

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

In the Matter of the Accusation Against:

**SAN DIEGO TOP TUNE, BASSAM S.
RADWAN, AKA BASSAM SHAKER
RADWAN, OWNER**
6982 University Avenue
La Mesa, CA 91941
Automotive Repair Dealer Registration No.
ARD 205624
Smog Check Test and Repair Station
License No. RC 205624,

Case No. 79/14-122

OAH No. 2014050099

BASSAM SHAKER RADWAN
6982 University Avenue
La Mesa, CA 91941
Smog Check Inspector License No.
EO 136052
Smog Check Repair Technician License No.
EI 136052,

and

MICHAEL WAYNE JENNINGS
9121 Rosedale Drive
Spring Valley, CA 91977
Smog Check Inspector License No.
EO 314424
Smog Check Repair Technician License No.
EI 314424

Respondents.

DECISION

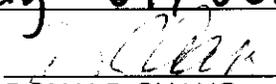
The attached Stipulated Settlement and Disciplinary Order as to Respondents San Diego Top Tune and Bassam Shaker Radwan is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondents San Diego Top Tune and Bassam Shaker, Automotive Repair Dealer Registration No. ARD 205624, Smog Check Test and Repair Station License No. RC 205624, Smog Check Inspector License No. EO 136052 and Smog Check Repair Technician License No. EI 136052.

The suspension of Automotive Repair Dealer Registration No. ARD 205624 shall commence on the effective date of this Decision.

This Decision shall become effective

July 24, 2014

DATED: July 2, 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 **SAN DIEGO TOP TUNE, BASSAM S.**
13 **RADWAN, AKA BASSAM SHAKER**
14 **RADWAN, OWNER**
15 **6982 University Avenue**
16 **La Mesa, CA 91941**
17 **Automotive Repair Dealer Registration No.**
18 **ARD 205624**
19 **Smog Check Test and Repair Station**
20 **License No. RC 205624,**
21 **BASSAM SHAKER RADWAN**
22 **6982 University Avenue**
23 **La Mesa, CA 91941**
24 **Smog Check Inspector License No.**
25 **EO 136052**
26 **Smog Check Repair Technician License No.**
27 **EI 136052,**
28 **MICHAEL WAYNE JENNINGS** and
29 **9121 Rosedale Drive**
30 **Spring Valley, CA 91977**
31 **Smog Check Inspector License No. EO**
32 **314424**
33 **Smog Check Repair Technician License No.**
34 **EI 314424**
35 Respondents.

Case No. 79/14-122
OAH No. 2014050099
STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER AS TO
RESPONDENTS SAN DIEGO TOP
TUNE AND BASSAM SHAKER
RADWAN

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

PARTIES

1
2 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
3 (BAR), Department of Consumer Affairs (Department). He brought this action solely in his
4 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
5 State of California, by G. Michael German, Deputy Attorney General.

6 2. Bassam Shaker Radwan, Owner of San Diego Top Tune, and individually,
7 (Respondent), is represented in this proceeding by attorney Michael B. Levin, Esq., whose
8 address is: 3727 Camino del Rio South, Suite 200, San Diego, CA 92108.

9 3. In 1999, the BAR issued Automotive Repair Dealer Registration Number ARD
10 205624 (registration) to San Diego Top Tune, Bassam S. Radwan, Owner. The registration was
11 in full force and effect at all times relevant to the charges brought herein and will expire on June
12 30, 2014, unless renewed.

13 4. On July 15, 1999, the BAR issued Smog Check Test and Repair Station License
14 Number RC 205624 (station license) to Respondent. The station license was in full force and
15 effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless
16 renewed. On April 14, 2014, the station license was suspended pursuant to an Interim Suspension
17 Order issued by Administrative Law Judge Susan J. Boyle.

18 5. In 1998, the BAR issued Advanced Emission Specialist (EA) Technician License
19 Number 136052 to Bassam Shaker Radwan (Respondent). Respondent EA Technician License
20 was due to expire on May 31, 2013, but was cancelled on May 10, 2013. Pursuant to California
21 Code of Regulations, title 16 (CCR), section 3340.28, subdivision (e),¹ said license was renewed
22 pursuant to Respondent's election as Smog Check Inspector (EO) License No. 136052 and Smog
23 Check Repair Technician (EI) License No. 136052, effective May 10, 2013. Respondent
24 Radwan's EO and EI licenses were in full force and effect at all times relevant to the charges
25 brought herein and will expire on May 31, 2015, unless renewed. On April 14, 2014, Respondent

26
27 ¹ Effective August 1, 2012, an amendment to CCR sections 3340.28, 3340.29, and
28 3340.30 implemented a license restructure of Smog Check Technician (EA/EB) license types to
Smog Check Inspector (EO) and Smog Check Repair Technician (EI) licenses.

