjusting stations and license lamp and brake adjusters. Business and Professions Code section 9889.9 states:

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

10. As set forth in Factual Findings 9 through 16, and 21, cause exists to revoke respondent's smog technician license numbers EO 153759 and EI 153759 pursuant to Health and Safety Code section 44072.2, subdivision (a), for violations of Health and Safety Code sections 44012, subdivision (f), and 44032.

11. As set forth in Factual Findings 9 through 16, and 21, cause exists to revoke respondent's smog technician license numbers EO 153759 and EI 153759 pursuant to Health and Safety Code section 44072.2, subdivision (c) for his failure to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42.

12. As set forth in Factual Finding 22, cause does not exist to discipline respondent's smog technician license pursuant to Health and Safety Code section 44072.2, subdivision (d), and Business and Professions Code section 9889.3, subdivision (d), because the evidence did not establish respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured.

13. Based upon Legal Conclusions 10 and 11, and pursuant to Health and Safety Code section 44072.8 and Business and Professions Code section 9889.9, cause exists to revoke any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of respondent.

14. As set forth in Legal Conclusions 10 and 11, respondent failed to comply with all statutes, regulations and rules governing automotive inspections, estimates, and repairs. Therefore, cause exists to revoke respondent's probation and lift the stayed revocation.

15. However, the evidence established that the health and safety of the public would be adequately protected if respondent's probation was extended for three years. The matters set forth in Finding 23 were considered in making this determination.

### *Award of Costs*

16. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. As set forth in Factual Finding 24, the Board seeks reimbursement for investigation and prosecution costs. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

17. Taking into account the above factors, the prosecution costs are not appropriate or reasonable, as discussed in Factual Finding 24. Additionally, respondent was successful at hearing on two alleged causes for discipline and raised a colorable challenge to the proposed discipline. Therefore, considering the complexity of this matter and the *Zuckerman* factors, enforcement costs in the amount of \$3,646.25, are reasonable, which respondent will be ordered to reimburse the Bureau.

### ORDER

Smog Check Repair Technician License Number EI 153759 and Smog Check Inspector License Number EO 153759 are hereby revoked. However, the revocation is stayed and respondent's probation is extended for three years from the effective date of this Decision on the following terms and conditions:

1. **Actual Suspension.** Smog Check Repair Technician License Number EI 153759 and Smog Check Inspector License Number EO 153759 issued to respondent Gurpreet Singh is suspended for fifteen (15) days.
2. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
4. **Reporting.** Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

5. **Report Financial Interest.** Within 30 days of the effective date of this decision, respondent must report any financial interest that he has in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

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

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

8. **Violation of Probation.** Should the Director of Consumers Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, set aside the stay order and impose the stayed discipline (revocation) of respondent's licenses.

If during the period of probation, an accusation and/or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation and/or petition to revoke probation against respondent's licenses, the probationary period shall automatically be extended and shall not expire until the accusation and/or petition has been acted upon by the Bureau.

9. **Cost Recovery.** Respondent shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$3,646.25 pursuant to a payment plan approved by the Bureau.

DATED: February 26, 2019

DocuSigned by:  
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DENA COGGINS  
Administrative Law Judge  
Office of Administrative Hearings

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

In the Matter of the Petition to Revoke  
Probation Against:

MANDEEP KAUR AND GURPREET  
SINGH,

Respondent.

Case No. 79/17-15365

OAH No. 2018050474

**ORDER OF DECISION**

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the INSPECTION & MAINTENANCE PROGRAM as its Decision in the above-entitled matter.

