

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **MISSION AUTO SERVICES, INC –**
14 **OWNER**
15 **DBA MISSION AUTO SERVICES**
16 **ZIPING ZHONG, PRESIDENT**
17 **5897 Mission Street**
18 **San Francisco, CA 94112**

19 **Automotive Repair Dealer Registration No.**
20 **ARD 246831**
21 **Smog Check Station License No. RC 246831**
22 **Smog Check Technician - Advanced**
23 **Emission Specialist License No. EA 602036**

24 **JIE ZHANG**
25 **1722 32nd Ave.**
26 **San Francisco, CA 94122**

27 **Advanced Emissions Specialist Technician**
28 **License No. EA631324**

Respondents.

Case No. 79/13-32

ACCUSATION

SMOG CHECK

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration No. ARD 246831

1 2. In 2006, the BAR issued Automotive Repair Dealer Registration Number ARD
2 246831 (Registration) to Mission Auto Services Inc., Ziping Zhong, also known as – James
3 Zhong - President/Secretary/Treasurer, dba Mission Auto Services (Respondent Zhong). The
4 Registration was in full force and effect at all times relevant to the charges brought herein and
5 expires on August 31, 2013.

6 **Smog Check, Station License Number RC 246831**

7 3. On or about October 3, 2006, the BAR issued Smog Check Station License Number
8 RC 246831 (Smog Check Station License) to Respondent Zhong. The Smog Check Station
9 License was in full force and effect at all times relevant to the charges brought herein and expired
10 on August 31, 2012.

11 **Advanced Emission Specialist Technician License Number EA 602036**

12 4. On a date uncertain in 2003, the BAR issued Advanced Emission Specialist
13 Technician License Number EA 602036 (technician license) to Ziping Zhong. The Technician
14 License expired on January 31, 2008.

15 **Advanced Emission Specialist Technician License Number EA 631324**

16 5. On or about September 14, 2009, the BAR issued Advanced Emission Specialist
17 Technician License Number EA 631324 (technician license) to Jie Zhang (Respondent Zhang).
18 The Technician License was in full force and effect at all times relevant to the charges brought
19 herein and will expire on October 31, 2013, unless renewed.

20 **JURISDICTION**

21 6. Business and Professions Code (“Bus & Prof Code”) section 9884.7 provides that
22 the Director may revoke an automotive repair dealer registration.

23 7. Bus & Prof Code section 9884.13 provides, in pertinent part: that the expiration of a
24 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
25 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
26 invalidating (suspending or revoking) a registration.

27 8. Health and Safety Code (“Health & Saf Code”) section 44002 provides, in pertinent part,
28 that the Director has all the powers and authority granted under the Automotive Repair Act for

1 enforcing the Motor Vehicle Inspection Program.

2 **STATUTORY PROVISIONS**

3 9. Section 119 of the Business and Professions Code ("Code") states, in pertinent part:

4 Any person who does any of the following is guilty of a misdemeanor:

5 (b) Lends his or her license to any other person or knowingly permits the use
thereof by another.

6 (c) Knowingly permits any unlawful use of a license issued to him or her.

7 10. Section 9884.7 of the Code states, in pertinent part:

8 (a) The director, where the automotive repair dealer cannot show there was a
9 bona fide error, may refuse to validate, or may invalidate temporarily or
10 permanently, the registration of an automotive repair dealer for any of the
11 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
automotive technician, employee, partner, officer, or member of the automotive
repair dealer.

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

15 (4) Any other conduct which constitutes fraud.

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

19 (b) Except as provided for in subdivision (c), if an automotive repair dealer
20 operates more than one place of business in this state, the director pursuant to
21 subdivision (a) shall only refuse to validate, or shall only invalidate temporarily or
22 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.

23 (c) Notwithstanding subdivision (b), the director may refuse to validate, or
24 may invalidate temporarily or permanently, the registration for all places of
25 business operated in this state by an automotive repair dealer upon a finding that
26 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.

