

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2061
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:

Case No. 79/13-57

13 **KING AUTO REPAIR**
OSCAR URENA, OWNER
14 12576 Heacock Street
Moreno Valley, CA 92553

ACCUSATION
SMOG CHECK

15 Automotive Repair Dealer Registration No.
ARD 254888

16 Smog Check-Test Only Station License No.
TC 254888

17 **OSCAR URENA**
18 12576 Heacock Street
Moreno Valley, CA 92553

19 Advanced Emission Specialist Technician
20 License No. EA 633497

21 and

22 **OMAR URENA**
23 21957 Burch Street
Perris, CA 92570

24 Advanced Emission Specialist Technician
25 License No. EA 148289

26 Respondents.

27 Complainant alleges:
28

1 **PARTIES**

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

4 **Automotive Repair Dealer Registration**

5 2. On May 19, 2008, the Bureau issued Automotive Repair Dealer (ARD)
6 Registration Number ARD 254888 to Oscar Urena, owner of King Auto Repair (Respondent).
7 The ARD registration was in full force and effect at all times relevant to the charges brought
8 herein and will expire on February 28, 2014, unless renewed.

9 **Smog Check Test Only Station License**

10 3. On June 2, 2008, the Bureau issued Smog Check Station License (station license)
11 Number TC 254888 to Respondent. The Smog Check Station License was in full force and
12 effect at all times relevant to the charges brought herein and will expire on February 28, 2014,
13 unless renewed.

14 **Advanced Emission Specialist Technician Licenses**

15 4. On August 11, 2011, the Bureau issued Advanced Emission Specialist Technician
16 (smog technician) License Number EA 633497 to Respondent. The Advanced Emission
17 Specialist Technician License was in full force and effect at all times relevant to the charges
18 brought herein and will expire on May 31, 2013, unless renewed.

19 5. In 2004, the Bureau issued Advanced Emission Specialist Technician License
20 Number EA 148289 to Omar Urena (Respondent Omar). The Advanced Emission Specialist
21 Technician License was in full force and effect at all times relevant to the charges brought herein
22 and will expire on May 31, 2014, unless renewed.

23 **JURISDICTION**

24 6. Business and Professions Code (Code) section 9884.7 provides that the Director
25 may revoke an automotive repair dealer registration.

26 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
27 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
28

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

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

6 9. H&S Code section 44072.2 of the states, in pertinent part:

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

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

11

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

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

16 10. H&S Code section 44072.4 states, in pertinent part:

17 The director may take disciplinary action against any licensee after a
18 hearing as provided in this article by any of the following:

19 (a) Imposing probation upon terms and conditions to be set forth by the
20 director.

21 (b) Suspending the license.

22 (c) Revoking the license.

23 11. H&S Code section 44072.6 provides, in pertinent part, that the expiration or
24 suspension of a license by operation of law, or by order or decision of the Director of Consumer
25 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
26 of jurisdiction to proceed with disciplinary action.

27 12. Section 9884.7 of the Code states, in pertinent part:

28 (a) The director, where the automotive repair dealer cannot show there
was a bona fide error, may refuse to validate, or may invalidate temporarily or
permanently, the registration 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 automotive repair dealer or any

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

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

7

8 (4) Any other conduct which constitutes fraud.

9

10 (6) Failure in any material respect to comply with the provisions of
11 this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
12 regulations adopted pursuant to it.

13 STATUTORY PROVISIONS

14 13. H&S Code section 44012 states, in pertinent part:

15 The test at the smog check stations shall be performed in accordance with
16 procedures prescribed by the department and may require loaded mode
17 dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a
18 vehicle's onboard diagnostic system, or other appropriate test procedures as
19 determined by the department in consultation with the state board. The
20 department shall implement testing using onboard diagnostic systems, in lieu of
21 loaded mode dynamometer or two-speed idle testing, on model year 2000 and
22 newer vehicles only, beginning no earlier than January 1, 2013. However, the
23 department, in consultation with the state board, may prescribe alternative test
24 procedures that include loaded mode dynamometer or two-speed idle testing for
25 vehicles with onboard diagnostic systems that the department and the state board
26 determine exhibit operational problems. The department shall ensure, as
27 appropriate to the test method, the following:

28 (a) Emission control systems required by state and federal law are
reducing excess emissions in accordance with the standards adopted pursuant to
subdivisions (a) and (c) of Section 44013.