This Decision shall become effective on \_\_\_\_\_.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_

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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 Against:

Case No. 79/17-15365

13 **GURPREET SINGH**

14 1532 Blackbird Place  
Lodi, CA 95240

**ACCUSATION AND  
PETITION TO REVOKE PROBATION**

15 Mailing Address:  
305 W. Lodi Ave.  
16 Lodi, CA 95240

17 **Smog Check Inspector License**  
**No. EO 153759**  
18 **Smog Check Repair Technician License**  
**No. EI 153759**  
19 **Brake Adjuster License No. BA 153759,**  
**Class C**  
20 **Lamp Adjuster License No. LA 153759,**  
**Class A**

21 and

22 Petition to Revoke Probation Against:

23 **Smog Check Inspector License No. EO**  
24 **153759**  
25 **Smog Check Repair Technician License No.**  
**EI 153759**

26 Respondent.

1 Patrick Dorais ("Complainant") alleges:

2 **PARTIES**

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

6 **Smog Check Inspector (EO)/Smog Check Repair Technician (EI) Licenses**

7 2. In 2006, the Bureau issued Advanced Emission Specialist Technician License No. EA  
8 153759 to Gurpreet Singh ("Respondent"). Respondent's technician license expired on  
9 September 30, 2012. Pursuant to California Code of Regulations, title 16 ("Regulations"), section  
10 3340.28(e), and effective October 16, 2012, Respondent elected to renew the license as Smog  
11 Check Inspector License Number EO153759 and Smog Check Repair Technician License EI  
12 153759.<sup>1</sup> The Smog Check Inspector and Smog Check Repair Technician Licenses were in effect  
13 at all times relevant to the charges brought herein and will expire on September 30, 2018, unless  
14 renewed.

15 **Brake Adjuster License**

16 3. On or about September 25, 2017, the Bureau issued Brake Adjuster License No. BA  
17 153759, Class C, to Respondent. The Brake Adjuster License will expire on September 30, 2021,  
18 unless renewed.

19 **Lamp Adjuster License**

20 4. On or about October 27, 2017, the Bureau issued Lamp Adjuster License No. LA  
21 153759, Class A, to Respondent. The Lamp Adjuster License will expire on September 30, 2021,  
22 unless renewed.

23 **Disciplinary Action**

24 5. In a disciplinary action entitled *In the Matter of the Accusation Against Gurpreet*  
25 *Singh, dba Alpine Smog and Gurpreet Singh, Case No. 79/15-87*, the Director of the Department

26 \_\_\_\_\_  
27 <sup>1</sup> Effective August 1, 2012, Regulations, sections 3340.28, 3340.29, and 3340.30 were  
28 amended to implement a license restructure from the Advanced Emission Specialist Technician  
(EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license  
and/or Smog Check Repair Technician (EI) license.

1 of Consumer Affairs adopted a *Stipulated Settlement and Disciplinary Order*, effective July 22,  
2 2015 (the "Decision"). The Decision revoked Respondent's Smog Check Inspector License  
3 Number EO 153759 and Smog Check Repair Technician License Number EI 153759; however,  
4 the revocations were stayed and the licenses were placed on probation for three years with certain  
5 terms and conditions.

### 6 ACCUSATION

### 7 JURISDICTION

8 6. This Accusation is brought before the Bureau under the authority of the following  
9 laws.

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

13 8. Bus. & Prof. Code section 9887.1 states:

14 The director shall have the authority to issue licenses for official lamp and  
15 brake adjusting stations and shall license lamp and brake adjusters. The licenses shall  
16 be issued in accordance with this chapter and regulations adopted by the director  
17 pursuant thereto. The director shall establish by regulation the terms of adjusters'  
18 licenses as are necessary for the practical administration of the provisions relating to  
19 adjusters, but those terms shall not be for less than one nor more than four years.  
Licenses may be renewed upon application and payment of the renewal fees if the  
application for renewal is made within the 30-day period prior to the date of  
expiration. Persons whose licenses have expired shall immediately cease the activity  
requiring a license . . .

20 9. Bus. & Prof. Code section 9889.9 states:

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

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

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1 11. Code section 118(b) states:

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

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

14 13. Health and Safety Code ("Health & Saf.") section 44002 provides, in pertinent part,  
15 that the Director has all the powers and authority granted under the Automotive Repair Act for  
16 enforcing the Motor Vehicle Inspection Program.

17 14. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
18 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
19 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
20 of jurisdiction to proceed with disciplinary action.