1 Radwan's EO and EI licenses were suspended pursuant to the Interim Suspension Order issued by
2 Administrative Law Judge Susan J. Boyle.

3 JURISDICTION

4 6. Accusation No. 79/14-122 was filed before the Director of Consumer Affairs
5 (Director), for the BAR, and is currently pending against Respondent. The Accusation and all
6 other statutorily required documents were properly served on Respondent on April 23, 2014.
7 Respondent timely filed his Notice of Defense contesting the Accusation.

8 7. A copy of Accusation No. 79/14-122 is attached as exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 8. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 79/14-122. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 9. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
17 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

21 10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 11. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 79/14-122.

26 12. Respondent agrees that his ARD registration, smog station, smog check inspector and
27 smog check repair technician licenses are subject to discipline and he agrees to be bound by the
28 Director's Disciplinary Order below.

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Smog Check Test and Repair Station License Number RC
3 205624 issued to San Diego Top Tune, Bassam S. Radwan, Owner; Smog Check Inspector (EO)
4 License No. 136052 and Smog Check Repair Technician (EI) License No. 136052 issued to
5 Bassam Shaker Radwan are revoked.

6 1. The revocation of Respondent's Smog Check Test and Repair Station License, Smog
7 Check Inspector (EO) License, and Smog Check Repair Technician (EI) License shall constitute
8 the imposition of discipline against Respondent. This stipulation constitutes a record of the
9 discipline and shall become a part of Respondent's license history with the BAR.

10 2. Respondent shall lose all rights and privileges as a Smog Check Test and Repair
11 Station Licensee, Smog Check Inspector (EO), and Smog Check Repair Technician (EI) in
12 California as of the effective date of the Director's Decision and Order.

13 3. Respondent shall cause to be delivered to the BAR his pocket licenses and, if issued,
14 his wall certificates on or before the effective date of the Decision and Order.

15 5. Respondent shall not apply for issuance of a Smog Check Test and Repair Station
16 license, Smog Check Inspector (EO) license, or Smog Check Repair Technician (EI) license for a
17 period of one year. If Respondent ever applies for licensure as a Smog Check Test and Repair
18 Station Licensee, Smog Check Inspector or Smog Check Repair Technician (EI), or petitions for
19 reinstatement in the State of California, the BAR shall treat it as a new application for licensure.
20 Respondent must comply with all the laws, regulations and procedures for licensure in effect at
21 the time the application or petition is filed, and all of the charges and allegations contained in
22 Accusation No. 79/14-50 shall be deemed to be true, correct and admitted by Respondent when
23 the Director determines whether to grant or deny the application or petition.

24 6. Respondent shall pay the BAR any balance of its costs of investigation and
25 enforcement as detailed in paragraph 9 below, prior to issuance of a new or reinstated license.

26 IT IS FURTHER ORDERED that Automotive Repair Dealer Registration Number ARD
27 205624, issued to San Diego Top Tune, Bassam S. Radwan, Owner (Respondent), is revoked, but
28

1 this revocation is stayed and Respondent is placed on probation for three years on the following
2 terms and conditions.

3 1. **Actual Suspension.** Automotive Repair Dealer Registration Number ARD 205624,
4 issued to San Diego Top Tune, Bassam S. Radwan, Owner, is suspended for 15 consecutive and
5 concurrent days.

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

8 3. **Post Sign.** Post a prominent sign, provided by the BAR, indicating the beginning and
9 ending dates of the suspension and indicating the reason for the suspension. The sign shall be
10 conspicuously displayed in a location open to and frequented by customers and shall remain
11 posted during the entire period of actual suspension.

12 4. **Reporting.** Respondent or Respondent's authorized representative must report in
13 person or in writing as prescribed by the BAR, on a schedule set by the BAR, but no more
14 frequently than each quarter, on the methods used and success achieved in maintaining
15 compliance with the terms and conditions of probation.

16 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
17 any financial interest which any partners, officers, or owners of the Respondent facility may have
18 in any other business required to be registered pursuant to Section 9884.6 of the Business and
19 Professions Code.

