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

11 In the Matter of the Accusation Against:

Case No. 79/16-142

12 **MILLBRAE AUTO REPAIR**
13 **ANDRE NAZARIAN, OWNER**
14 120 El Camino Real
Millbrae, CA 94030

ACCUSATION
smog check

15 Automotive Repair Dealer Registration No. ARD 268571
16 Smog Check Station License No. RC 268571

17 **ANDRE NAZARIAN**
18 120 Moore Ct.
San Bruno, CA 94066
19 Smog Inspector License No. EO 636313

20 Respondent.

21
22 Complainant alleges:

23 **PARTIES**

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

26 **Automotive Repair Dealer Registration**

27 2. On or about March 29, 2012, the Bureau issued Automotive Repair Dealer
28

1 Registration Number ARD 268571 (Registration) to Andre Nazarian, dba Millbrae Auto Repair
2 (Respondent). The ARD was in full force and effect at all times relevant to the charges brought
3 herein and will expire on March 31, 2017, unless renewed.

4 **Smog Check Station License**

5 3. On or about July 20, 2012, the Bureau issued Smog Check Station License Number
6 RC 268571 to Respondent. The Smog Check Station License was in full force and effect at all
7 times relevant to the charges brought herein and will expire on March 31, 2017, unless renewed.

8 **STAR Certification**

9 4. On or about January 15, 2013, the Bureau issued STAR Station Certification to
10 Respondent. The STAR Station Certification was in full force and effect at all times relevant to
11 the charges brought herein.

12 **Smog Check Inspector License**

13 5. On or about December 5, 2013, the Bureau issued Smog Check Inspector License No.
14 EO 636313 to Respondent. The Smog Check Inspector License was in full force and effect at all
15 times relevant to the charges brought herein and will expire on June 30, 2017, unless renewed.

16 **JURISDICTION**

17 6. This Accusation is brought before the Director of the Department of Consumer Affairs
18 (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

19 7. Code section **118**, subdivision (b), provides that the suspension, expiration, surrender,
20 or cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
21 disciplinary action during the period within which the license may be renewed, restored, reissued
22 or reinstated.

23 8. Code section **9884.13** provides, in pertinent part, that the expiration of a valid
24 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
25 proceeding against an automotive repair dealer or to render a decision invalidating a registration
26 temporarily or permanently.

27 9. Health and Safety Code section **44002** provides, in pertinent part, that the Director has
28 all the powers and authority granted under the Automotive Repair Act for enforcing the Motor

1 Vehicle Inspection Program.

2 10. Health and Safety Code section **44072.6** provides, in pertinent part, that the expiration
3 or suspension of a license by operation of law, or by order or decision of the Director of Consumer
4 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of
5 jurisdiction to proceed with disciplinary action.

6 11. Health and Safety Code section **44072.8** states:

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

10 **STATUTORY PROVISIONS**

11 12. Code section **9884.7** states:

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

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

20 "...

21 (4) Any other conduct which constitutes fraud.

22 "...

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

27 13. Health and Safety Code Section **44012** states:
28

1 "The test at the smog check stations shall be performed in accordance with procedures
2 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
3 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
4 and shall ensure all of the following:

5 "...

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

10 "..."

11 14. Code section **44032** states:

12 "No person shall perform, for compensation, tests or repairs of emission control devices or
13 systems of motor vehicles required by this chapter unless the person performing the test or repair
14 is a qualified smog check technician and the test or repair is performed at a licensed smog check
15 station. Qualified technicians shall perform tests of emission control devices and systems in
16 accordance with Section 44012."

17 15. Health and Safety Code section **44059** states:

18 "The willful making of any false statement or entry with regard to a material matter in any
19 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
20 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and
21 Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

22 16. Health and Safety Code section **44072.2** of states:

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

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

1 "...

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

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

4 "..."

5 **REGULATORY PROVISIONS**

6 17. California Code of Regulations, title 16, section 3340.24, states:

7 "...

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

11 "..."

12 18. California Code of Regulations, title 16, section 3340.30, states:

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

15 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
16 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
17 3340.42 of this article.

18 "..."

19 19. California Code of Regulations, title 16, section 3340.35, states:

20 "...

21 "(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner
22 or operator of any vehicle that has been inspected in accordance with the procedures specified in
23 section 3340.42 of this article and has all the required emission control equipment and devices
24 installed and functioning correctly. The following conditions shall apply:

25 "(1) Customers shall be charged the same price for certificates as that paid by the licensed
26 station; and

27 "(2) Sales tax shall not be assessed on the price of certificates.

