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

12 In the Matter of the Accusation Against:
13 **AUTO SMOG & REPAIR STATION**
14 **NAZARI 3 LLC, OWNER**
1700 North Parkside Dr.
Pittsburg, CA 94565
15 **Automotive Repair Dealer Registration No.**
16 **ARD 258891**
17 **Smog Check Station License No. RC 258891**
18 **and**
19 **MIKE NAZARI**
1700 North Parkside Dr.
Pittsburg, CA 94565
20 **Smog Check Inspector License No. EO**
21 **631723**
22 **Smog Check Repair Technician License No.**
23 **EI 631723 (formerly Advanced Emission**
24 **Specialist Technician License No. EA**
25 **631723)**
26 Respondents.

Case No. 79/16-41

ACCUSATION
Smog check

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about July 27, 2009, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 258891 to Auto Smog & Repair Station, Nazari 3 LLC,
7 Owner (Respondent Auto Smog). The Automotive Repair Dealer Registration was in full force
8 and effect at all times relevant to the charges brought herein and will expire on July 31, 2016,
9 unless renewed.

10 3. On or about August 6, 2009, the Bureau of Automotive Repair issued Smog Check
11 Station License Number RC 258891 to Respondent Auto Smog. The Smog Check Station
12 License was in full force and effect at all times relevant to the charges brought herein and will
13 expire on July 31, 2016, unless renewed.

14 4. On or about February 1, 2010, the Director of the Department of Consumer Affairs
15 issued Advanced Emission Specialist Technician License Number EA 631723 to Mike Nazari
16 (Respondent Nazari). Respondent Nazari's Advanced Emission Specialist Technician License
17 was due to expire on February 28, 2014. Pursuant to California Code of Regulations, title 16,
18 section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent Nazari's
19 election, as Smog Check Inspector License Number EO 631723 and Smog Check Repair
20 Technician License Number EI 631723 (technician licenses), effective September 6,
21 2013. Respondent Nazari's technician licenses will expire on February 28, 2016, unless
22 renewed.¹

23 **JURISDICTION**

24 5. This Accusation is brought before the Director of the Department of Consumer
25 Affairs (Director) for the Bureau of Automotive Repair (Bureau) under the authority of the

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29
27 and 3340.30 were amended to implement a license restructure from the Advanced Emission
28 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 following laws. All section references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
4 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
5 against an automotive repair dealer or to render a decision temporarily or permanently
6 invalidating (suspending or revoking) a registration.

7 7. Section 118, subdivision (b) of the Code states:

8 “The suspension, expiration, or forfeiture by operation of law of a license issued by a board
9 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
10 of a court of law, or its surrender without the written consent of the board, shall not, during any
11 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
12 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
13 provided by law or to enter an order suspending or revoking the license or otherwise taking
14 disciplinary action against the licensee on any such ground.”

15 STATUTORY PROVISIONS

16 8. Section 9884.7 of the Code provides, in relevant part:

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

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

25 ...

26 “(4) Any other conduct which constitutes fraud.

27 ...

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

3 “(7) Any willful departure from or disregard of accepted trade standards for good and
4 workmanlike repair in any material respect, which is prejudicial to another without consent of the
5 owner or his or her duly authorized representative.

6 ...”

7 9. Section 9884.9 of the Code provides, in relevant part:

8 “(a) The automotive repair dealer shall give to the customer a written estimated price for
9 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
10 before authorization to proceed is obtained from the customer. No charge shall be made for work
11 done or parts supplied in excess of the estimated price without the oral or written consent of the
12 customer that shall be obtained at some time after it is determined that the estimated price is
13 insufficient and before the work not estimated is done or the parts not estimated are supplied.
14 Written consent or authorization for an increase in the original estimated price may be provided
15 by electronic mail or facsimile transmission from the customer. The bureau may specify in
16 regulation the procedures to be followed by an automotive repair dealer if an authorization or
17 consent for an increase in the original estimated price is provided by electronic mail or facsimile
18 transmission. If that consent is oral, the dealer shall make a notation on the work order of the
19 date, time, name of person authorizing the additional repairs, and telephone number called, if any,
20 together with a specification of the additional parts and labor and the total additional cost, and
21 shall do either of the following:

22 “(1) Make a notation on the invoice of the same facts set forth in the notation on the work
23 order.

