

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2221
Facsimile: (510) 622-2270
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:

Case No. *79/13-24*

13 **SMOG CENTRAL STATION**
27 Industrial Way, Unit A
Greenbrae, CA 94904
14 **BERNARD L. SILBERMAN, OWNER**
Automotive Repair Dealer Registration No.
15 **ARD 238989**
Smog Check, Test Only, Station License No.
16 **TC 238989**

ACCUSATION
Smog Check

17 **and**

18 **RONALD J. SILBERMAN**
729 Bamboo Terrace
19 **San Rafael, CA 94903**
20 **Advanced Emission Specialist Technician**
License No. EA 311193
21

22 Respondent.
23

24 Complainant alleges:

25 **PARTIES/LICENSE INFORMATION**

26 1. John Wallauch (Complainant) brings this Accusation solely in his official capacity as
27 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
28

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

4 ...

5 “(4) Any other conduct that constitutes fraud.

6 ...

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

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

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

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

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

23 ...

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

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

26 15. Section 9884.9 of the Code requires an automotive repair dealer to give to the
27 customer a written estimated price for labor and parts necessary for a specific job and provides
28

1 that no work shall be done and no charges shall accrue before authorization to proceed is obtained
2 from the customer.

3 16. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

4 “No person shall enter into the emissions inspection system any vehicle identification
5 information or emission control system identification data for any vehicle other than the one
6 being tested. Nor shall any person knowingly enter into the emissions inspection system any
7 false information about the vehicle being tested.”

8 17. California Code of Regulations, title 16, section 3340.42, states that smog check
9 stations and smog check technicians shall conduct tests and inspections in accordance with the
10 Bureau’s BAR-97 Emissions Inspection System Specifications referenced in subsections (a) and
11 (b) of Section 3340.17, as well as section 3340.42.

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

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

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

18 **COST RECOVERY**

19 19. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 **UNDERCOVER OPERATION – MAY 31, 2012**

24 20. On or about May 31, 2012, a Bureau undercover operator (“operator”) drove a
25 Bureau documented 1995 Chevrolet Beretta to Respondent Smog Central’s facility and requested
26 a smog inspection from Respondent Silberman. The Exhaust Gas Recirculation (EGR) system on
27 the Beretta had been rendered inoperable, causing the vehicle to be incapable of passing a smog
28 inspection. The operator was not provided with a written estimate and did not sign a work order

1 prior to the smog inspection. Respondent Silberman performed the smog inspection and issued
2 electronic Certificate of Compliance No. OM959854C, certifying that he had tested and inspected
3 the vehicle and that it was in compliance with applicable laws and regulations. The operator paid
4 Respondent Silberman \$78 and was provided with a copy of Invoice number 019130 and a
5 Vehicle Inspection Report ("VIR").

6 21. On June 4 and 5, 2012, after the undercover operation, the Bureau re-inspected the
7 Beretta and verified that the EGR system was still inoperative. The Bureau performed a smog
8 inspection and verified that the Beretta still failed the smog inspection due to the inoperable EGR
9 system. As such, the Beretta could not have passed the functional portion of a properly
10 performed smog inspection on May 31, 2012, because the vehicle's EGR system had been
11 rendered inoperable.

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Untrue Misleading Statements)
14 (Bus. & Prof. Code § 9884.7, subd. (a)(1))

15 22. Respondent Smog Central has subjected its registration to disciplinary action under
16 Code section 9884.7, subdivision (a)(1), in that on or about May 31, 2012, Respondent made or
17 authorized statements which it knew or by the exercise of reasonable care should have known to
18 be untrue or misleading, as follows:

19 23. On or about May 31, 2012, Respondent Smog Central's technician, Respondent
20 Silberman, certified under penalty of perjury on the VIR that the Bureau's 1995 Chevrolet Beretta
21 had passed the inspection and was in compliance with applicable laws and regulations and issued
22 electronic Certificate of Compliance No. OM959854C. In fact, the vehicle's EGR system had
23 been rendered inoperable and the Beretta could not have passed the functional portion of the
24 smog inspection required by Health and Safety Code section 44012. The circumstances are set
25 forth in paragraphs 20 and 21, above.