. . . .

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

14. H&S Code section 44015, subdivision (b) provides that if a vehicle meets the
requirements of Section 44012, a smog check station licensed to issue certificates shall issue a
certificate of compliance or a certificate of noncompliance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. H&S Code section 44059 states:

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

16. H&S Code section 44072.8 states that 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.

17. H&S Code section 44072.10 states, in pertinent part:

....

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

....

REGULATORY PROVISIONS

18. California Code of Regulations, Title 16 (Regulations), section 3340.24, subdivision (c) provides that the bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

19. Regulations, section 3340.30, states:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

....

1 20. Regulations, section 3340.35, subdivision (c) states:

2 A licensed station shall issue a certificate of compliance or noncompliance
3 to the owner or operator of any vehicle that has been inspected in accordance with
4 the procedures specified in section 3340.42 of this article and has all the required
5 emission control equipment and devices installed and functioning correctly. The
6 following conditions shall apply:

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

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

10 21. Regulations, section 3340.41, subdivision (c), states:

11 No person shall enter into the emissions inspection system any vehicle
12 identification information or emission control system identification data for any
13 vehicle other than the one being tested. Nor shall any person knowingly enter into
14 the emissions inspection system any false information about the vehicle being
15 tested.

16 22. Regulations, section 3340.42, states:

17 With the exception of diesel-powered vehicles addressed in subsection (f)
18 of this section, the following emissions test methods and standards apply to all
19 vehicles:

20 (a) A loaded-mode test, except as otherwise specified, shall be the test
21 method used to inspect vehicles registered in the enhanced program areas of the
22 state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon
23 dioxide and oxides of nitrogen emissions, as contained in the bureau's
24 specifications referenced in subsection (b) of Section 3340.17 of this article. The
25 loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment,
26 including a chassis dynamometer, certified by the bureau.

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

.....

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

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon
monoxide, or oxides of nitrogen emissions pursuant to the gross polluter

1 emissions standards included in the tables described in subsections (a) and (b), as
2 applicable.

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

7 (3) A gross polluting vehicle shall not be passed or issued a certificate of
8 compliance until the vehicle's emissions are reduced to or below the applicable
9 emissions standards for the vehicle included in the tables described in subsections
10 (a) and (b), as applicable. However, the provisions described in section 44017 of
11 the Health and Safety Code may apply.

12 (4) This subsection applies in all program areas statewide to vehicles
13 requiring inspection pursuant to sections 44005 and 44011 of the Health and
14 Safety Code

15 (e) In addition to the test methods prescribed in this section, the following
16 tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog
17 Check inspection:

18 (1) A visual inspection of the vehicle's emissions control systems. During
19 the visual inspection, the technician shall verify that the following emission
20 control devices, as applicable, are properly installed on the vehicle:

- 21 (A) air injection systems,
- 22 (B) computer(s) and related sensors and switches,
- 23 (C) crankcase emissions controls, including positive crankcase ventilation,
- 24 (D) exhaust gas after treatment systems, including catalytic converters,
- 25 (E) exhaust gas recirculation (EGR) systems,
- 26 (F) fuel evaporative emission controls,
- 27 (G) fuel metering systems, including carburetors and fuel injection,
- 28 (H) ignition spark controls, and

(I) any emissions control systems that are not otherwise prompted by the
Emissions Inspection System, but listed as a requirement by the vehicle
manufacturer.

(2) A functional inspection of the vehicle's emission control systems.
During the functional inspection, the technician shall conduct, as applicable, the
following tests and verifications of the vehicle:

- (A) proper operation of the exhaust gas recirculation (EGR) system,
- (B) a check of the gasoline filler cap's integrity,
- (C) proper setting of ignition timing,
- (D) a low pressure check of the fuel evaporative control system,

1 (E) proper operation of the malfunction indicator light (MIL) or "Check
Engine Light," and

2 (F) an on-board diagnostics (OBD) system test.