24 “(2) Upon completion of the repairs, obtain the customer’s signature or initials to an
25 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
26 repairs, in the following language:

27 ‘I acknowledge notice and oral approval of an increase in the original estimated price.
28 (signature or initials)’

1 “Nothing in this section shall be construed as requiring an automotive repair dealer to give
2 a written estimated price if the dealer does not agree to perform the requested repair.

3 ...”

4 10. Section 44016 of the Health and Safety Code states:

5 “The department shall, with the cooperation of the state board and after consultation with
6 the motor vehicle manufacturers and representatives of the service industry, research, establish,
7 and update as necessary, specifications and procedures for motor vehicle maintenance and tuneup
8 procedures and for repair of motor vehicle pollution control devices and systems. Licensed repair
9 stations and qualified mechanics shall perform all repairs in accordance with specifications and
10 procedures so established.”

11 11. Section 44072.2 of the Health and Safety Code states, in relevant part:

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

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

17 ...

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

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

20 ...”

21 REGULATORY PROVISIONS

22 12. California Code of Regulations, title 16, section 3340.41, subdivision (d) states:

23 “The specifications and procedures required by Section 44016 of the Health and Safety
24 Code shall be the vehicle manufacturer’s recommended procedures for emission problem
25 diagnosis and repair or the emission diagnosis and repair procedures found in industry-standard
26 reference manuals and periodicals published by nationally recognized repair information
27 providers. Smog check stations and smog check technicians shall, at a minimum, follow the
28 applicable specifications and procedures when diagnosing defects or performing repairs for

1 vehicles that fail a smog check test.”

2 13. California Code of Regulations, title 16, section 3340.45, provides, in relevant part:

3 “(a) All Smog Check inspections shall be performed in accordance with requirements and
4 procedures prescribed in the following:

5 “(1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
6 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

7 ...”

8 14. California Code of Regulations, title 16, section 3353 provides, in relevant part:

9 “No work for compensation shall be commenced and no charges shall accrue without
10 specific authorization from the customer in accordance with the following requirements:

11 ...

12 “(c) Additional Authorization. Except as provided in subsection (f), the dealer shall obtain
13 the customer’s authorization before any additional work not estimated is done or parts not
14 estimated are supplied. This authorization shall be in written, oral, or electronic form, and shall
15 describe the additional repairs, parts, labor and the total additional cost.

16 “(1) If the authorization from the customer for additional repairs, parts, or labor in excess of
17 the written estimated price is obtained orally, the dealer shall also make a notation on the work
18 order and on the invoice of the date, time, name of the person authorizing the additional repairs,
19 and the telephone number called, if any, together with the specification of the additional repairs,
20 parts, labor and the total additional cost.

21 ...”

22 15. California Code of Regulations, title 16, section 3356 provides, in relevant part:

23 “(a) All invoices for service and repair work performed, and parts supplied, as provided for
24 in Section 9884.8 of the Business and Professions Code, shall comply with the following:

25 ...

26 “(2) The invoice shall separately list, describe and identify all of the following:

27 “(A) All service and repair work performed, including all diagnostic and warranty work,
28 and the price for each described service and repair.

1 “(B) Each part supplied, in such a manner that the customer can understand what was
2 purchased, and the price for each described part. The description of each part shall state whether
3 the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket
4 crash part.

5 ...”

6 16. California Code of Regulations, title 16, section 3373 states:

7 “No automotive repair dealer or individual in charge shall, in filling out an estimate,
8 invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter,
9 withhold therefrom or insert therein any statement or information which will cause any such
10 document to be false or misleading, or where the tendency or effect thereby would be to mislead
11 or deceive customers, prospective customers, or the public.”