27 11. Section 9884.13 of the Code provides, in pertinent part; that the expiration of a
28 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

3 12. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
4 "commission," "committee," "department," "division," "examining committee," "program," and
5 "agency." "License" includes certificate, registration or other means to engage in a business or
6 profession regulated by the Code.

7 13. Section 118(b) of the Code states:

8 The suspension, expiration, or forfeiture by operation of law of a license
9 issued by a board in the department, or its suspension, forfeiture, or cancellation
10 by order of the board or by order of a court of law, or its surrender without the
11 written consent of the board, shall not, during any period in which it may be
12 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.

13 14. Section 44002 of the Health and Safety Code provides, in pertinent part, that
14 the Director has all the powers and authority granted under the Automotive Repair Act for
15 enforcing the Motor Vehicle Inspection Program.

16 15. 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
18 license as provided in this article if the licensee, or any partner, officer, or director
19 thereof, does any of the following:

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

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

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

25 (f) Aids or abets unlicensed persons to evade the provisions of this chapter.
26

27 16. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
28 expiration or suspension of a license by operation of law, or by order or decision of the

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

3 17. Section 44072.8 of the Health and Safety Code states:

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

7 18. Health & Saf. Code section 44014, subdivision (a), states:

8 Except as otherwise provided in this chapter, the testing and repair portion of the
9 program shall be conducted by smog check stations licensed by the department, and
10 by smog check technicians who have qualified pursuant to this chapter.

11 19. Health & Saf. Code section 44032 states, in pertinent part:

12 [n]o person shall perform, for compensation, tests or repairs of emission control
13 devices or systems of motor vehicles required by this chapter unless the person
14 performing the test or repair is a qualified smog check technician.

15 20. Regulation 3340.45 states:

16 All vehicle emission tests, visual inspections of the emissions control systems,
17 functional inspections of the emissions control systems, liquid fuel leak inspections,
18 and visible smoke tests shall be conducted at licensed smog check stations by licensed
19 smog check technicians. The inspections shall be performed in accordance with the
20 Emissions Inspection System test prompts and the inspection requirements and
21 procedures prescribed in the Bureau's Smog Check Inspection Procedures Manual,
22 dated August 2009, which is hereby incorporated by reference.

23 21. Section 1.1.0 of the Bureau's Smog Check Inspection Procedures Manual states, in
24 pertinent part:

25 The individual technician license number and access code together provide access
26 into the Emissions Inspection System (EIS) Smog Check inspection mode . . .

27 The access code is assigned by BAR and is unique to each technician. Each
28 technician must maintain the security of his or her access code. Disclosure of one's
access code or use of another technician's access code or license information is
prohibited. If the security of your access code has been compromised, or you suspect
another person is using your access code, you must contact your local BAR field
office immediately to have the access code changed.

COST RECOVERY

22. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request

1 the administrative law judge to direct a licentiate found to have committed a violation or violations of
2 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement
3 of the case.

4 UNLICENSED ACTIVITY INVESTIGATION

5 23. On or about March 8, 2012, the BAR initiated an investigation of Respondents
6 based on an interview of licensed technician Jie Zhang, EA631324 (Zhang), by Bureau personnel
7 at the South San Francisco Field Office. Zhang had presented himself at the field office to request
8 a change of his Smog Check Technician personal access code. Zhang stated that Ziping Zhong,
9 aka – James Zhong (Zhong) also knew his access code. Zhang said that on January 24, 2012 he
10 had been involved in an automobile accident and had not returned to work at Mission Auto
11 Services since that date. A Bureau representative then performed a cursory check of tests
12 performed at Mission Auto Services on the Bureau's Vehicle Identification Database (VID)
13 between the dates of January 25, 2012 and March 8, 2012 and noted numerous tests and vehicle
14 certifications that were performed using Zhang's access code.