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

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

26 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
27 Respondent has failed to comply with the terms and conditions of probation, the Department may,
28 after giving notice and opportunity to be heard temporarily or permanently invalidate

1 Respondent's registration and suspend or revoke any of his licenses.

2 9. Cost Recovery. Respondent shall pay the BAR, \$13,054.06, jointly and severally
3 with co-Respondent Michael Wayne Jennings, for investigation and enforcement costs in 24
4 monthly installments of \$544.00 each, with the first payment due not later than 30 days after the
5 effective date of this Order and the final payment due 12 months prior to the end of the
6 probationary term, i.e., not later than the 24th month of probation. Full payment to the BAR of
7 this amount shall be received no later than 12 months before probation terminates. Failure to
8 complete payment of cost recovery within this time frame shall constitute a violation of probation
9 which may subject Respondent's registration to outright revocation; however, the Director's BAR
10 designee may elect to continue probation until such time as reimbursement of the entire cost
11 recovery amount has been made to the BAR.

12 ACCEPTANCE

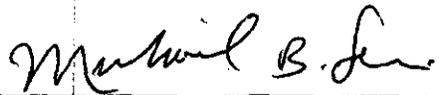
13 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
14 discussed it with my attorney, Michael B. Levin, Esq.. I understand the stipulation and the effect
15 it will have on my Automotive Repair Dealer Registration, Smog Check Test Only Station
16 License, Smog Check Inspector (EO) License, and Smog Check Repair Technician (EI) License.
17 I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
18 intelligently, and agree to be bound by the Decision and Order of the Director of Consumer
19 Affairs.

20 DATED: 5/20/14


21 BASSAM SHAKER RADWAN, Owner for SAN
DIEGO TOP TUNE, and individually, Respondent

22 I have read and fully discussed with Respondent Bassam Shaker Radwan the terms and
23 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
24 I approve its form and content.

25
26 DATED: 5/20/14


27 MICHAEL B. LEVIN, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

Dated: *May 20, 2014*

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

G. Michael German
G. MICHAEL GERMAN
Deputy Attorney General
Attorneys for Complainant

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Jennings Stip.docx

Exhibit A

Accusation No. 79/14-122

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Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
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Attorneys for Complainant

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ACCUSATION

12 **SAN DIEGO TOP TUNE, BASSAM S.**
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14 **RADWAN, OWNER**
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La Mesa, CA 91941

15 **Automotive Repair Dealer Registration No.**
16 **ARD 205624**
17 **Smog Check Test and Repair Station**
18 **License No. RC 205624,**

18 **BASSAM SHAKER RADWAN**
19 **6982 University Avenue**
20 **La Mesa, CA 91941**
21 **Smog Check Inspector License No.**
22 **EO 136052**
23 **Smog Check Repair Technician License No.**
24 **EI 136052,**

and

22 **MICHAEL WAYNE JENNINGS**
23 **9121 Rosedale Drive**
24 **Spring Valley, CA 91977**
25 **Smog Check Inspector License No. EO**
26 **314424**
27 **Smog Check Repair Technician License No.**
28 **EI 314424**

Respondents.

Complainant alleges:

1 **PARTIES**

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

4 **Respondents San Diego Top Tune and Its Owner Bassam S. Radwan**

5 2. In 1999, the BAR issued Automotive Repair Dealer Registration Number ARD
6 205624 (registration) to San Diego Top Tune (Top Tune); Bassam S. Radwan, Owner
7 (Respondent). The registration was in full force and effect at all times relevant to the charges
8 brought herein and will expire on June 30, 2014, unless renewed.

9 3. On July 15, 1999, the BAR issued Smog Check Test and Repair Station License
10 Number RC 205624 (station license) to Respondent. The station license was in full force and
11 effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless
12 renewed. On April 14, 2014, the station license was suspended pursuant to the Interim
13 Suspension Order issued by Administrative Law Judge Susan J. Boyle.

14 4. In 1998, the BAR issued Advanced Emission Specialist (EA) Technician License No.
15 136052 to Bassam Shaker Radwan (Respondent Radwan). Respondent Radwan's EA Technician
16 License was due to expire on May 31, 2013, but was cancelled on May 10, 2013. Pursuant to
17 California Code of Regulations, title 16 (CCR), section 3340.28, subdivision (e),¹ said license
18 was renewed pursuant to Respondent Radwan's election as Smog Check Inspector (EO) License
19 No. 136052 and Smog Check Repair Technician (EI) License No. 136052, effective May 10,
20 2013. Respondent Radwan's EO and EI licenses were in full force and effect at all times relevant
21 to the charges brought herein and will expire on May 31, 2015, unless renewed. On April 14,
22 2014, Respondent Radwan's EO and EI licenses were suspended pursuant to the Interim
23 Suspension Order issued by Administrative Law Judge Susan J. Boyle.

