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

11 In the Matter of the Accusation Against:
12 **Z AND T TEST ONLY**
13 **FLORIDA N. ZEIT, OWNER**
14 **6094 Mission Blvd #A**
Riverside, CA 92509

Case No. 79/13-04

FIRST AMENDED ACCUSATION

15 **Automotive Repair Dealer Registration No.**
ARD 234019
16 **Smog Check, Test Only, Station License No.**
TC 234019

17 **and**

18 **JEHAD M. EL-ABED**
19 **21307 Shakespeare Court**
Moreno Valley, CA 92557

20 **Smog Check Inspector License No. EO**
21 **24535 (formerly Advanced Emission**
Specialist Technician License No. EA 24535)

22 Respondents.

23
24 Complainant alleges:

25 **PARTIES**

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

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1 7. Health and Safety Code (Health & Saf. Code) section 44002 provides, in pertinent
2 part, that the Director has all the powers and authority granted under the Automotive Repair Act
3 for enforcing the Motor Vehicle Inspection Program.

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

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

12 10. Section 9884.7 of the Code states:

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

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

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21 (4) Any other conduct that constitutes fraud.

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

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

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

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

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

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

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

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14 12. Health & Saf. Code section 44072.8 states:

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

18 13. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:

19 "Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission
20 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
21 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

22 **STATUTORY PROVISIONS**

23 14. Health & Saf. Code section 44072.10 states, in pertinent part:

24

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

. . . .

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

15. Health & Saf. Code section 44012 provides, in pertinent part, that the test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013.

REGULATORY PROVISIONS

16. California Code of Regulations, title 16, section 3340.24 (c), states:

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

17. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

"A smog check technician shall comply with the following requirements at all times while licensed.

"(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

“ . . . ”

18. California Code of Regulations, title 16, section 3340.35, provides, in pertinent part, that a licensed station shall issue a certificate of compliance . . . 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.

19. California Code of Regulations, title 16, section 3340.41 (c), states:

"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."

20. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part, that smog check stations and smog check technicians shall conduct tests and inspections in

1 accordance with the bureau's BAR 97 Emissions Inspection System Specifications referenced in
2 subsections (a) and (b) of Section 3340.17.

3 COSTS

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

8 VID DATA REVIEW

9 22. In or about January 2012, the BAR initiated an investigation of Respondents based on
10 a review of information from the BAR's vehicle information database (VID), which indicated that
11 Respondents may be engaging in fraudulent smog check inspections.

12 23. Beginning in January of 2012, a representative of the BAR conducted a detailed
13 review of VID data for all smog inspections performed at Respondent's automotive repair
14 dealership for the period of October 13, 2011, through January 13, 2012. The review showed a
15 pattern of OBD II test² diagnostic trouble codes stored in the memory of the power train control
16 module (PCM) on different vehicles that received smog certificates in the four month period. The
17 BAR specifically examined the VID data, in detail, for five of the vehicles that were certified
18 from December 12, 2011 to December 29, 2011 and it was determined that none of them support
19 the OBD II code. Vehicles 1 through 5, set forth in Table 1 in paragraph 23 below, were all
20 certified with various pending codes stored in the PCM memory while the original equipment
21 manufacturer (OEM) service information shows these vehicles do not support the pending codes
22 stored in the PCM memory.

23 ² The On Board Diagnostic, generation II ("OBD II"), functional test is an automated
24 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a
25 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
26 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
27 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
28 Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically
retrieves information from the vehicle's on-board computer about the status of the readiness
indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
II functional test, it will fail the overall inspection.

23. The BAR representative obtained information indicating that none of these codes were applicable to the five vehicles. The VID data also showed that the inspections on all of the vehicles were performed under the technician license of Respondent El-Abed. The BAR concluded that Respondents performed the smog inspections on the vehicles using a different vehicle(s) during the OBD II tests, a method known as "clean plugging,"³ resulting in the issuance of fraudulent certificates of compliance for the vehicles that were tested as outlined in the following table.

TABLE 1

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 12/12/2011 14:34 – 14:43	2000 Toyota Echo; License No. 4KCE443	XB569741C
2. 12/14/2011 16:02 – 16:10	2002 Toyota Corolla; License No. 4VQA296	XB668656C
3. 12/15/2011 14:08 – 14:17	1997 Toyota 4Runner; License No. 3UBY980	XB668662C
4. 12/21/2011 14:44 – 14:51	2003 Toyota Corolla; License No. 5AIF595	XB767158C
5. 12/29/2011 16:42 – 16:49	1997 Hyundai Elantra; License No. 5BLD177	XB853671C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. Respondent Zeit's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that they made or authorized statements which they knew or in the exercise of reasonable care should have known to be untrue or misleading as

³ Clean-plugging is the use of the OBD II readiness monitor status and stored code status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to the noncompliant vehicle's failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored code that indicates an emission control system or component failure. Clean plugging occurs during the inspection of a vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD II system connection from the EIS into another vehicle that has a properly functioning OBD II system, rather than plugging the connection into the vehicle that was originally identified for testing.

1 follows: Respondent certified that vehicles 1 through 5, identified in Table 1 above, had passed
2 inspection and were in compliance with applicable laws and regulations. In fact, Respondent
3 conducted the inspections on the vehicles using clean-plugging methods in that, a different
4 vehicle(s) was substituted during the OBD II functional tests in order to issue smog certificates of
5 compliance for the vehicles, and the vehicles were not tested or inspected, as required by Health
6 and Safety Code section 44012.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 25. Respondent Zeit's registration is subject to disciplinary action under pursuant to Bus.
10 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute
11 fraud by issuing electronic smog certificates of compliance for the vehicles 1 through 5, identified
12 in Table 1 above, without performing bona fide inspections of the emission control devices and
13 systems on the vehicles, thereby depriving the People of the State of California of the protection
14 afforded by the Motor Vehicle Inspection Program.