15 24. Later on March 8, 2012, Bureau representatives visited Mission Auto Services and
16 gathered evidence in the form of invoices for smog checks performed at the facility between
17 January 25, 2012 and March 8, 2012. They then interviewed Zhong and he admitted that he had
18 asked for and received Zhang's personal access code and had used it and Zhang's Advanced
19 Emissions Specialist Technician License to perform the smog tests and certifications at his
20 facility during that timeframe. He also admitted to signing some of the Vehicle Inspection
21 Reports (VIR) for the vehicles he had tested in Zhang's absence. Zhong did not possess a valid
22 Advanced Emissions Specialist Technician License at the time of these tests.

23 25. On March 19, 2012, a representative of the BAR conducted a detailed review of VID
24 data for all smog inspections performed at Respondent Zhong's automotive repair dealership for
25 the period of, January 25, 2012 through March 8, 2012. On that day, the Bureau representative
26 also received, via Certified U.S. mail, the invoices and Vehicle Inspection Reports that were
27 requested, but not provided, during the March 8, 2012 inspection at Zhong's facility. The Bureau
28 representative was able to specifically identify that Zhong utilized Zhang's personal access code

1 and license to perform thirty five (35) illegal inspections resulting in twenty six (26) fraudulent
 2 certifications. Also identified, were seventeen VIRs that were signed by Zhong in place of Zhang.

3 26. Illegal tests and fraudulent certificates of compliance, as referenced in paragraphs 24
 4 and 25 above, for the vehicles that were tested are outlined in the following table.

5
 6 **Table 1, Unlicensed Tests and Certifications**

7

Vehicles Tested/Certified Using EA631324							
#	Test Date Start-End	Year	Make	Model	License #	Signed by	Certificate #
8 9 10	1 1/26/2012 1008-1023	1996	Buick	Century	5PNH819	James	Pretest
11	2 1/26/2012 1027-1101	1997	Buick	Skylark	5PNH819	James	O1184492C
12	3 1/27/2012 1224-1250	1999	Honda	Civic	4HHD964	unsigned	Pretest
13	4 1/28/2012 1015-1024	2004	Honda	Accord	5GJZ204	James	O1184493C
14	5 1-30-2012 1200-1207	2002	Toyota	Highlander	6W50848	James	O1184494C
15	6 1/31/2012 1028-1046	2000	Acura	3.2TL	4JHW287	unsigned	O1184495C
16	7 2/1/2012 1304-1319	2002	Honda	Civic	6ASN545	unsigned	O1184496C
17	8 2/2/2012 1458-1506	2006	Chevrolet	Express	8B27521	James	O1184497C
18	9 2/2/2012 1601-1620	1996	Honda	Accord	3PZW602	James	O1184498C
19	10 2/3/2012 0923-0936	1996	Buick	Regal	6NZA003	N/A	Failed
20	11 2/3/2012 0941-0951	2006	Acura	TL	5TMX265	James	O1184499C
21	12 2/3/2012 1549-1601	1996	Buick	Regal	6NZA003	James	O1184500C
22	13 2/4/2012 1653-1712	2007	Toyota	Camry	5YLS957	James	OK299201C
23	14 2/7/2012 1153-1200	2006	Lexus	RX 330	5TJW278	James	OK299202C

