

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

79/12-94

12 In the Matter of the Accusation Against:

Case No.

13 **CANYON TEST ONLY SMOG CENTER**
14 **JOSEPH SALEH HABASH, OWNER**
15 **501 Telegraph Canyon Road**
Chula Vista, CA 91910
16 **Automotive Repair Dealer Reg. No. ARD 259317**
Smog Check, Test Only, Station License No.
TC 259317

ACCUSATION

SMOG CHECK

17 and

18 **JOSEPH SALEH HABASH**
19 **1234 Boyle Avenue**
Escondido, CA 92027
20 **Advanced Emission Specialist Technician**
License No. EA 153589

21 Respondents.
22

23 Complainant alleges:

24 **PARTIES**

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

27 ///

28 ///

1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
2 of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

14

15 (3) Failing or refusing to give to a customer a copy of any document
16 requiring his or her signature, as soon as the customer signs the document.

17 (4) Any other conduct that constitutes fraud.

18

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

24 10. Bus. & Prof. Code section 22, subdivision (a), states:

25 "Board" as used in any provision of this Code, refers to the board in
26 which the administration of the provision is vested, and unless otherwise expressly
27 provided, shall include "bureau," "commission," "committee," "department,"
28 "division," "examining committee," "program," and "agency."

29 11. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
30 "license" includes "registration" and "certificate."

31 12. Health & Saf. Code section 44072.2 states, in pertinent part:

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

35 (a) Violates any section of this chapter [the Motor Vehicle Inspection
36 Program (Health and Saf. Code § 44000, et seq.)) and the regulations adopted
37 pursuant to it, which related to the licensed activities.
38

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

....

(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. Health & Saf. 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.

COST RECOVERY

14. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a 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.

UNDERCOVER OPERATION: 1994 NISSAN SENTRA

15. On October 26, 2011, an undercover operator with the Bureau ("operator") took the Bureau's 1994 Nissan Sentra to Respondent's facility and requested a smog inspection. The ignition timing on the Bureau-documented vehicle was not adjusted to manufacturer's specifications. The operator signed a work order/estimate, but was not given a copy at that time. After the inspection was completed, the operator paid the facility \$70 and received copies of the work order/estimate, an invoice, and a vehicle inspection report. The vehicle inspection report indicated that the vehicle passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No. WZ821230C, and that Respondent conducted the inspection. Information from the Bureau's VID (vehicle information database) showed that Respondent entered "N" (not applicable) for the functional low pressure fuel evaporative test ("LPFET")¹, indicating that the LPFET test was not required for the vehicle.

///

¹ The LPFET functional test is performed on most 1995 and older vehicles. The technician is required to follow the procedures set forth in the Bureau's Smog Check Inspection Procedures Manual to determine if the vehicle requires an LPFET test.

1 devices and systems on the vehicle, thereby depriving the People of the State of California of the
2 protection afforded by the Motor Vehicle Inspection Program.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 20. Respondent's smog check station license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
7 following sections of that Code:

8 a. **Section 44012, subdivision (f)**: Respondent failed to perform the functional tests of
9 the emission control systems and devices on the Bureau's 1994 Nissan Sentra in accordance with
10 procedures prescribed by the department.

11 b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for
12 the Bureau's 1994 Nissan Sentra without properly testing and inspecting the vehicle to determine
13 if it was in compliance with Health & Saf. Code section 44012.

14 **FIFTH CAUSE FOR DISCIPLINE**

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

17 21. Respondent's smog check station license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the
19 following sections of California Code of Regulations, title 16:

20 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
21 of compliance for the Bureau's 1994 Nissan Sentra even though the vehicle had not been
22 inspected in accordance with section 3340.42.

23 b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the EIS false
24 information about the Bureau's 1994 Nissan Sentra, as set forth in paragraph 17 above.

25 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
26 Bureau's 1994 Nissan Sentra in accordance with the Bureau's specifications.