3 (3) A liquid leak inspection of the vehicle's fuel storage and delivery
systems.

4 (4) An inspection of the vehicle's tailpipe and crankcase for the emissions
of smoke.

5

6
7 **COST RECOVERY**

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

14 **BACKGROUND**

15 24. In February 2012, the Bureau initiated an investigation of Respondents based on a
16 review of information from the Bureau's vehicle information database (VID), which indicated
17 that Respondents may be engaging in fraudulent smog check inspections.

18 25. Beginning in February of 2012, a representative of the Bureau conducted a
19 detailed review of VID data for all smog inspections performed at Respondent's automotive
20 repair dealership for the period of November 14, 2011, through January 5, 2012. The review of
21 the OBD II functional tests¹ showed a pattern of the same OBD II diagnostic trouble code
22 (P1518) stored in the memory of the power train control module (PCM) on thirty two different

23
24 ¹ The On Board Diagnostic, generation II ("OBD II"), functional test is an automated
25 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a
26 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
27 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
28 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically
retrieves information from the vehicle's on-board computer about the status of the readiness
indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
II functional test, it will fail the overall inspection.

1 vehicles that received smog certificates in the two month period. The Bureau specifically
 2 examined the VID data for ten of the vehicles that were certified from November 14, 2011, to
 3 December 30, 2011, and it was determined that none of them support the P1518 OBD II code.
 4 Vehicles 1 through 10, set forth in Table 1 in paragraph 26, below, were all certified with a
 5 pending P1518 code stored in the PCM memory while the original equipment manufacturer
 6 (OEM) service information shows these vehicles do not support a P1518 diagnostic trouble code.

7 26. The Bureau's representative obtained information indicating that the P1518 code
 8 was not applicable to the ten vehicles. The VID data also showed that the inspections on all of
 9 the vehicles were performed under Respondent Omar's technician license. The Bureau
 10 concluded that Respondents performed the smog inspections on the vehicles using a different
 11 vehicle(s) during the OBD II tests, a method known as "clean plugging,"² resulting in the
 12 issuance of fraudulent certificates of compliance for the vehicles that were tested as outlined in
 13 the following table.

14

15 **OBDII Clean Plug Table No. 1**

OBDII Clean Plug Table No. 1							
Vehicle Certified							
#	Test Date Start-End	Year	Make	Model	License #	Unsupported Code	Certificate #
1	11/14/2011 1245-1256	1999	Cadillac	Escalade	6MPC983	P1518	XB111231C
2	11/15/2011 1437-1449	1996	Geo	Prizm	3SEN788	P1518	XB111241C
3	11/18/2011 1319-1335	2001	Kia	Rio	4PJR834	P1518	XB293763C
4	12/1/2011 1252-1258	2001	Mitsubishi	Montero Sport	4UOT718	P1518	XB458460C

23

24 ² Clean-plugging is the use of the OBD II readiness monitor status and stored code status
 25 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that
 26 is not in compliance due to the noncompliant vehicle's failure to complete the minimum number
 27 of self tests, known as monitors, or due to the presence of a stored fault code that indicates an
 28 emission control system or component failure. Clean plugging occurs during the inspection of a
 vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters
 information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD
 II system connector from the EIS into another vehicle that has a properly functioning OBD II
 system for the purpose of obtaining a "Passing" OBD II functional test result.

