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

10  
11 In the Matter of the Accusation Against:

Case No.

79/15-53

12 **BASIC AUTO REPAIR**  
810 E. Holt Blvd.  
13 Ontario, CA 91761  
**HENOK GETAHUN, OWNER**  
14 **Automotive Repair Dealer Registration No.**  
**ARD 187166**  
15 **Smog Check Station License No. RC 187166**  
**Brake Station License No. BS 187166**  
16 **Lamp Station License No. LS 187166**

**ACCUSATION**

smog check

17 and

18 **HENOK GETAHUN**  
P.O. Box 4621  
19 Ontario, CA 91761  
**Smog Check Inspector EO 041755;**  
20 **Smog Check Repair Technician EI 041755**  
**(formerly Advanced Emission Specialist**  
21 **Technician License No. EA 041755)**

22 Respondent.

23  
24 Complainant alleges:

25 **PARTIES**

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

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2 **Automotive Repair Dealer Registration No. ARD 187166**

3 2. In 1996, the Bureau of Automotive Repair issued Automotive Repair Dealer  
4 Registration Number ARD 187166 (registration) to Henok Getahun, doing business as Basic Auto  
5 Repair (Respondent). The Automotive Repair Dealer Registration was in full force and effect at  
6 all times relevant to the charges brought herein, and will expire on January 31, 2015, unless  
7 renewed.

8 **Smog Check Station License No. RC 187166**

9 3. On or about February 8, 1996, the Bureau of Automotive Repair issued Smog Check  
10 Station License Number RC 187166 (station license) to Respondent. The Smog Check Station  
11 License was in full force and effect at all times relevant to the charges brought herein, and will  
12 expire on January 31, 2015, unless renewed.

13 **Brake Station License No. BS 187166**

14 4. On or about August 6, 2007, the Bureau of Automotive Repair issued Brake Station  
15 License Number BS 187166 to Respondent. The Brake Station License was in full force and  
16 effect at all times relevant to the charges brought herein, and will expire on January 31, 2015,  
17 unless renewed.

18 **Lamp Station License No. LS 187166**

19 5. On or about August 6, 2007, the Bureau of Automotive Repair issued Lamp Station  
20 License Number BS 187166 to Respondent. The Lamp Station License was in full force and  
21 effect at all times relevant to the charges brought herein, and will expire on January 31, 2015,  
22 unless renewed.

23 **Smog Check Inspector License No. EO 041755**

24 6. In 1996, the Bureau of Automotive Repair issued Advanced Emission Specialist  
25 Technician License EA 041755<sup>1</sup> to Respondent. Effective August 10, 2012, the license was

26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced  
28 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 renewed, pursuant to Respondent's election, as Smog Check Inspector License No. EO 041755.  
2 The Smog Check Inspector License was in full force and effect at all times relevant to the charges  
3 brought herein, and will expire on August 31, 2016, unless renewed.

4 **Smog Check Repair Technician License No. EI 041755**

5 7. In 1996, the Bureau of Automotive Repair issued Advanced Emission Specialist  
6 Technician License EA 041755 to Respondent. Effective August 10, 2012, the license was  
7 renewed, pursuant to Respondent's election, as Smog Check Repair Technician License No. EI  
8 041755. The Smog Check Repair Technician License was in full force and effect at all times  
9 relevant to the charges brought herein, and will expire on August 31, 2016, unless renewed.

10 **JURISDICTION**

11 8. This Accusation is brought before the Director of Consumer Affairs (Director) for the  
12 Bureau of Automotive Repair.

13 9. Section 9884.7 of the Business and Professions Code ("Code") provides that the  
14 Director may revoke an automotive repair dealer registration.

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

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

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

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1 13. Section 44072.8 of the Health and Safety Code states:

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

5 **STATUTORY PROVISIONS**

6 14. Section 9884.7 of the Code states, in pertinent part:

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

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

16 (2) Causing or allowing a customer to sign any work order that does not  
17 state the repairs requested by the customer or the automobile's odometer reading at  
18 the time of repair.

19 ...

20 (6) Failure in any material respect to comply with the provisions of this  
21 chapter [the Automotive Repair Act (Bus. & Prof. Code § 9880, et seq.)] or  
22 regulations adopted pursuant to it."

23 15. Section 44012 of the Health and Safety Code states, in pertinent part:

24 "The test at the smog check stations shall be performed in accordance with  
25 procedures prescribed by the department . . . . The department shall ensure, as  
26 appropriate to the test method, the following:

27 ...

