

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Acting Senior Assistant Attorney General
3 KENT D. HARRIS
Supervising Deputy Attorney General
4 State Bar No. 144804
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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 **DISCOUNT SMOG**
ADANAN AMAR BATH, OWNER
937 West 16th Street
14 Merced, California 95340
Automotive Repair Dealer No. ARD 249722
15 **Smog Check Station No. RC 249722**
16 and
17 **ADANAN AMAR BATH**
1623 9th Street
18 Livingston, California 95334
Smog Check Repair Technician
19 **License No. EI 151462**
Smog Check Inspector
20 **License No. EO 151462,**
21 Respondents.

Case No. 79/15-36
ACCUSATION
smog check

22
23 Patrick Dorais ("Complainant") alleges:

24 **PARTIES**

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

27 ///
28 ///

1 against an automotive repair dealer or to render a decision temporarily or permanently
2 invalidating (suspending or revoking) a registration.

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

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

10 9. Health & Saf. Code section 44072.8 states that when a license has been revoked or
11 suspended following a hearing under this article, any additional license issued under this chapter
12 in the name of the licensee may be likewise revoked or suspended by the director.

13 10. California Code of Regulations, title 16 (“Regulations”), section 3340.28, states, in
14 pertinent part:

15 (e) [u]pon renewal of an unexpired Basic Area Technician license or an
16 Advanced Emission Specialist Technician license issued prior to the effective date
17 of this regulation, the licensee may apply to renew as a Smog Check Inspector,
Smog Check Repair Technician, or both.

18 STATUTORY PROVISIONS

19 11. Code section 22 provides, in pertinent part, that “Board” as used in any provision of
20 this Code, refers to the board in which the administration of the provision is vested, and unless
21 otherwise provided, shall include “bureau,” “commission,” “committee,” “department,”
22 “division,” “examining committee,” “program,” and “agency.”

23 12. Code section 477 provides, in pertinent part, that a “license” includes “certificate”
24 and “registration”.

25 13. Code section 9884.7 states, in pertinent part:

26 (a) The director, where the automotive repair dealer cannot show there was a
27 bona fide error, may deny, suspend, revoke, or place on probation the registration
28 of an automotive repair dealer for any of the following acts or omissions related to
the conduct of the business of the automotive repair dealer, which are done by the

1 automotive repair dealer or any automotive technician, employee, partner, officer,
2 or member of the automotive repair dealer.

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

7 (4) Any other conduct that constitutes fraud.

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

13 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

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

24 15. Health & Saf. Code section 44072.10 states, in pertinent part:

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

(1) Clean piping, as defined by the department.

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

COST RECOVERY

16. Code section 125.3 provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

///

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **UNDERCOVER VIDEO SURVEILLANCE #1**

4 17. On or about February 20, 2014, between approximately 06:45 and 18:30 hours, the
5 Bureau performed a video surveillance of Respondent's facility. A videotape of the surveillance
6 operation and/or information obtained from the Bureau's vehicle information database ("VID"),
7 revealed that between 11:53 and 12:04 hours, Respondent performed a smog test on a 1985
8 Toyota Tercel, license number 6ECR484, and issued electronic Smog Certificate of Compliance
9 #YD385915C ("Certificate of Compliance") for the vehicle. In fact, Respondent performed the
10 smog inspection using the clean-piping method by using the tail pipe emissions of a vehicle other
11 than the 1985 Toyota Tercel in order to issue the Certificate of Compliance.²

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 18. Respondent's Registration is subject to disciplinary action under Code section
15 9884.7(a)(1), in that on or about February 20, 2014, Respondent made or authorized statements
16 which he knew or in the exercise of reasonable care should have known to be untrue or
17 misleading. Specifically, Respondent issued a Certificate of Compliance for a 1985 Toyota
18 Tercel, certifying that the vehicle was in compliance with applicable laws and regulations when,
19 in fact, the vehicle had been clean-piped.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 19. Respondent's Registration is subject to disciplinary action under Code section
23 9884.7(a)(4), in that on or about February 20, 2014, Respondent committed an act that constitutes
24

25 _____
26 ² California Code of Regulations, title 16, section 3340, states, in pertinent part, that
27 "[c]lean piping' for the purposes of Health and Safety Code section 44072.10(c)(1), means the
28 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 vehicle".

1 fraud by issuing a Certificate of Compliance for the 1985 Toyota Tercel without performing a
2 bona fide inspection on that vehicle, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Violation of the Motor Vehicle Inspection Program)**

6 20. Respondent's Station License No. RC 249722 is subject to disciplinary action under
7 Health & Saf. Code section 44072.2(a), in that on or about February 20, 2014, Respondent failed
8 to comply with the provisions of that Code as regards the 1985 Toyota Tercel, as follows:

9 a. **Section 44012(f)**: Respondent failed to ensure that the emission control tests were
10 performed in accordance with the procedures prescribed by the department.