12 COSTS

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

19 UNDERCOVER OPERATION #1 – May 21-29, 2014

20 18. From approximately March 28, 2014 to May 2, 2014, a Bureau representative
21 inspected and documented a 2001 Dodge. As part of the inspection, the Bureau representative
22 installed the following parts on the vehicle: spark plugs, ignition wires, PCV valve, distributor
23 cap, ignition rotor, and air filter. The Bureau representative also inspected the vehicle’s fuel
24 pump and found it to be within specifications. During the inspection the Bureau representative
25 rendered the vehicle’s number one cylinder fuel injector defective so that it would not flow any
26 fuel. As a result of this defect, the Dodge’s malfunction indicator lamp (MIL) illuminated and the
27 vehicle’s powertrain control module (PCM) stored diagnostic trouble codes (DTC) P0301
28 (misfire number one cylinder) and P0171 (fuel system lean on engine bank number one). The

1 only repair needed for the Dodge to be safely driven was the replacement of the number one
2 cylinder fuel injector.

3 19. On or about May 21, 2014, a Bureau representative drove the Dodge to Auto Smog &
4 Repair Station located at 1700 North Parkside Drive in Pittsburg. The Bureau representative
5 spoke with Respondent Nazari and requested that the vehicle's MIL problem be diagnosed and
6 that the vehicle be smogged. The Bureau representative filled out a work order and signed it.
7 The Dodge's odometer reading was then recorded on the work order and the Bureau
8 representative was given a copy of the work order.

9 20. On or about May 23, 2014, the Bureau representative called the facility and spoke
10 with Respondent Nazari. Respondent Nazari recommended a tune-up for the Dodge, which
11 included "plugs, wires, PCV valve, cap, rotor, everything." The Bureau representative orally
12 authorized Respondent Nazari to perform the tune-up.

13 21. On or about May 27, 2014, Respondent Nazari informed the Bureau representative
14 that the vehicle's fuel pump needed to be replaced at a cost of \$650. The Bureau representative
15 orally authorized Respondent Nazari to replace the fuel pump. Respondent Nazari did not make
16 an adequate notation on the work order or the invoice of the Bureau representative's oral consent
17 to replace the fuel pump.

18 22. On or about May 28, 2014, Respondent Nazari informed the Bureau representative
19 that there were two On Board Diagnostic (OBD) II monitors that were not running. Respondent
20 Nazari stated that it would cost an additional \$90 for him to drive the vehicle so as to get the
21 monitors to run. The Bureau representative orally authorized Respondent Nazari to drive the
22 Dodge in order to get the monitors to run and then to smog the vehicle. Respondent Nazari did
23 not make an adequate notation on the work order or the invoice of the Bureau representative's
24 oral consent to drive the Dodge in order to get the monitors to run.

25 23. On or about May 29, 2014, the Bureau representative picked up the Dodge from the
26 facility and paid Respondent Nazari \$1,248.25. The Bureau representative was provided with a
27 copy of the work order, an invoice, and a vehicle inspection report (VIR). The work order lacked
28 a description of certain repairs, parts, and labor associated with the work performed on the

1 Dodge. The invoice listed the odometer reading as 123,176 miles at the time the Bureau
2 representative picked up the vehicle from the facility. In fact, the odometer reading at the time
3 the Bureau representative picked up the vehicle from the facility was 123,252 miles. The invoice
4 also indicated that the facility had replaced the Dodge's spark plugs, ignition wires, PCV valve,
5 distributor cap, ignition rotor, air filter, and fuel pump, and that all of the OBD II monitors had
6 been run to completion. An inspection of the vehicle, however, indicated that the Dodge's
7 Evaporative OBD II monitor was incomplete.

8 24. Upon re-inspection of the Dodge, a Bureau representative determined that the facility
9 had replaced the vehicle's spark plugs, ignition wires, PCV valve, distributor cap, ignition rotor,
10 air filter, and fuel pump as invoiced, but that those parts were in good working condition and not
11 in need of replacement. The Bureau representative further determined that the facility had
12 replaced the Dodge's fuel injectors for cylinder number 1 and cylinder number 5. The
13 replacement of those fuel injectors, however, was not listed on the invoice.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 25. Respondent Auto Smog's registration is subject to disciplinary action under section
17 9884.7, subdivision (a)(1) of the Code and California Code of Regulations, title 16, section 3373,
18 in that Respondent Auto Smog made or authorized statements which it knew or in the exercise of
19 reasonable care should have known to be untrue or misleading as follows:

20 a. Respondent Nazari told the Bureau's representative that the Dodge needed certain
21 parts that were not in need of replacement.