28 "(d) No person shall sell, issue, cause or permit to be issued any certificate purported to be

1 a valid certificate of compliance or noncompliance unless duly licensed to do so.

2 ///

3 "(e) A repair cost waiver or an economic hardship extension shall be the same fee as a
4 certificate of compliance or noncompliance."

5 20. California Code of Regulations, title 16, section **3340.41**, states:

6 "...

7 "(c) No person shall enter into the emissions inspection system any vehicle identification
8 information or emission control system identification data for any vehicle other than the one being
9 tested. Nor shall any person knowingly enter into the emissions inspection system any false
10 information about the vehicle being tested.

11 "...

12 "(f) Effective January 1, 2013, a smog check station may not perform an initial test, except
13 for an official pre-test, on any vehicle or issue a certificate of compliance to any vehicle that has
14 been directed to a STAR station for its biennial smog check pursuant to Sections 44010.5 or
15 44014.7 of the Health and Safety Code, unless the station is certified as a STAR station pursuant
16 to Sections 44014.2 or 44014.5 of the Health and Safety Code. The reinspection and certification
17 of a directed vehicle that has failed an initial test at a STAR station and has undergone subsequent
18 repairs to correct the cause of the failure shall be performed by a STAR station."

19 "..."

20 21. California Code of Regulations, title 16, section **3340.42**, states:

21 "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
22 section 3340.45.

23 "(a) All vehicles subject to a smog check inspection, shall receive one of the following test
24 methods:

25 "(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year
26 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-
27 mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen
28 emissions, as contained in the bureau's specifications referenced in subsection (a) of Section

1 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test
2 equipment, including a chassis dynamometer, certified by the bureau.

3 “On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection
4 shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table
5 (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby
6 incorporated by reference. If the emissions standards for a specific vehicle are not included in this
7 table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE
8 I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured
9 emissions are less than or equal to the applicable emission standards specified in the applicable
10 table.

11 “(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-
12 year vehicles, except diesel-powered, registered in all program areas of the state, except in those
13 areas of the state where the enhanced program has been implemented. The two-speed idle mode
14 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
15 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of
16 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be
17 measured and compared to the emission standards set forth in this section and as shown in TABLE
18 III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or
19 equal to the applicable emissions standards specified in Table III.

20 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
21 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
22 The OBD test failure criteria are specified in section 3340.42.2.

23 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
24 receive the following:

25 “(1) A visual inspection of emission control components and systems to verify the vehicle's
26 emission control systems are properly installed.

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

4 ///

5 “(c) The bureau may require any combination of the inspection methods in sections (a) and
6 (b) under any of the following circumstances:

7 “(1) Vehicles that the department randomly selects pursuant to Health and Safety Code
8 section 44014.7 as a means of identifying potential operational problems with vehicle OBD
9 systems.

10 “(2) Vehicles identified by the bureau as being operationally or physically incompatible with
11 inspection equipment.

12 “(3) Vehicles with OBD systems that have demonstrated operational problems.

13 “(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards
14 are as follows:

15 “(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides
16 of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables
17 described in subsection (a), as applicable.

18 “(2) Vehicles with emission levels exceeding the emission standards for gross polluters
19 during an initial inspection will be considered gross polluters and the provisions pertaining to gross
20 polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of
21 the Health and Safety Code.

22 “(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until
23 the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle
24 included in the tables described in subsection (a), as applicable. However, the provisions described
25 in section 44017 of the Health and Safety Code may apply.

26 “(4) This subsection applies in all program areas statewide to vehicles requiring inspection
27 pursuant to sections 44005 and 44011 of the Health and Safety Code.”

28 22. California Code of Regulations, title 16, section **3340.45**, states:

1 used to input technician information, the vehicle identification number (VIN), and DMV renewal
2 information. The printer is used to print Vehicle Inspection Reports.

3 27. The VIN that is physically present on all vehicles is also required to be programmed
4 into the vehicle's OBD II computer on 2005 and newer vehicles, and on many occasions was
5 programmed into the OBD II computer in earlier model-years. This electronically programmed
6 VIN is referred to as the "eVIN" and is captured during a Smog Check. The eVIN must match the
7 physical VIN on the vehicle.

