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

12 In the Matter of the Accusation Against:

Case No. 79/13-14

13 **76 SMOG CENTER,**
14 **MICHAEL ISSA BATARSEH, OWNER**
15 **1000 N State College Blvd**
Anaheim, CA 92806

FIRST AMENDED
ACCUSATION

16 **Automotive Repair Dealer Registration No.**
17 **ARD 200012**

18 **Smog Check Station License No. RC 200012**

19 **and**

20 **MICHAEL ISSA BATARSEH**
21 **1000 N State College Blvd**
Anaheim, CA 92806

22 **Advanced Emission Specialist Technician**
23 **No. EA 313498 (to be redesignated upon**
renewal as EO 313498 and/or EI 313498).

24 Respondent.

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26 Complainant alleges:

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1 **PARTIES**

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

4 2. **76 Smog Center; Michael Issa Batarseh, Owner:** On or about June 16, 1998, the
5 Bureau of Automotive Repair issued Automotive Repair Dealer Registration No. ARD 200012
6 (the Registration) to Michael Issa Batarseh, Owner of 76 Smog Center (Respondent). The
7 Registration was in full force and effect at all times relevant to the charges brought herein and
8 will expire on May 31, 2013, unless renewed.

9 3. On or about June 18, 1998, the Bureau of Automotive Repair issued Smog Check
10 Station No. RC 200012 (the Smog Check Station License) to Respondent. The Smog Check
11 Station License was in full force and effect at all times relevant to the charges brought herein and
12 will expire on May 31, 2013, unless renewed.

13 4. **Michael Issa Batarseh, Advanced Emission Specialist Technician:** In or about
14 1996, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician No.
15 313498 (the Smog Technician License) to Respondent. The Smog Technician License was in full
16 force and effect at all times relevant to the charges brought herein and will expire on December
17 31, 2013. Upon timely renewal of the license, the license will be redesignated as EO 313498
18 and/or EI 313498.¹

19 **JURISDICTION**

20 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the
21 Bureau of Automotive Repair, under the authority of the following laws.

22 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
23 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed
24 with a disciplinary action during the period within which the license may be renewed, restored,
25 reissued or reinstated.

26 ¹ 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 12. Section 477 of the Code states:

2 As used in this division:

3 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
4 'examining committee,' 'program,' and 'agency.'

5 "(b) 'License' includes certificate, registration or other means to engage in a
6 business or profession regulated by this code."

7 13. Section 9884.7 of the Code states:

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

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

16 ". . .

17 "(4) Any other conduct that constitutes fraud.

18 ". . .

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

21 ". . .

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

26 14. Code section 9884.8 states:

27 "All work done by an automotive repair dealer, including all warranty work, shall be
28 recorded on an invoice and shall describe all service work done and parts supplied. Service work

1 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
2 prices for service work and for parts, not including sales tax, and shall state separately the sales
3 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice
4 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
5 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
6 statement indicating whether any crash parts are original equipment manufacturer crash parts or
7 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
8 given to the customer and one copy shall be retained by the automotive repair dealer.”

9 15. Section 44072.2 of the Health and Safety Code states:

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

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

16 “. . .

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

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

19 “. . . .”

20 16. Section 44072.10 of the Health and Safety Code states:

21 “. . .

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

25 “. . .

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

28 “. . . .”

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

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

5 **COSTS**

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

10 **FIRST UNDERCOVER RUN – JANUARY 20, 2012**

11 19. On or about January 20, 2012, a Bureau undercover operator drove a Bureau
12 documented 1989 Chevrolet C2500 truck (the truck) with a missing Thermostatic Air Cleaner
13 (TAC) system and presented it to Respondent at 76 Smog Center for a smog inspection.
14 Respondent performed the smog inspection, entered his smog technician license number into the
15 EIS, and Certificate of Compliance [REDACTED] was issued. The operator was never given an
16 invoice for the inspection. After the smog inspection, Bureau representatives inspected the truck
17 and the TAC system was still missing so that the truck should have failed a proper smog
18 inspection.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 20. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
22 subdivision (a)(1) in that Respondent made or authorized statements which Respondent knew or
23 in the exercise of reasonable care should have known to be untrue or misleading as follows:
24 Respondent certified that the truck had passed a smog inspection and was in compliance with
25 applicable laws and regulations when, in fact, the truck's TAC system was missing and should
26 have failed a proper inspection.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 24. Respondent's Smog Check Station License is subject to disciplinary action under
4 Health & Safety Code section 44072.10 and 44072.2, subdivision (c), in that Respondent failed to
5 comply with the following sections of Title 16, California Code of Regulations:

6 a. **Section 3340.35, subdivision (c)**: Respondent failed to inspect and test the truck in
7 accordance with the procedures specified in section 3340.42 of the Regulations and failed to
8 ensure that it had all the required emission control equipment and devices installed and
9 functioning correctly.