22 b. Respondent Nazari listed on the invoice for the repairs to the Dodge certain parts and
23 repairs that were unnecessary.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 26. Respondent Auto Smog's registration is subject to disciplinary action under section
27 9884.7, subdivision (a)(4) of the Code in that Respondent Auto Smog committed acts constituting
28 fraud by accepting payment for the replacement of the Dodge's spark plugs, ignition wires, PCV

1 valve, distributor cap, ignition rotor, air filter, fuel pump, and fuel injector for cylinder number 5
2 when those parts were not in need of replacement.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Willful Departure from Trade Standards)**

5 27. Respondent Auto Smog's registration is subject to disciplinary action under section
6 9884.7, subdivision (a)(7) of the Code, Health and Safety Code section 44016, and California
7 Code of Regulations, title 16, section 3340.41, subdivision (d), in that Respondent Auto Smog
8 willfully departed from or disregarded accepted trade standards for good and workmanlike repair
9 in that the repairs performed on the Dodge were not done in accordance with the specifications
10 and procedures established by the vehicle manufacturer or set forth in trade publications.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Failure to Document Oral Consent for Work Done in Excess of Estimated Price)**

13 28. Respondent Auto Smog's registration is subject to disciplinary action under sections
14 9884.7, subdivision (6) and 9884.9, subdivision (a) of the Code, and California Code of
15 Regulations, title 16, section 3353, subdivision (c)(1), in that Respondent Auto Smog failed to
16 properly document on the work order and/or invoice oral consent obtained from the Bureau
17 representative for certain work performed on the Dodge in excess of the estimated price.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Committing Acts Involving Dishonesty, Fraud, and/or Deceit)**

20 29. Respondent Auto Smog's station license is subject to disciplinary action under
21 section 44072.2, subdivision (d) of the Health and Safety Code in that Respondent Auto Smog
22 committed acts involving dishonesty, fraud, and/or deceit whereby another was injured, in that
23 Respondent Auto Smog accepted payment for the replacement of the Dodge's spark plugs,
24 ignition wires, PCV valve, distributor cap, ignition rotor, air filter, fuel pump, and fuel injector for
25 cylinder number 5, even though those parts were not in need of replacement.

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SIXTH CAUSE FOR DISCIPLINE

(Failure to List Repair Work and Parts on Invoice)

30. Respondent Auto Smog’s registration is subject to disciplinary action under section 9884.7, subdivision (6) of the Code and California Code of Regulations, title 16, section 3356, subdivisions (a)(2)(A) and (a)(2)(B), in that the invoice for the work performed on the Dodge did not separately list, describe, or identify the replacement of the fuel injectors for cylinder number 1 and cylinder number 5.

SEVENTH CAUSE FOR DISCIPLINE

(Creating a False and/or Misleading Invoice)

31. Respondent Auto Smog’s registration is subject to disciplinary action under section 9884.7, subdivision (6) of the Code and California Code of Regulations, title 16, section 3373, in that Respondent Auto Smog created a false and/or misleading invoice as follows:

- a. Respondent Auto Smog replaced the Dodge’s fuel injectors for cylinder number 1 and cylinder number 5 but did not list that work on the invoice.
- b. The invoice indicates that all of the OBD II monitors were run to completion. In fact, the vehicle’s Evaporative OBD II monitor was incomplete.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Perform Repairs in Accordance with Required Specifications and Procedures)

32. Respondent Nazari’s technician licenses are subject to disciplinary action under Health and Safety Code sections 44072.2, subdivisions (a) and/or (c) and 44016, and California Code of Regulations, title 16, sections 3340.41, subdivision (d) and 3340.45, subdivision (a)(1), in that Respondent Nazari failed to perform repairs on the Dodge in accordance with the specifications and procedures established by the vehicle manufacturer or set forth in trade publications.

