

BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**T WALLER SMOG CHECK; TIMOTHY  
WAYNE WALLER**

1700 E. Truxtun Avenue  
Bakersfield, CA 93305  
Automotive Repair Dealer Registration No.  
ARD 265479

Smog Check, Test Only, Station License No.  
TC 265479,

and

**TIMOTHY WAYNE WALLER**

501 L Street, #A  
Bakersfield, CA 93304  
Smog Check Inspector License No. EO  
631991

Case No. 79/13-70

OAH No. 2013071037

Respondents

DECISION

The attached Stipulated Revocation of License and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

March 7, 2014

DATED: FEB 14 2014

  
\_\_\_\_\_  
DONALD CHANG  
Assistant Chief Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 WILLIAM D. GARDNER  
Deputy Attorney General  
4 State Bar No. 244817  
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*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 79/13-70

12 **T WALLER SMOG CHECK; TIMOTHY**  
13 **WAYNE WALLER**  
14 **1700 E. Truxtun Avenue**  
**Bakersfield, CA 93305**  
15 **Automotive Repair Dealer Registration No.**  
**ARD 265479**  
16 **Smog Check, Test Only, Station License No.**  
**TC 265479,**

OAH No. 2013071037

**STIPULATED REVOCATION OF**  
**LICENSE AND ORDER**

17 and

18 **TIMOTHY WAYNE WALLER**  
19 **501 L Street, #A**  
**Bakersfield, CA 93304**  
20 **Smog Check Inspector License No. EO**  
**631991**

21 Respondents.

22  
23 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
24 entitled proceedings that the following matters are true:

25 **PARTIES**

26 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He  
27 brought this action solely in his official capacity and is represented in this matter by Kamala D.  
28 Harris, Attorney General of the State of California, by William D. Gardner, Deputy Attorney  
General.

1           2.     Respondent T Waller Smog Check; Timothy Wayne Waller and respondent Timothy  
2 Wayne Waller (collectively, "Respondent") are representing themselves in this proceeding and  
3 have chosen not to exercise their right to be represented by counsel.

4                   **Automotive Repair Dealer Registration**

5           3.     On or about June 13, 2011, the Bureau issued Automotive Repair Dealer Registration  
6 Number ARD 265479 ("registration") to Timothy Wayne Waller ("Respondent"), doing business  
7 as T Waller Smog Check. The registration was in full force and effect at all times relevant to the  
8 charges brought herein and will expire on June 30, 2014, unless renewed.

9                   **Smog Check Test Only Station License**

10           4.     On or about June 20, 2011, the Bureau issued Smog Check Test Only Station License  
11 Number TC 265479 ("station license") to Respondent. The station license was in full force and  
12 effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless  
13 renewed.

14                   **Smog Check Inspector License**

15           5.     On or about April 19, 2010, the Bureau issued Smog Check Inspector License  
16 Number EO 631991 ("inspector license") (previously EA 631991) to Timothy Wayne Waller  
17 ("Respondent Waller"). The technician license was in full force and effect at all times relevant to  
18 the charges brought herein and will expire on July 31, 2014, unless renewed.

19                                   **JURISDICTION**

20           6.     Accusation No. 79/13-70 was filed before the Director of Consumer Affairs  
21 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against  
22 Respondent. The Accusation and all other statutorily required documents were properly served  
23 on Respondent on April 29, 2013. Respondent timely filed his Notice of Defense contesting the  
24 Accusation. A copy of Accusation No. 79/13-70 is attached as Exhibit A and incorporated by  
25 reference.

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1 issued Timothy Wayne Waller is also is voluntarily revoked and accepted by the Director of  
2 Consumer Affairs.

3 1. The voluntary revocation of Respondent's Automotive Repair Dealer Registration,  
4 Smog Check Test Only Station License and Smog Check Inspector License, and the acceptance  
5 of the voluntarily revoked licenses and registration by the Bureau shall constitute the imposition  
6 of discipline against Respondent. This stipulation constitutes a record of the discipline and shall  
7 become a part of Respondent's license history with the Bureau of Automotive Repair.

8 2. Respondent shall lose all rights and privileges as an automotive repair dealer, smog  
9 check station and smog check inspector in California as of the effective date of the Director's  
10 Decision and Order.

11 3. Respondent shall cause to be delivered to the Bureau his pocket license(s) and, if  
12 issued, his wall certificate(s) on or before the effective date of the Decision and Order.

13 4. If he ever applies for licensure or petitions for reinstatement in the State of California,  
14 the Bureau shall treat it as a petition for reinstatement. Respondent must comply with all the  
15 laws, regulations and procedures for licensure in effect at the time the application or petition is  
16 filed, and all of the charges and allegations contained in Accusation No. 79/13-70 shall be  
17 deemed to be true, correct and admitted by Respondent when the Director determines whether to  
18 grant or deny the application or petition.