21 15. Health & Saf. Code section 44072.8 states:

22 When a license has been revoked or suspended following a hearing under this  
23 article, any additional license issued under this chapter in the name of the licensee  
24 may be likewise revoked or suspended by the director.

### 25 STATUTORY AND REGULATORY PROVISIONS

26 16. Code section 9889.3 states, in pertinent part:

27 The director may suspend, revoke, or take other disciplinary action against a  
28 license as provided in this article [Article 7 (commencing with section 9889.1) of the  
Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

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

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

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



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

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

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

8 18. Health & Saf. Code section 44072.10(c) states, in pertinent part:

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

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

15 19. California Code of Regulations, Title 16, section 3340.30(a) states, in pertinent part:

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

18 (a) Inspect, test and repair vehicles, as applicable, in accordance with section  
19 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code,  
20 and section 3340.42 of this article.

21 20. California Code of Regulations, Title 16, section 3340.41(c) states, in pertinent part:

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

26 21. California Code of Regulations, Title 16, section 3340.42 states:

27 Smog check inspection methods are prescribed in the Smog Check Manual,  
28 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.

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

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

### 8 **COST RECOVERY**

9 22. Code section 125.3 provides, in pertinent part, that a Board may request the  
10 administrative law judge to direct a licensee found to have committed a violation or violations of  
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
12 enforcement of the case.

### 13 **UNDERCOVER OPERATION – SEPTEMBER 14, 2017**

14 23. In or around July or August 2017, a Bureau representative installed an unapproved  
15 aftermarket add on device on the mass air flow sensor of the Bureau's 2002 Ford. With the  
16 installation of the unapproved aftermarket add on device, the vehicle could not pass a properly  
17 performed smog check test.

18 24. On or about September 14, 2017, an undercover operator with the Bureau (the  
19 "operator") took the 2002 Ford to Alpine Smog and Auto Sales located in Lodi, California, and  
20 requested a smog inspection. After the inspection was completed, the operator paid the facility  
21 \$50 and received a copy of invoice [REDACTED] and a vehicle inspection report ("VIR"). The VIR  
22 indicated that Respondent performed a smog inspection on the vehicle. That same day electronic  
23 Smog Certificate of Compliance [REDACTED] was issued for the vehicle.

24 25. On or about October 18, 2017, a Bureau representative inspected the vehicle and  
25 found that the vehicle could not have passed a smog test because the unapproved aftermarket add  
26 on device had been installed on the vehicle's mass air flow sensor.

### 27 **FIRST CAUSE FOR DISCIPLINE**

28 (Motor Vehicle Inspection Program – Code Violations)

26 26. Respondent's smog check inspector and repair technician licenses are subject to  
27 discipline pursuant to Health & Saf. Code section 44072.2(a), in that on or about September 14,  
28 2017, in regards to the Bureau's 2002 Ford, he violated sections of that Code as follows:

1 a. **Section 44012(f)**: Respondent failed to perform a visual and/or functional check of  
2 the emission control devices on the vehicle in accordance with required procedures.

3 b. **Section 44032**: Respondent failed to perform tests of the emission control devices  
4 and systems on the vehicle in accordance with Code section 44012, in that the vehicle was  
5 precluded from passing a lawful smog inspection because an unapproved aftermarket add-on  
6 device had been installed on the vehicle's mass air flow sensor.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Motor Vehicle Inspection Program – Regulatory Violations)

9 27. Respondent's smog check inspector and repair technician licenses are subject to  
10 discipline pursuant to Health & Saf. Code section 44072.2(c), in that on or about September 14,  
11 2017, in regards to the Bureau's 2002 Ford, Respondent failed to comply with provisions of  
12 Regulations, as follows:

13 a. **Section 3340.30(a)**: Respondent failed to inspect and test the vehicle in accordance  
14 with Health & Saf. Code sections 44012 and 44035.

15 b. **Section 3340.41(c)**: Respondent knowingly entered false information into the  
16 emission inspection system.