1 without performing a bona fide inspection of the emission control devices and systems on the
2 vehicle, thereby depriving the People of the State of California of the protection afforded by the
3 Motor Vehicle Inspection Program.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 (Violations of the Motor Vehicle Inspection Program)
6 (Health & Saf. Code § 44072.2, subd. (a))

7 30. Respondent Silberman has subjected his technician's license to discipline under
8 Health and Safety Code section 44072.2, subdivision (a), in that he violated the following
9 sections of the Health and Safety Code:

10 a. **Section 44012, subdivision (f):** On or about May 31, 2012, Respondent Silberman
11 failed to perform emission control inspections on the Bureau's 1995 Chevrolet Beretta in
12 accordance with the procedures prescribed by the department. The circumstances are set forth in
13 paragraphs 20 and 21, above.

14 b. **Section 44032:** On or about May 31, 2012, Respondent Silberman failed to perform
15 an inspection of the emission control devices and systems on the Bureau's 1995 Chevrolet Beretta
16 in accordance with section 44012 of the Health and Safety Code. The circumstances are set forth
17 in paragraphs 20 and 21, above.

18 **EIGHTH CAUSE FOR DISCIPLINE**

19 (Failure to Comply with Regulations)
20 (Health & Saf. Code § 44072.2, subd. (c))

21 31. Respondent Silberman has subjected his technician's license to discipline under
22 Health and Safety Code section 44072.2, subdivision (c), in that he failed to comply with the
23 following sections of the California Code of Regulations, title 16, in the following material
24 respects:

25 a. **Section 3340.30, subdivision (a):** On or about May 31, 2012, Respondent Silberman
26 failed to perform the emission control inspection in accordance with Health and Safety Code
27 section 44012. The circumstances are set forth in paragraphs 20 and 21, above.

28 b. **Section 3340.41, subdivision (c):** On or about May 31, 2012, Respondent Silberman
entered false information into the Emission Inspection System unit by entering "Pass" for the

1 functional portion of the inspection on the Bureau's 1995 Chevrolet Beretta, when the vehicle's
2 EGR system was inoperative. The circumstances are set forth in paragraphs 20 and 21, above.

3 c. **Section 3340.42:** On or about May 31, 2012, Respondent Silberman failed to
4 conduct the required smog tests on the Bureau's 1995 Chevrolet Beretta in accordance with the
5 Bureau's specifications. The circumstances are set forth in paragraphs 20 and 21, above.

6 **NINTH CAUSE FOR DISCIPLINE**

7 (Dishonesty, Fraud, or Deceit)
8 (Health & Saf. Code § 44072.2, subd. (d))

9 32. Respondent Silberman has subjected his technician's license to discipline under
10 Health and Safety Code section 44072.2, subdivision (d), in that on or about May 31, 2012, he
11 committed acts involving dishonesty, fraud, or deceit whereby another was injured. Specifically,
12 Respondent Silberman issued an electronic Certificate of Compliance No. OM959854C for the
13 Bureau's 1995 Chevrolet Beretta without performing a bona fide inspection of the emission
14 control devices and systems on the vehicle, thereby depriving the People of the State of California
15 of the protection afforded by the Motor Vehicle Inspection Program.

16 **PRIOR CITATIONS**

17 33. To determine the degree of discipline, if any, to be imposed on Respondents,
18 Complainant alleges the following:

19 **Respondent Smog Central**

20 a. On or about January 2, 2009, the Bureau issued Citation No. C09-0780 against
21 Respondent Smog Central for violating Health and Safety Code section 44012, subdivision (f)
22 (failure to perform a visual/functional check of emission control devices according to procedures
23 prescribed by the department), and California Code of Regulations, title 16, section 3340.35,
24 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
25 issuing a certificate of compliance to a Bureau undercover vehicle with a missing Air Injection
26 system. The Bureau assessed civil penalties totaling \$500 against Respondent Smog Central for
27 the violations. Respondent Smog Central complied with this citation on January 9, 2009.
28