NINTH CAUSE FOR DISCIPLINE

(Creating a False and/or Misleading Invoice)

33. Respondent Nazari’s technician licenses are subject to disciplinary action under Health and Safety Code sections 44072.2, subdivisions (c) and/or (d), and California Code of

1 Regulations, title 16, section 3373, in that Respondent Nazari created a false and/or misleading
2 invoice as follows:

3 a. Respondent Nazari replaced the Dodge's fuel injectors for cylinder number
4 1 and cylinder number 5 but did not list that work on the invoice.

5 b. The invoice indicates that all of the OBD II monitors were run to completion. In
6 fact, the vehicle's Evaporative OBD II monitor was incomplete.

7 **UNDERCOVER OPERATION #2 – July 23-25, 2014**

8 34. From approximately May 30, 2014 through June 26, 2014, a Bureau representative
9 inspected and documented a 2002 Dodge. During the inspection, the Bureau representative
10 installed a defective oxygen sensor heater relay, which caused the vehicle's MIL to illuminate.
11 The only repair needed for the Dodge to be safely driven was the replacement of the defective
12 relay.

13 35. On or about July 23, 2014, a Bureau representative dropped off the Dodge at the
14 subject facility and requested that the illuminated MIL be diagnosed and that the vehicle be
15 smogged. Later in the day on July 23, Respondent Nazari informed the Bureau representative
16 that the vehicle had a defective oxygen sensor that needed to be replaced at a cost of \$126.38.
17 The Bureau representative orally authorized the replacement of the defective oxygen sensor. The
18 Bureau representative also orally authorized Respondent Nazari to drive the Dodge in order for it
19 to pass smog at a cost of \$90.00. Respondent Nazari did not make an adequate notation on the
20 work order or the invoice of the Bureau representative's oral consent to these items.

21 36. On or about July 25, 2014, the Bureau representative picked up the Dodge from the
22 subject facility. The cost of the repairs listed on the invoice was \$374.63, and the Bureau
23 representative paid Respondent Nazari \$380. Respondent Nazari provided the Bureau
24 representative with a copy of the work order, a copy of the invoice, and a vehicle inspection
25 report (VIR). The work order lacks a description of all the repairs, parts, and labor for the work
26 done on the Dodge.

27 37. The Dodge's odometer reading at the time the Bureau representative picked up the
28 vehicle was 132,114 miles. The invoice, however, incorrectly states that the vehicle's odometer

1 reading at the time of pick-up was 132,029 miles.

2 38. Upon re-inspection of the Dodge, a Bureau representative determined that the oxygen
3 sensor had been replaced as invoiced. The Bureau representative further determined that the
4 defective relay had been swapped with a good spare relay that was in the vehicle's relay panel.
5 The replacement of the relay, however, was not listed on the invoice.

6 **TENTH CAUSE FOR DISCIPLINE**

7 **(Untrue or Misleading Statements)**

8 39. Respondent Auto Smog's registration is subject to disciplinary action under section
9 9884.7, subdivision (a)(1) of the Code and California Code of Regulations, title 16, section 3373,
10 in that Respondent Auto Smog made or authorized statements which it knew or in the exercise of
11 reasonable care should have known to be untrue or misleading, as follows:

12 a. Respondent Nazari listed on the invoice for the repairs to the Dodge certain parts and
13 repairs that were unnecessary.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 40. Respondent Auto Smog's registration is subject to disciplinary action under section
17 9884.7, subdivision (a)(4) of the Code in that Respondent Auto Smog committed acts constituting
18 fraud by accepting payment for a new oxygen sensor for the Dodge when that part was not in
19 need of replacement.