24
25
26
27 ¹ Effective August 1, 2012, an amendment to CCR sections 3340.28, 3340.29, and
28 3340.30 implemented a license restructure of Smog Check Technician (EA/EB) license types to
Smog Check Inspector (EO) and Smog Check Repair Technician (EI) licenses.

1 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
2 proceed with disciplinary action.

3 STATUTORY PROVISIONS

4 10. Code section 22, subdivision (a), states:

5 "Board" as used in any provision of this Code, refers to the board in which
6 the administration of the provision is vested, and unless otherwise expressly
7 provided, shall include "bureau," "commission," "committee," "department,"
8 "division," "examining committee," "program," and "agency."

9 11. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes
10 "registration" and "certificate."

11 12. Code section 9884.7 states, in pertinent part:

12 (a) The director, where the automotive repair dealer cannot show there was a
13 bona fide error, may deny, suspend, revoke or place on probation the registration of
14 an automotive repair dealer for any of the following acts or omissions related to the
15 conduct of the business of the automotive repair dealer, which are done by the
16 automotive repair dealer or any automotive technician, employee, partner, officer, or
17 member of the automotive repair dealer.

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

22

23 (4) Any other conduct that constitutes fraud.

24

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

27

28 13. H&S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with
procedures prescribed by the department and may require loaded mode
dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a
vehicle's onboard diagnostic system, or other appropriate test procedures as
determined by the department in consultation with the state board. The department
shall implement testing using onboard diagnostic systems, in lieu of loaded mode
dynamometer or two-speed idle testing, on model year 2000 and newer vehicles
only, beginning no earlier than January 1, 2013. However, the department, in
consultation with the state board, may prescribe alternative test procedures that
include loaded mode dynamometer or two-speed idle testing for vehicles with
onboard diagnostic systems that the department and the state board determine

1 exhibit operational problems. The department shall ensure, as appropriate to the test
method, the following:

2 (a) Emission control systems required by state and federal law are reducing
3 excess emissions in accordance with the standards adopted pursuant to subdivisions
(a) and (c) of Section 44013.

4
5 (b) If a vehicle meets the requirements of Section 44012, a smog check
6 station licensed to issue certificates shall issue a certificate of compliance or a
certificate of noncompliance.

7

8 (f) A visual or functional check is made of emission control devices
9 specified by the department, including the catalytic converter in those instances in
10 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.

11

12 14. H&S Code section 44015 states in pertinent part:

13

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

16

17 15. H&S Code section 44032 states:

18 No person shall perform, for compensation, tests or repairs of emission
19 control devices or systems of motor vehicles required by this chapter unless the
20 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 technicians shall
21 perform tests of emission control devices and systems in accordance with Section
44012.

22 16. H&S Code section 44072.2 states, in pertinent part:

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

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

27

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

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

2

3 17. H&S Code section 44072.10 states, in pertinent part:

4

5 (c) The department shall revoke the license of any smog check technician or
6 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
7 the following:

8 (1) Clean piping, as defined by the department.

9

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

11 18. H&S Code section 44072.8 states that when a license has been revoked or suspended
12 following a hearing under this article, any additional license issued under this chapter in the name
13 of the licensee may be likewise revoked or suspended by the director.

14 **REGULATORY PROVISIONS**

15 19. CCR, section 3340.1 states, in pertinent part:

16 "Clean piping," for the purposes of [H&S] section 44072.10(c)(1), means the
17 use of a substitute exhaust emissions sample in place of the actual test vehicle's
exhaust in order to cause the EIS to issue a certificate of compliance for the test
18 vehicle . . .

19 20. CCR section 3340.30 states in pertinent part:

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

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

24

25 21. CCR section 3340.35 states in pertinent part:

26

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

. . . .

1 22. CCR section 3340.41 states in pertinent part:

2

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

8

9 23. CCR section 3340.42 states:

10 With the exception of diesel-powered vehicles addressed in subsection (f) of
11 this section, the following emissions test methods and standards apply to all
12 vehicles:

13 (a) A loaded-mode test, except as otherwise specified, shall be the test
14 method used to inspect vehicles registered in the enhanced program areas of the
15 state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon
16 dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications
17 referenced in subsection (b) of Section 3340.17 of this article. The loaded-mode test
18 shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis
19 dynamometer, certified by the bureau.