15 **THIRD CAUSE FOR DISCIPLINE**

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

17 26. Respondent Zeit's smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
19 comply with the following sections of that Code:

20 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
21 devices and systems required by law for vehicles 1 through 5, identified in Table 1 above, were
22 installed and functioning correctly in accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the emission
24 control tests were performed on vehicles 1 through 5, identified in Table 1 above, in accordance
25 with procedures prescribed by the department.

26 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
27 compliance for vehicles 1 through 5, identified in Table 1 above, without ensuring that the
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1 vehicles were properly tested and inspected to determine if they were in compliance with Health
2 & Saf. Code section 44012.

3 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of
4 compliance for vehicles 1 through 5, identified in Table 1 above, by certifying that the vehicles
5 had been inspected as required when, in fact, they had not.

6 **FOURTH CAUSE FOR DISCIPLINE**

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

8 27. Respondent Zeit's smog check station license is subject to disciplinary action
9 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
10 comply with provisions of California Code of Regulations, title 16, as follows:

11 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
12 electronic smog certificates of compliance for vehicles 1 through 5, identified in Table 1 above.

13 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
14 compliance for vehicles 1 through 5, identified in Table 1 above, even though the vehicles had
15 not been inspected in accordance with section 3340.42.

16 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
17 conducted on vehicles 1 through 5, identified in Table 1 above, in accordance with the BAR's
18 specifications.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 28. Respondent Zeit's smog check station license is subject to disciplinary action
22 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
23 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
24 certificates of compliance for the vehicles 1 through 5, identified in Table 1 above, without
25 performing bona fide inspections of the emission control devices and systems on the vehicles,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 29. Respondent El-Abed's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
5 following sections of that Code:

6 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
7 devices and systems required by law for vehicles 1 through 5, identified in Table 1 above, were
8 installed and functioning correctly in accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent failed to perform the emission control
10 tests on vehicles 1 through 5, identified in Table 1 above, in accordance with procedures
11 prescribed by the department.

12 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
13 compliance for vehicles 1 through 5, identified in Table 1 above, without properly testing and
14 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section
15 44012.

16 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of
17 compliance for vehicles 1 through 5, identified in Table 1 above, by certifying that the vehicles
18 had been inspected as required when, in fact, they had not.

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 30. Respondent El-Abed's technician license is subject to disciplinary action pursuant to
22 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
23 provisions of California Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic smog certificates of compliance for vehicles 1 through 5, identified in Table 1 above.

26 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
27 through 5, identified in Table 1 above, in accordance with Health & Saf. Code sections 44012 and
28 44035, and California Code of Regulations, title 16, section 3340.42.

1 c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection
2 system vehicle identification information or emission control system identification data for a
3 vehicle other than the one being tested for vehicles 1 through 5, identified in Table 1 above.

4 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
5 through 5, identified in Table 1 above, in accordance with the Bureau's specifications.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 31. Respondent El-Abed's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
10 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
11 compliance for the vehicles 1 through 5, identified in Table 1 above, without performing bona
12 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
13 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program.

15 **OTHER MATTERS**

16 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
17 suspend, revoke or place on probation the registration for all places of business operated in this
18 state by Respondent, Florida N. Zeit, owner of Z and T Test Only, upon a finding that Respondent
19 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
20 pertaining to an automotive repair dealer.

21 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
22 License Number TC 234019, issued to Respondent, Florida N. Zeit, owner of Z and T Test Only,
23 is revoked or suspended, any additional license issued under the same chapter in the name of said
24 licensee may be likewise revoked or suspended by the Director.

25 34. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
26 Number EO 24535, (formerly Advanced Emission Specialist Technician License Number EA
27 24535), issued to Respondent Jehad M. El-Abed, is revoked or suspended, any additional license
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1 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
2 the director.

3 **DISCIPLINARY CONSIDERATIONS**

4 35. To determine the degree of discipline, if any, to be imposed on Respondent Zeit,
5 Complainant alleges that on or about April 13, 2010, Citation No. C2010-1080 was issued to
6 Respondent Zeit in the amount of \$500.00 for a violation of Health and Safety Code section
7 44012, subdivision (f). The Citation was paid on May 20, 2010.

8 36. Complainant further alleges that on or about April 13, 2010, Citation No. M2010-
9 1081 was issued to Respondent El-Abed, which ordered him to enroll in and complete an eight
10 hour training class for a violation of Health and Safety Code section 44032. Proof of completion
11 of the class was submitted on May 20, 2010.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Director issue a decision:

15 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
16 234019, issued to Florida N. Zeit, Owner of Z and T Test Only;

17 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
18 234019, issued to Florida N. Zeit, Owner of Z and T Test Only;

19 3. Revoking or suspending any additional license issued under Chapter 5 of the Health
20 and Safety Code in the name of Florida N. Zeit;

21 4. Revoking or suspending Smog Check Inspector License Number EO 24535,
22 (formerly Advanced Emission Specialist Technician License Number EA 24535), issued to Jehad
23 M. El-Abed;

24 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
25 and Safety Code in the name of Jehad M. El-Abed;

26 6. Ordering Respondents Florida N. Zeit, Owner of Z and T Test Only and Jehad M. El-
27 Abed to pay the Director the reasonable costs of the investigation and enforcement of this case,
28 pursuant to Business and Professions Code section 125.3; and

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

DATED: 9-30-13

Pat Dorais by Doug Balatti
PATRICK DORAIS
Acting Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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