8 28. The OBD II communication protocol describes the specified communication 'language'
9 used by the OBD II computer to communicate with the scan tools and other devices such as the
10 BAR-OIS. The communication protocol is programmed into the OBD II computer during
11 manufacture of the vehicle and does not change.

12 29. Parameter Identifications (PIDs) are data points reported by a vehicle's OBD II
13 system. Each make and model of vehicle reports a specific number of PIDs when it is being tested
14 by the BAR-OIS. The PIDs Count is the number of data points reported by the OBD II system.
15 The PIDs and PIDs Count are programmed during the manufacture of a vehicle and does not
16 change.

17 30. Data retrieved and recorded during a BAR-OIS smog inspection include the eVIN, the
18 communication protocol, and the PIDs Count. This information is transmitted to the vehicle
19 information data base during a smog inspection.

20 31. Clean-plugging is the practice of testing one OBD II system (a system that would pass
21 the smog inspection), for the purpose of fraudulently issuing a smog certificate of compliance to
22 another vehicle that would not pass the smog inspection and/or is not present for testing. The
23 vehicle receiving the certificate of compliance is not actually tested by the DAD during the smog
24 inspection.

25 32. On or about June 1, 2016, the Bureau initiated an investigation of Respondent's Shop,
26 Millbrae Auto Repair. Beginning on or about January 7, 2015, and continuing until about March
27 24, 2015, Respondent was found to have performed six fraudulent smog inspections using clean-
28 plugging methods. The six vehicles that were purportedly tested by Respondent were not and

1 could not have been connected to the DAD when they were being certified because the OBD-II
2 data purportedly transmitted by those vehicles could not have been transmitted by those vehicles,
3 resulting in the issuance of six fraudulent Smog Check Certificates of Compliance. The Vehicles
4 were clean plugged as follows:

5 a. On or about January 7, 2105, Respondent clean plugged a 2001 Infinity QX4, CA
6 License No.6N52716. Respondent issued Smog Check Certificate of Compliance No.
7 YN212799C to this vehicle. This was not the vehicle connected to the DAD during the smog
8 inspection.

9 b. On or about January 17, 2015, Respondent clean plugged a 2005 Mazda 3, CA
10 License No. 5YFR171. Respondent issued Smog Check Certificate of Compliance No.
11 PO186184C to this vehicle. This was not the vehicle connected to the DAD during the smog
12 inspection.

13 c. On or about February 3, 2015, Respondent clean plugged a 2006 Pontiac Solstice, CA
14 License No. 5SPS466. Respondent issued Smog Check Certificate of Compliance No.
15 YN611190C. This was not the vehicle connected to the DAD during the smog inspection.

16 d. On or about March 3, 2015, Respondent clean plugged a 2003 Mitsubishi Eclipse
17 GTS, CA License No. 4WKL544. Respondent issued Smog Check Certificate of Compliance No.
18 PO881050. This was not the vehicle connected to the DAD during the smog inspection.

19 e. On or about March 22, 2015, Respondent clean plugged a 2006 Mercedes-Benz E500,
20 CA License No. 5XJX670. Respondent issued Smog Check Certificate of Compliance No.
21 YP471976C. This was not the vehicle connected to the DAD during the smog inspection.

22 f. On or about March 24, 2015, Respondent clean plugged a 2005 Nissan Frontier XE,
23 CA License No. 7X54612. Respondent issued Smog Check Certificate of Compliance No.
24 YP471983C. This was not the vehicle connected to the DAD during the smog inspection.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Untrue and/or Misleading Statements- Registration)**

27 33. Respondent has subjected his Registration to disciplinary action under Code section
28 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of

1 reasonable carc, should have known were untrue or misleading, as set forth in paragraph 32,
2 above. Respondent fraudulently purported to test six vehicles, and certified that the six vehicles
3 passed inspection and were in compliance with applicable laws and regulations. In fact,
4 Respondents conducted the inspections on those vehicles using clean plugging methods.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud-Registration)**

7 34. Respondent has subjected his Registration to disciplinary action under Code section
8 9884.7, subdivision (a)(4), in that he committed acts of clean-plugging which constitute fraud, as
9 set forth in paragraph 32, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Violation of Motor Vehicle Inspection Program- Smog Check Station License)**

12 35. Respondent has subjected his Smog Check Station License to disciplinary action under
13 Health and Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of
14 that Code and applicable regulations by clean-plugging vehicles as set forth in paragraph 32,
15 above, as follows:

16 a. Section **44012**: Respondent failed to ensure that the emission control tests were
17 performed on those vehicles in accordance with procedures prescribed by the department.