19 5. Respondent shall pay the agency its costs of investigation and enforcement in the  
20 amount of \$30,959.32 prior to issuance of a new or reinstated license.

21 **ACCEPTANCE**

22 I have carefully read the Stipulated Revocation of License and Order. I understand the  
23 stipulation and the effect it will have on my Automotive Repair Dealer Registration, Smog Check

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1 Test Only Station License and my Smog Check Inspector License. I enter into this Stipulated  
 2 Revocation of License and Order voluntarily, knowingly, and intelligently, and agree to be bound  
 3 by the Decision and Order of the Director of Consumer Affairs.

4  
 5 DATED: 12-13-13 Timothy Waller  
 6 T WALLER SMOG CHECK; TIMOTHY  
 7 WAYNE WALLER  
 8 TIMOTHY WAYNE WALLER  
 9 Respondents

10 **ENDORSEMENT**

11 The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted  
 12 for consideration by the Director of Consumer Affairs.

13 Dated: Respectfully submitted,  
 14 KAMALA D. HARRIS  
 15 Attorney General of California  
 16 KAREN B. CHAPPELLE  
 17 Supervising Deputy Attorney General

18 WILLIAM D. GARDNER  
 19 Deputy Attorney General  
 20 *Attorneys for Complainant*

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1 Test Only Station License and my Smog Check Inspector License. I enter into this Stipulated  
2 Revocation of License and Order voluntarily, knowingly, and intelligently, and agree to be bound  
3 by the Decision and Order of the Director of Consumer Affairs.  
4

5 DATED: \_\_\_\_\_

T WALLER SMOG CHECK; TIMOTHY  
WAYNE WALLER  
TIMOTHY WAYNE WALLER  
Respondents

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9 **ENDORSEMENT**

10 The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted  
11 for consideration by the Director of Consumer Affairs.

12 Dated: *12/13/13*

Respectfully submitted,

13 KAMALA D. HARRIS  
14 Attorney General of California  
15 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General

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17 WILLIAM D. GARDNER  
18 Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 79/13-70**



1 KAMALA D. HARRIS  
 Attorney General of California  
 2 MARC D. GREENBAUM  
 Supervising Deputy Attorney General  
 3 WILLIAM D. GARDNER  
 Deputy Attorney General  
 4 State Bar No. 244817  
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 6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:  
 13 **TIMOTHY WAYNE WALLER, OWNER,**  
 14 **d.b.a. T WALLER SMOG CHECK**  
 1700 E. Truxton Avenue  
 Bakersfield, CA 93305  
 15  
 Automotive Repair Dealer Registration  
 16 Number ARD 265479, Smog Check Test  
 Only Station License Number TC 265479,  
 17 Smog Check Inspector License Number EO  
 631991  
 18  
 19 Respondent.

Case No. 79/13-70  
 OAH No. 2013071037  
**FIRST AMENDED ACCUSATION**  
 (Smog Check)

20 Complainant alleges:

**PARTIES**

- 21
- 22 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity  
 23 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
- 24 **Automotive Repair Dealer Registration**
- 25 2. On or about June 13, 2011, the Bureau issued Automotive Repair Dealer Registration  
 26 Number ARD 265479 ("registration") to Timothy Wayne Waller ("Respondent"), doing business  
 27 as T Waller Smog Check. The registration was in full force and effect at all times relevant to the  
 28 charges brought herein and will expire on June 30, 2013, unless renewed.



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(4) Any other conduct which constitutes fraud.

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

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

9. Section 9889.3 of the Code states, in pertinent part:

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

(b) Is convicted of any crime substantially related to the qualifications, functions, or duties of the licenseholder in question.

10. Code section 118, subdivision (b) states:

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

11. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

12. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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



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(b) Is convicted of any crime substantially related to the qualifications, functions, or duties of the licenseholder in question.

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

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

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

14. Section 44072.8 of the Health and Safety Code states:

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

**COST RECOVERY**

15. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licensee 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.

**SURVEILLANCE OPERATION – DECEMBER 23, 2011**

16. On or about December 23, 2011, the Bureau performed a surveillance operation at T Waller Smog Check. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 10:34 hours and 11:02 hours, Respondent Waller performed a smog inspection that resulted in the issuance of electronic Certificate of Compliance No. XB744364 for a 1994 Acura Integra, License No. 4TDZ646 certifying that he had tested and inspected that vehicle and that the vehicle was in compliance

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1 with applicable laws and regulations. In fact, Respondent Waller performed the smog inspection  
2 using the clean-piping method.<sup>1</sup>

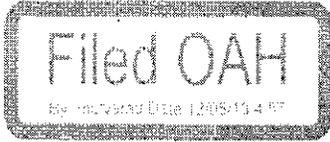
3 17. The surveillance operation and information from the VID further revealed that  
4 between 1603 hours and 1612 hours, Respondent Waller performed a smog inspection that  
5 resulted in the issuance of electronic Certificate of Compliance No. XB744367 for a 2001  
6 Hyundai XG300, VIN KM1HFU45DX1A085549, certifying that he had tested and inspected that  
7 vehicle and that the vehicle was in compliance with applicable laws and regulations. In fact,  
8 Respondent Waller performed the smog inspection using the clean-piping method.