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	2/7/2012 1430-1442	2002	Honda	Accord	4WKM508	unsigned	OK299203C
16	2/7/2012 1532-1603	1993	Nissan	Pickup	932XFR	James	Failed
17	2/9/2012 1212-1228	2000	Nissan	Xterra	4JYC596	James	OK299204C
18	2/9/2012 1243-1255	2004	Toyota	Corolla	ZZE13OZ	unsigned	OK299205C
19	2/9/2012 1301-1313	2000	Toyota	Tacoma	6E79384	unsigned	Failed
20	2/9/2012 1604-1620	2000	Toyota	Tacoma	6E79384	unsigned	Pretest
21	2/11/2012 1126-1142	2002	Toyota	RAV 4	LMS2828	unsigned	OK299206C
22	2/11/2012 1430-1450	2000	Honda	Civic	4NDD518	James	OK299207C
23	2/15/2012 1401-1413	2004	Nissan	Altima	5FYK705	unsigned	OK299208C
24	2/16/2012 1724-1735	2006	Mazda	Mazda6	6PUH658	unsigned	OK299209C
25	2/17/2012 1329-1342	1997	Acura	2.2CL	5SEK097	James	OK299210C
26	2/20/2012 1110-1123	2000	Toyota	Sienna	4LFW373	unsigned	OK299211C
27	2/20/2012 1416-1423	2005	BMW	3-Series	6NDG663	unsigned	OK299212C
28	2/20/2012 1517-1527	2001	BMW	X5	4UDM430	unsigned	OK299213C
29	2/20/2012 1535-1554	1993	Nissan	Pickup	932XFR	unsigned	Failed
30	2/24/2012 0923-0952	2000	Toyota	Corolla	4KDC404	James	Pretest
31	2/24/2012 1605-0834	2000	Toyota	RAV 4	4MVN680	unsigned	Failed
32	2/27/2012 1333-1344	2006	Subaru	Legacy	5UPE259	unsigned	OK299214C
33	2/28/2012 0854-0905	2006	Toyota	Sienna	6JHS408	unsigned	OK299215C
34	2/28/2012 0940-1040	2000	Toyota	RAV 4	4MVN680	James	OK299216C
35	3/3/2012 1244-1255	2000	Mercedes	ML320	4KRV061	unsigned	OK299217C

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

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

26. Respondent Zhong's registration is subject to disciplinary action pursuant to Bus. & Prof. 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 35, identified in Table 1 of paragraph 26 above, were inspected in compliance with applicable laws and regulations. In fact Zhong is not currently licensed to conduct inspections on the vehicles and instead utilized the license and personal access code of a different technician, Jie Zhang, thus the vehicles were not tested or inspected, as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

27. Respondent Zhong's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 2, 4 - 9, 11 - 15, 17 - 18, 21 - 28, and 32 - 35 identified in Table 1 of paragraph 26 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)

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

a. Section 44012: Respondent failed to ensure that all emission control devices and systems required by law for vehicles 1 through 35, identified in Table 1 of paragraph 26 above, were installed and functioning correctly in accordance with test procedures.

1 3340.42.

2 **c. Section 3340.42:** Respondent failed to ensure that the required smog tests were
3 conducted on vehicles 1 through 35, identified in Table 1 of paragraph 26 above, in accordance
4 with the BAR's specifications.

5 **FIFTH CAUSE FOR DISCIPLINE**

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

7 30. Respondent Zhong's smog check station license is subject to disciplinary action
8 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that Respondent
9 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic
10 smog certificates of compliance for vehicles 2, 4 - 9, 11 - 15, 17 - 18, 21 - 28, and 32 - 35,
11 identified in Table 1 of paragraph 26 above, without performing bona fide inspections of the
12 emission control devices and systems on the vehicles, thereby depriving the People of the State of
13 California of the protection afforded by the Motor Vehicle Inspection Program.

14 **SIXTH CAUSE FOR DISCIPLINE**

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

16 31. Respondent Zhang's technician license is subject to disciplinary action pursuant to
17 Health & Safety Code section 44072.2, subdivision (f), in that Respondent aided and abetted
18 Respondent Zhong, allowing this unlicensed person to utilize his Advanced Emissions Specialist
19 Technician license and confidential access code to perform the emission control tests on the
20 vehicles, identified in Table 1 of paragraph 26 above.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Licensing Violations)**

23 32. Respondent Zhang's technician license is subject to disciplinary action pursuant to
24 Bus. & Prof. Code section 119 subsections (b) and (c), in that Respondent knowingly allowed
25 Respondent Zhong to use his Advanced Emissions Specialist Technician license and confidential
26 access code to perform the emission control tests on the vehicles, identified in Table 1 of
27 paragraph 26 above.

28 **OTHER MATTERS**

1 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Jie Zhang;

3 6. Ordering Respondents, Ziping Zhong, president of Mission Auto Services Inc., DBA
4 Mission Auto Services and Jie Zhang to pay the Director the reasonable costs of the investigation
5 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
6 Taking such other and further action as deemed necessary and proper.

7
8
9
10 DATED: December 6, 2012


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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 SF2012403087
40618411.doc