28 (e) For diesel-powered vehicles, a visual inspection is made of emission control  
29 devices and the vehicle's exhaust emissions are tested in accordance with procedures  
30 prescribed by the department, that may include, but are not limited to, onboard  
31 diagnostic testing.

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

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1 16. Section 44015 of the Health and Safety Code states, in pertinent part:

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

4 (1) A vehicle that has been tampered with.

5 . . . .

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

9 17. Section 44072.2 of the Health and Safety Code states, in pertinent part:

10 “The director may suspend, revoke, or take other disciplinary action against a  
11 license as provided in this article if the licensee . . . does any of the following:

12 (a) Violates any section of this chapter and the regulations adopted pursuant to  
13 it, which related to the licensed activities.

14 . . . .

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

17 . . . .

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

20 **REGULATORY PROVISIONS**

21 18. California Code of Regulations, title 16, section 3340.24 states, in pertinent part:

22 “(c) The bureau may suspend or revoke the license of or pursue other legal  
23 action against a licensee, if the licensee falsely or fraudulently issues or obtains a  
24 certificate of compliance or a certificate of noncompliance.”

25 19. California Code of Regulations, title 16, section 3340.35 states, in pertinent part:

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

20. California Code of Regulations, title 16, section 3340.42 states, in pertinent part:

“(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.

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

4 **COST RECOVERY**

5 21. Section 125.3 of the Code provides, in pertinent part, that a Board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case.

9 **UNDERCOVER OPERATION – FEBRUARY 6, 2014**

10 22. On or about February 6, 2014, a Bureau undercover operator (“operator”) drove a  
11 Bureau-documented 2008 Ford (“Ford”) to Basic Auto Repair, located in Ontario, California. The  
12 operator requested a smog check. The Ford could not pass a smog check because the Diesel  
13 Particulate Filter (DPF) had been removed; however, a technician at Basic Auto Repair  
14 performed the inspection and issued Certificate of Compliance No. [REDACTED]. The operator  
15 paid \$50.00 for the inspection and received a copy of Invoice No. [REDACTED] and the Vehicle  
16 Inspection Report (“VIR”).

17 **FIRST CAUSE FOR DISCIPLINE**

18 ***(Untrue or Misleading Statements)***

19 23. Respondent's registration and station license are subject to discipline pursuant to  
20 Code section 9884.7, subdivision (a)(1), in that, on or about February 6, 2014, Respondent made  
21 or authorized statements which were untrue or misleading, and which he knew or, by the exercise  
22 of reasonable care should have known were untrue or misleading. Respondent issued Certificate  
23 of Compliance No. [REDACTED] for the Ford, certifying that the Ford was in compliance with  
24 applicable laws and regulations. In fact, the vehicle’s DPF was missing and could not have passed  
25 the visual portion of the smog inspection required by Health and Safety Code section 44012.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 *(Not Stating Odometer Reading)*

3 24. Respondent's registration and station license are subject to discipline pursuant to  
4 Code section 9884.7, subdivision, (a)(2), in that, on or about February 6, 2014, he failed to record  
5 the odometer reading on the estimate given to the operator.

6 **THIRD CAUSE FOR DISCIPLINE**

7 *(Failure to Comply with the Motor Vehicle Inspection Program)*

8 25. Respondent's registration and station license are subject to discipline pursuant to  
9 Health and Safety Code section 44072.2(a) and (h) in that, on or about February, 6 2014,  
10 Respondent failed to comply with the following sections of that Code:

11 a. Section 44012, subdivisions (e) and (f): Respondent failed to ensure that the emission  
12 control tests were performed on a vehicle, in accordance with procedures prescribed by the  
13 department.

14 b. Section 44015, subdivisions (a)(1) and (b): Respondent issued certificates of  
15 compliance for a vehicle, without ensuring that it was properly tested and inspected to determine  
16 if it was in compliance with Health and Safety Code section 44012.

17 **FOURTH CAUSE FOR DISCIPLINE**

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

19 26. Respondent's registration and station license are subject to discipline pursuant to  
20 Health and Safety Code section 44072.2(c) and Code section 9884.7, subdivision (a)(6), in that,  
21 on or about February 6, 2014, Respondent failed to comply with provisions of California Code of  
22 Regulations, title 16, as follows:

23 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued a certificate  
24 of compliance to a vehicle that could not pass the visual portion of the smog inspection required  
25 by Health and Safety Code section 44012.

26 b. Section 3340.35, subdivision (c): Respondent issued a certificate of compliance even  
27 though the vehicle had not been inspected in accordance with section 3340.42 of the Code.