9 SURVEILLANCE OPERATION – DECEMBER 28, 2011

10 18. On or about December 28, 2011, the Bureau performed a second surveillance  
11 operation at T Waller Smog Check. The surveillance operation and information obtained from the  
12 Bureau's Vehicle Information Database ("VID") revealed that between 1438 hours and 1504  
13 hours, Respondent Waller performed two (2) smog inspections that resulted in the issuance of  
14 electronic Certificate of Compliance No. XB744373 for a 1991 Toyota Pickup, license No.  
15 4J82019, and the issuance of electronic Certificate of Compliance No. XB744374 for a 1998  
16 Lexus ES300, license No. 3XMS170, certifying that he had properly tested and inspected both  
17 vehicles and they were in compliance with applicable laws and regulations. In fact, Respondent  
18 Waller improperly changed the method of both smog inspections from the required Acceleration  
19 Simulation Mode (ASM) test to a Two Speed Idle (TSI) test. Furthermore, the surveillance video  
20 does not show the 1991 Toyota Pickup or the 1998 Lexus ES300 at the subject facility at the time  
21 of the smog inspections.

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26 <sup>1</sup> "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of  
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in  
28 compliance or are not present in the smog check area during the time of the certification.



FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

19. Respondent has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about December 23, 2011, Respondent made statements which he knew, or which by exercise of reasonable care should have known, were untrue or misleading when he issued electronic certificates of compliance for the 1994 Acura Integra and 2001 Hyundai XG300, certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean-piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

20. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about December 23, 2011 and December 28, 2011, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Paragraphs 16 through 18 above, without performing bona fide inspections of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

21. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 23, 2011 and December 28, 2011, regarding the vehicles set forth in Paragraphs 16 through 18 above, Respondent violated sections of that Code, as follows:

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

b. Section 44015, subdivision (b): Respondent issued electronic certificates of compliance without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

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**FOURTH CAUSE FOR DISCIPLINE**

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

22. Respondent has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about December 23, 2011 and December 28, 2011, regarding the vehicles set forth in Paragraphs 16 through 18 above, Respondent violated sections of the California Code of Regulations, title 16, as follows:

a. Section 3340.35, subdivision (c): Respondent issued electronic certificates of compliance even though the vehicles had not been inspected in accordance with section 3340.42 of that Code.

b. Section 3340.42: Respondent failed to conduct the required smog tests and inspections on the vehicles in accordance with the Bureau's specifications.

**FIFTH CAUSE FOR DISCIPLINE**

(Dishonesty, Fraud or Deceit)

23. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 23, 2011 and December 28, 2011, regarding the vehicles set forth in Paragraphs 16 through 18 above, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**SIXTH CAUSE FOR DISCIPLINE**

(Violations of the Motor Vehicle Inspection Program)

24. Respondent Waller has subjected his inspector license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 23, 2011 and December 28, 2011, regarding the vehicles set forth in Paragraphs 16 through 18 above, he violated sections of that Code, as follows:

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





NINTH CAUSE FOR DISCIPLINE

(Criminal Conviction)

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27. Respondent has subjected his registration, station license and inspector license to discipline under Code section 9889.3, subdivision (b), and Health and Safety Code section 44072.2, subdivision (b), in that on or about November 15, 2013, in the criminal matter entitled *People of the State of California v. Timothy Wayne Waller* (Super. Ct. Kern County, 2013, No. BF149315A), Respondent entered a plea of nolo contendere and was convicted of one count of violating Penal Code section 115(a) [register/record false document with public office]. Respondent was sentenced to four (4) days in jail, fined and placed on probation for a period of three (3) years. The circumstances surrounding the conviction are that Respondent was arrested on or about September 28, 2013, and charged with multiple felonies in connection with the illegal conduct set forth in paragraphs 16 through 18, above.

OTHER MATTERS

28. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Timothy Wayne Waller upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

29. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 265479, issued to Timothy Wayne Waller, doing business as T Waller Smog Check, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

30. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License Number EO 631991, issued to Timothy Wayne Waller, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

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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, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 265479, issued to Timothy Wayne Waller, doing business as T Waller Smog Check;
- 2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued in the name Timothy Wayne Waller;
- 3. Revoking or suspending Smog Check Test Only Station License Number TC 265479, issued to Timothy Wayne Waller, doing business as T Waller Smog Check;
- 4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Timothy Wayne Waller;
- 5. Revoking or suspending Smog Check Inspector License Number EO 631991, issued to Timothy Wayne Waller;
- 6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Timothy Wayne Waller;
- 7. Ordering Timothy Wayne Waller 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; and,
- 8. Taking such other and further action as deemed necessary and proper.

DATED: December 4, 2013

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