5	12/6/2011 1632-1641	1996	Toyota	Tacoma	8J79875	P1518	XB458488C
6	12/7/2011 1301-1325	1996	Chevrolet	Corsica	3NKA572	P1518	XB458495C
7	12/8/2011 1639-1654	1999	Chevrolet	S10	8W21417	P1518	XB603701C
8	12/20/2011 1012-1032	2003	Hyundai	Elantra	4YVF533	P1518	XB767851C
9	12/20/2011 1618-1631	2002	Saturn	SL	6LDX607	P1518	XB767854C
10	12/30/2011 1206-1238	2000	Plymouth	Neon	4MLJ504	P1518	XB767869C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

27. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that he made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading as follows: Respondent certified that vehicles 1 through 10, identified in Table 1 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods substituting a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and the vehicles were not tested or inspected, as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

28. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for the vehicles 1 through 10, identified in Table 1 above, 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.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

29. Respondent's smog check station license is subject to disciplinary action pursuant

1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent's smog check station license is subject to disciplinary action pursuant
4 to H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
5 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
6 compliance for the vehicles 1 through 10, identified in Table 1 above, without performing bona
7 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
8 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **SIXTH CAUSE FOR DISCIPLINE**

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

12 32. Respondent Omar's technician license is subject to disciplinary action pursuant to
13 H&S Code section 44072.2, subdivision (a), in that Respondent Omar failed to comply with the
14 following sections of that Code

15 **a. Section 44012, subdivision (a):** Respondent failed to ensure that all emission
16 control devices and systems required by law for vehicles 1 through 10, identified in Table 1
17 above, were installed and functioning correctly in accordance with test procedures.

18 **b. Section 44012, subdivision (f):** Respondent failed to perform the emission
19 control tests on vehicles 1 through 10, identified in Table 1 above, in accordance with procedures
20 prescribed by the department.

21 **c. Section 44059:** Respondent willfully made false entries for electronic
22 certificates of compliance for vehicles 1 through 10, identified in Table 1 above, by certifying
23 that the vehicles had been inspected as required when, in fact, they had not.

24 **SEVENTH CAUSE FOR DISCIPLINE**

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

26 33. Respondent Omar's technician license is subject to disciplinary action pursuant to
27 Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that
28 Respondent failed to comply with the provisions of the Regulations as follows:

1 Bureau ordered Respondent Omar Urena to attend an eight-hour training class. Respondent Omar
2 Urena completed the training class on May 3, 2011.

3 OTHER MATTERS

4 36. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend,
5 revoke or place on probation the registration for all places of business operated in this state by
6 Respondent, Oscar Urena, owner of King Auto Repair, upon a finding that Respondent has, or is,
7 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
8 automotive repair dealer.

9 37. Pursuant to H&S Code section 44072.8, if Smog Check, Test Only, Station
10 License Number TC 254888, issued to Respondent, Oscar Urena, owner of King Auto Repair, is
11 revoked or suspended, any additional license issued under the same chapter in the name of said
12 licensee, including but not limited to Advanced Emission Specialist Technician License Number
13 EA 633497, may be likewise revoked or suspended by the Director.

14 38. Pursuant to H&S Code section 44072.8, if Advanced Emission Specialist
15 Technician License Number EA 148289, issued to Respondent Omar Urena is revoked or
16 suspended, any additional license issued under the same chapter in the name of said licensee may
17 be likewise revoked or suspended by the Director.

18 PRAYER

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

- 21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 254888, issued to Respondent Oscar Urena, Owner of King Auto Repair;
- 23 2. Revoking or suspending any other automotive repair dealer registration issued to
24 Respondent Oscar Urena;
- 25 3. Revoking or suspending Smog Check Station License Number TC 254888, issued
26 to Respondent Oscar Urena, Owner of King Auto Repair;
- 27 4. Revoking or suspending any additional license issued under Chapter 5 of the
28 Health and Safety Code in the name of Oscar Urena;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. Revoking or suspending Advanced Emission Specialist Technician License
Number EA 633497 issued to Respondent Oscar Urena;

6. Revoking or suspending Advanced Emission Specialist Technician Number EA
148289, issued to Omar Urena;

7. Revoking or suspending any additional license issued under Chapter 5 of the
Health and Safety Code in the name of Omar Urena;

8. Ordering Oscar Urena and Omar Urena 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;

9. Taking such other and further action as deemed necessary and proper.

DATED: February 26, 2013


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SD2012704077
70687182.doc