18 b. Section **3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic
19 certificates of compliance for those vehicles without performing bona fide inspections of the
20 emission control devices and systems on the vehicles as required by Health and Safety Code
21 section 44012.

22 c. Section **3340.35, subdivision (c)**: Respondent issued electronic certificates of
23 compliance even those vehicles had not been inspected in accordance with section 3340.42.

24 d. Section **3340.41, subdivision (c)**: Respondent entered false information into an
25 inspections system about the vehicle being tested.

26 e. Section **3340.42**: Respondent failed to conduct the required smog tests and
27 inspections on those vehicles in accordance with the Bureau's specifications.
28

1 f. Section 3373: Respondent used false information to issue smog check certificates of
2 compliance.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud, or Deceit- Station License- Smog Check Station License)**

5 36. Respondent has subjected his Smog Check Station License to disciplinary action under
6 Health and Safety Code section 44072.2, subdivision (d), in that he committed acts involving
7 dishonesty, fraud, or deceit whereby another was injured by issued electronic certificates of
8 compliance for those vehicles without performing bona fide inspections of the emissions control
9 devices and systems on the vehicles, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program. Respondent clean-plugged six
11 vehicles as set forth in paragraph 32, above.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Violation of the Motor Vehicle Inspection Program- Smog Check Inspector License)**

14 37. Respondent has subjected his Smog Check Inspector License to disciplinary action
15 under Health and Safety Code section 44072.2, subdivisions (a) and (c), in he violated sections of
16 the Code and applicable regulations by clean-plugging vehicles as set forth in paragraph 32, above,
17 as follows:

18 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
19 performed on those vehicles in accordance with procedures prescribed by the department.

20 b. **Section 44032:** Respondent failed to ensure that the emission control tests were
21 performed on those vehicles in accordance with procedures prescribed by the department.

22 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates
23 of compliance by certifying that those vehicles had been inspected as required when, in fact, they
24 had not.

25 d. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
26 electronic certificates of compliance for those vehicles without performing bona fide inspections of
27 the emission control devices and systems on the vehicles as required by Health and Safety Code
28 section 44012.

1 e. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those
2 vehicles in accordance with Health and Safety Code section 44012.

3 f. **Section 3340.41, subdivision (c):** Respondent entered false information into an
4 inspections system about the vehicle being tested.

5 g. **Section 3340.42:** Respondent failed to conduct the required smog tests and
6 inspections on those vehicles in accordance with the Bureau's specifications.

7 h. **Section 3340.45:** Respondent failed to conduct the required smog tests and
8 inspections on those vehicles in accordance with the Bureau's smog check procedures manuals.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Dishonesty, Fraud or Deceit-Smog Check Inspector License)**

11 38. Respondent subjected his Smog Check Inspector License to discipline under Health
12 and Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
13 fraud or deceit, whereby another was injured by issuing electronic certificates of compliance for
14 vehicles without performing bona fide inspections of the emission control devices and systems on
15 the vehicles, thereby depriving the People of the State of California of the protection afforded by
16 the Motor Vehicle Inspection Program. Respondent clean plugged six vehicles as set forth in
17 paragraph 32, above.

18 **OTHER MATTERS**

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

23 40. Pursuant to **Health & Safety Code section 44072.8**, if Respondent's Station License
24 is revoked or suspended, any additional license issued under this chapter in the name of said
25 licensee may be likewise revoked or suspended by the director.

26 41. Pursuant to **Health & Safety Code section 44072.8**, if Respondent's Smog Check
27 Inspector License is revoked or suspended, any additional license issued under this chapter in the
28 name of said licensee may be likewise revoked or suspended by the director.

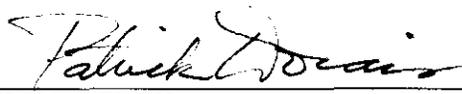
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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 268571, issued to Andre Nazarian, dba Millbrae Auto Repair;
2. Revoking or suspending Smog Check Station License Number RC 268571, issued to Andre Nazarian;
3. Revoking or suspending STAR Station Certification issued to Andre Nazarian;
4. Revoking or suspending Smog Check Inspector License EO 636313 issued to Andre Nazarian;
5. Ordering Andre Nazarian to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
6. Taking such other and further action as deemed necessary and proper.

DATED: June 28, 2016



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

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