20 **TWELFTH CAUSE FOR DISCIPLINE**

21 **(Willful Departure from Trade Standards)**

22 41. Respondent Auto Smog's registration is subject to disciplinary action under section
23 9884.7, subdivision (a)(7) of the Code, Health and Safety Code section 44016, and California
24 Code of Regulations, title 16, section 3340.41, subdivision (d), in that Respondent Auto Smog
25 willfully departed from or disregarded accepted trade standards for good and workmanlike repair,
26 in that the repairs performed on the Dodge were not done in accordance with the specifications
27 and procedures established by the vehicle manufacturer or set forth in trade publications.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Document Oral Consent for Work Done in Excess of Estimated Price)**

3 42. Respondent Auto Smog's registration is subject to disciplinary action under sections
4 9884.7, subdivision (6) and 9884.9, subdivision (a) of the Code, and California Code of
5 Regulations, title 16, section 3353, subdivision (c)(1), in that Respondent Auto Smog failed to
6 properly document on the work order and/or invoice oral consent obtained from the Bureau
7 representative for certain work performed on the Dodge in excess of the estimated price.

8 **FOURTEENTH CAUSE FOR DISCIPLINE**

9 **(Failure to List Repair Work and Parts on Invoice)**

10 43. Respondent Auto Smog's registration is subject to disciplinary action under section
11 9884.7, subdivision (6) of the Code and California Code of Regulations, title 16, section 3356,
12 subdivisions (a)(2)(A) and (a)(2)(B), in that the invoice for the work performed on the Dodge
13 does not separately list, describe, or identify the replacement of the vehicle's defective relay.

14 **FIFTEENTH CAUSE FOR DISCIPLINE**

15 **(Creating a False and/or Misleading Invoice)**

16 44. Respondent Auto Smog's registration is subject to disciplinary action under section
17 9884.7, subdivision (6) of the Code and California Code of Regulations, title 16, section 3373, in
18 that Respondent Auto Smog created a false and/or misleading invoice as follows:

19 a. Respondent Auto Smog replaced the Dodge's defective relay but did not list the
20 replacement on the invoice.

21 b. Respondent Auto Smog charged the Bureau representative for a new oxygen sensor
22 for the Dodge when that part was not in need of replacement.

23 **SIXTEENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Perform Repairs in Accordance with Required Specifications and Procedures)**

25 45. Respondent Nazari's technician licenses are subject to disciplinary action under
26 Health and Safety Code sections 44072.2, subdivisions (a) and/or (c) and 44016, and California
27 Code of Regulations, title 16, sections 3340.41, subdivision (d) and 3340.45, subdivision (a)(1),
28 in that Respondent Nazari failed to perform repairs on the Dodge in accordance with the

1 specifications and procedures established by the vehicle manufacturer or set forth in trade
2 publications.

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

4 **(Creating a False and/or Misleading Invoice)**

5 46. Respondent Nazari's technician licenses are subject to disciplinary action under
6 Health and Safety Code sections 44072.2, subdivisions (c) and/or (d), and California Code of
7 Regulations, title 16, section 3373, in that Respondent Nazari created a false and/or misleading
8 invoice as follows:

9 a. Respondent Nazari replaced the Dodge's defective relay but did not list the
10 replacement on the invoice.

11 b. Respondent Nazari charged the Bureau representative for a new oxygen sensor for the
12 Dodge when that part was not in need of replacement.

13 **UNDERCOVER OPERATION #3 – August 12-21, 2014**

14 47. From approximately June 2, 2014 through July 2, 2014, a Bureau representative
15 inspected and documented a 2001 GMC. During the inspection, the Bureau representative
16 ruptured the diaphragm on the vehicle's secondary air shut off valve of the secondary air injection
17 system, which caused the GMC's PCM to detect a problem with the vehicle's air injection system
18 and turn on the vehicle's MIL. It also caused a DTC P0410 to be stored in the vehicle's PCM.
19 The only repair needed for the GMC to be safely driven was the replacement of the vehicle's
20 defective secondary air shut off valve.

21 48. On or about August 12, 2014, a Bureau operator dropped off the GMC at the subject
22 facility and requested that the illuminated MIL be diagnosed and that the vehicle be smogged.
23 The Bureau operator signed a work order and was provided with a copy of it.