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1 c. Section 3340.42, subdivision (b): Respondent failed to conduct the required smog tests  
2 and inspections on the vehicle in accordance with the Bureau's specifications.

3 **PRIOR CITATIONS**

4 27. To determine the degree of discipline, if any, to be imposed on Respondent,  
5 Complainant alleges the following:

6 28. On or about May 20, 1997, the Bureau issued Citation No. C1997-0403 against  
7 Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to  
8 determine that emission control devices and systems required by State and Federal law are  
9 installed and functioning correctly in accordance with best procedures), and California Code of  
10 Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a  
11 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover  
12 vehicle with a tampered emission control system that is a non functioning exhaust gas  
13 recirculation system. The Bureau assessed civil penalties totaling \$250.00 against Respondent for  
14 the violations. Respondent complied with this citation on June 12, 1997.

15 29. On or about February 17, 2010, the Bureau issued Citation No. C2010-0837 against  
16 Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to  
17 determine that emission control devices and systems required by State and Federal law are  
18 installed and functioning correctly in accordance with test procedures), and California Code of  
19 regulations, title 16, section 3340.35, subdivision (c) (issuing a Certificate of Compliance to a  
20 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover  
21 vehicle with the ignition timing adjusted beyond specifications, and for failure to perform the low  
22 pressure fuel evaporative test and the gas cap test. The Bureau assessed a civil penalty of  
23 \$1,000.00. Respondent complied with this citation on March 25, 2010.

24 30. On or about November 17, 2010, the Bureau issued Citation No. C2011-0635 against  
25 Respondent for violating Health and Safety Code section 44012, subdivision (f), (failure to  
26 determine that emission control devices and systems required by State and Federal law are  
27 installed and functioning correctly in accordance with test procedures), and California Code of  
28 Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a

1 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover  
2 vehicle with ignition timing adjusted beyond specifications. The Bureau assessed a civil penalty  
3 of \$1,500.00. This citation was appealed on December 20, 2010, and was complied with on  
4 November 15, 2011.

5 31. On or about October 3, 2011, the Bureau issued Citation No. C2012-0246 against  
6 Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to  
7 perform a visual/functional check of emission control devices according to procedures prescribed  
8 by the department), for issuing a certificate of compliance to a Bureau undercover vehicle with a  
9 missing Pulse Air Injection System. The Bureau assessed a civil penalty of \$1,500.00 against  
10 Respondent for the violation. Respondent complied with this citation on November 15, 2011.

#### 11 **OTHER MATTERS**

12 32. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on  
13 probation the registrations for all places of business operated in this state by Respondent, upon a  
14 finding that he has, or is, engaged in a course of repeated and willful violation of the laws and  
15 regulations pertaining to an automotive repair dealer.

16 33. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License  
17 No. RC 187166, issued to Henok Getahun, doing business as Basic Auto Repair, is revoked or  
18 suspended, any additional license issued under this chapter in this name may be likewise revoked  
19 or suspended by the director.

#### 20 **PRAYER**

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

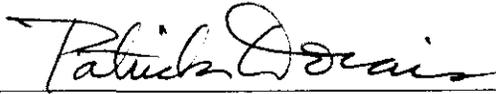
23 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 187166,  
24 issued to Henok Getahun, doing business as Basic Auto Repair;

25 2. Revoking or suspending any other automotive repair dealer registration issued to  
26 Henok Getahun;

27 3. Revoking or suspending Smog Check Station License No. RC 187166, issued to  
28 Henok Getahun, doing business as Basic Auto Repair;

- 1           4.    Revoking or suspending Brake Station License No. BS 187166, issued to Henok
- 2   Getahun, doing business as Basic Auto Repair;
- 3           5.    Revoking or suspending Lamp Station License No. BS 187166, issued to Henok
- 4   Getahun, doing business as Basic Auto Repair;
- 5           6.    Revoking or suspending Smog Check Inspector License No. EO 041755, issued to
- 6   Henok Getahun;
- 7           7.    Revoking or suspending Smog Check Repair Technician License No. EI 041755,
- 8   issued to Henok Getahun;
- 9           8.    Revoking or suspending any additional license issued under Chapter 5 of the Health
- 10   and Safety Code in the name of Henok Getahun;
- 11           9.    Ordering Henok Getahun to pay the Director of Consumer Affairs the reasonable
- 12   costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 13           10.   Taking such other and further action as deemed necessary and proper.

14  
15   DATED: October 7, 2014

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

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28   Accusation  
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