11 b. **Section 44015(b)**: Respondent issued a Certificate of Compliance without
12 properly testing and inspecting the vehicle to determine if it was in compliance with Health &
13 Saf. Code section 44012.

14 c. **Section 44059**: Respondent falsely represented on the Certificate of Compliance
15 that the vehicle had been inspected as required when, in fact, it had not.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

18 21. Respondent's Station License is subject to disciplinary action under Health & Saf.
19 Code section 44072.2(c), in that on or about February 20, 2014, Respondent failed to comply with
20 Regulations regarding the 1985 Toyota Tercel, as follows:

21 a. **Section 3340.24(c)**: Respondent falsely or fraudulently issued a Certificate of
22 Compliance for the vehicle without performing a bona fide inspection of the emission control
23 devices and systems on that vehicle as required by Health & Saf. Code section 44012.

24 b. **Section 3340.35(c)**: Respondent issued a Certificate of Compliance even though
25 the vehicle had not been inspected in accordance with section 3340.42.

26 c. **Section 3340.41(c)**: Respondent entered false information into the EIS by entering
27 vehicle identification information or emission control system identification data for a vehicle
28 other than the one being tested.

1 d. **Section 3340.42**: Respondent failed to ensure that the required smog test was
2 conducted in accordance with the Bureau's specifications.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 22. Respondent's Station License is subject to disciplinary action under Health & Saf.
6 Code section 44072.2(d), in that on or about February 20, 2014, Respondent committed a
7 dishonest, fraudulent or deceitful act whereby another is injured by issuing a Certificate of
8 Compliance for the 1985 Toyota Tercel when, in fact, it had not been properly tested and
9 inspected, thereby depriving the People of the State of California of the protection afforded by the
10 Motor Vehicle Inspection Program.

11 **SIXTH CAUSE FOR DISCIPLINE**

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

13 23. Respondent's Technician Licenses are subject to disciplinary action under Health &
14 Saf. Code section 44072.2(a), in that on or about February 20, 2014, Respondent failed to comply
15 with section 44012 of that Code as regards the 1985 Toyota Tercel, as follows:

16 a. **Section 44012(f)**: Respondent failed to determine that all emission control
17 devices and systems required by law were installed and functioning correctly in accordance with
18 prescribed test procedures.

19 b. **Section 44032**: Respondent failed to perform tests of the emission control
20 devices and systems in accordance with Health & Saf. Code section 44012, in that the vehicle had
21 been clean-piped.

22 c. **Section 44059**: Respondent willfully made false entries into the Emission
23 Inspection System ("EIS") for a Certificate of Compliance by entering vehicle identification
24 information or emission control information for a vehicle other than the one being tested.

25 ///

26 ///

27 ///

28 ///

1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 24. Respondent's Technician Licenses are subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2(c), in that on or about February 20, 2014, Respondent failed
5 to comply with Regulations as regards the 1985 Toyota Tercel as follows:

6 a. **Section 3340.30(a)**: Respondent failed to inspect and test the vehicle in
7 accordance with Health & Saf. Code section 44012.

8 b. **Section 3340.41(c)**: Respondent entered false information into the EIS by
9 entering vehicle identification information or emission control system identification data for a
10 vehicle other than the one being tested.

11 c. **Section 3340.42**: Respondent failed to ensure that the required smog test was
12 conducted in accordance with the Bureau's specifications.

13 **EIGHTH CAUSE FOR DISCIPLINE**

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

15 25. Respondent's Technician Licenses are subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2(d), in that on or about February 20, 2014, Respondent
17 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing a
18 Certificate of Compliance for the 1985 Toyota Tercel without performing a bona fide inspection
19 of the emission control devices and systems on the vehicle, thereby depriving the People of the
20 State of California of the protection afforded by the Motor Vehicle Inspection Program.

21 **UNDERCOVER VIDEO SURVEILLANCE #2**

22 26. On or about March 10, 2014, between approximately 06:35 and 19:02 hours, the
23 Bureau performed a video surveillance of Respondent's facility. A videotape of the surveillance
24 operation and/or information obtained from the Bureau's vehicle information database ("VID"),
25 revealed that between 14:58 and 15:16 hours, Respondent performed a smog test on a 2006 Ford
26 Fusion, license number 5TTR150, and issued Smog Certificate of Compliance #PE549130C
27 ("Certificate of Compliance") for the vehicle. In fact, Respondent performed the smog inspection

28 ///

1 using the clean-piping method by using the tail pipe emissions of a vehicle other than the 2006
2 Ford Fusion in order to issue the Certificate of Compliance.