24 49. Later in the day on August 12, 2014, Respondent Nazari informed the Bureau
25 operator that the GMC had a defective air injection pump, and that the cost to replace the pump
26 would be either \$760 (using an original equipment manufacturer (OEM) part) or approximately
27 \$400 (using an aftermarket part). The Bureau operator orally authorized Respondent Nazari to
28 replace the pump with an OEM part. The Bureau operator also orally authorized Respondent

1 Nazari to drive the vehicle the amount required for it to pass a smog inspection. Respondent
2 Nazari did not make an adequate notation on the work order or the invoice of the Bureau
3 operator's oral consent to replace the air injection pump.

4 50. On or about August 18, 2014, Respondent Nazari informed the Bureau operator that
5 there was a problem with the GMC's air injection system, and that two valves needed to be
6 replaced at a cost of \$195. The Bureau operator orally authorized the repair. Respondent Nazari
7 did not make an adequate notation on the work order of the Bureau operator's oral consent to
8 replace the two valves.

9 51. On or about August 21, 2014, the Bureau operator returned to the facility to pick up
10 the GMC. She paid Respondent Nazari \$1,091.50 for the repairs and received an invoice and a
11 VIR.

12 52. At the time of pick-up, the GMC's odometer reading was 81,556 miles. The invoice,
13 however, incorrectly states that the GMC's odometer reading at the time of pick-up was 81,067
14 miles. The invoice also indicates that a DTC P0410B was stored after the air injection pump was
15 replaced. That DTC, however, does not exist for the GMC. The invoice further states that the
16 vehicle's air pump check valve was not working. In fact, the GMC's air pump check valve was
17 properly working.

18 53. Upon re-inspection of the GMC, a Bureau representative determined that the
19 defective secondary air shut off valve had not been replaced. A Bureau representative also
20 determined that Respondent Nazari replaced the vehicle's air pump using an aftermarket part, not
21 an OEM part.

22 **EIGHTEENTH CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

24 54. Respondent Auto Smog's registration is subject to disciplinary action under section
25 9884.7, subdivision (a)(1) of the Code and California Code of Regulations, title 16, section 3373,
26 in that Respondent Auto Smog made or authorized statements which it knew or in the exercise of
27 reasonable care should have known to be untrue or misleading, as follows:

28 a. Respondent Nazari told the Bureau's operator that the GMC needed certain parts that

1 were not in need of replacement.

2 b. Respondent Nazari listed on the invoice for the repairs to the GMC certain parts and
3 repairs that were unnecessary.

4 **NINETEENTH CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 55. Respondent Auto Smog's registration is subject to disciplinary action under section
7 9884.7, subdivision (a)(4) of the Code in that Respondent Auto Smog committed acts constituting
8 fraud by (1) accepting payment for the replacement of the GMC's air injection pump and air
9 pump check valves even though those parts were not in need of replacement; and (2) replacing
10 the GMC's air pump using an aftermarket part rather than an OEM part.

11 **TWENTIETH CAUSE FOR DISCIPLINE**

12 **(Willful Departure from Trade Standards)**

13 56. Respondent Auto Smog's registration is subject to disciplinary action under section
14 9884.7, subdivision (a)(7) of the Code, Health and Safety Code section 44016, and California
15 Code of Regulations, title 16, section 3340.41, subdivision (d), in that Respondent Auto Smog
16 willfully departed from or disregarded accepted trade standards for good and workmanlike repair
17 in that the repairs performed on the GMC were not done in accordance with the specifications and
18 procedures established by the vehicle manufacturer or set forth in trade publications.

19 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

20 **(Failure to Document Oral Consent for Work Done in Excess of Estimated Price)**

21 57. Respondent Auto Smog's registration is subject to disciplinary action under sections
22 9884.7, subdivision (6) and 9884.9, subdivision (a) of the Code, and California Code of
23 Regulations, title 16, section 3353, subdivision (c)(1), in that Respondent Auto Smog failed to
24 properly document on the work order and/or invoice oral consent obtained from the Bureau
25 operator for certain work performed on the GMC in excess of the estimated price.