27 ///

28 ///

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent's smog check station license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
5 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an
6 electronic smog certificate of compliance for the Bureau's 1994 Nissan Sentra without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **SEVENTH CAUSE FOR DISCIPLINE**

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

12 23. Respondent's technician license is subject to disciplinary action pursuant to Health &
13 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
14 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the functional tests
15 of the emission control systems and devices on the Bureau's 1994 Nissan Sentra in accordance
16 with procedures prescribed by the department.

17 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 24. Respondent's technician license is subject to disciplinary action pursuant to Health &
21 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
22 of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
24 1994 Nissan Sentra in accordance with Health & Saf. Code sections 44012 and 44035, and
25 California Code of Regulations, title 16, section 3340.42.

26 b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the EIS false
27 information about the Bureau's 1994 Nissan Sentra, as set forth in paragraph 17 above.

28 ///

1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
2 Bureau's 1994 Nissan Sentra in accordance with the Bureau's specifications.

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 25. Respondent's technician license is subject to disciplinary action pursuant to Health &
6 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent,
7 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
8 for the Bureau's 1994 Nissan Sentra without performing a bona fide inspection of the emission
9 control devices and systems on the vehicle, thereby depriving the People of the State of California
10 of the protection afforded by the Motor Vehicle Inspection Program.

11 **STATION INSPECTION**

12 26. On November 18, 2011, a representative of the Bureau conducted an inspection of
13 Respondent's smog check station to verify that the station's LPFET unit was functional. The
14 representative verified with Respondent that the unit had not been replaced and was still assigned
15 to the station. The representative then had Respondent calibrate the unit and perform a
16 communication so that the unit would transmit any stored information to the Bureau's VID.
17 Later, the representative reviewed the station's LPFET calibration records and confirmed that
18 there were no communication problems between the unit and the VID. The representative
19 obtained copies of vehicle inspection reports and invoices pertaining to smog inspections
20 performed in October 2011 on 21 vehicles, all of which were eligible for the functional LPFET
21 test. The representative reviewed the VID data for the 21 vehicles and found that Respondent
22 entered "N" (not applicable) for the LPFET test during the smog inspections on the 13 vehicles
23 identified below, indicating that the LPFET test was not required for the vehicles. The VID data
24 also showed that the 13 vehicles were tested at other smog check stations and that those stations
25 performed the required LPFET test on the vehicles.

26 ///

27 ///

28 ///

Date of Inspection	Vehicle Certified & VIN No.	Certificate No.
1. 10/04/2011	1994 Toyota Corolla; VIN No. 2T1AE09BXRC053141	None; vehicle failed inspection
2. 10/05/2011	1993 Toyota pickup; VIN No. 4TARN81A8PZ056073	WZ448943C
3. 10/08/2011	1995 Ford mustang; VIN No. 1FALP4045SF196364	WZ669008C
4. 10/10/2011	1993 Honda Civic; VIN No. JHMEG8555PS034355	WZ669018C
5. 10/10/2011	1995 Nissan Sentra; VIN No. 1N4AB41D2SC769419	WZ669019C
6. 10/14/2011	1985 Toyota pickup; VIN No. JT4RN56S7F0090819	None; vehicle failed inspection
7. 10/19/2011	1995 Honda Civic; VIN No. 2HGEH2461SH524444	WZ821206C
8. 10/24/2011	1995 Honda Odyssey; VIN No. JHMRA1842SC029307	WZ821227C
9. 10/26/2011	1986 Cadillac Deville; VIN No. 1G6CD6987G4302789	WZ821231C
10. 10/26/2011	1992 Jeep Wrangler; VIN No. 2J4FY29S5NJ500289	WZ821236C
11. 10/29/2011	1982 Toyota pickup; VIN No. JT4RN34R5C0026441	WZ987156C
12. 10/29/2011	1995 Chevrolet K1500 Tahoe; VIN No. 1GNEK13K6SJ434768	WZ987160C
13. 10/31/2011	1995 Mazda Miata; VIN No. JM1NA3538S0612702	WZ987169C

TENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

27. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent entered data into the EIS, certifying that the LPFET functional test was not applicable to the 13 vehicles, identified in paragraph 26 above, when, in fact, the LPFET test was required for the vehicles.

b. Respondent represented on Invoice No. 020068 that an LPFET functional test was performed on the consumer's 1985 Toyota pickup, vehicle 6 identified in paragraph 26 above, when, in fact, that test was not conducted on the vehicle.

c. Respondent represented on Invoice No. 020120 that an LPFET functional test was performed on the consumer's 1986 Cadillac Deville, vehicle 9 identified in paragraph 26 above, when, in fact, that test was not conducted on the vehicle.

///

///

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 28. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud,
5 as follows:

6 a. Respondent issued electronic smog certificates of compliance for vehicles 2 through 5
7 and 7 through 13, identified in paragraph 26 above, without performing bona fide inspections of
8 the emission control devices and systems on the vehicles, thereby depriving the People of the
9 State of California of the protection afforded by the Motor Vehicle Inspection Program.

10 b. Respondent charged the owner of the 1985 Toyota pickup, vehicle 6 identified in
11 paragraph 26 above, \$20 for performing an LPFET functional test on the vehicle when, in fact,
12 that test was not conducted on the vehicle.

13 c. Respondent charged the owner of the 1986 Cadillac Deville, vehicle 9 identified in
14 paragraph 26 above, \$20 for performing an LPFET functional test on the vehicle when, in fact,
15 that test was not conducted on the vehicle.

16 **TWELFTH CAUSE FOR DISCIPLINE**

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

18 29. Respondent's smog check station license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
20 following sections of that Code:

21 a. **Section 44012, subdivision (f)**: Respondent failed to perform the functional tests of
22 the emission control systems and devices on the 13 vehicles, identified in paragraph 26 above, in
23 accordance with procedures prescribed by the department.

24 b. **Section 44015**: Respondent issued electronic smog certificates of compliance for
25 vehicles 2 through 5 and 7 through 13, identified in paragraph 26 above, without properly testing
26 and inspecting the vehicles to determine if they were in compliance with Health & Saf. Code
27 section 44012.

28 ///

1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent's technician license is subject to disciplinary action pursuant to Health &
4 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
5 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the functional tests
6 of the emission control systems and devices on the 13 vehicles, identified in paragraph 26 above,
7 in accordance with procedures prescribed by the department.

8 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

11 33. Respondent's technician license is subject to disciplinary action pursuant to Health &
12 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
13 of California Code of Regulations, title 16, as follows:

14 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 13
15 vehicles, identified in paragraph 26 above, in accordance with Health & Saf. Code sections 44012
16 and 44035, and California Code of Regulations, title 16, section 3340.42.

17 b. **Section 3340.41, subdivision (c):** Respondent knowingly entered into the EIS false
18 information about the 13 vehicles, identified in paragraph 26 above.

19 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 13
20 vehicles, identified in paragraph 26 above, in accordance with the Bureau's specifications.

21 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

23 34. Respondent's technician license is subject to disciplinary action pursuant to Health &
24 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent,
25 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
26 for vehicles 2 through 5 and 7 through 13, identified in paragraph 26 above, without performing
27 bona fide inspections of the emission control devices and systems on the vehicles, thereby

28 ///

1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 **MATTERS IN AGGRAVATION**

4 35. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges as follows:

6 a. On or about March 4, 2010, the Bureau issued Citation No. C2010-0900 against
7 Respondent, in his capacity as owner of Canyon Test Only Smog Center, for violations of Health
8 & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of
9 emission control devices according to procedures prescribed by the department); and California
10 Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a
11 certificate of compliance to a vehicle that was improperly tested). On or about February 18,
12 2010, Respondent issued a certificate of compliance to a Bureau undercover vehicle with a
13 missing evaporative charcoal canister. The Bureau assessed civil penalties totaling \$500 against
14 Respondent for the violations. Respondent paid the fine on April 14, 2010.