10 b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the EIS false
11 information about the truck for the condition of the TAC system.

12 c. **Section 3340.42**: Respondent failed to conduct the required smog test on the truck in
13 accordance with the Bureau's specifications.

14 **SIXTH CAUSE FOR DISCIPLINE**

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

16 25. Respondent's Smog Check Station License is subject to disciplinary action under
17 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that Respondent
18 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog
19 certificate of compliance for the truck without performing a bona fide inspection of the emission
20 control devices and systems on it, thereby depriving the People of the State of California of the
21 protection afforded by the Motor Vehicle Inspection Program.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 **(Violations of Motor Vehicle Inspection Program)**

24 26. Respondent's Smog Technician License is subject to disciplinary action under Health
25 and Safety Code sections 44072.10 and 44072.2, subdivision (a), in that Respondent failed to
26 comply with sections 44012 and 44035 of that Code as follows: Respondent failed to perform the
27 emission control tests on the truck in accordance with procedures prescribed by the department.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 27. Respondent's Smog Technician License is subject to disciplinary action under Health
4 & Safety Code section 44072.10 and 44072.2, subdivision (c), in that Respondent failed to
5 comply with the following sections of Title 16, California Code of Regulations:

6 a. **Section 3340.35, subdivision (c)**: Respondent failed to inspect and test the truck in
7 accordance with the procedures specified in section 3340.42 of the Regulations and failed to
8 ensure that it had all the required emission control equipment and devices installed and
9 functioning correctly.

10 b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the EIS false
11 information about the truck for the condition of the TAC system.

12 c. **Section 3340.42**: Respondent failed to conduct the required smog test on the truck in
13 accordance with the Bureau's specifications.

14 **NINTH CAUSE FOR DISCIPLINE**

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

16 28. Respondent's Smog Technician License is subject to disciplinary action under Health
17 and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that Respondent committed
18 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of
19 compliance for the truck without performing a bona fide inspection of the emission control
20 devices and systems on it, thereby depriving the People of the State of California of the protection
21 afforded by the Motor Vehicle Inspection Program.

22 **SECOND UNDERCOVER RUN – FEBRUARY 13, 2012**

23 29. On or about February 13, 2012, a Bureau undercover operator drove a Bureau
24 documented 1991 Toyota Truck (the Toyota) with missing air suction system components (PAIR)
25 and presented it to Respondent at 76 Smog Center for a smog inspection. Respondent performed
26 the smog inspection, entered his smog technician license number into the EIS, and Certificate of
27 Compliance [REDACTED] was issued. The operator was never given an invoice for the inspection.
28 After the smog inspection, Bureau representatives inspected the Toyota and the air suction system

1 components (PAIR) were still missing so that the Toyota should have failed a proper smog
2 inspection.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 30. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
6 subdivision (a)(1) in that Respondent made or authorized statements which Respondent knew or
7 in the exercise of reasonable care should have known to be untrue or misleading as follows:
8 Respondent certified that the Toyota had passed a smog inspection and was in compliance with
9 applicable laws and regulations when, in fact, the Toyota's air suction system components (PAIR)
10 were missing and it should have failed a proper inspection.

11 **ELEVENTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 31. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
14 subdivision (a)(4) in that Respondent committed acts that constitute fraud by issuing a certificate
15 of compliance for the Toyota without performing a bona fide inspection of the emission control
16 devices and systems on the Toyota.

17 **TWELFTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Code)**

19 32. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
20 subdivision (a)(6), in that Respondent failed to comply with the Code section 9884.8 because
21 Respondent never gave the operator an invoice for the smog inspection for the Toyota.

22 **THIRTEENTH CAUSE FOR DISCIPLINE**

23 **(Violations of Motor Vehicle Inspection Program)**

24 33. Respondent's Smog Check Station License is subject to disciplinary action under
25 Health and Safety Code sections 44072.10 and 44072.2, subdivision (a), in that Respondent failed
26 to comply with the following sections of that Code:

27 d. **Section 44012:** Respondent failed to ensure that the emission control tests were
28 performed on the Toyota in accordance with procedures prescribed by the department.