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

28 (b) A two-speed idle mode test, unless a different test is otherwise specified
in this article, shall be the test method used to inspect vehicles 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 (b) 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.

. . . .

(e) In addition to the test methods prescribed in this section, the following
tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog
Check inspection:

(1) A visual inspection of the vehicle's emissions control systems. During
the visual inspection, the technician shall verify that the following emission control
devices, as applicable, are properly installed on the vehicle:

- 1 (A) air injection systems,
- 2 (B) computer(s) and related sensors and switches,
- 3 (C) crankcase emissions controls, including positive crankcase ventilation,
- 4 (D) exhaust gas after treatment systems, including catalytic converters,
- 5 (E) exhaust gas recirculation (EGR) systems,
- 6 (F) fuel evaporative emission controls,
- 7 (G) fuel metering systems, including carburetors and fuel injection,
- 8 (H) ignition spark controls, and
- 9 (I) any emissions control systems that are not otherwise prompted by the
10 Emissions Inspection System, but listed as a requirement by the vehicle
11 manufacturer.

12 24. CCR section 3373 states:

13 No automotive repair dealer or individual in charge shall, in filling out an
14 estimate, invoice, or work order, or record required to be maintained by section
15 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
16 information which will cause any such document to be false or misleading, or where
17 the tendency or effect thereby would be to mislead or deceive customers,
18 prospective customers, or the public.

17 COST RECOVERY

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

24 FACTUAL ALLEGATIONS

25 26. On March 13, 2013, BAR personnel learned from an anonymous smog technician that
26 a private "Facebook" forum advertised clean piping for prices ranging from \$260 to \$400,
27 depending on whether a "clean" – i.e., smog compliant – similar vehicle was provided, a transfer
28 of ownership or renewal was involved, and a STAR Station was required, which forum continued

1 to advertise clean piping through at least July 10, 2013.² The facility that was clean piping
2 vehicles was unknown until August 13, 2013, when that technician again contacted BAR
3 personnel and provided them with a license plate number that was posted on the forum of a
4 vehicle that was allegedly clean piped. Reviewing the VID, BAR personnel found that the
5 vehicle bearing the posted license plate number had most recently received a smog check
6 inspection at Respondents' facility, Top Tune, and the Smog Check Inspector license used to
7 perform the smog check inspection was EO 136052, belonging to Respondent Radwan.

8 27. On December 5, 2013, BAR personnel set up a video recording camera to record Top
9 Tune's smog bay. The camera was set to record on December 6, 2013 and December 7, 2013,
10 recording each day beginning at approximately 0900 hours and was set to record each day for
11 approximately 12 hours. Thereafter, on December 26, 2013, BAR personnel set up another video
12 recording camera to record Top Tune's smog bay. The camera was set to record on December
13 27, 2013 and December 28, 2013, recording each day beginning at approximately 0900 hours and
14 was set to record each day for approximately 12 hours.

15 28. The two sets of video recordings were reviewed and compared to VID data from Top
16 Tune for the four December 2013 surveillance dates. That review, and Respondents' records,
17 revealed that using clean piping methods, Top Tune issued four fraudulent electronic certificates
18 of compliance through Respondent Radwan, and conducted 11 smog check pre-inspections³
19 through Respondents Radwan and Jennings. None of the 15 vehicles should have been issued
20 certificates of compliance or subjected to pre-inspection because none of them was tested in
21 accordance with BAR smog testing procedures. The review also showed that Respondents
22 Radwan and Jennings entered fraudulent tailpipe emissions results into the EIS for the 15
23 vehicles, as shown in Table 1 below, each performing six and nine inspections, respectively.

24 ² STAR is a voluntary certification program that applies to ARD registrants that are also
25 licensed smog check stations that meet all requirements specified in the regulations. It enhances
the reputation of smog stations among consumers and is prized by registrants and licensees.

26 ³A smog check pre-inspection can be performed to assess a vehicle's emission controls
27 and tailpipe emissions before undergoing the official smog check inspection. The pre-inspection
28 procedure is identical to the official smog check inspection except that no certificate is generated
and the vehicle is not subject to any gross polluter requirements. Pre-inspection test results are
transmitted to the VID as in an official smog check inspection.