15 b. On or about November 30, 2010, the Bureau issued Citation No. C2011-0651 against
16 Respondent, in his capacity as owner of Canyon Test Only Smog Center, for violations of Health
17 & Saf. Code section 44012, subdivision (f) (failure to determine that emission control devices and
18 systems required by State and Federal law are installed and functioning correctly in accordance
19 with test procedures); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
20 to a vehicle that was improperly tested). On or about October 26, 2010, Respondent issued a
21 certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
22 specifications. The Bureau assessed civil penalties totaling \$1,500 against Respondent for the
23 violations. Respondent paid the fine on January 20, 2011.

24 c. On or about March 4, 2010, the Bureau issued Citation No. M2010-0901 against
25 Respondent as to his technician license for violations of Health & Saf. Code sections 44032
26 (qualified technicians shall perform tests of emission control systems and devices in accordance
27 with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified
28 technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections

1 44012 and 44035 and Regulation 3340.42). On or about February 18, 2010, Respondent had
2 issued a certificate of compliance to a Bureau undercover vehicle with a missing evaporative
3 charcoal canister. Respondent was directed to complete an 8 hour training course and to submit
4 proof of completion to the Bureau within 30 days from receipt of the citation. Respondent
5 completed the training on April 11, 2010.

6 d. On or about November 30, 2010, the Bureau issued Citation No. M2011-0652 against
7 Respondent as to his technician license for violations of Health & Saf. Code sections 44032
8 (qualified technicians shall perform tests of emission control systems and devices in accordance
9 with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified
10 technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections
11 44012 and 44035 and Regulation 3340.42). On or about October 26, 2010, Respondent had
12 issued a certificate of compliance to a Bureau undercover vehicle with the ignition timing
13 adjusted beyond specifications. Respondent was directed to complete a 16 hour training course
14 and to submit proof of completion to the Bureau within 30 days from receipt of the citation.
15 Respondent completed the training on January 29, 2011.

16 **OTHER MATTERS**

17 36. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
18 suspend, revoke, or place on probation the registration for all places of business operated in this
19 state by Respondent Joseph Saleh Habash, owner of Canyon Test Only Smog Center, upon a
20 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
21 laws and regulations pertaining to an automotive repair dealer.

22 37. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
23 License Number TC 259317, issued to Respondent Joseph Saleh Habash, owner of Canyon Test
24 Only Smog Center, is revoked or suspended, any additional license issued under this chapter in
25 the name of said licensee may be likewise revoked or suspended by the director.

26 38. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
27 Technician License No. EA 153589, issued to Respondent Joseph Saleh Habash, is revoked or

28 ///

1 suspended, any additional license issued under this chapter in the name of said licensee may be
2 likewise revoked or suspended by the director.

3 PRAYER

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

- 6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 259317, issued to Joseph Saleh Habash, owner of Canyon Test Only Smog Center;
- 8 2. Revoking or suspending any other automotive repair dealer registration issued to
9 Joseph Saleh Habash;
- 10 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
11 259317, issued to Joseph Saleh Habash, owner of Canyon Test Only Smog Center;
- 12 4. Revoking or suspending Advanced Emission Specialist Technician License Number
13 EA 153589, issued to Joseph Saleh Habash;
- 14 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
15 and Safety Code in the name of Joseph Saleh Habash;
- 16 6. Ordering Joseph Saleh Habash, individually, and as owner of Canyon Test Only
17 Smog Center, to pay the Director of Consumer Affairs the reasonable costs of the investigation
18 and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 19 7. Taking such other and further action as deemed necessary and proper.

20
21 DATED: _____

3/6/12

John Wallauch by Doug Balata
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

22
23
24
25
26
27
28 SD2012802137