26 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

27 **(Committing Acts Involving Dishonesty, Fraud, and/or Deceit)**

28 58. Respondent Auto Smog's station license is subject to disciplinary action under

1 section 44072.2, subdivision (d) of the Health and Safety Code in that Respondent Auto Smog
2 committed acts involving dishonesty, fraud, and/or deceit whereby another was injured in that
3 Respondent Auto Smog (1) accepted payment for the replacement of the GMC's air injection
4 pump and air pump check valves even though those parts were not in need of replacement; and
5 (2) replaced the GMC's air pump using an aftermarket part rather than an OEM part.

6 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

7 **(Creating a False and/or Misleading Invoice)**

8 59. Respondent Auto Smog's registration is subject to disciplinary action under section
9 9884.7, subdivision (6) of the Code and California Code of Regulations, title 16, section 3373, in
10 that Respondent Auto Smog created a false and/or misleading invoice as follows:

11 a. The invoice indicates that the replacement air injection pump for the GMC is new. In
12 fact, Respondent Auto Smog replaced the vehicle's air injection pump with an aftermarket part.

13 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

14 **(Failure to Perform Repairs in Accordance with Required Specifications and Procedures)**

15 60. Respondent Nazari's technician licenses are subject to disciplinary action under
16 Health and Safety Code sections 44072.2, subdivisions (a) and/or (c) and 44016, and California
17 Code of Regulations, title 16, sections 3340.41, subdivision (d) and 3340.45, subdivision (a)(1),
18 in that Respondent Nazari failed to perform repairs on the GMC in accordance with the
19 specifications and procedures established by the vehicle manufacturer or set forth in trade
20 publications.

21 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

22 **(Creating a False and/or Misleading Invoice)**

23 61. Respondent Nazari's technician licenses are subject to disciplinary action under
24 Health and Safety Code section 44072.2, subdivisions (c) and/or (d), and California Code of
25 Regulations, title 16, section 3373, in that Respondent Nazari created a false and/or misleading
26 invoice as follows:

27 a. The invoice indicates that the replacement air injection pump for the GMC is new. In
28 fact, Respondent Nazari replaced the vehicle's air injection pump with an aftermarket part.

1 **OTHER MATTERS**

2 62. Under section 9884.7, subdivision (c) of the Code, the Director may suspend, revoke,
3 or place on probation the registrations for all places of business operated in this state by
4 Respondent Auto Smog upon a finding that it has, or is, engaged in a course of repeated and
5 willful violations of the laws and regulations pertaining to an automotive repair dealer.

6 63. Under Health and Safety Code section 44072.8, if Smog Check Station License
7 Number RC 258891 issued to Respondent Auto Smog is revoked or suspended, any additional
8 license issued under this chapter in the name of said licensee may be likewise revoked or
9 suspended by the Director.

10 64. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
11 Number EO 631723 and Smog Check Repair Technician License Number EI 631723 issued to
12 Respondent Nazari are revoked or suspended, any additional license issued under this chapter in
13 the name of said licensee may be likewise revoked or suspended by the Director.

14 **PRAYER**

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

17 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
18 Registration Number ARD 258891 issued to Auto Smog & Repair Station, Nazari 3 LLC, Owner
19 (Respondent Auto Smog);

20 2. Revoking, suspending, or placing on probation any other automotive repair dealer
21 registration issued to Respondent Auto Smog;

22 3. Revoking or suspending Smog Check Station License Number RC 258891 issued to
23 Respondent Auto Smog;

24 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
25 and Safety Code in the name of Respondent Auto Smog;

26 5. Revoking or suspending Smog Check Inspector License No. EO 631723 and Smog
27 Check Repair Technician License No. EI 631723 issued to Mike Nazari (Respondent Nazari);

28 ///

1 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Respondent Nazari;

3 7. Ordering Respondent Auto Smog and Respondent Nazari to pay the Bureau of
4 Automotive Repair the reasonable costs of the investigation and enforcement of this case pursuant
5 to Business and Professions Code section 125.3; and

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

7
8 DATED: October 28, 2015 *Patrick Dorais*

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

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