3 **NINTH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 27. Respondent's Registration is subject to disciplinary action under Code
6 section 9884.7(a)(1), in that on or about March 10, 2014, Respondent made or authorized
7 statements which he knew or in the exercise of reasonable care should have known to be untrue or
8 misleading. Specifically, Respondent issued a Certificate of Compliance for a 2006 Ford Fusion,
9 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
10 the vehicle had been clean-piped.

11 **TENTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 28. Respondent's Registration is subject to disciplinary action under Code section
14 9884.7(a)(4), in that on or about March 10, 2014, Respondent committed an act that constitutes
15 fraud by issuing a Certificate of Compliance for the 2006 Ford Fusion without performing a bona
16 fide inspection on that vehicle, thereby depriving the People of the State of California of the
17 protection afforded by the Motor Vehicle Inspection Program.

18 **ELEVENTH CAUSE FOR DISCIPLINE**

19 **(Violation of the Motor Vehicle Inspection Program)**

20 29. Respondent's Station License No. RC 249722 is subject to disciplinary action under
21 Health & Saf. Code section 44072.2(a), in that on or about March 10, 2014, Respondent failed to
22 comply with the provisions of that Code as regards the 2006 Ford Fusion, as follows:

23 a. **Section 44012(f)**: Respondent failed to ensure that the emission control tests
24 were performed in accordance with the procedures prescribed by the department.

25 b. **Section 44015(b)**: Respondent issued a Certificate of Compliance without
26 properly testing and inspecting the vehicle to determine if it was in compliance with Health &
27 Saf. Code section 44012.

28 ///

1 c. **Section 44059**: Respondent falsely represented on a Certificate of Compliance
2 that the vehicle had been inspected as required when, in fact, it had not.

3 **TWELFTH CAUSE FOR DISCIPLINE**

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

5 30. Respondent's Station License is subject to disciplinary action under Health & Saf.
6 Code section 44072.2(c), in that on or about March 10, 2014, Respondent failed to comply with
7 Regulations regarding the 2006 Ford Fusion, as follows:

8 a. **Section 3340.24(c)**: Respondent falsely or fraudulently issued a Certificate of
9 Compliance for the vehicle without performing a bona fide inspection of the emission control
10 devices and systems on that vehicle as required by Health & Saf. Code section 44012.

11 b. **Section 3340.35(c)**: Respondent issued a Certificate of Compliance even though
12 the vehicle had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.41(c)**: Respondent entered false information into the EIS by
14 entering vehicle identification information or emission control system identification data for a
15 vehicle other than the one being tested.

16 d. **Section 3340.42**: Respondent failed to ensure that the required smog test was
17 conducted in accordance with the Bureau's specifications.

18 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

20 31. Respondent's Station License is subject to disciplinary action under Health & Saf.
21 Code section 44072.2(d), in that on or about March 10, 2014, Respondent committed a dishonest,
22 fraudulent or deceitful act whereby another is injured by issuing a Certificate of Compliance for
23 the 2006 Ford Fusion when, in fact, it had not been properly tested and inspected, thereby
24 depriving the People of the State of California of the protection afforded by the Motor Vehicle
25 Inspection Program.

26 ///

27 ///

28 ///

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent's Technician Licenses are subject to disciplinary action under Health &
4 Saf. Code section 44072.2(a), in that on or about March 10, 2014, Respondent failed to comply
5 with section 44012 of that Code as regards the 2006 Ford Fusion, as follows:

6 a. **Section 44012(f)**: Respondent failed to determine that all emission control
7 devices and systems required by law were installed and functioning correctly in accordance with
8 prescribed test procedures.

9 b. **Section 44032**: Respondent failed to perform tests of the emission control
10 devices and systems in accordance with Health & Saf. Code section 44012, in that the vehicle had
11 been clean-piped.

12 c. **Section 44059**: Respondent willfully made false entries into the Emission
13 Inspection System ("EIS") for a Certificate of Compliance by entering vehicle identification
14 information or emission control information for a vehicle other than the one being tested.

15 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

17 33. Respondent's Technician Licenses are subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2(c), in that on or about March 10, 2014, Respondent failed to
19 comply with Regulations as regards the 2006 Ford Fusion as follows:

20 a. **Section 3340.30(a)**: Respondent failed to inspect and test the vehicle in
21 accordance with Health & Saf. Code section 44012.

22 b. **Section 3340.41(c)**: Respondent entered false information into the EIS by
23 entering vehicle identification information or emission control system identification data for a
24 vehicle other than the one being tested.

25 c. **Section 3340.42**: Respondent failed to ensure that the required smog test was
26 conducted in accordance with the Bureau's specifications.