TABLE 1

<i>Inspection Time per VID</i>	<i>Vehicle Information Certificate/Pre-Inspection Smog Check Inspector</i>	<i>Vehicle Seen in Smog Bay During Inspection Time?</i>
12/06/2013 – 1717 to 1734	1999 Toyota Corolla, Lic #4GFN753 Certificate #YB275803C EO136052, Bassam Radwan	NO – Mazda 5, Lic #5ZWC924
12/06/2013 – 1841 to 1856	2001 Nissan Sentra, Lic #5JLD790 Certificate #YB275805C EO136052, Bassam Radwan	NO – Mazda 5, Lic #5ZWC924
12/07/2013 – 1530 to 1551	2001 Toyota Camry, Lic #6AOT768 Pre-inspection EO136052, Bassam Radwan	NO – Mazda 5, Lic #5ZWC924
12/07/2013 – 1702 to 1719	1992 Honda Prelude, Lic #None Pre-inspection EO136052, Bassam Radwan	NO – Mazda 5, Lic #5ZWC924
12/27/2013 – 1340 to 1354	2004 Kia Amanti, Lic #None Pre-inspection EO314424, Michael Jennings	NO – Hyundai Elantra, Lic #None
12/27/2013 – 1424 to 1440	2003 Honda Odyssey, Lic #None Pre-inspection EO314424, Michael Jennings	NO – Chevrolet Blazer, Lic #None
12/27/2013 – 1508 to 1530	1989 BMW 3-Series, Lic #6JOP378 Pre-inspection EO314424, Michael Jennings	NO – Chevrolet Blazer, Lic #None
12/27/2013 – 1557 to 1614	2006 BMW 7-Series, Lic #None Certificate #YB275847C EO136052, Bassam Radwan	NO – Chevrolet Blazer, Lic #None
12/27/2013 – 1705 to 1718	2003 Hyundai Sonata, Lic #None Certificate #YB275848C EO136052, Bassam Radwan	NO – Hyundai Elantra, Lic #None Dynamometer. Chevrolet Blazer, Lic #None, tailpipe.
12/28/2013 – 1041 to 1054	1995 Nissan Sentra, Lic #None Pre-inspection EO314424, Michael Jennings	NO – Hyundai Elantra, Lic #None
12/28/2013 – 1206 to 1218	2004 Ford Ranger, Lic #None Pre-inspection EO314424, Michael Jennings	NO – Hyundai Elantra, Lic #None
12/28/2013 – 1225 to 1239	1978 Ford F100, Lic #None Pre-inspection EO314424, Michael Jennings	NO – Chevrolet Blazer, Lic #None
12/28/2013 – 1320 to 1330	1997 Geo Prizm, Lic #3VQX840 Pre-inspection EO314424, Michael Jennings	NO – Hyundai Elantra, Lic #None Dynamometer. Chevrolet Blazer, Lic #None, tailpipe.
12/28/2013 – 1334 to 1352	2003 Toyota Highlander, Lic #6AUC113 Pre-inspection EO314424, Michael Jennings	NO – Honda Accord, Lic #4GEP486
12/28/2013 – 1409 to 1428	1991 Toyota Camry, Lic #6RSV039 Pre-inspection EO314424, Michael Jennings	NO – Honda Accord, Lic #4GEP486

1 Respondent failed to comply with the following sections of the CCR:

2 a. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
3 compliance for four of the vehicles identified in Table 1 above, even though those vehicles had
4 not been inspected in accordance with section 3340.42.

5 b. **Section 3340.42:** Respondent issued electronic certificates of compliance and
6 conducted pre-inspections for the vehicles identified in Table 1 above, even though those vehicles
7 had not been inspected in accordance with BAR specifications.

8 c. **Section 3373:** In issuing electronic certificates of compliance and conducting pre-
9 inspections for the vehicles identified in Table 1 above, based upon inaccurate information
10 entered into the EIS, Respondent caused those certificates and pre-inspections to be false or
11 misleading, with the tendency or effect to mislead or deceive customers, prospective customers,
12 or the public.

13 **FOURTH CAUSE FOR DISCIPLINE**

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

15 33. Respondent Radwan's station license is subject to disciplinary action pursuant to
16 H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
17 following sections of that Code:

18 a. **Section 44012:** Respondent failed to ensure that the emission control tests performed
19 on the vehicles identified in Table 1 above, were done in accordance with procedures prescribed
20 by the department.