1 b. On or about July 28, 2009, the Bureau issued Citation No. C2010-0083 against
2 Respondent Smog Central for violating Health and Safety Code section 44012, subdivision (f)
3 (failure to perform a visual/functional check of emission control devices according to procedures
4 prescribed by the department), and California Code of Regulations, title 16, section 3340.35,
5 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
6 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing
7 adjusted beyond specifications. The Bureau assessed civil penalties totaling \$1000 against
8 Respondent Smog Central for the violations. Respondent Smog Central complied with this
9 citation on September 24, 2009.

10 c. On or about January 23, 2012, the Bureau issued Citation No. C2012-0758 against
11 Respondent Smog Central for violating Health and Safety Code section 44012, subdivision (f)
12 (failure to perform a visual/functional check of emission control devices according to procedures
13 prescribed by the department), and California Code of Regulations, title 16, section 3340.35,
14 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
15 issuing a certificate of compliance to a Bureau undercover vehicle with a missing Positive
16 Crankcase Ventilation system. The Bureau assessed civil penalties totaling \$1,500 against
17 Respondent Smog Central for the violations. This citation was appealed on March 26, 2012, and
18 the matter was submitted after an administrative hearing on September 19, 2012.

19 **Respondent Silberman**

20 d. On or about January 2, 2009, the Bureau issued Citation No. M09-0781 against
21 Respondent Silberman's technician license for violating Health and Safety Code section 44032
22 (failure to perform tests and inspections in accordance with Health and Safety Code section
23 44012), and California Code of Regulations, title 16, section 3340.30, subdivision (a) (inspect,
24 test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035,
25 and California Code of Regulations, title 16, section 3340.32) for issuing a certificate of
26 compliance to a Bureau undercover vehicle with a missing Air Injection system. Respondent
27 Silberman was required to attend an 8-hour training course. On or about March 1, 2009,
28 Respondent Silberman completed the required training course.

1 e. On or about July 28, 2009, the Bureau issued Citation No. M2010-0084 against
2 Respondent Silberman's technician license for violating Health and Safety Code section 44032
3 (failure to perform tests and inspections in accordance with Health and Safety Code section
4 44012), and California Code of Regulations, title 16, section 3340.30, subdivision (a) (inspect,
5 test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035,
6 and California Code of Regulations, title 16, section 3340.32) for issuing a certificate of
7 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
8 specifications. Respondent Silberman was required to attend a 16-hour training course. On or
9 about October 4, 2009, Respondent Silberman completed the required training course.

10 f. On or about January 23, 2012, the Bureau issued Citation No. M2012-0759 against
11 Respondent Silberman's technician license for violating Health and Safety Code section 44032
12 (failure to perform tests and inspections in accordance with Health and Safety Code section
13 44012), and California Code of Regulations, title 16, section 3340.30, subdivision (a) (inspect,
14 test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035,
15 and California Code of Regulations, title 16, section 3340.32) for issuing a certificate of
16 compliance to a Bureau undercover vehicle with a missing Positive Crankcase Ventilation
17 system. Respondent was required to attend a Basic Clean Air Car Course. This citation was
18 appealed on March 26, 2012, and the matter was submitted after an administrative hearing on
19 September 19, 2012.

20 **OTHER MATTERS**

21 34. Under Code section 9984.7, subdivision (c), the director may suspend, revoke, or
22 place on probation the registrations for all places of business operated in this state by Respondent
23 Smog Central, upon a finding that he has or is engaged in a course of repeated and willful
24 violation of the laws and regulations pertaining to an automotive repair dealer.

25 35. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
26 License Number 238989, issued to Bernard L. Silberman, doing business as Smog Central
27 Station, is revoked or suspended, any additional license issued under this chapter in this name
28 may be likewise revoked or suspended by the director.

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

DATED: NOVEMBER 14, 2018 John Wallauch by [Signature]

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

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