27 ///

28 ///

1 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

3 34. Respondent's Technician Licenses are subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2(d), in that on or about March 10, 2014, Respondent
5 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing a
6 Certificate of Compliance for the 2006 Ford Fusion without performing a bona fide inspection of
7 the emission control devices and systems on the vehicle, thereby depriving the People of the State
8 of California of the protection afforded by the Motor Vehicle Inspection Program.

9 **MATTERS IN AGGRAVATION**

10 **Discount Smog**

11 35. On or about May 29, 2008, the Bureau issued Citation No. C08-1048 against
12 Respondent for violation of Health & Saf. Code section 44012(f) (failure to perform a
13 visual/functional check of emission control devices according to procedures prescribed by the
14 department), and Regulations, section 3340.35(c) (issuing a certificate of compliance to a vehicle
15 that was improperly tested). On May 21, 2008, Respondent issued a certificate of compliance to a
16 Bureau undercover vehicle with a missing PCV system. The Bureau assessed civil penalties
17 totaling \$500 against Respondent for the violations. Respondent paid the fine on July 15, 2008.

18 36. On or about October 27, 2008, the Bureau issued Citation No. C09-0458 against
19 Respondent for violation of Health & Saf. Code section 44012(f) (failure to perform a
20 visual/functional check of emission control devices according to procedures prescribed by the
21 department), and Regulations, section 3340.35(c) (issuing a certificate of compliance to a vehicle
22 that was improperly tested). On October 14, 2008, Respondent issued a certificate of compliance
23 to a Bureau undercover vehicle with a missing pulse air reed valve. The Bureau assessed civil
24 penalties totaling \$1000 against Respondent for the violations. Respondent paid the fine on
25 December 3, 2008.

26 **Adanan Bath**

27 37. On or about May 29, 2008, the Bureau issued Citation No. M08-1049 against
28 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall

1 perform tests of emission control systems and devices in accordance with Health & Saf. Code
2 section 44012), and Regulations, section 3340.30(a) (qualified technicians shall inspect, test, and
3 repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035, and
4 Regulations, section 3340.42). On May 21, 2008, Respondent issued a certificate of compliance
5 to a Bureau undercover vehicle with a missing PVC system. Respondent was directed to
6 complete an eight hour training course and to submit proof of completion to the Bureau within 30
7 days from receipt of the citation. Respondent completed the training on August 16, 2008.

8 38. On or about October 27, 2008, the Bureau issued Citation No. M09-0459 against
9 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
10 perform tests of emission control systems and devices in accordance with Health & Saf. Code
11 section 44012), and Regulations, section 3340.30(a) (qualified technicians shall inspect, test, and
12 repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035, and
13 Regulations, section 3340.42). On October 14, 2008, Respondent issued a certificate of
14 compliance to a Bureau undercover vehicle with a missing pulse air reed valve. Respondent was
15 directed to complete a sixteen hour training course and to submit proof of completion to the
16 Bureau within 30 days from receipt of the citation. Respondent completed the training on
17 January 24, 2009.

18 OTHER MATTERS

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

24 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
25 Number RC 249722, issued to Adanan Amar Bath, owner of Discount Smog, is revoked or
26 suspended, any additional license issued under this chapter in the name of said licensee may be
27 likewise revoked or suspended by the Director.

28 ///


1 41. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
2 Number EO 151462 and/or Smog Check Repair Technician License Number EI 151462, issued to
3 Adanan Amar Bath is revoked or suspended, any additional license issued under this chapter in
4 the name of said licensee may be likewise revoked or suspended by the Director.

5 **PRAYER**

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

- 8 1. Revoking or suspending Automotive Repair Dealer Registration Number
9 ARD 249722, issued to Adanan Amar Bath, as owner of Discount Smog;
- 10 2. Revoking or suspending any other automotive repair dealer registration issued to
11 Adanan Amar Bath;
- 12 3. Revoking or suspending Smog Check Station License Number RC 249722, issued to
13 Adanan Amar Bath, as owner of Discount Smog;
- 14 4. Revoking or suspending Smog Check Inspector License Number EO 151462 and
15 Smog Check Repair Technician License Number EI 151462, issued to Respondent Adanan Amar
16 Bath;
- 17 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
18 and Safety Code in the name of Adanan Amar Bath;
- 19 6. Ordering Adanan Amar Bath, individually, and as owner of Discount Smog, to pay
20 the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of
21 this case, pursuant to Business and Professions Code section 125.3; and,
- 22 7. Taking such other and further action as deemed necessary and proper.

23 DATED: September 4, 2014


24 PATRICK DORAIS
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant

SA2014313698
DiscountSmog.docx