21 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the vehicles
22 identified in Table 1 above, were tested and inspected in accordance with the procedures
23 prescribed by the department.

24 c. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
25 compliance for the vehicles identified in Table 1 above, without properly testing and inspecting
26 the four vehicles to determine if they were in compliance with section 44012 of that Code.

27 **FIFTH CAUSE FOR DISCIPLINE**

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

1 a. Section 44012: Respondent failed to ensure that the emission control tests were
2 performed on the vehicles in accordance with procedures prescribed by the department.

3 b. Section 44012, subdivision (f): Respondent failed to ensure that a visual/functional
4 check of emission control devices was performed on the vehicles in accordance with procedures
5 prescribed by the department.

6 c. Section 44032: Respondent failed to perform tests of emission control devices and
7 systems in accordance with H&S Code section 44012.

8 d. Section 44035: Respondent failed to meet or maintain the standards prescribed for
9 qualification, equipment, performance, or conduct of a smog technician.

10 **EIGHTH CAUSE FOR DISCIPLINE**

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

12 37. Respondent Radwan's inspector and repair technician licenses are subject to
13 disciplinary action pursuant to H&S Code section 44072.2, subdivision (c), in that he failed to
14 comply with the provisions of the CCR in the six inspections he performed as set forth in Table 1,
15 above:

16 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the vehicles
17 identified in Table 1 above in accordance with H&S Code sections 44012 and 3340.42..

18 b. Section 3340.41, subdivision (c): Respondent entered false information into the EIS by
19 entering vehicle identification information or emission control system identification data for
20 vehicles other than the ones being tested, as detail in Table 1 above.

21 c. Section 3340.42: Respondent failed to ensure that the required smog tests were
22 conducted on the vehicles identified in Table 1, above in accordance with Bureau specifications.

23 **NINTH CAUSE FOR DISCIPLINE**

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

25 38. Respondent Radwan's inspector and repair technician licenses are subject to
26 discipline under H&S Code section 44072.2, subdivision (d), in that between December 6, 2013,
27 and December 28, 2013, he committed acts involving dishonesty, fraud, or deceit, by issuing
28 electronic Certificate of Compliance and pre-inspections for the six vehicles identified in Table 1

1 above, without performing bona fide inspections of the emission control devices and systems on
2 the vehicles, thereby depriving the People of the State of California of the protection afforded by
3 the Motor Vehicle Inspection Program.

4 **TENTH CAUSE FOR DISCIPLINE**

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

6 39. Respondent Jennings' inspector and repair technician licenses are subject to
7 disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that he failed to
8 comply with the following sections of that Code in the nine inspections he performed as set forth
9 in Table 1, above:

10 a. Section 44012: Respondent failed to ensure that the emission control tests were
11 performed on the vehicles in accordance with procedures prescribed by the department.

12 b. Section 44012, subdivision (f): Respondent failed to ensure that a visual/functional
13 check of emission control devices was performed on the vehicles in accordance with procedures
14 prescribed by the department.

15 c. Section 44032: Respondent failed to perform tests of emission control devices and
16 systems in accordance with H&S Code section 44012.

17 d. Section 44035, subdivision (a): Respondent failed to meet or maintain the standards
18 prescribed for qualification, equipment, performance, or conduct of a smog technician.

19 **ELEVENTH CAUSE FOR DISCIPLINE**

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

21 40. Respondent Jennings' inspector and repair technician licenses are subject to
22 disciplinary action pursuant to H&S Code section 44072.2, subdivision (c), in that he failed to
23 comply with the provisions of the CCR in the nine inspections he performed as set forth in Table
24 1, above:

25 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the vehicles
26 identified in Table 1 above in accordance with H&S Code sections 44012 and 3340.42.

27 b. Section 3340.41, subdivision (c): Respondent entered false information into the EIS by
28 entering vehicle identification information or emission control system identification data for

1 vehicles other than the ones being tested, as detail in Table 1 above.

2 c. Section 3340.42: Respondent failed to ensure that the required smog tests were
3 conducted on the vehicles identified in Table 1, above in accordance with Bureau specifications.

4 **TWELFTH CAUSE FOR DISCIPLINE**

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

6 41. Respondent Jennings' inspector and repair technician licenses are subject to discipline
7 under H&S Code section 44072.2, subdivision (d), in that on December 27 and 28, 2013, he
8 committed acts involving dishonesty, fraud, or deceit, by conducting pre-inspections for the nine
9 vehicles identified in Table 1 above, without performing bona fide inspections of the emission
10 control devices and systems on the vehicles, thereby depriving the People of the State of
11 California of the protection afforded by the Motor Vehicle Inspection Program.