17 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the vehicle  
18 in accordance with the Bureau's specifications.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Dishonesty, Fraud or Deceit)

21 28. Respondent's smog check inspector and smog check repair licenses are subject to  
22 discipline pursuant to Health & Saf. Code section 44072.2(d), in that on or about September 14,  
23 2017, he committed a dishonest, fraudulent, or deceitful act whereby another is injured by issuing  
24 an electronic smog certificate of compliance for the Bureau's 2002 Ford without performing a  
25 bona fide inspection of the emission control devices and systems on the vehicle, thereby  
26 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
27 Inspection Program.

28 \\\

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Dishonesty, Fraud, or Deceit)

3 29. Respondent's brake and lamp adjuster licenses are subject to discipline pursuant to  
4 Code section 9889.3(d), in that he committed dishonest, fraudulent, or deceitful acts whereby  
5 another was injured, as identified in paragraph 28, above.

6 **PETITION TO REVOKE PROBATION**

7 30. Complainant incorporates by reference as though fully set forth herein the allegations  
8 contained in paragraphs 1 through 29 above.

9 31. Condition Number 8 of Respondent's probation provides that should the Director  
10 determine that Respondent has failed to comply with the terms and conditions of probation, the  
11 Department may, after giving notice and opportunity to be heard, suspend or revoke the license.

12 32. Grounds exist to revoke Respondent's probation and reimpose the order of revocation  
13 of his Smog Check Inspector and Smog Check Repair Technician licenses, as set forth below.

14 **CAUSE TO REVOKE PROBATION**

15 (Failure to Obey All Laws)

16 33. Condition 2 of Respondent's probation states that Respondent, "shall comply with all  
17 statutes, regulations and rules governing automotive inspections, estimates and repairs."

18 34. Respondent's probation is subject to revocation in that he failed to comply with all  
19 statutes, regulations, and rules governing automotive inspections, as set forth above in paragraphs  
20 23 through 29.

21 **OTHER MATTERS**

22 35. Under Health & Saf. Code section 44072.8, if Smog Check Inspector License No.  
23 EO 153759, or Smog Check Repair Technician License No. EI 153759, issued to Gurpreet Singh,  
24 is revoked or suspended, then any additional license issued under Chapter 5 of Part 5 of Division  
25 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended  
26 by the Director.

27 36. Under Code section 9889.9, Brake Adjuster License No. BA 153759, Class C, issued  
28 to Gurpreet Singh is revoked or suspended, any additional license issued under Division 3,

Chapter 20.3, Articles 5 and 6 of the Code in the name of said licensee may be likewise revoked or suspended by the Director.

37. Under Code section 9889.9, if Lamp Adjuster License No. LA 153759 Class A, issued to Gurpreet Singh is revoked or suspended, any additional license issued under Division 3, Chapter 20.3, Articles 5 and 6 of the Code in the name of said licensee may be likewise revoked or suspended by the Director.

**PRAYER**

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

1. Revoking or suspending Smog Check Inspector License No. EO 153759 and Smog Check Repair Technician License No. EI 153759 issued to Gurpreet Singh;

2. Revoking probation and reimposing the order of revocation of Smog Check Inspector License No. EO 153759 and Smog Check Repair Technician License No. EI 153759 issued to Gurpreet Singh

3. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Gurpreet Singh;

4. Revoking or suspending Brake Adjuster License No. BA 153759 issued to Gurpreet Singh;

5. Revoking or suspending Lamp Adjuster License No. LA 153759 issued to Gurpreet Singh;

6. Revoking or suspending any additional license issued under Division 3, Chapter 20.3, Articles 5 and 6 of the Business and Professions Code, in the name of Gurpreet Singh;

7. Ordering Gurpreet Singh 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;

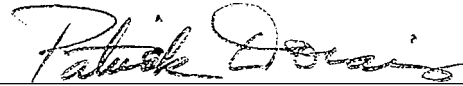
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1 8. Taking such other and further action as deemed necessary and proper.

2  
3 DATED: March 16, 2018



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

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