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

11 In the Matter of the Accusation Against:

Case No. *79/14-122*  
**ACCUSATION**

12 **SAN DIEGO TOP TUNE, BASSAM S.**  
13 **RADWAN, AKA BASSAM SHAKER**  
14 **RADWAN, OWNER**  
6982 University Avenue  
La Mesa, CA 91941

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

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

and

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

Respondents.

27 Complainant alleges:  
28

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),<sup>1</sup> 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 <sup>1</sup> 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."

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

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

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

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

17 . . . .

18 (4) Any other conduct that constitutes fraud.

19 . . . .

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

21 . . . .

22 13. H&S Code section 44012 states:

23 The test at the smog check stations shall be performed in accordance with  
24 procedures prescribed by the department and may require loaded mode  
25 dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a  
26 vehicle's onboard diagnostic system, or other appropriate test procedures as  
27 determined by the department in consultation with the state board. The department  
28 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  
perform tests of emission control devices and systems in accordance with Section  
44012.

21  
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  
the following requirements at all times while licensed:

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

23 . . . .

24 21. CCR section 3340.35 states in pertinent part:

25 . . . .

26 (c) A licensed station shall issue a certificate of compliance or  
27 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  
28 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  
manufacturer.

11 . . . .

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  
the tendency or effect thereby would be to mislead or deceive customers,  
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.<sup>2</sup> 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-inspections<sup>3</sup>  
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 <sup>2</sup> 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 <sup>3</sup>A 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

- 1 205624 issued to Respondent San Diego Top Tune, Bassam S. Radwan, Owner;
- 2 3. Revoking or suspending Smog Check Inspector License No. EO 136052 issued to
- 3 Respondent Bassam Shaker Radwan;
- 4 4. Revoking or suspending Smog Check Repair Technician License No. EI 136052
- 5 issued to Bassam Shaker Radwan;
- 6 5. Revoking or suspending Smog Check Inspector License No. EO 314424 issued to
- 7 Michael Wayne Jennings;
- 8 6. Revoking or suspending Smog Check Repair Technician License No. EI 314424
- 9 issued to Michael Wayne Jennings;
- 10 7. Ordering Respondents Bassam S. Radwan and Michael Wayne Jennings, jointly and
- 11 severally, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
- 12 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 13 8. Taking such other and further action as deemed necessary and proper.

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DATED: April 22, 2014

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

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