12 **DISCIPLINE CONSIDERATIONS**

13 42. To determine the degree of discipline, if any, to be imposed on Respondent Radwan,
14 his registration, station, and smog technician licenses have been previously disciplined as follows:

15 a. Citation C2010-1001 was issued on March 25, 2010, against Respondent Top Tune for
16 \$500, was appealed on May 24, 2010, and satisfied by payment received on July 8, 2011. Top
17 Tune was cited for violating H&S Code §44012(f) (Failure to perform a visual/functional check
18 of emission control devices according to procedures prescribed by the department), and CCR
19 §3340.35(c) (Issuing a certificate of compliance to the owner or operator of a vehicle that has not
20 been inspected in accordance with the procedures specified in CCR section 3340.42). That
21 Citation is now final and is incorporated by reference as if fully set forth.

22 b. Citation C2011-0182 was issued on August 16, 2010, against Respondent Top Tune for
23 \$1500, was appealed on October 4, 2010, and satisfied by payment received on July 14, 2011.
24 Top Tune was again cited for the same two violations of the H&S Code and CCR detailed above.
25 That Citation is now final and is incorporated by reference as if fully set forth.

26 c. Citation M2010-1002 was issued on March 25, 2010, against Respondent Radwan for
27 an 8 hour citation class, was appealed on May 24, 2010, but no citation training required, per the
28 stipulated agreement of the parties. Radwan was cited for violating H&S Code §44032 (qualified

1 technicians shall perform tests of emissions control systems and devices in accordance with H&S
2 Code §44012, and CCR §3340.30(a) (Licensed technician shall inspect, test and repair vehicles in
3 accordance with Section 44012 of the Health & Safety Code). That Citation is now final and is
4 incorporated by reference as if fully set forth.

5 43. To determine the degree of discipline, if any, to be imposed on Respondent Jennings,
6 his smog technician license was previously disciplined as follows: Citation M2010-0183 was
7 issued on August 16, 2010, against Respondent Jennings for an 8 hour citation class, was
8 appealed on October 4, 2010, and was satisfied when Jennings completed training on July 19,
9 2011. Jennings was cited for violating H&S Code §44032 (qualified technicians shall perform
10 tests of emissions control systems and devices in accordance with H&S Code §44012, and CCR
11 §3340.30(a) (Licensed technician shall inspect, test and repair vehicles in accordance with
12 Section 44012 of the Health & Safety Code). That Citation is now final and is incorporated by
13 reference as if fully set forth.

14 **OTHER MATTERS**

15 44. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or
16 place on probation the registration for all places of business operated in this state by Respondent
17 Radwan, upon a finding that said Respondent has, or is, engaged in a course of repeated and
18 willful violations of the laws and regulations pertaining to automotive repair dealers.

19 45. Pursuant to H&S Code section 44072.8, if Smog Check Test and Repair Station
20 License Number RC 205624, issued to Respondent San Diego Top Tune, Bassam S. Radwan,
21 Owner, is revoked or suspended, any additional license issued under the chapter in the name of
22 said licensee may be likewise revoked or suspended by the Director.

23 **PRAYER**

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

- 26 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 205624
27 issued to Respondent San Diego Top Tune, Bassam S. Radwan, Owner;
- 28 2. Revoking or suspending Smog Check Test and Repair Station License No. RC

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205624 issued to Respondent San Diego Top Tune, Bassam S. Radwan, Owner;

3. Revoking or suspending Smog Check Inspector License No. EO 136052 issued to Respondent Bassam Shaker Radwan;

4. Revoking or suspending Smog Check Repair Technician License No. EI 136052 issued to Bassam Shaker Radwan;

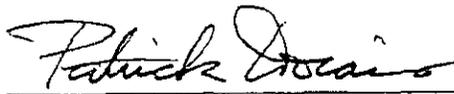
5. Revoking or suspending Smog Check Inspector License No. EO 314424 issued to Michael Wayne Jennings;

6. Revoking or suspending Smog Check Repair Technician License No. EI 314424 issued to Michael Wayne Jennings;

7. Ordering Respondents Bassam S. Radwan and Michael Wayne Jennings, jointly and severally, 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

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

DATED: April 22, 2014



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

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