1 e. **Section 44015:** Respondent issued a certificate of compliance for the Toyota without
2 properly testing and inspecting it to determine if it was in compliance with Health & Safety Code
3 section 44012.

4 f. **Section 44035:** Respondent failed to meet or maintain the standards prescribed for
5 qualification, equipment, performance, or conduct by failing to properly perform a smog
6 inspection on the Toyota.

7 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

9 34. Respondent's Smog Check Station License is subject to disciplinary action under
10 Health & Safety Code section 44072.10 and 44072.2, subdivision (c), in that Respondent failed to
11 comply with the following sections of Title 16, California Code of Regulations:

12 a. **Section 3340.35, subdivision (c):** Respondent failed to inspect and test the Toyota in
13 accordance with the procedures specified in section 3340.42 of the Regulations and failed to
14 ensure that it had all the required emission control equipment and devices installed and
15 functioning correctly.

16 b. **Section 3340.41, subdivision (c):** Respondent knowingly entered into the EIS false
17 information about the Toyota for the condition of the air suction system components (PAIR).

18 c. **Section 3340.42:** Respondent failed to conduct the required smog test on the Toyota
19 in accordance with the Bureau's specifications.

20 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

22 35. Respondent's Smog Check Station License is subject to disciplinary action under
23 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that Respondent
24 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog
25 certificate of compliance for the Toyota without performing a bona fide inspection of the
26 emission control devices and systems on it, thereby depriving the People of the State of California
27 of the protection afforded by the Motor Vehicle Inspection Program.

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1 **MATTERS IN AGGRAVATION**

2 39. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about June 25, 2007, Citation No. C07-1051 in the amount of
4 \$500.00 was issued to Respondent. The citation was paid on July 9, 2007.

5 40. Complainant further alleges that on or about September 25, 2007, Citation No. C08-
6 0273 was issued to Respondent in the amount of \$1,000.00. The citation was paid on October 15,
7 2007.

8 41. Complainant further alleges that on or about January 22, 2008, Citation No. C08-
9 0635 was issued to Respondent in the amount of \$2,000.00 and Citation No. M08-0636 was
10 issued to Respondent for an eight hour citation class. On February 14, 2008, Respondent paid the
11 citation, and on February 20, 2008, Respondent completed the citation training class.

12 42. Complainant further alleges that on or about September 27, 2010, Citation No.
13 C2011-0341 was issued to Respondent in the amount of \$2,500.00 and Citation No. M2010-0342
14 was issued to Respondent for a sixteen hour citation class. On November 16, 2010, Respondent
15 completed the citation training class, and on November 17, 2010, Respondent paid the citation.

16 **OTHER MATTERS**

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

21 44. Pursuant to Code section 9889.9, if a license is revoked or suspended following a
22 hearing under Article 7 of the Automotive Repair Act, any additional license issued under
23 Articles 5 and 6 of Chapter 20.3 in the name of Respondent may be likewise revoked or
24 suspended.

25 45. Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Check
26 Station License is revoked or suspended, the Director may likewise revoke or suspend any
27 additional license issued under Chapter 5 of the Health and Safety Code in the name of
28 Respondent.

1 46. Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Technician
2 License, currently designated as Advanced Emission Specialist Technician No. EA 313498 and as
3 redesignated upon timely renewal as EO 313498 and/or EI 313498, is/are revoked or suspended,
4 any additional license issued under this chapter in the name of Respondent may likewise be
5 revoked or suspended by the Director.

6 **PRAYER**

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

- 9 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 200012
10 issued to Michael Issa Batarseh, Owner of 76 Smog Center;
- 11 2. Revoking or suspending Smog Check Station No. RC 200012, issued to Michael Issa
12 Batarseh, Owner of 76 Smog Center;
- 13 3. Revoking or suspending Michael Issa Batarseh's smog technician license(s), currently
14 designated as Advanced Emission Specialist Technician No. EA 313498 and as redesignated
15 upon his timely renewal as EO 313498 and/or EI 313498;
- 16 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Michael Issa Batarseh;
- 18 5. Ordering Michael Issa Batarseh, Owner of 76 Smog Center, to pay the Bureau of
19 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
20 pursuant to Business and Professions Code section 125.3; and
- 21 6. Taking such other and further action as deemed necessary and proper.

22 DATED: _____

5/22/13

23 *John Wallauch*
JOHN WALLAUCH

Chief

Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

Doug Balatti

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